6 Phil. 236

[G.R. No. 2470. April 30, 1906]

PASTOR LERMA Y MARTINEZ, PETITIONER AND APPELLEE, DIONISIA ANTONIO ET AL., RESPONDENTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

On the 27th of September, 1904, the Court of Land Registration entered a decree ordering the registration of the property embraced within the application of Pastor Lerma y Martinez.

On October 27 of the same year, Dionisia Antonio, Toribia Mariano, and her husband, Pedro Vivas, moved to set aside the said decree. "The moving parties," says the court, "contend that Pastor Lerma y Martinez committed a fraud upon them when alleging in his petition that no other person, with the exception of the applicant, claimed any interest in the land sought to be registered. Consequently the entire question is reduced to the determination of one point of fact, namely, whether at the time of the filing of the application, Pastor Lerma y Martinez knew that Dionisia Antonio and Toribia Mariano claimed to be the absolute owners of certain portions of land Which it was sought to have recorded, and having knowledge of these claims, failed to state these facts in his application."

Immediately thereafter the trial judge states the following conclusion: "It has been admitted in the trial that the parcels of land claimed by the moving parties were not and have not been occupied by them, their interest in the said lands being based entirely upon the fact of their having cultivated them. Pastor Lerma, therefore, was without the means of knowledge which he would have possessed had the moving parties been living upon the property."

But supposing that the motion had been properly made, and that the questions arising might have been considered at the hearing of the case upon the merits of the proceeding—and it may be so considered inasmuch as the contestants have filed answers to the petition, the testimony of the witnesses was taken concerning the right of possession or the fact of

possession and even concerning the ownership of the land in question, and in this court also the appellants in their brief discuss these questions on the merits—still, even so, we must conclude, in harmony with the decision of the Court of Land Registration now before us on appeal, that the contestants could never have succeeded in their opposition, as it was without any legal foundation or even a foundation of fact, as shown by the result of the evidence taken.

With respect to the opposition of Dionisia Antonio, the conclusion of the judgment is of the following tenor: Dionisia Antonio testified that she had cultivated the parcel of land, which was the subject of her claim, only once since the American occupation (1898). It has been admitted that this land has been cultivated by Pastor Lerma during the last two years. The witness also testified that in August, 1893, and in August, 1894, which is the month in which rice is planted, she visited the land, and told the person who was working it that it was hers, and that he should cease cultivating it. Anastasio Punzalan, who is the person referred to, testifies that he was cultivating the land in question during the last few years, and that during this period he had not seen Dionisia Antonio on the land. (Record, pp. 145, 146.)

> "With respect to the land claimed by Toribia Mariano, it appears from her testimony, which has been corroborated by other witnesses, that she has exercised no act of possession on the land since 1901, when she left the city; that in August, 1904, when she returned, she notified the man who was working the land that it was her property; Pastor Lerma was not present. In her answer, filed in the record, Toribia Mariano states that she was dispossessed of the land in 1902. This statement does not harmonize with her testimony."

These findings made by the trial judge, as the result of his consideration of the evidence adduced during the trial, not only destroy the idea that Pastor Lerma acted surreptitiously or, as alleged by the contestants, fraudulently in presenting his application, but, moreover, contain the necessary data to enable us to pass upon the question as though it had been presented in due time against the application, and to determine that it was an opposition, entirely destitute of foundation of fact.

The trial judge then proceeds to analyze in detail the testimony adduced at the trial, and in conclusion denies the motion to set aside the decree of the court. This decision was rendered on the 23d of January, 1005. At this time Act No. 1108, which repealed section 14 of the original Land Registration Act, No. 496, was in force. Section 4 of the amendatory act

provides that those sections of Act No. 190 which concern the powers of the Supreme Court in its appellate jurisdiction shall be applicable to causes arising in the Court of Land Registration. One of these sections is 497, in accordance with paragraph 3 of which "If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the findings of fact were plainly and manifestly against the weight of the evidence, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts and render such judgment as justice and equity require."

The appellants not haying made any motion whatever, for a new trial, the Supreme Court is unable to revise the evidence and must accept the findings established by the trial judge in his decision.

The appellants, for the first time in this court, raise the question as to jurisdiction of the court below assigning in their brief as one of the errors relied upon the following: "The court erred in entertaining jurisdiction of this case, because the corresponding notice had not been published for twenty days or more as required by section 32 of the Land Registration Act."

According to the appellant's computation the decree was entered nineteen days and nine hours after publication. If the decree was entered without the performance of all the conditions precedent prescribed by law in order that such a decree may be entered, the remedy would be to move to set aside the decree by appropriate proceedings .in the court in.which the error was committed. Should the court below refuse to grant relief, this court upon a showing that the law had been violated, would declare the proceedings null and void, and would remand the case to the court below with directions to proceed anew from the point at which the void proceedings commenced. Acts done against the provisions of law must necessarily be void, but the infraction of procedural laws does not necessarily imply a lack of jurisdiction on the part of the court which directs the proceedings, but, rather on the contrary, presupposes jurisdiction. Even if the decree was entered before the expiration of the twenty days, as the appellants say it was, and the court was engaged during seven days or more with other formalities, as they contend, still it would have been too late for the contestants to come in thirty days after the decree was entered. It is always possible that the publication of the application by posting on the land in question should be unobserved by persons who, like the appellants, had not been on the land for two years before, and were not occupants of it. Such are the findings established by the judge, and they must be considered as true so long as they are in harmony with the decision in the case which is now

pending before this court.

Upon the findings established by the court in its decision the same is hereby affirmed, the appellants to pay the costs of the appeal.

Twenty days from this date judgment will be entered in accordance herewith. So ordered.

Torres, Mapa, Carson, and *Willard, JJ.,* concur.

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