

EUFEMIA MERCADO, PETITIONER, VS. HERMOGENES REYES, JUDGE OF FIRST INSTANCE OF PAMPANGA, THE MUNICIPAL PRESIDENT OF MACABEBE, PAMPANGA, AND THE SECRETARY OF PUBLIC WORKS AND COMM...

G. R. No. 45768. December 23, 1937

Ponente: DIAZ, J.

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DIAZ, J.:

Having failed in her attempt to obtain reconsideration of the order issued by the respondent judge of the Court of First Instance of Pampanga on September 27, 1937, providing for the execution of the judgment rendered in civil case No. 4527, affirmed by this court by means of its decision of March 1, 1934 (G. R. No. 37986, Mercado vs. Municipal President of Macabebe and Secretary of Commerce and Communications, 59 Phil., 592), the petitioner instituted this proceeding, alleging that the respondent judge exceeded his jurisdiction in ordering the sheriff of the Province of Pampanga, by means of the writ in question, to cause the removal of the obstacles or dikes placed in the creek named Batasan-Limasan, for the following reasons:

"1. In civil case No. 4527, the location of the BatasanLimasan creek was not determined;

"2. The question relative to the location of said creek was not raised because the technical description thereof was not even given;

"3. There being no technical description of the creek in question, there is no way of identifying it by means of the writ of execution issued;

"4. The exact location of the Batasan-Limasan creek not having been determined in the writ of execution, it may be said that the respondent judge has left the determination of said fact entirely in the hands of the sheriff, such act being tantamount to a delegation of judicial powers the exercise of which exclusively belongs to the courts of competent jurisdiction; and

"5. The removal of the obstacles and dikes referred to in the writ would unnecessarily exposed private property, as the petitioner's, to the risk of being destroyed by the sheriff."

The question decided in said case No. 4527 was whether the creek named Batasan-Limasan or Pinac-Bungalun, which crosses a part of the hacienda described in certificate of title No. 329 of the registry of deeds of Pampanga and registered therein in the name of the petitioner, belonged to said petitioner or to the public domain. The Court of First Instance of Pampanga and this court decided the question by holding that the creek in question is property of the public domain.

Before the question so decided was raised, and while he was yet the owner of the hacienda, Romulo Mercado, the petitioner's predecessor in interest, caused the construction of dikes at both ends of the creek to close it to water traffic and convert the same into a fishpond, as he had done with some portions thereof. While the aforesaid case was being tried in the courts, the fishponds in the hacienda, together with the creek whose two ends had been

closed by Romulo Mercado, were in the possession of Francisco de Leon, as lessee thereof, and the latter's contract to said effect with the Mercados, that is, Romulo Mercado and the petitioner, did not expire until November 15, 1937.

After the judgment holding the Batasan-Limasan or Pinac-Bungalun creek to be property of the public domain had become final, the lessee Francisco de Leon, in order not to lose the creek in question which, as stated above, had already been converted into a fishpond, and to be able to continue enjoying it as such lessee, filed an application to lease said creek from the municipality of Macabebe, within whose jurisdiction it was located. His application was granted with the approval of the Secretaries of the Departments of Public Works and Agriculture, and the contract so entered between him and the municipality will not expire until the 31st of the current month and year.

Upon the expiration of his contract of lease, with the Mercados, which was not renewed, Francisco de Leon returned to the petitioner, who already became the owner of the entire hacienda, the fishponds located therein, but kept the Batasan-Limasan creek by virtue of his contract of lease with the municipality of Macabebe. Finding later that the existence of the dikes, with which the two ends of the Batasan-Limasan creek had been closed, did not suit his interests as lessee, he asked the corresponding authorities for the removal thereof, for which reason the fiscal of Pampanga, representing the municipality of Macabebe and the Secretary of Public Works and Communications, applied for and obtained the issuance of the writ of execution the validity of which is questioned.

The reasons adduced by the petitioner in support of her petition for certiorari and prohibition, as she prays that the respondent judge, at the same time, be enjoined from issuing the writ of execution stated hereinbefore, are of no moment and without merit. This is so because, by reading the decisions of the Court of First Instance of Pampanga and this court, appearing in the record of case No. 4527, one necessarily comes to know Which is the Batasan-Limasan or Pinac-Bungalun creek and which are the dikes to be removed, the latter being those constructed at said creek's two ends located on the opposite sides of the petitioner's hacienda through which the creek in question passes, because they obstruct the passage of boats and other vessels along the creek.

It having been held in said decisions that the creek in question is property of the public domain, and since said creek is very well known, there being no other creek of the same name passing through the petitioner's hacienda, it is pure technicality, to say the least, to require, as the petitioner now requires, other descriptions and data to identify said creek and the dikes to be removed from the ends thereof, by virtue of judgments that have become absolutely final but have not yet been complied with.

If by the removal of the dikes in question, some damage may be caused to the petitioner's fishponds within the boundaries of her hacienda, let such damage be caused where it is absolutely unavoidable, because it is unlawful to have the Batasan-Limasan or Pinac-Bungalun creek closed to water traffic by blocking it up, as was done, with said dikes. The fact, however, is that the removal of the dikes is a task which the petitioner is bound to perform, inasmuch as she was ordered to do so in the judgment rendered in said civil case No. 4527, and it is to be expected that she will know how to act with the necessary prudence and care so as not to cause herself any damage, since she can easily do so by first constructing the necessary dikes along the sides of her hacienda which adjoin the creek, or by constructing any other work that may have the same effect, within a reasonable period of time which, if asked by her, will perhaps be granted by the respondent judge. Should she not do so, then the sheriff will do it, but entirely on her account.

The fact that the municipality of Macabebe, with the approval of the corresponding authorities, has leased the creek in question to Francisco de Leon, and that said creek is actually under the administration and care of said

lessee, is no reason to exempt the petitioner from complying with the obligation which, by judgment, she had been ordered to perform, that is, to remove the dikes at the ends of the creek passing through her hacienda. The municipality of Macabebe could not have exempted the petitioner from complying with said obligation by the mere fact of having leased the creek to Francisco de Leon, because an unlawful act cannot be ratified either expressly or impliedly, and it is undoubtedly unlawful to have blocked up with dikes a navigable creek, as the one under consideration (sec. 64, Act No. 4003).

The petitioner's petition should be, as it is hereby denied, with costs to said petitioner. So ordered.

Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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