

GREGORIO RESUENA AND EPIFANIA E. RESUENA, PETITIONERS, VS. MARCIAL BAS, RESPONDENT.

G.R. No. L-19641. August 14, 1970

Ponente: DIZON, J.

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DIZON, J.:

Appeal by certiorari taken by the spouses Gregorio and Epifania Resuena from the decision of the Court of Agrarian Relations in CAR Case No. 362 (Cebu) promulgated January 17, 1962 dismissing their petition for the ejectment of Marcial Bas from their landholding at Pook, Talisay, Cebu.

Sometime before the filing of the instant case, the petitioners sought the intervention of the Agricultural Tenancy Commission to effect the ejectment of respondent Bas from their land known as Lot No. 10190 of the Talisay-Minglanilla on the ground that they and their children would cultivate it. Having failed to comply with the service of the notice required by sub-section (a), Section 50, R. A. No. 1199, as amended, said ejectment proceeding was dismissed. (p. 7, Commissioner's report - Annex "A").

On May 10, 1960 petitioners wrote a letter in Visayan (Cebuano) dialect to their tenant, Bas, informing him of their intention to cultivate personally their landholding after the lapse of one year. Said notice was served by a policeman of the place, but as Bas refused to receive it, the same was sent by registered mail and was received on June 10, 1960. On or about the same date petitioners also filed a formal notice with the Court of Agrarian Relations stating their intention to cultivate personally their land and attaching thereto a copy of their letter addressed to Bas. Despite the lapse of 1 year following service of the notice aforesaid and repeated demands on Bas for him to return the possession of the landholding, the latter refused to do so. Hence, the present action for ejectment (Car Case No. 362 - Cebu 1961).

In his answer, respondent admitted the ownership, identity, location and area of the landholding as well as his tenancy relation with the petitioners since 1954, and as counterclaim prayed for reliquidation and moral damages.

After the presentation of petitioners' evidence on October 9, 1961, the respondent moved for the dismissal of the case on the ground that the petitioners had failed to show their capacity to personally work on the land and their bona fide intention to do so, but the motion was denied by the hearing commissioner who proceeded to receive respondent's evidence.

On January 17, 1962, the Agrarian Court rendered its decision dismissing petitioners' case due to their failure to establish their good faith in seeking the cultivation of the landholding in question through their son Aldrico, and likewise dismissed respondent's counter-claim for damages. Petitioners' motion for reconsideration having been denied they took the present appeal by certiorari.

The only issue to be resolved is whether the petitioners and their children may eject the respondent tenant and personally cultivate their landholding under the following provisions of Section 50(a) of Republic Act No. 1199, as amended by Republic Act No. 2263:

"Causes for the Dispossession of Tenant.- Any of the following, and no other, shall be sufficient cause for the dispossession of a tenant from his holdings:

"(a) The bona fide intention of the landholder-owner or his relative within the first degree by consanguinity to cultivate the land himself personally or through the employment of farm machinery and implements: Provided, however, That should the landholder-owner or the aforesaid relative not cultivate the land himself for at least three years or the landholder-owner and his successor in interest should fail to employ mechanical farm implements for a period of at least five years after dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and damages for any loss incurred by him because of said dispossession: Provided, further, That the landholder-owner or the aforesaid relative shall, at least one year but not more than two years prior to the date of his petition to dispossess the tenant under this subsection, file notice with the court and shall inform the tenant in writing in a language or dialect known to the latter of his intention to cultivate the land himself, either personally or through the employment of mechanical implements: Provided, That x x x."

Petitioners' contention is that the Court of Agrarian Relations erred in holding that they failed to establish good faith in seeking the ejectment of their tenant so that they may personally cultivate their landholding, claiming that the evidence presented below shows that they, together with their two sons, Aldrico and Rogelio, are qualified to till the land. They also contend that the right to personal cultivation is not limited to male-owners, but extends to female owners (*Feliciano vs. CAR, et al.*, G. R. No. L-14573, May 18, 1962; *Salcedo & Pascual vs. CAR & Madlangsakay*, G. R. No. L-13274, Jan. 30, 1960; *Llanillo vs. Soriente*, CAR case No. 145-Bulacan 1957, April 28, 1958, CAR Journal, June 1958).

As answer to the foregoing contentions of petitioners We quote the following portions of the appealed decision, which dispose of them clearly and reasonably:

"The principal question to be determined in this case is, therefore, whether or not petitioners have established their bona fide intention, i.e., their good faith, in wanting to cultivate the land personally, by themselves or thru their children.

"Petitioner Gregorio Resuena is an employee of the Bohol Land Transportation Company, with offices at Tagbilaran, Bohol. It is not even intimated that he will participate in any capacity in the proposed cultivation of the landholding.

"Petitioner Epifania Resuena, Gregorio's wife, is a housewife, with residence at Talisay, Cebu. Her role in the proposed cultivation will merely be supervisory in character.

