

**MAXIMO JAGUALING, ANUNCITA JAGUALING AND MISAMIS
ORIENTAL CONCRETE PRODUCTS, INC., PETITIONERS, VS. COURT
OF APPEALS (FIFTEENTH DIVISION), JANITA F. EDUAVE AND
RUDYGONDO EDUAVE,...**

G.R. No. 94283. March 04, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Between the one who has actual possession of an island that forms in a non-navigable and non-flotable river and the owner of the land along the margin nearest the island, who has the better right thereto? This is the issue to be resolved in this petition.

The parties to this case dispute the ownership of a certain parcel of land located in Sta. Cruz, Tagoloan, Misamis Oriental with an area of 16,452 square meters, more or less, forming part of an island in a non-navigable river, and more particularly described by its boundaries as follows:

North - by the Tagoloan River,
South - by the Tagoloan River,
East - by the Tagoloan River and
West - by the portion belonging to Vicente Neri.

Private respondents filed with the Regional Trial Court of Misamis Oriental[1] an action to quiet title and/or remove a cloud over the property in question against petitioners.

Respondent Court of Appeals[2] summarized the evidence for the parties as follows:

The appellant [private respondent Janita Eduave] claims that she inherited the land from his [sic] father, Felomino Factura, together with his co-heirs, Reneiro Factura and Aldenora Factura, and acquired sole ownership of the property by virtue of a Deed of Extra Judicial Partition with sale (Exh. D). The land is declared for tax purposes under Tax Decl. No. 26137 (Exh. E) with an area of 16,452 square meters more or less (Exh. D). Since the death of her father on May 5, 1949, the appellant had been in possession of the property although the tax declaration remains in the name of the deceased father.

The appellants further state that the entire land had an area of 16,452 square meters appearing in the deed of extrajudicial partition, while in [the] tax declaration (Exh. E) the area is only 4,937 square meters, and she reasoned out that she included the land that was under water. The land was eroded sometime in November 1964 due to typhoon Ineng, destroying the bigger portion and the improvements leaving only a coconut tree. In 1966 due to the movement of the river deposits on the land that was not eroded increased the area to almost half a hectare and in 1970 the appellant started to plant bananas [sic].

In 1973 the defendants-appellees [petitioners herein] asked her permission to plant corn and bananas provided that they prevent squatters to come to the area.

The appellant engaged the services of a surveyor who conducted a survey and placed concrete monuments over the land. The appellant also paid taxes on the land in litigation, and mortgaged the land to the Luzon Surety and Co., for a consideration of P6,000.00.

The land was the subject of a reconveyance case, in the Court of First Instance of Misamis Oriental, Branch V, at Cagayan de Oro City, Civil Case No. 5892, between the appellant Janita Eduave vs. Heirs of Antonio Factura which was the subject of judgment by compromise in view of the amicable settlement of the parties, dated May 31, 1979. (Exh. R);

That the heirs of Antonio Factura, who are presently the defendants-appellees in this case had ceded a portion of the land with an area of 1,289 square meters more or less, to the appellant, Janita Eduave, in a notarial document of conveyance, pursuant to the decision of Court of First Instance, after a subdivision of the lot No. 62 Pls-799, and containing 1,289 square meters more or less was designated as Lot No. 62-A [sic], and the subdivision plan was approved as Pls-799-Psd-10-001782. (Exh. R; R-1 end R-2);

The portion Lot No. 62-A, is described as follows:

"A parcel of land (Lot No. 62-A, Psd-10-001782 being a portion of Lot 62, Pls-799, Tagoloan Public Land Subdivision) situated in Bo. Sta. Cruz, Municipality of Tagoloan, Province of Misamis Oriental. Bounded on the W, and on the N along lines 4-5-1 by Lot 62-B of the subdivision plan-10-001782; on the E by line 1-2 by Lot 64; Pls-799; on the S, along line 2-3-4 by Saluksok Creek, containing an area of one thousand two hundred eighty nine (1,289) square meters more or less."

