

ESTER JAVELLANA, ROLANDO DEMAFILES, CESAR CRUZADA AND ANTONIO SISON, PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT, 4TH CIVIL CASES DIVISION, MARSAL & CO., INC., AND MARCEL...

G.R. No. 72837. April 17, 1989

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a Petition for Certiorari to review the Decision[1] dated August 14, 1985 promulgated by respondent intermediate Appellate Court in AC-G.R. C.V. No. 03781 which set aside the decision[2] rendered by the Regional Trial Court, 6th Judicial Region, Branch XXVI, Iloilo City, dated December 15, 1983 in Civil Case No. 12791.

The case at bar arose from a complaint for recovery of damages filed by Marsal & Co., Inc. and Marcelino Florete, Sr. (private respondents herein) against defendants Jose C. Hernani, Ester J. Javellana, Rolando Demafiles, Cesar Crusada and Antonio Sison for allegedly denying plaintiffs' access to, and use of a canal leading to plaintiffs' property and to enjoin the City Mayor and City Engineer of Iloilo City from demolishing the existing structures within plaintiffs' property serving as dike entrance gate to said canal situated at Barangay Navais, Mandurriao, Iloilo City. Before the pre-trial conference the complaint as against the City Mayor and City Engineer, was dismissed at the instance of plaintiffs on the ground that said defendants had agreed not to demolish the existing structures in plaintiffs' property during the pendency of the action.

At the pre-trial conference, on June 5, 1979 the parties stipulated:

"xxx (1) that plaintiff Marsal & Co., Inc., is presently the owner of the parcel of land adjoining the Iloilo River up to and adjacent the lot where the L. Borres Elementary School is located at Barangay Navais, Mandurriao, Iloilo; (2) that in 1961, when Marcelino Florete, Sr. was still the owner of said Marsal property having acquired the same by purchase from its former owners sometime in 1959, there existed a main canal from the Iloilo River cutting across said property towards the lot where the said school is located and thru a canal that traverses the school premises going towards Lot 2-344; (3) that sometime in July, 1978, plaintiffs closed the dike entrance of the main canal to the canal running across the L. Borres Elementary School premises to Lot 2344; (4) that on petition of school P.T.A. officials of Barangay Navais, an ocular inspection of the premises was made as a result of which a report dated November 7, 1978 was prepared and submitted by 2nd Asst. City Fiscal Serafin Abogado; (5) that before 1971, there were no houses standing within the school compound and premises of L. Borres Elementary School; (6) that at present, there are 15 to 16 houses in the said school compound one of which is the house of the barangay captain of Barangay Navais; (7) that some of those who signed the petition (Exh. "7") are not residents or occupants of the houses within the school compound; (8) that the photograph (Exh. "A") is the aerial photograph of the premises in question showing the location of the L. Borres Elementary School, the properties of the plaintiffs, the Iloilo River and the Borres property; (9) that the plaintiffs had demolished the dike connecting the main canal in plaintiffs' property with the canal running thru the school premises toward 2344; and (10) that defendant Director Jose C. Hernani had invited plaintiff

Marcelino Florete, Sr. for conference concerning the complaint of the residents of Barangay Navais on July 28, and 31, 1978 as per Exhs. "9" and "10." (pp. 35-36, Rollo)

The issues as defined by the parties are:

"(1) Whether or not the main canal and the canal traversing the premises of the L. Borres Elementary School going towards Lot 2344 existing only beginning 1961 as claimed by the plaintiffs or since time immemorial as contended by the defendants; (2) Whether or not it was plaintiff Marcelino Florete, Sr. who had constructed the main canal as well as the canal running thru the premises of the L. Borres Elementary School to Lot 2344; (3) Whether or not the closing of the dike entrance connecting the main canal with the canal running thru the school premises caused the flooding of the premises of L. Borres Elementary School and its vicinity; (4) Whether or not an easement or servitude of water-right-of-way was constituted on the property of the plaintiffs as servient estate in favor of the L. Borres Elementary School land and nearby lands as dominant estates; (5) Whether or not defendants acted in their respective private or official capacities in dealing with the problem related to the canals in question; (6) Whether or not the defendant Ester Javellana had denied plaintiffs the use of the canal running from the main canal thru the school premises to Lot 2344 of the plaintiffs; (7) Whether or not the demolition or closure by plaintiffs of the entrance-dike connecting the main canal with the canal running thru the L. Borres Elementary School preventing the free flow of water to and from the school premises and vicinity violates the provisions of Presidential Decree 296; and (8) Whether or not either party may be held liable to the other for damages." (Rollo, pp. 35-37)

