

TORIBIO BAUTISTA, PLAINTIFF AND APPELLEE, VS. TORIBIO ALARCON ET. AL., DEFENDANTS AND APPELLANTS.*G.R. No. 8153. December 24, 1912*

Ponente: TORRES, J.

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Appeal through a bill of exceptions by the defendants Toribio Alarcon and Teodora Raymundo, the latter in substitution of Julian Santos, from the judgment of June 21, 1911, whereby the Honorable Simplicio del Rosario, judge, held the injunction issued by the court on February 25, 1909, to be final and ordered the defendants to cease to occupy the tracts specified in the judgment, adjacent to the canal or ditch, to remove their respective dikes, designated in the rough sketch under letters B, A, K, I, S, and J, to the places where they had formerly been located, shown by line Q-4, as regards Teodora Raymundo, and line P-W, with respect to Toribio Alarcon, and sentenced the defendants to pay P100 to the plaintiff and the costs of the suit.

By written instrument of April 10, 1908, Toribio Bautista set forth that he was the owner of a tract of land, used as a fishpond in the barrio of Pangjolo and the sitio called Talinducan, of the pueblo of Obando, Bulacan, and bounded on the north by the fishery of Julian Santos; on the south by that of Cornelio Enriquez and that of Benito Enriquez; on the east by the Talinducan River; and on the west by the fisheries of the defendants, Toribio Alarcon and Julian Santos, and a canal or ditch which is between these defendant's fisheries; that the plaintiff's said fishpond is formed by two parcels of land, one low and the other high, and is divided into two separate fisheries, although together they are supplied with water, the low land from the Talinducan River, and the high land from the said canal or ditch which, in its western part, is connected with and derived from the Obando River, terminating at the plaintiff's fishpond and serving as a boundary line between the defendants' fisheries; that the said ditch had existed for more than fifty years and since he had known it, from a time prior to October, 1907, had a width of about 6 meters; that the bed of the said ditch or canal was not owned by either of the defendants, and that, even though it were, such ownership had prescribed with respect to the original owner; that about the month of October, 1907, the defendants, without any right, reason, or title, occupied the said ditch, constructed thereon the retaining walls of their respective fisheries, in such manner that they narrowed and reduced the bed of the ditch to an approximate width of 25 centimeters, thus obstructing and almost completely preventing the passage of the water, on which account the plaintiff's fishery on the high land had been almost entirely deprived of water from the said month of October to date; that, after the filing of the complaint in this case and the hearing on the preliminary injunction, the defendants did, maliciously and with the sole intent of injuring the plaintiff, completely close the said canal or ditch, thereby totally preventing the water from flowing into the plaintiff's fishery which thereafter became completely dry; that, by the said acts, performed by the defendants, the plaintiff had suffered losses and damages amounting to P3,000, and that, should the former continue to occupy the said ditch, the latter would thereby be caused cumulatively greater and irreparable damage, unless the defendants were enjoined from continuing such occupation. He therefore requested that a preliminary injunction issue against the defendants, restraining them, until further order, from occupying the said ditch or any part thereof, as it was before October, 1907; that no bond be accepted against said injunction; and that, after due legal procedure, the

said defendants be restrained by perpetual injunction from occupying the aforementioned ditch and be sentenced to pay to the plaintiff, as an indemnity, the sum of P3,000 and the costs of the trial.

The defendants, in their written answer of April 24, 1908, denied generally and specifically each and all of the facts contained in paragraphs 2 to 12 of the amended complaint, and, as a special defense, alleged that, along the boundary line separating the properties of the defendants, there had not existed and did not exist any kind of easement in the plaintiff's favor; that at no time and place had the latter obtained water which constantly and ordinarily came from any place along the boundary line of the defendants' properties, nor had obtained annual revenues or products from his fishery on the high land, amounting to P30 a year, inasmuch as at no time could the plaintiff obtain from said fishery more than 500 fish; that the plaintiff's said fishery was at all times supplied with water drawn from the Talinducan River, although, during the season of floods, the plaintiff, ever since he became possessed of his fishery described in paragraph 2 of the complaint, always obtained permission from one of the defendants to let off his extra water supply, as his fishery was of a higher elevation than that of the defendants, but that the place had always been a mangrove swamp where Julian Santos had his shrubs; that the two fisheries of the plaintiff were in charge of Toribio Alarcon for a period of about four years, during which time the latter always obtained his water supply therefor from the Talinducan River; that the plaintiff never obtained at any time nor during four years, as the product from the sale of fish from his fisheries, the amount stated in the amended complaint; that, before Alarcon had the said fishery, it had for three years been in charge of Silvestre Dilag who, during that whole period, had not received from the sale of fish taken therefrom more than P130, and did not at any time supply the said fishery with water from the Obando River, but always from the Talinducan River.

