43 Phil. 610

[G. R. No. 17877. July 10, 1922]

ADRIANO MIRASOL, PLAINTIFF AND APPELLANT, VS. THE MUNICIPALITY OF TABACO, ALBAY, DEFENDANT AND APPELLEE.

D E C I S I O N

OSTRAND, J.:

This is an action in ejectment and for damages, the plaintiff alleging that the defendant municipality, without his consent, caused an artesian well to be bored on a building lot owned by him thereby rendering the land unserviceable for the uses to which it was to be devoted by the plaintiff. The trial court rendered a judgment absolving the defendant from the complaint, from which judgment the plaintiff appeals.

It appears from the evidence that sometime in the year 1916 the defendant municipality decided to have an artesian well drilled in the central portion of the town. Three landowners expressed themselves as willing to furnish sites for the well without compensation; *viz.*, Fausto Ormachea, Sabina Santiago, and the plaintiff. The engineer in charge of drilling artesian wells in the locality was of the opinion that the plaintiff's lot would be the more suitable site and as soon as the choice of the lot was definitely determined, the acting municipal president, Bernardino Santillan, so informed the plaintiff and upon the latter's renewed assurance that he had no objection to the placing of the well upon his property, the person in charge of the well-drilling machinery was requested to commence operations. A few days thereafter the machinery was taken to the lot in question and set up for operation. After the machinery was installed, but before drilling was actually begun, the plaintiff apparently suffered a change of mind and objected to the continuation of the work, whereupon the operations were immediately suspended. The acting president then went to the store of the plaintiff and expressed his surprise at the latter's change of attitude towards the boring of the well. He further demanded a definite statement from the plaintiff as to whether he wanted the well to be placed on his lot as in the event of a refusal the well would be bored on the lot of Ormachea or on that of Sabina Santiago who were willing to donate

land for that purpose. The plaintiff, upon hearing that there was a possibility of the well being bored on the land of someone else, again gave his consent to its being drilled on his lot and told the president to go ahead with the work. The boring of the well was completed without any further objections on the part of the plaintiff.

The plaintiff insists that he never agreed to the placing of the well on his land, but consistently maintained an attitude of opposition. This is, however, inconsistent with the admitted fact that at the beginning of the boring of the well, operations were immediately suspended upon the plaintiff manifesting his objection, and it seems entirely unreasonable to suppose that the men in charge of the work would have resumed operations unless the plaintiff had withdrawn his objections. It also seems improbable that the municipal authorities should have taken possession of the plaintiffs land by force when other, almost equally good, sites for the well were readily available for the asking. The witness Santillan states that an artesian well is an advantage to the owner of the land upon which it is located and this does not seem improbable when it is considered that, according to the evidence, such a well occupies only a space of about 4 square meters and that a plentiful supply of pure water on a building lot is of obvious benefit to its owner or occupant.

It may be noted that though the plaintiff appears to be an intelligent and prosperous man (he states that he is a *propietario* by occupation) and evidently of some standing in the community, he did not make any claim for compensation for the use of his lot by the municipality until in 1918 and did not bring the present action until March, 1919. It is also possibly not without significance that he himself is the only witness who testifies to objections on his part except upon the occasion when the boring of the well was suspended as above stated. The plaintiff’s statement that the well is situated near the center of the lot is manifestly untrue; it clearly appears that it is near the southeast corner of the lot and close to the adjoining street.

There has been no valid donation of the land to the municipality ; according to Santillan’s testimony, the plaintiff, when asked to execute the necessary document, stated that such a document was unnecessary as he would not be likely to have any disputes with the municipality over such a small matter. It is therefore clear that the defendant municipality has acquired no title to the land occupied by the well nor even an easement therein; its interest can only be regarded as a mere license.

