

FAUSTINO IGNACIO, APPLICANT AND APPELLANT, VS. THE DIRECTOR OF LANDS AND LAUREANO VALERIANO, OPPOSITORS AND APPELLEES.

G.R. No. 12958. May 30, 1960

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Faustino Ignacio is appealing the decision of the Court of First Instance of Rizal, dismissing his application for the registration of a parcel of land.

On January 25, 1950, Ignacio filed an application for the registration of a parcel of land (mangrove), situated in barrio Gasac, Navotas, Rizal, with an area of 37,877 square meters. Later, he amended his application by alleging among others that he owned the parcel applied for by right of accretion. To the application, the Director of Lands, Laureano Valeriano and Domingo Gutierrez filed oppositions. Gutierrez later withdrew his opposition. The Director of Lands claimed the parcel applied for as a portion of the public domain, for the reason that neither the applicant nor his predecessor-in-interest possessed sufficient title thereto, not having acquired it either by composition title from the Spanish government or by possessory information title under the Royal Decree of February 13, 1894, and that he had not possessed the same openly, continuously and adversely under a bona fide claim of ownership since July 26, 1894. In his turn, Valeriano alleged that he was holding the land by virtue of a permit granted him by the Bureau of Fisheries, issued on January 13, 1947, and approved by the President.

It is not disputed that the land applied for adjoins a parcel owned by the applicant which he had acquired from the Government by virtue of a free patent title in 1936. It has also been established that the parcel in question was formed by accretion and alluvial deposits caused by the action of the Manila Bay which borders it on the southwest. Applicant Ignacio claims that he had occupied the land since 1935, planting it with api-api trees, and that his possession thereof had been continuous, adverse and public for a period of twenty years until said possession was disturbed by oppositor Valeriano.

On the other hand, the Director of Lands sought to prove that the parcel is foreshore land% covered by the ebb and flow of the tide and, therefore, formed part of the public domain.

After hearing, the trial court dismissed the application, holding that the parcel formed part of the public domain. In his appeal, Ignacio assigns the following errors:

"I. The lower court erred in holding that the land in question, altho an accretion to the land of the applicant-appellant, does not belong to him but forms part of the public domain.

"II. Granting that the land in question forms part of the public domain, the lower court nevertheless erred in not declaring the same to be the property of the applicant-appellant, the said land not being necessary for any public use or purpose and in not ordering at the same time its registration in the name of applicant-appellant in the present registration proceedings.

"III. The lower court erred in not holding that the land in question now belongs to the applicant-appellant by virtue of acquisitive prescription, the said land having ceased to be of the public domain and became the private or patrimonial property of the State.

"IV. The lower court erred in not holding that the oppositor Director of Lands is now in estoppel from claiming the land in question as a land of the public domain."

Appellant contends that the parcel belongs to him by the law of accretion, having been formed by gradual deposit inaction of the Manila Bay, and he cites Article 457 of the New Civil Code (Article 366, Old Civil Code), which provides that:

"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."

The article cited is clearly inapplicable because it refers to accretion or deposits on the banks of rivers, while the accretion in the present case was caused by action of the Manila Bay.

Appellant next contends that Articles 1, 4 and 5 of the Law of Waters are not applicable because they refer to accretions formed by the sea, and that Manila Bay cannot be considered as a sea. We find said contention untenable. A bay is a part of the sea, being a mere indentation of the same:

"Bay.—An opening into the land where the water is shut in on all sides except at the entrance; an inlet of the sea; an arm of the sea, distinct from a river, a bending or curbing of the shore of the sea or of a lake." 7 C.J. 1013-1014 (Cited in Francisco, Philippine Law of Waters and Water Rights p. 6)

Moreover, this Tribunal has in some cases applied the Law of Waters on Lands bordering Manila Bay. (See the cases of *Ker & Co. vs. Cauden*, 6 Phil., 732, involving a parcel of land bounded on the sides by Manila Bay, where it was held that such land formed by the action of the sea is property of the State; *Francisco vs. Government of the P.I.*, 28 Phil., 505, involving a land claimed by a private person and subject to the ebb and flow of the tides of the Manila Bay).

Then the applicant argues that granting that the land in question formed part of the public domain, having been gained from the sea, the trial court should have declared the same no longer necessary for any public use or purpose, and therefore, became disposable and available for private ownership. Article 4 of the Law of Waters of 1866 reads thus:

"Art. 4. Lands added to the shores by accretions and alluvial deposits caused by the action of the sea, form part of the public domain. When they are no longer washed by the waters of the sea and are not necessary for purposes of public utility, or for the establishment of special industries, or for the coastguard service, the Government shall declare them to be the property of the owners of the estates adjacent thereto and as increment thereof."

Interpreting Article 4 of the Law of Waters of 1866, in the case of *Natividad vs. Director of Lands*, (CA) 37 Off. Gaz., 2905, it was there held that:

"Article 4 of the Law of Waters of 1866 provides that when a portion of the shore is no longer washed by the waters of the sea and is not necessary for purposes of public utility, or for the establishment of special industries, or for coastguard service, the government shall declare it to be the property of the owners of the estates adjacent thereto and as an increment thereof. We believe that only the executive and possibly the legislative departments have the authority and the power to make the declaration that any land so gained by the sea, is not necessary for purposes of public utility, or for the establishment of special industries, or for coast-guard service. If no such declaration has been made by said departments, the lot in question forms part of the public domain." (*Natividad vs. Director of Lands*, supra.)

The reason for this pronouncement, according to this Tribunal in the case of *Vicente Joven y Monteverde vs. Director of Lands*, 93 Phil., 134, (cited in *Velayo's Digest*, Vol. I, p. 52).

"* * * is undoubtedly that the courts are neither primarily called upon, nor indeed in a position to determine whether any public land are to be used for the purposes specified in Article 4 of the Law of Waters."

Consequently, until a formal declaration on the part of the Government, through the executive department or the Legislature, to the effect that the land in question is no longer needed for coast guard service, for public use or for special industries, they continue to be part of the public domain, not available for private appropriation or ownership.

Appellant next contends that he had acquired the parcel in question through acquisitive prescription, having possessed the same for over ten years. In answer, suffice it to say that land of the public domain is not subject to ordinary prescription. In the case of *Insular Government vs. Aldecoa & Co.*, 19 Phil., 505, this Court said:

"The occupation or material possession of any land formed upon the shore by accretion, without previous permission from the proper authorities, although the occupant may have held the same as owner for seventeen years and constructed a wharf on the land, is illegal and is a mere detainer, inasmuch as such land is outside of the sphere of commerce; it pertains to the national domain; it is intended for public uses and for the benefit of those who live nearby."

We deem it unnecessary to discuss the other points raised in the appeal.

In view of the foregoing, the appealed decision is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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