"Petitioner Epifania Resuena told the Court that her son Aldrico will be the one who will principally cultivate the land personally, with the help of her other son Rogelio and under her supervision. Son Aldrico of petitioners is 27 years of age, single, jobless, and resides in their house in Talisay, Cebu. He is out of school and is dependent upon his parents for support.

"Petitioners' other son, Rogelio, is at present an assistant property clerk of the Bohol Land Transportation Company at Tagbilaran, Bohol, with which firm he has been connected for about a year. Before that, he worked as purchasing agent of the Mindanao Bus Company. In his present employment, Rogelio is laid off 5 days a month as forced leave, under a rotation system of the transportation firm where he works. Rogelio's wife and children live with his mother in the latter's house in Talisay, Cebu and he commutes -to that place whenever he is off-duty. Rogelio proposes to help his brother Aldrico during his off-days. He admits, however, that during his entire lifetime of 34 years he has not yet performed any of the phases of labor, such as plowing and harrowing the riceland and cleaning and preparing it for planting (Tsn. p. 11, Hearing of October 9, 1961).

"There is no evidence in the record showing that son Aldrico of petitioners, whom they propose to do the personal cultivation of the land principally, has any past experience in farm work or knows how to perform any

of the phases of labor, such as plowing, harrowing, etc., that an average farmer of a riceland normally does. Neither is there any evidence presented showing that petitioners or their son Aldrico now own or possess, or have under their control and disposition, any work animal and farm implements, which are the indispensable equipments of a farmer.

"The landholding involved in this case is a riceland, with a seedling capacity of 8 gantas of palay. Palay is planted therein 2 times a year, the first agricultural season being from February to June, and the second, from August to December. The average produce is from 10 to 11 cavans during the first season and 12 cavans during the second season.

"It further appears that sometime in 1958, respondent demanded from petitioners that the 50-50 sharing of crops theretofore prevailing between them, be changed to 70-30 in his favor, to which petitioners agreed, and from that time up to the present the sharing of crops has been 70-30 in the tenant's favor.

"In the same year 1958, it also appears that petitioner Epifania Resuena went to the office of the Agricultural Tenancy Commission in Cebu City to seek the intervention of said office in ejecting respondent from the aforementioned landholding on the ground of personal cultivation. When the ATC intervention proved ineffectual, said petitioner filed a complaint for ejectment against respondent in this Court, but the case was dismissed for lack of notice requirements.

"Aside from the parcel of land involved in this case, petitioners are the owners of 4 other parcels of land located in Talisay, Cebu, which are all worked under tenancy by other persons whose names do not appear in the record. Two of said parcels of land are situated near the landholding in question, about 1 kilometer away from petitioners' house, and the other 2 are situated a little bit farther, or more than 2 kilometers from said house.

"Petitioners have not advanced any explanation, during the trial, why they have chosen to cultivate respondent's landholding, in preference to the 4 other landholdings of their other tenants.

"Upon the facts and circumstances above set forth, the good faith of petitioners in wanting their son Aldrico to cultivate the landholding in question does not appear to have been established. Petitioners' evidence is devoid of any showing that Aldrico has ever done any farm work in his life or attempted to learn by actual practice any of its rudiments. One does not become a farmer by merely watching other farmers perform their work, any more than one can become a pianist or violinist by merely attending a concert where artists perform on said instruments. On top of this, it is not even shown that Aldrico now possesses or has under his disposition any work animal and farm implements. In other words, Aldrico's knowledge of farming is nil, and his equipment for farming has yet to be acquired. We think no landholder in his right mind would accept Aldrico to be his tenant now, under the latter's present handicaps.

"Moreover, if petitioners were actuated by laudable motives in wanting to have their son Aldrico work in the land, they would have prepared him for the job as far back as 1958, when they first tried to oust respondent from his landholding on the ground of personal cultivation by themselves and their children. And not only this. What justifiable reason do petitioners have in selecting respondent's landholding in preference to that of their other 4 tenants for their experiment in their son Aldrico's personal cultivation? They have advanced none, and probably there isn't any. There is, therefore, some substance to respondent's claim in his testimony that the reason why petitioners want to eject him from his landholding, is that petitioners resented his having demanded and secured a change of their former sharing arrangement of 50-50 to 70-30 in his favor in 1958.

"For failure of petitioners to establish their good faith in seeking the cultivation of the landholding in question through their son Aldrico, their petition for ejectment should be dismissed."

In the case of *de Santos vs. Acosta, et al.*, G. R. No. L-17564, Jan. 3, 1962, this Court, speaking through Mr. Justice Jose B.L. Reyes, said in part:

"Whether or not there was such a bona fide intention of the landowner is largely a question of fact into which this Court cannot inquire unless the Agrarian Court's finding in that respect should lack substantial basis in the evidence on record."

The present case does not fall within the exception mentioned in the above-quoted decision.

IN VIEW OF THE FOREGOING, the decision appealed from is affirmed, with costs.

It is so ordered.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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