

DIOGENES TUASON, PETITIONER, VS. COURT OF APPEALS AND ISABEL ESTEVEZ DE TUANQUI, RESPONDENTS.

G.R. No. L-48297. January 07, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal by certiorari to review the decision of the Court of Appeals in CA-G.R. No. 46861-R, wherein said court affirmed in toto with costs against appellant Diogenes Tuason the decision of the lower court in Civil Case No. 1851, an action to remove clouds over real property with damages and preliminary injunction, which dispositive portion reads as follows:

"WHEREFORE, the estate of Juan Estevez represented by Isabel Estevez de Tuanqui is hereby declared the owner of Lot No. 109 of the Cadastral Survey of Legazpi and the defendant, Diogenes Tuazon, is hereby ordered to reconvey the lot embraced in Original Certificate of Title No. 40 and to purge said title to the lien in the amount of P4,900.00 and, if he fails to do so, a writ of execution will issue against the defendant, Diogenes Tuazon, for the said amount, and to pay the plaintiff the amount of P120.00 annually from 1952 until he vacates Lot 109, with costs against the said defendant.

SO ORDERED."

(pp. 84-85, Record on Appeal)

To have a better grasp of the antecedent facts and issues of the case, quoted hereunder is the pertinent portion of the assailed decision of the appellate court:

This is an appeal from the decision of the Court of First Instance of Albay, Branch II, at Legaspi City, in Civil Case No. 1851, an action to remove clouds over real property with damages and preliminary injunction. The complaint filed by the plaintiff, administratrix of the late Juan Estevez, states the following material averments:

"2. That the estate of Juan Estevez, deceased, is the registered owner and the judicial administratrix has been and still is in the actual possession of the following described real properties:

(1) Transfer Certificate of Title No. 390 (RT-343 (755) of the Register of Deeds of Albay. A parcel of land of No. 1068-A Subdivision plan PSU-1290, being a portion of Lot No. 1068 of the Cadastral Survey of Legaspi, G.L.R.O. Cad. Records No. 860, with all the buildings and improvements thereon, situated in Legaspi, Albay. Bounded on the NE by Lot 1068-B of said subdivision plan S.E. by Lot 1069 W. by Kapantawan River; and NW. by Calle-Mercado containing an area of TWO HUNDRED (200) square meters more or less. Technical description appears fully on the Torrens Title mortgaged to the PNB.

(2) Another parcel of land adjacent to the West of the preceding parcel, Lot 1068-A, situated in Legaspi, Albay. Bounded on the North, West and South by lands formed by accretion and/or drying up of the old river bed of the Kapantawan River, and on the East by Lot 1068-A, containing a total area of one thousand fifty nine (1,059) square meters, more or less.

The first parcel is declared under Tax No. 12375 and assessed at P400.00, while the house constructed under

Tax No. 8975 and valued at P700.00.

"3. That the first parcel of land has been registered under Act 496 since 1916, with the Kapantawan River as the natural boundary to the West but subsequently by accretion thru the accumulation of alluvial deposits west of Lot 1068-A the parcel of land described in par. 2 of this complaint was formed. The late Juan Estevez and his heirs after his demise took immediate possession thereafter and improved the same. A residential house was constructed thereon with cement footings, which was however destroyed by the Typhoon TRIX in October 1952. Up to the present the cement footings are still there and a toilet still exists therein used by the lessee of the plaintiff on Lot 1068-A;

"4. That the defendant Diogenes Tuazon presently pretends certain rights over a portion of the second parcel of land and is threatening to destroy the toilet of the plaintiff therein constructed. This defendant further intends to construct a building of permanent nature over the old site of the building of the plaintiff estate destroyed by the typhoon trix;

"5. That the plaintiff is informed and so believes that the defendant Diogenes Tuazon acquired by purchase the house of PATRICIO and MARIA ESTEVEZ, constructed partly on Lot 1068-A and on a part of the second parcel of land. To this house an alleged annex is being constructed and/or to be constructed by the said defendant to eventually occupy the site of the old building of the plaintiff and the toilet. In a letter dated December 28, 1957, defendant Diogenes Tuazon with uncalled for audacity sought to compel the plaintiff to remove the said toilet;

