

DEMETRIA CACHO, PETITIONER AND APPELLANT, VS. THE GOVERNMENT OF THE UNITED STATES, OBJECTOR AND APPELLEE.

G.R. No. 9408. December 10, 1914

Ponente: CARSON, J.

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CARSON, J.:

The appellant in these proceedings prays for the adjudication and registration in her name of a tract of land lying within the "Camp Overton military reservation."

The Honorable Jesse George, the trial judge, in an interesting and exhaustive opinion discusses at length the grounds upon which he based his judgment denying in part and granting in part the prayer of appellant's petition. After a careful review of the whole record we are well satisfied that the findings of fact by the trial judge are fully sustained by the evidence adduced in the court below. Accepting these findings of fact we think that the reasoning upon which the trial judge bases his conclusions of law and of fact sufficiently and satisfactorily disposes of all the contentions of counsel for the appellant.

There is much of general and public interest in the opinion filed in the court below, and we think we can best dispose of this appeal by reproducing that opinion in full, holding as we do that it correctly and satisfactorily disposes of the issues raised in these proceedings.

"The applicant, Doña Demetria Cacho, applies for the registration of a parcel of land in each of the cases above enumerated, both parcels being situated in the municipality of Iligan, Moro Province, Philippine Islands.

"The parcel applied for in each case is particularly described in the corresponding application and a plan of both parcels is attached to the record in case 6908, marked 'Exhibit A.' Both of the parcels are situated within the limits of military reservation No. 43, pending in this court, which military reservation is generally known as 'Camp Overton.'

"The registration is opposed by the Government of the United States represented by the commanding general of the Division of the Philippines, on the ground that the two parcels applied for are the property of the United States, acquired by cession from Spain by virtue of the Treaty of Paris, and that said parcels form a part of the military reservation mentioned.

"The applicant appeared personally, represented by her attorney D. Leocadio J. Italia, and the commanding general appeared, represented by Capt. H. V. Evans, of the Eighth Infantry; Capt. Guy S. Nurvell, of the Eighth Cavalry; and Lieut. Milton G. Holliday, of the Eighth Cavalry. Neither the Attorney-General, nor any one else, appeared for the Director of Lands or the Government of the Philippine Islands.

"By agreement of both parties the two cases were heard together.

"From the proofs taken at the trial and an ocular inspection of the premises made in the presence of the parties, the court finds:

"1. The parcel of land described in case No. 6908 was purchased by the applicant, Dona Demetria Cacho y

Soriano from Gabriel Salzos. The deed of Gabriel Salzos, Exhibit C of said case in favor of the applicant, is dated September 14, 1904, but according to the deed itself the land was sold by Salzos to her on December 17, 1903. The title of Gabriel Salzos is founded on a deed of sale in his favor, executed and Bigned by a Moro woman named Alanga, who acted for her husband, a Moro named Darondon. This deed is Exhibit B of case No. 6908. No power of attorney or authorization, required by law, from the Moro Darondon in favor of his wife Alanga has been presented.

"2. The parcel, object of case No. 6909, was purchased by the applicant Dona Demetria Cacho from the Moro, Datto Bunglay. The deed of sale in favor of the applicant is dated January 15, 1904, but was not acknowledged before the notary public until March 15, 1910. This deed is Exhibit G of case No. 6909.

"3. It is not proven that either of the deeds of the Moros mentioned were executed with the consent of the United States or the Government of the Philippine Islands.

"4. The parcel described in case No. 6908 was cleared, tilled, and planted to coco, mango, lanzones, and other fruit trees by the Moro Darondon and his wife Aianga during their marriage many years before American occupation. The exact date of the first cultivation of this parcel is impossible to determine from the evidence. But the Mora Aianga testified that the coco trees were planted more than twenty years ago, and the court is satisfied that the greater part of the cocos are 20 or 25 years of age. Datto Duroc, witness for the Government, testified that Darondon, who, according to the witness, is also a datto, married his (the witness') sister Alanga and that this parcel of land belonged to them because they planted the coco trees with his permission, or rather without his opposition.

