

SANTIAGO ARENAS AND HIS WIFE TOMASA ROSARIO, APPLICANTS AND APPELLEES, VS. DIONISIO ZAMORA ET AL., OPPOSITORS AND APPELLANTS.

G.R. Nos. 41550, 41551. October 12, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

Cases Nos. 15116 and 15136 were tried together.

In case No. 15116 Santiago Arenas and his wife, Tomasa Rosario, applied for the registration of lots Nos. 1 and 2 (PlanPsu-94351).

In case No. 15136 Dionisio. Zamora and others applied for the registration of lots Nos. 1 and 2 (Plan PsU)-94350).

There was no adverse claimant to lot No. 1 in case No. 15116, and that lot is not involved in this appeal. Lot No. 2 in case No. 15116 refers to the same land as lot No. 2 in case No. 15136.

The dispositive part of the decision appealed from is as follows:

"In view of all the foregoing, the court hereby orders the adjudication and registration of lots 1 and 2, plan Psu04351, expediente No. 15116, in favor of the spouses Santiago Arenas and Tomasa Rosario, both of age, Filipino citizens and residents of Binmaley, Pangasinan. In expediente No. 15136, the court hereby orders the dismissal of the application with respect to lot 2; overrules the opposition of Vicente, Irineo and Leonardo, all surnamed De Guzman; sustains the opposition of Jose Salvador And Lamberto Arenas; and hereby orders the adjudication and registration of lot 1, after the exclusion of the portions contested by Leonardo Arenas and Jose Salvador, as shown on plan Psu-94350, in favor of the following persons and in the following proportions: One-sixth pro indiviso, in favor of Dionisio Zamora, of legal age, married to Isidra Lopez; also one-sixth, pro indiviso, in favor of Apolonio Zamora, of legal age, married to Jovita Ramos; also one-sixth, pro indiviso, in favor of Braulia Zamora, of legal age, married to Adriano Quinto; one-sixth pro indiviso, in favor of Maria Rosario, 12 years old, single; one-sixth, pro indiviso and in equal shares, in favor of Eusebio Ferrer, of legal age, married to Fortunata de Guzman, and Felicisimo Concepcion, 11 years old, single; and one-sixth, pro indiviso and in equal shares, in favor of Perfecto de Guzman of legal age, married to Rufina Sinlao; Cesareo de Guzman, 20 years old, single; Valeriana de Guzman, 9 years old, single; and Jacinta de Guzman, 6 years old, single; all residents of the municipality of Binmaley, Pangasinan.

"Once this decision has become final and the applicants Zamoras have amended their plan of lot No. 1, Psu-94350, so as to exclude the portions contested by Jose Salvador and Lamberto Arenas, and the amended plan duly approved by the Director of Lands, let the corresponding decrees be issued."

The appellants, Dionisio Zamora and others, make the following assignments of error:

"I. The trial judge erred in delegating his judicial functions to his own stenographer and interpreter by appointing them, over the objections of the appellants, commissioners (referees) to make an alleged ocular

inspection of the premises and in thereafter approving and adopting their so-called findings of facts without further hearing and without notice, to the prejudice of the appellants.

"II. The lower court erred in finding, as a result of the reports of the said commissioners, that 'the preponderance of the evidence points to the conclusion that the opponents Santiago Arenas, Jose Salvador and Lamberto Arenas personally and thru their respective predecessors in interest have been respectively in possession of the portions contested by them as bona fide owners openly, notoriously, continually and adversely for a period more than sufficient to acquire ownership by prescription.

"III. The lower court likewise erred in deducing from the evidence principally the so-called 'testimony' of the commissioners dubbed as 'impartial witnesses', that the said opponents and appellees Lamberto Arenas, Jose Salvador and Santiago Arenas 'have sufficiently proven that they are owners in fee simple of the portions respectively contested by them

"IV. The lower court erred in ordering the exclusion of the portions respectively claimed by the opponents and appellees from the application of the appellants and in not adjudicating in their entirety the two lots subject of the appellants' application in favor of the latter, with costs."

It appears that on September 26, 1933, after the parties had presented their evidence, the attorney for the adverse claimants in case No. 15136 asked for an ocular inspection of the land in question to determine whether or not there were trees and other visible signs marking the dividing line between the land claimed by them and that of the Zamoras. The attorney for the Zamoras opposed the petition on the ground that an ocular inspection was unnecessary and the small value of the land did not justify the expense which an ocular inspection would entail. The court then dictated the following order:

"Acceding to the petition of Attorney Crispin A. Fernandez for the opponents in case No. 15136, Record No. 46455, Dionisio Zamora, et al, applicants, the court hereby appoints Messrs. Juan C. Ramos and Mauro Ordoña as commissioners to make an ocular inspection of the portions contested by Santiago Arenas, Lamberto Arenas and Jose Salvador with a view to determine the claim of said opponents that the respective portions claimed by them are separated from the greater portion of the land claimed by the Zamora brothers by a line of trees called panolapey, pata and salisay which distinctly show the existence of such dividing lines separating their portions from the greater portion of the land covered by the plan of the Zamoras. These commissioners are also hereby ordered to determine the existence of dildpiles and fence separating said contested portions from the bigger portion and how long, more or less, said dildpiles and fence have been in existence. These two commissioners will be assisted by surveyor Roman Sison whose services in connection with the ocular inspection will be paid for by the opponents Santiago Arenas, Lamberto Arenas and Jose Salvador. The Zamoras and these opponents are hereby ordered to pay proportionately the transportation expenses of the commissioners. The commissioners are hereby ordered to make the ocular inspection not later than Saturday, September 30, 1933, and make their report afterwards to the court in writing, the same to be attached to the record of this case.

"After the ocular inspection and submission of the report of the commissioners in connection therewith, the case will be deemed submitted for the decision of the court."

On October 6th the court granted the parties five days to propose the name of another surveyor, and on the 11th the attorney for the appellants excepted to the order of October 6th and filed his objection to the ocular inspection unless it should be made by the court itself. Mariano Celis, a surveyor, was appointed to assist the commissioners, and the ocular inspection was made on October 21st. The surveyor and the commissioners filed their reports on October 23d and 24th respectively. It does not appear that the attorney for the appellants was ever notified of these reports.

In the course of the decision the lower court said: "In the mind of the court, the commissioners and surveyor Celis

have stated in their respective reports what they actually saw and found. The commissioners took the oath to perform faithfully their task and the surveyor has submitted a report supported by his oath. They have no interest in the case other than to comply with the duties entrusted to them by the court. The court believes that they have acted most impartially and their findings of facts are very useful in guiding the court in the fair determination of this case. Their findings of facts as embodied in the reports are, therefore, hereby approved and made as the findings of the court."

In another part of the decision the following was said:

"The testimony of the applicants and their witnesses on their alleged possession is not, in the mind of the court, reliable. On the other hand, the testimony of these opponents on their alleged respective possessions has been corroborated not only by the witnesses presented by them at the trial but also by the findings of impartial witnesses (the commissioners and the surveyor) who went to the premises and found mute and eloquent evidence of the existence of clear boundary lines between the portions contested by Lamberto Arenas, Jose Salvador and Santiago Arenas from the greater portion of lot 1. With respect to lot 2, they found from point 5 to 4 the existence of a pilapil, barbed wired fence and standing trees of many years old; the existence of a hut built by Santiago Arenas on the southern portion of said lot; the existence of a pilapil and marked with fence from points 4 to 1 and eastward; the non-existence of any pilapil or trees from points 1 and 2; the existence of pilapiles from east to west of lot 2 which are continuation of the pilapiles on the undisputed land of Santiago Arenas east of lot 2; and the fact that lot 2, like the land east of it, is a rice land actually planted with palay by opponent Santiago Arenas—all these findings corroborated" the contention of opponent Santiago Arenas and disprove completely the claim of the applicants Zamoras."

It is apparent therefore that the decision of the trial judge rests largely upon the findings of the commissioners and the surveyor. Neither the commissioners nor the surveyor testified as witnesses. The attorney for the appellants was not notified of the reports of the commissioners and the surveyor, nor did he have an opportunity to cross-examine the commissioners or the surveyor as to their findings, which were accepted by the lower court. The decision of the court was rendered on October 31, 1933, or a week after the reports were filed.

Rule 31 of the Rules of Courts of First Instance provides that upon the filing of the report of commissioners in partition or expropriation proceedings or of a referee the parties shall be notified by the clerk, and they shall be allowed ten days within which to file exceptions or signify grounds of objection to the findings, if they so desire, unless a different period is fixed by the court.

It is true that in the order appointing the commissioners it was stated that after the ocular inspection and submission of the report of the commissioners the case would be deemed submitted for decision, but the lower court could not lawfully deprive the parties of their right to object to the report, even if the commissioners had been appointed in accordance with section 135 of the Code of Civil Procedure; but they were not appointed in accordance with said section, and their findings could not be properly given the force of the findings of referees appointed in accordance with the law. The commissioners and the surveyor might have been called to testify as to the facts observed by them, but instead of calling them as witnesses, the trial judge accepted the findings stated in their reports and decided the case in accordance therewith (*De Ocampo and Custodio vs. Lim*, 38 Phil., 579). The action of the trial judge was erroneous, and that part of the decision appealed from is therefore set aside, and the case is remanded for further proceedings in accordance with the law.

The appellees will pay the costs of this instance.

Avanceña, C.J., Abad Santos, Hull, and Recto, JJ., concur.

Judgment set aside and case remanded for further proceedings.

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