

NICOLAS LUNOD ET AL., PLAINTIFFS AND APPELLEES, VS. HIGINO MENESES, DEFENDANT AND APPELLANT.*G.R. No. 4223. August 19, 1908*

Ponente: TORRES, J.

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On the 14th of March, 1904, Nicolas Lunod, Juan de la Vega, Evaristo Rodriguez, Fernando Marcelo, Esteban Villena, Benito Litao, Ventura Hernandez, and Casimiro Pantanilla, residents of the town of Bulacan, province of the same name, filed a written complaint against Higinio Meneses, alleging that they each owned and possessed farm lands situated in the places known as May tunas and Balot, near a small lake named Calalaran; that the defendant is the owner of a fish-pond and a strip of land situated in Paraanan, adjoining the said lake on one side, and the River Taliptip on the other; that from time immemorial, and consequently for more than twenty years before 1901, there existed and still exists in favor of the rice fields of the plaintiffs a statutory easement permitting the flow of water over the said land in Paraanan, which easement the said plaintiffs enjoyed until the year 1901 and consisted in that the water collected upon their lands and in the Calalaran Lake could flow through Paraanan into the Taliptip River. From that year however, the defendant, without any right or reason, converted the land in Paraanan into a fish pond and by means of a dam and a bamboo net, prevented the free passage of the water through said place into the Taliptip River; that in consequence the lands of the plaintiff became flooded and damaged by the stagnant waters, there being no outlet except through the land in Paraanan; that their plantations were destroyed, causing them loss and damage to the extent of about P1,000, which loss and damage will continue if the obstructions to the flow of the water are allowed to remain, preventing its passage through said land and injuring the rice plantations of the plaintiffs. They therefore asked that judgment be entered against the defendant, declaring that the said tract of land in Paraanan is subject to a statutory easement permitting the flow of water from the property of the plaintiffs, and that, without prejudice to the issuing of a preliminary injunction, the defendant be ordered to remove and destroy the obstructions that impede the passage of the waters through Paraanan, and that in future, and for ever he abstain from closing in any manner the aforesaid tract of land; that, upon judgment being entered, the said injunction be declared to be final and that the defendant be sentenced to pay to the plaintiffs an indemnity of P1,000, and the costs in the proceedings; that they be granted any other and further equitable or proper remedy in accordance with the facts alleged and proven.

In view of the demurrer interposed by the plaintiffs to the answer of the defendant, the latter, on the 29th of August, 1904, filed an amended answer, denying each and every one of the allegations of the complaint, and alleged that no statutory easement existed nor could exist in favor of the lands described in the complaint, permitting the waters to flow over the fish pond that he, together with his brothers, owned in the sitio of Bambang, the area and boundaries of which were stated by him, and which he and his brothers had inherited from their deceased mother, Apolinaria de Leon; that the same had been surveyed by a land surveyor in September, 1881; he also denied that he had occupied or converted any land in the barrio of Bambang into a fish pond; therefore, he asked the court to enter judgment in his favor, and to sentence the plaintiffs to pay the costs and corresponding damages.

Upon the evidence adduced by both parties to the suit, the court, on the 13th of March, 1907, entered judgment declaring that the plaintiffs were entitled to a decision in their favor, and sentenced the defendant to remove the dam placed to the east of the Paraanan passage on the side of the Taliptip River opposite the old dam in the barrio of Bambang, as well as to remove and destroy the obstacles to the free passage of the waters through the strip of land in Paraanan; to abstain in future, and forever, from obstructing or closing in any manner the course of the waters through the said strip of land. The request that the defendant be sentenced to pay an indemnity was denied, and no ruling was made as to costs.

The defendant excepted to the above judgment and furthermore asked for a new trial which was denied and also excepted to, and, upon approval of the bill of exceptions, the question was submitted to this court.

Notwithstanding the defendant's denial in his amended answer, it appears to have been clearly proven in this case that the lands owned by the plaintiffs in the aforesaid barrio, as well as the small adjoining lake, named Calalaran, are located in places relatively higher than the sitio called Paraanan where the land and fish pond of the defendant are situated, and which border on the Taliptip River; that during the rainy season the rain water which falls on the land of the plaintiffs, and which flows toward the small Calalaran Lake at flood time, has no outlet to the Taliptip River other than through the low land of Paraanan; that on the border line between Calalaran and Paraanan there has existed from time immemorial a dam, constructed by the community for the purpose of preventing the salt waters from the Taliptip River, at high tide, from flooding the land in Calalaran, passing through the lowlands of Paraanan; but, when rainfall was abundant, one of the residents was designated in his turn by the lieutenant or justice of the barrio to open the sluice gate in order to let out the water that flooded the rice fields, through the land of Paraanan to the above-mentioned river; that since 1901, the defendant constructed another dam along the boundary of his fish pond in Paraanan, thereby impeding the outlet of the waters that flood the fields at Calalaran, to the serious detriment of the growing crops.

