

DANIEL MARQUEZ, PLAINTIFF-APPELLEE, VS. GREGORIO MARQUEZ, DEFENDANT-APPELLANT.*G.R. No. 47792. July 24, 1941*

Ponente: MORAN, J.

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In the plan, Annex A, there are three contiguous parcels of land, the first situated on the North, belonging to defendant Gregorio Marquez, formerly to Severo Jurado; the second, on the south, belonging to plaintiff Daniel Marquez; and the third also on the south and adjoining the second, belonging to defendant Gregorio Marquez. A dispute having arisen between the two brothers, Daniel and Gregorio, as to the distribution and use of the waters flowing through these parcels from the north to the south, civil case No. 3832 was instituted in the Court of First Instance of Tayabas by Daniel Marquez against Gregorio Marquez which was compromised in the following manner:

"Las partes en los dos asuntos arriba titulados, Daniel Marquez y Gregorio Marquez, asistidas de sus respectivos abogados, deseando dar fin a los dos litigios ahora pendientes, han convenido en transigirlos como por la presente los transigen en los terminos y condiciones que a continuacion se expresan:

"1.º Se adjudican a Gregorio Marquez en pleno dominio el terreno ocupado por un canal de riego, identificado en el plano Anexo A de este convenio, por una linea gruesa trazada entre los puntos marcados en dicho plano con flechas y los numeros '2' y '3' en tinta roja, y todo el terreno situado al Este de dicho canal compuesto de porciones del lote con Certificado Original de Titulo No. 550, del lote con Certificado de Transferencia de Titulo No. 2712, y del lote 5903 con Certificado de Transferencia de Titulo No. 2710; pero con exclusion de la pequena porcion situada al lado Este de la carretera comprendida en el Certificado Original de Titulo No. 550, o sea el lote No. 2 del plano Psu-37917, la cual porcion queda adjudicada a Daniel Marquez.

"2.º A lo largo de dicho canal situado entre los dos puntos marcados 2 y 3 dentro de un circulo, en tinta roja, del adjunto plano Anexo A de este convenio, y en el borde Oeste o izquierdo del mismo, Gregorio Marquez se obliga a construir un dique de cemento con armaduras de hierro, debiendo tener dicho dique una altura de un (1) pie sobre el nivel del suelo y setenta (70) centimetros de profundidad bajo el suelo, con un grueso de cuatro (4) pulgadas siendo el objeto de dicho dique evitar que las aguas de las porciones de terreno que por el presente convenio quedan adjudicadas a Daniel Marquez caigan y discurran por dicho canal. El mencionado dique se construira en o antes del 30 de abril de 1937.

"3.º Todas las porciones situadas al Oeste de dicho canal de los lotes con Certificado Original de Titulo 550 y Certificado de Transferencia de Titulo 2712, asi como el lote No. 2 del plano Psu-37917, quedan adjudicados en pleno dominio a Daniel Marquez, libres de toda carga o gravamen.

"4.º El Certificado Original de Titulo No. 607 que actualmente esta a nombre de la sociedad entre Daniel Marquez y Gregorio Marquez se cancelara y en su lugar se expedira otro nuevo a nombre de Daniel Marquez solamente.

"5.º Las aguas que provienen del predio superior anteriormente de la propiedad de Severo Jurado y en la

actualidad de Gregorio Marquez, con Certificado de Transferencia de Título No. 9575 a favor de este último, se aprovecharán por Daniel Marquez y Gregorio Marquez, y a fin de distribuir equitativamente entre ambos el aprovechamiento de dichas aguas, se conviene lo siguiente: (a) En los días lunes, martes, miércoles y jueves de cada semana Daniel Marquez tendrá derecho de aprovechar exclusivamente dichas aguas, y a este efecto Gregorio Marquez estará obligado a cerrar el canal en los puntos marcados con flechas y números 2, 4 y 5 en tinta roja del adjunto plano Anexo 'A' de este convenio; y (b) En los días viernes, sábado y domingo, Gregorio Marquez tendrá derecho de aprovechar exclusivamente las mencionadas aguas, para cuyo efecto Daniel Marquez estará obligado a cerrar su canal en los puntos marcados con flechas y números 1, 6, 7 y 8 en tinta roja, indicados en el adjunto plano Anexo 'A' de este convenio, de modo que dichas aguas corran por el canal de Gregorio Marquez, marcado '1' y '2' en tinta roja en dicho plano. Daniel Marquez empezará a aprovecharse de las aguas a las 7 a. m. de cada lunes, y Gregorio Marquez a las 7 a. m. de cada viernes.

