

**SIMPLICIO BINALAY, PONCIANO GANNABAN, NICANOR MACUTAY,
DOMINGO ROSALES, GREGORIO ARGONZA, EUSTAQUIO BAUA,
FLORENTINO ROSALES, TEODORO MABBORANG, PATRICIO
MABBO-RANG AND FULGENCI...**

G.R. No. 92161. March 18, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

The late Judge Juan Taccad originally owned a parcel of land situated in Tumauni, Isabela having an estimated area of twenty (20) hectares. The western portion of this land bordering on the Cagayan River has an elevation lower than that of the eastern portion which borders on the national road. Through the years, the western portion would periodically go under the waters of the Cagayan River as those waters swelled with the coming of the rains. The submerged portion, however, would re-appear during the dry season from January to August. It would remain under water for the rest of the year, that is, from September to December during the rainy season.

The ownership of the landholding eventually moved from one person to another. On 9 May 1959, respondent Guillermo Manalo acquired 8.65 hectares thereof from Faustina Taccad, daughter of Judge Juan Taccad. The land sold was described in the Deed of Absolute Sale[1] as follows:

"x x x a parcel of agricultural land in Balug, Tumauni, Isabela, containing an area of 8.6500 hectares, more or less; bounded on the North by Francisco Forto; on the East by National Road; on South by Julian Tumolva; and on the West by Cagayan River; declared for taxation under Tax Declaration No. 12681 in the name of Faustina Taccad, and assessed at P750.00. x x x"

Later in 1964, respondent Manalo purchased another 1.80 hectares from Gregorio Taguba who had earlier acquired the same from Judge Juan Taccad. The second purchase brought the total acquisition of respondent Manalo to 10.45 hectares. The second piece of property was more particularly described as follows:

"x x x a piece of agricultural land consisting of tobacco land, and containing an area of 18,000 square meters, more or less, bounded on the North by Balug Creek; on the South, by Faustina Taccad (now Guillermo R. Manalo); on the East, by a Provincial Road; and on the West, by Cagayan River assessed at P440.00, as Tax Declaration No. 3152. x x x"[2]

During the cadastral survey conducted at Balug, Tumauni, Isabela on 21 October 1969, the two (2) parcels of land belonging to respondent Manalo were surveyed and consolidated into one lot, designated as Lot No. 307, Pls-964. Lot 307 which contains 4.6489 hectares includes: (a) the whole of the 1.80 hectares acquired from Gregorio Taguba; and (b) 2.8489 hectares out of the 8.65 hectares purchased from Faustina Taccad. As the survey was conducted on a rainy month, a portion of the land bought from Faustina Taccad then under water was left unsurveyed and was not included in Lot 307.

The Sketch Plan[3] submitted during the trial of this case and which was identified by respondent Manalo shows

that the Cagayan River running from south to north, forks at a certain point to form two (2) branches -- the western and the eastern branches -- and then unites at the other end, further north, to form a narrow strip of land. The eastern branch of the river cuts through the land of respondent Manalo and is inundated with water only during the rainy season. The bed of the eastern branch is the submerged or the unsurveyed portion of the land belonging to respondent Manalo. For about eight (8) months of the year when the level of water at the point where the Cagayan River forks is at its ordinary depth, river water does not flow into the eastern branch. While this condition persists, the eastern bed is dry and is susceptible to cultivation.

Considering that water flowed through the eastern branch of the Cagayan River when the cadastral survey was conducted, the elongated strip of land formed by the western and the eastern branches of the Cagayan River looked very much like an island. This strip of land was surveyed on 12 December 1969.[4] It was found to have a total area of 22.7209 hectares and was designated as Lot 821 and Lot 822. The area of Lot 822 is 10.8122 hectares while Lot 821 has an area of 11.9087 hectares. Lot 821 is located directly opposite Lot 307 and is separated from the latter only by the eastern branch of the Cagayan River during the rainy season and, during the dry season, by the exposed, dry river bed, being a portion of the land bought from Faustina Taccad. Respondent Manalo claims that Lot 821 also belongs to him by way of accretion to the submerged portion of the property to which it is adjacent.

Petitioners who are in possession of Lot 821, upon the other hand, insist that they own Lot 821. They occupy the outer edges of Lot 821 along the river banks, i.e., the fertile portions on which they plant tobacco and other agricultural products. They also cultivate the western strip of the unsurveyed portion during summer.[5] This situation compelled respondent Manalo to file a case for forcible entry against petitioners on 20 May 1969. The case was dismissed by the Municipal Court of Tumauni, Isabela for failure of both parties to appear. On 15 December 1972, respondent Manalo again filed a case for forcible entry against petitioners. The latter case was similarly dismissed for lack of jurisdiction by the Municipal Court of Tumauni, Isabela.

