

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT AND APPELLANT, VS. CONSORCIA CABAÑGIS ET AL., CLAIMANTS AND APPELLEES.

G.R. No. 28379, March 27, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The Government of the Philippine Islands appeals to the court from the judgment of the Court of First Instance of Manila in cadastral proceeding No. 373 of the Court of First Instance of Manila, G. L. R. O. Cadastral Record No. 373, adjudicating the title and decreeing the registration of lots Nos. 36, 39 and 40, block 3055 of the cadastral survey of the City of Manila in favor of Consuelo, Consorcia, Elvira and Tomas, surnamed Cabañgis, in equal parts and dismissing the claims presented by the Government of the Philippine Islands and the City of Manila.

In support of its appeal, the appellant assigns the following alleged errors as committed by the trial court in its judgment, to wit:

"1. The lower court erred in not holding that the lot in question are of the public domain, the same having been gained from the sea (Manila Bay) by accession, by filling made by the Bureau of Public Works and by the construction of the break-water (built by the Bureau of Navigation near the mouth of Vitas Estero.

"2. The lower court erred in holding that the lots in question formed part of the big parcel of land belonging to the spouses Maximo Cabañgis and Tita Andres, and holding that these spouses and their successors in interest have been in continuous, public, peaceful, and uninterrupted possession of said lots up to the time this case came up.

"3. The lower court erred in holding that said lots existed before, but that due to the current of the Pasig River and to the action of the big waves in Manila Bay during southwest monsoons, the same disappeared.

"4. The lower court erred in adjudicating the registration of the lands in question in the name of the appellees, in denying the appellant's motion for a new trial."

A preponderance of the evidence in the record which may properly be taken into consideration in deciding the case, proves the following facts:

Lots 36, 39 and 40, block 3035 of cadastral proceeding No. 71 of the City of Manila, G. L. R. O. Record No. 373, were formerly a part of a large parcel of land belonging to the predecessor of the herein claimants and appellees. From the year 1896 said land began to wear away, due to the action of the waves of Manila Bay, until the year 1901 when the said lots became completely submerged in water in ordinary tides, and remained in such a state until 1912 when the Government undertook the dredging of Vitas Estuary in order to facilitate navigation, depositing all the sand and silt taken from the bed of the estuary on the lands which were completely covered with water, surrounding that belonging to the Philippine Manufacturing Company, thereby slowly and gradually forming the lots, the subject matter of this proceeding.

Up to the month of February, 1927 nobody had declared lot 39 for the purposes of taxation, and it was only in the year 1926 that Dr. Pedro Gil, in behalf of the claimants and appellees, declared lot No. 40 for such purpose.

In view of the facts just stated, as proved by a preponderance of the evidence, the question arises: Who owns lots 6, 39 and 40 in question?

The claimants-appellees contend that inasmuch as the aid lots once formed a part of a large parcel of land belonging to their predecessors, whom they succeeded, and heir immediate predecessor in interest, Tomas Cabañgis, having taken possession thereof as soon as they were reclaimed, giving his permission to some fishermen to dry their fishing nets and deposit their bancas thereon, said lots belong to them.

Article 339, subsection 1, of the Civil Code, reads:

"Art. 339. Property of public ownership is—

"1. That devoted to public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, riverbanks, shores, roadsteads, and that of a similar character."

* * * * *

Article 1, case 3, of the Law of Waters of August 3, 1866, provides as follows:

"ARTICLE 1. The following are part of the national domain open to public use:

"3. The Shores. By the shore is understood that space covered and uncovered by the movement of the tide. Its interior or terrestrial limit is the line reached by the highest equinoctial tides. Where the tides are not appreciable, the shore begins on the land side at the line reached by the sea during ordinary storms or tempests."

In the case of *Aragon vs. Insular Government* (19 Phil., 223), with reference to article 339 of the Civil Code just quoted, this court said:

"We should not be understood, by this decision, to hold that in a case of gradual encroachment or erosion by the ebb and flow of the tide, private property may not become 'property of public ownership,' as defined in article 339 of the code, where it appears that the owner has to all intents and purposes abandoned it and permitted it to be totally destroyed, so as to become a part of the 'playa' (shore of the sea), 'rada' (roadstead), or the like. * * *"

In the *Enciclopedia Juridica Española*, volume XII, page 558, we read the following:

"With relative frequency the opposite phenomenon occurs; that is, the sea advances and private properties are permanently invaded by the waves, and in this case they become part of the shore or beach. They then pass to the public domain, but the owner thus dispossessed does not retain any right to the natural products resulting from their new nature; it is a de facto case of eminent domain, id not subject to indemnity."

Now then, when said land was reclaimed, did the claimants-appellees or their predecessors recover it as their original property?

As we have seen, the land belonging to the predecessors the herein claimants-appellees began to wear away in 1896, owing to the gradual erosion caused by the ebb and flow of the tide, until the year 1901, when the waters Manila Bay completely submerged a portion of it, included within lots 36, 39 and 40 here in question, remaining us under water until reclaimed as a result of certain work done by the Government in 1912. According to the above-cited authorities said portion of land, that is, lots 36, 39 and 40, which was private property, became a part of the public domain. The predecessors of the herein claimants-appellees could have protected their land by

building a retaining wall, with the consent of competent authority, in 1896 when the waters of the sea began to wear it away, in accordance with the provisions of article 29 of the aforesaid Law of Waters of August 3, 1866, and their failure to do so until 1901, when a portion of the same became completely covered by said waters, remaining thus submerged until 1912, constitutes abandonment.

