95 Phil. 407

[G.R. No. L-5416. July 26, 1954]

ALFREDO MONTELIBANO, ET AL., PLAINTIFFS AND APPELLANTS, VS. THE BACOLOD-MURCIA MILLING CO., DEFENDANTS AND APPELLANTS.

D E C I S I O N

LABRADOR, J.:

Parties plaintiffs and defendant appeal from a judgment of the Court of First Instance of Negros Occidental dismissing plaintiff's complaint for the recovery of P4, 712,501.89, representing the value of sugar alleged to belong to them and existing in defendant's warehouse at the time of the liberation, and ordering plaintiff Alfredo Montelibano to pay defendant the sum of P35,163.06, plus legal interest thereon from April, 1945, until fully paid. Plaintiffs appeal from the judgment of dismissal, and defendant from the judgment in so far as it fixes at P35,163.06 as the amount defendant is entitled to recover from plaintiff Alfredo Montelibano.

Plaintiffs are sugar planters, members of the Bacolod-Murcia Planters' Association, Inc., or assignees of sugar planters. The former have contracts with the defendant corporation, hereinafter known as the Central, for the delivery of their sugar cane to the sugar mill of the defendant for milling and processing into sugar. In accordance with the contracts, which the planters had signed with the defendant, the sugar processed from the sugar cane delivered by each planter was to be divided between the planter and the Central in the following proportion, namely, 60% for the planter and 40 c/o for the Central. The Central was to furnish the planter, from time to time as the milling progressed, with information as to the share of sugar that the planter was entitled to receive, furnishing the planter with quedans or

warehouses receipts therefor. After the milling, and for a period of 90 days, the Central was to keep the sugar in its warehouse free of charge; thereafter the planter was to pay five centavos per picul per month for storage, aside from such expenses of conservation and repacking as may be incurred in relation to the sugar upon presentation of his warehouse receipt (Exhibit KK).

At the time of the occupation of Negros Occidental by the Japanese forces on May 21, 1942, there were on deposit at the Central's warehouse 664,091.22 piculs of sugar, of which 128,452.24 belonged to the plaintiffs, 284,425.81 to the defendant Central, and the balance to planters not parties to the action (Exhibits C, C-1, C-2, and C-3. On February 10, 1943 (18th year of Shows February 10), the Japanese Military Administration, Visayan Branch, designated Fidel Henares, president of the Sugar Planters' Association, with the following authority:

> * * * hereby authorized to sell and dispose of all sugar to the Mitsui Bussan Kaisha, the authorized purchaser of the Philippine Military Administration, and in 'addition granting the following powers:
>
> > To contract, deliver, to receive payments, to pay various accounts to the members of the Planters' Association; and to open accounts, to contract overdraft accounts with the Bank of Taiwan, and perform such other powers as may be necessary in the premises. (Exhibit RH, Annex A, Annex A-1, Exhibit 19)

Thereafter the Japanese Military Administration issued a regulation governing purchases of sugar by the Military Administration (Exhibit JJ) by virtue of which, upon purchase of sugar by the Military

Administration, any claim of the Philippine National Bank or of any other enemy corporation thereto shall be automatically cancelled, and the sugar thus purchased deposited as new "Regenesis a/c" in the name of the vendee, the Bank of Taiwan, Ltd. Planters or owners of the sugar were authorized, if they chose, to borrow funds from the Bank of Taiwan, Ltd. According to regulations issued by the Executive Commission under the Military Administration, the checks in payment of the sugar purchased shall be Bank of Taiwan checks which, however, were to be deposited with said bank and set-off against the mortgages on old crop loans of the planters as Farmer Rehabilitation Funds. New crop loans could be granted within the limits of the proceeds of their sugar sold (Exhibit 23).