On 24 July 1974, respondent Manalo filed a complaint[6] before the then Court of First Instance of Isabela, Branch 3 for quieting of title, possession and damages against petitioners. He alleged ownership of the two (2) parcels of land he bought separately from Faustina Taccad and Gregorio Taguba for which reason he prayed that judgment be entered ordering petitioners to vacate the western strip of the unsurveyed portion. Respondent Manalo likewise prayed that judgment be entered declaring him as owner of Lot 821 on which he had laid his claim during the survey.

Petitioners filed their answer denying the material allegations of the complaint. The case was then set for trial for failure of the parties to reach an amicable agreement or to enter into a stipulation of facts.[7] On 10 November 1982, the trial court rendered a decision with the following dispositive portion:

"WHEREFORE, in the light of the foregoing premises, the Court renders judgment against the defendants and in favor of the plaintiff and orders:

1. That plaintiff, Guillermo Manalo, is declared the lawful owner of the land in question, Lot No. 821, Pls-964 of Tumauni Cadastre, and which is more particularly described in paragraph 2-b of the Complaint;
2. That the defendants are hereby ordered to vacate the premises of the land in question, Lot No. 821, Pls-964 of Tumauni Cadastre, and which is more particularly described in paragraph 2-b of the Complaint;
3. That the defendants are being restrained from entering the premises of the land in question, Lot No. 821, Pls-964 of Tumauni Cadastre, and which is more particularly described in paragraph 2-b of the Complaint; and
4. That there is no pronouncement as to attorney's fees and costs.

SO ORDERED.[8]"

Petitioners appealed to the Court of Appeals which, however, affirmed the decision of the trial court. They filed a motion for reconsideration, without success.

While petitioners insist that Lot 821 is part of an island surrounded by the two (2) branches of the Cagayan River, the Court of Appeals found otherwise. The Court of Appeals concurred with the finding of the trial court that Lot 821 cannot be considered separate and distinct from Lot 307 since the eastern branch of the Cagayan River substantially dries up for the most part of the year such that when this happens, Lot 821 becomes physically (i.e., by land) connected with the dried up bed owned by respondent Manalo. Both courts below in effect rejected the assertion of petitioners that the depression on the earth's surface which separates Lot 307 and Lot 821 is, during part of the year, the bed of the eastern branch of the Cagayan River.

It is a familiar rule that the findings of facts of the trial court are entitled to great respect, and that they carry even more weight when affirmed by the Court of Appeals.[9] This is in recognition of the peculiar advantage on the part of the trial court of being able to observe first-hand the deportment of the witnesses while testifying. Jurisprudence is likewise settled that the Court of Appeals is the final arbiter of questions of fact.[10] But whether a conclusion drawn from such findings of facts is correct, is a question of law cognizable by this Court.[11]

In the instant case, the conclusion reached by both courts below apparently collides with their findings that periodically at the onset of and during the rainy season, river water flows through the eastern bed of the Cagayan River. The trial court held:

"The Court believes that the land in controversy is of the nature and character of alluvion (Accretion), for it appears that during the dry season, the body of water separating the same land in controversy (Lot No. 821, Pls-964) and the two (2) parcels of land which the plaintiff purchased from Gregorio Taguba and Justina Taccad Cayaba becomes a marshy land and is only six (6) inches deep and twelve (12) meters in width at its widest in the northern tip (Exhs. 'W', 'W-1', 'W-2', 'W-3' and 'W-4'). It has been held by our Supreme Court that 'the owner of the riparian land which receives the gradual deposits of alluvion, does not have to make an express act of possession. The law does not require it, and the deposit created by the current of the water becomes manifest' (Roxas vs. Tuazon, 6 Phil. 408)."[12]

The Court of Appeals adhered substantially to the conclusion reached by the trial court, thus:

"As found by the trial court, the disputed property is not an island in the strict sense of the word since the eastern portion of the said property claimed by appellants to be part of the Cagayan River dries up during summer. Admittedly, it is the action of the heavy rains which comes during rainy season especially from September to November which increases the water level of the Cagayan river. As the river becomes swollen due to heavy rains, the lower portion of the said strip of land located at its southernmost point would be inundated with water. This is where the water of the Cagayan river gains its entry. Consequently, if the water level is high the whole strip of land would be under water."