"6. That the plaintiff is likewise informed and so believes that defendant Diogenes Tuazon applied with the defendant Director of Lands for the purchase of lease of the second parcel of land under the mistaken belief that said land forms part of the public domain, disposable under the public land law. That the second parcel of land is the private property of the plaintiff estate and the heirs by right of accretion. The defendant Director of Lands or anyone acting in his behalf may not dispose of the same. No action so far has been had on the application of the defendant Diogenes Tuazon;

"7. That prior to the filing of this action, defendants tried to make a survey of the second parcel of land but plaintiff suspended and protested any such survey. Defendant Diogenes Tuazon under false representations with the Office of the Mayor of Legaspi, Albay, recently secured a building permit to construct a building on the second parcel of land;

"8. That by reason of the hostile acts of the defendant Diogenes Tuazon and the apparent desire of said defendant to ripen whatever pretensions he has over the second parcel of land into a valid right by applying for its use and occupation with the defendant Director of Lands a cloud has been created over the said parcel of land, which need to be removed at once. In the event that after the service of process, the defendant Director of Lands decide to claim the second parcel of land as part of the public domain, then plaintiff maintains that the said property is a private land by right of accretion;

"9. That even admitting arguendo only that the said strip of land described as parcel (a) of this complaint forms part of the public land disposable under the public land (which contention is hardly allowable) yet by reason of priority of possession, improvements, and claim, the plaintiff is entitled to its adjudication as against the defendant Diogenes Tuazon;

"10. That the acts of defendant have been done with the utmost bad faith. He has full knowledge of the rights of the plaintiff over the property now disputed. Plaintiff has been forced to go to Court in order to protect the rights of the plaintiff estate resulting in the expense of P1,000.00 for attorney's fees before this Court alone, plus additional expenses on appeal;

"11. That by the unjust acts of usurpation committed and threatened to be done by the defendant Tuazon, plaintiff is entitled to actual and moral damages in the sum of P2,000.00; partly for use of land by Tuazon;"

(Record on Appeal, pp. 2-7)

The plaintiff asked for the issuance of a writ of preliminary injunction which the lower court granted and a writ was issued on January 2, 1958. (Ibid., pp. 7-12)

The defendant Diogenes Tuazon filed his answer denying the material averments of the complaint and as special defenses and counterclaim avers:

"AS FIRST SPECIAL DEFENSES:

Defendant alleges:

14. That the land in question was not formed by accretion but by the reclamation project of the government and the same was recently left dry due to the construction of the culvert for Legaspi drainage, consequently by the second parcel of land forms part of the public domain;

"AS SECOND SPECIAL DEFENSES:

Defendant alleges:

15. That assuming without conceding that the second parcel of land is the private property of the plaintiff, her rights to recover ownership, thereof has prescribed as defendant and his predecessor-in-interests has occupied the land openly and adversely for more than ten years;

"AS THIRD SPECIAL DEFENSES:

Defendant alleges:

16. That assuming that the land in question was formerly river bed and left dry because it was abandoned through the natural change in the course of the water, plaintiff, although claiming to be the adjoining owner, is not the owner thereof for the following reasons:

"Firstly, the river bed was abandoned not by natural change but by the reclamation project of the government and the construction of the culvert for the drainage of Legaspi which made the river bed higher than its source;

"Secondly, assuming that the land in question was formerly river bed of the Kapantawan River which was abandoned through the natural change in the course of the waters, the owners thereof are those whose land are occupied by the new course of the river and not the plaintiff as the land in question was left dry on or about the year 1955;

Said defendant Tuazon asks for the amount of P5,000.00 as actual and moral damages including attorney's fees. (Ibid., pp. 17-19)

The defendant, The Director of Lands, through the Solicitor General, denies the material averments of the complaint and avers:

"(5) the fear that the Director of Lands will proceed in adjudicating the disputed parcel of public lands exist only in the imagination of plaintiff who is not even certain that a public land application was filed for the land described in the complaint and therefore not a valid ground for the issuance of injunction, much less an ex-parte injunction.

