

**CIPRIANA GONZALES, PLAINTIFF AND APPELLEE VS.
PURIFICACION, GUILLERMO, EUSTACIO AND FAUSTINA, ALL
SURNAMED DE DIOS, ASSISTED BY THEIR GUARDIAN CARLOTA
INDUCIL DEFENDANTS AND APP...**

G. R. No. L-3099. May 21, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff is the owner of a fishpond situated in the barrio of Bambang, Bulacan, Bulacan, adjacent to the fishpond of defendants. The only source of water of her fishpond is Kay Pateng River, to which it has neither ingress nor egress, because it has been completely cut off from it by the fishpond of the defendants. After the several attempts made by her to obtain from the defendants a right of way to and from said river to furnish a source of water to her fishpond proved futile, she filed the present action in the Court of First Instance of Bulacan.

Upon agreement of the parties, the court designated one Felipe Asuncion, a surveyor, to investigate the premises and study the most convenient place through which an aqueduct may be constructed for the supply of water needed by the fishpond of the plaintiff, who accordingly investigated the property and submitted his report. After the parties have presented their evidence, the court rendered judgment, the dispositive part of which is as follows :

"WHEREFORE the Court hereby renders judgment as follows: (a) the plaintiff to have a right of passage for water from the river Kay Pateng to her fishpond, on the northwest side of the dyke represented by the line connecting corners 6 and 7 of Psu-27824 lot No. 8 of the Ariston de Dios, by constructing a canal eight meters wide and about one hundred meters long; (b) the plaintiff will construct at her expense a similar dyke, of the same height and width alongside the said canal opposite the old dyke; and (c) the plaintiff pay the defendants the sum of Seven hundred and ninety-eight pesos and sixteen centavos (P798.16) as just compensation including consequential damages..Without pronouncement as to costs. IT IS SO ORDERED."

Not satisfied with this judgment, defendants appealed to the Court of Appeals, the latter court affirming the judgment with costs against the appellants. The case is now before us on appeal by way of certiorari.

The only question which is presented to us for determination is whether there is a law which justifies the grant to the appellee of an easement of water over the land of the appellants in order to give to the appellee a source of water to irrigate her fishpond.

The Court of Appeals holds the view that the claim of the appellee finds support in the provisions of articles 118 to 125 of the Law of Waters of 1866 and articles 557 and 558 of the Civil Code, which were also relied upon by the court a quo. On this point the Court of Appeals said: "A perusal of the provisions of the Law of Waters on this point shows that the easement of aqueduct is granted for any of the purposes mentioned in article 113 of said law, such as irrigation, public bath, or use of factories and drainage. The provisions of the Civil Code convey the same idea as to the use for which the right of way may be needed. There is nothing, however, in the provisions of both the Law of Waters and the Civil Code above mentioned, that prohibits the use of water for purposes other than

those mentioned in said laws. Plaintiff-appellee has proven that she has the right to draw water from Kay Pateng River to make her fishpond as productive as the other surrounding fishponds."

We agree with the Court of Appeals that articles 557 and 558 of the Civil Code can be invoked in support of the claim of the appellee. Article 557 provides that "any person who wishes to use upon his own land any water of which he may have the control is entitled to take it through the intervening estates, subject to the obligation of indemnifying the owners thereof." The phrase "of which he may have the control" should be interpreted in connection with article 558(1) which means that he has a right to dispose of the water. This was interpreted to mean one who has obtained from the government a grant to use water from a river (*Gonzales vs. Banzon*, 51 Phil., 15). The use to which the water may be applied must also be interpreted in the same way: that the water be sufficient for the use intended (558[1]). And according to Manresa "Puede el agua solicitarse para cualquiera de los usos necesarios de la vida." (4 Manresa, 704, 3rd Ed.). In fact these articles were applied to a grant to use water from a river for irrigation purposes in the case mentioned above.

"But as to the second canal, however, the defendant Mariano B. Banzon has filed a counterclaim alleging that he has obtained from the Director of Public Works a grant to use 50 liters of water per second from the Talisay River to irrigate his lands, and, in accordance with the provision of article 557 in connection with article 558 of the Civil Code, he asks that he be authorized to open, maintain and preserve a canal similar to the second one mentioned on plaintiff's land upon payment of the proper indemnity to the plaintiff, alleging that the place where said canal passes is the most convenient and least onerous to third parties, and that there is no other place more appropriate and less prejudicial.

"The defendant Mariano B. Banzon undoubtedly has a right to a compulsory easement of aqueduct upon payment of indemnity since, although he is not the owner of the waters of the Talisay River, he can dispose of 50 liters of the same per second, by virtue of the grant from the Director of Public Works. This may be inferred from the provision of article 125 of the Law of Waters of August 3, 1866, which authorizes the owner of the land on which it is sought to impose the compulsory easement of aqueduct, to object when the applicant is not the owner or grantee of the water.

"To enjoy the right granted by article 557 of the Civil Code, the requisites established in article 558 of the same code must be complied with."(*Gonzales vs. Banzon*, supra).

If a person who has obtained from the Government a grant to use water from a river for irrigation was given the right to construct a canal over the intervening lands of other private owners upon payment of indemnity, no valid reason is seen for not granting the same privilege to the herein appellee who desires to draw water from a river for the use of her fishpond. A fishpond comes within the classification of agricultural land and is regarded as an important source of revenue (*Molina vs. Rafferty*, 38 Phil. 167). It is generally constructed in low lands or swampy places and draw its breadth of life from brooks and rivers. It is just as rich and valuable as any piece of agricultural land and in some regions it is regarded as the main source of wealth. It is an undertaking to be encouraged and promoted, for it contributes to the economic development of the people. Our law should be interpreted in a sense that may give it life if it can be done without doing violence to reason or to any rule of statutory construction.

There can, therefore, be no doubt with regard to the right of the appellee to draw the water she needs for her fishpond through the land of the defendants if she has obtained the necessary permit to use the water from the Government. The law requires that this permit be obtained from the Director of Public Works. (Sec. 14 of Act 2152, as amended by Act 3208; *The Philippine Sugar Estate Development Co. vs. Unson and Williams*, 53 Phil., 599.) While there is no proof to this effect, at least this matter is not an issue in this case. This point is not disputed. The only important question to be determined is how and where the right should be exercised, but this is a question of fact which the Court of Appeals has determined and which it is not now within our province to pass

upon. The finding of said Court on this matter is final.

Wherefore, the petition is hereby dismissed, without pronouncement as to costs.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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