Appellant also applied for concession with the Bureau of Mines to extract 200 cubic meters of gravel (Exh. G & G-1); and after an ocular inspection the permit was granted (Exh. K, and K-1 and K-2). That the appellant after permit was granted entered into an agreement with Tagoloan Aggregates to extract sand and gravel (Exh. L; L-1; and L-2), which agreement was registered in the office of the Register of Deeds (Exh. M; M-1; and M-2).

The defendants-appellees [petitioners herein] denied the claim of ownership of the appellant, and asserted that they are the real owners of the land in litigation containing an area of 18,000 square meters more or less. During the typhoon Ineng in 1964 the river control was washed away causing the formation of an island, which in now the land in litigation. The defendants started occupying the land in 1969, paid land taxes as evidenced by tax declaration No. 26380 (Exh. 4) and tax receipts (Exhs. 7 to 7-G), and tax clearances (Exhs. 8 & 9). Photographs showing the actual occupation of the land the defendants including improvements and the house were presented as evidence (Exh. 11 to 11-E). The report of the commissioner who conducted the ocular inspection was offered as evidence of the defendants (Exh. G).

The sketch plan prepared by Eng. Romeo Escalderon (Exh. 12) shows that the plaintiffs' [private respondents'] land was across the land in litigation (Exh. 12-A), and in going to the land of the plaintiff, one has to cross a distance of about 68 meters of the Tagoloan river to reach the land in litigation.[3]

On 17 July 1987 the trial court dismissed the complaint for failure of private respondents as plaintiffs therein to establish by preponderance of evidence their claim of ownership over the land in litigation. The court found that the island is a delta forming part of the river bed which the government may use to reroute, redirect or control the course of the Tagoloan River. Accordingly, it held that it was outside the commerce of man and part of the public domain, citing Article 420 of the Civil Code.[4] As such it cannot be registered under the land registration law or be acquired by prescription. The trial court, however, recognized the validity of petitioners' possession and gave them preferential rights to use and enjoy the property. The trial court added that should the State allow the island to be the subject of private ownership, the petitioners have rights better than that of private respondents.[5]

On appeal to the Court of Appeals, respondent court found that the island was formed by the branching off of the Tagoloan River and subsequent thereto the accumulation of alluvial deposits. Basing its ruling on Articles 463

and 465 of the Civil Code[6] the Court of Appeals reversed the decision of the trial court, declared private respondents as the lawful and true owners of the land subject of this case and ordered petitioners to vacate the premises and deliver possession of the land to private respondents.[7]

In the present petition, petitioners raise the following as errors of respondent court, to wit:

1. Whether [or not] respondent court correctly applied the provisions of Articles 463 and 465 of the new Civil Code to the facts of the case at bar; and
2. Whether [or not] respondent court gravely abused its discretion in the exercise of its judicial authority in reversing the decision appealed from.[8]

Petitioners point out as merely speculative the finding of respondent court that the property of private respondents was split by the branching off or division of the river. They argue that because, as held by the trial court, private respondents failed to prove by preponderance of evidence the identity of their property before the same was divided by the action of the river, respondent court erred in applying Article 463 of the Civil Code to the facts of this case.

It must be kept in mind that the sole issue decided by respondent court is whether or not the trial court erred in dismissing the complaint for failure of private respondents [plaintiffs below] to establish by preponderance of evidence their claim of ownership over the island in question. Respondent court reversed the decision of the trial court because it did not take into account the other pieces of evidence in favor of the private respondents. The complaint was dismissed by the trial court because it did not accept the explanation of private respondents regarding the initial discrepancy as to the area they claimed: i.e., the prior tax declarations of private respondents refer to an area with 4,937 square meters, while the Extra-Judicial Partition with Sale, by virtue of which private respondents acquired ownership of the property, pertains to land of about 16,452 square meters.

The trial court favored the theory of petitioners that private respondents became interested in the land only in 1979 not for agricultural purposes but in order to extract gravel and sand. This, however, is belied by other circumstances tantamount to acts of ownership exercised by private respondents over the property prior to said year as borne out by the evidence, which apparently the trial court did not consider at all in favor of private respondents. These include, among others, the payment of land taxes thereon, the monuments placed by the surveyor whose services were engaged by the private respondent, as evidenced by the pictures submitted as exhibits, and the agreement entered into by private respondents and Tagoloan Aggregates to extract gravel and sand, which agreement was duly registered with the Register of Deeds.

