

EDMONDS V. GOMEZ, 1958-NMSC-008, 63 N.M. 378, 320 P.2d 735 (S. Ct. 1958)

**George EDMONDS, Plaintiff-Appellee,
vs.
Benedicto V. GOMEZ, Defendant-Appellant**

No. 6285

SUPREME COURT OF NEW MEXICO

1958-NMSC-008, 63 N.M. 378, 320 P.2d 735

January 14, 1958

Suit to quiet title wherein defendant cross-complained that his title be quieted as against claim of plaintiff. The District Court, San Miguel County, Luis E. Armijo, D. J., entered judgment in favor of plaintiff and defendant appealed. The Supreme Court, Lujan, C.J., held that evidence sustained finding that title to land in question was in plaintiff.

COUNSEL

Roberto L. Armijo, Las Vegas, for appellant.

Noble & Noble, Las Vegas, for appellee.

JUDGES

Lujan, Chief Justice. McGhee, Compton and Kiker, JJ., concur. Sadler, J., not participating.

AUTHOR: LUJAN

OPINION

{*378} {1} Appellee, who was plaintiff below, commenced this suit to quiet title to three tracts of land, designated as Tracts A, B and C, situated in San Miguel County. Appellant answered denying appellee's ownership of the lands and alleged his own ownership thereof and prayed that appellee's complaint be dismissed. He then cross-complained alleging, as he did in his answer, ownership in the land, and prayed that his title be quieted as against the claim of appellee. From a judgment quieting title of said property in the appellee, the appellant, Benedicto V. Gomez, has perfected this appeal.

{2} The appellee's title commenced with the Las Vegas Grant to the Pueblo of La Senora de Los Dolores de Las Vegas, predecessor to the Town of Las Vegas, by the Republic of Mexico, March 23, 1835, and an allotment of 200 varas of land, within the

present limits of the City of Las Vegas, to Jesus Maria Montoya, by the Constitutional Justice under the Mexican government. By various mesne conveyances Tracts A, B and C became vested in appellee. None of those conveyances are controverted or denied by appellant.

Facts Covering the Montoya Allotment.

{3} The Las Vegas Grant was made to the Town of Las Vegas by the Republic of ^{*379}Mexico and juridical possession given April 16, 1835; the town was established and laid out by the Constitutional Justice acting under instructions of the proper officials of the Republic of Mexico; the Constitutional Justice was instructed to make allotments of house lots and garden lands within the town and allotments of agricultural lands adjacent thereto, to the settlers of the town and those who were without lands; the allotments were made by the Constitutional Justice to a large number of persons, among them an allotment of two hundred varas of land to Jesus Maria Montoya; the Constitutional Justice reported to the Government of Mexico, the names of the persons and the number of varas of land allotted to each, by a written report which is a part of the Archives of Mexico, and of record in San Miguel Country; the allotment of two hundred varas to Jesus Maria Montoya appears in the report of the Constitutional Justice; and the land in question lies within the two hundred varas allotment to Jesus Maria Montoya.

{4} Appellant's claim of title is as follows: (1) Quitclaim deed from the Las Vegas Grant Board to Eugenio Gallegos dated April 29, 1949; (2) Deed dated 1947 from Eugenio Gallegos and wife to Benedicto Gomez, appellant; and Deed dated 1954 from Eugenio Gallegos and wife to Benedicto Gomez, appellant.

{5} A number of suits to quiet title have been prosecuted covering various portions of the land in question. The first material here was one by Waldo Spiess, No. 11738 in which title was decreed to Spiess to Tract A and against Eugenio Gallegos, appellant's grantor. Cause No. 14127 was likewise brought and consolidated with Nos. 14106 and 14392. The trial court took judicial notice of findings of fact made by the court on December 9, 1949, in the consolidated cases, in which the Court found for the plaintiffs and against the defendant, Eugenio Gallegos, appellant's grantor.

{6} It is claimed that error was committed by the trial court in finding "that the cross-complaint of Emilio Serna and Benedicto V. Gomez are considered as denied by plaintiff, except that plaintiff claims paramount title thereto, and that cross-plaintiffs or their predecessors are barred by former decrees of this court."

{7} This claim of error must be rejected. When appellant files his answer denying appellee's ownership of the lands in question and alleged his own ownership thereof the issue was complete as to appellee's title and he was not required to answer appellant's cross-complaint. 74 C.J.S. Quieting Title 72, p. 105.

{8} It is also claimed that the trial court committed error in making its findings of fact as follows:

{*380} "18. That the land and real estate described in the complaint and hereinabove described is within an allotment made by the Government of the Republic of Mexico to Jesus Maria Montoya, at a time when said land was under the jurisdiction of the Republic of Mexico.

"19. That title to the real estate described in the complaint was separated from the public lands of the Republic of Mexico by a valid allotment to Jesus Maria Montoya."

and in rendering judgment quieting title to the disputed land in plaintiff. This claimed error must likewise be rejected.

{9} A careful examination of the record shows that the above findings of fact are justified by the evidence and the legal conclusions based thereon are without error and support the judgment and will not be disturbed by this court.

{10} Other propositions are presented and argued but we find them without merit.

{11} The judgment of the trial court is affirmed.

{12} It is so ordered.