

CELSO DAYRIT ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN DE LOS SANTOS, DEFENDANT AND APPELLANT.

G.R. No. 5005. January 11, 1911

Ponente: MAPA, J.

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MAPA, J.:

The judgment rendered in this case in first instance and which was appealed by the defendant, is of the following tenor:

"The plaintiffs ask in this suit that the defendant be restrained from preventing the plaintiffs from destroying the dam constructed by him on their property, repairing the damage done to the property, and performing any other act which may tend to protect the property from damage; the plaintiffs further ask that the writ of preliminary injunction issued by this court be made perpetual, and that the defendant be sentenced to pay more than "P250 for loss and damage, besides the amount of the damage which may be caused to the said property, pending the action, by the construction of the dam, together with the costs of this suit.

"From the evidence adduced, we hold the following facts to have been proved: (1) That the plaintiffs herein own the property described in the complaint and which is crossed from west to east by the Panipuan estero; (2) that in August, 1906, the defendant constructed a dam in the said Panipuan estero within the plaintiffs' property and a canal or ditch to convey the water from the said estero to his fields; (3) that Gregorio Dizon, the husband of the plaintiff Eulogia Dayrit, opposed the creation of this servitude, and the defendant answered (Exhibits G and H) by stating that he, the defendant, had intercepted the water of an estero which belonged to nobody, but formed the boundary line between the land of the said Gregorio Dizon and that which he held under lease. In this answer of the defendant no right by prescription is alleged; however, the defendant's principal defense is that he has acquired a right to the servitude through a prescription of twenty years.

"The witness Felix Urquico testified that he was the owner of the land held by the defendant; that he acquired the said land from one Telesforo Pineda, in June, 1878; that since its acquisition, and without opposition, he annually constructed a dam in the same place where the defendant built one in 1906; that he conveyed the property to Juan de los Santos, in 1905; that in 1904, Saturnino Aguas, a lessee of his of the said land, also constructed a dam in the same place, without opposition; that the land previously belonging to him, and afterwards sold to the defendant, is bounded on the north by the said Panipuan estero, and that this circumstance was recorded in the private instrument which was executed when he acquired the said land from Telesforo Pineda; that prior to his occupancy of this land, it was occupied by his brother-in-law, Mariano Pamintuan, and that already, at the time it was held by the latter and by Telesforo Pineda, the said dam was constructed each year in order that they might utilize the water from the estero.

"There exists a private instrument, not shown to have been destroyed, which would have been the best proof of the date when Felix Urquico, according to his testimony, acquired the land in question, as well as the true boundaries of the land now owned by the defendant. Mariano Pamintuan and Telesforo Pineda are cited. These parties would have thrown much light on this matter; but they did not testify and it is not known why these witnesses were not summoned to give testimony. With respect to Saturnino Aguas, it is true that in 1904 he constructed a dam in the same place where the defendant constructed his; but he was sued by Gregorio Dizon

and the matter was settled by the defendant's agreement not to construct any more dams in the same place; and, finally, according to the rough sketch, Exhibit A, the area comprised between the dam, marked with the numbers 10 and 11, and the boundary of the swamp land, marked 5 and 6, belongs to the plaintiffs.

"In the defendant's Exhibit No. 1 is shown a strip of land, letters A and C, which he did not venture to state belonged to him. It appears unquestionable to us that this strip, planted with cañas espinas, belongs to the plaintiffs, inasmuch as, according to Exhibit B, the plaintiffs' land does not adjoin the Panipuan estero on the south. It is maintained by the plaintiffs that the construction of the dam caused them some loss and damage. In regard to this, there is no proof other than that some clumps of cañas espinas, placed in the middle of the estero, will now probably not grow on account of the stagnant water. There is no proof that the said clumps of cañas espinas were destroyed, nor that it is now impossible for them to be utilized by their owner.