"As will be seen hereafter, Datto Duroc claimed as his own all the land now in question between the River Nunucan and the River Agus, with the exception of this parcel and a small part of the parcel subject of case No. 6909, which, according to his testimony, belonged to his uncle, Datto Anandog. Datto Duroc testified also that Datto Darondon is still alive and that according to the Moro custom the wife cannot sell the land of her husband while he is still alive.

"This parcel, object of case No. 6908, is small, the fruit trees are distributed over the whole parcel, and the court is satisfied that Datto Darondon and his wife Aianga have possessed, occupied, administered, and cultivated the land continuously, openly, pacifically, and as owners for at least twenty-five years.

"5. The parcel of land claimed by the applicant in case No. 6909 is the larger of the two parcels and contains 37.87 hectares, or more than 90 acres. It is a long narrow strip of land stretching along the beach in a southwesterly direction between the mouths of the Nunucan and Agus River. It is almost 2 kilometers long, and includes all the target range of Camp Over ton.

"The testimony of the witnesses as to the cultivation of this parcel is somewhat contradictory and not very satisfactory. To better understand the testimoney it is necessary to take into account the fact that the Moro Dalano has a small parcel of land between this parcel and the Nunucan Rfver which separates this land from the other parcel subject of the application in case No. 6908.

"Datto Bunglay who sold this land to the applicant, as the court understands from his declaration, claims to have acquired part of it by inheritance from his uncle, Datto Anandog, who died without issue, and the balance by his own possession and cultivation. The testimony of this witness is somewhat confused and contradictory. But he testified that his uncle Anandog cleared the land, and that he helped clear portions of it himself. That they planted about 70 cocos, 12 mango, 45 nanca, and about 150 cacao trees; that 12 of the coco trees and all of the other fruit trees except the 8 manga trees were planted by his uncle Datto Anandog on the southwestern portion of the land near the River Agus; that 58 coco trees were planted by himself on the northern portion near the River Nunucan; and that 'these coco trees were not bearing fruit yet at the time when the land was sold to the applicant Dona Demetria Cacho. He further testified that he planted a hedge of tubatuba on the boundary line of the parcel; that his house was on the northeast part of the land partly near the three mango trees, and

partly near point 25 of the boundary line marked on the plan; that the house of his uncle was on the southern portion near the River Agus where the fruit trees planted by him, mentioned above, were located. There are 3 mango trees yet standing on the west side of the road which leads from Camp Overton to Camp Keithly near point 25 of the plan, and the court can very well believe that there was formerly a house in the vicinity of these mango trees. There were also some fruit trees and a house on the southwestern portion of the land near the River Agus, and some of the fruit trees and portions of the house still remain.

"The court is satisfied also that there were formerly cocos and perhaps some nanca and other fruit trees near the River Nunucan; but it appears that these trees were on the land of the Moro Dalano. The portion of the land not cleared by the military for use as a target range is a wooded jungle very similar to the land across the road from it, which is marked on the plan as Government land and which nobody claims has ever been cultivated. There are trees 2 or 3 feet in diameter on the part of the land not cleared, and the court noted fallen trunks of about the same diameter on the part cleared near the beach. But there are not many large trees on this land nor on the adjoining Government land.

"The court tried to find the remains of the tubatuba hedge, which, according to the witness Bunglay, was planted on the boundary line of the land, not only on the day of the ocular inspection but also on another day when the court was on the land for more than an hour. No traces of this hedge could be found. It is possible that the hedge has been destroyed by the military; but the greater part of the line between this land and the Government land adjoining has not been cleared and the court believes that if such a hedge had ever existed there would be traces of it remaining. The court has made many ocular inspections of agricultural lands, and has often found remains of tuba-tuba hedges on lands abandoned for years and overgrown with brush. Nor is there cogon grass on the part not cleared by the military. The court noted some abandoned lands covered with cogon between Camp Overton and Iligan not far from this land and the court is convinced that the vicinity is no exception to the general rule that abandoned lands first grow up with cogon and afterwards become covered with timber.

