

7 Phil. 98

[ G.R. No. 2530. December 03, 1906 ]

**THE ORDER OF DOMINICANS, PETITIONER AND APPELLEE, VS. THE INSULAR GOVERNMENT ET AU, RESPONDENTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

On the 14th of June, 1904, the Order of Dominicans presented a petition to the Court of Land Registration asking that it be inscribed as the owner of a certain tract of land known as the "Hacienda de San Juan del Monte," containing 168 hectares. The Solicitor-General appeared and opposed the petition on the ground that the property belonged to the Government. A judgment was entered in the Court of Land Registration on the 7th of December, 1904, granting the prayer of the petition as to all the land except that part included in what was known as the military zone. On the 31st day of October, 1905, another judgment was entered in that court granting the prayer of the petition with respect to the military zone. The Government excepted to both judgments, moved for a new trial on the ground that the evidence did not justify the decisions, excepted to the orders denying these motions, and has brought the case here by two bills of exceptions.

According to the petition the land is bounded as follows:

"Linda por el Norte. y Oeste con el rio Salapan, por el Sur con el rio de San Juan, y por el Este con terrenos de los Padres Agustinos, D. Trinidad Jurado y la ciudad de Manila."

The only evidence which was presented to show that the petitioner was the owner of the 168 hectares thus described is the following:

On the 6th day of September, 1602, Capt, Julian de Cuenca made a donation "de un pedazo

de tierra en una loma en el estero de Meytumas y en tierra de una estancia suya en el estero de Sapa." On the 6th of February, 1641, Captain Santiago de Gastelu made a donation to the petitioner of "20 brazas de tierra de ancho y 40 de largo de las tierras de dicha su estancia en la parte y lugar que las quisiera escoger el dicho padre prior." On the 5th of May, 1641, judicial possession was given to the petitioner of the lands above described. On the 4th of September, 1670, under a judgment against Juan Guerrero, there was sold to Captain Diego de Palencia a tract of land which was described as follows: "La estancia de ganado mayor nombrada Santa Oatalina y tierras de labor que el dicho alffrez Juan Guerrero tiene y posee en terminos del dicho convento de San Juan del Monte." On the 27th of November, 1670, Captain Diego de Palencia conveyed the land thus acquired by him to the petitioner.

There is no evidence in the case relating to the time elapsing between 1670 and 1891. On the 7th of October of the last-named year the *gobernadorcillo* of the pueblo of San Juan del Monte and six of the principal men of the town signed a document in which they stated that they had surveyed and measured the "Hacienda de San Juan del Monte" and that its boundaries were as described in the document which they then signed. These boundaries are substantially the boundaries set out in the petition in this case. On the 12th of January, 1892, the surveyor who, according to the document last above mentioned, took part in the survey made a map of the *hacienda* which conforms substantially with the map presented by the petitioner. On the 21st of January, 1893, the *procurador-general* of the Order of Dominicans signed a notarial document in which he stated that the petitioner was the owner of the "Hacienda de San Juan, del Monte," giving the sources of its title thereto and stating the boundaries thereof substantially as they are stated in the petition. This document was annotated in the Registry of Property on the 28th of February, 1893. Evidence was also introduced to show that the plaintiff had paid tithes upon the "Hacienda de San Juan del Monte" for many years.

Upon this evidence the Solicitor-General claims that the ownership of the petitioner to the land described in the petition and the plan attached thereto was not proven. We think that this contention must be sustained. No attempt was made to show that the land described in the documents executed prior to 1671 was the same land as that described in the petition, except by the introduction of the document signed by the *gobernadorcillo* of the pueblo of San Juan del Monte in 1891. This document was not authorized by any law then in force and it can produce no more effect than that produced by a statement made out of court by private persons who were familiar with the location of the land. None of the persons who signed this document, nor the surveyor, nor anyone else was called as a witness to

corroborate the statement made therein. No parol evidence was offered to prove that the land described by metes and bounds in the petition is the tract of land known as the “Hacienda de San Juan del Monte.”

