6 Phil. 732

[G.R. No. 2394. November 22, 1906]

KER & CO., PLAINTIFFS AND APPELLANTS, VS..A. R. CAUDEN, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

This is an action of ejectment to recover certain land in the Province of Cavite, described in the complaint as follows:

> "A parcel of land constituting a part of the tract known as Sangley Point, situated within the municipal limits of San Roque, Province of Cavite, bounded on the north by Manila Bay; on the east by Manila Bay and Cañacao Bay; on the south by Manila Bay, Cañacao Bay, the northeast boundary of the property of the Varadero of Manila and the prolongation of the said northeast line toward the northwest to Manila Bay; and on the west by the said northeast boundary of the said Varadero and by the said prolongation of the same and by Manila Bay."

The defendant is in possession of the above-described land as commandant of the Cavite Naval Station of the United States and sets up title in the United States.

The plaintiff claims title by conveyances made in 1901 and 1902 by the owners of the so-called "Hacienda de la Estanzuela" or "San Isidro Labrador." The land consists of a sandy point covered with weeds and brush (about 15 hectares in extent) which has been formed in the last one hundred years by accretion. In 1811 none of the parcel in controversy existed. In 1856 a part of it had been formed, perhaps one-fourth of the present area.

The foregoing statement is taken from the brief of the appellants. The defendants, in addition to a denial, either direct or upon information and belief, of the facts stated in the

complaint, pleaded the statute of limitations and also the following general defense:

> "4. Y, por via de defensa especial, expone el demandado que dicha porci6n de la mencionada Punta es terreno hecho qne ha venido agregandose a la linea de la antigua playa mediante acrecentamientos y depositos causadog por la acci6n de la mar, y es parte del dominio ptiblico del Gobierno."

At the trial of the case the plaintiffs made the following admission:

> "Mr. Suteo. The plaintiffs allege as special defense, in paragraph four of the answer, that said portion of said land was formed by lands aggregated to the line of shore by deposits and accretion caused by action of the sea; and this allegation of special defense is admitted as true by the plaintiffs with the explanation that we do not determine the date of the commencement of the accretion, which we expect the defendant shall do."

The court below, in view of this admission, decided that the land thus gained from the sea w£ts public property and belonged to the State, and entered judgment for the defendant, stating that it was not necessary in the view that it took of the law to determine the other questions in the case, and particularly the defense of the statute of limitations which had been set up in the answer.

The plaintiffs—appellants in this court—make a number of assignments of error relating,' most of them, to the admission and rejection of evidence offered on the subject of the statute of limitations. The appellants say in their brief that:

> "Of course, if land formed by the action of the sea is *ipso facto* public domain, the question of prescription loses its interest and need not be considered."

And again:

"It is apparent that the vital question in the case is this: Do new lands added by action of the sea to private estates become, by accession, incorporated in such estates, or are they public domain? This has been accepted by plaintiffs, defendant, and the trial court as the vital

issue in this cause, and its determination will decide the case." We think that the judgment of the court below should be affirmed upon the ground upon which that court based its decision, and therefore the only question wJrich we should consider is the one above referred to as quoted from the appellants' brief.

A survey of the hacienda was made in 1811. At that time no part of the land here in question existed. In 1856 another survey was made and from that survey it appears that a part of this land had then been formed.

The Law of Waters of June 13,1879, now in force in the Peninsula,, was never extended to the Philippines. By a royal order of August 8, 1866, the Law of Waters of August 3, 1866, was sent here. The *cumplase* of the Governor-General was not attached to this royal order until September 21, 1871. It was published in the "Gaceta de Manila" on September 24, 1871, and the law declared to be in force here. Doubts having arisen as to whether the law was communicated to the Islands in the proper way, they were settled by the royal order of April 8,187&, which was promulgated on July 12,1873. The law was declared to be in force in the Archipelago. As to the land formed since 1871, then, the rights of the parties must be determined with reference to the Law of Waters of 1866, and the provisions contained in the present Oivil Code. Article 1 of that law[1] is in part as follows:

> "Son del dominio nacional y uso publico: * * *
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> "3.° Las playas. Se entiende por playa el espacio que alternativamente cubren y descubren las aguas en el movimiento de la marea. Forma su limite interior o terrestre la linea hasta donde llegan las mas altas mareas y equinocciales. Donde no fueron sensibles las mareas, empieza la playa por la parte de tierra en la linea a donde llegan las aguas en las tormentas o temporales ordinarios."

