

**PURITA S. AGUILON, REPRESENTED BY HER ATTORNEY-IN-FACT,
IGNACIO S. AGUILON, PLAINTIFF-APPELLANT, VS. MONTANO
BOHOL, DEFENDANT-APPELLEE.**

G.R. No. L-27169. October 20, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the jurisdiction of the Court of First Instance to adjudicate the possessory rights over a parcel of land for which the plaintiff had filed a homestead application but against which application the defendant had filed a protest with the Director of Lands.

On October 21, 1964 Purita S. Aguilon sued Montano Bohol in the Court of First Instance of Davao to recover possession of a portion of Lot No. 3046 situated in Barrio Kina-blangan, Baganga, Davao Oriental, with an area of more than twenty-one hectares (Civil Case No. 4464).

Plaintiff Aguilon alleged in her complaint that through her father she cleared, cultivated and improved the said land immediately after the war; that she declared it for realty tax purposes beginning 1954; that she paid taxes due thereon up to 1964; that she filed homestead application No. 20-1846 for that land; that in 1957 Montano Bohol, through his son-in-law, Crisanto Garay, usurped a portion of the land and refused to vacate it notwithstanding repeated demands, and that she filed a forcible entry case against Garay in the justice of the peace court but it was dismissed on February 18, 1958 on the ground that her alleged remedy was with the Director of Lands (Civil Case No. 66).

Purita S. Aguilon further alleged that after the dismissal of the forcible entry case, the district land officer, at her instigation, required Bohol to vacate the homestead because it was covered by her application and because Bohol had not filed any application nor obtained any permit from the district land office for his entry and cultivation thereof; that Bohol refused to vacate the homestead and, instead, enlarged his clearing and planted seasonal crops and coconuts thereon, and that on July 23, 1958 Bohol filed a formal protest against her application.*

Bohol in his answer alleged that since 1951 he has occupied about six hectares of the disputed lot and that in 1952 he declared for taxation the said six hectares and paid the taxes due thereon up to 1964.

Bohol pleaded prescription as a defense. His theory is that the action to recover possession should have been brought within ten years from 1951. He also pleaded lack of jurisdiction because the land in litigation is a part of the public domain under the control of the Director of Lands.

Purita S. Aguilon in her reply alleged that the lower court has jurisdiction over the case, following the rulings in *Pitargue vs. Sorilla*, 92 Phil. 5 and *Bohayang vs. Maceren*, 96 Phil. 390. She countered that her action had not yet prescribed because the disturbance of her possession occurred in 1957 when Garay, Bohol's son-in-law, occupied the disputed area as found by the private land surveyor commissioned by the municipal judge in Civil Case No. 134 to make a relocation survey.

On April 21, 1966 the lower court, long after the pre-trial and upon motion of Bohol (the record on appeal does not show that he filed a written motion to dismiss), issued a minute order dismissing the case for lack of jurisdiction. Plaintiff Aguilon appealed to this Court.

Her appeal is meritorious. Her action is an acción publiciana, which action "corresponde al que tiene derecho á la posesión, contra el que posee sin derecho ó con título menos firme, para que se ponga la cosa en poder del actor con todas las accesiones, frutos, etc." (1 Enciclopedia Jurídica Española 450).

The trial court has jurisdiction over the acción publiciana or the plenary action in an ordinary civil proceeding to determine the better right of possession independently of title (Bishop of Cebu vs. Mangaron, 6 Phil. 286, 291; Rodriguez vs. Taiño, 16 Phil. 301; Lagumen vs. Abasolo, 94 Phil. 455; Emilia vs. Bado, L-23685, April 25, 1968, 23 SCRA 183; Miranda vs. Legaspi, 92 Phil. 290).

Courts of First Instance have jurisdiction over all actions involving possession of land except ejectment cases filed within one year from the unlawful deprivation of possession (Secs. 44[b] and 88, Judiciary Law; Tenorio vs. Gomba, 81 Phil. 54).

"Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the law and the Rules of Court" (Art. 539, Civil Code).

Even in cases involving public lands, the courts may decree the restoration of the possession of the said lands to one who has been illegally deprived of his possessory right (Kimpoy vs. Tabañar and Director of Lands, 113 Phil. 409).

A homesteader in possession of the land he has applied for, although his title thereto is still imperfect, cannot be forcibly dispossessed by a third party, and he, as sole lawful possessor of the land, is entitled to the protection of the law and the courts (Fabian vs. Paculan, 25 Phil. 26, 31-32).

Courts have jurisdiction to entertain an action for forcible entry instituted by a bona fide applicant for public land, who is in occupation and peaceful possession thereof and who has introduced improvements, against one who deprives him of the possession thereof before the award and pending investigation of the application (Pitargue vs. Sorilla, 92 Phil. 5).

