

[G.R. No. 18454. April 04, 1923]

NICANOR VILLAROSA ET AL., PLAINTIFFS AND APPELLEES, VS. ANTONIO SARMIENTO, AS ADMINISTRATOR OF THE INTESTATE ESTATE OF JOSE SARMIENTO, DECEASED, DEFENDANT AND APPELLANT.

D E C I S I O N

ARAULLO, C.J.:

In cadastral proceeding No. 2 of the Court of First Instance of Occidental Negros and No. 55 of the General Land Registration Office for the adjudication and registration of several parcels of land situated in the municipality of Bacolod of the said province, after the publication of the proper notices, the administrator of the intestate estate of the deceased Jose Sarmiento in behalf of the latter's heirs, and Nicanor Villarosa and the heirs of Victor Flores, through their attorney-in-fact Maximo Villarosa, filed their respective answers to the application of the Director of Lands, asserting their respective titles and asking that the same be confirmed and the proper certificates of title issued, adjudicating lot No. 639, with the improvements thereon, to the latter, which lots are described in their said answers and in the plan attached to the record and marked Exhibit A. After the proper proceedings, no opposition having been entered to the claims made in the said answers, the Court of First Instance of the said province, in a decision rendered August 25, 1915, adjudicated the first lot to the heirs of Jose Sarmiento, and the second to Nicanor Villarosa and the heirs of Victor Flores, and decreed the registration thereof in their respective names, the proper certificates of title having been issued, to wit, that for the first lot, No. 2680, on September 26, 1916, and that for the second, No. 2533, on October 7th of the same year, the originals thereof having been registered in the registry of property of the said Province of Occidental Negros, the first, that of lot No. 639, in the name of the heirs of Jose Sarmiento on November 3, 1916, and the second, that of lot No. 642 in the name

of Nicanor Villarosa and the heirs of Victor Flores on October 25th of the same year.

The status of the case being as stated, a complaint was filed in the court below by Nicanor Villarosa and his coplaintiffs on February 21, 1921, alleging that they are the legal owners of a fish pond described in the fourth paragraph thereof, which is a part of the aforesaid lots, Nos. 639 and 642 of the above-mentioned cadastral plan of Bacolod, one-half thereof belonging to Nicanor Villarosa and the other half to his coplaintiffs. They also alleged that a considerable portion of said fish pond containing 56,813 square meters, which yielded P3,000 a year, as the minimum net profit, was included in lot No. 639, and adjudicated to the heirs of Jose Sarmiento, the herein defendants, due to the fact that when the cadastral survey of the said municipality was made, said defendants knowing that they had no right to any part of the said fish pond, fraudulently tried to have, and succeeded in having, said portion included in the aforesaid lot, making the plaintiffs then, as well as after the trial of the cadastral case and up to the month of November, 1919, believe that they had not claimed, and were not claiming, any interest, right or share in the said fish pond, and that the said portion had not been included in the aforesaid lot, and kept them ignorant of that fact, thus preventing them from filing any opposition to the adjudication of the whole lot to the defendant; that from time immemorial, they, the plaintiffs, as well as their predecessors in interest, had been in possession of the said fish pond and in the public, peaceful and continuous enjoyment thereof as owners, until the month of November, 1919, the said possession not having been disturbed in any manner whatsoever by any person; that on November 30, 1919, the defendant acting in bad faith filed a motion in the lower court asking for the issuance of a writ of possession in his favor, which motion was granted by that court and the said writ was immediately issued, whereby the said plaintiffs were deprived of the possession of the said fish pond, as well as of the net profit usually derived therefrom, to their great damage. Wherefore, it was prayed in the complaint that the defendant be sentenced to return and convey to the plaintiffs the said fish pond, and that the same be excluded from the certificate of title No. 2680 issued to the defendant, or in case that cannot be done, that they pay the plaintiffs the sum of P16,000, the value of the said portion; that the defendant be also sentenced to pay, as damages, the sum of P250 monthly for the fruits of the portion in

question that they failed to receive from the issuance of the writ of possession, from January 17, 1920, and an additional sum of P500 monthly for the damages alleged in the complaint.