Now then: The lots under discussion having been reclaimed from the sea as a result of certain work done by the Government, to whom do they belong?

The answer to this question is found in article 5 of the aforementioned Law of Waters, which is as follows:

"ART. 5. Lands reclaimed from the sea in consequence works constructed by the State, or by the provinces, pueblos, or private persons, with proper permission, shall become the property of the party constructing such works, unless otherwise provided by the terms of the grant of authority."

The fact that from 1912 some fishermen had been drying their fishing nets and depositing their bancas on lots 36, 39 and 40, by permission of Tomas Cabañgis, does not confer on the latter or his successors the ownership of said lots, because, as they were converted into public land, no private person could acquire title thereto except in the form and manner established by the law.

In the case of *Buzon vs. Insular Government and City of Manila* (13 Phil., 324), cited by the claimants-appellees, this court, admitting the findings and holdings of the lower court, said the following:

"If we heed the parol evidence, we find that the seashore was formerly about one hundred brazas distant from the land in question; that, in the course of time, and by the removal of a considerable quantity of sand from the shore at the back of the land for the use of the street car company in filling in Calle Cervantes, the sea water in ordinary tides now covers part of the land described in the petition.

"The fact that certain land, not the bed of a river or of the sea, is covered by sea water during the period of ordinary high tide, is not a reason established by any law to cause the loss thereof, especially when, as in the present case, it becomes covered by water owing to circumstances entirely independent of the will of the owner."

In the case of *Director of Lands vs. Aguilar* (G. R. No. 22034),^[1] also cited by the claimants-appellees, wherein the Government adduced no evidence in support of its contention, the lower court said in part:

"The contention of the claimants Cabañgis is to the effect that said lots are a part of the adjoining land adjudicated to their deceased father, Don Tomas Cabañgis, which, for over fifty years had belonged to their deceased grandmother, Tita Andres, and that, due to certain improvements made in Manila Bay, the waters of the sea covered a large part of the lots herein claimed.

"The Government of the Philippine Islands also claims the ownership of said lots, because, at ordinary high tide, they are covered by the sea.

"Upon petition of the parties, the lower court made an ocular inspection of said lots on September 12, 1923, and on said inspection found some light material houses built hereon, and that on that occasion the waters of the sea did not reach the aforesaid lots.

"From the evidence adduced at the trial of this cause may be inferred that Tita Andres, during her lifetime, was the owner of a rather large parcel of land which was adjudicated by a decree to her son Tomas Cabañgis; the lots now in question are contiguous to that land and were covered by the waters of the sea at extraordinary high tide; some 50 years before the sea did not reach said strip of land, and on it were constructed, for the most part, light material houses, occupied by the tenants of Tita Andres, to whom they paid rent. Upon her death, her son Tomas Cabañgis succeeded to the possession, and his children succeeded him, they being the present claimants, Consuelo, Jesus, Tomas, and Consorcia Cabañgis.

"The Government of the Philippine Islands did not adduce any evidence in support of its contention, with the exception of registry record No. 8147, to show that the lots here in question were not excluded from the application (resented in said proceeding.)"

It will be seen that in the case of *Buzon vs. Insular Government and City of Manila*, cited above, the rise of the waters of the sea that covered the lands there in dispute, was due not to the action of the tide but to the fact that a large quantity of sand was taken from the sea at the side of said land in order to fill in Cervantes Street, and this court properly held that because of this act, entirely independent of the will of the owner of said land, the latter should not lose the ownership thereof, and the mere fact that the waters of the sea covered it as a result of said act, is not sufficient to convert it into public land, especially, as the land was high and appropriate for building purposes.

In the case of the *Director of Lands vs. Aguilar* also cited by the claimants-appellees, the Insular Government did not present any evidence in support of its contention, thus leaving uncontradicted the evidence adduced by the claimants Aguilar et al., as to the ownership, possession and occupation of said lots.

In the instant case the evidence shows that from 1896, the waves of Manila Bay had been gradually and constantly washing away the sand that formed the lots here in question, until 1901, when the sea water completely covered them, and thus they remained until the year 1912. In the latter year they were reclaimed from the sea by filling in with sand and silt extracted from the bed of Vitas Estuary when the Government dredged said estuary in order to facilitate navigation. Neither the herein claimants-appellees nor their predecessors did anything to prevent their destruction.

In conclusion, then, we hold that the lots in question having disappeared on account of the gradual erosion due to the ebb and flow of the tide, and having remained in such a state until they were reclaimed from the sea by the filling in done by the Government, they are public land. (*Aragon vs. Insular Government*, 19 Phil., 223; *Francisco vs. Government of the Philippine Islands*, 28 Phil., 505.)

By virtue whereof, the judgment appealed from is reversed and lots Nos. 36, 39 and 40 of cadastral proceeding No. 373 of the City of Manila are held to be public land belonging to the Government of the United States under the administration and control of the Government of the Philippine Islands. So ordered.

Johnson, Street, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

[1] Promulgated October 23, 1924, not reported.

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