

**ANGELICA VIAJAR AND CELSO VIAJAR, PLAINTIFFS-APPELLANTS,
VS. COURT OF APPEALS, LEONOR P. LADRIDO, LOURDES LADRIDO
IGNACIO, EUGENIO P. LADRIDO AND MANUEL P. LADRIDO,
DEFENDANTS-A...**

G.R. No. 77294. December 12, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dated December 29, 1986, in CA-G.R. CV No. 69942 entitled, "ANGELICA VIAJAR, et. al., Plaintiffs-Appellants, versus LEONOR LADRIDO, et. al., Defendants-Appellees", affirming the decision of the Court of First Instance (now Regional Trial Court) of Iloilo dated December 10, 1981.

The antecedent facts in the instant case are as follows:

The spouses Ricardo Y. Ladrido and Leonor P. Ladrido were the owners of Lot No. 7511 of the Cadastral Survey of Pototan situated in barangay Cawayan, Pototan, Iloilo. This lot contained an area of 154,267 square meters and was registered in the names of the spouses under Transfer Certificate of Title No. T-21940 of the Register of Deeds of Iloilo.

Spouses Rosendo H. Te and Ana Te were also the registered owners of a parcel of land described in their title as Lot No. 7340 of the Cadastral Survey of Pototan.

On September 6, 1973, Rosendo H. Te, with the conformity of Ana Te, sold this lot to Angelica F. Viajar and Celso F. Viajar for P5,000. A Torrens title was later issued in the names of Angelica F. Viajar and Celso F. Viajar.

Later, Angelica F. Viajar had Lot No. 7340 relocated and found out that the property was in the possession of Ricardo Y. Ladrido. Consequently, she demanded its return but Ladrido refused.

On February 15, 1974, Angelica F. Viajar and Celso F. Viajar instituted a civil action for recovery of possession and damages against Ricardo Y. Ladrido. This case was docketed as Civil Case No. 9660 of the Court of First Instance of Iloilo. Summoned to plead, defendant Ladrido filed his answer with a counterclaim. Plaintiffs filed their reply to the answer.

Subsequently, the complaint was amended to implead Rosendo H. Te as another defendant. Plaintiffs sought the annulment of the deed of sale and the restitution of the purchase price with interest in the event the possession of defendant Ladrido is sustained. Defendant Te filed his answer to the amended complaint and he counterclaimed for damages. Plaintiffs answered the counterclaim.

During the pendency of the case, plaintiff Celso F. Viajar sold his rights over Lot No. 7340 to his mother and co-plaintiff, Angelica F. Viajar. For this reason, plaintiff Angelica F. Viajar now appears to be the sole registered

owner of this lot.

On May 25, 1978, defendant Ladrado died. He was substituted in the civil action by his wife, Leonor P. Ladrado, and children, namely: Lourdes Ladrado-Ignacio, Eugenio P. Ladrado and Manuel P. Ladrado, as parties defendants.

The facts admitted by the parties during the pre-trial show that the piece of real property which used to be Lot No. 7340 of the Cadastral Survey of Pototan was located in barangay Guibuanogan, Pototan, Iloilo; that it consisted of 20,089 square meters; that at the time of the cadastral survey in 1926, Lot No. 7511 and Lot No. 7340 were separated by the Suague River; that the area of 11,819 square meters of what was Lot No. 7340 has been in the possession of the defendants; that the area of 14,036 square meters, which was formerly the river bed of the Suague River per cadastral survey of 1926, has also been in the possession of the defendants; and that the plaintiffs have never been in actual physical possession of Lot No. 7340.

After trial on the merits, a second amended complaint which included damages was admitted.

The plaintiffs raised the following issues to be resolved:

- Whether the change in the course of the Suague River was sudden as claimed by the plaintiffs or gradual as contended by the defendants;
- Assuming arguendo it was gradual, whether or not the plaintiffs are still entitled to Lot "B" appearing in Exhibit "4" and to one-half (1/2) of Lot "A", also indicated in Exhibit "4"; and
- Damages (pp. 12-13, Rollo).

On December 10, 1981, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiffs:

"1.

Dismissing the complaint of plaintiffs Angelica F. Viajar and Celso F. Viajar with costs against them;

"2.