Articles 4 and 5 are as follows:

> "ART. 4.° Son del dominio ptiblico los terrenos que se unen a las playas por las accesiones y aterramientos que oeasione el mar. Cuando ya no los bafien las aguas del mar, ni sean necesarios para los objetos de utilidad publica, ni para el establecimiento de especiales industrias, ni para el servicio de vigilancia, el Gobierno los deelarara propiedad de los duenos de las fincas colindantes en aumento de ellas.

> "ART. 5.° Los terrenos ganados al mar por consecuencia de obras construfdas por el Estado o por las provincias, pueblos o particulares competentemente autorizados, seran de propiedad de quien hubiere construido las obras, a no haberse establecido otra cosa en la autorizacion."

This case is directly covered by the first part of said article 4. There is therein an express declaration that land formed in the way this land was formed is public property. Nothing could be more explicit and the effect of this declaration is not in any way limited by the subsequent provisions of the same article, The claim of the appellants that these subsequent provisions indicate that the ownership of such land is in the private persons who own the adjoining property, and that the declaration which is spoken of is simply proof of that ownership, can not be sustained. It is in direct conflict with the statement made in the first part of the article. The true construction of the article is that when these lands which belong to the State are not needed for the purposes mentioned therein, then the State shajl grant them to the adjoining owners. No attempt was made by the appellants to prove any such grant or concession in this case and, in fact, it is apparent from the evidence that the conditions upon which the adjoining owners would be entitled to such a grant have never existed because for a long time the property was used by the Spanish navy and it is now occupied by the present Government as a naval station, and works costing more than $500,000, money of the United States, have been erected thereon.

The view which the commission appointed to draft the law of 1866 took of this question, as indicated in the preface to that law, loses its force when it appears, as pointed out by the Solicitor-General, that their view was not adopted in the law which was finally passed. (I Alcubilla Diccionario de Administracion, 4th ed., p. 344, note.)

The provisions contained in the same law in regard to the easement of salvage and coast guard are not inconsistent with the construction which we have placed on article 4. The beach is always the same, though it may be in different places at different times. It is always the land between low and high water mark, but it may, as it did in the case at bar, change with the accretion caused by the action of the water. The easement of salvage and coast guard must necessarily bear the same relation to the beach, whether the land adjoining the beach belongs to the State or to private persons. In the case at bar the easement of salvage after some years necessarily rested upon the public property of the State and not upon the property of adjoining owners.

With reference to the land which was formed prior to 1871, the law governing the same is found in the Partidasy the provisions of that body of law being applicable under the circumstances to a case of this character.

Law 3, title 28, partida' 3, provides in part as follows:

> "Ley III: Las cosas que comunalmente pertenescen a todas las criaturas que biuen en este mundo, son estas; el ayre, e las aguas de la.lluuia, e el mar, e su ribera."

Law 4 of the same title provides in part as follows:

> "* * * e todo aquel lugar esllamado ribera de la mar, quanto se cubre del agua della, quanto mas crece en todo el año, quier en tiempo del inuierno, o del verano."

Law 6 of the same title, however, provides that the banks of rivers—that is, the part between high and low water mark (*ribera*)— belong to the owners of the adjoining land, and law 24 of the same title provides that lancl gained by accretion in rivers belongs, as a general rule, to the adjoining owners. There is no such provision, however, in regard to land added to the shore by the action of the sea. In Arrazola's Enciclopedia EspaSola, published in 1849, there is found in volume 2, at page 582, the following:

> "No tiene lugar tampoco el derecho de aluvi6n en las desviaciones que hace el mar dejando en seco alguna parte de terreno inmediata a los campos o a la playa. La Iegislacion francesa ha creido deber resolver este caso expresamente en el sentido expuesto; pero bastaria la consideracion de que estos terrerios son considerados como dependencia del dominio ptiblico para opinar asi en todos los casos aunque no hubiera una disposicion terminante."

