

BENITO E. LIM, AS ADMINISTRATOR OF THE INTESTATE ESTATE OF ARSENIA ENRIQUEZ, PLAINTIFF AND APPELLANT, VS. HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AND ASAIC...*G.R. No. L-8587. March 24, 1960*

Ponente: GUTIERREZ DAVID, J.

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This is an appeal from an order of the Court of First Instance of Manila, dismissing plaintiff's action for the recovery of real property for lack of jurisdiction over the subject matter.

The property in dispute consists of four parcels of land situated in Tondo, City of Manila, with a total area of 29,151 square meters. The lands were, after the last world war, found by the Alien Property Custodian of the United States to be registered in the name of Asaichi Kagawa, national of an enemy country, Japan, as evidenced by Transfer Certificates of Title Nos. 64904 to 65140, inclusive, for which reason the said Alien Property Custodian, on March 14, 1946, issued a vesting order on the authority of the Trading with the Enemy Act of the United States, as amended, vesting in himself the ownership over two of the said lots, Lots Nos. 1 and 2. On July 6, 1948, the Philippine Alien Property Administrator, (successor of the Alien Property Custodian) under the authority of the same statute, issued a supplemental vesting order, vesting in himself title to the remaining Lots Nos. 3 and 4. On August 3, 1948, the Philippine Alien Property Administrator (acting on behalf of the President of the United States) and the President of the Philippines, executed two formal agreements, one referring to Lots 1 and 2 and the other to Lots 3 and 4, whereby the said Administrator transferred all the said four lots to the Republic of the Philippines upon the latter's undertaking fully to indemnify the United States for all claims in relation to the property transferred, which claims are payable by the United States of America or the Philippine Alien Property Administrator of the United States under the Trading with the Enemy Act, as amended, and for all such costs and expenses of administration as may by law be charged against the property or proceeds thereof hereby transferred." The transfer agreements were executed pursuant to section 3 of the Philippine Property Act of 1946 and Executive Order No. 9921, dated January 10, 1948, of the President of the United States.

On the theory that the lots in question still belonged to Arsenia Enriquez, the latter's son Benito E. Lim filed on November 15, 1948 a formal notice of claim to the property with the Philippine Alien Property Administrator. The notice was subsequently amended to permit Lim to prosecute the claim as administrator of the intestate estate of the deceased Arsenia Enriquez, thus, in effect, substituting the intestate estate as the claimant, it being alleged that the lots were once the property of Arsenia Enriquez; that they were mortgaged by her to the Mercantile Bank of China; that the mortgage having been foreclosed, the property was sold at public auction during the war to the Japanese Asaichi Kagawa, who, by means of threat and intimidation succeeded in preventing Arsenia Enriquez from exercising her right of redemption; and that Kagawa never acquired any valid title to the property because he was ineligible under the Constitution to acquire residential land in the Philippines by reason of alienage.

On March 7, 1950, the claim was disallowed by the Vested Property Claims Committee of the Philippine Alien Property Administrator, and copy of the decision disallowing the claim was received by claimant's counsel on the 15th of that month. The claimant, however, took no appeal to the Philippine Alien Property Administrator, so that pursuant to the rules of procedure governing claims before the Philippine Alien Property Administrator, the decision of the committee became final on April 15, 1950, that is, twenty days after receipt of the decision by claimant's counsel.

On November 13, 1950, the claimant Benito E. Lim, as administrator of the intestate estate of Arsenia Enriquez, filed a complaint in the Court of First Instance of Manila against the Philippine Alien Property Administrator (later substituted by the Attorney General of the United States) for the recovery of the property in question with back rents. The complaint was later amended to include Asaichi Kagawa as defendant. As amended, it alleged that the lands in question formerly belonged to Arsenia Enriquez and were mortgaged by her to the Mercantile Bank of China; that the mortgage having been foreclosed, she was sentenced to pay the mortgage debt within 3 months; that within those 3 months the bank commissioner, who had been appointed liquidator of said bank, assured her that she could pay her mortgage debt little by little in monthly installments, and pursuant to that arrangement the income derived from the mortgaged property were thereafter, applied to her indebtedness, that such payment of the mortgage debt continued until a few months after, the occupation of the City of Manila by the Japanese forces, when the Bank of Taiwan, having taken over the administration and control of all banks in the Philippines, including the Mercantile Bank of China, had the properties sold at public auction on October 26, 1942 by the sheriff of the city; that the properties were awarded to Asaichi Kagawa and the sale was subsequently confirmed by the court; that if Arsenia Enriquez failed to redeem the properties before the confirmation of the sale, it was because of the financial depression and also because she was prevented from doing so by Kagawa through threats and intimidation; that the auction sale was irregular and illegal because it was made without publication or notice and because though the land was subdivided into lots, the same was sold as a whole; that because of the irregularities mentioned, competitive bidding was prevented or stifled with the result that the lands, which could have been easily sold for P300,000 at then prevailing prices, were awarded to Kagawa whose bid was only P54,460.40, a price that was "grossly inadequate and shocking to the conscience;" that the titles to the lands having been subsequently transferred to Kagawa, the latter in June, 1943 illegally dispossessed Arsenia Enriquez and kept possession of the properties until the liberation of the City of Manila; that as Arsenia Enriquez was still the owner of the properties, the seizure thereof by the United States Attorney General's predecessors on the assumption that they belong to Kagawa, as well as their decision disallowing her claim, was contrary to law. Plaintiff, therefore, prayed that the sheriff's sale to Kagawa and the vesting of the properties in the Philippine Alien Property Administrator and the transfer thereof by the United States to the Republic of the Philippines be declared null and void; that Arsenia Enriquez be adjudged owner of the said properties and the Register of Deeds of Manila be ordered to issue the corresponding transfer certificates of title to her; and that the defendant Attorney General of the United States be required to pay rental from March 14, 1946, and the Government of the Philippines from August 3, 1948, at the rate of P30,000 per annum with legal interest.

