

**FLAVIANA ACUÑA AND EUSEBIA DIAZ, PLAINTIFFS AND APPELLANTS, VS. FURUKAWA PLANTATION COMPANY, DEFENDANT AND APPELLEE.***G.R. No. L-5833. October 22, 1953*

Ponente: REYES, J.

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The Furukawa Plantation Company, a Philippine corporation, is the registered owner of a large tract of land in the Province of Davao, as evidenced by original certificate of title No. 2768 (now transfer certificate of title No. 276) of the land records of that province, issued more than 30 years ago. As a result of the last war, this tract of land was turned over to the NAFCO (National Abaca and Other Fibers Corporation) for administration and disposition and, together with other Japanese-owned properties in the province, distributed among war veterans and deserving civilians, each of whom was allocated five hectares pursuant to the directives of the President of the Philippines and the agreement entered into between the Philippine Veterans Legion and the NAFCO.

Among those favored with an allocation were Flaviana Acuña and her daughter Eusebia Diaz, two homesteaders within the area covered by the Furukawa Plantation Company's title, who, however, turned down their allocation, claiming that they were entitled to the whole area occupied by them—some 31 hectares—and, on this claim being denied, brought the present action against the company in the Court of First Instance of Davao. The complaint sets up three causes of action and alleges that plaintiffs are the widow and daughter, respectively of Roman Diaz, deceased, who, as a homestead applicant, was, on August 18, 1914, granted by the Director of Lands a provisional permit to occupy and clear 31.79 hectares of public land in sitio Calanitoy, municipality of Santa Cruz, Davao Province; that since then, Roman Diaz and (after his death) plaintiffs themselves have been cultivating and improving the said land, planting it to coconut and other fruit trees and food crops, and building thereon two residential houses; that, through fraud and strategy, defendant was able to include the said land and the improvements thereon in its certificate of title, though acknowledging plaintiffs' right thereto under a general annotation on the certificate which says: "Except those herein expressly noted as belonging to other persons;" that as defendant's certificate of title does not give the names of those "other persons," it is necessary that plaintiffs "be expressly declared and (their names) annotated" as among the persons referred to; and that defendant and its agents have been abetting its overseer and other persons in occupying plaintiff's coconut plantation and committing depredations thereon to the damage and prejudice of said plaintiffs. Plaintiffs, therefore, pray that they be declared to be "among those persons noted as owners of the improvements included in (defendant's) transfer certificate of title No. 276;" that defendant be made to cede to them the 31.79 hectares of land on which the improvements owned by them stand; and that defendant be made to pay damages and, together with those acting under its authority, enjoined from "committing further acts of dispossession and despoliation" on the homestead.

Before answering the complaint, defendant moved that it be dismissed, and the court granted the motion on the grounds that the complaint did not state a cause of action, that plaintiffs' action had already prescribed, and that the court had no jurisdiction over the subject matter thereof. From the order of dismissal plaintiffs appealed to the

Court of Appeals, but that court has certified the case here because of the nature of the questions involved.

For a proper resolution of these questions, it should be stated at the outset that despite the allegation of "fraud and strategy" in the procurement of defendant's title, the validity or incontestability of that title has already become indefeasible because of the more than 30 years that have elapsed since the decree of registration was entered. What plaintiffs appear to claim is that, while the land occupied by them as homestead is embraced in defendant's Torrens title, the improvements thereon are expressly excluded therefrom, being among those noted down in the Torrens certificate as properties belonging to other persons. On this hypothesis, plaintiffs are asking for three specific remedies, namely: (1) to have their names inscribed in defendant's certificate of title as owners of said improvements; (2) to have defendant cede to them the land on which the improvements stand; and (3) to have defendant pay damages for depredations committed on plaintiffs' coconut plantation by persons acting under defendant's authority and to have a writ issued to enjoin "further acts of dispossession and despoliation."

With respect to the first remedy, which is the subject of the first cause of action and which plaintiffs seek to obtain through an action for declaratory relief under Rule 66 of the Rules of Court, we note that plaintiffs are not merely asking for a determination of their rights through a judicial interpretation of defendant's certificate of title. What they want is to have that certificate amended by having their names inscribed thereon as owners of the improvements existing on the homestead occupied by them but registered in defendant's name. This is a remedy that can be granted only under the Land Registration Act and is, therefore, not within the scope and purpose of an action for declaratory relief as contemplated in Rule 66. If plaintiff's first cause of action is to succeed, it must be formulated by proper petition in the original case where the decree of registration was entered, and with notice to all persons whose rights might be affected by the proposed amendment to the certificate of title. It may be stated that an amendment of that kind is not barred by the incontestability of defendant's Torrens title, since this contains a special reservation with respect to improvements belonging to other persons.

The second remedy—which is the objective of plaintiffs' second cause of action—is sought to be attained through an action for "specific performance". But it is obvious that an action of that kind will not lie, since plaintiffs are not seeking the fulfillment of any contract. What they ask for is that defendant be made to cede to them the land covered by their homestead and for that they invoke article 361 of the Old Civil Code (article 448 of the new) which gives "the owner of land on which anything has been built, sown, or planted, in good faith," the right "to appropriate the thing so built, sown, or planted, upon paying the compensation mentioned in articles 453 and 454, or to compel the person who has built or planted to pay him the value of the land, and the person who sowed thereon to pay the proper rent therefor." But the article invoked does not give plaintiffs, as owners of the improvements, the right to compel defendant, as registered owner of the land, to cede to them, by sale or otherwise, the land in question. Under the article, it is the owner of the land that has the right to choose between acquiring the improvements and selling the land. An action predicated on the assumption that the option may be exercised by the owner of the improvements is clearly without legal basis.

On the assumption that plaintiffs are the owners of the improvements on the land occupied by them and that defendant's men or those acting under its authority are committing depredations thereon, there can be no question that plaintiffs should be entitled to the remedy sought in their third cause of action, that is, to have the depredations stopped and indemnity paid for damages suffered. We note, however, that the complaint does not identify and delimit the land on which plaintiffs' improvements stand, the complaint being for that reason defective.

To summarize, it is our conclusion that (1) plaintiffs may not in the present case ask for the remedy sought in their first cause of action, for the reason that an amendment to a Torrens certificate of title may be had only in the original case where the decree of registration was entered; (2) plaintiffs' second cause of action is untenable; and

(3) plaintiffs' complaint is defective with respect to the third cause of action because it does not give the metes and bounds of the property sought to be protected by a writ of injunction.

Wherefore, the order of dismissal is affirmed with respect to the first and second causes of action, and modified as to the third in the sense that this cause of action shall be deemed definitely dismissed if the complaint is not properly amended within ten days from the time this decision becomes final. Without costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

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