

MARIA DE LA CRUZ ET AL., PETITIONERS AND APPELLEES, VS. CLEMENTE DAYRIT, OBJECTOR AND APPELLANT.*G.R. No. 9086. March 19, 1915*

Ponente: TORRES, J.

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Appeal filed through bill of exceptions by counsel for the¹ objector, Clemente Dayrit, from a judgment of February 21, 1913, whereby the Honorable Norberto Romualdez, judge, overruled the oppositions set up by the provincial board of Pampanga and by Clemente Dayrit, and decreed adjudication and registration of the land and the buildings existing thereon, both described in the application, in favor of the applicant Maria de la Cruz Dizon and her children Marcelina Tiotuyco y de la Cruz, Maria Angeles Tiotuyco y de la Cruz, Maria Lourdes Tiotuyco y de la Cruz, and Jose Tiotuyco y de la Cruz, in equal parts.

In a petition dated January 19, 1912, counsel for the applicants sought in the Court of Land Registration inscription in accordance with law of a parcel of land with the buildings existing thereon, of which the applicants are the absolute owners, situated at the northern corner of the intersection of Calles Santo Entierro and Jesus, in the barrio of Santo Cristo of the municipality of Angeles, Pampanga, the situation, area, and boundaries whereof are given in detail in the plan and technical description marked "Exhibit A," which is made a part of the application, with a total area of 1,385 square meters; he alleged that the said estate was acquired by the applicants through inheritance from their predecessor in interest Martin Tiotuyco, and that no encumbrance of any kind exists against said estate, nor is there any person entitled to participate in the same, and so forth.

The provincial fiscal, as counsel for the provincial board of Pampanga, opposed the said application, alleging that in the tract of land to which it refers there had been improperly included certain portions forming part of the highways that are mentioned in the application, which portions of land are the property of that province.

After the court had issued an order of general default in this case, with the exception of the provincial board which put in its appearance, counsel for the objector Clemente Dayrit presented a motion praying that the order of default be annulled with reference to him and that he be permitted to oppose the application, which motion was granted by the court, and hence the objector claims all the land that is the subject matter of the application as being part of a greater tract belonging to him.

After trial, wherein the parties submitted parol and documentary evidence, the court rendered the decision mentioned, whereto counsel for Clemente Dayrit excepted, asking for a new trial and announcing his intention of filing a bill of exceptions. Said motion having been denied, he requested that the evidence submitted in this case be made an integral part of the bill of exceptions, which was filed, approved, and forwarded to the clerk of this court.

In August, 1897, Martin Tiotuyco applied for a possessory information to a tract of urban land, situated in the barrio of Santo Cristo of the municipality of Angeles, Pampanga, which was approved and annotated in the property registry of said province on the 13th of the same month and year (Exhibit B). Said instrument sets forth

that the applicant Tiotuyco had been in possession "of this estate since the 12th day of August, 1886, when he acquired it by purchase from Don Mauricio Villanueva," said estate being bounded as follows: On the north by the house and lot of Feliciano del Rosario, on the east by the lot of Modesto Paras, on the south by the road leading to the town of Magalang, and on the west by the road leading to the market of the town of Angeles. As may be seen in said information, neither the opponent nor either of his predecessors in interest, Luisa Eusebio or Agustina Henson, were cited, but other persons were who had no objection to the granting of the application made by Martin Tiotuyco in his petition.

On February 6, 1911, the said Martin Tiotuyco died, leaving a widow, Maria de la Cruz, and the four children Marcelina, Maria Angeles, Maria Lourdes, and Jose, all surnamed Tiotuyco y de la Cruz, who are now the ones that seek inscription of the land in question.

In the will, Exhibit C, which said Tiotuyco executed before his death and which was duly probated, there appears specified among the property that belonged to him a lot, situated in the barrio of Santo Cristo of the municipality of Angeles, bounded on the north by the lot of Feliciano del Rosario, now of Andres Sinson; on the east by the lot of Modesto Paras, now of Apolinario Pineda and brothers; on the south by the road to Magalang, now Calle Santo Entierro; and on the west by the road leading to the market, now Calle Jesus; with buildings thereon consisting of a house of mixed materials and a warehouse of the same kind; the whole being worth P2,000. This is the tract of land which the applicants wish to inscribe in their name, but which in the application appears as bounded on the north by the land of Apolonio Pineda, on the southeast by Calle Santo Entierro, on the southwest by Calle Jesus, and on the northwest by property of Juan Geronimo.

