

DIONISIA P. BAGAIPO, PETITIONER, VS. THE HON. COURT OF APPEALS AND LEONOR LOZANO, RESPONDENTS.*G.R. No. 116290. December 08, 2000*

Ponente: QUISUMBING, J.

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This petition assails the decision dated June 30, 1994 of the Court of Appeals affirming the dismissal by the Regional Trial Court of Davao City, Branch 8, in Civil Case No. 555-89, of petitioner's complaint for recovery of possession with prayer for preliminary mandatory injunction and damages.

The undisputed facts of the case are as follows:

Petitioner Dionisia P. Bagaipo is the registered owner of Lot No. 415, a 146,900 square meter agricultural land situated in Ma-a, Davao City under Transfer Certificate of Title No. T-15757 particularly described as follows:

...Bounded on the NE., by Lots Nos. 419 and 416; on the SE by the Davao River; on the SE., (sic) by Lots Nos. 1092 and 1091; and on the NW., by Lots Nos. 413 and 418...[1]

Respondent Leonor Lozano is the owner of a registered parcel of land located across and opposite the southeast portion of petitioner's lot facing the Davao River. Lozano acquired and occupied her property in 1962 when his wife inherited the land from her father who died that year.

On May 26, 1989, Bagaipo filed a complaint[2] for Recovery of Possession with Mandatory Writ of Preliminary Injunction and Damages against Lozano for: (1) the surrender of possession by Lozano of a certain portion of land measuring 29,162 square meters which is supposedly included in the area belonging to Bagaipo under TCT No. T-15757; and (2) the recovery of a land area measuring 37,901 square meters which Bagaipo allegedly lost when the Davao River traversed her property. Bagaipo contended that as a result of a change in course of the said river, her property became divided into three lots, namely: Lots 415-A, 415-B and 415-C.

In January 1988, Bagaipo commissioned a resurvey of Lot 415 and presented before the trial court a survey plan[3] prepared by Geodetic Engineer Gersacio A. Magno. The survey plan allegedly showed that: a) the area presently occupied by Bagaipo, identified as Lot 415-A, now had an area of only 79,843 square meters; b) Lot 415-B, with an area measuring 37,901 square meters, which cut across Bagaipo's land was taken up by the new course of the Davao River; and c) an area of 29,162 square meters designated as Lot 415-C was illegally occupied by respondent Lozano. The combined area of the lots described by Engineer Magno in the survey plan tallied with the technical description of Bagaipo's land under TCT No. T-15757. Magno concluded that the land presently located across the river and parallel to Bagaipo's property still belonged to the latter and not to Lozano, who planted some 350 fruit-bearing trees on Lot 415-C and the old abandoned river bed.

Bagaipo also presented Godofredo Corias, a former barangay captain and long-time resident of Ma-a to prove her claim that the Davao River had indeed changed its course. Corias testified that the occurrence was caused by a big flood in 1968 and a bamboo grove which used to indicate the position of the river was washed away. The river

which flowed previously in front of a chapel located 15 meters away from the riverbank within Bagaipo's property now flowed behind it. Corias was also present when Magno conducted the relocation survey in 1988.

For his part, Lozano insisted that the land claimed by Bagaipo is actually an accretion to their titled property. He asserted that the Davao River did not change its course and that the reduction in Bagaipo's domain was caused by gradual erosion due to the current of the Davao River. Lozano added that it is also because of the river's natural action that silt slowly deposited and added to his land over a long period of time. He further averred that this accretion continues up to the present and that registration proceedings instituted by him over the alluvial formation could not be concluded precisely because it continued to increase in size.

Lozano presented three witnesses: Atty. Pedro Castillo, his brother-in-law; Cabitunga Pasanday, a tenant of Atty. Castillo; and Alamin Catucag, a tenant of the Lozanos.

Atty. Castillo testified that the land occupied by the Lozanos was transferred to his sister, Ramona when they extra-judicially partitioned their parents' property upon his father's death. On September 9, 1973, Atty. Castillo filed a land registration case involving the accretion which formed on the property and submitted for this purpose, a survey plan[4] approved by the Bureau of Lands as well as tax declarations[5] covering the said accretion. An Order of General Default[6] was already issued in the land registration case on November 5, 1975, but the case itself remained pending since the petition had to be amended to include the continuing addition to the land area.

