

**SALVADOR CRESPO, PETITIONER, VS. MARIA BOLANDOS, ET AL.,
RESPONDENTS.***G.R. No. L-13267. July 26, 1960*

Ponente: BENGZON, J.

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Review of a Court of Appeals' decision calling for interpretation or application of articles 366 and 372 of the Civil Code, which are quoted in the margin.[1]

Way back in 1928, the Pampanga River running East to West, separated the land of Felipe Buencamino, Jr. from the lots of Maria Bolandos and others (herein described as plaintiffs). These lots in Cabiao, Nueva Ecija, were registered under the Torrens System, except that of plaintiff Juan Magbag. In 1954, when the complaint was filed in this case in Nueva Ecija, the Pampanga River was still flowing East to West but no longer in its 1928 bed. Its waters were then running about 387 meters farther to the south.

It seems that Buencamino's agents claiming that his land extended south up to the (new) bed of the Pampanga River, took possession of the portion (north of the River) of the lots of plaintiffs, asserting ownership through accretion (Art. 366, Civil Code). Wherefore, the present action. As Buencamino subsequently sold his property to Salvador Crespo, the latter was substituted as sole defendant.

After hearing the parties, the court of first instance found for defendant. However, the Court of Appeals reversed, holding there had been no accretion, but a change or changes in the course of the Pampanga River effected during the years 1943 to 1945. Said the Appellate Court:

"* * * Ya queda indicado que, segun la teoria de los demandantes el cambio de cauce del rio de Pampanga, tuvo lugar durante tres años desde 1943, mientras que el demandado sostiene que esta mutacion ha sido paulatina y comenzo desde el año 1928."

"Hemos examinado con cuidado las pruebas de las partes sobre esta cuestion de hecho, y entendemos que la preponderancia de las pruebas demuestra que la mutacion de cauce del rio de Pampanga, tuvo lugar en el periodo indicado por los demandantes. * * *"

On the basis of the above findings, the Appellate Court declared that plaintiffs had lost no part of their properties, inasmuch as there had been no such slow and gradual accretion, beginning in 1928, as defendant claimed. Therefore, it required defendant Crespo to surrender the portion in question and to pay damaged in the amount of P1,000.00 per year beginning 1954.

In this Court, Salvador Crespo alleges it was error not to apply the principles of accretion, inasmuch as "it is not to be disputed" "that the Pampanga River had been eroding its southern bank for the last several years or since 1923 * * * hence the erosion was gradual" (p. 8 petitioner's brief). But the Court of Appeals declared specifically that there was no such gradual erosion since 1928. It expressly rejected the plaintiffs' theory on that particular point; and we are bound by its findings of fact. For this reason, we see no merit to petitioner's contention that the

controversy should be decided in the same way *Cañas vs. Tuason*[2] had been decided. For one thing, the land therein disputed had been transferred[3] to the other side of the Mariquina river by gradual erosion occurring during the period of thirty years; whereas here, the Pampanga river had shifted its course during floods occurring three or four times a year during the period between 1943 to 1945. In the circumstances, we believe it proper to apply the provisions of Art. 372 as the appellate court did.

When for the first time the flood moved the Pampanga River into the lots of the plaintiffs, the bed thus newly; covered by its waters became property of public ownership. But when the next flood transferred the river bed farther south into plaintiffs' lands, they ipso facto recovered the bed they had first lost, even as the new bed on their property accrued to the public domain. And thus the automatic process of recovering and losing river beds continued until the year 1945, when apparently the River stopped its wandering movements to settle into its present location—thereby segregating a part of plaintiffs' property, without affecting their title.

The thing to remember is that the portions in dispute were admittedly part of the lots of plaintiffs[4], and that defendant Crespo (or his predecessor) never acquired them through "gradual erosion and consequent deposit of alluvial soil imperceptibly taking place since 1928," because there was no such erosion as found by the Court of Appeals.

The decision under review must accordingly be affirmed, with costs against petitioner. It is so ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Barrera, JJ., concur.

Gutierrez David, J., took no part.

[1] Art. 366.—Any accretions which the banks of rivers may gradually receive from the effect of the current belong to the owners of the estate bordering thereon.

ART. 372.—Whenever a navigable or floatable river changes its course from natural causes and opens a new bed through a private estate, the new-bed shall be of public ownership, but the owner of the estate shall recover it in the event that the waters leave it dry again either naturally or as the result of any work, legally authorized for this purpose.

[2] 5 Phil., 688.

[3] The old bed (1928) is now dry and still remains visible.

[4] Lots still separated from Buencamino's lot by the old 1928 bed. (Court of Appeals decision p. 11)

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