

**ANDRES TOBIAS Y SANDOVAL ET AL., PLAINTIFFS AND APPELLEES,
VS. GABRIEL ENRICO Y CUSTODIO ET AL., DEFENDANTS AND
APPELLANTS.***G.R. No. 7289. March 28, 1912*

Ponente: TORRES, J.

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The appeal in this case was raised, through a bill of exceptions, by counsel for the opponents, from a judgment rendered on February 13, 1911, by the Honorable Jesse George, associate judge of the Court of Land Registration.

On July 6, 1908, counsel for Andres, Serapion, Leoncio, Crispin, M6nico, M&xima and, Regino, all surnamed Tobias y Sandoval, filed an application in the Court of Land Registration for the inscription in the registry in accordance with law of a parcel of land of which they are the absolute owners, situated in the barrio of Santo Angel of the pueblo of Santa Cruz, Laguna: bounded on the north by the Laguna de Bay; on the south, by the land of Aniceto Tek and Carmela Tobias; on the east, by the Santa Cruz River; and on the west, by the land of Antonio Garcia; comprising 3 hectares, 84 ares and 35 centares, the detailed description and boundaries being given in the attached plan, Exhibit A. Said land was appraised at the last assessment for payment of the land tax; and there is no encumbrance on it, nor any third person who has any right or share therein, with the exception of Gabriel Enrico, who claims to be the owner thereof. The applicants acquired the land by inheritance from their deceased father, Bernardo Tobias, and it is now held by the said Gabriel Enrico.

After service of the required notices and advertisement in the newspapers, Gabriel Enrico y Custodio, in his own behalf and in representation of his brothers and sisters, Hermenegildo, Apolonio, Primo, Valentina and Paulina, all surnamed Enrico y Custodio, opposed the registration applied for, alleging that the land belongs to them by inheritance from their deceased parents, Marcelo Enrico and Celedonia Custodio, who acquired it by purchase from another person, through just title and in good faith, more than 16 years ago, and thereafter held it in quiet and peaceable possession as owners, which possession was continued by the opponents without being disturbed by anyone. Therefore, he asked that the decree of registration be issued in the name of the opponents, and in support of his petition exhibited a possessory information title or certificate of possessory proceedings, inscribed in the registry, and receipts for the payment of the land tax.

After the hearing of the case and the introduction of testimony by the parties, the court, on July 20, 1910, decided the case by dismissing the claim presented by the opponents and holding that, after entry of general default, the applicants aforementioned were the owners of the land pro indiviso, with the exception of the undivided share of the applicant Serapion Tobias which was encumbered by a mortgage held by the opponents, and ordered the said land inscribed in the registry in the name of the seven applicants; and, in view of the fact that an exact survey had not been made of the land, which is agricultural, although the applicants were entitled to the benefits of Chapter VI of Act No. 926, he ordered that the clerk forward a copy of the plan and specifications of the land, together with a certified copy of the resolution of the court, to the Director of Lands for the purpose of the procedure

provided by section 66 of the said Act; and that, as soon as this resolution should become final, the necessary decree, orders, and certificates be issued, with the costs against the applicants.

Serapion Tobias, one of the applicants, asked by written motion for an amendment to the judgment in the part thereof concerning him, stating that the private instrument of mortgage had not been registered under the Mortgage Law, and therefore did not affect the property, according to article 1875 of the Civil Code, as the said mortgage was not validly constituted, and that the opponents could only institute a personal action.

A hearing having been had on this motion, the judge, by an order of August 8, 1910, held that the opponent, Gabriel Enrico, should have an opportunity to prove more extensively the nature of the instrument and to present the same, if possible, and accordingly allowed him to adduce further evidence, fixing a day and hour in the court-room therefor.

After such further proceedings, the court, by an order of January 17, 1911, overruled the applicants' motion and directed that the decree be issued them, with record therein of the P50 mortgage held by the opponents upon the part of the land belonging to the applicant Serapion Tobias.