"By way of affirmative defense to this Honorable Court alleges:

"That the petition does not show that the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done some acts in violation of plaintiff's rights, tending to render the judgment ineffective and therefore fall short of the legal requisites to entitle the petitioner to the injunction issued." (Ibid., pp. 22-23)

After trial, the lower court dismissed the complaint with costs against the plaintiff. (Ibid., pp. 31-41)

On March 14, 1961, the plaintiff, assisted by a new counsel, filed a Motion for New Trial based on newly discovered evidence. The lower court granted the new trial and admitted the newly discovered evidence (Exhs. "A" and "B") with the testimonies of the plaintiff's witnesses.

Despite the pendency of the case, in the interim, the Director of Lands on May 18, 1967, issued to his co-defendant, Diogenes Tuazon, Miscellaneous Sales Patent No. 2850 to the land in question, for which O.C.T. No. 40 of the Register of Deeds of Legaspi City was issued in the name of the latter. The defendant Tuazon also executed a mortgage over the property in question to guarantee a loan in the amount of P4,900.00. These facts were brought to the attention of the lower court by new counsel. (Ibid., pp. 73-77)

On May 29, 1968, the lower court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, the estate of Juan Estevez represented by Isabel Estevez de Tuanqui is hereby declared the owner of Lot No. 109 of the Cadastral Survey of Legaspi and the defendant, Diogenes Tuazon, is hereby ordered to reconvey the lot embraced in Original Certificate of Title No. 40 and to purge said title of the lien in the amount of P4,900.00 and, if he fails to do so, a writ of execution will issue against the defendant, Diogenes Tuazon, for the said amount, and to pay the plaintiff the amount of P120.00 annually from 1952 until he vacates Lot 109, with costs against the said defendant.

SO ORDERED.

Given at Legaspi City, Philippines, this May 29, 1968.

(Sgd.) EZEKIEL S. GRAGEDA

Judge

(Record on Appeal, pp. 84-85)

On August 28, 1968, the decision rendered on May 29, 1968 having become final and executory, upon motion filed by counsel for the plaintiff, a Writ of Execution for the satisfaction of the judgment was issued. (Ibid., pp. 85-90) The writ of execution issued was however suspended upon filing on October 21, 1968 by the defendant Diogenes Tuazon of a Petition for Relief from Judgment (Ibid., pp. 92-100).

Upon opposition to the petition for relief from judgment filed by counsel for the plaintiff, showing indubitably to the court that plaintiff's motion to submit the case for decision, dated January 10, 1968, including a supplemental motion dated January 11, 1968, was duly served on defendants' counsel, the petition was denied on December 6, 1968 (Ibid., pp. 105-108).

The defendant Tuazon, upon denial of the motion for reconsideration of the denial of the petition for relief from judgment appealed to this Court.

The defendant Diogenes Tuazon assigned the following errors allegedly committed by the trial court:

FIRST ASSIGNMENT OF ERROR. —

The lower court erred in holding that the Western boundary of Lot 1068-A was a river on the basis of alleged newly discovered evidence presented at the new trial, disregarding the ocular findings of the same Court and the admissions of the parties.

SECOND ASSIGNMENT OF ERROR. —

The lower Court erred in holding that Lot 109 was formed by the alluvial accumulation of deposit through the action of the current of river, despite its own finding that the area of which Lot 109 was a part was admittedly a swamp.

THIRD ASSIGNMENT OF ERROR. —

The lower Court erred in not holding that appellee's complaint is barred by estoppel in that she had previously filed an application for sales patent with the government but that it was rejected in favor of appellant Tuazon.

FOURTH ASSIGNMENT OF ERROR. —

The lower Court erred in not giving due course to the petition for relief from judgment when the facts undisputably show that the judgment was procured thru fraud and/or accident or excusable negligence, or that proceedings antecedent thereto were had without notice to appellants.

