

JOSE V. HILARIO, JR., PLAINTIFF-APPELLANT, VS. THE CITY OF MANILA, DEFENDANT-APPELLEE, DIRECTOR OF PUBLIC WORKS, CITY ENGINEER OF MANILA, FERNANDO BUSUEGO AND EUGELIO SESE, DEFE...

G.R. No. L-19570. September 14, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This case is before Us anew on a motion for reconsideration filed by plaintiff-appellant Hilario. In the decision promulgated on April 27, 1967, We absolved defendants City of Manila and the Director of Public Works from liability to plaintiff for the materials taken from the gravel pit but declared all that portion of the said area to the west, starting from a line 20 meters east of the camachile tree, as still part of plaintiff's property,

In support of his motion, plaintiff submits the following grounds: (1) the Supreme Court cannot make new findings of fact unless those made by the lower court were in abuse of discretion or were manifestly mistaken, absurd or impossible; (2) the area where defendants extracted gravel and sand is plaintiff's property, and (3) there is no "secondary bank" above (to the west of) the New Accretion Area.

It is only when the issues raised in the appeal a purely questions of law that the Supreme Court is bound to respect the findings of fact the lower court, in the absence of abuse of discretion, or patent mistake, absurdity or impossibility. But the appeal here involve questions of fact which required Us to review the entire evidence on record and state the facts as established thereby.* Plaintiff himself questioned and assailed lower court's finding that only the northern 2/5 of that area in question remained as his property,[1] and asserted that defendants extracted materials from within his property and not from the riverbed and/or riverbank. The latter controverted this. So, We had to determine precisely where the peripheries of plaintiff's property were, vis-a-vis those of the moving western bank, and where defendants extracted materials from 1945 to 1955. The findings of fact We stated in the decision sought to be recon-sidered were all based on the evidence on record, with the necessary references and citations thereto. We could not simply review the facts found by the lower court unfavorable to the plaintiff and accept those favorable to him especially because the defendants also appealed from the decision.

Withal, a new finding of fact had to be made when a review of the entire evidence on record showed (1) that there was nothing to support the lower court's conclusion that the site where rice and corn were found in the ocular inspection of June 15, 1951 was on the northern 2/5 potion and, furthermore, not being properly delineated, such determination would be impossible of proper execution; (2) that defendants did not cause the unnatural widening of the River, contrary to the lower court's holding; and (3) that defendants did not extract indiscriminately from area in question during tee entire period of their operations, but confined themselves to definite areas during particular periods of time. The lower court failed to make a finding in conformity with this established fact.

On the second ground, plaintiff argues that even as early as 1945, the gravel pit was already high since it was not reached by the ordinary floods and, hence, it could not be considered a part of the west riverbank. Plaintiff relies,

however, on Cruz' report (Exh. 1-Calalang) stating that from 1950 to 1951, the higher portions of the gravel pit, "which used to be submerged", were no longer inundated. This is undeniable proof that before 1950, even the higher portions which plaintiff is referring to were covered by the ordinary floods accompanying the swelling of the river. Moreover, the non-inundation of the higher areas during the period 1950-1951 was partly due to the movement of the river to the east.[2] It was this eastward movement that caused the periphery of the west bank to recede eastward also until it was located at 20 meters west of the camachile tree during this period.

Plaintiff would also refer Us to a portion of Suiza's testimony[3] purportedly showing that this witness did not see the River flooded from 1946 to 1949, in contradiction to Our finding that Suiza stated that from 1947 to 1949, the disputed area was always inundated. In the portion alluded to, however, Suiza stated that it was perhaps three years after 1945 (when he started working in the plant) - or in 1948 - when he first saw the River flooded, and the second time was on the following year, or in 1949. Anyway, the assumption sought to be drawn - erroneous as it is - based on what Suiza did not see, cannot overcome the positive statements of witnesses Ross and Villafuerte, and Exh. 1-Calalang.

Regarding the last point: First of all, We stated in the decision sought to be reconsidered, that the phrase "secondary bank line" was a mere convenient designation only, for identification purposes. It was used to refer to a lateral zone west of the New Accretion Area. We also made it clear that the periphery of the west bank was more or less in that portion where the "secondary bank line" was indicated only from 1945 to 1949, when the River was itself along the New Accretion Area site. Afterwards, this periphery receded eastward, together with the River.

Secondly, We emphasized the point that the reason defendants were being absolved from liability was due to the absence of sufficient evidence showing that they extracted materials beyond the receding periphery of the west bank. It was they who followed the eastward movement of the river and its western bank, not vice-versa. In fact, what the evidence on record reveals is that defendants were prevented from conducting operations beyond the outer borders of the western bank. In the present motion, plaintiff has not pointed to any evidence on record to show the contrary.

Thirdly, the evidence pointed to in support of this ground, had already been passed upon and considered by Us and no new matter of substantial significance is being brought forth. We already stated that defendants' witnesses were more qualified and acquainted with the situs of the disputed area. Witnesses Lorenzo, Angeles and San-tamaria are not geologists and it has not been shown that they were always in the disputed area while defendants' operations were going on. The portion of Ross' testimony[4] on the extent reached by the ordinary floods refers to the year 1954 only. The height of the gravel pit as agreed upon in the ocular inspection of June 15, 1951 cannot be considered conclusive since Exh. 1-Calalang reports that after the typhoons of 1952 the level of the pit increased again.

WHEREFORE, the motion to reconsider is hereby denied.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

* This appeal involves over P200,000; thus this Court has exclusive appellate jurisdiction to decide all questions of facts and of law raised herein.

[1] See Plaintiff-appellant's brief, pp. 45, 47.

[2] The other factor, as reported in Exh. 1-Calalang, was the lesser amount of rainfall from 1949 to 1951.

[3] Session of May 25, 1955, TSN, pp. 10-11.

[4] Session of May 31, 1955, TSN, pp. 5-6 (See footnote 68 of decision).

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