After due trial, judgment was rendered by the trial court, the dispositive portion reading as follows:

"WHEREFORE, judgment is hereby rendered dismissing plaintiffs' complaint.

"On defendants' counterclaim, the plaintiffs are hereby ordered to restore and reopen the dike entrance connecting the main canal with the canal running thru the premises of L. Borres Elementary School and to demolish any and all structures within plaintiffs' property that impede the free flow of water to and from the Iloilo River thru the said canals.

"Further, plaintiffs Marsal & Co., Inc. and Marcelino Florete, Sr. are hereby ordered to pay, jointly and severally, each of the defendants, Jose C. Hernani, Ester J. -Javellana, Rolando Demafilis, Cesar Cruzada and Antonio Sison, the following sums, to wit: (1) P10,000.00 for moral damages; (2) P2,500.00 for exemplary damages and (3) P2,500.00 for and as attorney's fees of the total sum of P15,000.00 each, plus costs.

"SO ORDERED." (p. 46, Rollo)

Not satisfied with said judgment, plaintiffs appealed to the Intermediate Appellate Court which rendered the assailed decision, its dispositive portion stating as follows:

"WHEREFORE, finding the decision appealed from not consistent with the facts and the law applicable, the same is hereby set aside and another one entered -

"1. Granting the issuance of the writ of preliminary injunction sought in the complaint to become permanent upon the finality of this decision;

"2. Ordering the defendants-appellees to respect plaintiffs' rights and to refrain from demolishing and/or causing the demolition of the dikes built by plaintiff (Florete, Sr.) on his property;

"Costs de officio.

"SO ORDERED." (pp. 57-58, Rollo)

Petitioners contend that the decision of the Appellate Court is contrary to law, its conclusions based entirely on speculations and conjectures and there is grave abuse of discretion in that the findings of fact are without

competent evidence to support them. Petitioners argue that the respondent Appellate Court erred in holding:

“I

That the canal in question was built by plaintiff-appellant purposely to make water available to its own Lot 2344. (Decision, p. 8)

“II

That the plaintiff-appellant is the one that has the right of easement upon the lot occupied by the barrio school. Plaintiff-appellant is thus the dominant estate and not the L. Borres Elementary School. (Decision, p. 8)

"III

That the school, in violation of the said easement, allowed other parties to use the canal for salt production in competition with the salt business of plaintiff-appellant which is conducted in Lot 2344. (Decision, p. 8)

"IV

That the canal which traverses plaintiff's property never benefitted the school. It was only after plaintiff built the canal starting from its fishpond up to its other property that the school benefited from the water coming from the river. (Decision, p. 10)

"V

That aside from the plaintiff's property, there is another parcel of land which is more than adequate to provide the drainage sought by the defendants and this is the Borres property." (Decision, p. 10)

The petition is worthy of consideration. In the Appellate Court's decision, it is noted that said court relied heavily on the findings of facts of the trial court even to the extent of quoting such findings in its decision in support of its ruling. However, the conclusions reached by both courts were different. Petitioners now question the correctness of the conclusions drawn by the respondent Court of Appeals from the proven facts enumerated by the trial court. This determination as to the correctness of the conclusions drawn from the pleadings is a question of law which this Court is authorized to pass upon. There is no question of fact here because the facts are admittedly proven. Said facts are reproduced hereunder:

"The Court finds from the evidence that the main canal had been in existence long before defendant Marcelino Florete, Sr. acquired ownership of the land thru which the same passes from the Iloilo River up to the premises of what is now known as the L. Borres Elementary School. This fact was clearly brought to light by the testimonies of at least three witnesses, including a member of the Maranon family from whom Florete, Sr. acquired the land, in addition to the testimony of defendant Antonio Sison, Barangay Captain of Barangay Navais where the subject canal is situated.