There can be no doubt that the land described in the application is the same as that specified in the will of the deceased Martin Tiotuyco, which was the subject matter of the possessory information in 1897, as shown by the document Exhibit B. The applicant Maria de la Cruz testified that during her fourteen years of married life with her husband Martin she had from the very first lived at the house and lot in question, and added furthermore that even before her marriage she had lived on said property. Francisco Dizon, who has known this property for over twenty years, asserted that it is Martin Tiotuyco's. The lot in question is fenced on all its four sides and neither the applicant Maria de la Cruz nor her husband has ever paid fee or rent therefor to anybody.

Clemente Dayrit's opposition sets up that the lot sought to be registered forms part of a larger tract which he inherited from his relatives Juan and Isabelo Nepomuceno; that these latter had inherited it from their mother Agustina Henson, who in turn had acquired it by purchase from Luisa Eusebio.

Notwithstanding the evidence submitted by the opponent to prove these points, consisting in the statements of Gonzalo Nepomuceno and the objector himself and of the documents Exhibits 1 and 2, we are of the opinion that he has not thereby refuted the fact proven in the record that this tract of land had been possessed by Martin Tiotuyco from the year 1886, in which he purchased it from Mauricio Villanueva, later perfecting his title through the possessory information he applied for in 1897, which was approved and later annotated in the property registry on August 13 of the same year; and during all the time that elapsed thereafter it never occurred to the objector to protest, claim, or sue for recovery of the land he alleges to be his, but only when this application for inscription thereof was filed. On these same grounds also no great weight or consideration is to be given to the statements of Catalino Dalusong and Leon Sanchez, who aver that some sixteen years ago Martin Tiotuyco, the applicant's predecessor in interest, told them that he had bought only the house built on the land in question and that the land itself did not belong to him; for, although these witnesses affirm that it was then known to them that this tract, which forms part of another more extensive one, was under the care of an agent of Agustina Henson, they were not aware through their own knowledge of how the said Agustina possessed it, nor did they know the nature of the occupation and possession which Martin Tiotuyco had of this land; and even though the said Martin

may have made such a statement, it does not harmonize with his subsequent act of securing a possessory information to the land by solemnly declaring before competent officials that he had acquired said land by purchase from Mauricio Villanueva.

The objector tried to prove that the applicant Maria de la Cruz had been in Dayrit's house to beg him not to sue her, as she had never disputed his right of ownership to the land in litigation, but aside from the fact that this allegation was denied under oath by said Maria de la Cruz she herself stated that what had really happened was that Dayrit had sent for her and caused her to sign a contract in which it was stipulated that if he should win the suit for recovery that he had instituted against various persons she would have to deliver to him the land that is the subject matter of this application, but that if he lost the suit she could keep said land, a contract that the applicant later got from Dayrit and destroyed, a fact which does not demonstrate that the applicant recognized the opponent Dayrit as owner of the land in question. Aside from the fact that it does not appear that the applicant agreed to the terms of that contract, as the destruction thereof demonstrates, we do not see how her conduct can serve as proof of the opponent's rights.

Nor has it been proved in the case that Martin Tiotuyco's possession of this parcel of land was precarious, as the objector affirms, for it does not appear that he paid rent on this land to anybody or that he was in possession thereof through mere tolerance of the objector. There merely appear in the case the statements of the objector Dayrit and his witness Nepomuceno that Maria de la Cruz in the year 1911 told the former that she regarded him as the owner of the land she was occupying, statements that were denied by the applicant herself.

Moreover, since the applicants and their predecessor in interest have been in peaceable, open, and continuous possession of this land from 1886 until the present date, possessing it under title of ownership by virtue of a purchase made from Mauricio Villanueva, as is demonstrated by the possessory information which Martin Tiotuyco secured in 1897 and which was inscribed in the property registry of Pampanga, there can be no question that the applicants have by prescription acquired ownership and property rights in the land under the provisions of section 41 of Act No. 190, because it has not been proven that within the ten years subsequent to the promulgation of said Act the objector instituted the proper action for recovering title to and possession of this property, and furthermore that the period of twenty years has also elapsed, by virtue whereof the annotation in the registry of the possession the applicants enjoyed has been converted into inscription of ownership in accordance with the provisions of the Mortgage Law.

For these reason, whereby the errors assigned to the judgment appealed from are held to be refuted, affirmation thereof is proper, as we do affirm it with the costs against the appellant. So ordered.

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

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