

EDWIN CASE, PETITIONER AND APPELLANT, VS. THE HEIRS OF TUASON Y SANTIBAÑEZ, OPPONENTS AND APPELLEES.*G.R. No. 5044. December 01, 1909*

Ponente: TORRES, J.

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On the 7th of December, 1906, the attorneys for Edwin Case filed a petition with the Court of Land Registration requesting that the property owned by the applicant, described in their petition, be registered in accordance with the provisions of the Land Registration Act. After a written opposition was presented by Felipe R. Caballero on the 6th of June, 1907, on behalf of the heirs of the late Pablo Tuason and Leocadia Santibañez, counsel for the applicant, Case, on August 2, 1907, amended the original petition and set forth: that said property, situated in Calle Escolta, district of Binondo, consists of a parcel of land and the building erected thereon bearing Nos. 142 and 152; it is bounded on the northwest, approximately, by the estero of Santa Cruz and the property of Carmen de Ayala de Roxas; on the southeast by the River Pasig; on the southwest by the property of the heirs of Tuason and Santibañez; and on the northwest by Calle Escolta and the aforesaid property of Carmen de Ayala de Roxas; that the total area is 3,251.84 square meters, its description and boundaries being detailed in the plan attached to the petition; that according to the last assessment made for the purposes of taxation the land was valued at P170,231 and the buildings thereon at P30,000; that the property is free from all incumbrance, and no one has any interest therein or right thereto; that on the northeast side the property has in its favor the right of easement over some 234.20 square meters of land owned by the said Ayala de Roxas, and that the applicant acquired the property by succession from Doña Clotilde Romree.

In the written opposition above alluded to, counsel for the heirs of Pablo Tuason and Leocadia Santibañez alleged that the parties whom he represents are owners in common of the property adjoining that of the petitioner on the southwest; that the latter, in making the plan attached to his petition, extended his southwest boundary line to a portion of the lot of the said heirs of Tuason and Santibañez in the form indicated by the red line in the annexed plan; that the true dividing line between the property of the petitioner and that of the said heirs is the walls indicated in black ink on the accompanying plan; that said walls belong to the opponents, and that about two years ago, when the applicant made alterations in the buildings erected on his land, he improperly caused a portion of them to rest on the wall owned by the parties whom he represents, at points 12, 13, and 14 of said plan; for which reason the opponent prayed the court to direct the applicant to amend the line marked in his plan with the letters Y, X, U, T, S, and R, so that it may agree with the wall indicated by the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 on the plan which accompanies the written opposition, reducing the area to whatever it may be after the amendment has been made; that the applicant be compelled to remove the supports that he placed for his buildings on the wall of the representatives of the petitioner, and that he be sentenced to pay the costs.

The case was brought to trial, both parties adduced evidence, and their exhibits were made of record. The court, assisted by the interested parties and their respective experts, made an inspection of the two properties, in view of which it entered judgment on the 31st of July, 1908, sustaining the opposition offered by the representative of the

heirs of Pablo Tuason and Leocadia Santibañez, and after declaring a general default granted the registration of the property described in the application filed by Edwin Case, with the exclusion of the wall claimed by the opponents and shown on their plan by the lines numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14; and in view of the fact that the lines drawn on the plan offered in evidence by the applicant under letter G are not correctly drawn, once this decision shall have become final, let the dividing line of both properties be fixed by common accord between the two parties and their experts, taking as a base for the same the amended line of walls drawn on the plan of the opponents, but should they not reach an agreement a surveyor of the Court of Land Registration shall be detailed to fix the same at the expense of the parties; the court also ordered the cancellation of the registration entries of the property entered in the name of Clotilde Romree, principal of the petitioner, at page 142 and those following of volume 15, section of Binondo and 52 of the register, property No. 828, first entry.

On the 12th of August, 1908, the petitioner moved for a new trial on the ground that the evidence was not sufficient to justify the decision of the court in excluding the wall claimed by the opponents; that said decision was contrary to the law, in so far as it excludes the said wall, and that the conclusions of fact therein are openly and manifestly contrary to the weight of the evidence in so far as they referred to the exclusion of said wall. The said motion was overruled on the 15th of the same month, to which overruling the applicant excepted and announced his intention to perfect the corresponding bill of exceptions which was filed, approved, and submitted to this court together with the proper assignment of errors.

In the appeal interposed by the applicant against the decision of the Court of Land Registration, now before this court, the questions set up are merely of fact.

The question is whether the wall that with slight interruption runs from Calle Escolta to the River Pasig, and which divides the adjoining properties of the applicant, Edwin Case, and of the opponents, belongs to the former, as he claimed in the first instance, or is a dividing wall as affirmed in his brief in this second instance, or is the property of the said opponents, the heirs of the late Tuason and Santibañez.