In his answer the defendant executor denied each and every allegation of the complaint, except that relating to the capacity of the parties, and alleged that the aforesaid portion of 56,813 square meters of lot No. 639 belonged to the heirs of Jose Sarmiento, whose title to all of the said lot had been confirmed by the court in a decision rendered August 25, 1916, in the aforesaid cadastral proceeding, the certificate of title hereinbefore mentioned having been issued to the said heirs pursuant to a decree dated September 26, 1916, and after all the legal requirements had been complied with, without any fraud of whatever nature having been practiced; and as a counterclaim he alleged that the said portion of 56,813 square meters of lot No. 639 had been leased by the deceased Jose Sarmiento to the plaintiffs at the annual rental of P30, payable in advance, which rent they paid until the death of the said deceased, namely, March 30, 1914, since which time they have not paid any rent notwithstanding the demands made on them on several occasions, for which reason the aforesaid writ of possession was applied for in the above-mentioned cadastral proceeding against these plaintiffs to eject them from the said portion, they having deprived the intestate estate of Jose Sarmiento of the fruits thereof, which amounted to not less than P3,000 a year. The defendant prayed that he be absolved from the complaint and the plaintiffs be sentenced to restore him, that is, the administrator of the intestate estate of the deceased Jose Sarmiento, in the possession of the said portion, and to pay him P3,000 per year from 1915 until the delivery thereof, with legal interest for the years that may have expired until the same is fully paid.

The plaintiffs having filed their reply to the counterclaim, denying each and every allegation thereof, and trial having been held at which the parties presented their respective evidence, the court below rendered judgment in favor of the plaintiffs and against the defendant, sentencing the latter to execute a valid deed, one that could be registered in favor of the former, conveying to them the title to the portion of the fish pond in question, as described in the sixth paragraph of the complaint, subject to the mortgage lien thereon in favor of the National Bank in the sum of P3,500, with interest at the rate of 8 per cent per annum, or to indemnify the plaintiffs in the sum of P60,000, the value

thereof, with costs. From this judgment the defendant has appealed to this court by bill of exceptions after moving for a new trial, and excepting to the ruling of the trial court denying said motion.

The plaintiffs made a great effort in their attempt to prove that when, in October, 1913, the government surveyor made the survey necessary for the institution of the aforesaid cadastral proceeding concerning the parcels situated in the municipality of Bacolod, Province of Occidental Negros, among which are the two lots in question situated in the barrio of Sumag of the said municipality, the portion of the fish pond involved in this litigation was included within the boundaries of the land of Jose Sarmiento by those who indicated them, while a part of that same land was, in turn, included within the boundaries of the property of Nicanor Villarosa by those who pointed out the said boundaries, which made it necessary to make a correction of the boundaries already indicated of the said two lots, by excluding the aforesaid portion of the fish pond from the property of Jose Sarmiento, and including the same in that of Villarosa. The defendant in turn attempted to overcome the evidence of the plaintiffs on this point by documentary and oral evidence.

In the judgment appealed from, the trial court finds it proven by the preponderance of evidence "that the cadastral survey of the barrio of Sumag, municipality of Bacolod, Occidental Negros, was made in October, 1913; that on the occasion of the survey of the lands of Jose Sarmiento, the person who indicated the boundaries of the said lands included the portion now in question; that on account of this, the persons who indicated the boundaries of the land of Nicanor Villarosa included, in turn, a part of that belonging to Jose Sarmiento; that in view of this dispute, the portion of land included in that of Jose Sarmiento, and that included in the property of Nicanor Villarosa were marked by the surveyor as disputed portions; that on learning this, Jose Sarmiento saw Andres Claridad on the following day at his home in the barrio of Sumag and told him that Nicanor Villarosa had included a part of his land in the survey; that Andres Claridad then answered that he (Sarmiento) had in turn included in his land a portion of Nicanor Villarosa's; that in view of this statement, Jose Sarmiento proposed that a correction of the boundaries be made, and to this end they came to Bacolod to see the surveyor, who, after being informed of the arrangement they wanted to make, effaced the boundaries, that he originally indicated between the land of Nicanor Villarosa and that of Jose Sarmiento, and