The reason is that, even pending the resolution of his application, the bona fide applicant and occupant, by the priority of his application and of his entry, acquires a possessory right over the public land applied for as against any other public land applicant. That prior possessory right may be protected by means of a forcible entry action or by means of the acción publiciana (Pitargue vs. Sorilla, supra).

It should be stressed that the authority given to the Director of Lands over the disposition of public lands does not exclude the courts from their jurisdiction over possessory actions over public lands (Molina vs. De Bacud, L-20195, April 27, 1967, 19 SCRA 956).

The instant case is similar to Bohayang vs. Maceren, 96 Phil. 390 to which the trial court's attention was called and which it arbitrarily ignored.

In the Bohayang case, the plaintiff, who had possessed a homestead from 1935 to 1941, filed an acción publiciana against the defendants, who had usurped his homestead after he had abandoned it during the Japanese occupation because he had to evacuate to another place.

The trial court, on learning that the respective rights of the parties to the homestead were under consideration by the Director of Lands, ordered the suspension of the hearing until the Director had finally resolved the

controversy. This Court issued the writ of mandamus to compel the trial court to set the case for trial because the suspension might last for a long stretch of time and because the Director would decide, not the issue of possession, but the question of who is entitled to the homestead.

This Court underscored that an action for recovery of possession is an urgent matter which must be decided promptly to forestall breaches of peace, violence or even loss of life and, therefore, the court should act swiftly and expeditiously in cases of that nature.

WHEREFORE, the trial court's order of dismissal is reversed and set aside and it is directed to set the case for trial on the merits. Costs against the defendant-appellee.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., and Santos, JJ., concur.

Antonio, J., separate opinion.

Fernando, J., did not take part.

* Up to this time the Director of Lands has not rendered any decision on the application and protest.

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CONCURRING OPINION

ANTONIO, J.:

There is no question that the determination of the rights of claimants to public lands is lodged primarily with the Director of Lands.[1] As stated in Ortua,[2] "the Director of Lands has been made by law a quasi-judicial officer. As such officer he makes findings of facts, even passes upon questions of mixed fact and law, and considers and decides the qualifications of applicants for purchase of public lands." The determination of the respective rights of rival claimants to public land is, however, different or distinct from the determination of who has the actual physical possession or who has a better right of possession with a view to protecting the same and preventing disorder and breaches of the peace. This involves a judicial controversy which properly appertains to the courts. As fully explained by the Court in Pitargue:[3]

"The question that is before this Court is: Are courts without jurisdiction to take cognizance of possessory actions involving these public lands before final award is made by the Lands Department, and before title is given any of the conflicting claimants? It is one of utmost importance, as there are public lands everywhere and there are thousands of settlers, especially in newly opened regions. It also involves a matter of policy, as it requires the determination of the respective authorities and functions of two coordinate branches of the Government in connection with public land conflicts.

"Our problem is made simple by the fact that under the Civil Code, either in the old, which was in force in this country before the American occupation, or in the new, we have a possessory action, the aim and purpose of which is the recovery of the physical possession of real property, irrespective of the question as to who has the title thereto. Under the Spanish Civil Code we had the acción interdictal, a summary proceeding which

could be brought within one year from dispossession (Roman Catholic Bishop of Cebu vs. Mangaron, 6 Phil. 286, 291); and as early as October 1, 1901, upon the enactment of the Code of Civil Procedure (Act No. 190 of the Philippine Commission) we implanted the common law action of forcible entry (section 80 of Act No. 190), the object of which has been stated by this Court to be to 'prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims.' (Supia and Batioco vs. Quintero and Ayala, 59 Phil. 312, 314.) So before the enactment of the first Public Land Act (Act No. 926) the action of forcible entry was already available in the courts of the country. So the question to be resolved is, Did the Legislature intend, when it vested the power and authority to alienate and dispose of the public lands in the Lands Department, to exclude the courts from entertaining the possessory action of forcible entry between rival claimants or occupants of any land before award thereof to any of the parties? Did Congress intend that the lands applied for, or all public lands for that matter, be removed from the jurisdiction of the Judicial Branch of the Government, so that any troubles arising therefrom, or any breaches of the peace or disorders caused by rival claimants, could be inquired into only by the Lands Department to the exclusion of the courts? The answer to this question seems to us evident. The Lands Department does not have the means to police public lands; neither does it have the means to prevent disorders arising therefrom, or contain breaches of the peace among settlers; or to pass promptly upon conflicts of possession. Then its power is clearly limited to disposition and alienation, and while it may decide conflicts of possession in order to make proper award, the settlement of conflicts of possession which is recognized in the courts herein has another ultimate purpose, i.e., the protection of actual possessors and occupants with a view to the prevention of breaches of the peace. The power to dispose and alienate could not have intended to include the power to prevent or settle disorders or breaches of the peace among rival settlers or claimants prior to the final award. As to this, therefore, the corresponding branches of the Government must continue to exercise power and jurisdiction within the limits of their respective functions. The vesting of the Lands Department with authority to administer, dispose, and alienate public lands, therefore, must not be understood as depriving the other branches of the Government of the exercise of their respective functions or powers thereon, such as the authority to stop disorders and quell breaches of the peace by the police, and the authority on the part of the courts to take jurisdiction over possessory actions arising therefrom not involving, directly or indirectly, alienation and disposition.