"The Court, indeed, finds no reason to doubt the testimonies of these witnesses not only because they ring true throughout but also because the same emanate from reliable sources who had been actual residents of the place, having had occasions to take their bath in the same canal and with separate individual experiences incident thereto to relate.

"Severo Maranon, a public school teacher and one of the children of the late Buenaventura Maranon, a co-owner of the fishpond purchased by plaintiff Florete, Sr. testified that as early as 1948, when he was about 6 years old, he already knew the subject canal that passes thru their fishpond at Barangay Navais from the Iloilo River towards the premises of the school. On one occasion in 1954, while taking a bath in this canal when still

a young boy, he nearly drowned, reasons for which he has not forgotten the said canal.

"Another witness, Ignacio Genciano, 75, a former employee of the Bureau of Public Highways, testified that when he was still single, being a resident of Barangay Navais, he used to take a bath in the canal near the Iloilo River which is deeper than the other portions. He recalled an incident where a woman, named Toribia Tajaon, while picking shells at the sides of the dikes, fell into the canal and nearly got drowned had he not helped her. He last took a bath in the canal in 1937 before he got employed at the Bureau of Public Highways.

"Witness Genciano also testified that he was then the Barrio Captain of Navais when the Barrio School was constructed in 1940 on the land owned by Lucas Borres.

"Francisco Regacho, 56, testifying for the defendants, declared that in 1948, his house was located beside the canal near the Iloilo River and the land thereat was then owned by Buenaventura Maranon. When the barrio school was constructed in 1940, he worked filling sand on the school site. He was able to lease the school fishpond from 1973 to 1977. This fishpond draws its supply of salt water from the canal coming from the Iloilo River. He had previously worked this main canal in 1948 as part of his job in the fishpond of Buenaventura Maranon fixing its dikes in order to make water flow freely towards the fishpond of the Maranon family.

"Witness Regacho further declared that when defendant Marcelino Florete, Sr. became owner of this Maranon fishpond, he was able to work on this canal where he dug the canal deeper up to Florete's land. He testified that during high tide, the water in the canal was only about 1/2 meter deep and there was no water during low tide and so Florete made the canal deeper.

"Regacho also testified that there are two canals within the school premises, one going towards the land of Florete and the other to the land of Mirasol. These two canals met at the place where Florete closed the canal. The canal going towards Florete's land and that to Mirasol's land serve to empty rainwater to the Iloilo River. He further confirmed that the school fishpond has no other source of salt water except from the canal that connect to the main canal that starts from the Iloilo River.

"For his part, defendant Antonio Sison, 54, testified that he was born in Barangay Navais and has been its barangay captain since 1954 continuously up to the present. He first noticed the existence of the canal in 1933 when he reached the age of reason at the age of 8 years, said canal being about 300 meters long from the Iloilo River going towards the premises of the barrio school and to the land now known as Lot 2344 owned by Marcelino Florete. He also used to take a bath in this canal when still a small boy.

"Defendant Sison further declared that the brothers Pedro and Buenaventura Maranon were then the owners of the fishpond along which the canal runs starting from the Iloilo River towards the school premises when the Maranons sold the land to Florete sometime in 1959. Florete was not the one who constructed the canal but only made the same deeper.

"This construction of Florete took place in 1961 when Sison was also the barangay captain. He recalled Francisco Regacho was one of those who worked in making the canal deeper at the instance of Florete and that no employee from the City Engineer's Office inspected the canal during its repair undertaken by Florete and where Alfredo Emboltorio, Florete's overseer and not Modesto Emboltorio, as the one who managed the work in the canal.