In *Government of the Philippine Islands vs. Colegio de San Jose*, it was held that --
'According to the foregoing definition of the words "ordinary" and "extra-ordinary", the highest depth of the waters of Laguna de Bay during the dry season is the ordinary one, and the highest depth they attain during the extra-ordinary one (sic); inasmuch as the former is the one which is regular, common, natural, which occurs always or most of the time during the year, while the latter is uncommon, transcends the general rule, order and measure, and goes beyond that which is the ordinary depth. If according to the definition given by Article 74 of the Law of Waters quoted above, the natural bed or basin of the lakes is the ground covered by their waters when at their highest ordinary depth, the natural bed or basin of Laguna de Bay is the ground covered by its waters when at their highest depth during the dry season, that is up to the northeastern boundary of the two parcels of land in question.'

We find the foregoing ruling to be analogous to the case at bar. The highest ordinary level of the waters of the Cagayan River is that attained during the dry season which is confined only on the west side of Lot [821] and Lot [822]. This is the natural Cagayan river itself. The small residual of water between Lot [821] and 307 is part of the small stream already in existence when the whole of the late Judge Juan Taccad's property was still susceptible to cultivation and uneroded."^[13]

The Court is unable to agree with the Court of Appeals that *Government of the Philippine Islands vs. Colegio de San Jose*^[14] is applicable to the present case. That case involved Laguna de Bay; since Laguna de Bay is a lake, the Court applied the legal provisions governing the ownership and use of lakes and their beds and shores, in order to determine the character and ownership of the disputed property. Specifically, the Court applied the definition of the natural bed or basin of lakes found in Article 74 of the Law of Waters of 3 August 1866. Upon the other hand, what is involved in the instant case is the eastern bed of the Cagayan River.

We believe and so hold that Article 70 of the Law of Waters of 3 August 1866 is the law applicable to the case at bar:

"Art. 70. The natural bed or channel of a creek or river is the ground covered by its waters during the highest floods". (Underscoring supplied)

We note that Article 70 defines the natural bed or channel of a creek or river as the ground covered by its waters during the highest floods. The highest floods in the eastern branch of the Cagayan River occur with the annual coming of the rains as the river waters in their onward course cover the entire depressed portion. Though the eastern bed substantially dries up for the most part of the year (i.e., from January to August), we cannot ignore the periodical swelling of the waters (i.e., from September to December) causing the eastern bed to be covered with flowing river waters.

The conclusion of this Court that the depressed portion is a river bed rests upon evidence of record. Firstly, respondent Manalo admitted in open court that the entire area he bought from Gregorio Taguba was included in Lot 307.^[15] If the 1.80 hectares purchased from Gregorio Taguba was included in Lot 307, then the Cagayan River referred to as the western boundary in the Deed of Sale transferring the land from Gregorio Taguba to respondent Manalo as well as the Deed of Sale signed by Faustina Taccad, must refer to the dried up bed (during the dry months) or the eastern branch of the river (during the rainy months). In the Sketch Plan attached to the records of the case, Lot 307 is separated from the western branch of the Cagayan River by a large tract of land which includes not only Lot 821 but also what this Court characterizes as the eastern branch of the Cagayan River.

Secondly, the pictures identified by respondent Manalo during his direct examination depict the depressed portion as a river bed. The pictures, marked as Exhibits "W" to "W-4", were taken in July 1973 or at a time when the eastern bed becomes visible.^[16] Thus, Exhibit "W-2" which according to respondent Manalo was taken facing the east and Exhibit "W-3" which was taken facing the west both show that the visible, dried up portion has a markedly lower elevation than Lot 307 and Lot 821. It has dike-like slopes on both sides connect-ing it to Lot 307 and Lot 821 that are vertical upward and very prominent. This topographic feature is compatible with the fact that a huge volume of water passes through the eastern bed regularly during the rainy season. In addition, petitioner Ponciano Gannaban testified that one had to go down what he called a "cliff" from the surveyed portion of the land of respondent Manalo to the depressed portion. The cliff, as related by petitioner by Gannaban, has a height of eight (8) meters.^[17]

The records do not show when the Cagayan River began to carve its eastern channel on the surface of the earth. However, Exhibit "E"^[18] for the prosecution which was the Declaration of Real Property standing in the name of

Faustina Taccad indicates that the eastern bed already existed even before the sale to respondent Manalo. The words "old bed" enclosed in parentheses -- perhaps written to make legitimate the claim of private ownership over the submerged portion -- is an implied admission of the existence of the river bed. In the Declaration of Real Property made by respondent Manalo, the depressed portion assumed the name Rio Muerte de Cagayan. Indeed, the steep dike-like slopes on either side of the eastern bed could have been formed only after a prolonged period of time.

