

JOSE ARGUELLES, PLAINTIFF AND APPELLEE, VS. TORIBIA MONTALVO, DEFENDANT AND APPELLANT.*G. R. No. 9717. July 21, 1915*

Ponente: ARELLANO, C.J.

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The lands of the plaintiff and the defendant herein adjoin and, by an act of the defendant, a question has arisen relative to a portion of one of these properties, measuring 4 meters north and south, and 7 meters, 10 centimeters east and west, valued at P200, of which strip defendant took possession. Plaintiff asks that he be declared to be the owner of this portion and that it be restored to him, with indemnity for the losses and damages he has suffered to the amount of P100, and the costs of the suit.

The question at issue is merely one of fact.

"Plaintiff's allegations—says the Court of First Instance of Batangas, who tried the case—are strongly supported by his own positive testimony, corroborated by that of the witnesses Graciano Babao and Gavino del Rosario, and also by Exhibits A, B and C, presented by plaintiff and admitted in evidence. Hence, there is no room for doubt that the fence which plaintiff built on the northern boundary of his lot described in the complaint is the true dividing line between his lot and that of the defendant, inasmuch as this fence was erected on the remains of the old one that previously stood in the same place. Consequently, the court has arrived at the conclusion that the portion of the lot in litigation is an integral part of plaintiff's lot described in the complaint. With respect to the sum of P100 claimed by plaintiff as the amount of losses and damages caused him by defendant, there is evidence in support of this claim, and the court believes that said sum should be paid to the plaintiff." (Bill of exceptions, pp. 12 and 13.)

By reason of this evidence, which the court deemed to be preponderant, the judge ordered defendant to restore to plaintiff the possession of the parcel of land in litigation, as being an integral part of plaintiff's lot, and to pay the latter P100 as losses and damages, and the costs of the suit.

Defendant appealed.

As held by the trial court, the preponderance of evidence is in accord with the merits of the case. It is a proven fact that plaintiff erected his fence on the line where the old fence formerly stood, and that defendant never made any complaint with respect to the old fence. Every property owner has the right to inclose his property by means of walls, ditches, growing or dead hedges; and in the present case plaintiff inclosed his land with a growing hedge of madre cacao trees, as, without protest, it had been inclosed before. (Civ. Code, art. 388.)

Plaintiff presented his property titles, Exhibits A, B, and C, the first two of which describe the land as measuring 22½ varas in length and the third as 21½ varas in the direction of north and south. By cutting off a piece four meters in length, running north and south, a considerable part of the frontage of plaintiff's land would be taken away from him. And this measurement, set forth in the titles, must be taken as correct, so long as the contrary, or some other measurement, is not proven by means of the property titles of the adverse party, or by other proof such

as might destroy the effect of said public documents presented at the trial. In an action to fix boundaries, to which the action hereby brought is equivalent, the law prescribes that the boundaries shall be fixed in accordance with the titles of each owner. (Civ. Code, art. 385.) Plaintiff stated in two parts of his testimony, and without contradiction by defendant, that he endeavored to make the latter show his property titles, but defendant did not do so.

The judgment appealed from is affirmed, with costs in this instance. So ordered.

Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

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