told them to go back to Sumag and put stakes at the points where they wanted the new boundary line to pass through, and that he would go there the following day to make the new survey; that as suggested by the surveyor, both parties went to the land and placed a stake of wood at point C, in blue pencil on the plan, Exhibit A, which was seen by the trial court in the ocular inspection made in the morning of July 31, 1921, at the instance of the parties; that as the surveyor had promised, he went to the land on the following day and, in the presence of both parties, made the survey from point 4, in pencil, to point 2, in red pencil, on Exhibit A, bordering on the fish pond; that after the completion of the survey, the parties rested in the belief that the trouble between them as to the boundaries had been settled by the new survey made by the surveyor, the plaintiffs having remained, as they had done theretofore, in the possession of the fish pond marked on the plan Exhibit A with the words *Fish Pond*," within which lies the portion of 56,813 square meters now in litigation.

The defendant attempted to prove that, while it is true that the plaintiffs remained in the possession of the said fish pond, including the portion here in controversy, even after the issuance of the title deed of lot No. 63 to the heirs of the deceased Jose Sarmiento, in which the said portion was included, yet that was only because the said portion had been given in lease to the plaintiffs by the deceased Jose Sarmiento during his lifetime, at an annual rental of P30 payable in advance, as was alleged in the counterclaim, but that the lessees having failed to pay the rent when it was raised to P100, the administrator of the estate of Jose Sarmiento was compelled, in October, 1919, to ask the trial court for a writ of possession to recover that portion of the fish pond, but notwithstanding the issuance of the said writ, the plaintiffs remained in the possession of the said portion.

The plaintiffs having, in turn, attempted to prove the contrary, the trial court in the aforesaid judgment, likewise held, by a preponderance of evidence, that the possession of the plaintiffs, including that of their predecessors in interest, had been open, adverse, continuous, peaceful and public and under a claim of ownership without any interruption of whatever nature, up to the 17th of January, 1920, when a writ of possession was issued in favor of the intestate estate of Jose Sarmiento and against the said plaintiffs for the recovery of the aforesaid portion of the fish pond, without paying any rent to anybody, either

to the defendant or his predecessor in interest.

Now, it is an undisputable fact that the portion of the fish pond of which the plaintiffs allege themselves to be the owners, is within lot No. 639, adjudicated in the aforesaid cadastral case of the municipality of Bacolod, Province of Occidental Negros, to the heirs of the deceased Jose Sarmiento, of whose intestate estate the defendant Antonio Sarmiento is the administrator, and not within lot No. 642 adjudicated in the same proceeding to the plaintiffs and the heirs of Victor Flores. It is also an undisputable fact that upon the institution by the Director of Lands of the said cadastral proceeding, both parties appeared therein and filed their respective answers, claiming to be the owners of their respective lot, as described in the said answers, and, finally, that no opposition having been made either by Nicanor Villarosa and the heirs of Victor Flores, the plaintiffs herein, or by anybody else, after the entry of the order of default and due hearing, the Court of First Instance of Occidental Negros rendered judgment in the said proceeding on August 25, 1915, adjudicating said lot No. 639, within which lies the portion of the fish pond in question, to the heirs of Jose Sarmiento, and lot No. 642 to Nicanor Villarosa and the heirs of Victor Flores, and decreeing the registration thereof in their respective names, the certificate of title of lot No. 639 having been issued on September 26, 1916, to the heirs of Jose Sarmiento, now represented by the administrator of the intestate estate of the said deceased, the defendant herein, and the certificate of title of lot No. 642 on October 7th of the same year to Nicanor Villarosa and the heirs of Victor Flores, the herein plaintiffs, the former certificate of title having been registered on November 3, 1916, and the latter on October 25th of the same year. This fact is also mentioned by the trial court in the decision involved in this appeal, but that court does not make any finding to the effect that the undue inclusion in lot No. 639 of the portion of the fish pond described in the sixth paragraph of the complaint, was procured, made and obtained through fraud by the heirs of Jose Sarmiento, which inclusion is alleged by the plaintiffs to have been made notwithstanding that a correction of the boundaries of the said lot had been proposed to the surveyor and the latter had proceeded to make a new survey thereof. On the contrary, the trial court does find that that inclusion was due to a mistake committed by the surveyor in the new survey made by him of said lots, whereby he erroneously included again said portion in lot No. 639 when he made the description and the