"Defendant Sison went to see Pedro Maranon, who was once a co-owner of the land where the main canal passes, to request him to testify but the latter begged off by reason of his health and old age and, instead, executed an affidavit dated May 14, 1979 (Exh. "8") certifying to the effect that "since before the war until we sold the said land to Marcelino Florete, there exists a canal from the Iloilo River cutting across our property down towards the lot where the school is located and thru a canal that traverses the school premises." (par. 4, Exh. "8").

"It is thus clear from the testimonies of defendants' witnesses that the main canal starting from the Iloilo River

and the canal traversing the premises of the L. Borres Elem. School going toward Lot 2344 existed long before defendant Florete, Sr. acquired ownership of the land of the Maranons and that, if at all, Florete merely caused to be made deeper that portion traversing the school premises.

"To less than the defendants' evidence itself proved the existence of the main canal. Thus, in his letter dated June 26, 1961 embodied in Resolution No. 715 dated June 27, 1961 of the Municipal Board of the City of Iloilo (Exh. "B") defendant Florete Sr. asked that he be allowed to build a canal within the premises of the barrio school up to his Lot 2344. It is not, therefore, a permit to build a canal from the Iloilo River for otherwise, Florete would have so stated in his said letter to the Board. This is so because there already existed a main canal from the Iloilo River. The canal traversing the school was likewise then already existing but not so deep that Florete wanted it constructed to permanent. And in making this canal deeper, he started not from the Iloilo River but from his fishpond adjoining the school premises towards his Lot 2344. Florete testified thus:

"Q. (Court) - From what point did you start?

A From our fishpond traversing the Borres Elementary and then going to our lot." (TSN, July 5, 1979, page 22).

"Defendants presented in evidence a blueprint copy of the Cadastral Map. B.L. No. 3 (Exh. "F") to show that no natural waterway or creek existed in the premises that connected the Iloilo River to the fishpond premises. But this piece of evidence was rendered without any probative value when plaintiffs also presented Teodoro Simpas, Chief of the Surveys Division of the Bureau of Lands, Region IV, who testified that creeks and esteros are delineated in the cadastral map only if they are five (5) or more meters wide and, even less than five (5) meters wide, if there is continuous flow of water is to be determined by the surveyor who made the survey.

"Here, it has been duly established that the canal in question starting from the Iloilo River is only about 3 meters wide for the first 100 meters long and then measures about 2 meters wide until it reaches Lot 2344 with a length of about 200 meters. And it has been shown that salt water coming from the Iloilo River flows in the canal during high tide where the water in the main canal reaches about one-half meter and about two (2) feet in the canal that traverses the school premises. In ordinary days, no water flows in the canal that cuts across the school premises. This explains why the canal in question was not indicated in the cadastral map during the 1913 survey. The canal is less than 5 meters wide and did not have a continuous flow of water except during high tide and during rainy season where it serves as drainage and empties flood waters into the Iloilo River.

"Defendants' closure of the dike's entrance connecting the main canal with the canal running thru the school premises, therefore, caused the flooding of the premises of the L. Borres Elementary School and its vicinity. This is so because during rainy season, said canal also serves as outlet of rain or flood waters that empties to the Iloilo River. Witnesses Ignacio Genciano, Francisco Regacho, Severo Maranon and Barangay Captain Antonio Sison were unanimous in declaring so.

"In his attempt to show that the closing of the dike entrance of the canal did not cause the flooding of the school premises and its vicinity, plaintiffs' witnesses, Modesto Emboltorio, declared that flood in the school fishpond immediately disappears because water recedes to the Borres property. But it has been shown that the adjacent Borres property is higher in elevation compared to the school premises such that water in the school premises cannot flow towards that area. And because water has no other way out except thru the canal, the school premises and its vicinity get flooded once it rains and flood waters remain stagnant for days as shown by the photographs exhibits "3" and "3-A" taken on August 24, 1978 and Exhibits "10" and "10-A" taken on August 15, 1979. The said photographs Exhibits "10" and "10-A" belied Emboltorio's testimony that there were no flood waters in that area when he testified in Court in the morning of August 14, 1979.

