

AMADA AND CARMEN MESTRES Y YANGCO, PETITIONERS AND APPELLEES, VS. THE DIRECTOR OF LANDS, OPPONENT AND APPELLANT.

G.R. No. 6866. August 31, 1912

Ponente: TORRES, J.

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TORRES, J.:

This appeal was raised, through a bill of exceptions, by counsel for the Director of Lands, against the judgment rendered in this case by the Honorable Pedro Concepcion, associate judge of the Court of Land Registration.

By a written application dated May 18, 1909, the legal representative of Amada and Carmen Mestres y Yangco, both spinsters/ applied to the Court of Land Registration for the registry in accordance with law of a parcel of land of which his said principals claimed to be the owners in fee simple, situated on San Jose and Gallera Streets of the District of Ermita, Manila. The said land, on which there was a building of strong material, is bounded on the northeast by San Jose Street; on the southeast, by Gallera Street; on the southwest, by Manila Bay; and on the northwest, by the property of the heirs of Sergio Corrales, and has an area of 416.17 square meters, as specified in the plan and technical description subsequently presented,, through a written motion for amendment, and approved on June 30, 1909, by the Director of Lands, in place or substitution of those attached to the record.

The said application further recited, among other particulars, that the land in question had been acquired by the said Carmen and Amada Mestres y Yangco by purchase from Harold M. Pitt, according to a public instrument executed in Manila on December 8, 1908, before the notary public Florencio Gonzalez Diez; that it was free from all incumbrance, and that there was no one, besides the applicants, who had any right or share therein.

The Attorney-General, in behalf of the Director of Lands, by a writing of July 23, 1909, opposed the registration sought of that portion of the said land comprised between the line marked "face of retaining wall" and the water of the bay, as shown in the attached plan which was made an integral part of the opponent's brief, on the ground that such land belonged to the Government of the United States and was under the control of the Philippine Government, and asked that the applicants' petition be denied arid that, should the disputed parcel of land be found to belong to the Insular Government, it be adjudicated thereto and the proper certificate of registration issued in the name of the same.

The case came to trial on the 15th and 24th of September, 1909, and oral and documentary evidence was introduced by the parties thereto. On the 27th of September of the same year, an ocular inspection was made of the land in controversy and in the record thereof an entry was made attesting to the presence on the said property, of the attorney, Francisco Qrtigas, of the honorable judge of the Court of Land Registration, of the assistant attorney, Juan Medina, in representation of the Director of Lands, and of the architect, Arcadio Arellano, in behalf of the applicants, and, further, to the following facts: That Mr. L. C. Knight did not remain on the ground referred to, but left after having seen the situation of the stones, the subject of the inspection, stating that it was not necessary for him to be present at the latter; that, during the said proceedings, Attorney Ortigas requested that the

facts hereinafter stated be made of record, to wit, that the two last layers of stone in the lower part of the foundation, as could be seen, were of old stones and formed the base of the old foundation; that the extreme outer line of the building, toward the shore, did not extend beyond the line of the old foundation; that, before the wall such as it appeared to be constructed, there still existed the remains of several piles, as one of them was plainly in sight, which indicated the limit of the old Wall; that, at the end of Gallera Street, in the part thereof adjacent to the sea, there was an area which embraced nearly two-thirds of the space comprised between the shore and San Jose Street and on which masonry work had been constructed to prevent the waves from continuing to undermine the ground of Gallera Street, the foundation of the said masonry work coinciding, more or less, with that of the wall of the property in question; that the ramp of the wall mentioned, which was still preserved as formerly, had been partly expropriated by the municipality, and formed a united part of the old foundation in sight; and that, at the time of the inspection, it was low-tide. All of the foregoing facts, stated by Attorney Ortigas, were by order of the court made of record.

On the 16th of March, 1910, the attorneys for the applicants and the Attorney-General presented, with a plan of the land, an agreement of facts couched in the following terms; Whereas L. G. Knight died in November of last year after having stipulated (p. 40 of the record) with the counsel for the applicants that he would appear on the premises and land in question during the time of high tide, said counsel and the Attorney-General have agreed, very particularly the former, to compromise and admit, as of a thing decided, that during the high and the mean tides the water of Manila Bay reaches as far as the perpendicular face of the old retaining wall which formerly served as a boundary of the land sought to be registered, which is equivalent to saying that the ramp of the said retaining wall then becomes entirely covered by the water which reaches the point marked X on the attached plan that forms a part of the present agreement (p. 54 of record).