plan of that same lot, and it must have found in the aforesaid decision that there was no fraud or bad faith on the part of the heirs of Jose Sarmiento when they applied for, and obtained in the said cadastral proceeding, the registration of lot No. 639, including the portion in dispute between Jose Sarmiento, on the one hand, and Nicanor Villarosa and the heirs of Victor Flores, the plaintiffs herein, on the other, as that court says that it was Jose Sarmiento, the predecessor in interest of the defendant Antonio Sarmiento, who recognized that said portion of the fish pond did not belong to him but to the defendants; that said Jose Sarmiento had no knowledge of the mistake committed by the surveyor, and that if he were alive and would apply for the registration of the said lot, he would do it in the belief that the same included only what was his and not the portion in dispute, which is admitted to belong to Nicanor Villarosa and the heirs of Victor Flores; and that court further says that Jose Sarmiento having died, the defendant Antonio Sarmiento, as judicial administrator of the intestate estate of the said deceased, did what said deceased would have done if alive, to wit, to apply for the registration of lot No. 639 aforesaid in the belief that it contained only what belonged to Jose Sarmiento and did not include the aforementioned portion in dispute.

The question, therefore, to be decided in this appeal is whether or not, under the facts stated in the foregoing two paragraphs, the title issued in favor of the heirs of Jose Sarmiento, the herein defendants, to lot No. 639 may be declared null in so far as it includes the portion of the fish pond described in the sixth paragraph of the complaint upon the action for recovery of title to real property brought by Nicanor Villarosa and the heirs of Victor Flores, and the said portion be excluded from the aforesaid certificate of title and returned and conveyed to said plaintiffs, or, in default thereof, the defendants be sentenced to pay the plaintiffs an indemnity for the damages alleged in the complaint.

Section 38 of Act No. 496, the Land Registration Act, is very plain and conclusive. According to that section, the decree of registration shall have effect as to the ownership and the peaceful enjoyment of the possession, with the limitations relative to liens, taxes, and other incumbrances mentioned in the following section 39, which have nothing to do with the subject-matter of this case. “* * * It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name

in the application, notice, or citation, or included in the general description *To all whom it may concern*. Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest. *
* * But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. * * *

In the instant case, it is undisputable that under the provision of section 38 aforecited of the Land Registration Act, the decree issued in the above-mentioned cadastral proceeding in favor of the heirs of Jose Sarmiento covering lot No. 639 may not be revoked, and, consequently, the certificate of title covering the portion of the fish pond described in the sixth paragraph of the complaint, may not be annulled in this action for the recovery of title brought by the plaintiffs, the only purpose of which is to obtain the revocation of the said decree. It is also indisputable that the said decree is conclusive against all persons and the more so against the plaintiffs who were a party to the said cadastral proceeding and applied for the confirmation of their title to, and the registration in their name of, lot No. 642 which adjoins lot No. 639, and should have known, for the reason that these two lots are adjacent to each other, the boundaries of each of them, and, consequently, the fact that the portion of the fish pond described in the sixth paragraph of the complaint was included in lot No. 639. Hence the allegation that the above-mentioned portion was erroneously included in the said lot is absolutely without foundation, specially when they pretend that the said inclusion was made after an attempt had been made to correct the supposed error committed in the first survey made by the surveyor, which fact cannot be deemed to have sufficiently been proven for the purposes contemplated in the complaint, not only because the evidence adduced by the plaintiffs on this point was overcome by that of the defendant, but also because were it true that the surveyor acceded to making said correction and effaced the boundaries that he had originally indicated between the two lots and made a second survey, the portion now claimed by the plaintiffs

as their property would have been partially described as being between the two lots on the plan, Exhibit A, and marked, as is usual in like cases, with the words "Claimed by Nicanor Villarosa and the heirs of Victor Flores," which fact does not appear on the said plan.