"That the premises of the school and its vicinity were flooded when it rained during the rainy season of 1978 immediately after the closing of the dike entrance of the canal is further shown by the report (Exh. "4") dated September 3, 1978 submitted by Carlos G. Brasileno, Asst. Complaint & Acting Officer, Barangay City secretariat and the 6th Indorsement (Exh. "1") dated November 7, 1978 of 2nd Asst. City Fiscal Serafin L. Abogado. These two officials were with the government teams that conducted ocular inspection of the place upon complaint of the residents therein and they actually saw for themselves the flooded situation of the place caused by plaintiffs' closure of the dike entrance of subject canal.

"To be sure, the defendants acted in their official capacities in dealing with the problem related to the canals in question. It has been sufficiently established that the school fishpond gets its supply of salt water directly from the Iloilo River passing thru the canal that traverses the school premises. Likewise, the residents of the place produce salt thru the use of plastic sheets using salt water drawn from the canal. Salt water in this canal is fresh and clean as the tide changes from the Iloilo River unlike in the fishpond nearby which is stagnant and polluted and not suitable for salt-making.

"The closure of the dike entrance of the canal deprived the school fishpond as well as the residents of the place of salt-water and placed the premises of the school and the surrounding vicinity in danger of being flooded when it rains so that the school officials, the defendants Ester Javellana, as district supervisor, Cesar Cruzada as head teacher and Rolando Demafiles as practical arts teacher and the barangay captain, Antonio Sison only did what were incumbent upon them to do as such school and barangay officials when they complained to higher authorities about the plaintiffs' closure of the canal in question.

"indeed, there is no showing that the defendants school officials were motivated by their own personal interests when they complained against plaintiffs' action vis-a-vis the canal. Their effort were all directed towards the benefit of the school as well as for the school children who, in one way or another, had been adversely affected by the closure of the canal. These officials did not act privately for themselves but for public good and public interest. They expected no personal benefit in return.

"The same is true with the defendant barangay captain Antonio Sison who merely complied with his duty extending assistance to the residents of bringing their complaint to the authorities concerned. It was his duty to attend to the needs and problems of his barangay and its residents. The closure of the canal did not only deprive the residents of salt water for salt-making but also posed danger to them as, in fact, during the ensuing rainy days in August of 1978, the place was flooded thus endangering the health and safety of the residents therein.

"Then, too, defendant Col. Jose Hernani only did his duty as head of the Office of Civil Defense in attending to the complaint of the residents of the place. His office has jurisdiction over cases of calamity, flood and the like such that it was but proper, nay obligatory, on his part to act on their complaint against the closure of the canal that caused flood in Barangay Navais.

"The fact is that plaintiffs are without any justifiable reason to close the canal. Defendants advanced that the district supervisor, defendant Ester Javellana, wrote Marcelino Florete Sr. a letter allegedly denying his use of the canal that traverses the school premises reason for which he closed the dike entrance and built an underground canal on the other side of his property going to his Lot 2344. But defendant Javellana explained that there was no such denial. What she meant when she wrote the letter to Marcelino Florete, Sr. was that plaintiffs could not lay pipes underneath the canal. Defendant Ester Javellana testified thus:

"Q- Could you inform the Hon. Court Mrs. Javellana what impelled you to write Mr. Florete this letter?

A- My Head Teacher informed that they were going to lay or buy a 10 inch pipe in the canal which crosses the school that canal to my office one morning Feb. 22. Industrial Arts Teacher Mr. Rolando Demafiles and the

Head Teacher, Mr. Cesar Cruzada. They were excited. There was already a 10 inch rubber tube running from Iloilo River crossing to the school to the bed of Mr. Florete. That they intend to bury and so I accompanied them to L. Borres Elementary School and saw for myself that there really was a 10 inch or 8 inch rubber pipe running across the school and was about to be buried.

Q - Why? Can you explain what would be the disadvantage if Mr. Florete bury those pipes on the canal that traverses the school?

