

PAYATAS ESTATE IMPROVEMENT CO., PETITIONER AND APPELLANT, VS. MARIANO TUASON, AUGUSTO TUASON ET AL., OPPOSITORS AND APPELLEES.

G.R. No. 30067. March 23, 1929

Ponente: OSTRAND, J.

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OSTRAND, J.:

Maria de la Concepcion Martinez Caiias was originally the owner of the so-called Payatas estate, the principal part of which was bounded on the east by the Mariquina River. The so-called Mariquina estate adjoined the river on the other side and belonged to the Tuasons.

In 1904, shortly after the initiation of the Torrens system of land registration, Maria de la Concepcion Caiias had the property surveyed and obtained a certificate of title to the same. Later on, the land, consisting of three parcels, A, B and C, was sold by her to the Payatas Estate Improvement Company. In 1920 another survey was made for subdivision purposes, and on October 15, 1924, the subdivision plans were submitted to the Court of First Instance of Rizal for approval. In the motion accompanying the plans, it was stated:

"1. That as shown by the transfer certificate of title No. 8691 issued by the register of deeds of Rizal, Philippine Islands, said company (the Payatas Estate Improvement Company) is the owner of the hacienda, known under the name of 'Payatas,' situated in the municipality of San Mateo and Montalban of said province.

"2. That in 1920 and 1921 said hacienda was surveyed by the surveyor Salvador N. Tolentino, dividing it in two parcels, the first portion being subdivided in 124 lots according to plan P. S. U. 24733, and the second portion being subdivided in 149 lots according to plan P. S. U. 32686. Both plans had already been approved by the Director of Lands."

Before action on the motion was taken by the court, the plans were submitted to the General Land Registration Office for examination. After such examination, attention was called to the fact that the rivers, esteros, roads and some portions of land—which were within the original plan had been excluded and that the total area of the land included in the subdivision plans was only 4,839 hectares, 88 ares and 3 centares instead of 5,122 hectares, 84 ares and 35 centares as shown by the plan upon which the original decree was issued. The surveyor who prepared the plans explained that the difference in area was due "(1) to his conforming to the adjoining decreed old surveys, (2) to the exclusion of rivers and creeks inside the estate, and (3) to the erosion on the bank of Montalban-San Mateo river before the new survey, P. S. U. 24733, was executed."

On October 25, 1924, the Payatas Estate Improvement Company filed another motion in which it asked that transfer certificate of title No. 8691 be cancelled as to parcels A and C but not in regard to parcel B, the latter not being included in the subdivision. Two days later, the Court of First Instance approved the subdivision and gave instructions to the register of deeds in accordance with the Improvement Company's last motion.

The register of deeds complied fully with the order of the court, and certificates of title were issued accordingly, but on March 18, 1925, the Payatas Estate Improvement Company filed another motion alleging that the area of

the subdivided land, parcels A and C, together with parcel B, did not include all the land to which the company was entitled and which was included in the plan Exhibit A upon which the final decree was issued in 1905. The motion was accompanied by a plan (P. S. U. 45292) of two strips of land situated along the eastern side of the Mariquina River and embracing a little over 22 hectares, and the company asked that a certificate of title be issued in its favor in accordance with that plan.

The motion was opposed by the Tuasons and after hearing, the court below denied it, principally on the ground that a motion in the land registration record was not the proper action in a case such as this. From this order the Payatas Estate Improvement Company appealed.

The controversy in the present case seems to be due to the erroneous conception that article 366 of the Civil Code does not apply to Torrens registered land. That article provides that "any accretions which the banks of rivers may gradually receive from the effect of the current belong to the owners of the estates bordering thereon." Accretions of that character are natural incidents to land bordering on running streams and are not affected by the registration laws. It follows that registration does not protect the riparian owner against diminution of the area of his land through gradual changes in the course of the adjoining stream.

At the points where the land now in question is situated, the Mariquina River separates the Payatas estate from the Mariquina estate and constitutes the boundary between the two estates. According to plan P. S. U. 45292, the river has changed its course to the prejudice of the Payatas estate on the western side of the stream and to the benefit of the Mariquina estate by increasing the latter's area, and the 22 hectares now in controversy which formerly were on the Payatas side of the river are now on the Mariquina estate side. Assuming this to be true—and it will not be denied by the appellant—the case reduces itself to the question whether the change in the course of the river was caused by accretion and erosion or whether it had occurred through avulsion. There is no direct evidence on this point, but according to the decision of this court in the case of *Martinez Canas vs. Tuason* (5 Phil., 688), the presumption is that the change was gradual and caused by erosion of the Payatas bank of the river and consequent accretion to the Mariquina estate. It follows that the land in question is now a part of that estate and no longer pertains to the Payatas estate.

We may say in passing that the *Martinez Canas vs. Tuason* case was also a boundary dispute between the owners of the two estates, in which dispute the Tuasons claimed 30 hectares of land which had been shifted over to the Payatas estate side of the Mariquina River. Though the evidence for the owners of the Mariquina estate was much stronger than that for the owner of the Payatas estate in the present case, this court, nevertheless, held that the owner of the Payatas estate had acquired title to the land by accretion.

We cannot quite agree with the court below that the matter before us may not be properly dealt with and determined under section 112 of the Land Registration Act; that section covers a wide range and undoubtedly embraces questions such as those raised in this case. That, however, does not necessarily mean that said questions might not also have been ventilated in a separate action.

For the reasons stated, the motion in question is denied, and it is declared that the land in dispute is now an integral part of the aforesaid Mariquina estate. The appellant will pay the costs of this instance. So ordered.

Johnson, Street, Johns, Romualdez, and Villa-Real, JJ., concur.

MALCOLM, J.:

My vote is to affirm the order appealed from in its result.

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