Declaring defendants Leonor P. Ladrado, Lourdes Ladrado-Ignacio, Eugenio P. Ladrado and Manuel P. Ladrado as owners of the parcel of land indicated as Lots A and B in the sketch plan (Exhs. 'C' as well as '4', '4-B' and '4-C') situated in barangays Cawayan and Guibuanogan, Pototan, Iloilo, and containing an area of 25,855 square meters, more or less; and

"3.

Pronouncing that as owners of the land described in the preceding paragraph, the defendants are entitled to the possession thereof.

"Defendants' claim for moral damages and attorney's fees are dismissed.

"SO ORDERED" (p. 36, Rollo).

Not satisfied with the decision, the plaintiffs appealed to the Court of Appeals and assigned the following errors:

I.

THE LOWER COURT ERRED IN NOT HOLDING THAT PLAINTIFFS ARE ENTITLED TO LOT B APPEARING IN EXHIBIT "4" AND TO ONE-HALF (1/2) OF LOT A IN THE SAID EXHIBIT "4".

II.

THE LOWER COURT ERRED IN NOT AWARDING DAMAGES TO PLAINTIFFS (p. 42, Rollo).

As earlier stated, the Court of Appeals affirmed the decision of the court a quo. Plaintiffs (the petitioners herein) now come to Us claiming that the Court of Appeals palpably erred in affirming the decision of the trial court on the ground that the change in the course of the Suague River was gradual and not sudden.

In the decision appealed from, the Court of Appeals held:

"This appeal is not impressed with merit.

"Article 457 of the New Civil Code provides that:

"Art. 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters."

"The presumption is that the change in the course of the river was gradual and caused by accretion and erosion (Martinez Cañas vs. Tuason, 5 Phil. 668; Payatas Estate Improvement Co. vs. Tuason, 53 Phil. 55; C.H. Hodges vs. Garcia, 109 Phil. 133). In the case at bar, the lower court correctly found that the evidence introduced by the plaintiff to show that the change in the course of the Suaque River was sudden or that it occurred through avulsion is not clear and convincing.

"Contrariwise, the lower court found that:

"x x x the defendants have sufficiently established that for many years after 1926 a gradual accretion on the eastern side of Lot No. 7511 took place by action of the current of the Suague River so that in 1979 an alluvial deposit of 29,912 square meters (2.9912 hectares), more or less, had been added to Lot No. 7511. (Exhs. '1' as well as Exhs. 'C' and '4'). Apropos it should be observed that the accretion consisted of Lot A with an area of 14,036 square meters; Lot B, 11,819 square meters; and Lot C, 4,057 square meters. (Exhs. '4-B', '4-C' and '14-D'). Only Lot C is not involved in this litigation. (See Pre-trial Order, supra)

"The established facts indicate that the eastern boundary of Lot No. 7511 was the Suague River based on the cadastral plan. For a period of more than 40 years (before 1940 to 1980) the Suague River overflowed its banks yearly and the property of the defendant gradually received deposits of soil from the effects of the current of the river. The consequent increase in the area of Lot No. 7511 due to alluvion or accretion was possessed by the defendants whose tenants plowed and planted the same with corn and tobacco.

"The quondam river bed had been filled by accretion through the years. The land is already plain and there is no indication on the ground of any abandoned river bed. The river bed is definitely no longer discernible now.

"What used to be the old river bed (Lot A) is in level with Lot No. 7511. So are the two other areas to the East. (Lots B and C) Lots A, B and C are still being cultivated.

"Under the law, accretion which the banks or rivers may gradually receive from the effects of the current of the waters becomes the property of the owners of the lands adjoining the banks. (Art. 366, Old Civil Code; Art. 457, New Civil Code which took effect on August 30, 1950 [Lara v. Del Rosario, 94 Phil. 778]. Therefore, the accretion to Lot No. 7511 which consists of Lots A and B (see Exhs. 'C' and '4') belongs to the defendants" (pp. 34-35, Record on Appeal).

"We find no cogent reason to disturb the foregoing finding and conclusion of the lower court.

"The second assignment of error is a mere offshoot of the first assignment of error and does not warrant further discussion"(pp. 42-44, Rollo).

The petition is without merit.

The petitioners contend that the first issue raised during the trial of the case on the merits in the Court of First Instance, that is, "whether the change in the course of the Suague River was sudden as claimed by the plaintiffs or gradual as contended by the defendants", was abandoned and never raised by them in their appeal to the Court of Appeals. Hence, the Court of Appeals, in holding that the appeal is without merit, because of the change of the Suague River was gradual and not sudden, disposed of the appeal on an issue that was never raised and, accordingly, its decision is void. In support of its contention, petitioners cite the following authorities:

"It is a well-known principle in procedure that courts of justice have no jurisdiction or power to decide a question not in issue" (Lim Toco vs. Go Fay, 80 Phil. 166).

