

FEDERICO MARTINEZ, PLAINTIFF AND APPELLEE, VS. CASIMIRO DIZA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6558. November 24, 1911

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from the judgment of the Court of First Instance of the Province of Ilocos Norte, the Hon. Dionisio Chanco presiding, perpetually prohibiting the defendants from constructing a dam across a certain small stream of water within the jurisdiction of the municipality of Vintar, or from interfering in any manner with the flow of the water in that stream.

The plaintiff claims to have the exclusive right to the use of this water for irrigating purposes by reason of having used the same without interruption since 1884 up to 1904, when Venancio Duque and Casimiro Diza attempted to construct a dam across this stream, but that the part of the dam which they did build was destroyed and these parties forever enjoined from interfering with the free flow of the water, by a final judgment of the court.

On the other hand, the defendants insist that they and their ancestors have since time immemorial been using the water in this zanja or arroyo for the purpose of irrigating their lands.

It is admitted by all the parties that the source of this zanja, is a certain number of springs; that the lands of the defendants lie on each side of said zanja, nearer to its source than the lands of the plaintiff; and that there is not more than sufficient water to irrigate the lands of one of the parties.

The defendants, Cornelio Pasis and Dionisio Pasis, assume all responsibility and state that the other defendants have no interest in this case, they being their laborers only.

The first witness presented by the plaintiff was Leon Agcaoili, a native of Vintar, 66 years of age. This witness testified that he had known this zanja or stream for a great many years; that the plaintiff had been in the exclusive use of this water for more than twenty years; that he was for one year the encargado and in charge of the plaintiff's lands; that he knew of the attempt by Duque and Diza to construct the dam in 1904; and that the defendants constructed for the first time in April, 1910, a dam in exactly the same place where Duque and Diza made their attempt in 1904. This witness further testified that the plaintiff was the only person who had or ever had had, within his knowledge, a dam across this zanja, and that the defendant's dam is more than two hundred meters above that of the plaintiff's.

The plaintiff's second witness is Tomas Tamayo, 51 years of age and a resident of the same town. This witness stated that he knew of his own knowledge that the plaintiff has had the exclusive use of this water for more than twenty years without interruption, except in 1904, when Duque and Diza attempted to build the dam; that he being a property holder in that vicinity knew the lands of the two Pasises; that the lands of these two persons had been abandoned for some years; and that he knew of only one dam, aside from the plaintiff's, that one being the one placed there in April by the two Pasises.

Francisco Agcaoili, 47 years of age and a native and resident of Vintar, the third witness called by the plaintiff, corroborated the testimony of the other two witnesses in all its material parts and further stated that some distance above the plaintiff's dam there are the old ruins of another dam, but that these old ruins do not disturb the natural course of the water.

The next witness, Aniceto Agcaoili, who is a brother-in-law and tenant of the plaintiff, corroborated the other witnesses.

The plaintiff presented in rebuttal the deputy sheriff who destroyed by order of the court the dam which Duque and Diza started to build in 1904. This witness testified that when he and his companions destroyed this partially built dam, there existed no other near that place.

The plaintiff was present and after testifying that he purchased this land in 1883, stated that since that time up to 1904, he had the exclusive use of the water in this zanja; that the defendants never had since this purchase, attempted in any way to disturb the free flow of water therein until April, 1910; and that the documents which he received from his vendors showed that said vendors were the owners of this zanja and had been using" the same for a great many years.

The defendants presented Mateo Leano, 49 years of age; Ignacio Acasio; Victorino Agpaca, 46 years of age; Benito Maltezo, 46 years of age; Casimiro Diza, 49 years of age; and Dionisio Pasis, 31 years of age; all natives and residents of the town of Vintar, who testified that they have known the lands of the two principal defendants ever since their childhood; that these lands have been all this time under cultivation; that the two defendants (Pasises) owned lands on each side of the zanja; and that the said Pasises have been using all the water which flows in this zanja, except that which in time of heavy rains flows over or filters through their dam, for the purpose of irrigating these rice lands. The majority of these witnesses testified further that the ancestors of these two defendants likewise used this water in the same manner and for the same purpose. The defendants presented also Eutiquio Diza, who stated that he was present at the time the deputy sheriff destroyed the partially constructed dam in 1904; that after the water had been released he saw another partially constructed dam just about three meters above this one, and that the deputy sheriff could not have seen this partially constructed dam for the reason that he did not remain on the premises until the dam which he was ordered to remove was completely destroyed or removed, and that when he (the deputy sheriff) left, the water held by this dam covered the other one.

Before proceeding with the analysis of this testimony to determine its probative force, it is well to note that the trial court based his decision, to a great extent, upon the decision of the court in the case decided in 1904, wherein this plaintiff was the complaining party and Dionisio Duque and Casimiro Diza were the defendants. Neither Cornelio Pasis nor Dionisio Pasis was a party to that suit, nor did they have anything whatever to do with that case. They did not acquire their rights to their lands or to the use of this water from the defendants in that case. That they are not bound by the decision in that case is a rule of law too well settled to require the citation of authorities to support it. The court should not have taken into consideration, in making his findings of fact in this case, the decision in that suit.

The testimony is very conflicting, the witnesses for the plaintiff testifying in support of the allegations in the complaint, while the witnesses for the defendants testified just as positively in support of the contention of the defendants. We realize, and take into consideration, the fact that the trial court had an opportunity to see these witnesses, observe their demeanor on the stand, and hear them testify; but there does not appear in the decision appealed from any reason given by the court why it accepted as true the testimony of the plaintiff's witnesses, while on the other hand we can see a number of well-founded reasons why the testimony of the defendants'

witnesses should have controlled. One of these principal reasons is the fact that the lands of the two defendants, Cornelio and Dionisio Pasis, which lie on each side of this zanja, are rice lands now under cultivation and have been for a great number of years, and that these two defendants have nowhere to obtain water for the irrigation of these lands except from this zanja; while, on the other hand, the plaintiff's lands lie below those of the defendants, and he has another source from which he can obtain water for irrigating his lands, this source being another zanja which empties into the zanja in question below the lands of the defendants. It might be true that this second zanja does not furnish sufficient water during an extremely dry season to irrigate the plaintiff's lands. However this may be, the significant fact remains, as we have said, that he can and does obtain water from this second zanja, and the defendants could not have cultivated their lands if they had not used the water from the zanja in question. We think the trial court failed to give these important circumstances due consideration.

For these reasons the judgment appealed from is reversed and the complaint dismissed without costs. So ordered.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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