

GABRIELA SANTOS, PETITIONER AND APPELLEE, VS. THE DIRECTOR OF LANDS, OPPONENT AND APPELLANT.

G.R. No. 6958. March 29, 1912

Ponente: MAPA, J.

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MAPA, J.:

The herein applicant seeks inscription in the land registry of five parcels of land situated in the Province of Rizal and which are described in the application and specified therein under the letters A, B, C, D, and E. The engineer of the thirteenth district of the Bureau of Public Works opposed the application with respect to the parcels A, B, and C, alleging that there should be segregated from the first two a strip of land 2.70 meters wide on the side thereof which borders the provincial highway known as "Pasig-Montalban," also called Calzada de Mabini, and from the third, a strip 3.30 meters wide along the northeast side of the same adjoining the highway leading to Montalban, which is an extension or continuation of the road just aforementioned.

After hearing the case, the Court of Land Registration overruled the opposition to the application and ordered the inscription of the five parcels of land in the name of the applicant.

It is shown by the evidence that the highway adjoining the Parcels A and B now measures 7 meters and 30 centimeters in width; and that which borders Parcel C, 6 meters and 70 centimeters. The opponent maintains that each of these highways should, in accordance with law, have a width of 12.90 meters, and that strips of land of a width equal to the difference between said 12.90 meters and the width of said highways at the present time, should be taken from the parcels which adjoin the said highways.

The judgment declares the following facts to have been proved:

"1. That the boundaries of the said three parcels adjoining the highway, have never been altered or changed and that the royal order of May 21, 1868 (cited as a ground by the opponent), which served as a basis for the instructions issued by the Bureau of Public Works providing that the said highway should have a width of 12 meters and 90 centimeters, was never complied with.

"2. That the highway in question has not until now been sought to be widened to a width of 12 meters and 30 centimeters, by taking from the adjoining properties the land necessary.

"3. That the applicant acquired the properties described in the application, by inheritance from the deceased Carmen Amado who was in possession of the same, as owner, for more than thirty years, including the time the land was in the possession of her predecessor in interest, her father, Valeriano Amado."

These conclusions of fact are not controverted in the opponent's brief, and in reality agree with the evidence adduced at the trial: wherefore, they should be maintained. It is clearly to be deduced from them that the strips of land, the subject of the adverse party's claim, never formed a part of either the Mabini or the Montalban highway. The royal order cited by the opponent, which prescribes the width of highways, was never complied with as regards the two roads just named, neither did the latter ever have an actual width of 12.90 meters which now, and

only now, the opponent claims they have. Such being the case, the allegations completely fail that are solely and exclusively founded on the fact, not only unproven but also conclusively contradicted by the evidence, that the strips of land in question constitute a part of the aforesaid highways and were aggregated to or incorporated with the applicant's property to the prejudice and detriment of these roads.

For the same reason, the opponent's allegation also completely fails, to wit, that the applicant's possession of more than thirty years can not serve her as a title for the acquisition of ownership of the strips of land in 'question, because the same are parts of public roads or highways. It has already hereinabove been shown that this alleged fact is in no wise true, since these strips of land never were any part of such roads.

That these strips of land are necessary to give to the highways above named the width required by existing provisions of law, is not a reason which can lawfully prevent the inscription sought by the applicant, it being, as has been shown, that she and her predecessors in interest have been in quiet, peaceable and uninterrupted possession, as owners, of the lands that are the subject of the application. The opponent could bring the proper action for expropriation, in conformity with the provisions of sections 241 to 253 of the Code of Civil Procedure; but it is not lawful, in the meanwhile, to deprive the applicant, for that sole reason, of the ownership of the lands in question and of the rights inherent thereto.

"No one shall be deprived of his property, except by competent authority and with sufficient cause of public utility, always after the proper indemnity.

"If this requisite has not been fulfilled the judges shall protect, and in a proper case replace the condemned party in possession." (Art. 349, Civil Code.)

The judgment appealed from is affirmed, with the costs of this instance against the opponent.

Arellano, C. J., Torres, Johnson, Carson, and Trent, JJ., concur.

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