The notarial document which was recorded in 1893 referred to no title deeds which authorized the description which was therein given of the land in controversy. The title deeds therein mentioned did not show that the land in them described was the land which is now claimed to be the “Hacienda de San Juan del Monte.” Neither the document of 1891 nor the plan of 1892 is mentioned therein, nor is there anything to show that they were ever presented to the registrar. The ground on which the registrar acted in inscribing the “Hacienda de San Juan del Monte” with the boundaries therein given to it was not the title deeds presented but the statement made by the *procurador-general* of the order in the document referred to above. This statement was not sufficient authority for that description. If the title deeds presented with this document did not warrant the description of the land which the registrar made, the inscription can not in this case give to the petitioner any additional rights. (Article 20 of the Mortgage Law; *Merchant vs. Lafuente*<sup>[1]</sup> (4 Off. Gaz., 239) ; *Ker & Co. m. Cauden*<sup>[2]</sup> (4 Off. Gaz., 732).

The result is that while it appears from the evidence in the case that the petitioner makes a claim of ownership to a tract of land known as the “Hacienda de San Juan del Monte,” there is no evidence to show that the “Hacienda de San Juan del Monte” is the land described in the petition by area and bounds. The petition alleges that the petitioner is the owner of 168 hectares of land, but “there is nothing in any one of the title deeds offered in evidence to show that the petitioner is the owner of this or any other definite amount of land. By reason of this defect in the evidence in regard to the identity of the land described in the title deeds with that described in the petition, the judgments of the court below can in no event be, sustained.

The petitioner claims that it is entitled to an affirmance of the judgments on the ground that the case is brought within paragraph 6 of section 54 of Act No. 926, the Public Land Act, That article is in part as follows:

“SEC. 54. The following-described persons or their legal successors in right, occupying public lands in the Philippine Islands, or claiming to own any such lands or interest therein, but whose titles to such lands have not been perfected, may apply to the Court of Land Registration of the Philippine Islands for

confirmation of their claims and the issuance of a certificate of title therefor.

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“6. All persons who by themselves or their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural public lands, as defined by said act of Congress of July first, nineteen hundred and two, under a *bona fide* claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this act, except when prevented by war or *force majeure*, shall be conclusively presumed to have performed all the conditions essential to a Government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter.”

If a possession of the land described in the petition such: as is required by this section had been proved, we should have no hesitation in affirming the judgments. The fact that relief was not specifically sought under this act is not important. The petitioner asked generally that its ownership of the land be registered. That petition should be granted if the evidence showed that it was entitled to such relief under any law in force in the Islands.

In this particular case the fact that the Director of Lands had not been cited would not prevent the granting of such relief. He is merely the person designated by law as the one on whom the summons must be served in order that the Government may have notice of the claim and an opportunity to assert its rights. By law, when he is cited, the Attorney-General is bound to represent him. The Government has appeared in this case and is now an active party therein. So far as the question of procedure is concerned, there would be no difficulty in allowing the petitioner the benefits of Act No. 926. But the difficulty is found in the want of evidence to show that possession which is required by section 54. No proof was presented in the court below to show that from 1670 to the present time the petitioner had been in the actual occupation of any of the land described in its petition, or that it is now in such occupation.

The judgments of the court below must be set aside, but in view of all the circumstances we think that the case should be remanded for a new trial in order to give the petitioner an opportunity to bring itself within the provisions of said Act No. 926.

With a view to such further proceedings, we will say that the questions here raised by the

Government in its second bill of exceptions in regard to the military zone have been decided adversely to it in the case of Inchausti & Co.vs. The Commanding General,<sup>(1)</sup> No. 2127, November 1,1906.

The judgments of the court below contained in the two bills of exceptions are set aside and the entire case remanded to the court below for a new trial only of the issues raised between the petitioner and the Government. Upon such new trial it will not be necessary to retake the evidence already taken, but either one of the two parties will be at liberty to present such additional evidence as it may desire. No costs will be allowed to either party in this court. At the expiration of twenty days let judgment be entered accordingly, and ten days thereafter the case be returned to the Court of Land Registration for new trial. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

*Johnson, J.,* did not sit in this case.

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<sup>[1]</sup> 5 Phil. Rep., 638.

<sup>[2]</sup> 6 Phil. Rep., 732.

<sup>(1)</sup> 6 Phil. Rep., 556.

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