

**MAXIMO CORTES Y PROSPERO, PETITIONER AND APPELLANT, VS.
THE CITY OF MANILA, RESPONDENT AND APPELLEE.***G.R. No. 4012. March 25, 1908*

Ponente: TORRES, J.

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On the 26th of September, 1906, Maximo Cortes filed a written application for the registration of a parcel of land owned by him, free of all incumbrances, situated in Calle Aguilar, corner of Calle Cecilia in the district of Hinondo, this city, together with the buildings erected thereon, which land has an area of 1,172.21 square meters, its boundaries being stated in the application. The land was acquired by the applicant by purchase from Higinio Francisco y Prospero, according to a deed of sale dated July 3, 1894, recorded in the registry of property, no other person having any title to or interest therein, and the property was assessed, for the purpose of taxation of the last fiscal year, at \$1,444,. United States currency. The buildings erected thereon were paid for by the applicant with his own money, and the application is accompanied by the deed of sale, plan, and technical description of the land.

The examiner of titles reported, in due course, that the said building lot was attached by reason of certain proceedings instituted against the applicant for treason and rebellion, yet, inasmuch as the land was acquired by him more than ten years previously, he could be considered the real owner thereof by prescription; but that, in order to obtain title, it was necessary for him to show that said attachment had been discharged or canceled, for which reason he considered the title of the applicant to be defective and that it could not be registered.

Against the claim of the applicant the attorney for the city of Manila objected and reproduced the verbal opposition offered in the case, alleging that both the plan and the technical description exhibited contained errors; that there was an excess in the measurement which affected the interests of the city, and that, should the application be granted, an area of 33.40 square meters of the Meisic Creek would become the property of Maximo Cortes, when, as a matter of fact, the said creek was one of public use and belonged to the city of Manila. For these reasons he asked that the registration applied for be denied in so far as it affected the Meisic Creek, with costs against the applicant.

Upon an examination of the evidence adduced, the judge rendered his decision on the 11th of March, sustaining the opposition of the city of Manila, and 'ordering that the said land, including its walls, be adjudicated and registered in favor of the applicant upon presentation of an amended description, showing the measurements of the property, including its walls but excluding therefrom the rest of the land shown in Exhibit A.

The applicant asked that the case be reopened on account of his having discovered very important proof; to this end he filed an affidavit stating that he had learned the Whereabouts of the original owner of the land, who was better informed with respect to its conditions and location; but, as said motion was overruled, he excepted to the judgment and also moved for a new trial on the ground that the decision of the court was contrary to law and to the weight of the evidence. This motion was likewise denied and exception taken.

The dominion of the applicant, Maximo Cortes, over the land or building lot acquired by him from Higinio Francisco y Prospero, according to the public deed executed before a notary on the 3d of July, 1894, registered in the registry of property, is unquestionable and has been fully proven; and, in view of the validity of his title, the city attorney had to limit his opposition to the registration simply to its effect upon the Meisic Creek. The court, upon previous declaration of general default, then ordered the adjudication and registration of the title of the applicant, Cortes, to said building lot upon submitting an amended description of the land.

It having been satisfactorily shown that the portion of land included in the technical description presented by the applicant, situated between the lot to which said instrument refers and the bed of the Meisic Creek, has been gradually formed by alluvion, as the result of the current in the said stream, it can not be denied that said portion of land, with an area of 33.40 square meters, belongs by right of accretion to the owner of the land referred to in the instrument of the 3d of July, 1894, exhibited by the applicant.

The Law of Waters, promulgated by royal decree of the 3d of August, 1866, and extended to these Islands by a royal decree dated April 8, 1873, provides in article 84 that—

"The accretion resulting from the gradual deposit by or sedimentation from the waters belongs to the owners of land bordering on streams, torrents, lakes, and rivers."

Article 366 of the Civil Code provides that—

"The accretions which banks of rivers may gradually receive from the effects of the currents belong to the owners of the estates bordering thereon."

There is no evidence whatever to prove that the addition to the said property was made artificially by the owner; therefore, the facts alleged and proven in the proceedings must stand. The increase or accretion which in a latent, incessant, and spontaneous manner is received by the land from the effects of "the current depositing, in the course of time, sediment and alluvial matter along the shore, is undeniably the work of nature and lawfully belongs to the owner of the property; and from the fact that all or almost the whole area of said increased portion is soft and unsettled, one is naturally convinced that it was formed by alluvion, and that for such reason it appertains to the owner of the land bordering thereon, by virtue of the right of accretion recognized by the law.

The reason therefore is quite evident because, if lands bordering on streams are exposed to floods and other damage due to the destructive force of the waters, and if by virtue of law they are subject to incumbrances and various kinds of easements, it is only just that such risks or dangers as may prejudice the owners thereof should in some way be compensated by the right of accretion.

And, although the acts of possession exercised over the bordering land are always understood legally to cover that portion added to the property by accretion, in this case shrubs have been planted there, which furnish additional proof that Maximo Cortes has exercised rights of ownership and possession over the whole area of the property the registration of which he requests.

For the reasons above set forth it is our opinion that the judgment appealed from should be reversed, as we do hereby reverse the same, and that the court below should direct that the land to which the appellant refers be recorded in the registry of property, in accordance with the law, including that portion of the same added by accretion up to the water line of the Meisic River, without any special ruling as to costs. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ. concur.

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