The trial court after considering the evidence adduced by both parties to the suit, found that the wall in controversy belongs to the opponents for the reason, among others, that in the public document by which one of their original ancestors acquired on the 19th of April, 1796, the property now possessed by them, it appears that the property was then already inclosed by a stone wall. This document, which was offered in evidence by the opponents, has not been impugned by the applicant. On the contrary, it was acknowledged as the title deed of the property adjoining that of the applicant by the witness Juan B. Tuason, who knows the one and the other.

It is fully proven that two walls extend from Calle Escolta to the interior of both properties, the one backing the other, and which respectively support the edifices of the petitioner and of the opponents from points 36, 35, 34, 33, 32, 31, and 30 on the plan of the petitioner corresponding to points 1 to 6 on that of the opponents.

This section of the wall of the opponents embraced within the points mentioned in the plans offered in evidence by the parties, for the very reason that it supports only the property of the opponents and not that of the petitioner, can not be a party wall, one-half of which along its entire length would belong to the adjoining building owned by Mr. Case. There is not sufficient proof to sustain such claim, and besides, the building erected thereon disproves the pretension of the petitioner.

It should, however, be noted that that portion of the wall between the numbers 3, 4, 5, and 6 on the plan of the opponents, which corresponds to numbers 33, 32, 31, and 30 of that of the petitioner, and which constitutes the cesspool on the property of the latter, belongs to him, and it has so been admitted by counsel for the opponents, for the reason that the petitioner had acquired it by prescription, the opponents having lost control over the area of

land covered by the said cesspool together with the walls that inclose it.

Under article 572 of the Civil Code the easement of party walls is presumed, unless there is a title or exterior sign, or proof to the contrary, among others, in dividing walls of adjoining buildings up to the common point of elevation.

The legal presumption as to party walls is limited to the three cases dealt with in the said article of the code, and is that of *juris tantum* unless the contrary appear from the title of ownership of the adjoining properties, that is to say, that the entire wall in controversy belongs to one of the property owners, or where there is no exterior sign to destroy such presumption and support a presumption against the party wall. (Art. 573, Civil Code.)

The intermediate portion of the wall in question, lying between numbers 6 and 13 on the defendants plan, equivalent to a little more than numbers 30 to 25 on the plan of the petitioner, is the portion against which no other wall appears to have been erected on the land owned by Mr. Case. In spite of this it can not be presumed that the aforesaid portion was a party wall, and that it was not exclusively owned by the defendants, inasmuch as the latter have proven by means of a good title that has not been impugned by the petitioner, that when one of their ancestors and principals acquired the property the lot was already inclosed by the wall on which the building was erected; it must therefore be understood that in the purchase of the property the wall by which the land was inclosed was necessarily included.

The above documentary evidence has not been overcome by any other presented by the petitioner, but apart from that the record discloses the existence of certain unquestionable signs. These consist of constructions made by the petitioner himself on his own property which entirely destroy any presumption that it is a party wall, and indeed gives rise to a presumption against it.

Three openings have been made in the wall, undoubtedly to allow the passage of air and light. Two of them are beveled on the side toward the land of the objectors, and the third has recently been beveled on the other. A rafter or lintel was found imbedded in the wall on the side of the property of the opponents. These things constitute exterior signs and were recorded as the result of personal inspection by the trial court in company with the experts of both parties. These signs positively and conclusively prove that the said wall is not a party wall, but the exclusive property of the defendant. This is further confirmed by the testimony of the witnesses at the trial.

The fact that the petitioner built a wall and backed it against the one in question to support the edifice he had constructed between points 21 and 13 of the corrected plan is a further indication that the neighboring wall is not a party one. He knew perfectly well that he had no right to rest his building on the latter. That he built a terrace about four years previously over the wall between points 30, 29, 28, and 27 does not prove that the whole of the wall, from the Escolta to the River Pasig, is a party wall, but it does show that he usurped a portion thereof to the prejudice of the real owner.

Neither can it be presumed that that part of the wall bordering on the River Pasig comprised between points 13 and 14 is a party wall. It was shown in the proceedings as resulting from the above-mentioned ocular inspection that at the side of the said wall, which is rather a low one, there is another, a higher one erected on the petitioner's land and backed against the one in question. The first one, as has been said, forms part of that which has surrounded the property from the date of its acquisition, more than a century ago, until the present date. It is absolutely independent of that built by the petitioner, and that it is the exclusive property of the objectors and is not a party wall can not be denied.

It therefore appears from the proceedings that, with the exception of the small portion of the wall in question occupied by the latrine on the property of the petitioner, and which the opponents admit that he has acquired by

prescription, the whole of said wall from the Escolta to the River Pasig can not be presumed to be a party wall; the evidence to the contrary conclusively proves that it belonged exclusively to the defendants, and it has been further shown in the case that at one time an old building belonging to the opponents used to rest on a portion of the wall near the river.

In view of the foregoing, and considering that the judgment appealed from is in accordance with the law and the merits of the case, it is our opinion that the same should be affirmed in full, as we do hereby affirm it, with the costs against the petitioner. So ordered.

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

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