

EVARISTO FRANCISCO, PETITIONER AND APPELLEE, VS. THE GOVERNMENT OF THE PHILIPPINE ISLANDS ET AL., OPPONENTS AND APPELLANTS. AND THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIO...

G.R. No. 9128. November 28, 1914

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal by both the Insular Government and the city of Manila from the decisions rendered by the Court of Land Registration in case No. 8322, Evaristo Francisco, applicant, and in case No. 8519, the Government of the Philippine Islands, applicant. The subject of the controversy in these appeals is a small piece of land in the district of Ermita, Manila, having an area of 546.50 square meters, described as parcel No. 3 in case No. 8519, and referred to in the decision in case No. 8322 as lot X.

Evaristo Francisco included the disputed area in his application as a part and portion of a greater tract of land, measuring a total area of 2,039 square meters. The applicant alleged that the properties included in his application were acquired "by purchase from the administrator and guardian, Luis Javier, of the estate of Bonifacia Panganiban."

The Insular Government, as well as the city of Manila, objected to the registration of parcel No. 3, the land now in question, in favor of Evaristo Francisco, and the former instituted case No. 8519 under the provisions of section 61 of Act No. 926, alleging that the land belonged to the public domain.

The appellants now insist that the Court of Land Registration erred:

"1. In holding that the area in question was not a part of the seashore of Manila Bay.

"2. In holding that said area is the property of Evaristo Francisco, and in decreeing the registration thereof in his favor.

"3. In finding or inferring from the hearsay testimony of Luis Javier and Romualdo Gramonte that the area in question was held adversely and under claim of ownership by applicant's alleged predecessors in interest."

The Insular Government claims that the lot in question is a part of the public domain, as is defined in subsection 1 of article 339 of the Civil Code, which is as follows:

"ART. 339. Property of public ownership is—

"1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character."

And also as defined in article 1 of "The Law of Waters" of the 3d of August, 1866, which reads as follows:

"The following belong to the national domain and are for the public use;

* * * * *

"The shores.—'Shore' is understood to be that space which is alternately covered and uncovered by water with the movement of the tides. Its interior or terrestrial limit is marked by the line reached by the highest tides and equinoctials. Where the tides are not perceptible the shore begins at the line reached by the water during tempests and ordinary storms."

Treating of the seacoasts And shores as property of the public domain, Partida 3, Title 28, Law 3, says:

"The things that belong in common to all the living creatures of this world are:

The air, rain water, the sea and its shores; and every living creature may use them according to its needs, * *

*."

The evidence of record leaves no room for doubt that since the year 1900, the area in question was so located, before the construction of the Cavite Boulevard, that at high tide it was completely covered by the waters of Manila Bay, although the receding waters left it practically bare at low tide. The same would have been true up to the time the cases were tried, had it not been for the construction of that boulevard. Therefore, it necessarily follows that if there were no other evidence with reference to the physical status of the land or the title thereto, the contention of the appellee must fail.

The theory advanced by the appellee at the trial, briefly stated, was as follows: The original occupant and possessor of the area in question was Pedro Carbonel, since 1878; Luis Javier in 1894 purchased it from Carbonel, and on July 30, 1912, it was sold to the appellee. No claim is made that a grant or concession was ever made by the former sovereign either to Carbonel or Javier. The whole claim of the appellee rests on the adverse possession of his two alleged predecessors in interest, acquired and enjoyed under claim of ownership. Consequently, the proper solution of this case requires a careful analysis of the proofs presented by the respective parties.

Evaristo Francisco presented no documentary evidence whatever, either as applicant in case No. 8322 or as opponent in case No. 8519. Luis Javier, Romualdo Gramonte, Javier's nephew, and Honorato Agrava, a former tenant of Javier's father-in-law, all testified that the lot in question has belonged to Pedro Carbonel since about 1878-1880; that the latter had three houses on it, in one of which Carbonel lived, and in the other two, tenants of his named Acang and Vicente Molina; that in those days there was a strip of land about 5 meters wide between parcel No. 3 and the high-tide line; that in 1894 Carbonel ceded this land to Javier in payment of a debt; and that Carbonel executed a private document evidencing this transfer, but it had been lost, according to the testimony of the vendee. Javier also testified that he collected rents from the two tenants of Carbonel for about two months after purchasing the land. Gramonte also testified that he knew Carbonel's tenants paid him rent, because he used to keep a store on the first floor of Javier's house and he would give Carbonel credit upon his promise to pay as soon as he collected his rent, and that he operated this store from 1884 to 1887. Agrava also testified that the house of Carbonel remained standing until some months before the revolution of 1896; that after purchasing the property Javier fenced it with bamboo and stones, but the action of the waves destroyed the fence and carried the stones elsewhere; and that Javier used to store bamboo and nipa on the lot. The witness did not state when this bamboo and nipa was so stored.

The Insular Government and the city of Manila offered the following proof for the purpose of showing that Evaristo Francisco is not the owner of this land in dispute: That there is no evidence of occupancy upon the lot, nor has there been since 1902; that the tax records have continuously shown the land to be part of the beach of Manila Bay; that a map of the Ermita District, prepared by the Spanish Government and included in a large collection of such maps transferred to the United States Government upon the change of sovereignty, shows lot No. 3 to have been within the limits of Manila Bay in the year 1895; that lot No. 3 is but one-half the size of

another parcel bounding it on the south similarly covered at high tide, and which was claimed by and awarded to the city of Manila without objection from anyone; that the two parcels form a sort of cove in the bay shore; that bounding this cove on its north side is the private property of one Teus, along which a retaining wall was constructed by Mr. Teus in 1892 or 1893, as estimated by the witness Gramonte, or in 1888 or 1889, as estimated by the witness Agrava; and that bounding the lot on the south is property of the United States military authorities, along which a retaining wall was built after the American occupation. In addition to these facts, K. S. Heck, chief of port works of the Insular Government, testified that neither of the retaining walls, above mentioned, would have a tendency to increase the corrosive effect of the waves on the land in question, but, on the contrary, would have a tendency to cause deposits of sediment in the cove. Aguirre testified that he had known the land in question since 1872; that if the sea did not cover all of the land at that time, it at least touched it; and that he could not say whether there were houses on this lot then or not, because there were fishermen's shacks all along the bay shore at that time.

