

LEONARDO GUISON, RECURRENTE, CONTRA LA CIUDAD DE MANILA, RECURRIDA.

G.R. No. 47819. June 20, 1941

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DIAZ, M.

Esta causa es, en un sentido, una continuacion de un Expediente de Registro que, elevado en grado de apelacion por la recurrida como opositora en el mismo, desde el Juzgado de Primera Instancia de Manila, al Tribunal de Apelacion (expediente de registro No. 635, Juzgado de Primera Instancia de Manila; G. L. R. O. Record No. 52899), fue resuelto por dicho ultimo Tribunal en contra del recurrente que lo habia promovido. El Tribunal de Apelacion revoco la decision del Juzgado de Primera Instancia y declaro que el terreno cuya inscripcion en el Registro de la Propiedad habia sido solicitado por el recurrente, era parte del canal del estero de San Lazaro o del estero de Magdalena.

Creyendo el recurrente que el Tribunal de Apelacion incurrio en error y abuso de su discrecion al resolver el Expediente en el sentido expresado, dejando de aplicar al caso alii tratado, las disposiciones del articulo 366 delCodigo Civil; y al revocar la decision del Juzgado de Primera Instancia que conocio originariamente de dicho Expedients promovio el presente proceso, con el fin de que su decision sea objeto de una revision.

Los hechos que el Tribunal de Apelacion declaro probados, se desprenden del siguiente pasaje de su decision:

"After a careful study of the evidence, we are convinced that the tract of land applied for, far from having been added thru accretion to the original parcel already registered in the name of Guison in 1914, is still part of the bed or channel of the estero in question. The preponderance of the evidence shown, and we may even take judicial notice of the fact, that the esteros in the City of Manila are not streams or rivers having their sources in the mountains or in higher distant places, flowing into the sea, and having a regular and continuous current that are liable to deposit alluvium or sediment on their banks before they reach the sea, but rather they are canals or water passages used as drainage to receive and carry away the rain water from the streets of the City of Manila; that except after a heavy rain there is no current in these esteros and that the water they contain is stagnant except when affected by the flow of the tides from Manila Bay. The evidence further shows that oftentimes the people living on the edges or banks of these esteros, either from habit or because the garbage trucks do not reach their houses, throw or dump their garbage and other waste material into these esteros, thereby partially filling up, the channel and making it necessary for the City of Manila to dig and clear these channels periodically in order that they may properly fulfill their function to drain the rain water from the City streets. This fact is confirmed by the very finding of the trial court found on pages 17 and 20 of the Bill of Exceptions which read as follows:

'Se ha probado por el solicitante que es dueno inscrito de uri terreno urbano, mas particularmente descrito en el piano Exhibito D y en el decreto en el ano 1914, confinaba con el estero de San Lazaro; que la ribera de este estero por el lado de dicho terreno ha estado creciendo paulatinamente, desde dicho ano hasta hace poco, por efecto de la cordonte de las aguas que arrastraba las basuras y materiales iirados al estero, en la extension deslindada por el piano Exhibito A.'

'Las pruebas del solicitante fueron consistentes respecto al hecho de que desde el año 1918 hasta el año 1936, la ribera del estero de San Lazaro que confinaba con el terreno inscrito de dicho solicitante ha estado acreciendo paulatinamente por efecto de la corriente causado por el flujo y reflujo de las aguas del mar que arrastraban las basuras y los materiales tirados al estero, * * *'."

Pues bien; el artículo 366 del Código Civil invocado por el recurrente, contiene la siguiente disposición:

"Pertenece a los dueños de las heredades confinantes con las riberas de los ríos el acrecentamiento que aquellas reciben paulatinamente por efecto de la corriente de las aguas." (Art. 366 del Código Civil).

Se vea que no tiene el referido artículo aplicación al caso de autos, porque el terreno en litigio no constituye ni puede constituir el acrecentamiento a que el mismo se refiere; en primer lugar, porque no se forrío en la ribera de un río, sino solamente en un canal de desagüe; en segundo lugar, porque lo formaron, según declaración del Tribunal de Apelación, "the garbage and waste material thrown into the channel and carried and dragged in by the current of the estero caused by the tide"; en tercer lugar, porque el recurrente no ha contribuido en lo mínimo a la formación de dicho terreno; y finalmente, porque, como dice el Tribunal con mucha razón, "the reason for the law giving the riparian owner the right to any land or alluvium deposited by a river is to compensate him for the loss he suffers because of flood and other damage due to the destructive force of water and because of the incumbrances and assessments imposed by the law on such riparian property. Here in the present case, however, the western boundary of the original parcel registered in the name of the applicant as shown by Exhibit D bordering" on the estero in high protecting wall on which his house stands and is, therefore, subject to no incumbrances or easement. As already stated, the estero in question has no regular and continuous current that might damage or destroy said original parcel by its force. What happened in the present case is that the employees of the City of Manila or the City Prisoner employed for the purpose of cleaning and clearing the channel of estero, instead of removing all the rubbish and garbage and mud from the entire channel merely used to dig and clear a narrow passage in or around the middle of the estero, depositing what they removed therefrom to one side instead of taking it away entirely. This process clearly would not give the applicant a right or title to this mud, rubbish and garbage left and deposited in the estero itself however high it may be piled up and irrespective of the fact that the tides may or may not cover it".

"Por las razones expuestas, y hallando como hallamos arreglada a derecho la decisión del Tribunal de Apelación, por la presente, la confirmamos en todas sus partes, condenando al recurrente al pago de las costas. (Así se ordena.

Avenceña, Pres., Laurel, Moran y Horrilleno, MM., están conformes.

Se confirma la decisión.

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