(Tuazon's Brief, pp. 12-13)

The defendant Director of Lands alleged the following errors:

"I

THE LOWER COURT ERRED IN HOLDING THAT LOT NO. 109 'WAS FORMED BY ALLUVIAL DEPOSIT THROUGH THE ACTION OF THE CURRENT OF THE RIVER' AND, THEREFORE, BELONGS TO THE ESTATE OF JUAN ESTEVEZ AS OWNER OF THE MOTHER ESTATE.

II

ASSUMING ARGUENDO THAT THE LOT IN QUESTION WAS AN ACCRETION, THE LOWER COURT NEVERTHELESS ALSO ERRED IN NOT FINDING THAT PLAINTIFF, AS JUDICIAL ADMINISTRATRIX OF THE ESTATE OF JUAN ESTEVEZ, HAD ALREADY WAIVED AND/OR LOST WHATEVER, RIGHT SHE OR ESTEVEZ ESTATE MIGHT HAVE HAD OVER SAID LOT IN FAVOR OF THE ESTATE.

III

THE LOWER COURT ERRED IN NOT DECLARING THE LAND IN QUESTION AS PART OF THE PUBLIC DOMAIN UNDER THE ADMINISTRATION OF THE DEFENDANT DIRECTOR OF LANDS." (Appellant Dir. of Lands' Brief, pp. 1-2)

The simple issue to be resolved in this appeal is the proper application of Article 457 of the New Civil Code relating to the right of a riparian owner of real properties over the additional estate formed therein by accretion." (pp. 35-44, Rollo)

In the dispositive portion of its decision, the appellate court affirmed in toto the lower court's findings, after a careful consideration of all evidences presented.

Both petitioners Diogenes Tuason and Director of Lands filed their separate motions for reconsideration which were denied by the appellate court. Hence, petitioners filed separate petitions for review on appeal by way of certiorari. The two cases are now consolidated, with several assignments of error, which can be summarized into two:

- The Court of Appeals grievously erred in declaring that there was accretion and consequently in not declaring

the same as public land subject to the disposition of the Director of Lands; and

- The Court of Appeals grievously erred in not granting petitioner's petition for relief from judgment."

After a diligent study and examination of the records of the case, We find no reason to reverse the findings of facts or conclusions arrived at by the lower courts. In ruling that there was indeed accretion, the appellate court declares clearly that:

"The records show indubitably the existence of a river west of the titled property of the appellee (Annexes "A" and "B"). Annex "A" to the motion for new trial is the plan of Lot 1068 showing that the property of the appellee has as its natural boundary to the west the Kapantawan River. Annex "B" to the Motion for New Trial is the cadastral plan of Legaspi Port confirming the existence of said natural boundary to the west as Kapantawan River. This fact which was established during the previous trial of the case on the testimony of Dr. Estevez was made more indubitable during the new trial by testimonies of witnesses, Jorge A. Logroño, Soledad Maristela and Josefa O. Pineda. Lagroño was a government official who plotted and relocated on the ground the development plan of Legaspi and Maristela and Pineda are adjoining property owners who testified categorically to the existence of the natural boundary to the west of appellee's property as the Kapantawan River." (pp. 44-45, record)

The lower courts reached such conclusion not whimsically but after painstakingly considering the attending circumstances and the entire evidence. Worth mentioning also is the fact that the same trial judge who made the factual finding that Kapantawan River did not exist in the area, granted a motion for new trial to receive newly discovered evidence. The trial court, in its amended decision, emphasized:

"At the new trial, the plaintiff presented oral and documentary evidence tending to established that boundary of Lot No. 109 to the West was actually a river. After careful consideration of said evidence, the Court is convinced that formerly the real boundary of Lot 109 to the West was a river."In view of the foregoing finding, it is now clear that Lot 109 was formed by the alluvial accumulation of deposit through the action of the current of the river. Therefore Article 457 of the Civil Code of the Philippines applies. Said article reads:

"ART. 457. To the owners of land adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters."

