

NICOLAS VALISNO, PLAINTIFF-APPELLANT, VS. FELIPE ADRIANO, DEFENDANT-APPELLEE.

G.R. No. L-37409. May 23, 1988

Ponente: GRINO-AQUINO. J.

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GRINO-AQUINO. J.

This case was certified to this Court by the Court of Appeals in a resolution dated August 10, 1973, the sole issue being a question of law and beyond its jurisdiction to decide.

Admitted by the parties in their pleadings and established during the trial on the merits are the following material facts:

On June 20, 1960, the plaintiff-appellant filed against the defendant-appellee an action for damages docketed as Civil Case No. 3472 in the Court of First Instance of Nueva Ecija. The complaint alleged that the plaintiff is the absolute owner and actual possessor of a 557,949-square-meter parcel of land in La Fuente, Santa Rosa, Nueva Ecija, and more particularly described in his Transfer Certificate of Title No. NT-16281. The plaintiff-appellant Valisno bought the land from the defendant-appellee's sister, Honorata Adriano Francisco, on June 6, 1959. (Deed of Absolute Sale, Exh. "A".) The land which is planted with watermelon, peanuts, corn, tobacco, and other vegetables adjoins that of the appellee Felipe Adriano on the bank of the Pampanga River. Both parcels of land had been inherited by Honorata Adriano Francisco and her brother, Felipe Adriano, from their father, Eladio Adriano. At the time of the sale of the land to Valisno, the land was irrigated by water from the Pampanga River through a canal about seventy (70) meters long, traversing the appellee's land.

On December 16, 1959, the appellee levelled a portion of the irrigation canal so that the appellant was deprived of the irrigation water and prevented from cultivating his 57-hectare land.

The appellant filed in the Bureau of Public Works and Communications a complaint for deprivation of water rights. A decision was rendered on March 22, 1960 ordering Adriano to reconstruct the irrigation canal, "otherwise judicial action shall be taken against him under the provisions of Section 47 of Act 2152 (the Irrigation Act), as amended." Instead of restoring the irrigation canal, the appellee asked for a reinvestigation of the case by the Bureau of Public Works and Communications. A reinvestigation was granted.

In the meantime, plaintiff Valisno rebuilt the irrigation canal at his own expense because his need for water to irrigate his watermelon fields was urgent.

On June 20, 1960, he filed a complaint for damages in the Court of First Instance (now Regional Trial Court) of Nueva Ecija (Civil Case No. 3472) claiming that he suffered damages amounting to P8,000 when he failed to plant his fields that year (1960) for lack of irrigation water, P800 to reconstruct the canal on defendant Adriano's land, and P1,500 for attorney's fees and the costs of suit.

On October 25, 1961, the Secretary of Public Works and Communications reversed the Bureau's decision by issuing a final resolution dismissing Valisno's complaint. The Secretary held that Eladio Adriano's water rights

which had been granted in 1923 ceased to be enjoyed by him in 1936 or 1937, when his irrigation canal collapsed. His non-use of the water right since then for a period of more than five years extinguished the grant by operation of law, hence the water rights did not form part of his hereditary estate which his heirs partitioned among themselves. Valisno, as vendee of the land which Honorata received from her father's estate did not acquire any water rights with the land purchased.

In his answer to the damage suit (Civil Case No. 3472), the defendant Felipe Adriano admitted that he levelled the irrigation canal on his land, but he averred: that neither his late father nor his sister Honorata possessed water rights for the land which she sold to the appellant; that he (the appellee) applied for water rights for his land in 1956 and obtained the same in 1958; and that he had a perfect right to level his land for his own use because he merely allowed his sister to use his water rights when she still owned the adjacent land. He set up a counterclaim for P3,000 as damages incurred by him in levelling the land on which the appellant dug an irrigation canal. P2,000 as actual damages, P3,000 as attorney's fees, and expenses of litigation.

In a decision dated April 21, 1966, the trial court held that the plaintiff had no right to pass through the defendant's land to draw water from the Pampanga River. It pointed out that under Section 4 of the Irrigation Law, controversies between persons claiming a right to water from a stream are within the jurisdiction of the Secretary of Public Works and his decision on the matter is final, unless an appeal is taken to the proper court within thirty days. The court may not pass upon the validity of the decision of the Public Works Secretary collaterally. Furthermore, there was nothing in the plaintiff's evidence to show that the resolution was not valid. It dismissed the complaint and counterclaim.