As early as February 24, 1943, the Mitsui Bussan Kaisha, Ltd., notified the president of the Planters' Association that it was buying all the sugar of the planters, whether they could be located or not (Exhibit II). Warehouse orders for release of sugar he had sold were issued at the request of the president of the Planter's Association on the following dates and for the following amounts:

February 17, 1943	22,724.09 piculs (Exhibit 62)
March 6, 1943	275,580.35 piculs (Exhibit 22)
March 27, 1943	575.84 piculs (Exhibit 63)
April 20, 1943	14,105.92 piculs (Exhibit 54)
May 17, 1943	22,698.31 piculs (Exhibit 65 C)
May 18, 1943	6,240.92 piculs (Exhibit 6 B)

As for the share of the Central in the sugar, Exhibit E shows that as early as April 21, 1943, as much as a total of 272,601 piculs had been sold to the Mitsui Bussan Kaisha, and by the end of December, 1943, a full total of 272,801.07 piculs. There was, however, still a balance of 12,153.05 piculs as of December, 1943 (Exhibit 1, p. 3).

From the time of Mitsui Bussan Kaisha made purchases, it began withdrawing sugar from the Central in sacks. Withdrawals were made during the years 1943 and 1944 (Exhibit 72, 73, 74), but without indication as to whose sugar each withdrawal was being made. As the

sugar belonging to the planters and that of the Central were mixed up, and there being nothing to show what the vendee was withdrawing, it could not be determined whose sugar had been actually sold or withdrawn. It is a fact admitted by both parties, however, that at the time of the liberation, notwithstanding the sales and withdrawals, there were around 150,000 piculs of sugar in the warehouse of the Central. This sugar was impounded by the U. S. Enemy Property Custodian, but upon representation of the parties the same was finally released. And upon resolution of the majority of the planters, it was agreed that 60 per cent thereof would be provisionally assigned to them, to be prorated among them according to the sugar they had on deposit in the Central prior to the military occupation, irrespective of whether they had been paid their sugar or not during the occupation, and the balance of 40 per cent to be assigned to the Central to be disposed by it, but the proceed were to be kept by it in trust subject to the results of this litigation. The share of the defendant in this distribution was 93,66360 piculs (Exhibit H) and that of the plaintiffs 35,405.35 piculs.

After liberation (around March to June, 1945) and before the proration above set forth, plaintiff Alfredo Montelibano withdrew from the warehouse some 12,789 piculs. Of these around 5,115.60 piculs were the share of the defendant Central. Montelibano received a bill of P45,273,06 for the value of this sugar, and he proposed to pay the said amount in installments. A first payment of P10,000 was made. The amount of the bill was based on a basic price of P8.85 per picul. The balance of the price has not yet been paid by plaintiff Alfredo Montelibano.

The present action of plaintiffs is predicated on the claim that the defendant has already been fully paid for its share of the sugar in the warehouse, as it had sold during the period from April, 1943, to March, 1945, some 284,601 piculs, in excess of around 175.19 piculs of its own share, and had received the total price of this amount (P2,410,790,03), so that the sugar remaining at the time of the liberation pertained and belonged exclusively to plaintiffs and the other planters. It is contended that of the 129,452.24 piculs that plaintiffs owned at the

time of the military occupation, only 35,405.35 piculs had actually been taken advantage of by them (that which they received by the proration), so that the remaining 94,046.89 piculs should be charged against the balance of the sugar and which was adjudicated to the Central as its share in the proration, the value of which was P4,712,501.89. Moral justification for this claim of the plaintiffs is sought for in the fact that the defendant Central had actually sold its share and received in full the price therefor, which is not the case with the plaintiffs, who have not been paid for, or credited with, the value of their own. The defense is that all the sugar that plaintiffs had in the Central's warehouse at the time of the military occupation was ordered by the Japanese Military Administration to be sold by and through the president, which it did itself appoint, in the same manner that the defendant was obliged to sell its own sugar to the buyer of the Military Administration, and that all the sugar that plaintiffs had in the warehouse had, therefore, been sold and delivered through said president of the plaintiffs, so that the latter had no more sugar in the warehouse at the time of the liberation. The defendant presented a counterclaim against plaintiff Alfredo Montelibano for the value of the 5,115.60 piculs of the defendant which he appropriated and which they claim to be valued at P248,337. The right of the defendant to said sugar is denied, and instead plaintiff Montelibano demands the return of the Pl0,000 which he claims was erroneously paid to defendant.