A - The school maybe deprived of the water for their fishpond, that is one and the second drainage canal which drains the school in case of flood will not be working anymore.

Q - Now, in your letter you mentioned here and I read quote: 'Please sit down with us with Mr. Borres because this lot of the school still belongs to Mr. Borres and the Division Office denies your right of way, my question is what do you mean when you say that the Division Office denied your right of way?

A - I meant they cannot bury a pipe depriving the school of the water because the land does not belong to us yet. In other words, the land does not belong to L. Borres Elementary School although it is supposed to be donated by L. Borres.

Q - But when you wrote this letter Mrs. Witness, did you really stop or prohibit Mr. Florete from continuing the use of the canal?

A. - No sir." (TSN, Oct. 17, 1979, pp. 5-6)

"Mrs. Javellana sent that letter-invitation when she came to know that water pipes were about to be laid underground by plaintiffs in lieu of the open canal. Plaintiff Florete Sr., however, did not come to the conference nor sent any word or representative. Nor did he attend to all other subsequent invitation related to the canal although he knew said invitations or conference conducted by the government offices concerned.

"As heretofore stated, the main canal had long been in existence even before plaintiff Marcelino Florete Sr. acquired ownership of the fishpond of the Maranons thru which the same passes. This canal served as passage of salt water from Iloilo River to the school fishpond and at the same time, as outlet and drainage canal or channel of rainwater from the school premises and adjacent lands that empties to the Iloilo River. An easement or servitude of water-right of way had thus been constituted on the property of the plaintiffs as the servient estate in favor of the L. Borres Elementary School land and the nearby lands as the dominant estates.

"Even on the assumption that it was plaintiff Florete Sr. who constructed the subject canal in 1961, an easement or servitude of water-right-of-way had nonetheless been constituted on subject property because since then the same had been in continuous use for no less than fifteen, (15) years - by the school fishpond as well as by the adjacent lands. A positive easement (Art. 616, New Civil Code) had thereby been created and plaintiffs have no right to terminate it unilaterally without violating Art. 629 of the New Civil Code which provides:

'Art. 629: "The owner of the servient estate cannot impair, in any manner whatsoever, the use of the servitude.

'Nevertheless, if by reason of the place originally assigned or of the manner established for the use of the easement, the same should become very inconvenient to the owner of the servient estate, or should prevent him from making any important works, repairs or improvements thereon, it may be charged at his expense, provided he offers another place or manner equally convenient and in such a way that no injury is caused thereby to the owner of the dominant estate or to those who may have a right to the use of the easement.'

"Plaintiffs, however, did not recognize, much less, follow the above-quoted law on easement. They closed the entrance of the canal and demolished portions of the main dike thus impairing the use of the servitude by the dominant estate. And by so doing, plaintiffs violated not only the law on easement but also Presidential Decree

No. 296 which enjoins any person, natural or juridical, to demolish structures or improvements which tend to obstruct the flow of water through rivers, creeks, esteros and drainage channels. For this canal did not serve merely to supply salt water to the school fishpond but also serves as drainage canal or channel of rainwater from adjacent lands to the Iloilo River.

"Before the canal was closed, the residents had not experienced any flood in the area or in the school premises. It was only after the canal was closed by plaintiffs on July 25, 1978, that the residents began to experience flood in the school premises particularly in the month of August every year thereafter when rainy season comes. Rainwater from adjoining areas accumulate at the school premises without any chance of going out. Flood waters remain stagnant for days and became filthy and veritable breeding place of mosquitoes.

"Plaintiffs claimed that they closed the canal because the residents of the place threw waste matter and garbage into the canal and so the waters therein were dirtied and rendered totally unsanitary for human use, particularly for salt-making. But this claim was belied by defendants' showing that what motivated plaintiffs to close the canal was the fact that the residents engaged in salt-making using plastic bags and thus, somehow, competed with plaintiffs in the production of salt in the area. At any rate, regardless of what motivated plaintiffs into closing the canal, the fact is that plaintiffs' act ran roughshod over the aforequoted provisions of law in easement and transgressed Presidential Decree No. 296.