The defendant Attorney General of the United States and the defendant-intervenor Republic of the Philippines each filed an answer, alleging by way of affirmative defenses (1) that the action with respect to Lots 1 and 2 had already prescribed, the same not having been brought within the period prescribed in section 33 of the Trading with the Enemy Act, as amended, and (2) that the lower court had no jurisdiction over the claim for rentals since; the action in that regard constituted a suit against the United States to which it had not given its consent. The defendant Asaichi Kagawa was summoned by publication, but having failed to file an answer to the complaint, he was declared in default. Thereafter, a preliminary hearing on the affirmative defenses was held at the instance of the United States Attorney General pursuant to Section 5, Rule 8 of the Rules of Court. After said hearing, the

court ordered the complaint dismissed, on the ground—as stated in the dispositive part of the order—that the "court has no jurisdiction over the subject matter of this action, taking into consideration the provisions of Sec. 34 (must be 33) of the Trading with the Enemy Act, as the requirements needed by the above-mentioned Act have not been fulfilled by the herein plaintiff." From that order, plaintiff has taken the present appeal.

Judging from the context of the order complained of, it would appear that the dismissal of plaintiff's action was actually based upon the principle that a foreign state or its government cannot be sued without its consent. Considering, however, the law applicable, we do not think the order of dismissal can be sustained in its entirety. There is no denying that an action against the Alien Property Custodian, or the Attorney General of the United States as his successor, involving vested property under the Trading with the Enemy Act located in the Philippines, is in substance an action against the United States. The immunity of the state from suit, however, cannot be invoked where the action, as in the present case, is instituted by a person. Who is neither an enemy or ally of an enemy for the purpose of establishing his right, title or interest in vested property, and of recovering his ownership and possession. Congressional consent to such suit has expressly been given by the United States. (Sec. 3, Philippine Property Act of 1946; *Philippine Alien Property Administration vs. Gastelo, et al.*, 89 Phil., 568.)

The order of dismissal, however, with respect to plaintiff's claim for damages against the defendant Attorney General of the United States must be upheld. The relief available to a person claiming enemy property which has been vested by the Philippine Alien Property Custodian is limited to those expressly provided for in the Trading with the Enemy Act, which does not include a suit for damages for the use of such vested property. That action, as held by this Court in the *Castelo* case just cited, is not one of those authorized under the Act which may be instituted in the appropriate courts of the Philippines under the provisions of section 3 of the Philippine Property Act of 1946. Congressional consent to such suit has not been granted.

The claim for damages for the use of the property against the intervenor defendant Republic of the Philippines to which it was transferred, likewise, cannot be maintained because of the immunity of the state from suit. The claim obviously constitutes a charge against, or financial liability to, the Government and consequently cannot be entertained by the courts except with the consent of said government. (*Syquia vs. Almeda Lopez*, 84 Phil., 812; 47 Off. Gaz., 665; *Compañía General de Tabacos vs. Gov't of PI*, 45 Phil., 663.) Plaintiff argues that by its intervention, the Republic of the Philippines, in effect, waived its right of non-suability, but it will be remembered that the Republic intervened in the case merely to unite with the defendant Attorney General of the United States in resisting, plaintiff's claims, and for that reason asked no affirmative relief against any party in the answer in intervention it filed. On the other hand, plaintiff in his original complaint made no claim against the Republic and only asked for damages against it for the use of the property when the complaint was amended. In its answer to the amended complaint, the Republic "reproduced and incorporated by reference" all the affirmative defenses contained in the answer of the defendant Attorney General, one of which, as already stated, is that the lower court had no jurisdiction over the claim for rentals because of lack of consent to be sued. Clearly, this is not a case where the state takes the initiative in an action, against a private party by filing a complaint in intervention, thereby surrendering its privileged position and coming down to the level of the defendant—as what happened in the case of *Froilan vs. Pan Oriental Shipping Co., et al.* 95 Phil., 905 cited by plaintiff—but one where the state, as one of the defendants merely resisted a claim against it precisely on the ground, among others, of its privileged position which exempts it from suit.