On the 24th of the same month of January, counsel for the opponents excepted to the aforesaid judgment and asked for a rehearing on the grounds stated and for the further reason of the discovery of new evidence in their behalf. The court, after consideration of the motion, reversed its former judgment by an order of February 4, 1911, and ordered a new trial, and, in view of the new evidence adduced, found, on February 13, 1911, that the applicants, Andres, Serapion, Leoncio, Crispin, Monico, Maxima and Regino, all surnamed Tobias y Sandoval, were the owners in fee simple of the land in question; wherefore, in accordance with the previous judgment (pp. 96 to 99 of the record), he ordered the inscription or registration of the said land pro indiviso in the name of the applicants, with Serapion Tobias' portion subject to the mortgage hereinbefore discussed, and after survey of the land, in accordance with section 66 of Act No. 926, issuance of the required decrees, orders and certificates, with costs against the applicants. Counsel for the opponents excepted to this judgment, and presented the proper bill of exceptions, which was approved and forwarded to the clerk of this court.

This case concerns the registration in the Court of Land Registration of a tract of land situated in the barrio of Santo Angel of the pueblo of Santa Cruz, Province of Laguna, alleged to belong to the seven applicants, who inherited the property, which is still undivided, from their deceased father, Bernardo Tobias, the original owner of the land.

Gabriel Enrico opposed the registration sought, alleging that Serapion Tobias, one of the applicants, had sold the land in question to his father, Marcelo Enrico, and that, therefore, the opponent Gabriel Enrico and his five brothers and sisters were the present owners of the property, as they had inherited the same from the vendee, Marcelo Enrico, their deceased father; but Serapion Tobias stated in an affidavit (p. 41 of the record) that in fact he did mortgage the said land for the sum of 50 pesos, which was lent him by the spouses Marcelo Enrico and Celedonia Custodio who, as his creditors, were to receive one-half of the fruits produced on the land, but he denied that he had sold the property to them, as they alleged, for on various occasions he had endeavored to redeem it, but had been thwarted in his purpose through certain pretexts made by Gabriel Enrico. The deponent, Tobias, added that the land was mortgaged without the knowledge of his six brothers and sisters.

During the trial the opponents exhibited a certificate issued by the registrar of property of Laguna on October 1, 1896, attesting the inscription in the registry of a record of possessory proceedings, prosecuted by Marcelo Enrico in the Court of First Instance, relative to the land in question, which record was approved on June 19, 1896. The said certificate recites that the possessory information proceedings were had in order to attest his possession for about two years of the land he had purchased from Serapion Tobias for 60 pesos. But notwithstanding the

contents of the said certificate the judge of the Court of Land Registration held that only the part pro indiviso of the land in question belonging to Serapion Tobias was encumbered or mortgaged, since the latter was not the owner of the whole of the land nor could he dispose of the whole of it without the knowledge and consent of his six coheirs, who took no part whatever in the act executed by him in encumbering the land of joint ownership without the consent of his coheirs and to their prejudice. With regard to the form of acquisition of the land entered in the registrar's certificate, it is merely the statement of the interested party, which the registrar recorded in his memorandum of registration, but without certifying to the truth of such statement of the interested party, Marcelo Enrico, that is, of the sale alleged in the document, for the sole purpose of the document was to certify the inscription in the property registry of a record of possessory proceedings had before the Court of First Instance with reference to the land in question.

In the judgment appealed from it is held that the part of the property pertaining to Serapion Tobias is subject to the said mortgage, and, though the writer hereof believes that it is improper to consider a mortgage established which has not been constituted in a public instrument nor inscribed in the property registry, in accordance with the provisions of article 1875 of the Civil Code, yet the fact is that no appeal whatever against this finding of the judgment was taken by the applicant Serapion Tobias, who is affected thereby.

Accepting in all other respects the grounds of the judgment appealed from and taking account of the fact that counsel for the opponents has not requested a new trial, wherefore it would be improper to proceed with an examination and review of the evidence taken at the trial, the case must be decided in conformity with the facts contained in such judgment.

For the foregoing reasons, whereby the errors assigned by the appellants are deemed to have been refuted, it is our opinion that the judgment appealed from should be, as it is hereby affirmed, with the costs against the appellants.

Arellano, C. J., Mapa, Johnson, Carson, Moreland, and Trent, JJ., concur.

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