By a written petition of April 20, 1910, counsel for the applicants set forth that, as one of the latter, Carmen Mestres, had died, they requested that the name of the said deceased be substituted by that of Gregoria R. Yangco, 63 years of age, a widow of the late Benito Mestres and to whom, as the mother and sole heir of Carmen Mestres, all the latter's estate was awarded, in accordance with the order of partition of January 15, 1910, issued in re the intestate estate of the said deceased, Carmen Mestres.

A day having been set for a continuation of the hearing of the case, the parties petitioned that judgment be rendered without further proceedings, and on November 28, 1910, the court pronounced judgment by disallowing the adverse claim filed by the Director of Lands and by decreeing the registration and adjudication of the said property in favor of Amada Mestres y Yangco and Gregoria R. Yangco y Ronquillo, in accordance with Act No. 496, together with other findings. From this judgment the acting Attorney-General excepted, moved for a rehearing and announced his intention to file a bill of exceptions. By order of December 24, the said motion was overruled and an exception there to was taken on the part of the Attorney-General with the request that all the evidence adduced by both parties contained in the record be made an integral part of the bill of exceptions which, when presented, was approved and transmitted to the clerk of this court.

The opposition of counsel for the Director of Lands to the inscription in the property registry of the land in question, belonging to the applicants, solely concerns the portion or strip of the latter's lot on the side thereof next to Manila Bay and which is occupied by the containing wall constructed with a ramp by some former owner of the land for the purpose of preventing an encroachment thereon of the water of the sea and a destruction of the property thereby, or, according to the plan that accompanied the opponent's claim and is found on page 23 of the record, the portion of land comprised between the line marked with the words "face of retaining wall" and the water of Manila Bay. Said counsel claims that this strip of land belongs to the Government of the United States and is under the control of the Philippine Government.

The adverse claim is founded on the alleged fact that, as the said portion or strip is shore land, it belongs to the public domain, in proof of which counsel for the opponent and appellant cited article 339 of the Civil Code and article 1 of the Law of Waters of August 3, 1886.

The said article 339 of the Civil Code provides: "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."

Article 1 of the Law of Waters of August 3, 1886, published in the Official Gazette of September 24, 1871, with compliance decree of the Governor-General of these Islands, is as follows:

"The following are part of the national domain open to public use:

"1. The coasts or maritime frontiers of Spanish territory, with their coves, inlets, creeks, roadsteads, bays, and ports.

"2. The coast sea, that is, the maritime zone encircling the coasts, to the full width recognized by international law. The State provides for and regulates the police supervision and uses of this zone, as well as the right of refuge and immunity therein, in accordance with law and international treaties.

"3. The shores. By the shore is understood that space alternately covered and uncovered by the movement of the tide. Its interior or terrestrial limit is the line reached by the highest equinoctial tides. Where the tides are not appreciable, the shore begins on the land-side at the line reached by the sea during ordinary storms or tempests."

The contention, then, of the representative of the Government is that the portion of land occupied by the containing wall, together with its ramp, the registration whereof he opposes, is a part of the shore and belongs to the public domain and, therefore, is not susceptible of private appropriation, nor of registration in the property registry; he does not, however, lay any claim to the rest of the applicants' lot.

If the record of the case had shown satisfactory proof that the containing wall, upon which now rests a part of the building erected by the applicants, was constructed on the shore of the bay, the opposition made by the Attorney-General in the name of the Director of Lands, would have been well founded.

The mere fact that at the present time the water of the sea reaches the greater part or nearly the entire height of the said containing wall, is not proof that this wall was built on the shore.

In the deed of sale of the land in litigation, executed, on October 6, 1908, by Mr. Harold M. Pitt, in behalf of the Misses Amada and Carmen Mestres y Yangco (Exhibit B, p. 5 of the record), it is set forth, in the description of the area and boundaries of the property, that the land is bounded on the rear, the southeast side, by the shore of the bay. In another deed of sale of the same land and of the same date, executed by P. G. Eastwick, an agent of the International Bank, as the attorney-in-fact of Mr. William S. Makenson, of the State of California, in favor of the said Harold M. Pitt, it likewise appears from the description of the metes and bounds of the said land that the same is bounded on the rear, the southeast side, by the shore of the bay, and that three small houses of light material existed on the lot.

In the certificates of the registrar of titles of this city (pp. 14 and 25 of the record), it likewise appears, in the descriptive part relative to the said lot, that the same is bounded on the rear, the southeast side, by the shore of the bay, and further that one of the former acquirers of the property had purchased it, on July 15, 1890, from its original owner, Benigna Sinchongco.