"As between the plaintiff and the defendant, Diogenes Tuazon, the former has the right to Lot No. 109."

(pp. 83-84, Record on Appeal)

It is argued by petitioner that ocular inspections must be given probative value. Ocular inspection was indeed made by the trial judge to establish the condition of the area a generation before the ocular inspection was conducted. Said ocular inspection cannot be given too much probative value because there might be physical changes through the passage of the years the cause of which cannot easily be determined by said ocular inspection. Moreover, the evidence submitted by petitioners themselves show that the source of the water in the area in question had been cut off from the sea even before the Japanese invasion of the Philippines. The evidence for private respondent shows that subsequent to the year 1916, gradual accumulation of the deposits covered by the current of the Kapantawan River had already taken place. Also witness for the petitioner Mr. Juan Firaza, Acting Provincial Land Officer of Albay testified as follows:

"Q - You have no personal knowledge as to whether Lot 109 in this case existed because of the drying up of the Tibu River or because it was filled up by the adjacent owner or because it was due to the accumulation of sediment, you do not know that?

"A - No, sir." (TSN, May 16, 1960, p. 78). (p. 137, record)

On the other hand, there is enough evidence that the land in question was formed by accretion; thus it belongs to the riparian owner, pursuant to Art. 457 of the Civil Code of the Philippines. Consequently, the Director of Lands has no jurisdiction over it and any conveyance made by him of any private land is null and void.

We now come to the second assignment of error. This was touched upon extensively in the ruling of the trial court and in the ruling of the respondent Appellate Court to the effect that several notices (re the submission of the case for decision) had been duly sent by registered mail to the attorneys involved. We fully agree with said finding.

Note further that on appeal, the respondent Court of Appeals, ruled:

"The alleged excusable negligence for failure to claim the mail addressed to counsel for the defendant because of change of address without notification of such change to the parties and to the Court is not a valid ground or an excuse for failure to appear for the hearing set forth in said motion, considering the certification of the Acting Mail Operation Chief, Registry Division that no less than three (3) notices were sent to the addressee therein failed to claim the mail. x x x" (Decision of respondent Court of Appeals, Annex "C" of Petition of Diogenes Tuazon, p. 11) (p. 140, records)

In support of their contention, petitioners cite the principles laid down in the case of *Vecino v. Court of Appeals*, L-38612, March 29, 1977 (p. 140, Record). Such contention was aptly refuted by respondents in their memorandum, to wit:

"The factual setting of the *Vecino* case is entirely different from the facts obtaining in this case. Said case does not involve a situation which obtains in this case, where a counsel transferred from his office address of record without notifying the court and parties thereof, as he is required to do under the Rules of Court. He is using his very negligence and admitted violation of the Rules of Court as a shield to avoid consequences unfavorable to his case. Therefore, there was no fraud, accident, mistake or excusable negligence, upon which a petition for relief from judgment can only be granted.

"More importantly, there is no showing that petitioner Diogenes Tuazon's rights with respect to the determination of the merits of the case were harmed or adversely affected. Extensive evidence had been presented by petitioners to support their respective theories as to the cause how Lot 109 was formed. Furthermore, petitioner Diogenes Tuazon did not state in his motion for relief from judgment what evidence he will present which, if admitted, will probably change the decision of the trial court, as he is required to do in the Rules of Court. His petition, therefore, is pro forma and the only purpose to be achieved by the allowance thereof is the delay of the disposition of the case."

(pp. 140-141, records).

With respect to the denial of the petition for relief filed by petitioner Tuazon insofar as the decision of the trial court was initially held to be final and executory, this issue was no longer pressed by the parties inasmuch as said petitioner was subsequently allowed to appeal from the decision itself. (See petitioner's brief, p. 44). Besides, there was no question about the timeliness of the appeal from said decision by petitioner Director of Lands.

WHEREFORE, in view of the foregoing considerations, the appealed decision is hereby **AFFIRMED** with costs against the petitioners.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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