

LUIS VERZOSA Y SALVATIERRA, PETITIONER AND APPELLANT, VS. PETRONA NICOLAS, OBJECTOR AND APPELLANT, AND BALDOMERO GUIEB, OBJECTOR AND APPELLEE.*G.R. No. 9227. February 10, 1915*

Ponente: TORRES, J.

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This is an appeal by counsel for Luis Verzosa y Salvatierra, through bill of exceptions, from the judgment of September 18, 1912, whereby the Honorable James A. Ostrand, judge of the Court of Land Registration, decreed the registration of 26 parcels of land, duly described in the application, in the name of the petitioner Luis Verzosa y Salvatierra; but with respect to the parcels 25 and 26, he denied the adjudication and registration of the lot 25-A, which has an area of 1,004 square meters, and lot 26-A, measuring 302 square meters. These lots are claimed by the respondent Baldomero Guieb.

By a written application of May 22, 1911, the petitioner Verzosa alleged that he was the owner of 26 parcels of land situated in the barrios of Santiago, Barcelona, and Juan, municipality of Solsona, Province of Ilocos Norte, and prayed for their registration in the Court of Land Registration. He further alleged therein that the 26 parcels of land described in his application were assessed at P10,020, for the purposes of the land tax; that, to his best knowledge and belief, the said properties were not encumbered in any manner nor did any person have any right or share therein, with the exception of the respondents who claimed a part of parcels 24, 25, and 26; that the said lands were acquired by purchase from Dona Vicenta Gutierrez y Tomas, more than 8 years ago, as shown by a public instrument duly recorded in the property registry of Ilocos Norte; and that the said parcels of land are now occupied by the petitioner. Petrona Nicolas, one of the opponents, claims that she is entitled by right of homestead to the possession of 50,535 square meters of parcel No. 24.

Parcel 25, situated in the barrios of Santiago and Juan, is bounded on southeast by lot No. 24 of the plan; on the south by property of Severo Hernando; and on the northwest by property of Epifanio Madamba and an estuary. It contains an area of 6,900 square meters. Lot No. 25-A, 1,004 square meters in area, is claimed by Baldomero Guieb, another of the opponents.

Parcel 26, situated in the same barrios of Santiago and Juan, is bounded on the southeast by property of Epifanio Madamba; on the southwest by property of Severo Hernando; and on the northwest by property of Epifanio Madamba. It contains an area of 2,367 square meters. Lot 26-A of the plan, containing 302 square meters, is likewise claimed by the said Guieb.

At the close of the proceedings, the court rendered the judgment aforementioned, to which Luis Verzosa and the respondent Petrona Nicolas, both excepted; but the latter's appeal was, by resolution of this court of October 1, 1913, declared to be improperly admitted, for the reason that her bill of exceptions was filed after the time prescribed by law, and it was ordered that final judgment, in conformity with that appealed from, be rendered against her, and that the proceedings in this case be continued with regard to the appeal filed by the petitioner

Verzosa.

The appeal raised by Petrona Nicolas would not have prospered even though the proceedings therein had been continued, inasmuch as in the case of Nicolas vs. Verzosa (No. 8146), of December 4, 1913, (not published), judgment was rendered whereby the defendant Luis Verzosa y Salvatierra was absolved from the complaint. In that decision this court held that Verzosa was the possessor and unquestionable owner of the disputed land and that the plaintiff Petrona Nicolas never succeeded in obtaining possession of the said land, since Verzosa was in material possession thereof. So that the right of property in the land in question, as well as the opposition and claims of Petrona Nicolas in the Court of Land Registration, were already judicially settled.

The question that we have to decide then is restricted to whether the two lots of land which form parts of the parcels 25 and 26, the subject matter of the application for registration, are the property of the petitioner, or of the respondent Baldomero Guieb.

The petitioner proved, by means of the testimony of witnesses and the deed of sale, Exhibit L (p. 37 of the record), that he is the owner of the parcels of land sought to be registered by him, on account of his having acquired them by purchase from Doña Vicenta Gutierrez y Tomas on December 11, 1902, and that the latter in turn had purchased them from various other persons, as shown by the instruments Exhibits N, O, P, and Q (pp. 96 to 124, inclusive, of the record). The deed of sale, Exhibit L, executed by Vicenta Gutierrez in behalf of the petitioner, was duly entered in the property registry of I locos Norte on December 26, 1902. The indisputable possession of these lands, which are shown on the plans Exhibits A, B, C, D, E, F, G, and H (pp. 26 to 36 of the record), was enjoyed by the petitioner Verzosa for eight or nine years after he purchased them from Doña Vicenta, during which period he tilled them and exercised acts of ownership thereon.

Toward the western part of the parcel 24, which is one of those purchased by the petitioner from Dona Vicenta, are the lots designated as 25-A and 26-A. These are the ones claimed by Baldomero Guieb as being his property on account of their having been separated from the rest of his land by the Arasaas River when it changed its course in 1910.

