

IGNACIO GRANDE, ET AL., PETITIONERS, VS. HON. COURT OF APPEALS, DOMINGO CALALUNG AND ESTEBAN CALALUNG, RESPONDENTS.

G. R. No. L-17652. June 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal taken by petitioners Ignacio, Eulogia, Alfonso, Eulalia, and Sofia Grande, from the decision of the Court of Appeals (CA-G. R. No. 25169-R) reversing that of the Court of First Instance of Isabela (Civil Case No. 1171), and dismissing petitioners' action against respondents Domingo and Esteban Calalung, to quiet title to and recover possession of a parcel of land allegedly occupied by the latter without petitioners' consent.

The facts of the case, which are undisputed, briefly are: Petitioners are the owners of a parcel of land, with an area of 3.5032 hectares, located at barrio Ragan, municipality of Magsaysay (formerly Tumauini), province of Isabela, by inheritance from their deceased mother Patricia Angui (who inherited it from her parents Isidro Angui and Ana Lopez, in whose name said land appears registered, as shown by Original Certificate of Title No. 2982, issued on June 9, 1934). Said property is identified as Lot No. 1, Plan PSU-83342. When it was surveyed for purposes of registration sometime in 1930, its northeastern boundary was the Cagayan River (the same boundary stated in the title). Since then, and for many years thereafter, a gradual accretion on the northeastern side took place, by action of the current of the Cagayan River, so much so, that by 1958, the bank thereof had receded to a distance of about 105 meters from its original site, and an alluvial deposit of 19,964 square meters (1.9964 hectares), more or less, had been added to the registered area (Exh. C-1).

On January 25, 1958, petitioners instituted the present action in the Court of First Instance of Isabela against respondents, to quiet title to said portion (19,964 square meters) formed by accretion, alleging in their complaint (docketed as Civil Case No. 1171) that they and their predecessors-in-interest, were formerly in peaceful and continuous possession thereof, until September, 1948, when respondents entered upon the land under claim of ownership. Petitioners also asked for damages corresponding to the value of the fruits of the land as well as attorney's fees and costs. In their answer (dated February 18, 1958), respondents claim ownership in themselves, asserting that they have been in continuous, open, and undisturbed possession of said portion, since prior to the year 1933 to the present.

After trial, the Court of First Instance of Isabela, on May 4, 1959, rendered a decision adjudging the ownership of the portion in question to petitioners, and ordering respondents to vacate the premises and deliver possession thereof to petitioners, and to pay to the latter P250.00 as damages and costs. Said decision, in part, reads:

"It is admitted by the parties that the land involved in this action was formed by the gradual deposit of alluvium brought about by the action of the Cagayan River, a navigable river. We are inclined to believe that the accretion was formed on the northeastern side of the land covered by Original Certificate of Title No. 2982 after the survey of the registered land in 1931, because the surveyors found out that the northeastern boundary

of the land surveyed by them was the Cagayan River, and not the land in question. Which is indicative of the fact that the accretion has not yet started or began in 1931. And, as declared by Pedro Laman, defendants' witness and the boundary owner on the northwest of the registered land of the plaintiffs, the accretion was a little more than one hectare, including the stony portion, in 1940 or 1941. Therefore, the declarations of the defendant Domingo Calalung and his witness, Vicente C. Bacani, to the effect that the land in question was formed by accretion since 1933 do not only contradict the testimony of defendants' witness Pedro Laman, but could not overthrow the incontestable fact that the accretion with an area of 4 hectares, more or less, was formed in 1948, reason for which, it was only declared in that same year for taxation purposes by the defendants under Tax Dec. No. 257 (Exh. '2') when they entered upon the land. We could not give credence to defendants' assertion that Tax Dec. No. 257 (Exh. '2') canceled Tax Dec. No. 28226 (Exh. '1'), because Exh. "2" says that 'tax under this declaration begins with the year 1948. But, the fact that defendants declared the land for taxation purposes since 1948, does not mean that they become the owner of the land by mere occupancy, for it is a new provision of the New Civil Code that ownership of a piece of land cannot be acquired by occupation (Art. 714, New Civil Code). The land in question being an accretion to the mother or registered land of the plaintiffs, the accretion belongs to the plaintiffs (Art. 457, New Civil Code; Art. 366, Old Civil Code). Assuming, arguendo, that the accretion has been occupied by the defendants since 1948, or earlier, is of no moment, because the law does not require any act of possession on the part of the owner of the riparian owner, from the moment the deposit becomes manifest (*Roxas vs. Tuason*, 9 Phil. 408; *Cortez vs. City of Manila*, 10 Phil. 567). Further, no act of appropriation on the part of the riparian owner is necessary, in order to acquire ownership of the alluvial formation, as the law does not require the same (3 *Manresa, C.C.*, pp. 231-236).

