43 Phil. 835

[G. R. No. 18006. September 27, 1922]

THE ROMAN CATHOLIC BISHOP OF TUGUEGARAO, APPLICANT AND APPELLANT, VS. THE MUNICIPALITY OF APARRI, OBJECTOR AND APPELLEE.

D E C I S I O N

STREET, J.:

This appeal has been brought by the Roman Catholic Bishop of Tuguegarao to reverse a judgment of the Court of First Instance of the Province of Cagayan in land registration proceeding No. 49 G. L. R. O., in which said court denied the right of the petitioner and appellant to have registered in its name a parcel of land situated in the municipality of Aparri, and designated in the official plan as lot No. 3, plan II-8055, sheet No. 3.

Opposition was interposed by the municipality of Aparri upon the ground that the property in question belongs to the municipality, having been in its possession as owner for about twenty years. The opposition was sustained by the trial judge on the ground that according to the proof the municipality had been in adverse possession at the time this proceeding was begun for more than ten years, and that it had thereby acquired a title by prescription under section 41 of the Code of Civil Procedure.

At a former day of the term the decision of the trial court was affirmed in the first division of this court,[1] and a motion for reconsideration was interposed by the attorneys for the appellant. Upon this, the Justices who had participated in the decision, being of the opinion that the point of law presented in the case was of sufficient importance to warrant submission to the full court, the matter was brought before the body for the resolution of said motion.

The lot in question in times past was occupied by a Catholic church, and some remains of the foundation of the old church are apparently discernible on the lot even at this late day. In 1898, however, the revolutionary forces ejected the curate of Aparri, Father Julian Malumbres, who was carried away to Carig as prisoner. For many years prior to this event a

Chino named Ignacio Alvarado had been occupying a part of the lot by agreement with the *Padre*, paying a stimulated rent therefor. Upon the arrival of the revolutionary forces Colonel Tirona, who was in command, took possession of the pueblo and turned the property in question over to the municipal authorities, and on September 30, 1899, Ignacio Alvarado began paying rent for the lot to the municipality, which he continued to do until the municipality assumed possession of the entire lot in 1904, since which date the municipality has exercised in its own right, and under claim of ownership, all the indicia of ownership, the chief use of the lot being as a landing place or wharf for a municipal ferry. In this connection it appears that Vicente Malana has been collector of ferry tolls at this place since 1901, and the tolls collected by him have been continuously paid over to the municipality. During all this time the physical possession asserted by the municipality has not been disturbed by anyone, and the land in question has continuously figured in the inventory of the properties of the municipality.

The Church, however, has not admitted the right of the municipality, and when the first assessment of real property was made in the Province of Cagayan the curate of Aparri, then *Padre* Pablo Callueng, declared the lot as the property of the Church. Moreover, it appears that in the year 1903, or 1904, the same *Padre*, by order of his Bishop, made written demand upon the municipal authorities for the return of the property, claiming it as the property of the Church. No attention seems to have been paid to this complaint, and the municipality remained in possession as before.

The facts found by the trial judge are in conformity with the proof, and in our opinion it is undeniable that the municipality of Aparri had been in adverse possession of this lot for more than ten years prior to the date when the petition for registration was filed; and for the purposes of the solution of this case, said date can be taken as of 1904, or the occasion when *Padre Callueng*, at the instance of his Bishop, made written demand upon the municipality for the return of the property. Under these circumstances, the Church, assuming it to have been the prior owner, has clearly lost the property by prescription.

Now, while the attorneys for the appellant do not controvert the facts as above set forth, they nevertheless insist that the municipality of Aparri has not, and cannot acquire the title to this property by prescription; and in this connection they direct attention to various decisions in which this court has refused to recognize prescriptive title in a municipality, against the opposition of the Director of Lands, acting in behalf of the Insular Government. A brief resume of the cases chiefly relied on in this connection will show that the contention of the appellant is not well founded.

In Municipality of Tacloban vs. Director of Lands (18 Phil., 201), an attempt was made by the municipality of Tacloban to obtain the inscription of a parcel of land which was alleged to be of its ownership. The property in question had in times past been a mangrove swamp, although within the confines of the town proper. In course of time it had been filled in by order of the municipal authorities, and it had been occupied by the houses of various residents of Tacloban, who paid rent to the municipality therefor. It was not shown that any building belonging to the municipality of Tacloban and intended for public service was erected on said land, nor that the property had ever been conveyed to the aforementioned municipality. It was held that it could not be considered as the patrimonial property of the municipality, and the inscription of the same was denied.

The idea underlying this case, as more fully explained in later decisions, is that property like that here in question pertains to the Sovereign and that, subject to conditions presently to be stated, the municipality could not during the Spanish regime acquire property for uses other than of a public nature. Hence no grant could be presumed in favor of the municipality from mere occupation, however long continued. And of course prescription is not now effective against the Sovereign.