"In view of the foregoing, it is ordered that judgment be entered restraining the defendant from preventing the plaintiffs' destroying the dam constructed by him in the Panipuan estero and referred to in the complaint, and from repairing damages to the property and performing any other act which may tend to preserve the property from any injury. Let it be entered in the judgment, furthermore, that the writ of preliminary injunction issued by this court is made perpetual. The costs shall be assessed against the defendant and the plaintiffs shall be absolved from the counterclaim filed by the said defendant."

The writ of preliminary injunction, made final in the judgment just above transcribed, was issued in the following terms:

"Whereas the plaintiffs, Celso Dayrit and Eulogia Dayrit, together with the latter's husband, Gregorio Dizon, in the above-cited case have presented an amended complaint against the defendant, Juan de los Santos, wherein, as an incidental remedy, it is asked that a writ of preliminary injunction be issued restraining the defendant, his agents and representatives from entering upon the said property, making excavations thereon, opening ditches and building dams to intercept the water of the Panipuan estero, the said plaintiffs having furnished the bond of P500 required by this court;

"Therefore you (the defendant), your agents and representatives, are hereby prohibited from repeating and again committing the acts above specified, during the trial of this case and until final judgment shall have been rendered therein."

In the counterclaim, from which the plaintiffs were absolved, the defendant asked that they be sentenced to the payment of P500, the amount of the damages caused to him by the issuance of the said writ of preliminary injunction, on the ground that the said plaintiffs had no legal reason whatever to apply for the same.

As grounds for his appeal, the appellant sets forth seven assignments of error in his brief, of which the second and third refer only to questions of fact, and the fourth, fifth, sixth and seventh are mere conclusions drawn from the premises established in the two former above mentioned. After a careful study of the evidence, we decide that the findings of fact contained in the judgment appealed from are sufficiently supported by the evidence and that there is no preponderance of proof against the findings such as might oblige us to modify the same, wherefore they must be sustained.

In the first ground of the appeal, the appellant maintains that the lower court incurred error in overruling the defendant's demurrer to the plaintiffs' complaint.

The demurrer is based on two grounds: (1) That the facts alleged in the complaint do not constitute a cause of action; and (2) that the complaint is ambiguous, unintelligible and vague. This last ground was abandoned in this instance, and only the first was maintained, in support of which it is stated in the appellant's brief that;

"The plaintiffs do not allege that the defendant is performing, or intends to perform, or endeavors to perform or permits the performance of, any act tending to prejudice any right of the plaintiffs in the land in question. They

only allege that the defendant did perform certain acts, and it is unquestionable that a writ of injunction can not be issued to prohibit an act or acts already performed."

The appellant's assertion is inexact with respect to his averment that, in the complaint, only acts were alleged which were already completely performed by the defendant. It is set forth in the complaint that the defendant entered upon the land belonging to the plaintiffs, without permission and against the latter's will, made excavations thereon, opened a ditch and built dams to intercept the natural course of the water of the Panipuan estero which crosses the said land, to divert such water to adjoining land held by the defendant under lease, thereby causing detriment to the plaintiffs' said property. The complaint further recites, textually, that "the defendant will continue to perform the said acts on the plaintiffs' property * * * unless he, his agents and other representatives are prohibited by the court * * * from repeating and continuing to commit the acts above specified."

From this, it is very clear that the complaint alleges, not only acts already effected, but also others which the defendant endeavored to effect by repeating or continuing those already executed by him on the plaintiffs' property. It being conceded that acts already consummated can not be the subject of injunction, there is no doubt whatever that those acts which the defendant is about to perform or intends to effect, whenever they infringe the plaintiffs' rights and tend to render the judgment inefficacious, can be enjoined. It is, moreover, to be noted that not only the commission or execution of such acts, but also their continuation can be prevented or prohibited by the said injunction, according to the express terms of section 164 of the Code of Procedure in Civil Actions. As a consequence derived from the preceding premises, the facts alleged in the complaint constitute a right of action, and the demurrer set up by the defendant under contrary grounds was, therefore, very properly overruled.

The judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Carson and Moreland, JJ., concur.

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