

NEMESIO HOLGADO, PLAINTIFF-APPELLANT, VS. JORGE ATIENZA, ET AL., DEFENDANTS-APPELLANTS.*G.R. No. CA.-9695. March 26, 1946*

Ponente: PARAS, J.

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The plaintiff and the defendants are adjoining landowners in the sitio of Ringin, barrio and municipality of Alitagtag, province of Batangas, and their only point of disagreement in this case refers to the common boundary of their properties, namely, whether (as alleged by the plaintiff) it is a creek running through the eastern side of plaintiff's land or whether (as claimed by the defendants) it is the line between points A and B of the sketch, Exhibit "A". In other words, the parties herein both assert ownership over the strip lying between said creek and line, containing an area of about 350 square meters, represented and identified in Exhibit "A" as lot 3.

After hearing the testimony of the witnesses, in conjunction with the exhibits presented during the trial, the Court of First Instance of Batangas rendered judgment ordering that lot 3 be divided into two parts separated "by a horizontal line to be drawn from East to West and on the middle of the space between the two bamboo clumps marked in Exhibit "A" as X and Y; awarding the northern portion containing the bamboo clump X to the plaintiff, and the southern portion containing bamboo clumps T and Z to the defendants; and disallowing the damages sought to be recovered by the plaintiff, without pronouncement as to costs. The latter has appealed.

The Solomonic decision of the trial court is conformable to the evidence, considered in its entirety. It is significant that while the appellant insists that the creek has always been the eastern boundary of his land, his tax declarations, Exhibit "B" (dated October 17, 1930) and Exhibit "I" (dated November 8, 1920), fail to mention that fact. Which lends plausibility to appellees' contention that said creek came into existence only around the year 1926 as a result of successive typhoons and of the great flood in the Calumpang River. The appellant Invokes the stipulation entered into during the pre-trial, wherein it was admitted that lot 3 is covered toy tax declaration (Exhibit "B"); but said stipulation is not enough to destroy the unfavorable effect of the silence in said exhibit as to the existence of the creek. Moreover, under the same stipulation, it is also admitted that the adjoining lot on the East belongs to the appellees.

The testimony of the teniente del barrio and former adjoining owner, Quirino Gutierrez, to the effect that he went to the lot in dispute in company with the appellant and his attorney, Luis Atienza Bijis, and on that occasion the appellant had acknowledged the ownership of the appellees over the bamboo clumps Y and Z, deserves credence, for he is obviously disinterested and Attorney Luis Atienza Bijis, who has handled this case for the appellant, did not take the stand in rebuttal. Upon the other hand, another witness (Raymundo Brual) testified that the appellant once went to the house of appellees' mother and there stated, without any answer on the part of the appellees, that the former was irrigating bamboo clump X. The trial court awarded the northern portion of lot 3 to the appellant rightly on the strength of said testimony which should be disinterested, considering the fact that Raymundo Brual was a witness for the appellees.

The appealed judgment is hereby affirmed, without costs. So ordered.

Moran, C.J., Jaranilla, Feria, Pablo, and Briones, JJ., concur.

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