

44 Phil. 695

[G.R. No. 18771. March 26, 1923]

NICOLAS PANLILIO, EUTIQUIANO CUYUGAN, AND SIXTO TIMBOL, PLAINTIFFS AND APPELLANTS, VS. ATILANO MERCADO, CIRIACO PIMPING, MANUEL REYES, AND TELESFORO MARTINEZ, DEFENDANTS AND APPELLANTS.

D E C I S I O N

OSTRAND, J.:

This is a petition for a writ of injunction to restrain the defendants from entering upon certain lands situated in the municipality of Mexico, Province of Pampanga, and from disturbing the plaintiffs in their peaceful possession of the same. The plaintiffs also pray for damages for trespass on the land.

The defendants' answer denies generally the allegations of the petition. The defendants Reyes and Martinez alleged by way of special defense that the former is the district engineer; that the latter is the Commander of the Constabulary of the Province of Pampanga; that in their relations to the matter in controversy they have been acting in their official capacity; and that they therefore have no interest in the litigation. The defendants Mercado and Pimping set up a counterclaim for P40,000, alleging that the plaintiffs, by placing bamboo stakes in the River Abacan, caused it to change its course, thus invading said defendants' lands and causing damages in the sum mentioned.

The court absolved the defendants from the complaint and the plaintiffs from the counterclaim, without costs. From this judgment all of the parties appeal.

It appears from the evidence that the plaintiffs are the owners of various parcels of land in the municipality of Mexico, Province of Pampanga, more particularly described in plaintiffs' amended complaint. From 1911 until August, 1919, the parcels of land belonging to the plaintiffs were divided by a small

river known as the Estera Abacan. The defendants Atilano Mercado and Ciriaco Pimping are the owners of various parcels of land which, previously to the month of August, 1919, were situated to the east of the land of the plaintiffs and were not touched by the Abacan River.

In the month mentioned, a very heavy flood occurred in the Abacan River and when the flood subsided, the river no longer flowed in the channel through the lands of the plaintiffs but had opened a new course for itself through the lands of the defendants where it still continues to flow. This new course was the course of the river previous to the year 1911. It may be noted that in the years 1916 and 1917 a cadastral survey was made of the district where the lands of both the plaintiffs and the defendants are situated and that upon the plans of that survey the then course of the river is excluded from the cadaster and set apart as a public stream.

After the termination of the 1919 rainy season and early in the year 1920, a complaint was made to the provincial board of the Province of Pampanga by various land owners, including the defendants Atilano Mercado and Ciriaco Pimping, setting forth that the new course of the river was destroying their land and rendering it useless and asking that the river be returned to its former channel. The complaint was endorsed to the district engineer and on June 10, 1920, the defendants Atilano Mercado and Ciriaco Pimping, accompanied by the defendant district engineer, Manuel Reyes, proceeded to the point where the river had first begun to change its course, and, after locating this point upon the cadastral plan, proceeded with laborers of the defendants Atilano Mercado and Ciriaco Pimping to excavate the old bed of the river for the purpose of causing the river to return to this bed. As a consequence, this action was instituted on June 25, 1920.

The facts stated are not disputed and the law of the case presents, in our opinion, no serious difficulty. Article 370 of the Civil Code reads:

“Los cauces de los rios, que quedan abandonados por variar naturalmente el curso de las aguas, pertenecen a los dueños de los terrenos ribereños en toda la longitud respectiva a cada uno. Si el cauce abandonado separaba heredades de distintos dueños, la nueva linea divisoria correra equidistante de unas y

otras.”

Relying on the provisions of this article, the plaintiffs maintain that the old bed of the river Abacan became *ipso facto* absolutely abandoned upon the river varying its course in 1919. Examining the provisions in question, it is apparent that while the abandonment of the bed may be the consequence of the river changing its course, it is not necessarily the action of the river itself which is the only and final determining factor in such abandonment. In the case of a public stream, the bed is of public ownership and the public cannot be considered absolutely divested of this ownership until there is some indication of an intention on the part of the Government to acquiesce in the change in the course of the stream. That the Government is not compelled to stand idly by and let nature take its course is clearly indicated by article 372 of the Civil Code. (*See* also discussion in Manresa’s Commentaries on the Civil Code, vol. 3, pp. 253, 254.)

In the present case the river is a public stream; its bed is of public ownership and was definitely located and determined in the cadastral survey. As soon as practicable after the river changed its course, steps were taken under the direction of the Government functionaries to bring it back into its old course and work was continued until interrupted by the present action. This certainly does not indicate abandonment on the part of the Government.

As to the defendants’ claim for damages, we agree with the trial court that while the evidence undoubtedly shows that the plaintiffs placed bamboo stakes across the river and that the stakes may have caused an accumulation of sand or sediment which in turn may have contributed to the change in the course of the river, such evidence falls short of showing that this was the primary cause of the change and of the damage to the defendants’ property.

The judgment appealed from is affirmed, without costs in this instance. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

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