

SEVERINA AND FLORA CHOCO, PLAINTIFFS AND APPELLANTS, VS. ISIDRO SANTAMARIA, DEFENDANT AND APPELLANT.

G.R. No. 6076. December 29, 1911

Ponente: MAPA, J.

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MAPA, J.:

The judgment rendered in this case in first instance is in part as follows:

"From the evidence presented at the trial, I find that the defendant is in possession of a parcel of land on the corner of Calles Pescadores and P. Rada, in the district of Tondo, city of Manila, and that he has erected a house thereon flush with the boundary line of the adjacent property; that the plaintiffs are the owners of the land on both sides of defendant's house, erected as stated, both on Calle Pescadores and Calle P. Rada; that the defendant in the building of his house has made several openings and windows in the walls of the house on both sides overlooking the property of the plaintiffs; that at the time the defendant was building his house, and the windows and openings were being made, the plaintiffs protested, and later on and in the year 1905 made written protest and demand on the defendant, and the defendant received the written protest and referred it to his counsel, who, from the evidence, appears to have suggested an amicable adjustment of the matter, but the adjustment was not made, and this action was brought.

"It is likewise established that the entrance to the defendant's house is in Calle Pescadores, and taking it as the front of his house he has put a large window in its upper story, on the balcony of said house, marked 1 on Exhibit A, overlooking" Calle P. Rada; and that this window and its balcony do not face directly toward the house of the plaintiffs.

"There have also been constructed two windows in the rear wall of the house of the defendant, in the first story of the house, which are marked 8 and 9 on Exhibit A, and these windows are each 50 by 80 centimeters, and are placed immediately under the ceiling of the first story, and each of these windows is equally divided into four panes.

"On the right hand side of the house, entering from Calle Pescadores, there is a window or opening in the wall of the house in the second story, which is about 25 by 35 centimeters, and is located a little more than half way from the floor of the ceiling of the second story and this is subdivided into smaller panes; and on the same side there are three windows which are marked 2, 3, and 4 on Exhibit A, located immediately under the ceiling of the first story, and each of the three is 25 by 25 centimeters.

"There are two other windows on the same side located immediately under the ceiling, which are marked 5 and 6 on Exhibit A and also on Exhibit C, and one of these windows is about 35 by 67 centimeters, and the other about 75 by 90 centimeters.

"It also appears that there is wire screening over all these openings or windows.

"The law provides that the owner of a wall which is not a party wall, adjoining another's estate, may make in it windows or openings to admit light at the height of the ceiling joists, or immediately under the ceiling, thirty centimeters square, with an iron grate embedded in the wall and a wire screen.

"In this case the windows are in a wall not a party wall adjoining plaintiff's estate, and the windows marked 2, 3, and 4, as appears on Exhibit A, are less than thirty centimeters square and have a wire screen, but there does not appear to be the iron grate embedded in the wall.

"The windows marked 5 and 6, as indicated on Exhibit A, have a wire screen but are more than thirty centimeters square, and have not the iron grate embedded in the wall. "The window marked 7 on Exhibit A has a wire screen, but is more than 30 centimeters square and has not the iron grate embedded in the wall.

"The windows 8 and 9, as indicated on Exhibit A, have a wire screen but no iron grate embedded in the wall, and are of a greater dimension than thirty centimeters square. "The window marked One on Exhibit A is located in a balcony which overlooks the street, and, while the premises of the plaintiff may be seen from it, it is not adjoining their estate.

"The court finds that the plaintiffs are entitled to a decree for closing all the windows or openings in the walls of the defendant's house, as herein before described, which directly overlook the premises of the plaintiffs, or that in some other way the provisions of the law be complied with so that they may remain open.

"All these openings and windows can be made to comply with the law, with the exception of that marked 7, which is not immediately under the ceiling (techo).