"6." Queda entendido y estipulado igualmente que el gravamen a favor exclusivamente de Gregorio Marquez sobre la parcela de terreno que anteriormente era de Severo Jurado y ahora es de Gregorio Marquez, con Certificado de Transferencia de Título No. 9573 a favor de este último, queda igualmente extendido a favor de Daniel Marquez a los efectos del aprovechamiento de aguas arriba estipulado.

"7.º Entre los puntos marcados con flechas y con los números '1' y '2' dentro de un círculo en tinta roja en el adjunto plano Anexo 'A,' existen actualmente dos canales paralelos y a poca distancia el uno del otro, por lo que ambas partes convienen en convertirlos en un solo canal que será de la propiedad común de ambos, Daniel Marquez y Gregorio Marquez.

"8.º Los gastos de subdivisión de los lotes arriba mencionados correrán por cuenta de Daniel Marquez, y los de expedición de los nuevos certificados, por cuenta de ambos en proporción a sus respectivas porciones."

This compromise was approved by the court and a judgment rendered in accordance therewith. Thereafter, in the same civil case No. 5832, a motion was filed by the plaintiff, alleging the defendants to have violated the compromise, in that he constructed a dam by which the waters coming from his property on the north were intercepted and prevented from flowing freely towards the land of Ejanil Marquez on the south. The motion was heard, an ocular inspection had, and the trial court thereafter rendered an order directing defendant to open the dam built at the point X in the plan, Annex A, during the days in which, according to the compromise, plaintiff is entitled to the use of the waters, without prejudice to closing it during the days in which the use of the waters should appertain to the defendant. It also directed defendant not to close the right of way existing on the northern and southern strips of the land ceded to him in their compromise, so that plaintiff may have access to the other side of his land. Defendant now challenges the validity of this order, contending that the lower court had no jurisdiction to entertain the motion, on the ground that, although it had power to enforce its judgment founded on the compromise, it can so enforce it only in the very terms of such compromise without in the least altering or modifying them, otherwise the proper procedure would be an independent action.

It is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation. The relevant portion of the compromise as approved by the court is as follows:

"(a) En los días lunes, martes, miércoles y jueves de cada semana Daniel Marquez tendrá derecho de aprovechar exclusivamente dichas aguas, y a este efecto Gregorio Marquez estará obligado a cerrar el canal en los puntos marcados con flechas y números 2, 4 y 5 en tinta roja del adjunto plano Anexo A de este convenio; y (b) En los días viernes, sábado y domingo, Gregorio Marquez tendrá derecho de aprovechar exclusivamente las mencionadas aguas, para cuyo efecto Daniel Marquez estará obligado a cerrar su canal en los puntos marcados con flechas y números 1, 6, 7 y 8 en tinta roja, indicados en el adjunto plano Anexo 'A' de este convenio, de modo que dichas aguas corran por el canal de Gregorio Marquez, marcado '1' y '2' en tinta roja en dicho plano."

These stipulations have become orders of the court contained in the judgment rendered in accordance with the compromise, and such judgment being one requiring the performance of an act other than the payment of money, or the sale or delivery of real or personal property, is considered as a special judgment enforceable by proceedings as for contempt. (Sec. 446, Act No. 190, now Rule 39, sec. 9.) If, therefore, after service of a copy of the judgment upon the defendant, as required in the legal provisions above cited, defendant violates the order or orders contained in the judgment, he may be dealt with as for contempt. In the judgment sought to be enforced, defendant is bound, from Monday to Thursday of every week, to close the canal at points 2, 4 and 5 in the plan, Annex A, to permit plaintiff the exclusive enjoyment of the waters during said days, and if defendant does something by which the waters are prevented from flowing to plaintiff's property, he is liable for contempt. It has been found by the trial court that the construction of the dam at point X in the plan, Annex A, impairs greatly the flowing of the waters from the north to the property of plaintiff Daniel Marquez on the south, constituting thus a violation of the judgment rendered upon the compromise. We find in the record or in the evidence no ground whatsoever for disturbing this finding.

However, the order of the trial court directing defendant not to close the right of way existing on the north and south of the portion ceded to him in the compromise is null and void, it having been issued in excess of the court's jurisdiction. This right of way is not a matter covered by the judgment sought to be enforced. It is completely a new matter and cannot be acted upon in a mere petition for execution of judgment.

Order is affirmed in so far as it directs defendant to open the dam built at point X in plan Annex A from Monday to Thursday of every week, and is reversed in so far as it directs defendant not to close the right of way existing on the north and south of the portion of land ceded to him in the compromise, this matter being a proper subject of an independent action, without pronouncement as to costs.

Avanceña, C. J., Diaz, Laurel, Horrilleno, and Ozaeta, JJ., concur.

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