

VICTOR SANCHEZ, PLAINTIFF AND APPELLANT, VS. CIRILO PASCUAL, DEFENDANT AND APPELLEE.

G.R. No. 3551. October 06, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

From the appeal interposed by the plaintiff in this case, from the judgment of the Court of First Instance of Ilocos Norte wherein his complaint was dismissed, it appears:

(1) That the plaintiff, Victor Sanchez, filed a complaint on the 14th of April, 1905, setting forth—

"That seven years previously the southern portion of an orchard that he cultivated in the sitio of Roeng, town of Laoag, in the Province of Ilocos Norte, was destroyed by reason of the Eiver Laoag changing its course and covering an extension of 748 meters of the said portion of his orchard; but that four years ago the river again changed its course, and the plaintiff again cultivated that portion of his orchard which had been occupied by the river; notwithstanding this, the defendant appropriated to himself the said portion."

(2) That in his reply the defendant states that, long before the river had occupied the locality shown by the plaintiff, the defendant had possession of the orchard which is the subject of the complaint, and that he grew mongos and other useful plants thereon, peacefully enjoying the usufruct thereof with the knowledge of the plaintiff, who did not offer the least objection. By this affirmation the identity of the thing claimed is established.

(3) That both parties presented witnesses, principally in order to determine the present location of that portion of the orchard in question, of the river that formerly occupied the same and that has now taken another course, and of the land of the defendant adjoining the river in its present course.

From all of the above evidence the following is fully proven: (1) The location of the land in question, which is on the north, side of the Laoag River as it flows at present; (2) the situation of the river, which is on the south of the land in question; and (3) the location, of the land of the defendant, which is on the south side of the river.

Three of the plaintiff's witnesses, Bemigio Nicolas, Manuel Daguro, and Marcelo Roya, declare that the land in controversy is bounded on the south side by the river; one of the witnesses of the defendant testifies to the same effect, and the defendant has set forth the same thing on folio 4 of his brief presented to this court. Hence, it has been proven that what exists on the north side of the river is the land in controversy, and that at the present time on the south side of said land is the river. And on the north side there is no land belonging to the defendant as the latter's attorney appears to intimate in his brief.

As to the third fact, the most important in this question, the defendant's attorney cross-examined the witnesses of the plaintiff as follows:

To Bemigio Nicolas—

"Q. Is it not true that the orchard on the south side of the river, right in front of the orchard in question, is the

property of the defendant?—A. I do not know, sir.

"Q. Is it not true that two or three years ago, more or less, the river crossed the space lying between the orchard in question and the defendant's orchard?—A. Yes, sir."

To Castor Matias—

"Q. Is it not true that the space between the orchard in question and that of Cirilo Pascual, where the river now runs, formed a part of the orchard of the said Cirilo?—A. Yes, sir.

"Q. Is it not true that when the river left its former course each one of you took up a portion of the land that the said river had left?—A. Yes, sir; marking the limits of Our respective properties."

This cross-examination conclusively proves that, when the Laoag River abandoned the orchard in question, it occupied a portion of the defendant's orchard; the rest of the same being left on the south side of the river.

Another witness of the plaintiff, in reply to direct questions stated "that two years ago the defendant took the land in question, and that the defendant possesses another orchard on the south side of the river, directly in front of the orchard in controversy."

Furthermore, Zacarias Fernando, a witness for the defendant, being asked on cross-examination if it were not true that Cirilo Pascual is the owner of the land opposite the one in question on the other side of the river, answered in the affirmative,

Another witness of the defendant, Clavino Pascual, declares that the latter owns land in San Banior and on the south side of the river, right in front of the property in question, and that it is on the opposite side.

From all of the above proofs it is evident that, at the present time, the Laoag River runs between the orchard in controversy and that of the defendant, its bed being a portion of the orchard of the defendant according to some witnesses, and denied by others.