The plan Exhibit H (p. 36 of the record) shows that toward the west there is an estuary, which undoubtedly must be the stream the witnesses referred to in their testimony as the Arasaas River, and this estuary or river separates a large tract of land belonging to the opponent Baldomero Guieb toward the north of the lands claimed by him, which are situated south of the said stream. It is to be observed that the situation of the property in litigation agrees with the description of the same given by the witnesses in their testimony.

The petitioner's witnesses, Santiago Felipe, Pedro Ariola, and Evaristo Juan, are laborers or tenants-on-shares of Verzosa. After affirming that the petitioner was the possessor and owner of the lands sought to be registered by him, they testified that the parcels marked "25-A" and "26-A" never had belonged to Baldomero Guieb; that the said estuary had never changed its course; and that they had never at any time seen the said Guieb till these lands, for the property north of the said estuary was a sandy tract and belonged to the Government.

The opponent admitted that the land toward the north of the aforementioned estuary was sandy and stony, because in 1904 his land was inundated and could not be cultivated, but that in the year 1908 and in the succeeding years up to the present he had been cultivating it and planting it to sweet potatoes and mastic trees. He denied that this land belonged to Verzosa and asserted that it was his own, that he had inherited it from his grandfather in 1877, and that he had been in continuous possession of it. He stated that when Verzosa ordered it surveyed, in 1910, he, the opponent, objected to the inclusion of lots 25-A and 26-A in the survey, as they were a part of the inheritance he had received from his grandfather; and, furthermore, that when he inherited the land in question it was as yet uncultivated, but that in 1892 he gave it to the brothers Felipe Carlos and Zoilo Carlos to be plowed and sown to

rice, thus converting it into agricultural land. This continued until 1904, when it was flooded by the inundation of that year.

The two Carlos brothers testified that the said parcels of land were tilled since 1892, in which year they were delivered to them by Baldomero Guieb, until 1910, when the Arasaas River changed its course and flowed to the north; that these lands were left between the old and the new channel of that river; and that now only mastic trees were planted on them. Pedro Pasis, who had worked on the land adjoining the properties in dispute, and Sixto Bolibol, an old tenant of the opponent's predecessors, also testified that the Arasaas River changed its course and separated the lands of Baldomero Guieb from the rest of his property, leaving the said lands between the old and the new channel of the river. The witness Pasis also testified that the Arasaas River, in making a turn toward the north, left to the south some thirty meters of the land situated on the west, lot 25-A, and forty meters of that which is on the east, lot 26-A. Finally, Epifanio Madamba, who has a parcel of land between the two lots in dispute that lies parallel to these latter, corroborated the statements made by the other witnesses with respect to the property of Baldomero Guieb in the lands in litigation, and testified that in the year 1904 these lands were ruined by water; that when Verzosa ordered his lands surveyed he caused to be included therein ten ares more, which is lot 25-A, and another three ares, which is lot 26-A, and that these lands so included belonged to the opponent. These additional parcels are the very ones that appear in the plan Exhibit H (p. 36 of the record).

All the opponent's witnesses are acquainted with the lands in litigation, some because they have personally worked them, and others because they are the owners of the adjacent properties or have cultivated the same, and their testimony is as worthy of credit as that of the petitioner's witnesses, for all the latter are now tenants-on-shares of the petitioner and are ever ready to defend his interests.

Moreover, the record shows that Baldomero Guieb has always been in continuous possession of these lands; that in 1908, four years after the inundation, he again cultivated them and planted them to sweet potatoes and mastic trees; and that in 1910 he opposed and objected to the inclusion of these lands in the survey then made of Verzosa's land.

It is, therefore, unquestionable that the lands designated as lots 25-A and 26-A are a part of a larger tract belonging to the opponent Baldomero Guieb, and that in 1904, as the result of an inundation and the Arasaas River changing its course by flowing toward the north, these lots of land were segregated from the rest of his property and were thus left to the south where the petitioner has his land. Consequently, the lands in question cannot be awarded to the petitioner, nor registered in his favor.

The record discloses no proof that the parcels in dispute form a part of the land purchased by the petitioner from Vicenta Gutierrez, nor that they were included in the deed of sale of that land. The petitioner must produce conclusive proof that he is lawful owner of the rural properties he seeks to register; vague and indecisive proof is insufficient to support his application.

It is incumbent upon the petitioner as plaintiff to prove his ownership and possession of the two lots of land which he seeks to register as his property; and, as he has not adduced any proof of his right, while on the contrary the proceedings disclose a preponderance of evidence in favor of the opponent Guieb, who has satisfactorily proved that he now holds the said two lots of land in the capacity of owner, it would be improper to grant the application for the registration of the aforementioned property.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, we should, as we do hereby, affirm the said judgment, with the costs of this instance against the appellant. So ordered.

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

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