

**CRISPINA SALAZAR, PETITIONER, VS. GUILLERMO GUTIERREZ, AND DAMASO MENDOZA, RESPONDENTS.***G.R. No. L-21727. May 29, 1970*

Ponente: MAKALINTAL, J.

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Judgment was rendered by the Court of First Instance of Bataan (Civil Case No. 2269) in favor of the plaintiff, Crispina Salazar, now petitioner; on appeal by the defendants, Guillermo Gutierrez and Damaso Mendoza, the Court of Appeals reversed (CA- G. R. No. 19489-R); and the plaintiff elevated the case to us for review by certiorari.

Crispina Salazar is owner of a piece of land (Lot 436 of the Cadastral Survey of Balanga) situated in Tuyo, Balanga, Bataan, covered by Transfer Certificate of Title 1578 issued by the Register of Deeds of the said province, and acquired by her from the municipality of Balanga on May 4, 1949. The lot is bounded on the northeast by Lot 361, on the southeast by Sapang Tuyo, on the southwest by Lot 435, and on the northwest by Lot 433.

Lot 433 was registered under the Torrens system on July 23, 1923, with Original Certificate of Title 2162. Ownership passed to respondent Guillermo Gutierrez by in-heritance in 1927, and Transfer Certificate of Title No. 1059 was issued in his name on June 11, 1928. No annotation of any lien or encumbrance affecting the land appears on either title.

Before the present controversy arose, Lot 436 and some of the surrounding estates, including Lot 433, were irrigated with water from Sapang Tuyo, a public stream, flowing through a dike that traversed Lots 431, 434, 433 and 461. The portion of this dike that passed through Lot 433 branched near the boundary between this lot and Lot 434 into a canal which ran across the rest of Lot 433 up to Lot 436. It was with the water flowing through this canal that Lot 436 used to be irrigated.

On February 24, 1953 respondent Damaso Mendoza, a lessee of Lot 433, demolished the said canal, thereby stopping the flow of the water and depriving Crispina Salazar's Lot 436 of the irrigation facilities which it had formerly enjoyed. Her requests that the canal be re-built and the water flow restored having been turned down, Salazar commenced the present suit on March 2, 1953, pray-ing that these reliefs be granted her by the Court and that the defendants be ordered to pay her actual damages in the sum of P900, moral damages in the sum of P5,000, and P1,000 for attorney's fees, plus costs.

The trial court issued a writ of preliminary injunction as prayed for by the plaintiff, ordering the defendants to restore the demolished portion of the canal and to refrain from again demolishing the same pending trial, but the writ was dissolved on March 9, 1953, upon a counterbond filed by the defendants. The latter answered with their own counterclaim for damages, denied the sub-stantial averments of the complaint and put up a number of affirmative defenses.

After trial, the Court of First Instance of Bataan, finding that the demolished canal had been in existence for more than thirty years and that the big dike from which it extended had been constructed for the use of Lot 436 as well as several other lots belonging to different owners, rendered judgment on April 10, 1956, ordering the defendants to restore at their expense the canal in question, to connect it with the canal found in Lot 436 and to cause the corresponding annotation of the encumbrance on Transfer Certificate of Title 1059 covering Lot 433; and ordering the defendants to pay the plaintiff the sum of P1,360 annually beginning the agricultural year 1956-1957 until the restoration of the canal, P4,700 as actual damages, P5,000 as moral damages, and P1,000 as attorney's fees, plus costs.

On July 26, 1963, the Court of Appeals reversed the decision of the Court of First Instance and held that since the easement of aqueduct over Lot 433 for the benefit of Lot 436 was a voluntary one, the same was extinguished when Lot 433 was registered on July 23, 1923 and the corresponding certificate of title was issued without the annotation of said easement as a subsisting encumbrance.

The respondents have raised a preliminary procedural question, alleging that Section 1 of Rule 46 (now Section 1 of Rule 45), requiring proof of service of a copy of the petition upon the Court of Appeals, was not complied with. Such omission, however, is not of jurisdictional import. In an appeal by certiorari upon a question of law, as distinguished from an original petition for certiorari under Rule 65, the Court of Appeals is merely a nominal party respondent. The original parties in the trial court are the same parties in the appeal.

The main issue as set forth in the decision of the Court of Appeals is the nature of the easement of aqueduct claimed by the petitioner. If voluntary, according to the said Court, the easement was extinguished upon the registration of Lot 433 in 1923, pursuant to Section 39 of Act No. 496, which provides:

"But if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner." (underscoring supplied).