"As to the portion of the land cleared by the military, which is marked approximately on the plan with the words 'cleared ground, Camp Overton target range,' the court finds that before it was occupied by the military in the latter part of the year 1902, it was a jungle and forest of the same general character as the portions not cleared. The military forces of the United States first occupied this land in October or November, 1902. This fact is established by the testimony of the witnesses present when it was first occupied, corroborated by various documents and official letters attached to the record, written at that time in 'Camp No. 1' or 'Camp Nunucan.' One of these letters, Exhibit 5, is dated November 26, 1902, at 'Camp No. 1.' Part of the Twenty-eighth Infantry Regiment and part of the Tenth Cavalry were the first troops to occupy the land; and when it was first occupied it was known as 'Camp No. 1' and also 'Camp Nunucan.' A large part of the land was cleared to establish the camp thereon, but after two or three months the troops were removed to the north side of the Nunucan River on the present site of Camp Overton. The land was occupied anew as a target range in 1904.

"It is proven by the witnesses who helped clear the land, that when it was first occupied by the troops it was not inhabited nor did Moros or others live in the vicinity, except on the banks of the Nunucan River; and it appears to the court from the proofs that these Moros were the ones living on the first parcel and on the land of Datto Dalano. Nor were there houses or fences on the land. The land was a jungle and forest with some trees of considerable size, and there were no signs of cultivation except the cocos and other trees near the River Agus, the mango trees near the road already mentioned, and two small patches of land that appeared to have been planted at some time to tobacco. The brush was so tall and thick, that, according to one witness, it was necessary to open roads or paths for the horses to pass. When the troops were transferred to Camp Overton, north of the River Nunucan, the land was abandoned until 1904, as already stated, and during this period it was examined and purchased by Senor Vidal, representing his wife Dona Demetria Cacho, the applicant.

"It will be seen by the declaration of Senor Vidal that he arrived in Iligan December 31, 1902, and visited this land in 1903, undoubtedly after the troops were transferred to another place, and it is not strange therefore,

that, due to the cleared condition of the land, the existence of the three manga trees by the side of the road and the cocos on the southern part, Senor Vidal should have concluded that the larger portion of the land had been cultivated. Senor Vidal testified also that there were some houses near the River Nunucan. It is possible that these houses were on the land of Dalano. But admitting that they were on this land, it is not strange that they existed at the date of the first visit of Senor Vidal. It is well known that houses are built up quickly around military posts by employees and traders. Senor Vidal himself purchased the small parcel for his wife for the purpose of building a house and opening up a store to do business with the military.

"It will be seen also that Datto Duroc, called suftan of Dumarao, claimed all the land in question between the River Nunucan and the River Agus. His claim was the object of an investigation by Maj. R. L. Bullard of the Twenty-eighth Infantry, who certified under date of February 23, 1904, that his claim of ownership and dominion was generally accepted by all of the Moros of the vicinity. (See Exhibit 1 of the Government.) This certificate has no value as a title, but it shows that on the date indicated Datto Duroc was claiming the land now in question, publicly and before the only governmental authority existing in the place at the time. It appears also from the proofs that Major Bullard was investigating the titles of the Moros for the purpose of acquiring and paying for their lands.

"In order to better understand the character of the possession' of the various Moro claimants and properly appreciate their claims, the court believes it necessary to consider the laws, customs, form of government, habits, and industries of the Moros, and especially as to agriculture and the cultivation of land.

