

**GUILLERMO DE LOS SANTOS, PETITIONER AND APPELLEE, VS.
FELIX DE LA CRUZ, RESPONDENT AND APPELLANT.***G.R. No. 9243. July 30, 1914*

Ponente: TORRES, J.

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This is an appeal raised through a bill of exceptions from the decision of May 31, 1913, whereby the Honorable James A. Ostrand, judge, overruled the objection of Felix de la Cruz and decreed the adjudication and registration of all the land in question in favor of the conjugal partnership of Guillermo de los Santos and Maria Yuson.

By a written petition dated September 5, 1912, Guillermo de los Santos applied to the Court of Land Registration for registration of a tract of land belonging to them, situated in the place called Apunan-auac, barrio of Calubasan, municipality of Bamban, Province of Tarlac. The said tract is bounded on the north by property of Felipe Lagman, on the southeast by Dolores Singian, on the south by Agaton Lugtu, on the west by Alberto Rivera, and on the northeast by Felipe de la Cruz. It measures 152.468 square meters and its description and boundaries are set forth in detail in the attached plan; it was last assessed for the purposes of the land tax at \$140, being free from any kind of encumbrance and no person was entitled to participate therein; that the said land he acquired by purchase from the spouses Nicolas Maristela and Froilana Magtoto and that he is now occupying it; that he has been married since October 27, 1909, to Maria Yuson. In case his application should not be proper under the Land Registration Act he laid claim to the benefits of Chapter VI of Act No. 926, especially as he had been in possession of the land since 1911, having built a fence around it and used it for the cultivation of rice and garden truck for more than a year.

On April 3, 1913, counsel for Felix de la Cruz objected in writing to the foregoing application, alleging that the lot indicated by the letter A in the plan ought not to be registered, as the applicant claims, because he is the absolute and exclusive owner thereof; and he prays that the application and registration be denied with reference to the lotmarked "A."

After trial of the case on the same date and examination of the evidence adduced by the parties, together with the documents exhibited, the trial court rendered the judgment set forth. The respondent Cruz excepted thereto and prayed for a reopening of the case and the holding of a new trial. This motion was overruled, with exception on the part of the respondent, whose counsel in due time presented the corresponding bill of exceptions, requesting that the documents and evidence submitted at the trial form a part thereof, and, having been approved and certified by the court, it was forwarded with the record of the case to the clerk of this court in virtue of the appeal filed.

The opposition set up by Felix de la Cruz to the application for inscription in the property register requested by Guillermo de los Santos of land situate in Apunan-auac, as hereinbefore set forth, is based on the improper inclusion of a portion of his land in the plan, Exhibit A, which is the lot indicated by the letter A on the western side of said tract. To this end the respondent presented at the hearing of the case the notarial document, Exhibit 1,

executed on October 7, 1904, and ratified under oath by the interested parties before a notary on this same date. In this document it appears that the spouses Jose Torres Pamintuan and Carmen Tizon sold absolutely to Felix de la Cruz a parcel of land situate in Tibag or Dungan Tapayan, a place included in the municipality of Bamban, Tarlac, of approximately 27 balitas in extent or area, bounded on the north by the property of Fernando Manipun, on the east by Mariano Ocampo, on the south by Alberto Rivera, and on the west by Basilio Macale.

There can be no doubt that the respondent's land is bounded on the east by that of the petitioner.

It appears in the case that the petitioner Santos acquired his tract by purchase from the spouses Nicolas Maristela and Froilana Magtoto, who in turn had acquired it from Mariano Ocampo; and that according to the notarial deed of sale executed by the spouses Torres and Tizon in favor of the purchaser Cruz the land acquired by the latter from them is bounded on the east by that of Mariano Ocampo, the original owner of the land sold by him to the Maristela couple and afterwards purchased from them by the petitioner Santos; wherefore it is beyond all doubt that the petitioner's land is east of the respondent's, just as this is in turn situated on the west of the said land of the applicant.

These very important facts appear to be fully proven in the case, so, for the proper and just settlement of the controversy it is of the greatest importance to determine the boundary line between the two tracts, for according to the way this is fixed so will it appear whether a certain portion of the land belonging to Felix de la Cruz was really included in the plan, Exhibit A, presented by the petitioner Guillermo de los Santos.

The contention of the respondent Cruz that a certain portion of his tract was included in the plan prepared by the petitioner is confirmed by Isidro Ocampo, son of the original owner of the tract, Mariano Ocampo.

Nevertheless, this witness, as well as those of the petitioner, asserts that the boundary line between the two tracts was the byroad that passes along the line drawn from Nos. 12 to 13 on the said plan. One of them, Pablo Rivera, added that the land which now belongs to Felix de la Cruz was originally his fathers and passed to the spouses Domiciano Tizon and Dolores Singian, from whom Felix de la Cruz later acquired it. The byroad located on the line 12 to 13 of the plan, which separates the two tracts as a boundary line, does not at the present time exist. The other witness, Nicolas Maristela, former owner of the petitioner's land, stated that while he was in possession of it he had had no question with any one over said boundary line, and pointed out that the land which had belonged to Singian is west of the old byroad, while the petitioner's land is east thereof. Although the respondent Cruz affirms that the boundary line between his land and the petitioner's runs along the dotted line 1 to 2, still this affirmation does not appear to be supported by any evidence in the case.

In the face of such evidence, notoriously favorable to the petitioner, the trial court held in the decision appealed from that the small excess, 70 ares in area, which is to be noticed in the application with reference to the area set forth in the petitioner's titles, can be attributed to defects incurred in making the old survey, and it is impossible to reject this finding when it is considered that the respondent did not present the plan of his land, wherein he might have specified in detail the portion of the land of which he was deprived and which was unduly included in the petitioner's plan, nor has he proven the exact and true area of the part of his property he now claims; while it appears to be proven in the record that Guillermo de Los Santos is in possession of all the land comprised in the plan A, including the part of the lot A in question, and therefore no legal ground exists whereby the respondent's claim can be justified, especially when it is impossible without good legal ground to set aside the opinion formed by the trial court in passing upon the merits of the evidence adduced in the case by both parties.

The respondent is also a claimant and as such cannot escape the obligation to prove the allegations contained in his exception to the application of the party who alleges that he is the owner of the land sought to be registered, and if the respondent Cruz has not succeeded in disproving with evidence the allegations of Santos, who has

proved his ownership of the land, then the registration sought by the latter is proper under the law.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are held to be refuted, affirmation of the same is proper, as we do hereby affirm it; with the costs against the appellant.

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

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