The trial court found that the sugar remaining in the central's warehouse at the time of the liberation was already purchased by the Military Administration, but it could not withdraw the same by reason of the advent of the liberation; that as the sugar of the parties were all mixed up, none of the owners could claim exclusive ownership of those remaining in the warehouse, and their rights thereto should be governed by the provision of Article 381 of the Spanish Civil Code. This, the court said, the parties had already accepted and carried out by the proration. The court, also held that the taking of the sugar belonging to both plaintiffs and defendant was an act of confiscation by the Japanese Military Government, which was legal and valid in accordance with the ruling in the case of Hodges *vs.* Lacson, 46

Official Gazette (No. 3) 1148, from which no recourse may be had by the parties against the Japanese Government or against the defendant. The plaintiffs' action was, therefore, dismissed and the defendant absolved therefrom,

As to the counterclaim, the court found the same to be justified, and it sentenced Montelibano to pay for its value, which the court, however, fixed at P8.80 per picul only. It, therefore, rendered judgment against Montelibano, ordering him to pay defendant the balance of its value, i.e., P35,163.06

Plaintiffs have appealed from the judgment dismissing their action, while defendant has also appealed from the amount adjudged on its counterclaim, asserting that the price of the sugar taken by Montelibano should have been fixed at P256,291.56 at the rate of P50.10 per picul.

Plaintiffs-appellants rely on the following legal propositions: that the purchase of plaintiffs' sugar during the Japanese Military Occupation was neither an act of confiscation nor of requisition, but a voluntary sale, but as there was no consent of the plaintiffs thereto or consideration paid for the sugar, none of plaintiffs' sugar should be considered as sold; that, on the other hand, defendant's sale of its sugar was validly made and it had received in full the value thereof, hence the sugar remaining in the Central's warehouse at the time of the liberation should belong to plaintiffs, to the exclusion of the Central.

In our opinion, the determination of the nature or validity of the act of the Japanese Military Administration in purchasing plaintiffs' sugar from the president of the planters, whom it appointed without the planters or owners consent, is absolutely immaterial; whether the act of purchase was an act of confiscation of enemy property by the military occupant, or one of requisition, or one of voluntary sale, is beside the fundamental issue, which we find to be: Who are the legal owners of the sugar existing in the Central's warehouse at the time of the liberation? Irrespective of the legality or illegality of the purchase of plaintiffs' sugar (by the Japanese Military Administration,

for which defendant may not certainly be made responsible, the fact remains that in consequence thereof of warehouse orders for the release of plaintiffs' sugar were issued and sugar actually taken from the warehouse. Also by the sale of defendant's sugar, release were authorized to the purchaser and withdrawals made. But evidently the delivery of all the sugar sold by both was not completed, as some 150,000 piculs remained thereafter. As to this sugar (remaining), we hold that title thereto remained in the original owners, because ownership of personal property sold is not transferred until actual delivery—*non nudis pactis, sed traditione dominia return transferuntur.* (Fidelity and Deposit Co. *vs.* Wilson, 8 Phil., 51; Crusado *vs.* Bustos, 34 Phil., 17.)

It also follows that as the sugar of the plaintiffs and of the other planters and of the Central were stored together in one single mass, without separation or identification, and as it appears that the Mitsui Bussan Kaisha made withdrawals of sugar from the Central's warehouse without express statement as to whose sugar was being withdrawn, whether the planters' or the Central's, it is absolutely impossible, physically or legally, to determine whose sugar it was that remained after the withdrawals. There is no legal basis for plaintiffs' proposition that as the taking of their sugar was without their consent, and that of the defendant's with its consent, all that remained is theirs. The only legal solution is, as the mass of sugar in the warehouse was owned in common, and as it is not possible to determine whose sugar was withdrawn and whose was not, the mass remaining must pertain to the original owners in the proportion of the original amounts owned by each of them. This is the solution expressly indicated by the law (article 381, Spanish Civil Code), and the one most consistent with justice and equity.

