

JOSE DIAZ AND ESCOLASTICA SULIT, PETITIONERS, VS. VICENTE DEL ROSARIO, RESPONDENT.

G.R. No. 48959. February 11, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

The beautiful good-neighborliness which for generations has existed between two respectable families, cemented by ties of intimate friendship, and nurtured and strengthened by considerations of mutual esteem and affection, was by this litigation pathetically ruined and reduced to but a poignant memory between them. The venerable heads of the two families of the peaceful town of San Mateo, Rizal, who are made unnecessarily to embitter the approaching sunset of their lives with this protracted and expensive lawsuit, apparently motivated more by lacerated feelings and hurt pride than by the conflict of property rights, are the bachelor septuagenarian Vicente del Rosario, represented by his nephew, Attorney Vicente Santiago, and the octogenarian Escolastica Sulit, aided by her son, Mr. Jose Diaz. They and their ancestors had lived in amity and harmony as good neighbors on two contiguous lots facing the town plaza of San Mateo, with the eaves of their respective houses almost touching each other and with neither fence nor monument to mark the boundary between them. It is to fix that boundary now that the present suit has been brought by Vicente del Rosario against Escolastica Sulit and her son Jose Diaz.

The litigants respectively claim full ownership and possession of the strip of land about 26 meters long and 1.13 meters wide that lies between their respective houses. The eaves of the house of the plaintiff, which was built about the year 1872, cover part of that strip, while the eaves of the present house of the defendants, which was constructed in 1933, overlap those of the plaintiff's. The entrance to the premises of the defendants is thru the strip of land in question. The concrete platform on which defendants' stairway rests covers almost the entire width of said strip of land, while a camarin of theirs covers the rear end of the same strip. Said concrete platform has been preserved from the old house of the defendants which was demolished in order to build their present house. The old house, constructed at an undetermined time during the Spanish regime, was smaller and lower than the present house and a little farther from the house of the plaintiff. While the present new house of the defendants was being constructed, they and all the members of their family lived and were accommodated by the plaintiff in his ancestral home, and the plaintiff interposed no objection to and did not prevent the defendants from so constructing their new house as to make its eaves cover those of his. Neither does it appear that he ever prohibited defendants' passage thru the strip of land in controversy.

To whom does the strip of land in question belong? The trial judge, Hon. Servillano Platon, who made an ocular inspection of the premises, declared that one half of it, divided lengthwise, belongs to the plaintiff and the other half to the defendants, and that both parties must respect the constructions of both houses in their present form until the defendants make a repair in the roofing of their house on the north side which overlaps that of the plaintiff, in which event the plaintiff may prevent them from doing so unless they adjust it to the terms of the adjudication. Both parties appealed to the Court of Appeals, which at first declared that the whole strip of land in question belonged to the defendants by prescription, but later reconsidered and modified its judgment by declaring

that of said strip of land only the portions covered by the concrete platform and by defendants' camarin belong to them and that the rest' of it belongs to the plaintiff, subject to an easement of right of way in favor of the defendants leading to the said platform of the stairway and thence to the camarin beyond it, and ordering the defendants to construct a galvanized iron gutter or eaves-trough so that the rain water would not fall on the roof of the plaintiff. From that judgment as modified, the defendants have appealed to this Court by certiorari.

From the fact that the house of the plaintiff was so constructed as to make the rain water fall from its roof onto the land in question, the Court of Appeals concluded that said land must have belonged to the plaintiff, because article 586 of the Civil Code provides that "the owner of a building shall be obliged to construct the roof or covering thereof in such a manner that rain water shall fall on his own land, or on a street or public place, and not on the land of his neighbor." But we do not consider that fact decisive and conclusive of ownership because, considering the good and amicable relations existing between the parties, the construction of plaintiff's house in that manner might very well have been merely tolerated by the defendants or by their ancestors, just as the construction of the defendants' concrete platform and camarin and the passage to them thru the rest of the strip of land in question might have been merely tolerated by the plaintiff upon the same consideration of good-neighborliness. In view of the overlapping rights of the parties, it is evident that they and their predecessors could have made use of the strip of land in question only by mutual tolerance, and it cannot be said that the possession of one has been adverse to and exclusive of the other. Under the facts and circumstances of this case as found by the Court of Appeals, we believe and so decide that the judgment of the trial court was just and correct, in accordance with article 386 of the Civil Code, which reads as follows:

"Art. 386.—If the titles do not fix the boundaries or area of each owner, and the question cannot be decided by possession or by other means of proof, the demarcation shall be made by dividing the land in dispute into equal parts."

The result, therefore, is that the rights of the parties to and their enjoyment of the strip of land in controversy shall remain as they have always been ever since they and their ancestors established themselves on the two contiguous lots and maintained with each other cordial relations of friendship and good-neighborliness, which are far more valuable than petty property rights, undue concern for which the present succeeding generation of the two good families seem to have been unfortunately obsessed with to the extent of marring their beautiful friendship. May the conciliatory words of ours serve as a balm for hurt pride and revive the mystic chord of memories and associations stretching from the present generation of heirs back to their ancient lineage and constituting the sustaining root of their mutual esteem and friendship.

The judgment of the Court of Appeals is reversed and that of the Court of First Instance is hereby affirmed and reinstated, it being understood that the easements heretofore respectively enjoyed by the parties shall remain unaffected by this judgment. No costs to either party.

Yulo, C. J., Moran, Horrilleno, Paras, and Bocobo, JJ., concur.

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