

JUAN N. ARAGON, PETITIONER AND APPELLEE, VS. THE INSULAR GOVERNMENT, OPPOSITOR AND APPELLANT.

G.R. No. 6019. March 25, 1911

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a decree of the Court of Land Registration adjudicating title to a small lot or parcel of land in the city of Manila in favor of the appellees and ordering its registry in accordance with the provisions of "The Land Registration Act."

The Government of the Philippine Islands, through its proper representatives, objected to the application for registry on the ground that, as it alleges, the land in question is a part of the public domain, as defined in subsection 1, article 339, of the Civil Code, which is as follows:

"Art. 339. Property of public ownership is -

"1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character." and also as denned in article 1 of "The Law of Waters" (Ley de Aguas) of the 3d of August, 1886, which is as follows:

"The following belong to the national domain and are for the public use:

* * * * *

"3. The shores. - 'Shore' is understood to be that space which is alternatively covered and uncovered by water with the movement of the tides. Its interior or terrestrial limit is marked by the line reached by the highest tides and equinoctials. Where the tides are not perceptible the shore begins at the line reached by the water during tempests and ordinary storms."

The evidence of record leaves no room for doubt that, as alleged by the opponent, the land in question, at the time when the trial was had in the court below, was so located that at high tide it was completely covered by the waters of the Bay of Manila, though the receding waters left it completely bare at low tide. It can not be denied, therefore, that if there were no other evidence of record, touching the physical status of this land or the title thereto, the contention of the Government would necessarily be sustained.

It appears, however, that in the year 1892 a possessory title to the land in question was duly registered in favor of Inocencio Aragon, one of the predecessors in interest of these applicants; that for a long period of years, and perhaps from a time beyond which the memory of man runneth not to the contrary, the applicants and their predecessors in interest have been in possession of the parcel of land in question, under an undisputed claim of ownership; that it is located well toward the center of one of the most valuable residential sections of the city of Manila, and that for many years a house stood upon this land, and was occupied by some of the predecessors in interest of the applicants in these proceedings; that with some relatively small expenditure by way of a "fill" or a "retaining wall" it would still be a valuable building lot for residential purposes; that the adjoining lots extend

toward the bay to a line formed by the extension of the outer boundary line of the lot in question, and that these adjoining lots would be in substantially the same physical condition, by relation to the ebb and flow of the tide, as the lot in question, but for low retaining walls which protect them against the incoming sea; that the water which spreads over the lot in question at high tide is of but little depth, and would be wholly excluded by a very limited amount of "filling" materials or a low retaining wall; that there are strong reasons to believe that the land in question was originally well above the ebb and flow of the tide; and that only in later years have the waters risen to such a height along the shores of the Bay of Manila at this point as to cover the land in question completely at high tide; though it does not definitely appear whether this is due to changes in the current and flow of the waters in the bay, or to the gradual sinking of the land along the coast.

We think that these facts conclusively establish the right of possession and ownership of the applicants.

Article 446 of the Civil Code is as follows:

"Every possessor has a right to be respected in his possession; and should he be disturbed therein, he must be protected or possession must be restored to him by the means established in the laws of procedure."

Article 460 of that code is as follows:

"Art. 460. The possessor may lose his possession -

"1. By the abandonment of the thing.

"2. By transfer to another for a good or valuable consideration.

"3. By the destruction or total loss of the thing or by the thing becoming unmarketable.

"4. By the possession of another, even against the will of the former possessor, if the new possession has lasted more than one year."

Under these provisions of the code it seems quite clear that if the Government is justified in disturbing the possession of the applicants, it can only be on the ground that they have abandoned their property, or that it has been totally destroyed and has now become a part of the public domain by the erosive action of the sea. It is quite clear that applicants have never abandoned their possession under a claim of ownership of this land. And we think the facts above stated fully sustain a finding that there has been no such destructive or total loss of the property as would justify a holding that the owners have lost possession. Doubtless the property has been injured by the erosive action of the sea. Doubtless the owners in order to profitably enjoy the possession of this property will be compelled to make some, relatively small expenditures by way of a "fill" or a retaining wall. But the actual condition of the property as it appears from the record makes a claim that it has been totally lost or destroyed preposterous and wholly untenable. We need hardly add that if the applicants have not lost their right of possession, the Government's claim of ownership, on the ground that this land is a part of the playa (shore) of Manila Bay, necessarily falls to the ground.

We should not be understood, by this decision, to hold; that in a case of gradual encroachment or erosion by the ebb and flow of the tide, private property may not become "property of public ownership," as defined in article 339 of the code, where it appears that the owner has to all intents and purposes abandoned it and permitted it to be totally destroyed, so as to become a part of the "playa" (shore of the sea), "rada" (roadstead), or the like. Our ruling in this case is merely that it affirmatively appears that the owners of the land in question have never in fact nor in intent abandoned it, and that keeping in mind its location and actual condition it can not be said to have been totally destroyed for the purposes for which it was held by them, so as to have become a part of the playa (shore) of the Bay of Manila.

The decree entered by the lower court should be affirmed, with the costs of this instance against the appellant. It is so ordered.

Arellano, C. J., Mapa, Moreland, and Trent, JJ., concur.

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