The plaintiff's motion for reconsideration of the decision was denied by the trial court. The plaintiff appealed to the Court of Appeals which certified the case to Us upon the legal question of whether the provisions of the Irrigation Act (Act No. 2152) or those of the Civil Code should apply to this case.

The plaintiff-appellant argues that while the trial court correctly held that the Secretary of Public Works may legally decide who between the parties is entitled to apply for water rights under the Irrigation Act, it erred in ruling that the Secretary has authority to hear and decide the plaintiff's claim for damages for the defendant's violation of his (plaintiff's) right to continue to enjoy the easement of aqueduct or water through the defendant's land under Articles 642, 643, and 646 of the Civil Code, which provide:

"Article 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 flow or descend.

"Article 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.

"Article 646. For legal purposes, the easement of aqueduct shall be considered as continuous and apparent, even though the flow of the water may not be continuous, or its use depends upon the needs of the dominant estate, or upon a schedule of alternate days or hours."

The existence of the irrigation canal on defendant's land for the passage of water from the Pampanga River to Honorata's land prior to and at the time of the sale of Honorata's land to the plaintiff was equivalent to a title for the vendee of the land to continue using it, as provided in Article 624 of the Civil Code:

"Article 624. The existence of an apparent sign of easement between two estates, established or maintained by

the owner of both shall be considered should either of them be alienated, as a title in order that the easement may continue actively and passively unless at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons" (Civil Code)

This provision was lifted from Article 122 of the Spanish Law of Waters which provided:

"Article 1 22. Whenever a tract of irrigated land which previously received its waters from a single point is divided through inheritance, sale or by virtue of some other title, between two or more owners. the owners of the higher estates are under obligation to give free passage to the water as an easement of conduit for the irrigation of the lower estates, and without right to any compensation therefore unless otherwise stipulated in the deed of conveyance." (Art. 122. Spanish Law of Waters of August 3, 1866.)

No enlightened concept of ownership can shut out the idea of restrictions thereon, such as easements. Absolute and unlimited dominion is unthinkable, inasmuch as the proper enjoyment of property requires mutual service and forbearance among adjoining estates (*Amor vs. Florentine*), 74 Phil. 403).

As indicated in the decision dated March 22, 1960 of the Bureau of Works "the principal issue involved in this case falls under the subject of servitude of waters which are governed by Article 648 of the new Civil Code and the supplementary laws mentioned in the cases of *Lunod vs. Meneses* (11 Phil. 128) and *Osmena vs. Camara* (C.A. 380 62773) which are the irrigation law and the Spanish Law of Waters of August 3, 1866, specifically Article 122 thereof.

The deed of sale in favor of Valisno included the "conveyance and transfer of the water rights and improvements" appurtenant to Honorata Adriano's property. By the terms of the Deed of Absolute Sale, the vendor Honorata Adriano Francisco sold, ceded, conveyed and transferred to Dr. Nicolas Valisno all "rights, title, interest and participations over the parcel of land above-described, together with one Berkely Model 6 YRF Centrifugal Pump G" suction, 6" discharge 500-1500 GPM, with Serial No. 5415812 and one (1) set of suction pipe and discharge of pipe with elbow, nipples, flanges and footvalves," and the water rights and such other improvements appertaining to the property subject of this sale. According to the appellant, the water right was the primary consideration for his purchase of Honorata's property, for without it the property would be unproductive.

Water rights, such as the right to use a drainage ditch for irrigation purposes, which are appurtenant to a parcel of land, pass with the conveyance of the land, although not specifically mentioned in the conveyance. The purchaser's easement of necessity in a water ditch running across the grantor's land cannot be defeated even if the water is supplied by a third person (*Watson vs. French*, 111 Me 371, 19 CJ. 868-897). The fact that an easement by grant may also have qualified as an easement of necessity does not detract from its permanency as property right, which survives the determination of the necessity (*Benedicto vs. CA*. 25 SCR A 145).

As an easement of waters in favor of the appellant has been established, he is entitled to enjoy it free from obstruction, disturbance or wrongful interference (19 CJ 984), such as the appellee's act of levelling the irrigation canal to deprive him of the use of water from the Pampanga River.

WHEREFORE, the appealed decision is set aside, and a new one is entered ordering the appellee to grant the appellant continued and unimpeded use of the irrigation ditch traversing his land in order to obtain water from the Pampanga River to irrigate appellant's land. Let the records of this case be remanded to the court a quo for the reception of evidence on the appellant's claim for damages.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Medialdea, JJ., concur.

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