

ROMAN ROSARIO, PLAINTIFF AND APPELLEE, VS. EL MUNICIPIO DE SAN CARLOS, DEFENDANT AND APPELLANT.

G. R. No. 34819. December 16, 1931

Ponente: OSTRAND, J.

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OSTRAND, J.:

This action was, brought in the Court of First Instance of Pangasinan for the recovery of a strip of land in the municipality of San Carlos, Pangasinan, and described in the complaint.

On June 16, 1927, the defendant municipality ordered and in fact opened an alley on the land of the plaintiff herein situated at the barrio of Turac, within the municipality of San Carlos. The said alley embraces an area 210 meters long and 3 1/2 meters wide. By reason of the opening of the alley, 17 coconut trees died, and plaintiff was deprived of the enjoyment of the land, hence the present action.

The defendant municipality presented no evidence what-so-ever, but simply presented a motion for dismissal on the ground that the allegations in the complaint have not been proved by the plaintiff.

Upon trial the court below found from the evidence adduced by the plaintiff that the land traversed by the alley in question is a property of the plaintiff and that there never was a public alley running across the land; that on June 16, 1927, the defendant municipality ordered the opening of the alley without any authority whatsoever, and this was done against the protest of the plaintiff; that since that time up to the present, the said alley has been existing and is being used by the public, much to the prejudice of the plaintiff. The court below also found that 17 coconut trees valued at P170, which were growing on the land in question, died in consequence of the opening of said alley; and that the plaintiff was further deprived of the enjoyment of the land for two agricultural years, that is, 1927-1928 and 1928-1929 for, due to the existence of the alley, he could not at all plant anything on the land; and that previous to the opening of the alley, the annual crops obtained by the plaintiff from the land were two bitis of palay valued at P20 and tomatoes valued at P20. In other words, his annual production from the land in question was worth P40. As a result, the trial Judge held that the plaintiff suffered damages in the amount of P250 representing the value of the coconut trees and the palay and tomato crops which the plaintiff was not able to produce from the land.

After trial the court below ordered the defendant municipality to immediately deliver to the plaintiff the possession of the land in question and pay the plaintiff damages in the sum of P250, with costs. From that judgment the defendant appealed to this court.

Upon careful examination of the record, we cannot find any error in the appreciations of the court below. The assignments of error are not worthy of any further discussion.

The judgment appealed from is affirmed, with costs against defendant.

Ten days after the promulgation of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

It is so ordered.

Avanceña, C. J., Johnson, Villamor, and Villa-Real, JJ., concur.

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