Mr. Cabitunga Pasanday testified that he has continuously worked on the land as tenant of the Castillos since 1925, tilling an area of about 3 hectares. However, the land he tilled located opposite the land of the Lozanos and adjacent to the Davao River has decreased over the years to its present size of about 1 hectare. He said the soil on the bank of the river, as well as coconut trees he planted would be carried away each time there was a flood. This similar erosion occurs on the properties of Bagaipo and a certain Dr. Rodriguez, since the elevation of the riverbank on their properties is higher than the elevation on Lozano's side.

Alamin Catucag testified that he has been a tenant of the Castillos since 1939 and that the portion he occupies was given to Ramona, Lozano's wife. It was only 1 hectare in 1939 but has increased to 3 hectares due to soil deposits from the mountains and river. Catucag said that Bagaipo's property was reduced to half since it is in the curve of the river and its soil erodes and gets carried away by river water.

On April 5, 1991, the trial court conducted an ocular inspection. It concluded that the applicable law is Article 457[7]. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.⁷ of the New Civil Code and not Art. 461[8] The reduction in the land area of plaintiff was caused by erosion and not by a change in course of the Davao River. Conformably then, the trial court dismissed the complaint.

On appeal, the Court of Appeals affirmed the decision of the trial court and decreed as follows:

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the plaintiff-appellant.[9]

Hence, this appeal.

Petitioner asserts that the Court of Appeals erred in:

....NOT GIVING PROBATIVE VALUE TO THE RELOCATION SURVEY (EXHIBIT "B") PREPARED BY LICENSED GEODETIC ENGINEER GERSACIO MAGNO. THE CASE OF "DIRECTOR OF LANDS VS. HEIRS OF JUANA CAROLINA" 140 SCRA 396 CITED BY THE RESPONDENT COURT IN DISREGARDING EXHIBIT "B" IS NOT APPLICABLE TO THE CASE AT BAR.

....NOT FINDING THAT ASSUMING WITHOUT ADMITTING THAT THE QUESTIONED LOT 415-C

(EXHIBIT "B-1") OCCUPIED BY RESPONDENT LEONOR LOZANO WAS THE RESULT OF AN ACCRETION, THE PRINCIPLE OF ACCRETION CANNOT AND DOES NOT APPLY IN THE INSTANT CASE TO FAVOR SAID RESPONDENT BECAUSE SAID LOT 415-C IS WITHIN AND FORM PART OF PETITIONER'S LAND DESCRIBED IN TCT NO. 15757 (EXHIBIT "A")

....FINDING PETITIONER GUILTY OF LACHES WHEN SHE INSTITUTED THE SUIT.

....NOT ORDERING RESPONDENT LEONOR LOZANO TO VACATE AND SURRENDER LOT 415-C IN FAVOR OF PETITIONER AND FOR HIM TO PAY PETITIONER DAMAGES FOR ITS UNLAWFUL OCCUPATION THEREOF.

....NOT HOLDING PETITIONER ENTITLED TO THE ABANDONED RIVER BED.[10]

For this Court's resolution are the following issues: Did the trial court err in holding that there was no change in course of the Davao River such that petitioner owns the abandoned river bed pursuant to Article 461 of the Civil Code? Did private respondent own Lot 415-C in accordance with the principle of accretion under Article 457? Should the relocation survey prepared by a licensed geodetic engineer be disregarded since it was not approved by the Director of Lands? Is petitioner's claim barred by laches?

On the first issue. The trial court and the appellate court both found that the decrease in land area was brought about by erosion and not a change in the river's course. This conclusion was reached after the trial judge observed during ocular inspection that the banks located on petitioner's land are sharp, craggy and very much higher than the land on the other side of the river. Additionally, the riverbank on respondent's side is lower and gently sloping. The lower land therefore naturally received the alluvial soil carried by the river current.[11] These findings are factual, thus conclusive on this Court, unless there are strong and exceptional reasons, or they are unsupported by the evidence on record, or the judgment itself is based on a misapprehension of facts.[12] These factual findings are based on an ocular inspection of the judge and convincing testimonies, and we find no convincing reason to disregard or disbelieve them.

The decrease in petitioner's land area and the corresponding expansion of respondent's property were the combined effect of erosion and accretion respectively. Art. 461 of the Civil Code is inapplicable. Petitioner cannot claim ownership over the old abandoned riverbed because the same is inexistent. The riverbed's former location cannot even be pinpointed with particularity since the movement of the Davao River took place gradually over an unspecified period of time, up to the present.

