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[G.R. No. 544. April 19, 1902]

EDWIN H. WARNER, PLAINTIFF AND APPELLANT, VS. THE MUNICIPALITY OF PASAY, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

In this case an attempt has been made to apply the procedure of title 14, book 3 of the Law of Civil Procedure to the survey and fixing of boundaries of some 480 hectares of land constituting a single property known as the Pasay estate. It appears that the town of Pasay, with its streets, public squares, and buildings, is situated within this estate. The requirements of article 2020 of the Law of Civil Procedure were not strictly complied with in the original complaint, as no person interested was cited therein. The amended complaint only mentions the names of the adjacent property owners outside the perimeter of the estate. Although the municipality of Pasay was not cited, it entered an appearance in the action as the owner of streets, squares, and other lands. This opposition having been made, the judge dismissed the proceedings and the petitioner appealed.

Article 384 of the Civil Code grants to all property owners the right to survey their property. This right is also granted to those in whose favor real rights exist. Article 2020 of the Law of Civil Procedure grants the right to the owner as well as to "him who has a real right in the land for his use and benefit." For the purposes of this action the Codes are consistent with each other, and each one of them grants the owner this right.

If the person who solicits the remedy is not the actual owner he is not entitled to it. Passing for the present the question of real rights, it is evident that he who is not the owner of property is not entitled under either Code to survey and make a designation of the boundaries thereof. No one is entitled to the survey and designation of boundaries of an estate which is in the possession and is the property of another. Such a survey and designation of boundaries would imply an unlawful interference with the said possession

and ownership. It could not be done without a material trespass upon the land, an act which no stranger has a right to perform. If a stranger should attempt to do so there is no doubt that the real owner would have an interest in the matter, under the provisions of article 1800 of the Law of Civil Procedure cited. Being a party in interest, he has a right to make opposition and to deny that the petitioner is the owner. Such opposition having been made, the judge can follow only one course. He sees that he is without authority in an action of voluntary jurisdiction to take cognizance of a contentious suit. He has no authority to decide that the petitioner is the owner and that the opposing party is not He can not decide that the opposing party is the owner. He can only remit the parties to a contentious suit in which alone such questions can be decided. To direct a continuation of this act of voluntary jurisdiction, in view of the denial of ownership, would be practically equivalent to deciding the question in issue. This proceeding is available to the owner only. To allow the petitioner to utilize it is to decide that he is the owner, a fact which the opposing party denies.

But it is alleged that no one can make opposition, with the exception of the adjacent owners, and article 1807 is cited in connection with articles 1800 and 2029 of the Law of Civil Procedure. It has been repeatedly held by the supreme court of Spain and by the commentators that the proceeding under title 14 depends upon the consent of the parties and upon nothing else. “Upon the ground that there can be no suit if there is no contest or question between the parties, the law has placed the survey of property among the acts of voluntary jurisdiction, provided that it is effected with the consent or acquiescence, at least, of all the parties in interest. But from the moment in which one of them makes opposition, whether before the operation or at the time of its performance, it is carried into the domain of contentious jurisdiction. Until such opposition is made the act is inter volentes. Its validity depends upon the consent of the parties in interest, and if the judicial authorities are permitted to intervene it is not as an essential requisite, as there is no issue to be decided, but simply for the purpose of giving greater solemnity to the act, or for the purpose of avoiding obstacles which might arise either owing to the difficulty of getting together all the adjacent owners at the simple request of the one most interested, or by reason of the passive resistance of some of them. Thus it is that if they meet together voluntarily and by common agreement make the survey and record it in a notarial act or some other authentic document, it would have the same force and effect as if done with the intervention of the judicial authority.” (6 Manresa’s Commentaries on Law of Civil Procedure, 486.) If the parties in interest do not consent to this proceeding, it must necessarily fail. This consent may be withheld by the owner, in which case the proceeding is entirely suspended. The consent may be refused by one of the adjacent owners, in which case the proceeding can not

continue with respect to that part of the estate adjacent to Ms. An examination of titles 1 and 14 of book 3 of the Law of Civil Procedure demonstrates that these principles are therein recognized. Article 2020 says that the complaint shall state the names and residences of the persons who shall be cited to appear. Article 2021 says that the designation of the day and hour shall fbe made in such a manner that "all the parties in interest may be present, they to be previously cited in legal form."