On the issue of damages, therefore, the Court is of the view and so holds that plaintiffs are liable to the defendants for moral damages, attorney's fees and costs of litigation. It is bad enough that plaintiffs, after closing the canal and thus depriving the school fishpond and residents of the place salt water from the Iloilo River and impeding the flow of rain and flood waters from the school premises and adjacent lands to said river during rainy season, unjustifiably refused and failed to heed defendants' plea for them to reopen said canal. Worse, plaintiffs instituted the present action against the defendants and dragged the latter into a court suit that occasioned upon them worries, serious anxiety, fright and mental anguish. No doubt, the defendants were vexed to the utmost to find themselves faced with a court suit when what they did was only to do what was incumbent upon them to do as public officials committed to serve public interest and welfare. What is more, they were forced to secure the services of a private counsel as they were sued also in their private capacities.

"It is quite evident that plaintiffs filed the present action in bad faith to preempt whatever appropriate legal action the authorities could take under the circumstances aware, as they were, that no less than the offices of the City Fiscal of Iloilo and the City Barangay Secretariat, after conducting ocular inspection of the place together with other government functionaries tasked with promoting the health, safety and welfare of the people in the area, recommended immediate appropriate action aimed at reopening the canal.

"The damages that could be adjudged in this case are, however, limited only to the herein defendants. It may be that the school fishpond was damaged and the school PTA suffered actual damages in the form of lost income therefrom. And so with the school children and residents of the place reason for which defendants pray that they should be compensated. But they are not parties to this case hence, damages could not be awarded to them." (pp. 37-46, Rollo)

After a careful reading of the aforementioned findings of the trial court, there is no question that the two subject canals had been in existence long before plaintiff Florete bought his land from the Maranons. Respondent appellate court cannot now disown it after quoting with approval in the body of its decision the findings of the trial court. This brings Us to the determination of the other issue namely: which of the two (2) estates is the dominant or servient estate, an issue which hinges upon the conclusion reached by the trial court that the canals were in existence long before Florete Sr. had acquired that property from the Maranons. It has been established that the main canal which is traversing the property of Florete served as the passage of salt water from the Iloilo River to the school fishpond and at the same time, as an outlet and drainage canal or channel of rainwater from the school premises and adjacent lands that empty into the Iloilo River. Even assuming that it was plaintiff Florete Sr.

who constructed the subject canal in 1961, an easement of water-right of way had already been constituted on the property of the plaintiffs as the servient estate in favor of the L. Borres Elementary School premises and the nearby lands as the dominant estates. Private respondents thus violated Art. 629 of the Civil Code when they closed the entrance of the canal and demolished portions of the main dike thus impairing the use or the servitude by the dominant estates. The findings of the trial court are amply supported by a careful and exhaustive consideration of all available documentary and oral evidence including ocular inspections as it was in the best position to do so. Its legal conclusions are likewise unassailable. In view of the well-settled rule that this Court is not a trier of facts, We find no plausible reason not to sustain the trial court in its findings of fact and the legal conclusions drawn from these findings.

WHEREFORE, premises considered, the assailed decision of the respondent appellate court is hereby REVERSED and SET ASIDE, and the judgment of the Regional Trial Court in Civil Case No. 12791 is hereby REINSTATED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Annex "B", pp. 47-58, Rollo. Penned by Justice Porfirio V. Sison, concurred in by Justices Abdulwahid A. Bidin and Marcelino R. Veloso. A Motion for Reconsideration (Annex "C", pp. 59-80, Rollo) of the same decision was denied in a Resolution of the Intermediate Appellate Court, promulgated on October 29, 1985, (Annex "D", p. 81, Rollo) penned by Justice Porfirio V. Sison, concurred in by Justices Abdulwahid A. Bidin, Marcelino R. Veloso and Ramon B. Britanico, who had inhibited himself earlier from any participation in the original decision for undisclosed reasons.

[2] Annex "A", p. 32, Rollo. Penned by Judge Ricardo M. Ilarde.

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