

7 Phil. 154

[G.R. No. L-2890. December 07, 1906]

VALENTINA PALMA, PLAINTIFF AND APPELLEE, VS. JORGE FERNANDEZ AND THE MUNICIPALITY OF BINMALEY, DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

The plain tilt' alleged in her complaint that she was the owner of a piece of land, a. part of which, by an inundation in 1872, had become covered with water, and that the defendant, Fernandez, under a license from the other defendant, the municipality of Binmalay, had constructed u fishing apparatus upon this property and had caught fish there to her damage in the amount of 500 pesos. Judgment was rendered against both of the defendants in the court below to the effect that the property in question belonged to the plaintiff and that they pay her 170 pesos for damages. The defendants have brought the case here by bill of exceptions.

Act No. 303, section 1, paragraph (j), in enumerating the powers of the municipalities, says:

“The granting of the privilege of fisheries in freshwater streams, lakes, and tidal streams included within the municipality and not the property of any private individual * * *.”

The court below found, among other things, as follows :

“That in the year 1872, as a result of the flood, part of the land was washed away, the said portion having ever since been covered with water, forming an estuary, the plaintiff having used the same by herself and through her tenants as a fishery from the time of the flood until the month of March, 1904.

* * * * *

“The defendants claim that the portion of water covering the land of the plaintiff is part of a river which is public property and that, therefore, the municipality has the right to either lease it or authorize the placing therein of fishing apparatus to those who pay the tax fixed by the municipality. They also allege that the estuary is navigable and that as a result of the flood the plaintiff has lost her rights to the said portion thus covered by the water.

“The court is of the opinion that the weight of evidence justifies a finding that the water covering that portion of the land of the plaintiff is not a part of the river but an insignificant estuary which takes its water from the river Agno and is affected by the tide; but that in normal times no part of the water comes from any spring or stream, there being therein several fisheries operated by their own owners without any authority, license, or intervention on the part of the defendant municipality of Binmaley.”

These findings are sustained by the preponderance of the evidence. In any event they are not plainly and manifestly against the weight of the evidence and they are, we think, decisive of the case. Neither under Act No. 303, above quoted, nor the Law of Waters of 1866, nor the provisions of article 407 of the Civil Code, is the *estero* in question public property. It is not a stream of water. There is no current in it and at times it is completely dry. The fact that it is affected by the tide can not make it public property. If this fact were determinative of the question of public or private property, it would, as suggested by the appellee in her brief, make public property many of the *nipa* lands in the Islands.

What has been said disposes of all the assignments of error except one. Judgment in the court below was rendered not only against the defendant, Fernandez, but also against the municipality. The only action taken by the municipality according to the evidence was the granting of a license to Fernandez to fish in this place. That license was not introduced in evidence and its terms do not appear. The mere granting of a license in such a case, without any other affirmative act on the part of the municipality, can not, we think, make the municipality liable for damages caused to a third person by wrongful acts committed by the licensee. The effect of this license is simply to say that so far as the licensor is concerned it will not interfere with the acts of the licensee.

The judgment of the court below as to the defendant Fernandez is affirmed. The judgment

as to the municipality of Bininalay is reversed and it is absolved from the complaint with the costs of the first instance. No costs will be allowed to either party in this court.

After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the court below for proper action. So ordered.

Arellano, C J., Tores, Mapa, Carson, and Tracey, JJ., concur.

Johnson, J., did not sit in this case.

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