Article 2029 is, in our opinion, entirely consistent with article 1800. The first article is specific; the second is general. Article 2029 limits the effects of the opposition made by an adjacent owner to that part in which he is interested, provided that the petitioner desires to continue with respect to the remainder. It was never intended to withhold from a third person who, under article 1800, has an "interest in the matter," as, for example, the owner or possessor, the right to oppose the proceedings.

That any other person not an adjacent property owner may have interest in this case is also evident when we pass to the second class of persons who may exercise this right; that is to say, those who have real rights. Such a person institutes proceedings; his intention is to obtain a survey and designation of boundaries of lands which are not his property but over which he has a real right. Argument is not necessary to show that the owner is interested in the survey of his own land; that he is a party interested in the case within the meaning of article 1800, and should be cited. Manresa, in his Commentaries on the Civil Code, states that the law is to this effect (Vol. 3, p. 289.) If the owner is cited he is entitled to make opposition to the proceeding. If he makes opposition the proceeding must be declared contentious. He is a party in interest and he refuses his consent. Consent constitutes the basis of the act, and if this is lacking nothing can be done.

But are there any parties in interest other than adjacent owners and the owner of the property? Is a bare possessor who refuses to set forth the details of his claim a person interested, who can suspend the proceedings by refusing his consent? We have recently had occasion to consider the rights of such persons in the case of the Philippine Sugar Estates Development Company, Limited, concerning judicial possession. According to the principles therein established, such a person must be respected in his possession, and in case of his being disturbed therein he is entitled to the remedy of *interdicto de retener*. We believe that the act of the petitioner who alleges that he is an owner and who makes an actual entry upon the lan(J with the purpose of designating its boundaries constitutes such a disturbance as that spoken of in article 446 of the Civil Code as well as in article 1633 of the Law of Civil Procedure. Such an act is therefore contrary to law and can not be permitted under title 14.

It follows that the naked possessor is a person in interest. Under the provisions of article 2021 he should be cited, and under article 1800 may make opposition.

It is not necessary to decide in this case whether the opposition made at the time by the inhabitants of the town was or was not sufficient. The petitioner alleges that he is with some exceptions the owner of all the lands included within the perimeter described, but in these exdeptions he does not include the streets. The municipality of Pasay was the owner of said streets and public squares. (Arts. 339, 343, and 344 of the Civil Code.) These form part of the lands described in the petition and improperly claimed by the petitioner. As owner of part of the lands the municipality, as we have seen, was entitled to oppose the petition. The municipality undertook also to oppose the proceeding as the representative of the private interests of the inhabitants. It had no right to do this, but it expressly made opposition with respect to its ownership of the streets, squares, and other lands which did or might belong to it. This last ground was sufficient, and the proceedings were properly terminated.

In conclusion we should add that whenever a dispute arises between parties interested in real property, either with respect to ownership or possession, they should not resort to this act of voluntary jurisdiction, nor insist upon it, no matter what may be the merits of the dispute. However unfounded may be the claims of either party, the fact that there is a dispute places the case beyond the scope of an act of voluntary jurisdiction.

The judgment appealed is affirmed, with the costs of this instance to the appellant. So ordered.

Torres, Mapa, and *Ladd, JJ.,* concur.

DISSENTING

COOPER, J.:

This is a voluntary proceeding for the survey and demarcation of the boundary lines of a tract of land containing about 400 hectares, called the “Hacienda de Pasay,” instituted by Edwin H, Warner, who states in his application that he is the owner of the entire tract, with the exception of certain parts which are described by him, lying wholly within the perimeter and not touching the boundary lines of the part to be surveyed at any point.

After an order had been made by the court directing the survey and demarcation of the lines of the hacienda, and after they had in part surveyed and marked the land, the town of Pasay, acting through its municipal council, filed an opposition to the proceeding, upon which the court dismissed the same. From this order of dismissal the plaintiff has appealed to this court.