"Let judgment be entered in favor of the plaintiffs, Severina and Flora Choco, and against the defendant, Isidro Santamaria, forever prohibiting the opening of the window marked No. 1, as herein before stated, which must be closed, and forever prohibiting the opening of the windows and openings marked, as herein before stated, 2, 3, 4, 5, 6, 8, and 9, which must be closed or made to conform to the requirements of law with regard to dimensions and an iron grate embedded in the wall, with the costs of the action."

The plaintiffs appealed from that judgment and allege in their appeal in this instance:

- That the lower court erred by not ordering in his judgment the final and perpetual closing of the large window opened in the balcony of the back part of the appellee's house and marked No. 1 in the photographic Exhibits A and D, on the ground that the said window is in the balcony which overlooks Calle Padre Rada and that, though the appellants' lot can be seen from this window, it is not contiguous to the latter's property.
- That the trial court also erred in ordering in his judgment that the openings and windows, Nos. 2, 3, 4, 5, 6, 8, and 9, might continue open if they were fixed so as to comply with the requirements of the law as regards their dimensions and the placing of iron grates embedded in the wall.
- That the lower court also erred in denying the appellants' petition for a rehearing.

It appears obvious to us, from the evidence, that the window No. 1, referred to in the first assignment of errors, is next to the appellants' lot. To judge from the photographic views, Exhibits A and D, it opens on the boundary line between the said lot and that of the appellee and is situated perpendicularly above a part of the wall that belongs to the appellants. This opinion is corroborated by the testimony of the defendant's witness who took the said photographs, in so far as he said that "a part of the window in question is in front of the plaintiffs' property, and a person approaching the window may clearly see the said lot." And certainly if it is in front of this lot, it is unquestionable that it directly overlooks the same; but even though it did not and only a side or oblique view of the lot could be obtained from it, it could not be kept open, since between it and the plaintiffs' property there does not intervene the distance required by law - that of two meters in the first case, and 60 centimeters in the second. In reality, there is no distance at all between the said window and the plaintiffs' lot, because, as we have said, this window is perpendicular to the boundary line of the said lot; therefore, its opening is a manifest violation of the provisions of article 582 of the Civil Code which reads as follows:

"Windows with direct views, or balconies or any similar openings projecting over the estate of the neighbor, can not be made if there is not a distance of, at least, 2 meters between the wall in which they are built and said estate.

"Neither can side nor oblique views be opened over said property, unless there is a distance of 60 centimeters."

Because of the lack of the distance required by law, the window in question must be closed, and consequently the judgment appealed from should be modified in this sense, as regards this window.

With respect to the second assignment of error, the question raised by the appellants concerns the proper interpretation of article 581 of the Civil Code which prescribes as follows:

"The owner of a wall which is not a party-wall, adjoining another's estate, may make in it windows or openings to admit light, at the height of the ceiling joists or immediately under the ceiling, of the dimensions of 30 centimeters square and, in any case, with an iron grate embedded in the wall and a wire screen."

The windows mentioned, in this part of the appeal are those indicated by Nos. 2, 3, 4, 5, 6, 8, and 9, in the defendant's Exhibit A. They are all situated immediately under the ceiling of the first floor and are provided with wire screens; some of them measure more and others less than 30 centimeters square and none of them have iron grates embedded in the wall. Owing to this last circumstance, none of them fully comply with the conditions required by law; moreover, those numbered 5, 6, 8, and 9, have the additional defect of being greater than 30 centimeters square. The trial judge therefore ordered, in the judgment, that all the aforementioned windows be closed or that they be made to conform to the law with respect to their dimensions and the placing of iron grates embedded in the wall. The appellants maintain that these windows should have been ordered closed absolutely and finally, and, consequently, that the option allowed the defendant to keep them open, provided that he brought them within the terms of the law, is contrary to the same and, therefore, illegal.

It is alleged as a ground for such averment that none of the windows referred to are at the height of the ceiling joists, which is the first condition required by law.