"A judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard, is not merely irregular, but extra-judicial and invalid" (Salvante vs. Cruz, 88 Phil. 236-244; Lazo vs. Republic Surety & Insurance Co. Inc., 31 SCRA 329, 334).

The pivotal issue in the petitioners' appeal was whether the change in the course of the Suague River was gradual or sudden because the trial court below resolved the same in its decision thus subjecting the same to review by respondent appellate court. By simply abandoning this issue, the petitioners cannot hope that the affirmance of the decision wherein this issue was resolved makes the decision of the Court of Appeals void. In effect, the petitioners are expounding a new procedural theory that to render a questioned decision void, all that has to be done is to simply abandon on appeal the pivotal issue as resolved by the lower court and when its decision is affirmed on appeal, attack the decision of the appellate court as void on the principle that a court of justice has no jurisdiction or power to decide the question not in issue. This is not correct. Even the authorities cited by the petitioners, more specifically the Salvante and Lazo cases, supra, do not support their contention. They were heard in the trial court and they cannot complain that the proceeding below was irregular and hence, invalid.

The trial court found that the change in the course of the Suague River was gradual and this finding was affirmed by the respondent Court of Appeals. We do not find any valid reason to disturb this finding of fact.

Article 457 of the New Civil Code (reproduced from Article 366 of the Old), the law applied by the courts a quo, provides:

"Art. 457. To the owners of the lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters."

Petitioners contend that this article must be read together with Sections 45 and 46 of Act No. 496 which provides:

"SEC. 45.[1] The obtaining of a decree of registration and the entry of a certificate of title shall be regarded as an agreement running with the land, and binding upon the applicant and all successors in title that the land shall be and always remain registered land, and subject to the provisions of this Act and all Acts amendatory thereof."

"SEC. 46.[2] No title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession."

As a result, petitioners contend, Article 457 of the New Civil Code must be construed to limit the accretion mentioned therein as accretion of unregistered land to the riparian owner, and should not extend to registered land. Thus, the lot in question having remained the registered land of the petitioners, then the private respondents

cannot acquire title there in derogation to that of the petitioners, by accretion, for that will defeat the indefeasibility of a Torrens Title.

The rule that registration under the Torrens System does not protect the riparian owner against the diminution of the area of his registered land through gradual changes in the course of an adjoining stream is well settled. In *Payatas Estate Improvement Co. vs. Tuason*, 53 Phil. 55, We ruled:

"The controversy in the present cases seems to be due to the erroneous conception that Art. 366 of the Civil Code does not apply to Torrens registered land. That article provides that 'any accretions which the banks of rivers may gradually receive from the effects of the current belong to the owners of the estates bordering thereon.' Accretions of that character are natural incidents to land bordering on running streams and are not affected by the registration laws. It follows that registration does not protect the riparian owner against diminution of the area of his land through gradual changes in the course of the adjoining stream."

In *C.N. Hodges vs. Garcia*, 109 Phil. 133, We also ruled:

"It clearly appearing that the land in question has become part of defendant's estate as a result of accretion, it follows that said land now belongs to him. The fact that the accretion to his land used to pertain to plaintiff's estate, which is covered by a Torrens Certificate of Title, cannot preclude him (defendant) from being the owner thereof. Registration does not protect the riparian owner against the diminution of the area of his land through gradual changes in the course of the adjoining stream. Accretions which the banks of rivers may gradually receive from the effect of the current become the property of the owners of the banks (Art. 366 of the Old Civil Code; Art. 457 of the New). Such accretions are natural incidents to land bordering on running streams and the provisions of the Civil Code in that respect are not affected by the Registration Act."

We find no valid reason to review and abandon the aforecited rulings.

As the private respondents are the owners of the premises in question, no damages are recoverable from them.

ACCORDINGLY, the petition is DISMISSED for lack of merit without pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, and Grino-Aquino, JJ., concur.

Narvasa, J., on leave.

[1] Since there is no provision in P.D. 1529 which is inconsistent with or in conflict with this Section of Act 496, Sec. 45 therefore, is still the law on the matter.

[2] Now Section 47, of P.D. 1529, otherwise known as the "Property Registration Decree".

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