43 Phil. 468

[G. R. No. 17107. June 09, 1922]

MATIAS GONZALES, PETITIONER AND APPELANT, VS. IRA L. DAVIS ET AL., OPPONENT AND APPELLEES.

D E C I S I O N

ROMUALDEZ, J.:

Matias Gonzalez applied for the registration of the land described in the plan Exhibit C on page 6 of this record, alleging that he had acquired it by inheritance from his father, the same having been allotted to him in the partition made by his said ascendant. The opponents to the application are the Director of Lands, Aurea Gonzalez de Ilagan, Manuel Ernesto Gonzalez y Morales, Ramona Gonzalez, Victorina Gonzalez, Guadalupe Gonzalez, Cristina Gonzalez, and Ira L. Davis.

It has been proven that the land the registration of which is applied for is no longer public land and that it is a part of the *hacienda* known as "Esperanza" owned by the father of the applicant, Francisco Gonzalez y Reinado, and duly registered in his name. For this reason the Director of Lands did not appeal from the decision dismissing his opposition.

The question at issue is whether or not the applicant is entitled to a decree for all the land covered by the application.

It appears from the record that the "Esperanza" estate was divided into several portions, which, when surveyed afterwards, in accordance with modern methods, showed that their proportion was different from that intended in the partition, which error was probably due to the large extent of the estate.

The applicant alleges that the portion allotted to him in the partition, which should be the same as that given to his brother Joaquin, contained, according to his belief, an area of 2,816 hectares and 77 ares, while the portion of his brother, after being surveyed accurately, was 3,317 hectares, 44 ares, and 86 centiares. For this reason applicant caused

his portion of the land to be surveyed and later applied for its registration in proceedings numbered 5464.

The records do not show the exact area resulting from the survey of the portion belonging to the applicant. The fact is that after surveying the lands alloted to the step-brothers of the applicant, some of whom are the herein opponents, it was found that there were 800 hectares in excess of the total area of the estate, said excess being contiguous to the portion allotted to the herein applicant. The applicant had this excess surveyed and it was found to contain 800 hectares, 45 ares, and 37 centiares, according to the plan Exhibit C aforesaid. This is the land that is now the subject matter of these proceedings. The plan, however, was later amended so as to conform with record No. 5550 and the land was subdivided into lot A (containing 388 hectares, 12 ares, and 51 centiares) and lot B (with an area of 386 hectares, 35 ares, and 32 centiares), or a total of 774 hectares, 47 ares, and 84 centiares. This is, therefore, the exact area of the land now in question.

At the trial of this cause the applicant acceded to the claim of Aurea Gonzalez to 50 hectares; of Manuel Ernesto Gonzalez to 30 hectares; of Ramona Gonzalez to 2 hectares; of Victorina Gonzalez to 72 hectares; of Guadalupe Gonzalez to 53 hectares, and of Cristina Gonzalez to 50 hectares, making a total of 265 hectares.

In this instance, therefore, the question is limited to the remainder of the land; that is, to the 518 hectares, 47 ares, and 84 centiares.

The opponent Ira L. Davis claims to be the owner of 388 hectares, 12 ares, and 51 centiares of this land which is lot A in the amended plan Exhibit C, alleging that said land had been sold to him by the applicant, as evidenced by Exhibit “Davis-1.” Applicant denies this allegation. The trial court gave judgment in favor of the opponent and the applicant now comes on appeal assigning several errors. The first error is assigned to the act of the court below in overruling his demurrer to the opposition of Ira L. Davis and is based on the allegation that Davis’ claim does not describe fully the portion of land claimed, nor does it state the right under which he claims it. According to the language employed in the demurrer the opponent claims a right of coownership to the whole land included in the application. At the time of passing1 upon the demurrer, it could not have been foreseen that the said opponent was entitled to a smaller portion of land, and the fact that after the trial this was found to be the case does not constitute an essential defect of the pleading. After an examination of said pleading, we find it sufficient, as it was not necessary to describe therein any specific portion, the whole land involved in the application being the subject of

the opposition, nor to specify the right or interest under which the opponent claimed, since it is alleged in the said pleading that the opponent's predecessor in interest was a joint owner of the property with the applicant. Wherefore, applicant's verbal objection was properly overruled.

The applicant's second and third assignments of error are concerned with the act of the trial court in considering favorably the document Exhibit "Davis-1," and are based on the allegation that the said document is defective in that it does not contain the description of the land to which it refers, nor does it show a sufficient consideration. It is a fact, however, that the said document contains a description of the land claimed by the opponent and that it is situated within the property sought to be registered. The description is sufficient to identify the land without the necessity of a new contract between the parties, wherefore it is no obstacle to the existence of the contract. (Article 1273, Civil Code.)

Regarding the alleged defect of the contract, which is made to consist in the supposed lack of sufficient consideration, we are of the opinion that the uncontradicted explanations of the opponent Davis, about the consideration of the aforesaid contract of sale, are enough to make us conclude that it is not vitiated by the alleged defect.

As regards the fourth assignment of error, in which it is contended that Davis succeeded in taking possession of the document Exhibit "Davis-1" without the consent of the applicant, it is sufficient to say that the said instrument of sale was recorded in the registry of deeds and it has been proven that the opponent took possession of the land described in the document.

The fifth assignment of error being a consequence of the previous assignments need not be discussed.

We find that the judgment appealed from is in accordance with the facts and the law, wherefore it is affirmed with costs against the appellant. So ordered.

Malcolm, Avanceña, Villamor, Ostrand, and *Johns, JJ.,* concur.

Date created: June 05, 2014