"This brings us now to the determination of whether the defendants, granting that they have been in possession of the alluvium since 1948, could have acquired the property by prescription. Assuming that they occupied the land in September, 1948, but considering that the action was commenced on January 25, 1958, they have not been in possession of the land for ten (10), years; hence, they could not have acquired the land by ordinary prescription (Arts. 1134 and 1138, New Civil Code). Moreover, as the alluvium is, by law, part and parcel of the registered property, the same may be considered as registered property, within' the meaning of Section 46 of Act No. 496; and, therefore, it could not be acquired by prescription or adverse possession by another person."

Unsatisfied, respondents appealed to the Court of Appeals, which rendered, on September 14, 1960, the decision adverted to at the beginning of this opinion, partly stating:

"That the area in controversy has been formed through a gradual process of alluvion, which started in the early thirties, is a fact conclusively established by the evidence for both parties. By law, therefore, unless some superior title has supervened, it should properly belong to the riparian owners, specifically in accordance with the rule of natural accession in Article 366 of the old Civil Code (now Article 457), which provides that 'to the owner of lands adjoining the banks of rivers, belongs the accretion which they gradually receive from the effects of the current of the water.' The defendants, however, contend that they have acquired ownership through prescription. This contention poses the real issue in this case. The Court a quo, has resolved it in favor of the plaintiffs, on two grounds: First, since by accession, the land in question pertains to the original estate, and since in this instance the original estate is registered, the accretion, consequently, falls within the purview of Section 46 of Act No. 496, which states that 'no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession'; and, second, the adverse possession of the defendant began only in the month of September, 1948, or less than the 10-year period required for prescription before the present action was instituted.

"As a legal proposition, the first ground relied upon by the trial court, is not quite correct. An accretion to registered land, while declared by specific provision of the Civil Code to belong to the owner of the land as a natural accession thereof, does not ipso jure become entitled to the protection of the rule of imprescriptibility

of title established by the Land Registration Act. Such protection does not extend beyond the area given and described in the certificate. To hold otherwise, would be productive of confusion. It would virtually deprive the title, and the technical description of the land given therein, of their character of conclusiveness as to the identity and area of the land that is registered. Just as the Supreme Court, albeit in a negative manner, has stated that registration does not protect the riparian owner against the erosion of the area of his land through gradual changes in the course of the adjoining stream (*Payatas Estate Development Co. vs. Tuason*, 53 Phil. 55), so registration does not entitle him to all the rights conferred by the Land Registration Act, in so far as the area added by accretion is concerned. What rights he has, are declared not by said Act, but by the provisions of the Civil Code on accession; and these provisions do not preclude acquisition of the additional area by another person through prescription. This Court has held as much in the case of *Galindez, et al. vs. Baguisa, et al.*, CA-G. R. No. 19249-R, July 17, 1959.

"We now proceed to review the second ground relied upon by the trial court, regarding the length of time that the defendant have been in possession. Domingo Calalung testified that he occupied the land in question for the first time in 1934, not in 1948 as claimed by the plaintiffs. The area under occupancy gradually increased as the years went by. In 1946, he declared the land for purposes of taxation (Exhibit 1). This tax declaration was superseded in 1948 by another (Exhibit 2), after the name of the municipality wherein it is located was changed from Tumauni to Magsaysay. Calalung's testimony is corroborated by two witnesses, both owners of properties nearby. Pedro Laman, 72 years of age, who was Municipal president of Tumauni for three terms, said that the land in question adjoins his own on the south, and that since 1940 or 1941, he has always known it to be in the peaceful possession of the defendants. Vicente C. Bacani testified to the same effect, although, he said that the defendants' possession started sometime in 1933 or 1934. The area thereof, he said, was then less than one hectare.

