101 Phil. 205

[G. R. No. L-9782. April 26, 1957]

HILARION CORTEZ, PLAINTIFF AND APPELLANT, VS. JUAN AVILA, DEFENDANT AND APPELLEE.

D E C I S I O N

CONCEPCION, J.:

This is an appeal, taken by plaintiff Hilarion Cortez, from an order granting a motion to dismiss of defendant, Juan Avila, and dismissing the former's complaint, without pronouncement as to costs.

Plaintiff, Hilarion Cortez, alleges in said complaint that since 1935, he has continuously, publicly and adversely occupied a parcel of land, of about sixteen (16) hectares, situated in the Barrio of Conversion, Municipality of Pan-tabangan, Province of Nueva Ecija, more particularly described in said pleading, and included within the land "described in the Original Certificate of Title No. P-1318 in the name (now) of Juan Avila, the herein defendant; that in November, 1946, Cortez applied for a homestead patent on said 16-hectare lot, the same being a public land; that his homestead application was duly approved by the Director of Lands, on June 25, 1947; that, having complied with all the conditions essential to the issuance of a patent, he filed his final proof thereon in May, 1952; that, as a result, the issuance of a homestead patent in his favor was recommended by the investigating public lands inspector as well as by the District Land Officer of Nueva Ecija, in am indorsement to the Director of Lands, dated June 6, 1952; that for reasons unknown to plaintiff, said homestead patent has not been issued to him, 'although he has already become the "equitable owner" of the lot aforementioned; that defendant Avila had filed a free patent application for the same lot, knowing that it had been in continuous and actual possession of the plaintiff since 1985, and despite his (Avila's) knowledge, actual or pressumed, of the submission of plaintiff's aforementioned final proof; that through threat, intimidation and force, Avila succeeded in occupying said lot, in or about June, 1953, to the exclusion of the plaintiff; that on October 15, 1954, Avila secured a free patent on said lot,

by alleging falsely, in his free patent application, that he and his predecessors in interest were in possession of said lot, continuously, since July 4, 1925, and by misrepresenting to the "table" public lands inspector who 'alledgedly made the investigation relative to said free patent application of Avila, that he had complied with the legal requirements therefor; that less- than a year has elapsed, since the issuance of said original certificate of title in favor of Avila; and that, in consequence of the aforementioned acts of Avila, plaintiff has suffered damages amounting to P6,400 a year, apart from the sum of P5,000 by way of attorney's fees. Plaintiff prays the Court to:

1. "Order the cancellation of the free patent of the defendant and the Certificate of Title issued to him and to register the same in the name of the plaintiff;
2. "Restore possession of the premises to the herein plaintiff;
3. "Order defendant to pay the plaintiff the amount of P6,400 for each year that he is in possession until it is returned to plaintiff, and further, to order defendant to pay the amount of P5000.00 as attorneys' fees;
4. "Issue such order and remedies as may he equitable in the premises."

As above stated, Avila filed a motion to dismiss alleging that plaintiff has no legal capacity to sue, because the land in dispute is part of the public domain, and, hence, an action to recover the same may be instituted exclusively by the Government, through the Solicitor-General. Appellant now maintains that the lower court erred in granting said motion, upon the ground that, having complied with the conditions essential to be entitled to a patent, he is the equitable owner of the lot in question, and that the Government could not have maintained the present action, the same being for the benefit of the plaintiff, in his private capacity.

Obviously, plaintiff herein has "legal capacity" to sue, which is independent of the public or private character of the lot in controversy. This does not mean, however, that he has a cause of 'action, or that his appeal should prosper.

To begin with, an indispensable party is lacking. The complaint is predicated upon the major premise that plaintiff is the equitable owner of said lot, for he has fully satisfied the prerequisites to the issuance of a homestead patent in his favor. This pretense implies that said lot was a public land; that the legal, as well as the equitable, title thereto used to be in

the State; and.that, although still its *legal* owner, the State has already been divested of its *equitable* title, and plaintiff has acquired it, he having fulfilled all the conditions essential for the issuance of a patent in his name. Thus, the issue raised cannot be determined without affecting the interest of the State, which is not a party in this proceeding, and, hence, cannot protect and defend therein such interest.

Ordinarily, when a complaint is defective by reason of failure to include an indispensable party, reasonable opportunity to amend said pleading must be given, and the action should not be dismissed, except when plaintiff fails or refuses to include said party, or the latter cannot be sued. In the case at bar, such policy need not be followed, for plaintiff has not exhausted the administrative remedies available to him. Indeed, he seeks, in effect, a review of the decision of the Director of Lands in causing a patent to be issued to defendant Avila. Yet, plaintiff does not appear to have asked the Director of Lands to reconsider said decision, or to have appealed therefrom to the Secretary of Agriculture and Natural Resources, who controls said official and is the "officer charged with carrying out the provisions" of our revised public land law (C, A. 141, sec. 3). It is well settled that, before the decisions of administrative bodies can be brought to courts for review, all administrative remedies must first be exhausted, especially in disputes concerning public lands, where the finding of said administrative bodies, as to questions of fact, are declared by statute to be "conclusive" (C. A. 141, sec. 4; Lamb vs. Phipps., 22 Phil., 456; Arnedo vs. Aldanese, 63 Phil., 768; R. Lopez vs. Court of Tax Appeals, 100, Phil., 850).

> "A party aggrieved by an erroneous decision of the. federal land department must exhaust his remedies in that department ,before he can resort to the courts, and where one instituting a contest in a local land office against a homestead entry did not appeal to the general land office or the secretary of the interior from an order dismissing the contest because not sufficiently regular to constitute a valid contest, he was bound thereby, and he could not resort to the courts." Kendall vs. Long, 66 Wash. 62, 119 p. 9 (Footnote 98a, 60 C. J. 1093, 1094.)

As we held in Eloy Miguel vs. Anacleta M. Vela, de Reyes 93 Phil., 542), having failed to exhaust his remedy in the administrative branch of the Government, plaintiff "cannot now seek relief in the courts of justice."

Wherefore, the order appealed from is hereby affirmed, with costs against plaintiff-

appellant. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and *Felix, JJ.*, concur.

Date created: October 13, 2014