"The government before the arrival of the Americans, as also afterward, except wherein it is modified by the American administration, was tribal and patriarchal. The population of the Moro country was not numerous and was scattered as compared with the other islands of the Archipelago. This population was governed by numerous petty dattos. The most powerful of these dattos did not have under his jurisdiction more than 1,000 men. Each datto had certain territorial jurisdiction, or a certain amount of land under his control. Within this land he and his sacopes, slaves, and subjects constructed a fortress called a cotta and inside and around the cotta, he and his subjects lived. They took refuge in the fortress to defend themselves when attacked. There were conflicts of territorial jurisdiction between the various dattos. From time immemorial there were petty encounters and wars between them. These wars and the lack of exportation of products operated against the development of agriculture on an extensive scale, and, with the exception of a few Moros in the Cotabato Valley they rarely planted more than was necessary for their own consumption.

"A tract of land 37 hectares in area, which is the extent of the land under discussion, is larger than is cultivated ordinarily by the Christian Filipinos. In the Zamboanga cadastral case of thousands of parcels now on trial before this court, the average size of the parcels is not above 3 or 4 hectares, and the court doubts very much if a Moro with all his family could cultivate as extensive a parcel of land as the one in question! The court has observed the old cottas and the lands cultivated in the vicinity of them on the shores of Lake Lanao, and especially the cotta where the municipality of Dansalan is established on lands purchased of the Moro owners; and it does not appear to the court that the whole extent of cultivated land surrounding any of these old cottas would equal 37 hectares. Due to the establishment of Camp Keithley in recent years, the Moros have planted extensively around said camp, and are, as the court is informed, producing rice for commerce. But this is an exceptional case and is due to peace and the fact that they now have a market for their products. Although the territorial jurisdiction of each datto was often extensive, the land planted by him and his sacopes was generally only a few hectares around his cotta. The plantings outside of this were generally accidental and temporary. In times of peace a Moro could plant in any part of the jurisdiction of his datto. Nor did the planting of land necessarily indicate that the person planting it was owner or claimant of the land planted, as will be seen further on.

"The laws governing all the Moro tribes collectively are so vague and irregular in their application that the American Government found it useless to codify them and make them of permanent application, in accordance with the provisions of Act No. 787, the Organic Act of the Moro Province. See as a basis of what we have set

forth as to the customs and laws of the Moros, the reports of the Philippine Commission and especially the report for the year 1904, part 1, pages 5 to 14; report of Gen. Leonard Wood dated September 9, 1904; the data contained in the Philippine census reports; and the collection of data of the Jesuit fathers entitled 'El Archipielago Filipino,'

"The laws of most general application among the Moros of Mindanao are found in the 'Luwaran' Code brought to Mindanao by the Mohammedan conquerors and amended by them to make them applicable to local conditions. A translation of this code from the Arabic manuscript made by Dr. Najeeb M. Saleeby, is found in volume 4, part 1, of the publications of the Ethnological Survey. A translation of the marginal annotations in the original manuscript, modifying the provisions to make them applicable to local conditions, is found in the same volume.

"There is no provision in this code nor in any other law of the Moros, examined by the court, for the acquiring or transfer of lands by private parties. There is absolutely nothing relating to the prescription, or the cession, or sale of lands. Were it not for a provision (Art. XLVII) of said code regulating the renting of cultivated lands, the court would believe that there was no private ownership of lands among the Moros. Due to the sanguinary struggles between the dattos and the fact that they and their Moro subjects lived principally by means of fishing, hunting, robbery, and sometimes piracy, neither their habitations nor their cottas were fixed permanently, but were moved from one place to another with facility and frequency.

From the declaration of Datto Bunglay himself it will be seen that neither he nor his uncle Anandog lived continuously on the land under discussion. They lived in other places outside of it also. It appears that a Moro could cultivate any unoccupied land of his datto or tribe and the fruits of his planting would be his, even though the land passed into the possession of some other Moro. This right is recognized by Article XLVI of the 'Luwaran Code,' which provides that if a man finds his cattle or his trees in the possession of another, he has a right to the proceeds even though they continue in the possession of the second party.