So that the containing wall, constructed on the extreme end of the land in question towards the bay, was not

erected on the shore, but on the very portion or strip of the lot bounded by the shore, and was built, not by the applicants in 1909, who erected the building that is on the said lot, but, several years before, by some one of the former owners of the land and for the purpose of preventing the encroachment of the water of the bay and preventing the destruction of the land by the natural action of such water.

Through the ocular inspection made by the judge of the Court of Land Registration, in the presence of the applicant's attorney, the assistant attorney and an employee of the Bureau of Lands, all of whom officially visited the said land, it was verified in an unquestionable manner, and, as a result of the inspection, it was made of record, that the two last layers of stone in the lower part of the foundation of the building, which projected out of the water of the sea, were of old and ancient stones; that the extreme outer line of the new building, toward the shore, did not extend beyond the line of the ancient foundation consisting of the said old stones that, in front of the containing wall, there still existed the remains of several piles, one of them plainly in sight, which indicated the limit of the old wall; that, at the end of Gallera Street, in the part thereof immediately adjacent to the sea, there was an area which embraced nearly two-thirds of the space comprised between the shore and San Jose Street and on which masonry work had been constructed to prevent the waves from continuing to undermine the ground of Gallera Street, the foundation of the said masonry work coinciding, more or less, with that of the wall of the applicant's building; that the ramp of the aforementioned containing wall, which had been preserved in its former state, formed, in a part thereof that had been expropriated by the municipality, a united whole with the old foundation in sight; and that, at the time of the inspection, it was low tide. All of the foregoing particulars were by the court made of record, as being positive facts.

The contractor, Arcadio Arellano, stated in an affidavit, page 43 of the record, that upon examining for the first time the side of the lot toward the bay, he found that the aforesaid containing wall existed, with its ramp, and was provided with a stone railing; that the new house erected on the lot was constructed on the side toward the sea, on the said containing wall, which was very old and had already existed on the said side of the lot prior to the construction of the house that was standing there, the outer line of which did not exceed the outer line of the said wall on which the uprights of the house stood; and that there was a distance of about 20 meters between the containing wall mentioned and the containing wall of the boulevard then being built.

As a result of the construction of the port of Manila and of the breakwater running toward Malate and Pasay, and owing to the work done on the reclaimed land, the water therefrom has for some little time past been inundating the shores and lots of the districts of Malate and Ermita, which indicates either a slow and gradual sinking of the lands near the bay or that, through other causes, there is a greater rise of the water of the bay in the ebb and flow thereof, thereby bringing about the inundation of the said lots.

Counsel for the applicants, in their brief in this instance, state without contradiction that the shore immediately adjacent to the District of Ermita extended at low tide to a distance of about a hundred brazas from the extreme end of Gallera Street, but that that shore has now disappeared, for the municipality had to construct a containing wall to prevent the destruction, by the encroachment of the water of the sea, of the part of the said street bordering on the bay.

Though the shore next to the lot in question and to Gallera Street should have disappeared, on account of its being covered by the water of the sea, and the building constructed by the applicants on the said old containing wall, which was already in existence before they purchased the lot in question from the last of its previous owners, should now appear to border on the water of the bay, it does not necessarily follow that the containing wall in litigation was constructed on the shore, because the latter was beyond the limits of the lot in question and at the present time is under water. It is undeniable that when the said containing wall was constructed, the water of the sea was already making advances toward the lot mentioned and entirely covered the shore on which it then

bordered, and that this wall was erected in anticipation of the damages that might result to the property therefrom.

Moreover, there is no proof in the record that the land sought to be registered has at the present time a greater lineal extension on the side next to the bay than it should have, nor that a part of the building erected on the land projects or extends beyond the outer line of the old. containing wall immediately adjoining the sea, thereby invading property belonging to the state.

In conclusion, it appears, then, to have been duly proved that the said containing wall was erected by one of the original owners of the property, on and within the same, and that the opponent has not established that it was constructed on the shore or on public land belonging to the Government. Therefore, the adverse claim filed by counsel for the Director of Lands has no legal foundation and there is no just nor reasonable ground upon which to oppose the registration of the said land as the exclusive property of the applicants. The land herein concerned is in similar circumstances to that referred to in case No. 6019, *Aragon vs. The Insular Government* (19 Phil. Rep., 233).

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are held to have been refuted, it is our opinion that the said judgment should be affirmed, with the costs against the appellant. So ordered.

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

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