With respect to the recovery or return of the properties vested, section 33 of the Trading with the Enemy Act, as amended, provides:

"SEC. 33. Return of property; notice; institution of suits, computation of time.—No return may be made pursuant to section 9 or 32 unless notice of claim has been, filed: (a) in the case of any property or interest

acquired by the United States prior to December 18, 1941, by August 9, 1948; or (b) in the case of any property or interest acquired by the United States on or after December 18, 1941, by April 30, 1949, or two years from the vesting of the property or interest in respect of "which the claim is made, whichever is later. No suit pursuant to section 9 may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 or 32(a) hereof." (USCA, Tit. 50, App., p. 216.)

From the above provisions, it is evident that a condition precedent to a suit for the return of property vested under the Trading with the Enemy Act is that it should be filed not later than April 30, 1949, or within two years from the date of vesting, whichever is later, but in computing such two years, the period during which there was pending a suit or claim for the return of the said property pursuant to secs. 9 or 32 (a) of the Act shall be excluded. That limitation, as held in a case, is jurisdictional. (See *Cisatlantic Corporation, et al. vs. Brownell, Jr.*, Civil Case No. 8-221, U. S. District Court, Southern District, New York, affirmed by the United States Court of Appeals, 2nd Circuit, May 11, 1955 (Docket No. 23499), annexed as appendices "D" and "E" in appellees' brief.) Such being the case, it is evident that the court below erred in dismissing the complaint, at least insofar as lots 3 and 4 of the land in dispute are concerned. These lots were vested only on July 6, 1948 and consequently the two-year period within which to file the action for their recovery expired on July 7, 1950. But in computing that two-year period, the time during which plaintiff's claim with the Philippine Alien Property Administration was pending— from November 16, 1948 when the claim was filed to March 7, 1950 when it was disallowed—should be excluded. The complaint therefore filed on November 13, 1950 is well within the prescribed period. As a matter of fact, the Attorney General of the United States concedes that the dismissal of the complaint with respect to these lots was erroneous. Indeed, he states that he had never asked for the dismissal of the complaint with respect to them because the complaint insofar as those properties were concerned was filed within the period provided for in the law.

On the other hand, lots 1 and 2 were vested by the Alien Property Custodian on March 14, 1946". The two-year period, therefore, within which to file a suit for their return expired on March 14, 1948. As no suit or claim for the return of said properties pursuant to sections 9 or 32 (a) of the Trading with the Enemy Act was filed by plaintiff within two years from the date of vesting, the "later" date and the last on which suit could be brought was April 30, 1949. The claim filed by plaintiff with the Philippine Alien Property Administration on November 15, 1948 obviously could not toll the two-year period that had already expired on March 14, 1948. And the complaint in the present case having been filed only on November 13, 1950, the same is already barred. (*Pass vs. McGrath*, 192 F. 2d 415; *Kroll vs. McGrath*, 91 F. Supp. 173.) The lower court, therefore, had no jurisdiction to entertain the action insofar as these lots are concerned.

Plaintiff contends that section 33 of the Trading with the Enemy Act cannot prevail over section 40 of the Code of Civil Procedure, which provides that an action to recover real property prescribes after 10 years, on the theory that under international law questions relating to real property are governed by the law of the place where the property is located and that prescription, being remedial, is likewise governed by the laws of the forum. But the Trading with the Enemy Act, by consent of the Philippine Government, continued to be in force in the Philippines even after July 4, 1946 (*Brownell, Jr., vs. Sun Life Assurance Co. of Canada*,[*] 50 Off. Gaz., 4814; *Brownell, Jr. vs. Bautista*, 95 Phil., 853) and consequently, is as much part of the law of the land as section 40 of the Code of Civil Procedure. Contrary to plaintiff's claim, therefore, there is here no conflict of laws involved. It should be stated that in an action under the Trading with the Enemy Act for the recovery of property vested thereunder, the rights of the parties must necessarily be governed by the terms of that Act. Indeed, section 7 (c) thereof explicitly provides that the relief available to a claimant of vested property is limited to those expressly provided for by its

terms.

Needless to say, the defense of limitation as contained in section 33 of the Trading with the Enemy Act, as amended, may be invoked not only by the defendant Attorney General of the United States but also by the intervenor Republic of the Philippines to which the lands in question were transferred. To sustain plaintiff's claim and preclude the Republic from putting up that defense would render nugatory the provisions of the Act. For in such case, a claimant who has failed to file his claim or suit within the period provided for in section 33 of the Act and consequently has forfeited whatever rights he may have therein, could easily circumvent the law. It would also mean that the transfer of vested property to the Republic would have the effect of permitting re-examination of the title to such vested property which has already become absolute in the name of the United States, the transferor, for failure of the claimant to assert his claim within the prescribed time. This absurdity, to say the least, cannot be countenanced.

In view of the foregoing, the order appealed from insofar as it dismisses the complaint with respect to Lots 1 and 2 and the claim for damages against the Attorney General of the United States and the Republic of the Philippines, is affirmed, but revoked insofar as it dismisses the complaint with respect to Lots 3 and 4, as to which the case is hereby remanded to the court below for further proceedings. Without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Barrera, JJ., concur.

[*] 95 Phil. 228.

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