Now, then, pursuant to Article 420 of the Civil Code, respondent Manalo did not acquire private ownership of the bed of the eastern branch of the river even if it was included in the deeds of absolute sale executed by Gregorio Taguba and Faustina Taccad in his favor. These vendors could not have validly sold land that constituted property of public dominion. Article 420 of the Civil Code states:

"The following things are property of public dominion:

- (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
- (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth." (Underscoring supplied)

Although Article 420 speaks only of rivers and banks, "rivers" is a composite term which includes: (1) the running waters, (2) the bed, and (3) the banks.[19] Manresa, in commenting upon Article 339 of the Spanish Civil Code of 1889 from which Article 420 of the Philippine Civil Code was taken, stressed the public ownership of river beds:

"La naturaleza especial de los rios, en punto a su disfrute general, hace que sea necesario considerar en su relacion de dominio algo mas que sus aguas corrientes. En efecto, en todo rio es preciso distinguir: 1. esta agua corriente; 2. el alveo o cauce, y 3. las riberas. Ahora bien: son estas dos ultimas cosas siempre de dominio publico, como las aguas?

"Realmente, no puede imaginarse un rio sin alveo y sin ribera; de suerte que al decir elCodigo civil que los rios son de dominio publico, parece que debe ir implicito el dominio publico de aquellos tres elementos que integran el rio. Por otra parte, en cuanto a los alveos o cauces tenemos la declaracion del art. 407. num. 1. donde dice: son de dominio publico ... los rios y sus cauces naturales; declaracion que concuerda con lo que dispone el art. 34 de la ley de [Aguas], segun el cual, son de dominio publico: 1. los alveos o cauces de los arroyos que no se hallen comprendidos en el art. 33, y 2. los alveos o cauces naturales de los rios en la extension que cubran sus aguas en las mayores crecidas ordinarias." [20] (Underscoring supplied)

The claim of ownership of respondent Manalo over the submerged portion is bereft of basis even if it were alleged and proved that the Cagayan River first began to encroach on his property after the purchase from Gregorio Taguba and Faustina Taccad. Article 462 of the Civil Code would then apply divesting, by operation of law, respondent Manalo of private ownership over the new river bed. The intrusion of the eastern branch of the Cagayan River into his landholding obviously prejudiced respondent Manalo but this is a common occurrence since estates bordering on rivers are exposed to floods and other evils produced by the destructive force of the waters. That loss is compensated by, inter alia, the right of accretion acknowledged by Article 457 of the Civil Code.[21] It so happened that instead of increasing the size of Lot 307, the eastern branch of the Cagayan River had carved a channel on it.

We turn next to the issue of accretion. After examining the records of the case, the Court considers that there was no evidence to prove that Lot 821 is an increment to Lot 307 and the bed of the eastern branch of the river. Accretion as a mode of acquiring property under Article 457 of the Civil Code requires the concurrence of three

(3) requisites: (a) that the deposition of soil or sediment be gradual and imperceptible; (2) that it be the result of the action of the waters of the river (or sea); and (3) that the land where accretion takes place is adjacent to the banks of rivers (or the sea coast).[22] The Court notes that the parcels of land bought by respondent Manalo border on the eastern branch of the Cagayan River. Any accretion formed by this eastern branch which respondent Manalo may claim must be deposited on or attached to Lot 307. As it is, the claimed accretion (Lot 821) lies on the bank of the river not adjacent to Lot 307 but directly opposite Lot 307 across the river.

Assuming (*arguendo* only), that the Cagayan River referred to in the Deeds of Sale transferring ownership of the land to respondent Manalo is the western branch, the decision of the Court of Appeals and of the trial court are bare of factual findings to the effect that the land purchased by respondent Manalo received alluvium from the action of the river in a slow and gradual manner. On the contrary, the decision of the lower court made mention of several floods that caused the land to reappear making it susceptible to cultivation. A sudden and forceful action like that of flooding is hardly the alluvial process contemplated under Article 457 of the Civil Code. It is the slow and hardly perceptible accumulation of soil deposits that the law grants to the riparian owner.

