

6 Phil. 589

[ G.R. No. 2791. November 05, 1906 ]

**CATALINO NICOLAS ET AL., PETITIONERS AND APPELLANTS, VS. MARIA JOSE ET AL., RESPONDENTS AND APPELLEES.**

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

**WILLARD, J.:**

On the 8th day of September, 1903, the municipality of Cavite, through its president, Catalino Nicolas, presented a petition to the Court of Land Registration asking that it be inscribed as the owner of a certain tract of land containing 193.29 square meters, situated in the Paseo de la Soledad, within the said municipality. On the 25th of January, 1904, Maria Jose", Irene Jose, and Macario Jose" filed amended objections to the granting of the petition, alleging that they were the owners of the land described therein. This case was numbered in that court 155.

On the 24th of October, 1903, the said Maria Jose, Irene Jose", and Macario Jose" presented a petition to the Court of Land Registration asking that they be inscribed as the owners of seven separate and distinct tracts of land situated within the Province of Cavite. The seventh parcel of land is the parcel described in the petition in case No. 155. Upon this tract of land there stands a building known as the "Kiosko Cafe." The sixth tract of land described in the said petition is also situated in the Paseo or Plaza de la Soledad, and there stands upon it a building called the "Cavite Theater." This case was numbered in the Court of Land Registration 240. On the 17th day of December, 1903, the municipality of Cavite filed an objection to the petition of Maria Jose and others so far as it related to the tract on which the theater stands. In case No. 240 the prayer of the petitioners was granted as to all the tracts of land therein described except those tracts on which stand the theater and the Kiosko Cafe. As to those tracts this case, No. 240, was tried with case No. 155, in accordance with the law, and one decision was rendered for both cases. The court below held that Maria Jose, Irene Jose, and Macario Jose were the owners of the land and

buildings in controversy, having acquired title thereto by prescription, and entered a judgment denying the inscription asked by the municipality as to the land occupied by the Kiosko Cafe and ordering the inscription of both tracts of land in favor of the petitioners, Maria Jose and others. The municipality moved for a new trial on the ground that the evidence did not justify the decision and that motion having been denied, they brought the case here by bill of exceptions.

The evidence shows, and the court below so found, that at the time the Kiosko Cafe and the theater were built, they were built upon a public street or square known as the "Paseo o Plaza de la Soledad."

As to the theater, the evidence shows that it was constructed by Esteban Jose, the father of the petitioners, in 1885 or 1886. The petitioners claimed that it was so constructed by virtue of a concession made to Esteban Jose by the then politico-military governor of Cavite, and proof was presented to show that the document evidencing this concession had been delivered by the petitioners to the authorities of the quartermaster department of the United States Army, some time in 1900, that department being the lessees then of the theater, and that it had been lost. Parol evidence of the contents of this document was then received. Assuming that the evidence is sufficient to show that there was a license issued, it is not sufficient to show that any grant of the land itself was made by the governor to Esteban Jose. The property being a public street or square, the burden of proof was upon the petitioners to show that it had ceased to be such public street or square by reason of some action taken by competent authorities to that end. No such proof was made and the claim of the petitioners must, therefore, rest upon the statute of limitations.

Assuming, without deciding, that the statute of limitations is applicable to this case, the evidence nevertheless, is not sufficient to show that the petitioners are entitled to the benefit thereof. Neither they nor their ancestor were or have been in possession of the land for thirty years. In order to show title by prescription it is, therefore, necessary for them to prove that they occupied this land for ten years under color of title and in good faith. The license given by the governor, its terms not appearing and it not being shown that it was a grant of the land, could not constitute color of title. Esteban Jose", therefore, during his lifetime was not occupying under color of title. He died on the 24th day of October, 1892, and the petitioners then acquired, by virtue of being his heirs, all the interest which he had in the property. They had occupied the land for ten years from the 24th of October, 1892, before their possession was legally interrupted by the municipality. There was no proof that they were not occupying in good faith and the court below held that the transmission to

them of the rights of their father by his death constitutes color of title, and they having occupied for ten years under color of title, and in good faith, became the owners of the land by prescription.

We think the court erred in holding that the transmission of the interest of Esteban Jose by his death to his heirs constituted color of title. The cases cited by the court below decided by the supreme court of Spain in support of that view are judgments of the 1st of May, 1858, and the 4th of October, 1862, but that court, by judgments of the 21st of June, 1864, the 16th of November, 1871, and the 3d of October, 1878, held to the contrary and declared that the transmission of rights to heirs by the death of the ancestor did not constitute color of title for the purposes of the statute of limitations. It appears in this case that there was no partition of any kind among the heirs of the property left by Esteban Jose" until the 10th of July, 1904.

As to the Kiosko Cafe, it appears that that was constructed about 1885 by Pedro Oliva. There was some testimony as to a license or concession given to him for that purpose by the then politico-governor of Cavite, but what has been said in regard to the concession granted for the construction of the theater applies to the concession granted for the construction of this Kiosko Cafe. As it does not appear what the terms thereof were, it can not be said that there was any grant of the land upon which the building stood. In 1886 or 1887 Pedro Oliva transferred to Esteban Jose his rights in the building, but it does not appear that he transferred to him any interest in the land itself. Therefore, neither the license given to Oliva nor the transfer by Oliva to Esteban Jose constituted color of title, and Esteban Jose prior to his death, was not holding the land under color of title. It is admitted by the municipality that the buildings belong to the petitioners.

The petitioners, Maria Jose et al., not having shown any grant of the land and not having shown that they have acquired title thereto by prescription, are not entitled to have the land registered in their names. The judgment ordering such registration must, therefore, be reversed.

The question remains as to whether the municipality is entitled to have the land upon which the Kiosko Cafe stands registered in its name. Article 344 of the Civil Code is as follows:

“Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works ‘of general service supported by the said towns or provinces.

“All other property possessed by either is patrimonial, and, shall be governed by the provisions of this code, unless otherwise prescribed in special laws.”

The land in question, upon which this Kiosko Cafe” stands, being dedicated to public use, we do not think it is subject to inscription by the municipality. Article 25 of the regulations for the execution of the Mortgage Law prohibits the inscription of public streets in the old registry. Public streets are not *bienes patrimoniales* of the municipality so long as they are destined to public use.

On January 12,1904, the Philippine Commission passed Act No. 1039, section 3 of which is as follows:

“The following public lands and buildings in the said municipality of Cavite are hereby granted to the said municipality: (1) The undedicated portion of the paseo extending from the north end of Calle Isabela Segunda, passing the statue of Columbus, to the northwest salient, to be kept open as a public thoroughfare; (2) the northwest salient; (3) Soledad Square; (4) the isthmus leading from Porta-Vaga gate toward San Boque, to be kept open as a public thoroughfare; (5) the southwest salient.”

We do not think that this act intended to convert Soledad Square and the other places mentioned in the act which are to be kept open as public thoroughfares into *bienes patrimoniales* of the municipality so as to entitle the said municipality to, have the said Soledad Square registered in its name as owner thereof.

The judgment of the court below ordering the inscription of the lands described in paragraphs 6 and 7 of the petition of Maria Jose et al. is hereby reversed and the case is remanded with instructions to the court below to dismiss the petition so far as it relates to these tracts of land. The judgment of the court below denying the petition of the municipality of Cavite is affirmed but upon the ground that the property in question being a public square is not subject to inscription. No costs will be allowed to either party in this court. After the expiration of twenty days from the date hereof let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court below for proper action. So ordered.

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

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