> ART. 381. If, by the will of their owners, two things of identical or dissimilar nature are mixed, or if the mixture occurs accidentally, and in the latter case the things can not be separated without injury each owner shall acquire a right in the mixture proportionate to the part belonging to him, according to the

value of the things mixed or commingled. (Spanish Civil Code)

The
778 cavans and 38 kilos of palay belonging to the plaintiff Urbano Santos, having been mixed with 1,026 cavans and 9 kilos of palay belonging to the defendant Pablo Tiongson in Jose C. Bernabe's warehouse; the sheriff having found only 924 cavans and 31% kilos of palay in said warehouse at the time of the attachment thereof; and there being no means of separating from 924 cavans and 31% kilos of palay belonging to Urbano Santos and those belonging to Pablo Tiongson, the following rule prescribed in article 381 of the Civil Code for cases of this nature, is applicable.

> ART.
> 381. If, by the will of their owners, two things of identical or dissimilar nature are mixed or if the mixture occurs accidentally, if in the latter case the things can not be separated without injury, each owner shall acquire a right in the mixture proportionate to the part belonging to him according to the value of the things mixed or commingled.

The number of kilos in a cavan
not having been determined, we will take the proportion only of the 924 cavans of palay which were attached and sold, thereby giving Urbano Santos, who deposited 778 cavans, 398.49 thereof, and Pablo Tiongson, who deposited 1,026 cavans, 525.51, or the value thereof at the rate of P3 per cavan. (Santos *vs.* Bernabe, 54 Phil., 19, 22)

Lastly,
article 393 of the Civil Code, referring to common ownership, provides that the share of the participants in the benefits, as well as in the charges, shall be proportionate to their respective interests.

This
being the rule, it is obvious that whenever an undivided property gains an increase in its area, all the co-owners shall be entitled to

participate in the benefits to be proportionate to their shares; if it suffers diminution they shall have to share, too, the charges in accordance with their interests. (Tarnate *vs.* Tarnate. 46 Off. Gaz. {No. 9) 4397, 4403-4404).

If goods of the same kind owned by various persons are so mixed with the mutual consent of the owners that the portions or shares of the various owners in the mixture are indistinguishable, the owners become tenants in common of the mixture, each having an interest in common in proportion to his respective shares. This is the rule of the civil law. The doctrine finds its most frequent application where several owners deposit grain in a warehouse although it of course exists wherever the goods of two or more parties are indistinguishably mingled by common consent, as where quantities of oil belonging to different persons are stored in a tank. In such cases, in the event of partial loss, there will be prorated distribution of the loss. Where such a confusion arises it seldom causes inconvenience, embarrassment, or dispute, for the separation of the intermingled goods into the aliquot shares of the owners is merely a matter of measuring, weighing, counting, or selecting, and in all such cases it is certain that he is entitled to receive back a like quantity. Since they are tenants in common, however, the co-owners are subject to stand their pro rata share of any loss which may accrue to the general property from diminution, decay, or other causes. (11 Am. Jur. 532-533.).

There can be no doubt that, where the volume of grain, stored in an elevator, or of oil stored in a tank, is made up of contributions from different owners, and becomes "common stock." its partial destruction by fire, resulting from lightning or other fortuitous cause must necessitate a pro rata distribution of the loss., * * * (Jennings-Heywood Oil Syndicate *vs.* Houssiere-Latrelle Oil Co., et al., Ann. Cas. 1913 E. 679, 690.)

With respect to defendant's counterclaim, we agree with the trial court that the evidence submitted shows that P8.85 is the fair price of

the sugar taken by plaintiff Alfredo Montelibano. Defendant's own original bill fixed this as a price for said sugar (Exhibit 49), and sales made to third persons at the time the sugar was withdrawn were at prices fluctuating around this sum. We find no reason, therefore, for disturbing the judgment in relation thereto.

For the foregoing consideraions, the judgment appealed from is hereby affirmed, both in so far as it dismisses the complaint and in so far as it awards the sum of P35,163.06 on defendant's counterclaim against plaintiff Alfredo Montelibano, with costs against the plaintiffs-appellants.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, A., Jugo and *Bautista Angelo, JJ.,* concur.

Date created: October 08, 2014