

THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. TOMAS CABANGIS, DEFENDANT AND APPELLANT.*G.R. No. 3898. February 18, 1908*

Ponente: CARSON, J.

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The plaintiff in this action alleges that the defendant on or about January 1, 1902, obstructed the course of a public navigable river, estero, or waterway, known as Sunog-Apog, situate in Gagalangin, district of Tondo, Manila; that at that time the said defendant took possession of the said river or estero, and converted it into a private pesqueria (fishing pond) ; and that he continued in possession of the said river, estero, or waterway up to the time of the filing of the complaint. The plaintiff claims the right of possession and control of the said river, estero, or waterway, and prays for judgment of possession, together with damages for the alleged unlawful occupation, and further that the defendant be required to remove the obstructions placed by him in the said river, estero, or waterway.

The defendant denies the existence now or heretofore of any open public river, estero, or waterway known as Sunog-Apog in the said district of Gagalangin, or that the city of Manila has now or ever did have the right to the possession or control of any such river, estero, or waterway; the defendant further alleges that the subject-matter of the litigation forms an integral part of the Island of Balot purchased by his forefathers from the Augustinian Order on December 9, 1871, and that it has been in the continuous and peaceable control of himself and his predecessors in interest since that time.

The defendant being in possession of the property, in order that recovery of possession and control may be had by the plaintiff, the burden of proof is on the plaintiff to establish by competent evidence (1) the existence at one time of an open, public, and navigable river, estero, or waterway known as Sunog-Apog; (2) that such estero, river, or waterway or the bed thereof is now in the possession of the defendant, and that, by reason of the unlawful establishment of a pesqueria, the defendant has obstructed and continues to obstruct navigation and passage along the said river, estero, or waterway; (3) that the bed of such river, estero, or waterway is now included within the jurisdictional limits of the city of Manila.

The trial court was of opinion that the evidence of record sustains an affirmative finding as to each of these facts, and that the defendant had failed to sustain his allegations of ownership or of prescriptive rights in the said fishery, and rendered judgment accordingly in favor of the plaintiff.

Counsel for the appellant submits the following assignment of errors, which he alleges were committed by the trial court in the course of its proceedings:

- The court erred in admitting in evidence Exhibit B.
- The court erred in admitting in evidence Exhibit C.
- The court erred in admitting in evidence Exhibits D, E, and F.

- The court erred in admitting in evidence Exhibit G.
- The court erred in finding that there ever existed an open, public, navigable estero, or rio, called Sunog-Apog.
- The court erred in finding that such estero, or rio, was within the jurisdiction of the old Ayuntamiento de Manila, and is now within the jurisdiction of the city of Manila.
- The court erred in finding that such rio, or estero, occupied the site of an existing pesqueria of the defendant.
- The court erred in finding that the defendant, Tomas Oabangis, had obstructed such rio, or estero, by the construction of a pesqueria.
- 9. The court erred in holding that the burden of proof rested upon the defendant to show that there never existed a Rio Sunog-Apog, and, if it did exist, to show it was not of common and public use.
- The court erred in holding that Exhibits 1, 2, 3, and 4 did not show title in the defendant to the site designated by plaintiff's attorney and the, city engineer as constituting the former bed of the Rio Sunog-Apog.
- The court erred in holding that prescriptive title had not been acquired by the defendant to the site designated by the plaintiff's attorney and the city engineer as being the bed of the former Rio Sunog-Apog.

Exhibits B and C purport to be maps of the section of the city of Manila wherein the fisheries in question are situated. They were offered in evidence to show (1) the existence and location of the bed of the River Sunog-Apog and (2) the existence and location of the fisheries of the defendant.

Taken together with the testimony of the city engineer, who testified as to their accuracy, and the admissions of the defendant as to the existence and location of his fisheries, we think these maps were properly admitted in evidence to show the location of the subject-matter in litigation by reference to the Hay of Manila, and the Rivers Maypajo and Vitas, whose existence and identity have never been questioned; they were, however, wholly incompetent as evidence of the existence or location of the River Sunog-Apog, or as evidence as to the disputed fact that the subject-matter in litigation is within the jurisdictional limits of the city of Manila. The plaintiff failed to establish the authenticity of these maps as maps of territory included within the jurisdiction of the present city of Manila (*City of Manila vs. Rosario*, 5 Phil. Rep., 227); and the evidence shows that the "former bed of the River Sunog-Apog," which appears on one of these maps, was placed there by one of the engineers of the city of Manila at a time when, according to the allegations of the complaint, the territory in question was in the possession of the defendant and used as a fishery, and neither the authority of the engineer so to do nor the source of his information are disclosed in the record. These maps, therefore, so far as they purport to establish the existence and location of the Sunog-Apog River, are no more than an expression of opinion of the engineer who prepared them, unsupported by evidence as to the grounds upon which his opinion was based.