According to article 530 of the Civil Code, an easement is a charge imposed upon one estate for the benefit of another estate belonging to a different owner, and the realty in favor of which the easement is established is called the dominant estate, and the one charged with it the servient estate.

The lands of Paraanan being the lower are subject to the easement of receiving and giving passage to the waters proceeding from the higher lands and the lake of Calalaran; this easement was not constituted by agreement between the interested parties; it is of a statutory nature, and the law has imposed it for the common public utility in view of the difference in the altitude of the lands in the barrio of Bambang.

Article 552 of the Civil Code provides:

"Lower estates must receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stone or earth which they carry with them.

"Neither may the owner of the lower estate construct works preventing this easement, nor the one of the higher estate works increasing the burden."

Article 563 of the said code reads also:

"The establishment, extent, form, and conditions of the easements of waters to which this section refers shall be governed by the special law relating thereto in everything not provided for in this code."

The special law cited is the Law of Waters of August 3, 1866, article 111 of which, treating of natural easements relating to waters, provides:

"Lands situated at a lower level are subject to receive the waters that flow naturally, without the work of man, from the higher lands together with the stone or earth which they carry with them."

Hence, the owner of the lower lands can not erect works that will impede or prevent such an easement or charge, constituted and imposed by the law upon his estate for the benefit of the higher lands belonging to different owners; neither can the latter do anything to increase or extend the easement.

According to the provisions of law above referred to, the defendant, Meneses, had no right to construct the works, nor the dam which blocks the passage, through his lands and the outlet to the Taliptip River, of the waters which flood the higher lands of the plaintiffs; and having done so, to the detriment of the easement charged on his estate, he has violated the law which protects and guarantees the respective rights and regulates the duties of the owners of the fields in Calalaran and Paraanan.

It is true that article 388 of said code authorizes every owner to enclose his estate by means of walls, ditches, fences or any other device, but his right is limited by the easement imposed upon his estate.

The defendant Meneses might have constructed the works necessary to make and maintain a fish pond within his own land, but he was always under the strict and necessary' obligation to respect the statutory easement of waters charged upon his property, and had no right to close the passage and outlet of the waters flowing from the lands of the plaintiffs and the lake of Calalaran into the Taliptip River. He could not lawfully injure the owners of the dominant estates by obstructing the outlet to the Taliptip River of the waters flooding the upper lands belonging to the plaintiffs.

It is perhaps useful and advantageous to the plaintiffs and other owners of high lands in Calalaran, in addition to the old dike between the lake of said place and the low lands in Paraanan, to have another made by the defendant at the border of Paraanan adjoining the said river, for the purpose of preventing the salt waters of the Taliptip River flooding, at high tide, not only the lowlands in Paraanan but also the higher ones of Calalaran and its lake, since the plaintiffs can not prevent the defendant from protecting his lands against the influx of salt water; but the defendant could never be permitted to obstruct the flow of the waters through his lands to the Taliptip River during the heavy rains, when the high lands in Calalaran and the lake in said place are flooded, thereby impairing the right of the owners of the dominant estates.

For the above reasons, and accepting the findings of the court below in the judgment appealed from in so far as they agree with the terms of this decision, we must and do hereby declare that the defendant, Higino Meneses, as owner of the servient estate, is obliged to give passage to and allow the flow of the waters descending from the Calalaran Lake and from the land of the plaintiffs through his lands in Paraanan for their discharge into the Taliptip River; and he is hereby ordered to remove any obstacle that may obstruct the free passage of the waters whenever there may be either a small or large volume of running water through his lands in the sitio of Paraanan for their discharge into the Taliptip River; and in future to abstain from impeding, in any manner, the flow of the waters coming from the higher lands. The judgment appealed from is affirmed, in so far as it agrees with this decision, and reversed in other respects, with the costs of this instance against the appellant. So ordered.

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

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