As a counterclaim the defendants alleged that the plaintiffs had caused them losses and damages aggregating P3,000 by preferring charges against them in the justice of the peace courts of Polo and Obando, for infraction of municipal ordinances. They therefore asked to be absolved from the complaint and that the plaintiff be sentenced to pay P3,000 for losses and damages, and the costs of the trial.

The case came to trial, oral evidence was introduced, the documentary evidence was included in the record and an ocular inspection also made by the court of the place where the said fisheries were located, and as a result thereof the judgment aforementioned was rendered.

The question at issue between the parties to this suit is whether the bed of the canal through which water flows from the Obando River to the fishery of the plaintiff, Toribio Bautista, and the land through which the said canal is opened, belongs to the defendants or to the public domain, because such canal or watercourse is a branch of the aforementioned Obando River.

The defendants have not proved that both or either of them were or was the legitimate owners or owner of the land in which the said watercourse or canal lies, and, therefore, being an arm of the Obando River, it belongs, together with the water flowing through it, to the public domain and partakes of the nature and conditions of the river on which it depends.

In order to arrive at a just and proper conclusion in this case, it is necessary to present here the legal provisions that govern in the matter at issue. Article 339, No. 1, 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 407 of the same code prescribes:

"The following are of public ownership:

"1. Rivers and their natural beds.

"2. Continuous or intermittent waters from springs or brooks running in their natural beds and the said beds.

"3. Waters rising continuously or intermittently in lands of said public ownership.

"4. Lakes and ponds formed by nature on public lands and their beds.

"5. Rain water running through ravines or sandy beaches, the beds of which shall also be public property."

The provisions of the above-cited articles substantially agree with those of the Law of Waters of August 3, 1866, made applicable to these Islands by the Spanish Government and published in the Gaceta de Manila of September 24, 1871, as is shown by the text of articles 33, 36, 37, 39, 72, and others relevant to the matter under discussion.

The plaintiff's petition is held to be proper whereby he asks for the issuance of a perpetual injunction against the defendants, restraining them from the occupation or usurpation of the canal or ditch, which is virtually an arm of the Obando River, belonging to the public domain and being for the common use, especially when it is duly proved in the case that the said watercourse is also a part of the public domain, and does not belong to the defendants; and therefore, the latter have absolutely no right whatever to occupy the said watercourse and to erect on the sides thereof the retaining walls of their respective fisheries, which walls narrowed and reduced the water flow to 25 centimeters, while the said canal or watercourse was formerly, up to October, 1907, about 6 meters wide.

No private person has a right to usurp possession of a watercourse, branch of a river, or lake of the public domain and use, unless it shall have been proved that he constructed the same within property of his exclusive ownership, and such usurpation constitutes a violation of the legal provisions which explicitly exclude such waterways from the exclusive use or possession of a private party.

From the evidence at trial it was fully proven that the defendants, without right or authorization, removed the dikes of their respective fisheries, which dikes had been erected on the banks of the said watercourse or canal, and transferred them to the center of the stream, leaving only a very reduced space for the flow of a small quantity of water, for the purpose of enlarging their said fisheries, thereby causing detriment, not only to the plaintiff, who, by such usurpation was deprived of the quantity of water he needed and used to get for his upper fishery, but also to the public, which has an unquestionable right to the use of the said watercourse or canal, a branch of the Obando River.

The canal herein concerned, together with the water that flows through it, drawn from the Obando River, belongs to that class of property of public use and domain which is not susceptible of private appropriation, and, therefore, the defendants could not, under any circumstances, usurp the greater portion of it without committing a notorious and glaring violation of the law that protects the properties of the State and the rights of its citizens.

Both the plaintiff and the defendants are entitled to utilize, for the needs and benefit of their fisheries, the water which flows from the Obando River into the said canal, but none of them may utilize and receive such water exclusively and to the detriment of the rest, as did the defendants by reducing the bed of the canal, thereby almost depriving the plaintiff of the quantity of water necessary for the maintenance of his fishery.

Had it been proven that the defendants, or any of them, were the owners of the land crossed by the canal in question, it would have devolved upon us to decide whether the plaintiff was or was not entitled to supply his fishery with water from the Obando River, conducted through the said canal, and whether the defendants might

reduce the volume of the flow by constructing, near the middle of the canal, the dikes of their respective fisheries; but as the latter have not adduced any proof whatever that they are the owners of the said watercourse or canal, it is not necessary to consider, in this decision, the right to an easement for conveying water, acquired by the plaintiff through prescription for a period of more than forty years, as is demonstrated by the record.

Furthermore, the defendants are jointly obligated to indemnify the plaintiff for the losses and damages which they occasioned him by the construction of their fishery dikes and the reduction of the capacity of the said canal, in the amount fixed by the trial court in the judgment appealed from, the findings of which are approved, as they are in accordance with law.

By reason, therefore, of the foregoing conclusions, whereby the errors assigned to the said judgment are deemed to have been refuted, it is proper to affirm the same, as we hereby do, with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Mapa, Johnson, and Trent, JJ., concur.
Carson and Moreland, JJ., concur in the result.

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