In December, 1904, the Court of Land Registration entered a decree describing the property of Mr. Teus as follows: "Bounded on the north by Calle Divisoria; on the east by the property of Luis and Rafael Perez and Luis Javier; and on the south and west by the shore of Manila Bay."

Again, in October, 1912, the same court found that the property of Teus was bounded: "On the northwest by Calle Divisoria; on the northeast by the property of Rafael Perez and Luis Javier; on the south by the property of the Government of the Philippine Islands; and on the southwest by Manila Bay."

In passing upon the credibility of the witness Luis Javier, it might be well to note his testimony in reference to the loss of the private document transferring the land to him by Carbonel. Javier first testified that he thought this document must have been left with the court records in a proceeding instituted by him for the perpetuation of testimony. He said that he had looked everywhere for the document, but had not found it. When asked, however, if he had looked among the court records, he replied in the negative. When asked if he had inquired of his counsel in that proceeding concerning the document's whereabouts, he replied in the negative, stating that he had possession of it after those proceedings had been concluded. He did not know where he lost the document. He did not state the amount of the debt which was the consideration for the transfer of the land, and his account as to where, when, and how he lost this document of sale is contradictory. Why did he first say that he thought the document had remained among the court records and then positively assert that it was in his possession after the court proceedings had been concluded? At most, his testimony upon this point is exceedingly weak and unsatisfactory.

With reference to lots Nos. 1 and 2, the trial court said: "The lots Nos. 1 and 2 are likewise claimed by the city of Manila, on account of their being comprised within the zone of the Luneta extension in which the city, on its own account and expense, has carried on and is carrying on works of filling. This strip of land, so reclaimed from the sea, will become the absolute property of the city of Manila, by virtue of the provisions of Act No. 1360."

It is an undisputed fact that the entire area comprised in lots Nos. 1, 2, and 3 are of like character and condition; that neither in the south nor west part of lot No. 3 had there ever existed anything; and that there is nothing between them but the imaginary lines drawn on the plans. Again, if Mr. Teus, owning the property on the north of the cove, found it necessary in 1889, or even as late as 1892 or 1893, to build a retaining wall to protect his property from the action of the waves, it stands to reason that the parcel in dispute, lying directly south of Teus' wall, was subject to the action of the waves at that time. The fact that this wall was built as early as 1892 or 1893, corroborates the Spanish map showing parcel No. 3, lying directly south of it, to be outside the shore line in 1898.

After an examination of the entire record, we must find that the evidence tending to show the ownership of Carbonel, his cession of the land to Javier, and the acts of ownership by the latter, is exceedingly weak, even when taken at its face value. When we consider that no one has exercised any rights of ownership or possession over the land in dispute since 1900; that the Spanish map of 1895 shows the land to be within the confines of Manila Bay at that time; that Teus built a retaining wall along a considerable portion of the north side of lot No. 3 as early, at least, as 1892 or 1893, to protect his own land from the action of the waves; that a much larger parcel adjoining this lot has never been claimed by anyone; and that parcels Nos. 1 and 2 are of like character and condition as lot No. 3, we are led irresistibly to the conclusion that the evidence for the private claimant is not sufficient to establish his claim of ownership.

It is urged that *Aragon vs. Insular Government* (19 Phil. Rep., 223), is a conclusive answer to all objections against granting a decree of registration in favor of Evaristo Francisco. An examination of this case will show otherwise, for it was there found that in the year 1892, a possessory title to the land in question was duly registered in favor of the predecessors in interest of the applicant; that for a period of years, and perhaps, for a "time beyond which the memory of man runneth not to the contrary," the applicants and their predecessors in interest had been in possession of the land under an undisputed claim of ownership; and that for many years a house stood upon this land, and was occupied by some of the predecessors in interest of the applicant. In that case there was a registered possessory title, coupled with long and continued possession under an undisputed claim of ownership, while in the case at bar there is no documentary evidence on the part of the applicant and no satisfactory proof of either possession or ownership. But on the contrary, the Government has shown that lot No. 3 is a part of the playa of Manila Bay and, therefore, public property.

The judgment in case No. 8322, decreeing the registration of lot No. 3 in favor of Evaristo Francisco, must be reversed. The Insular Government is the applicant in case No. 8519. This case was brought under the provisions of section 61 of Act No. 1926. Under the provisions of that section the land court is empowered and directed to decree the registration in favor of whomsoever may establish title. No question is raised with reference to the right of the Government to proceed under that section. In view of the fact that all the right, title and interest in lot No. 3 of the Insular Government was sold by the Government on July 7, 1910, to the city of Manila, and in view of the further fact that there is no question raised with reference to the validity of this sale, it having been made in accordance with Act No. 1890, the city is entitled to a decree for registration. Judgment will be entered directing that the decree of registration be issued in favor of the city of Manila for lot No. 3. Without costs in this instance.

Johnson, Carson, Moreland, and Araullo, JJ., concur.

Arellano, C. J., dissents.

DISSENTING

TORRES, J.

I dissent. In my opinion the judgment appealed from should be affirmed.

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