

ADRIANO ANTONIO, PLAINTIFF AND APPELLANT, VS. BENJAMIN JALANDONI AND MANUEL PLANA, DEFENDANTS AND APPELLEES.*G.R. No. L-18301. July 31, 1965*

Ponente: MAKALINTAL, J.

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Plaintiff's complaint in the Court of First Instance of Iloilo was dismissed upon defendants' motion on the ground that it was barred by prior judgment. The case is before us on appeal from the order of dismissal.

The first action was filed by the same plaintiff against the same defendants and docketed below as Civil Case No. 4172. It was for the recovery of lot No. 8119 of the Passi Cadastre, sold by Benjamin Jalandoni to his co-defendant Manuel Plana in 1954 and covered by T.C.T. No. 17037-V-86 in the latter's name. According to the plaintiff the area of the lot is 2.4807 hectares; according to the defendants it is 4.5658 hectares. The claim for recovery is based on the following allegations: that the said lot was formerly submerged under water, being then part of the bed of the Jalaud River; that in 1954 the river changed its course, leaving the area dry and making it an accretion to lot No. 564 of the Dueñas cadastre, which belonged to the plaintiff; and that defendant Jalandoni fraudulently secured a title to said lot No. 8119 and the plaintiff "was illegally deprived of his possession and ownership from 1927 (sic) ..."

At the trial of the first civil case on November 6, 1957, after the defendants had filed their answers, both the plaintiff and his lawyer did not appear—deliberately, they say—and so the court dismissed the complaint forthwith. On March 1, 1958 the plaintiff filed the present action, docketed as Civil Case No. 4743 of the same court. It was in turn dismissed as aforesaid by order dated October 25, 1960.

The parties in both cases are identical. In this appeal by the plaintiff, however, his position is that there is no identity of cause of action and of subject-matter, the other requisites essential to a plea of *res adjudicata*.

Lack of identity of cause of action is predicated on the fact that appellant's present claim to the ownership of the disputed area is based on supposedly different allegations, to wit: (1) that it was added to his land, which is now identified by him as lot No. 761-A of the Dueñas cadastre and not lot No. 564 as before, by means of alluvion due to the gradual change of course of the Jalaud River which started in 1928 or 1929; (2) that lot No. 8119 was formerly part of a bigger lot, No. 1104, which belonged to defendant Benjamin Jalandoni and was situated on the opposite side of said river; (3) that as a result of the gradual process of accretion "the area of lot No. 761-A has been increased by no less than fifteen (15) hectares to include lot No. 8119. . . and a big portion of lot No. 1104; so that lot No. 8119 and a big portion of lot No. 1104 were transferred and had become a permanent part of lot No. 761-A . . . , and (4) that the plaintiff had long been in possession of those 15 hectares when defendant Jalandoni divested him thereof in 1954.

Appellant's theory in his second complaint is quite difficult to comprehend. He identifies the area claimed by him as lot No. 8119 and a bigger portion of lot No. 1104 after alleging that these lots had been gradually eroded by the current of the Jalaud River from the side thereof opposite his own lot No. 761-A, and in fact states in his brief that

said lots have ceased to exist and "the area in controversy is decidedly not lot 8119 nor part of 1104." But this is by way of passing observation—the point has to do with the merits of his claim and not with the issue before us.

The trial court did not err in ruling that there is identity of cause of action in the two cases filed by appellant. In both it consists of his alleged right of ownership and possession of land and the violation thereof by appellees. The difference in the manner appellant says he acquired such right, that is, by a sudden change in the river course in the first case and by alluvion in the second, does not make for distinct causes of action; nor the fact that the accretion was to lot No. 564 in the first case and to lot No. 761-A in the second.

However, there is no complete identity of subject matter to justify the dismissal of the complaint on the ground that it is barred by prior judgment. In the former action what was sought to be recovered is lot No. 8119 of the Passi cadastre, containing an area of only 2.4807 hectares according to appellant or 4.5658 hectares according to appellees. In the present action, aside from lot No. 8119 appellant lays claim to an additional area, referred to in the complaint as a big portion of lot No. 1104 "owned" by appellee Jalandoni, which was "transferred and had become a permanent part of lot No. 761-A belonging to appellant." The total area claimed by him now is fifteen (15) hectares, of which the portion outside Lot No. 8119 was definitely not the subject-matter of the former case. Under the allegations in the complaint in that case appellant could not have recovered the additional area, and evidence concerning it would have been ruled out as irrelevant and immaterial. In other words, the finding of the lower court that there is identity of subject-matter, and hence bar by prior judgment, is correct with respect to lot No. 8119, but not so with respect to the rest of the property described in the complaint herein.

The order appealed from is set aside and the case is remanded for further proceedings in accordance with the foregoing indications. No pronouncement as to costs.

Bengzon, C. J. Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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