In Municipality of Hagonoy vs. Roman Catholic Archbishop of Manila (29 Phil., 320), an attempt was made by the municipality to secure the adjudication and registration in its favor of a parcel of land located in its limits. The application was opposed by the Director of Lands, as well as by the Archbishop of Manila. It did not appear that the land in question had ever been used for any recognized public purpose, based on public necessity and formerly recognized by the Government as a basis for a grant of land to a municipality. It did appear, however, that the municipality had been long in possession and had been accustomed to rent the land to private persons and to apply the proceeds to the general municipal purposes. It was held that the property could not be registered in the name of the municipality.

In Municipality of Hinunangan vs. Director of Lands (24 Phil., 124), it was held that a municipality could not procure the registration of a parcel of land within the limits of the municipality upon which in time past had stood a stone fort, used as a defense against the invasion of the Moros. Said the court:

> "That the municipality may have exercised within recent years acts of ownership over the land by permitting it to be occupied and consenting to the erection of

> private houses thereon does not determine necessarily that the land has become the property of the municipality. We have held in several cases that, where the municipality has occupied lands distinctly for public purposes, such as for the municipal court house, the public school, the public market, or other necessary municipal building, we will, in the absence of proof to the contrary, presume a grant from the state in favor of the municipality; but, as indicated by the wording, that rule may be invoked only as to property which is used distinctly for public purposes. It cannot be applied against the state when occupied for any other purpose."

In Municipality of Laoag vs. Director of Lands (31 Phil., 360), the doctrine of Municipality of Tacloban vs. Director of Lands, *supra*, was again applied; and registration was denied because it did not appear that the property had been used for any public purpose such as would justify the presumption of a grant from the former Sovereign.

Lastly, in Municipality of Tigbauan vs. Director of Lands (35 Phil., 798), this court, upon opposition of the Director of Lands, again denied registration of a parcel of land claimed by a municipality. It appeared that for forty or fifty years the municipality had been accustomed to gather canes for its own use from the cane groves growing on the land, and had subsequently planted *cañas-espinas* which were productive at the time the action was tried. The land was of an agricultural character; and there was no proof that it had been of private ownership at any time prior to occupation by the municipality.

The parallel line of cases in which inscription or registration has been permitted in the name of the municipality begins apparently with the case of Municipality of Catbalogan vs. Director of Lands (17 Phil., 216), where the property had been used for forty or fifty years as the site of a court house; and in conformity with the doctrine of that decision are the later cases of Municipality of Luzuriaga vs. Director of Lands and Roman Catholic Bishop of Jaro, 24 Phil., 193 (where the property had been occupied for more than thirty years by buildings used for a public market and cockpit) and Municipality of Vintar vs. Director of Lands and Roman Catholic Bishop of Nueva Segovia, 34 Phil., 584 (where the property had been immemorially used by the municipality for school purposes).

In all of the cases to which reference has been made, the question was one arising upon the opposition of the Director of Lands on behalf of the Insular Government; and in none did it appear that the property in' question had ever been of private ownership. The doctrine to be

deduced is that while a municipality cannot obtain title to public land by mere prescription as against the Sovereign, nevertheless, in those cases where the property has been applied to a use which might have been the legitimate basis for a Government grant under the Spanish regime, an ancient grant will now be presumed in favor of the municipality, where occupation and use has continued for a sufficient length of time to give rise to the presumption of a grant.

That doctrine is not applicable to a case like the one now before us, where it affirmatively appears that the parcel in question ceased to be a part of the public domain and acquired the character of privately owned property more than a hundred years ago.

Now, acquisitive prescription is undoubtedly a lawful source of title, and a municipality can acquire property by that means to the same extent as in any other way, as for example, by purchase, donation, or the exercise of the right of eminent domain; and for all legitimate municipal purposes, municipalities can acquire and hold real and personal property to the same extent as any other person or entity known to law (Adm. Code, sec. 2165). In the case before us, the parcel in question has been continuously used as a wharf or landing place for a municipal ferry for more than the period required to confer title by prescription, with the result that the legal title is vested in the municipality; and the property is held by it in the character of patrimonial estate. In this connection it is unnecessary to inquire whether the use to which this property has been put was such a use as would have justified the presumption of an ancient grant, because our decision does not proceed upon the presumption of such a grant, the question not being one between the municipality and the higher political entity, the Insular Government, but between the municipality and the Roman Catholic Bishop of Tuguegarao.

From what has been said it follows that the motion to rehear is not well founded, and the same is accordingly denied.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, Johns, and *Romualdez, JJ.,* concur.

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[1]August 23, 1922

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