

C. N. HODGES, PLAINTIFF AND APPELLANT, VS. AMADOR D. GARCIA, DEFENDANT AND APPELLEE.*G.R. No. 12730. August 22, 1960*

Ponente: GUTIERREZ DAVID, J.

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This is an action filed with the Court of First Instance of Iloilo for the recovery of the possession of a portion of land designated as Lot No. 908-Q with an area of 5,931 square meters, which is alleged to have been separated from plaintiff's land by the "natural change" in the course of a river. The case having been decided adversely against the plaintiff, the latter appealed to the Court of Appeals. The court, however, certified the case to this Court on the ground that it was decided upon a stipulation of facts and for that reason questions of fact can no longer be raised on appeal.

It appears that the land in dispute was formerly a part of Lot No. 908 of the Cadastral Survey of Jaro, Iloilo, which lot was acquired by plaintiff C. N. Hodges from Salustiano Mirasol in January, 1950, and subsequently registered in his name as evidenced by Transfer Certificate of Title No. T-2504 issued by the Register of Deeds of Iloilo. This property was bounded on the north by the Salog River. Adjoining that river on the other side is Lot No. 2290, which was purchased by defendant Amador D. Garcia from Dr. Manuel Hechanova on April 15, 1950. On July 12 of that same year, defendant had the land he bought resurveyed. The survey plan disclosed that the land, which was originally surveyed in 1912 and was then bounded on the SE and SW by the Salog river, had increased in area by the river bank, and that the added area, which bounds the land on the SE and SW, is in turn bounded on the SE and SW by the Salog river. In due time, defendant applied for the registration of the additional area under the Land Registration Act, and on March 22, 1952, the cadastral court rendered a decision holding that the land sought to be registered is an accretion to Lot No. 2290 and decreeing that the land be registered in his name. On June 30, 1952, the corresponding Original Certificate of Title No. 0-229 was issued in favor of the defendant.

Plaintiff claims in these proceedings that the Salog river changed its course and that the land in dispute—which appears to be a portion of the area added to Lot No. 2290 as above mentioned—was separated from his Lot No. 908 by the current of the river, and the separation was abrupt, like in avulsion, so that under Art. 374 of the Civil Code (Art. 463 of the new) he retains ownership thereof. No evidence, however, was presented by plaintiff to show that the change in the course of the river was sudden or that it occurred through avulsion. In the absence of such evidence, the presumption is that the change was gradual and caused by accretion and erosion. (*Payatas Estate Improvement Co. vs. Tuason*, 53 Phil., 55.) In any event, it was agreed upon by the parties in open court that "from the year 1917 until the construction of the dike (in 1939) along the river * * *, the course of the Salog river, starting from the edge of lot 2290, gradually ate up the bank towards the side of the poblacion of Jaro and at the same time gradually deposited sediments towards the side of lot No. 2290;" that "when the defendant bought lot No. 2290 from Dr. Manuel Hechanova in 1950, he found out that there was an accretion along one side of said lot, as now shown on this plan, PSU-12743-A;" that "by virtue of such accretion towards lot 2290, the defendant applied for its registration under the Land Registration Act, and decision was on March 22, 1950 by the Court of

First Instance of Iloilo;" that "effectively, original certificate of title No. O-229, dated June 30, 1952, was issued to the defendant;" and that "because of the gradual deposit of sediments of the Salog River along Us land, lot 2290, the defendant has been in possession of said land since 1950 until now, while the plaintiff and his predecessors in interest since the gradual loss of lot No. 908-Q, covered by water, has never been in actual possession of the said lot." The foregoing facts have never been denied or contradicted by plaintiff, and they clearly show that the increase in area of Lot No. 2290 by the river bank was due to alluvion or accretions which it gradually received (from 1917 to 1939, or for a period of 22 years) from the effects of the current of the river.

It should here be stated that in the cadastral proceedings wherein the land object of this action was sought to be registered by herein defendant Amador D. Garcia, plaintiff C. N. Hodges did not file any opposition despite due publication of the notice of the application and hearing. The record also shows that the land now being claimed by plaintiff had been litigated in three civil cases. (Exhs. "4", "5" and "6".) In those cases, herein defendant was recognized as the owner of the land and held legally entitled to its possession. In fact, the land in question had been adjudged to be owned by him as an accretion to his lot No. 2290. (See exh. "6" decision of the Court of Appeals in Candelaria Efe, et al. vs. Amador D. Garcia, CA-G.R. No. 9306-R, October 28, 1952, Reyes, J. B. L., J., ponente.)

It clearly appearing that, the land in question has become part of defendant's estate as a result of accretion, it follows that said land now belongs to him. 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. (Payatas Estate Improvement Co. vs. Tuason, supra)

In view of the foregoing, the decision appealed from is affirmed, with costs against plaintiff-appellant.

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

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