Voluntary proceedings are defined as all matters in which the intervention of a judge is requested or is necessary without there being actual litigation, or which are not instituted against known and determinate parties. Under this classification fall surveys and demarcations. With reference to voluntary proceedings, it is provided by the Code of Civil Procedure as follows:

"Art. 1800. If opposition to the request be made by any person interested the matter shall become litigious without altering the situation of the parties in interest or the subject-matter of the proceedings, and the procedure prescribed for ordinary actions shall be followed according to the import thereof."

Under this provision of law the opposition of the town of Pasay seems to have been made and filed. The questions for the determination of this appeal are therefore: First, was the town of Pasay a party "interested" within the meaning of this article; and, second, will its opposition duly filed terminate the survey and demarcation of the land as attempted by the plaintiff? The opinion of the majority of the court is based upon the affirmative view of the questions. I am inclined to the opposite view. It is said in the opinion that it needs no argument to show that the owner is interested in the survey of his own land. The converse is equally true. But these self-evident propositions do not tend in any way to elucidate the questions. The proceeding is intended simply for the determination of the boundary line and can have no other effect, and none can be interested except those who are interested in the location and demarcation of these lines. The proceedings are necessarily confined to adjoining owners, and the fact of establishing the lines can not in any way affect those who do not occupy such position.

It is not contended that the town of Pasay abuts on any line attempted to be surveyed nor that any of its streets form such lines. It has not been made a party to the proceedings, nor is there any attempt to bind it. In his amended petition the plaintiff names as parties owners entirely outside the limits of the hacienda, they being the only persons who are interested in the boundary line. It did not concern the town of Pasay in any manner whether this line was pressed in or forced out so long as the parties engaged in making the survey did not intrude

upon its possession. The bare possibility of such a result would not make it an interested party and give it the status of an adjoining property owner. The provision of law with reference to the filing of an opposition expressly and clearly limits the right to the owner of adjoining property, and the discontinuance of the voluntary proceedings takes effect only as to that part of the land which adjoins that of the opposing party. As to other adjoining owners who do not object to the continuation of the survey, article 2029 of the (Code of Civil Procedure reads as follows: "If before commencing the survey opposition be made thereto by any owner of adjoining property, the survey of that part of the land which adjoins that of the opposing party shall be discontinued, the parties reserving the right to institute such declarative action therefor as may be proper. A similar discontinuance shall be ordered if any opposition is presented during the proceedings, provided the parties in interest do not agree upon the matter in dispute. In both cases the survey of the balance of the land may be performed at the request of the petitioner, provided the other adjoining owners do not make opposition thereto."

I do not consider this article of the Code as in any way conflicting with the provisions of article 1800, which gives the right to any *person interested* to file opposition and to convert the voluntary proceeding into a contentious proceeding, because, as above stated, the town of Pasay is in no way interested in the boundary line. If such a conflict does exist, the general provision contained in article 1800 must give way to the more specific provision which is contained in article 2029, not only according to the ordinary rules of construction but by the express provisions of article 1807, which reads as follows: "The provisions prescribed in the preceding articles (including 1800) shall be applicable to special proceedings specially mentioned in the titles following except in so far as the provisions may be opposed thereto."

The case has been tried upon the theory, which the opinion of the majority of the court recognizes, that the town of Pasay is situated entirely within the boundaries of the hacienda and does not adjoin the tract which plaintiffs attempt to survey.

It would be a sufficient answer to the objections or opposition which is made to say that it is not shown that the town of Pasay "is the owner of any *adjoining* property," and therefore does not come within the provisions of article 2029.

I do not understand that the case of the Philippine Sugar Estates Development Company states a contrary doctrine and that any person interested may, without declaring the nature of his claim, file opposition to a voluntary proceeding and so terminate it. that case was a

voluntary proceeding for the judicial possession of land, and the opposition was made by one in possession without disclosing the nature of his title, simply stating his possession. This was a specific statement of the nature of his claim, and his possession was of itself sufficient to justify him in objecting to the voluntary proceeding for possession.

The opposition at Pasay wholly fails to show that it is interested as the owner of an *adjoining* tract of land. On the contrary it clearly shows that, while it is within the limits of the outer boundary lines described in plaintiff's petition, the town tract does not touch the boundary lines which plaintiff is attempting to survey.

Other reasons might be given which would lead to the reversal of the judgment of the lower court, but those stated are sufficient to determine the case upon its merits.

Arellano, C. J., also dissented.

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