"It appears that in the beginning the Americans believed, that the title to all of the land in the possession of a datto or Moro tribe was in the datto himself, or the tribe, as common property; and it appears probable that Act No. 718 prohibiting all cessions, deeds, and contracts of lease or rent by such dattos or tribes was promulgated under this belief. And it appears to the court that there was some foundation for this belief, and that in general, the lands were the common property of the tribe. It is doubtful, at least, that the property of a Moro in the lands cultivated by him was any other than the right of usufruct or a property in the crops or trees planted. The writer of this opinion has been unable to find a single instance of sale or transfer of land from one Moro to another. A Moro can readily put a price on his animals or other personal property, but he has no idea whatever of the value of his land. Generally, he will answer such a question, saying that he has never sold land and does not know the value of it. The large parcel of land in question is level, and though sandy in some places, it appears to the court to be good agricultural land. Its value, taking as a basis the minimum price of P10 per hectare fixed for the sale of public lands by the Government under the provisions of Act No. 926, would be P370, and it appears, to the court to be of far greater value than that. The applicant insists that the just rental value which the Government should pay her as damages for the retention of this land during the past eight years would not be less than P12,000 or P15,000 per year. Datto Bunglay sold all this land to the applicant for the insignificant sum of P250, as shown by the deed. Due, no doubt, to the abundance of land, the fact that a Moro could occupy and cultivate any unoccupied land of his tribe and the other circumstances already mentioned, it appears that the Moros were not accustomed to sell land; nor did they generally have any idea of its just value. Nor does it appear that a Moro datto distinguished clearly between the lands of his own cultivation and those under his jurisdiction as datto. All this demonstrates that the Philippine Commission worked wisely when it placed restrictions on the sale of lands by Moro dattos and Moro tribes.

"Nevertheless the court is convinced that to a certain extent under the laws and customs of the Moros, a Moro was recognized as owner of the land cultivated by him for many years, and on which he had his home and the

graves of his ancestors. All the land outside of this was the common property of the tribe on which any Moro of the tribe might plant. Generally the tracts of land cultivated by the Moros were smaller in extent than those of the Christian Filipinos.

"6th. The court is convinced from the proofs that the small parcel of land sold by the Moro woman Alanga was the home of herself and her husband, Darondon, and was their conjugal property; and the court so finds.

"The court is also convinced from the proofs that the small portion in the southern part of the larger parcel, where, according to the proofs, Datto Anandog had his house and where there still, exist some cocos and fruit trees, was the home of the said Moro Datto Anandog; and the court so finds. As to the rest of the large parcel the court does not find the title of Datto Bunglay established. According to his own declaration his residence on this land commenced only a few days before the sale. He admitted that the coco trees he is supposed to have planted had not yet begun to bear fruit at the time of the sale, and were very small. Datto Duroc positively denies that Bunglay lived on the land, and it clearly appears that he was not on the land when it was first occupied by the military. Nor does Datto Bunglay claim to have planted the three mango trees by the roadside near point 25 of the plan. The court believes that all the rest of this parcel, not occupied nor cultivated by Datto Anandog, was land claimed by Datto Duroc and also by Datto Anandog and possibly by other dattos as a part of their general jurisdiction, and that it is the class of land that Act No. 718 prohibits the sale of, by the dattos, without the express approval of the Government.

"It is also found that Datto Bunglay is the nephew of Datto Anandog, and that the Moro woman Alanga, grantor of the small parcel, is the sister of Datto Anandog, and that he died without issue.

"It is insisted by the Government that the sale to the applicant is void under the provisions of Act No. 718, which prohibits all grants, deeds, patents, and leases, from Moro sultans or dattos or the chiefs of non-Christian tribes conveying rights in land, made without the authority of the Spanish Government before American occupation, or the authority of the Government of the United States or of the Insular Government since the sovereignty was transferred to the United States. But the court does not find this contention well founded. Undoubtedly the law prohibits the cession of rights in land the common property of the tribes, but does not prohibit the cession of his own land by an individual Moro or other non-Christian. The law in question is very similar, almost a copy, of section 2116 of the Revised Statutes of the United States, which prohibits the sale or transfer of lands by the chiefs of Indian tribes. The Supreme Court of the United States in the case of Jones vs. Meehan (volume 175, page 1, of the Supreme Court Reports), has decided that the prohibition is against the chiefs or tribes only, and that the sale by an Indian of his own private land is not prohibited by said law.