Inasmuch as a license in respect to real property gives no estate in land it may be, and generally is, created by parol or implied from acquiescence on the part of the owner of the

land. (25 Cyc., 641-642, and authorities there cited.) Ordinarily, a license is revokable at the pleasure of the licensor, but it has been held in most jurisdictions in the United States that where a licensee has entered upon land under a license and has with the express or implied consent of the owner expended money or labor for extensive improvements on the strength of such license, the owner is estopped from revoking the license. (Western Union Tel. Co. vs. Penn. Co., 129 Fed., 849; Rhodes vs. Otis, 33 Ala., 578; Flickinger vs. Shaw, 87 Cal., 126; Grimshaw vs. Belcher, 88 Cal., 217; Stoner vs. Zucker, 148 Cal., 516; Gyra vs. Windier, 40 Colo., 366; Howes vs. Barmon, 11 Idaho, 64; Nowlin vs. Whipple, 120 Ind., 596; Bush vs. Sullivan, 3 G. Greene [Iowa], 344; Beatty vs. Gregory, 17 Iowa, 109; Vannest vs. Fleming, 79 Iowa, 638; Addison vs. Hack, 2 Gill [Md.], 221; Dyer vs. Sanford, 9 Mete. [Mass.], 395; Munsch vs. Stelter, 109 Minn., 403; Hudson Tel. Co. vs. Jersey City, 49 N. J. L., 303; Curtis vs. La Grande Hydraulic Water Co., 29 Ore., 34; McBroom vs. Thompson, 25 Ore., 559; Ewing vs. Rhea, 37 Ore., 583; Shaw vs. Proffitt, 57 Ore., 192; Rerick vs. Kern, 14 Serg. & R. [Pa.], 267; Swartz vs. Swartz, 4 Pa. St., 353; Huff vs. McCauley, 53 Pa. St., 206; Dark vs. Johnston, 58 Pa. St., 164; Pierce vs. Cleland, 133 Pa. St., 189; Harris vs. Brown, 202 Pa. St., 16; Lowe vs. Miller, 3 Grat. [Va.], 205; Pifer vs. Brown, 43 W. Va., 412; Walterman vs. Norwalk, 145 Wis., 663; Gustin vs. Harting, 20 Wyo., 1.)

There are many cases laying down a contrary rule, but in general it will be found that in these cases the land-owner’s consent to the making of the improvements or expenditures has been implied and not expressed and all of them are, we think, readily distinguishable from the case at bar. (Streator Independent Telephone, etc. Co. vs. Interstate Independent Telephone, etc. Co., 142 III. App., 183; Prentice vs. McKay, “38 Mont., 114; Archer vs. Chicago, etc. R. Co., 41 Mont., 56; Lewis vs. Patton, 42 Mont., 528; Johanson vs. Atlantic City R. Co., 73 N. J. L., 767; Fowler vs. Delaplain, 79 Ohio St., 279; Weidensteiner vs. Mally, 55 Wash., 79; Salinger vs. North American Woolen Mills Co. [W. Va.], 73 S. E., 312; Connor-Ruddy Co. vs. Robinson-Whyte Co., 19 Ont. L. Rep., 133.)

The doctrine of estoppel having its origin in equity and therefore being based on moral right and natural justice, its applicability to any particular case depends, to a very large extent, upon the special circumstances of the case. In the present case the plaintiff is a participant in the benefits of the well in question; he gave his express consent to the boring of the well upon the premises and thereby led the defendant to believe that the license would not be revoked. Acting upon this belief, the defendant caused the well to be bored and incurred large expenses. We doubt that any authoritative judicial decision will be found where upon such or similar facts the applicability of the doctrine of estoppel has been denied.

To hold that under the circumstances stated the license might be revoked, would be putting a premium upon fraud and deception which equity will not tolerate and would also be in conflict with the provisions of subsection 1 of section 333 of the Code of Civil Procedure, which reads:

> "Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."

We therefore hold that not only upon the general principles of equity, but also under subsection 1 of section 333 of the Code of Civil Procedure, is the plaintiff estopped from revoking the license in question without first reimbursing the defendant for the expenditures incurred upon the strength of said license.

The judgment appealed from is affirmed with the costs against the appellant. So ordered.

Araullo, C. J., Johnson, Street, Villamor, Johns, and *Romualdez, JJ.,* concur.

DISSENTING

MALCOLM, *J.*,

The court misses entirely the point at issue in this case. The issue is not one of estoppel, but of donation. The alleged gift of real property, or the tolerance of its use, by the municipality of Tabaco, on the part of the plaintiff, has not been established, as is required in such cases, by clear and unequivocal proof. Even if evidence of this character existed in the record, still the donation would not be binding, because of the explicit and mandatory language of article 633 of the Civil Code, where it is provided that "In order that a donation of real property be valid it must be made by public instrument * * *." (*See* 5 *Manresa, Comentarios*

al Codigo Civil, p. 113.)

Judgment should be reversed.

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