The real question involved in this suit is that set up in the brief of the appellant on folio 6 of the record:

"To whom should belong the space abandoned by a river through a change in the course of its waters?" the answer is that given as a first premise in the brief of the defendant, citing article 370 of the Civil Code: "It should belong to the owners of the riparian lands throughout their respective lengths."

But it is evident that the defendant is not one of the said riparian proprietors, inasmuch as he is on the opposite side of the abandoned river bed, the river in its present course now running between the latter and his estate.

The statement contained in the same brief that "the record shows that the Laoag River traversed the estate of Cirilo Pascual, dividing it into two parts, north and south, and that therefore Cirilo is at least the owner of a small portion to the north of said land," is controverted by the transcribed testimony of the witnesses of both parties, in which it is explicitly set forth that Cirilo Pascual's orchard is situated on the side opposite that on which the orchard in controversy is located, and runs parallel therewith, the river flowing between. This situation is described by the attorney for the appellee on cross-examination as "directly in front of the orchard in question" and by his witness Gavino Pascual as "on the south side of the river, directly in front of the one in question, and is on the opposite side." Consequently, he is not the owner of the lands bordering upon the north side of the river and as such entitled to participate in the old river bed now situated on the north side of the river.

In view of the evidence and of the provisions of article 370 of the Civil Code, a decision in favor of the defendant can not be sustained; hence, the judgment appealed from should be reversed.

But in order to decide the claims of the plaintiff appellant, this court proceeds to a consideration of other facts

contained in the record.

It is stated in the complaint that twenty-three years ago the plaintiff was in possession of an orchard 1,408 meters in extend and that a portion thereof, about 748 meters, was occupied by the Laoag River seven years previously, and that the same was abandoned by said river about four years before the filing of the complaint; that the said land is bounded on the south by the Laoag River; that said portion of land which is now dry, owing to the fact that the Laoag River changed its course, was again cultivated by the plaintiff, and that, in October, 1904, the defendant took possession of the same.

Witnesses being presented by the plaintiff, Remigio Nicolas testified that the latter possessed the orchard in question ever since he was eighteen years of age; Castor Matias declares that the orchard belongs to the plaintiff because ever since he inherited it from his father he has always cultivated it, and that not the whole of it is now in his possession, but only, a small portion on the north side, because the defendant appropriated to himself the southern portion of said orchard ; that the defendant had already twice planted the said southern portion, and had fenced it in. On cross-examination, he stated that the adjoining owners on the north were the witness himself, Manuel Daguro, and another whose name he did not recall ; that the river bed for many years was within the orchards now standing on the north side of the river, and that when the river abandoned said course, each of them took his share of the land that the river had left, and defined his respective estates. Manuel Daguro testifies that he knows that the orchard belongs to the plaintiff, because he is one of the adjoining owners on the north side, and that at the present time the plaintiff is not in possession of all the property but only of a portion thereof to the north, because the defendant appropriated to himself the rest on the southern side two years ago, although the latter had no land except on the side of the river directly opposite the land in question. Marcelo Royas states that the boundaries of the plaintiff's orchard are: On the south, the river and on the north, the lands of Castor Matias and Manuel Daguro.

The following facts have been sufficiently proven: (1) That the land now claimed was originally and for a long time in the possession of the plaintiff; (2) that the said portion was occupied by the Laoag River; and (3) that when the Laoag River abandoned the land, instead of reverting to the former owner, the plaintiff, it was occupied by the defendant.

It is a principle of law that, the plaintiff being the proprietor of land along the north bank of a river, if the river through inundation shifts its course to the south, he becomes the owner of the abandoned river bed although he was not previously in possession thereof, following the provisions of article 370 of the Civil Code.

In view of the foregoing, the judgment appealed from is hereby reversed, and we hold that the land along the border of that which still remains in the plaintiff's possession, which was seized by the defendant, is the property of Victor Sanchez, and therefore Cirilo Pascual is hereby ordered to deliver to Victor Sanchez the land seized by him and to pay the costs of the first instance. And it is further held that, inasmuch as the losses claimed to have been sustained have not been proven, the defendant can not be sentenced to pay them nor the costs of the second instance. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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