In the case of Catherine Zeller *vs*. The Southern Yacht Club (34 La. Annual, 837) the court says, at page 839:

> "The plaintiff, however, denies that Lake Pontchartrain is either the sea or an arm of the sea, and therefore contends that this question of accretions or alluvion on the seashores has no applicability to this case. It might be sufficient reply to this to say that the only acknowledged right to accretions as property, under our law, are those formed on rivers and running streams; and that there is no recognition of any property right therein when formed on lakes, bays, arms of the sea, or other large bodies of water, and that the modes or ways of the acquisition of property are limited to those expressly prescribed by law and can not be extended by implication."

The *Partidas* having expressly declared that the banks of rivers belong to the adjoining owners, and that what is added to the banks by accretion belongs to such owners, and having said in the same title that the shore of the sea belongs to the public, and not having made any declaration that what is added to the shore by the action of the sea belongs to the adjoining owners, we are bound to infer that it was not the intention of the makers of that body of laws that such land formed by the action of the water should belong to the proprietors of the adjoining land. The general rule is that what is added by accretion belongs to the owner of the thing to which it is added. Applying this rule to lands added to the shore of the sea by the action of the water, it would follow that such addition belongs to the public, and we hold that prior to 1871 the land formed in this case by the action of the sea did not belong to the grantors of the plaintiffs, the owners of the adjoining property, but belonged to the public.

The plaintiffs relied also upon the fact that in 1890 their grantors were inscribed in the Registry of Property as the owners of an estate bounded on the north by the Bay of Manila, on the south by the Isthmus of Dalahican and land belonging to Jose Basa, on the east by the Cove of Cañacao, an estero of the pueblo of San Boque, and Cove of Bacoor, and on the west by Manila Bay. The, property in question is now included in these boundaries and the larger part of it must have been included therein in 1890, when the inscription was made.

The land here in controversy did not belong to the persons in whose name it was inscribed at the time this inscription was made. On the contrary, it belonged to the State. By the terms of article 33 of the Mortgage Law, the inscription of this property in the name of the grantors of the plaintiffs did not deprive the State of its interest therein. (Merchant *vs*. Lafuente,[(1)] 4 Off. Gaz., 239.) Neither is the State so deprived of its interest by the provisions of article 34 of the law. The plaintiffs, when they purchased the land, knew its location with

reference to the sea. They were bound to know that any land which the sea had added to the former tract there existing did not belong to the adjoining owner but belonged to the State. They were bound to know that the owners of the adjoining estate had no right to convey any land that had been added thereto by the action of the sea.

Moreover the inscription itself gave them express notice that a part of the land had been so formed. There are in fact two descriptions in the inscription which are not consistent with each other. The first is the one above quoted. But after giving that, the registry goes on to give the description of the land as it appeared from the survey of 1811, stating in detail all of the metes and bounds of that survey. Within this latter description the land in controversy would not be included. The registry then states that in 1856 another survey was made—

> "Incluyendo algunos terrenos que habian sido ganados por aluvi6n y excluyendo otros que habian sido mermados por, el mar advirtisidose en esta segundas diligencias que las diferencias notadas en varias partes de la finca son de poca consideracion puesto que no alteran la direccio de ips rumbos ni los ifmites."

The purpose of this second survey is not stated with entire correctness in the registry, for its sole object was to verify the survey of 1811 for the purpose of ascertaining if certain lots of land then in controversy were within or outside the boundaries of that survey. But passing this point, it is apparent that the registry gave the plaintiffs express notice that some of the land inscribed had been formed by the action of the sea and that it was therefore public property.

They are not then entitled to the protection of article 34 of the Mortgage Law. It did not appear from the registry that their grantors had the right to convey this land. On the contrary, it expressly appeared therefrom that they had no right to convey it if it had been formed by the action of the sea.

Having come to the conclusion that the land in question always has been the property of the State, it is not necessary to cbnsider the question of the statute of limitations nor the other questions raised by the various assignments of error contained in the appellants' brief.

The judgment of the court below is affirmed, with the costs of this instance against the appellants.

After expiration of twenty days let judgment be entered in accordance herewith and at the

proper time let the record be remanded to the court below for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and *Tracey, JJ.,* concur.

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[1] Gaceta de Manila, page 629.

(1) 5 Phil. Rep., 638.

Date created: May 05, 2014