The rule is well-settled that accretion benefits a riparian owner when the following requisites are present: 1) That the deposit be gradual and imperceptible; 2) That it resulted from the effects of the current of the water; and 3) That the land where accretion takes place is adjacent to the bank of the river.[13] These requisites were sufficiently proven in favor of respondents. In the absence of evidence that the change in the course of the river was sudden or that it occurred through avulsion, the presumption is that the change was gradual and was caused by alluvium and erosion.[14]

As to Lot 415-C, which petitioner insists forms part of her property under TCT No. T-15757, it is well to recall our holding in *C.N. Hodges vs. Garcia*, 109 Phil. 133, 135:

... The fact that the accretion to his land used to pertain to plaintiff's estate, which is covered by a Torrens certificate of title, cannot preclude him (defendant) from being the owner thereof. Registration does not protect the riparian owner against the diminution of the area of his land through gradual changes in the course of the adjoining stream. Accretions which the banks of rivers may gradually receive from the effect of the current become the property of the owners of the banks (Art. 366 of the old Civil Code; Art. 457 of the new). Such accretions are natural incidents to land bordering on running streams and the provisions of the Civil Code in

that respect are not affected by the Land Registration Act.[15]

Petitioner did not demonstrate that Lot 415-C allegedly comprising 29,162 square meters was within the boundaries of her titled property. The survey plan commissioned by petitioner which was not approved by the Director of Lands was properly discounted by the appellate court. In *Titong vs. Court of Appeals*[16] we affirmed the trial court's refusal to give probative value to a private survey plan and held thus:

...the plan was not verified and approved by the Bureau of Lands in accordance with Sec. 28, paragraph 5 of Act No. 2259, the Cadastral Act, as amended by Sec. 1862 of Act No. 2711. Said law ordains that private surveyors send their original field notes, computations, reports, surveys, maps and plots regarding a piece of property to the Bureau of Lands for verification and approval. A survey plan not verified and approved by said Bureau is nothing more than a private writing, the due execution and authenticity of which must be proven in accordance with Sec. 20 of Rule 132 of the Rules of Court. The circumstance that the plan was admitted in evidence without any objection as to its due execution and authenticity does not signify that the courts shall give probative value therefor. To admit evidence and not to believe it subsequently are not contradictory to each other...

In view of the foregoing, it is no longer necessary now to discuss the defense of laches. It is mooted by the disquisition on the foregoing issues.

WHEREFORE, the assailed decision dated June 30, 1994, of the Court of Appeals in C.A.-G. R. CV No. 37615, sustaining the judgment of the court a quo, is **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] RTC Records, p. 7.

[2] *Id.* at 1.

[3] Exhibit "B."

[4] Exhibit "5."

[5] Exhibit "6".

[6] Exhibit "8".

[7] Art. 45

[8] Art. 461. River beds which are abandoned through the natural change in the course of the waters ipso facto belong to the owners whose lands are occupied by the new course in proportion to the area lost. However, the owners of the lands adjoining the old bed shall have the right to acquire the same by paying the value thereof, which value shall not exceed the value of the area occupied by the new bed.

[9] *Rollo*, p. 43.

[10] *Id.* at 13-14.

[11] *Id.* at 40-41.

[12] *Titong vs. Court of Appeals*, 287 SCRA 102, 111 (1998), citing: *Inland Trailways Inc. vs. Court of Appeals*, 325 Phil. 457, 462 (1996); *Valenzuela vs. Court of Appeals*, 323 Phil. 374, 383 (1996); and *Acebedo Optical Co.*

Inc. vs. Court of Appeals, 250 SCRA 409, 414 (1995).

[13] Agustin vs. Intermediate Appellate Court, 187 SCRA 218, 221 (1990).

[14] 109 Phils. 133, 135 citing: Payatas Estate Improvement Co. vs. Tuason, 53 Phil. 55 (1929).

[15] Id. at 136-137.

[16] Supra. Note 12 at 114-115 citing: Fige vs. Court of Appeals, 233 SCRA 586, 590 (1994) and Ledesma vs. Realubin and Court of Appeals, 118 Phil. 625, 629 (1963).

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