It is also indisputable that the plaintiffs were not deprived of their property or any interest in the aforesaid portion of the fish pond, such as would give them the right to file in the Court of Land Registration a petition for the review of the aforesaid decree of registration in favor of the heirs of Jose Sarmiento, for they had had an opportunity in the same proceeding to oppose their application so far as lot No. 639 was concerned, but did not do so even within one year after the issuance of the decree of registration. What they did was to bring this action for the recovery of title four years thereafter, which is, as above stated, manifestly improper. Nor can it be held, under these facts and those hereinbefore set out, that the aforesaid decree of registration was, in so far as it affects lot No. 639, obtained in bad faith and by fraudulent means by the heirs of Jose Sarmiento. And it is evident that this is another reason for denying the plaintiffs' claim for damages against the defendant, the successor in interest of the deceased Jose Sarmiento.

And it is of no importance that the plaintiffs have been in possession of the portion of land in dispute for several years before the institution of the aforementioned cadastral proceeding, and were in possession thereof when the heirs of Jose Sarmiento filed their application for the confirmation and registration of their title to lot No. 639 including the said portion, for the lapse of the period fixed in section 38 aforesaid of Act No. 496 for the review of the said decree and the fact that the same was not obtained fraudulently by the heirs of Jose Sarmiento, make the certificate of title issued to them absolute and indefeasible, and, consequently, said lot being, by virtue of the said title, the property of the said heirs, the latter are entitled to the possession thereof, as was prayed for in their counterclaim and in the motion of November 30, 1919, for the issuance of a writ of possession to obtain possession of the said lot, in view of the aforementioned certificate of title.

It cannot be maintained, as the trial court holds in the judgment appealed from, citing the case of Marsden vs. McAllister, ([1887], 8 N. S. W. L. R., 300), mentioned in Niblack's book entitled "Analysis of Torrens System,"

paragraph 149, page 233, that as this case involves an error committed by the surveyor in the description of lot No. 639 of the heirs of Jose Sarmiento, by including therein the portion of the fish pond in question and making it appear on the plan, Exhibit A, as a part of the said lot, the registration thereof in their names did not deprive the plaintiffs, the true owners, of the said possession and their title and they are entitled to recover the same, for, as the appellant says in his brief, quoting, in support of his contention, the comment made by the said author on that case in explaining the difference between a mere error in the description and an error in the title, the heirs of Jose Sarmiento having applied for the confirmation of their title to, and the registration in their names of, lot No. 639 as described in their application, which description is identical to that contained in the certificate of title issued to them, and the legal requirements for its adjudication having been complied with, the error, if any, is not in the description, but in the title. And the title is not void, nor can it be so declared in the present case both as regards the whole lot and the portion of the fish pond therein included, because the confirmation of the said title was not obtained through fraud, nor was any petition for the annulment thereof filed by the plaintiffs, Nicanor Villarosa and the heirs of Victor Flores, within the period fixed for that purpose by section 38 aforecited of the Land Registration Act.

Finally, as to the rent of the said portion of the fish pond, the payment of which is claimed by the defendant from the plaintiffs in his cross-complaint, we do not find the value sufficiently established by the evidence, which point we need not discuss in this opinion, inasmuch as the defendant is entitled to the possession of the whole lot, No. 639, wherein, the said portion of the fish pond is included, he being the owner thereof by virtue of a valid title duly registered in his name in the registry of property, as above demonstrated.

For the foregoing reasons, the judgment appealed from is reversed and the defendant absolved from the complaint and the possession of the fish pond described in the sixth paragraph thereof ordered returned to him, and the plaintiffs are absolved from the cross-complaint in so far as the payment of the rent of the said portion claimed by the defendant is concerned, with the costs of the first instance against the plaintiffs and without special finding as to those of this instance. So ordered.

*Street, Malcolm, Avanceña,
Ostrand, and Romualdez, JJ., concur.*

Date created: June 17, 2014