"We find the testimony of the said witnesses entitled to much greater weight and credence than that of the plaintiff Pedro Grande and his lone witness, Laureana Rodriguez. The first stated that the defendants occupied the land in question only in 1948; that he called the latter's attention to the fact that the land was his, but the defendants, in turn, claimed that they were the owners; that the plaintiffs did not file an action until 1958, because it was only then that they were able to obtain the certificate of title from the surveyor, Domingo Parian; and that they never declared the land in question for taxation purposes or paid the taxes thereon. Pedro Grande admitted that the defendants had the said land surveyed in April, 1958, and that he tried to stop it, not because he claimed the accretion for himself and his co-plaintiffs, but because the survey included a portion of the property covered by their title. This last fact is conceded by the defendants who, accordingly, relinquished their possession to the part thus included, containing an area of some 458 square meters.

"The oral evidence for the defendants concerning the period of their possession—from 1933 to 1958—is not only preponderant in itself, but is, moreover, supported by the fact that it is they and not the plaintiffs who declared the disputed property for taxation, and by the additional circumstance that if the plaintiffs had really been in prior possession and were deprived thereof in 1948, they would have immediately taken steps to recover the same. The excuse they gave for not doing so, namely, that they did not receive their copy of the certificate of title to their property until 1958 for lack of funds to pay the fees of the surveyor Domingo Parian, is too flimsy to merit any serious consideration. The payment of the surveyor's fees had nothing to do with their right to obtain a copy of the certificate. Besides, it was not necessary for them to have it in their hands, in order to file an action to recover the land which was legally theirs by accession and of which, as they allege, they had been illegally deprived by the defendants. We are convinced, upon consideration of the evidence, that the latter, were really in possession since 1934, immediately after the process of alluvion started, and that the plaintiffs woke up to their rights only when they received their copy of the title in 1958. By then, however, prescription had already supervened in favor of the defendants."

It is this decision of the Court of Appeals which petitioners seek to be reviewed by us.

The sole issue for resolution in this case is whether respondents have acquired the alluvial property in question

through prescription.

There can be no dispute that both under Article 457 of the new Civil Code and Article 366 of the old, petitioners are the lawful owners of said alluvial property, as they are the registered owners of the land to which it adjoins. The question is whether the accretion becomes automatically registered land just because the lot which receives it is covered by a Torrens title thereby making the alluvial property imprescriptible. We agree with the Court of Appeals that it does not, just as an unregistered land purchased by the registered owner of the adjoining land does not, by extension, become ipso facto registered land. Ownership of a piece of land is one thing, and registration under the Torrens system of that ownership is quite another. Ownership over the accretion received by the land adjoining a river is governed by the Civil Code. Imprescriptibility of registered land is provided in the registration law. Registration under the Land Registration and Cadastral Acts does not vest or give title to the land, but merely confirms and thereafter protects the title already possessed by the owner, making it imprescriptible by occupation of third parties. But to obtain this protection, the land must be placed under the operation of the registration laws wherein certain judicial procedures have been provided. The fact remains, however, that petitioners never sought registration of said alluvial property (which was formed sometime after petitioners' property covered by Original Certificate of Title No. 2982 was registered on June 9, 1934) up to the time they instituted the present action in the Court of First Instance of Isabela in 1958. The increment, therefore, never became registered property, and hence is not entitled or subject to the protection of imprescriptibility enjoyed by registered property under the Torrens system. Consequently, it was subject to acquisition through prescription by third persons.

The next issue is, did respondents acquire said alluvial property through acquisitive prescription? This is a question which requires determination of facts: physical possession and dates or duration of such possession. The Court of Appeals, after analyzing the evidence, found that respondents-appellees were in possession of the alluvial lot since 1933 or 1934, openly, continuously and adversely, under a claim of ownership up to the filing of the action in 1958. This finding of the existence of these facts, arrived at by the Court of Appeals after an examination of the evidence presented by the parties, is conclusive as to them and can not be reviewed by us.

The law on prescription applicable to the case is that provided in Act 190 and not the provisions of the Civil Code, since the possession started in 1933 or 1934 when the pertinent articles of the Old Civil Code were not in force and before the effectivity of the New Civil Code in 1950. Hence, the conclusion of the Court of Appeals that the respondents acquired the alluvial lot in question by acquisitive prescription is in accordance with law.

The decision of the Court of Appeals under review is hereby affirmed, with costs against the petitions. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, and Dizon, JJ., concur.

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