Besides, it is important to note that Lot 821 has an area of 11.91 hectares. Lot 821 is the northern portion of the strip of land having a total area of 22.72 hectares. We find it difficult to suppose that such a sizable area as Lot 821 resulted from slow accretion to another lot of almost equal size. The total landholding purchased by respondent Manalo is 10.45 hectares (8.65 hectares from Faustina Taccad and 1.80 hectares from Gregorio Taguba in 1959 and 1964, respectively), in fact even smaller than Lot 821 which he claims by way of accretion. The cadastral survey showing that Lot 821 has an area of 11.91 hectares was conducted in 1969. If respondent Manalo's contention were accepted, it would mean that in a span of only ten (10) years, he had more than doubled his landholding by what the Court of Appeals and the trial court considered as accretion. As already noted, there are steep vertical dike-like slopes separating the depressed portion or river bed and Lot 821 and Lot 307. This topography of the land, among other things, precludes a reasonable conclusion that Lot 821 is an increment to the depressed portion by reason of the slow and constant action of the waters of either the western or the eastern branches of the Cagayan River.

We turn finally to the issue of ownership of Lot 821. Respondent Manalo's claim over Lot 821 rests on accretion coupled with alleged prior possession. He alleged that the parcels of land he bought separately from Gregorio Taguba and Faustina Taccad were formerly owned by Judge Juan Taccad who was in possession thereof through his (Judge Taccad's) tenants. When ownership was transferred to him, respondent Manalo took over the cultivation of the property and had it declared for taxation purposes in his name. When petitioners forcibly entered into his property, he twice instituted the appropriate action before the Municipal Trial Court of Tumauni, Isabela. Against respondent Manalo's allegation of prior possession, petitioners presented tax declarations standing in their respective names. They claimed lawful, peaceful and adverse possession of Lot 821 since 1955.

If respondent Manalo had proved prior possession, it was limited physically to Lot 307 and the depressed portion or the eastern river bed. The testimony of Dominga Malana who was a tenant for Justina Taccad did not indicate that she was also cultivating Lot 821. In fact, the complaints for forcible entry lodged before the Municipal Trial Court of Tumauni, Isabela pertained only to Lot 307 and the depressed portion or river bed and not to Lot 821. In the same manner, the tax declarations presented by petitioners conflict with those of respondent Manalo. Under Article 477 of the Civil Code, the plaintiff in an action for quieting of title must at least have equitable title to or interest in the real property which is the subject matter of the action. The evidence of record on this point is less than satisfactory and the Court feels compelled to refrain from determining the ownership and possession of Lot 821, adjudging neither petitioners nor respondent Manalo as owner(s) thereof.

WHEREFORE, the Decision and Resolution of the Court of Appeals in C.A.-G.R. CV No. 04892 are hereby SET

ASIDE. Respondent Manalo is hereby declared the owner of Lot 307. The regularly submerged portion or the eastern bed of the Cagayan River is hereby DECLARED to be property of public dominion. The ownership of Lot 821 shall be determined in an appropriate action that may be instituted by the interested parties inter se. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Records, p. 123

[2] Id., p. 120.

[3] Id., p. 209.

[4] Id., p. 210.

[5] Exhibits "1-C," "1-D" and "1-E" for the Prosecution, Records, p. 209.

[6] Records, pp. 1-6.

[7] Id., p. 24.

[8] Court of First Instance Decision, p. 40; Rollo, p. 98.

[9] Go Ong vs. Court of Appeals, 154 SCRA 270 (1987).

[10] Sese vs. Intermediate Appellate Court, 152 SCRA 585 (1987).

[11] Pilar Development Corporation vs. Intermediate Appellate Court, 146 SCRA 215 (1986).

[12] Court of First Instance Decision, p. 39; Rollo, p. 97.

[13] Court of Appeals Decision, pp. 5-6; citation omitted.

[14] 53 Phil. 423 (1929).

[15] TSN, 7 October 1975, pp. 4-6.

[16] TSN, 13 October 1975, pp. 9-10.

[17] TSN, 3 November 1976, p. 3.

[18] Records, p. 122.

[19] Hilario vs. City of Manila, 126 Phil. 128 (1967).

[20] 3 Manresa, Comentarios al Código Civil Español (6a ed., 1934), p. 75.

[21] Cortes vs. City of Manila, 10 Phil. 567 (1908). See also Article 461, Civil Code.

[22] Republic vs. Court of Appeals, 132 SCRA 514 (1984).

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