In arriving at the conclusion that the easement in question was voluntary and not legal or compulsory, the Court of Appeals took into consideration the provisions of Articles 557 and 558 of the Spanish Civil Code, now Articles 642 and 643 of the new Civil Code respectively, as follows:

"ART. 642. Any person who may wish to use upon his own estate any water of which he can dispose shall have the right to make it flow through the intervening estates, with the obligation to indemnify their owners, as well as the owners of the lower estates upon which the waters may filter or descend."

"ART. 643. One desiring to make use of the right granted in the preceding article is obliged:

"(1) To prove that he can dispose of the water and that it is sufficient for the use for which it is intended;

"(2) To show that the proposed right of way is the most convenient and the least onerous to third persons;

"(3) To indemnify the owner of the servient estate in the manner determined by the laws and regulations."

Specifically the appellate court held that there is no evidence to show that the petitioner has complied with the three requisites laid down in Article 643 in order to entitle her to claim a legal easement of aqueduct under Article 642. It bears repeating that the finding thus made, although apparently factual in character, is premised upon supposed absence of evidence, and therefore is reviewable by this Court if the premise is clearly contradicted by the record or unjustified upon other considerations which logically lead to a different conclusion, but which the decision under review did not take into account.

On the first requisite of Article 643 - that the petitioner must prove that he can dispose of the water and that it is sufficient for the use for which it is intended - there is the statement of the trial court that the disputed canal had been in existence since the Spanish regime, or at least prior to the original registration of Lot 433 in 1923, and that of the Court of Appeals itself confirmatory of this second alternative finding. If, as thus found, the petitioner had been using water from Sapang Tuyo to irrigate Lot 436 since she acquired said lot in 1949, as the municipality of Balanga had been doing before her, and that such use had lasted continuously for at least thirty years, it is a fair presumption that she had a right to do so and that the water she could dispose of was sufficient for the purpose. Indeed it would be a superfluity to require her to produce a permit from the proper authorities, for even without it the right had already become vested both under Article 194 of the Spanish Law of Waters and under Article 504 of the Civil Code, which respectively state:

"ART. 194. Any person who has enjoyed the use of public waters for a term of twenty years without objection on the part of the authorities or of any third person, shall continue in its enjoyment, even though he may not be able to show that he secured proper permission."

"ART. 504. The use of public waters is acquired:

(1) By administrative concession;

(2) By prescription for ten years.

The extent of the rights and obligations of the use shall be that established, in the first case, by the terms of the concession, and, in the second case, by the manner and form in which the waters have been used."

The third requisite of Article 643 of the Civil Code refers to the matter of indemnity to the owner of the servient estate. As correctly pointed out by the petitioner, it would be nigh impossible now to present actual proof that such indemnity has been paid, considering the number of years that have elapsed since the easement had first come into existence and the subsequent changes in ownership of the lots involved. It stands to reason, however, that if the easement had continued for so long - in fact, not only before Lot 433 Was registered in 1923 but for thirty years thereafter, until cut off by the respondents in 1953 - the legal requirement in question must have been complied with.

The other requisite of Article 643 is that "the proposed right of way is the most convenient and the least onerous to third persons." The Court of Appeals stated that the petitioner has not established this fact, and that "her own evidence reveals that her lot is abutting Sapang Tuyo on its southern boundary, wherefrom she can easily and directly draw the water necessary to irrigate her land." This statement is an oversimplification. Proximity or abutment of a piece of land to a stream does not necessarily carry with it the conclusion that water may conveniently be drawn directly therefrom for irrigation. In the first place, the petitioner has pointed out in her brief, without contradiction by the respondents, that the portion of her land which abuts Sapang Tuyo is a precipice. Secondly, the trial court made an ocular inspection of the premises and observed that the eastern and northeastern portions of Lot 436 are lower than the southwestern, western and north-western (the point where Lot 436 adjoins Lot 433) portions of the same. Finally, it would appear from the observation made by the same court that the demolished canal is part of a system of conduits used to irrigate the lands of the petitioner and the respondents as well as the surrounding estates belonging to other owners, and that this system of conduits is of a permanent nature. The trial court's description bears repeating:

"At the ocular inspection conducted on September 22, 1953, it was found that the eastern and northeastern portions of Lot No. 436 are lower than the southern, western and northwestern portions of the same; that about one-fourth (1/4) only of the lot is planted to palay and this palay is yellowish, scarce and could hardly merit attention to produce any substantial quantity of palay; that this palay is planted in the eastern portion of the

same; that the palay planted on the land of defendant Gutierrez and on the lot east of the land of the plaintiff is luxuriant, green and had all the earmarks of producing a good harvest; that the 'pinitak' on the northwestern portion of the land of the plaintiff is higher than the rest of the land; that on this portion is found a canal about one and a half (1-1/2) meters deep which canal runs south and parallel to the boundary line of Lot 436 owned by the plaintiff and Lot No. 435 and is one and a half (1-1/2) meters from this boundary; that along the southern boundary of Lot No. 433 that separates it from Lot No. 436 is a 'minangon' or a dike and water flows continuously from one 'pinitak' to another of said Lot No. 433 up to a point between points '15' and '14' of said lot as shown on Exhibit 'A' x x x that this water passes from one 'pinitak' to another through openings made on the 'pilapils' or small dikes that separate the several 'pinitaks' on this Lot No. 433; that the western side of the canal that was demolished is located on the boundary line of Lots Nos. 433 and 434 and this boundary line is higher and some trees are found therein; that the new canal x x x is short and the old canal from point '131' to about point '7' of Lot No. 433 on this exhibit is still in use although it is not clean; that Lot No. 434 owned by Antonio Mendoza is irrigated by two (2) pipes coming from Lot No. 431 and by a canal that comes from Lot No. 431 and by a canal that comes from the main irrigation canal located on the boundary line of these two (2) lots 431 and 434; that this main irrigation canal is the canal that goes through Lot No. 443 x x x which canal ends farther east of Lot 448 x x x; that this canal begins from the dam farther west of these Lots Nos. 431, 434, 433 and 436.

x x x

The boundary line of the two (2) lots Nos. 433 and 434 shows, that it is a 'minangon', a dike. It is extraordinarily high. From this situation, it can be concluded that the canal along this boundary line must be big. To irrigate the southern part of Lot No. 433 would not require a big and permanent canal if the same was used to irrigate the southern part of Lot No. 433. Canal marked 'W' which is a substitute canal is small and shallow. From the remnants of the old and demolished canal, it is safe to assume that the canal has been in existence for a long time as shown by some big trees on the high 'minangon'. If it were to water only the southern part of the lot as claimed by the defendants, it would have been the same in size as the new canal marked 'W' on Exhibit 'A.' The construction of the new canal marked 'W' on the exhibit is a feeble attempt to justify the alleged purpose of the old canal, but this attempt at coverage is laid bare by the existence of the old canal that crossed Lot No. 433 x x x. Considering that the southern portion of said lot is lower than the rest of the same, the Court believes that the openings on the dike of the old canal would be sufficient to let water flow to the southern portions of this lot. The western portion of this lot could have been watered from the old canal ('X') or from the existing canal ('Z') on Exhibit 'A'. That being so, there is only one explanation why the old canal ('X') is in existence and that is for the use of Lot No. 436 and other lots farther east of Lot No. 436."

It is a reasonable conclusion from the foregoing that the demolished canal supplying water to Lot 436 of the petitioner was merely an extension of the system of conduits established long ago, considering that in view of the topography of the area and the proximity of the said lot to the main dike in Lot 433 it was more convenient to make the connection therewith than to draw water directly from Sapang Tuyo. Article 118 of the Spanish Law of Waters allows the creation of a compulsory easement of aqueduct for the purpose of establishing or extending an irrigation system, and there is nothing to the contrary in the Civil Code.

In any case the respondents are hardly in a position to avail of the registration of Lot 433 in 1923 without the corresponding registration of the easement on the title as an excuse to summarily terminate it thirty years thereafter. The original registered owner allowed the easement to continue in spite of such non-registration: the least that can be said is that he either recognized its existence as a compulsory servitude on his estate or voluntarily agreed to its establishment and continuance. And the respondent Guillermo Gutierrez, as the successor-in-interest to the said owner by inheritance, is not an innocent third person who could plead the absence of annotation on the title. Not only was he aware of the existence of the easement when he inherited the property in 1927, but he likewise allowed it to continue for twenty-six years after he acquired title. He is bound both by the

act of his predecessor and by his own.

Wherefore, the decision of the Court of Appeals is set aside, and that of the Court of First Instance of Bataan affirmed, with costs against the respondents.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Fernando, Barredo, and Villamor, JJ., concur.

Castro, J., on leave.

Teehankee, J., did not take part.

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