Private respondents also presented in evidence the testimony of two disinterested witnesses: Gregorio Neri who confirmed the metes and bounds of the property of private respondents and the effects of the typhoon on the same, and Candida Ehem who related on the agreement between private respondents and petitioners for the latter to act as caretakers of the former.[9] The trial court disregarded their testimony without explaining why it doubted their credibility and instead merely relied on the self-serving denial of petitioners.[10]

From the evidence thus submitted, respondent court had sufficient basis for the finding that the property of private respondents actually existed and was identified prior to the branching off or division of the river. The Court of Appeals, therefore, properly applied Article 463 of the Civil Code which allows the ownership over a portion of land separated or isolated by river movement to be retained by the owner thereof prior to such separation or isolation.[11]

Notwithstanding the foregoing and assuming arguendo as claimed by petitioners that private respondents were not able to establish the existence and identity of the property prior to the branching off or division of the Tagoloan

River, and hence, their right over the same, private respondents are nevertheless entitled under the law to their respective portion of the island.

It is clear petitioners do not dispute that the land in litigation is an island that appears in a non-flotable and non-navigable river; they instead anchor their claim on adverse possession for about fifteen years. It is not even controverted that private respondents are the owners of a parcel of land along the margin of the river and opposite the island. On the other hand, private respondents do not dispute that the island in question has been in the actual physical possession of petitioners; private respondents insist only that such possession by petitioners is in the concept of caretakers thereof with the permission of private respondents.

This brings Us, as phrased earlier in this opinion, to the underlying nature of the controversy in this case: between the one who has actual possession of an island that forms in a non-navigable and non-flotable river and the owner of the land along the margin nearest the island, who has the better right thereto?

The parcel of land in question is part of an island that formed in a non-navigable and non-flotable river; from a small mass of eroded or segregated outcrop of land, it increased to its present size due to the gradual and successive accumulation of alluvial deposits. In this regard the Court of Appeals also did not err in applying Article 465 of the Civil Code.[12] Under this provision, the island belongs to the owner of the land along the nearer margin as sole owner thereof; or more accurately, because the island is longer than the property of private respondents, they are deemed ipso jure to be the owners of that portion which corresponds to the length of their property along the margin of the river.

What, then, about the adverse possession established by petitioners? Are their rights as such not going to be recognized? It is well-settled that lands formed by accretion belong to the riparian owner.[13] This preferential right is, under Article 465, also granted the owners of the land located in the margin nearest the formed island for the reason that they are in the best position to cultivate and attend to the exploitation of the same.[14] In fact, no specific act of possession over the accretion is required.[15] If, however, the riparian owner fails to assert his claim thereof, the same may yield to the adverse possession of third parties, as indeed even accretion to land titled under the torrens system must itself still be registered.[16]

Petitioners may, therefore, acquire said property by adverse possession for the required number of years under the doctrine of acquisitive prescription. Their possession cannot be considered in good faith, however, because they are presumed to have notice of the status of private respondents as riparian owners who have the preferential right to the island as recognized and accorded by law; they may claim ignorance of the law, specifically Article 465 of the Civil Code, but such is not, under Articles 3 and 526 of the same code, an adequate and valid defense to support their claim of good faith.[17] Hence, not qualifying as possessors in good faith, they may acquire ownership over the island only through uninterrupted adverse possession for a period of thirty years.[18] By their own admission, petitioners have been in possession of the property for only about fifteen years. Thus, by this token and under the theory adopted by petitioners, the island cannot be adjudicated in their favor.