It is not quite clear from the record whether these maps were finally admitted as evidence as to the existence and location of the Rio Sunog-Apog, but granting that they were, we think their admission for the purpose indicated would not constitute reversible error, because the fact that the fisheries in question are within the jurisdictional limits of the city of Manila and occupy the bed of a former river, estero or waterway known as the Sunog-Apog, in proof of which these maps were offered in evidence, is sufficiently established by other evidence of record.

Exhibits D, E, and F are photographs of a part of the fisheries of the defendant, which are alleged to occupy the bed of the former river, estero, or waterway known as Sunog-Apog. It is a constant practice of courts to receive as evidence pictures, drawings, and photographs of objects which can not be brought into court, upon proof of their exactness and accuracy as representations of the original subject. (*Jones on Evidence*, vol. 2, sec. 597.) He has been held that photographs may be introduced to show the appearance of any place which might be properly

viewed by the jury, where such a view by the jury is impossible or impracticable (*Omaha S. Ry. Co. vs. Beeson*, 36 Nebraska, 361; see also *People vs. Buddensieck*, 103 N. V., 487 I, and since in all cases this court may be called upon to review the evidence taken in the court below, we think that in this jurisdiction photographs of any place which may properly be viewed by the trial court should be admitted in the record upon proper proof of their exactness and accuracy, as appropriate aids in applying the evidence as it appears of record. Satisfactory testimony was introduced as to the accuracy and exactness of these photographs and the conditions under which they were taken, and we are of opinion that they were properly admitted in evidence.

Exhibit G is a letter from the defendant to the attorney for the plaintiff wherein the defendant admits that the pesquerias in question, which the plaintiff alleges were unlawfully constructed on the bed of a river, estero or waterway known as Sunog-Apog, are located within the boundary lines of the city of Manila. This admission was made in the course of an offer to compromise, and the letter was manifestly inadmissible as evidence against the defendant over his objection. It appears, however, that the defendant made no objection when it was offered and admitted in evidence, although he testified at some length with reference thereto. He can not, therefore, be heard on appeal to assign the admission as reversible error.

The remaining assignments of error, except assignment No. 9, are directed to the findings of fact by the trial court. The evidence was conflicting and in some respects not satisfactory, but we think, upon a review of the whole record, we would not be justified in holding that the findings of the trial court are not sustained by the weight of the evidence, save only the finding that the River Sunog Apog, upon which the defendant's fisheries are located was the property of the Ayuntamiento de Manila, and is to-day the property of the city of Manila. No evidence was introduced to support this finding, the mere fact that it lies within the jurisdictional limits of that city not being sufficient of itself to establish such right of property. Nevertheless this erroneous finding by the trial court should not and does not affect the judgment in favor of the plaintiff for the possession and control of the property in question, and requiring the defendant to remove the obstructions placed therein, since the evidence of record sustains the finding of the court as to the existence within the jurisdictional limits of the city of Manila of an open, public, navigable river, estero, or waterway, which has been unlawfully obstructed by the defendant, and of which possession and control is granted to the city of Manila in accordance with the terms of its charter.

It does not appear from the record that the trial court did in fact hold that the burden of proof rested upon the defendant to show that there never existed a Rio Sunog- Apog, and that if it did exist, it was not of common and public use, as set up in the ninth assignment of error. What the court below did hold was that the plaintiff having introduced satisfactory evidence in support of his allegations as to the existence and location of a public navigable river, estero, or waterway known as Sunog-Apog, within the jurisdictional limits of the city of Manila, which had been converted into a private fishery by the defendant, judgment for possession and control thereof should be rendered in favor of the plaintiff unless the defendant controverted this evidence, or established his allegations of ownership and of prescriptive right to the exclusive use thereof; but this is by no means a holding that the burden of proof rested upon the defendant to establish his denial of the allegations of the complaint. The plaintiff having established by competent evidence the allegations of his complaint, and those allegations, when thus established, entitling him to judgment, it became the duty of the defendant either to disprove the truth of those allegations or to prove the truth of his own allegations, which if established would avoid the legal consequences flowing from proof of the allegations of the complaint, but the burden of proof always rested on the plaintiff to sustain by a preponderance of evidence the affirmative allegations of his complaint upon which he rested his prayer for judgment.

The judgment of the lower court should be, and is hereby, affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Johnson, and Tracey, JJ., concur.

Willard, J., concurs in the result.

Arellano, C. J., and Mapa, J., did not sit in this case.

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