

CRISPINA SALAZAR, PETITIONER, VS. GUILLERMO GUTIERREZ, AND DAMASO MENDOZA, RESPONDENTS.*G.R. No. L-21727. December 16, 1970*

Ponente: MAKALINTAL, J.

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Respondents have filed a motion for reconsideration and/or modification of the decision of this Court dated May 29, 1970, with notice sent by registered mail to petitioner's former counsel of record and subsequently to the new counsel who substituted him, but the first notice was returned unclaimed and the second elicited no answer to the motion.

The first point raised by respondents has to do with the main issue in this case, namely, whether or not petitioner had acquired an easement of aqueduct over respondent Gutierrez' lot No. 433 for the irrigation of petitioner's adjacent property, known as lot No. 436. The arguments advanced in connection with this issue have been sufficiently considered and discussed in the decision and we see no reason to change our findings and conclusions.

The second point refers to the award of damages by the trial court as affirmed by us in the judgment sought to be reconsidered. Respondents submit, that the said award was reversed by the Court of Appeals and that such reversal has not been assigned as error by petitioner before this Court. It should be noted that the Court of Appeals did not touch on the question of damages at all although the same was raised squarely before it in the appeal thereto by herein respondents, and that the reversal of the award was merely a consequence of the said court's decision to the effect that no easement of aqueduct had been acquired. Petitioner came to us in turn for a review of that decision and for the affirmance of that of the trial court, and for that purpose it was not necessary to attribute error to the Court of Appeals on a question not passed upon by it.

By the same token, of course, respondents are not now precluded from asking this Court to take a second look at the question of damages, especially since they did raise it before the Court of Appeals.

The three amounts awarded by the trial court are: the P4,700 by way of actual damages suffered by petitioner prior to the rendition of the judgment on April 10, 1956; P1,360 annually thereafter, beginning with the agricultural year 1956-1957 until restoration of the irrigation canal in dispute P5,000 as moral damages; and P1,000 as attorney's fees.

With respect to the item of actual damages, respondents submit that there is not enough evidence to justify it, and that the failure of the crops on petitioner's land after the canal was closed by respondents could have been due to a number of other causes, such as pests and plant diseases. The finding of the trial court on this point, however is not without reasonable basis. The canal was demolished on February 24, 1953. For the preceding three years the produce of petitioner's land was as follows: 1949 to 1950 - 115 cavans (wet season) and 50 cavans (dry season), or 165 cavans in all; 1950 to 1951 - 120 cavans (wet season) and 63 cavans (dry season), or 183 cavans in all; and 1951 to 1952 - 130 cavans (wet season) and 75 cavans (dry season), or 205 cavans in all. The average yearly

produce during those three years, as correctly found by the trial court, was 184 cavans of palsy. After the destruction of the canal the yield was reduced to 54 cavans for the agricultural year 1953 to 1954; 80 cavans for 1954 to 1955; and 9 cavans for the year after that. The average loss therefore was 136 cavans a year, or 408 cavans far three years, which, added to 62 cavans unrealized during the dry season of 1952 to 1953, aggregated a total of 470 cavans. This is the basis of the award of actual damages in the sum of P4,700, computed at the price of P10 a cavan. The award, it is clear, is neither speculative nor unjustified.

We do agree with respondents, however, that the award of P5, 000 as moral damages should be eliminated. This case does not fall under any of the instances wherein such damages may be recovered, as enumerated in Articles 2219 and 2220 of the Civil Code. With respect to the latter Article there is no clear showing that the demolition of the canal in question, which was admittedly on respondents' property, was done by them willfully and in bad faith, that is, purposely to cause injury to petitioner. The trial court's finding on this point is a mere conclusion, without reference to any particular evidence of record.

In connection with the award of attorney's fees, the same is authorized in any case "where the court deems it just and equitable that (they) should be recovered." We do not consider that the trial court committed a reversible error in this regard, or that the amount fixed by it is excessive.

In view of the foregoing, the judgment is modified by eliminating therefrom the award of moral damages, and maintained in all other respects.

Concepcion, C.J., and Makasiar, J., on leave, did not take part.

Reyes, J.B.L., Zaldivar, Castro, Fernando, Barredo, and Villamor, JJ., concur.

Dizon, J., on official leave.

Teehankee, J., took no part.

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