This case is not between parties as opposing riparian owners contesting ownership over an accession but rather between a riparian owner and the one in possession of the island. Hence, there is no need to make a final determination regarding the origins of the island, i.e., whether the island was initially formed by the branching off or division of the river and covered by Article 463 of the Civil Code, in which case there is strictly no accession because the original owner retains ownership, or whether it was due to the action the river under Article 465, or, as claimed by petitioners, whether it was caused by the abrupt segregation and washing away of the stockpile of the river control, which makes it a case of avulsion under Article 459.[19]

We are not prepared, unlike the trial court, to concede that the island is a delta which should be outside the

commerce of man and that it belongs to the State as property of the public domain in the absence of any showing that the legal requirements to establish such a status have been satisfied, which duty properly pertains to the State.[20] However, We are also well aware that this petition is an upshot of the action to quiet title brought by the private respondents against petitioners. As such it is not technically an action in rem or an action in personam, but characterized as quasi in rem,[21] which is an action in personam concerning real property.[22] Thus, the judgment in proceedings of this nature is conclusive only between the parties[23] and does not bind the State or the other riparian owners who may have an interest over the island involved herein.

WHEREFORE, We find no error committed by respondent court and DENY the petition for lack of sufficient merit. The decision of respondent Court of Appeals is hereby AFFIRMED, without pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Civil Case No. 5890, 10th Judicial Region, Branch 22, Cagayan de Oro City, the Hon. Alfredo J. Lagamon, Presiding Judge.

[2] Fifteenth Division, composed of Justices Gloria C. Paras as Chairperson, Bonifacio A. Cacdac, Jr., as ponente, and Serafin V. C. Guingona, CA-G.R. CV No. 17419, 15 June 1990.

[3] Rollo, pp. 16-18.

[4] Art. 420. 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.

[5] RTC Decision, p. 32, et seq.

[6] Art. 463. Whenever the current of a river divides itself into branches, leaving a piece of land or part thereof isolated, the owner of the land retains his ownership. He also retains it if a portion of land is separated from the estate by the current.

Art. 465. Islands which through successive accumulation of alluvial deposits are formed in non-navigable and non-flotable rivers, belong to the owners of the margins or banks nearest to each of them, or to the owners of both margins if the island is in the middle of the river, in which case it shall be divided longitudinally in halves. If a single island thus formed be more distant from one margin than from the other, the owner of the nearer margin shall be the sole owner thereof.

[7] Rollo, p. 19.

[8] Rollo, p. 8.

[9] Rollo, pages 25-26.

[10] Rollo, page 32.

[11] See note 6, supra.

[12] See note 6, *supra*.

[13] For the rationale thereof, see 2 A. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, pp. 116-117 (1983); see also *Tuason v. CA*, 147 SCRA 37 [1987].

[14] *Id.*, at 129, citing 3 *Manresa* 263.

[15] *Roxas v. Tuazon*, 9 Phil. 408 [1907] and *Cortes v. City of Manila*, 10 Phil. 567 [1908], as cited in 2 A. Tolentino, *Id.*, at 118-119.

[16] *Ignacio Grande, et al., v. CA*, G.R. No. 17652 115 Phil. 521, 5 SCRA 524 [1962].

[17] Art. 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.

Mistake upon a doubtful or difficult question of law may be the basis of good faith.

Art. 3. Ignorance of the law excuses no one from compliance therewith.

[18] The Civil Code provides:

Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

[19] Art. 459. Whenever the current of a river, creek or torrent segregates from an estate on its bank a known portion of land and transfers it to another estate, the owner of the land to which the segregated portion belonged retains the ownership of it, provided that he removes the same within two years.

[20] Under Article 175 of the Spanish Law of Waters [3 August 1866], the State has the duty to declare which rivers are navigable and which are not. The present law, Presidential Decree No. 1067 entitled A Decree Instituting a Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources [73 O.G. 3554, 1976], under Article 59 thereof, provides that rivers, lakes and lagoons may, upon the recommendation of the Philippines Coast Guard, be declared navigable either in whole or in part.

[21] *Realty Sales Enterprise, Inc. v. Intermediate Appellate Court* 154 SCRA 328 [1987], citing *McDaniel v. McElvy*, 108 So. 820 [1926].

[22] 2 E. Paras, *Civil Code of the Philippines Annotated*, p. 255 (12th ed., 1989).

[23] *Realty Sales Enterprises v. Intermediate Appellate Court*, *supra*., citing *Sandejas v. Robles*, 81 Phil. 421 [1948].

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