"As we have seen, the deed on which applicant's title to the small parcel rests, is executed only by the Moro woman Alanga, wife of Datto Darondon, which is not permitted either by the Moro laws or the Civil Code of the Philippine Islands. It appears that the husband of Alanga, Datto Darondon, is alive yet, and before admitting this parcel to registration it is ordered that a deed from Datto Darondon, husband of Alanga, be presented, renouncing all his rights in the small parcel of land object of Case No. 6908, in favor of the applicant.

"It appears also that according to the provisions of the Civil Code as also the provisions of the 'Luwaran Code' of the Moros, the Moro woman Alanga has an interest in the portion of land left by her deceased brother, Datto Anandog. By article LXXXV, section 3, of the 'Luwaran Code, it will be seen that the brothers and sisters of a deceased Moro inherit his property to the exclusion of the more distant relatives. Therefore Datto Bunglay had no legal interest whatever in the land to sell to the applicant, Dona Demetria Cacho. But the Moro woman, Alanga, having appeared as a witness for the applicant without having made any claim to the land, the court finds from this fact that she has ratified the sale made by her nephew.

"The court therefore finds that the applicant Dona Demetria Cacho is owner of the portion of land occupied and planted by the deceased Datto Anandog in the southern part of the large parcel object of expediente No. 6909 only; and her application as to all the rest of the land solicited in said case is denied. And it is ordered that

a new survey of the land be made and a corrected plan be presented, excluding all the land not occupied and cultivated by Datto Anandog; that said survey be made and the corrected plan presented on or before the 30th day of March, 1913, with previous notice to the commanding general of the Division of the Philippines.

"On the 8th day of December, the court was at Camp Overton and had another ocular inspection of the land for the purpose of fixing the limits of the part cultivated by Datto Anandog, so often mentioned herein, with previous notice to the applicant and her husband and representative, Senor Dionisio Vidal. Having arrived late, Senor/Vidal did not assist in the ocular inspection, which was fixed for 3 o'clock, p. m. of the day mentioned. But the court, nevertheless, set stakes marking the N. E., S. E., and S. W. corners of the land found to have been cultivated by the deceased Anandog. The N. E. limit of said land is a brook, and the N. W. corner is the point where the brook intersects the shore line of the sea, the other corners mentioned being marked with pine stakes. And it is ordered that the new survey be made in accordance with the points mentioned, by tracing four straight lines connecting these four points. Between the portion cultivated by Datto Anandog and the mouth of the River Agus there is a high steep hill and the court does not believe it possible to cultivate said hill, it being covered with rocks and forest.

"The attorney for the applicant insists in his brief that neither the commanding general of the Division of the Philippines nor the officers who appeared to represent him were authorized, or had any right to represent the United States. This question was not raised at the trial, and the applicant did not oppose the representation in any manner. It appears to the court that the objection should not be considered now. Furthermore both Act No. 496 and Act No. 627 seem to permit the representation.

"Nobody having appeared to oppose the applications up to this date, December 10, except the Government of the United States represented by the commanding general of the Division of the Philippines, a general default against all the world except said Government, is ordered, and the allegations of the applications are taken as confessed by all the world, with the exception of the Government of the United States.

"It is further ordered that one-half of the costs of the new survey be paid by the applicant and the other half by the Government of the United States, and that the applicant present the corresponding deed from Datto Darondon on or before the above-mentioned 30th day of March, 1913. Final decision in these cases is reserved until the presentation of the said deed and the new plan.

"It is so ordered.

"Given in Zamboanga, December 10, 1912.

(Sgd.) "JESSE GEORGE,
"Associate Judge."

The decree entered in the court below should be affirmed with the costs of this instance against the applicant. So ordered.

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

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