"We understand by ceiling joists - say the appellants - in a building composed of any given number of stories, the long pieces to which are nailed the boards that form the ceiling of the last story of the building, counting the stories from below; and this interpretation which we give to the words ceiling joists must be that most in harmony with the spirit of article 581 of the code, the subject of our examination, since immediately after them in the same article, in explanation, are found the words or immediately under 'los techos,' in order to indicate, without the least doubt, the sole place or height where openings or windows may be made in conformity with the law. It is needless to say that a building, though composed of several stories, can have but one techo. * * *"

This last assertion is incorrect. By techo is understood that part of a construction which covers the rooms under it and certainly forms one of the essential parts of every story. A story is composed of earth, pavement and ceiling, the latter, that is, the ceiling, being that part of the story that is visible to the observer situated below in the room covered by it. (Hispano-American Encyclopedic Dictionary, by Montaner and Simon.) Consequently, every story has a ceiling, and not, as the appellants maintain, the upper one alone.

Nor is their definition exact of the word joists, as it is employed in article 581 of the Code. According to the dictionary of the Spanish Academy, these are, in architecture, understood to be a kind of beam laid horizontally and serving in buildings to support others or for bracing and connecting the parts of the structure. Mucius Scaevola says in his Civil Code, volume 10, page 448:

"The horizontal timbers that are placed upon the tops of the uprights, that is, what are commonly called beams, intended to serve for connection and main support of the timbers of the different floors that separate the stories of the building, are called joists."

According to these definitions each floor necessarily has joists, that is, beams, since, in the last analysis they are what support and secure the structure of the story immediately above; therefore it is not true that there may be joists only in the top story, as the appellants claim by saying that they understand to be such the long timbers to which are fastened the boards of the ceiling at the top story of the building. On the contrary, carefully considered, it is precisely the top story that does not need joists, since it does not have to support any other higher portion of the building. It has only to support the weight of the roof, which is undoubtedly much less than that of a whole story. So that, according to Mucius Scaevola (work cited, vol. 10, p. 487), it can not be said that the top story has joists. And because it certainly does not have them, is the reason why the code in said article 581 employs the phrase or immediately under "los techos" in referring to the top story.

The author's words in expounding this theory in his commentary on article 581 of the Civil Code are as follows:

"We said elsewhere that these (the joists) were the horizontal timbers that rest upon the tops of the uprights; they form, then, the upper limit of the different stories of a house; and therefore, in referring to the top story, which can not be said to have joists, article 581 makes use of the phrase or immediately under 'los techos.' "

This does not mean that the italicized phrase refers solely and exclusively to the top story, since the lower stories also have techos, as above set forth. In our opinion what the author cited means is that in speaking of the top story, which has no joists, the words of article 581 of the code, at the height of the ceiling joists, fail to apply, the phrase or immediately under "hs techos" alone being thereto applicable, in distinction from the lower stories, with regard to which both phrases are applicable as they have at the same time joists and techo. In referring to the lower stories either phrase may, in connection with the other, determine the place, which surely can not be more than one, where it is permissible to open the windows called regulation windows, whenever in them the joists are actually joined to or placed next to the techo which forms the top of each of said stories. Both phrases therefore express the same idea with reference to the lower stories.

Aside from what has been said here, the object of the law in authorizing the opening of the windows in question in all the stories of a building, without any exception, is clear. Their purpose is, as article 581 itself says, to furnish light to the rooms, and it is evident at a glance that the rooms of the lower stories have as much need for light as those of the top story. No good reason exists for having one story in better condition than another, whichever it may be, in connection with this provision of law.

The defendant is ordered to close finally and forever the window marked No. 1 in Exhibit A, the judgment appealed from in so far as it refers to said window being thus modified, but affirmed in all other respects; without special finding as to costs in this instance.

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

DISSENTING

MORELAND, J.,

I cannot conform to a decision which, in the twentieth century and in a civilized country, makes it an offense for a person to put windows in his own house.

The law, if any (and I do not believe that the law invoked covers the case), upon which the decision is based, together with the reasons for its existence, disappeared with the American occupation, and with the advent of American institutions, Constitution and laws.

Moreover, it might well be that such a law would seriously conflict with those laws, rules and regulations which are necessary to assure and preserve the public health.

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