"Our attention has been called to a principle enunciated in American courts to the effect that courts have no jurisdiction to determine the rights of claimants to public lands, and that until the disposition of the land has passed from the control of the Federal Government, the courts will not interfere with the administration of matters concerning the same. (50 C.J. 1093-1094.) We have no quarrel with this principle. The determination of the respective rights of rival claimants to public lands is different from the determination of who has the actual physical possession or occupation with a view to protecting the same and preventing disorder and breaches of the peace. A judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, can never be 'prejudicial interference' with the disposition or alienation of public lands. On the other hand, if courts were deprived of jurisdiction of cases involving conflicts of possession, that threat of judicial action against breaches of the peace committed on public lands would be eliminated, and a state of lawlessness would probably be produced between applicants, occupants or squatters, where force or might, not right or justice, would rule.

"It must be borne in mind that the action that would be used to solve conflicts of possession between rivals or conflicting applicants or claimants would be no other than that of forcible entry. This action, both in England and the United States and in our jurisdiction, is a summary and expeditious remedy whereby one in peaceful and quiet possession may recover the possession of which he has been deprived by a stronger hand, by violence or terror; its ultimate object being to prevent breach of the peace and criminal disorder. (Supia and Batioco vs. Quintero and Ayala, 59 Phil. 312, 314.) The basis of the remedy is mere possession as a fact, of

physical possession, not a legal possession. (*Mediran vs. Villanueva*, 37 Phil., 752.) The title or right to possession is never in issue in an action of forcible entry; as a matter of fact, evidence thereof is expressly banned, except to prove the nature of the possession. (Section 4, Rule 72, Rules of Court.). With this nature of the action in mind, by no stretch of the imagination can the conclusion be arrived at that the use of the remedy in the courts of justice would constitute an interference with the alienation, disposition, and control of public lands. To limit ourselves to the case at bar can it be pretended at all that its result would in any way interfere with the manner of the alienation or disposition of the land contested? On the contrary, it would facilitate adjudication, for the question of priority of possession having been decided in a final manner by the courts, said question need no longer waste the time of the land officers making the adjudication or award.

"The original Public Land Law (Act 926) was drafted and passed by a Commission composed mostly of Americans and as the United States has had its vast public lands and has had the same problems as we now have, involving their settlement and occupation, it is reasonable to assume that it was their intention to introduce into the country these laws in relation to our problems of land settlement and disposition. The problem now brought before us was presented in an analogous case in the year 1894 before the Supreme Court of Oklahoma in the case of *Sproat vs. Durland*, 2 Okl. 24, 35 Pac. 682, and said court made practically the same solution as we have, thus:

* * *. This question is one of vital importance in Oklahoma. All our lands are entered, and title procured therefor, under the homestead laws of the United States. The question arising out of adverse possession, as between homestead claimants, daily confront our courts. To say that no relief can be granted, or that our courts are powerless to do justice between litigants in this class of cases, pending the settlement of title in the land department, would be the announcement of a doctrine abhorrent to a sense of common justice. It would encourage the strong to over-ride the weak, would place a premium upon greed and the use of force, and, in many instances, lead to bloodshed and crime. Such a state of affairs is to be avoided, and the courts should not hesitate to invoke the powers inherent in them, and lend their aid, in every way possible, to prevent injustice, by preventing encroachments upon the possessory rights of settlers, or by equitably adjusting their differences. In the case under consideration, no adequate remedy at law is provided for relief. Ejectment will not lie. *Adams vs. Couch*, 1 Okl. 17 26 Pac. 1009. And, at the time this proceeding was instituted, the forcible entry and detainer act was insufficient in its provisions to afford a remedy. The appellee was entitled to speedy relief, and ought not to be compelled to await the final and tedious result of the litigation in the interior department, before obtaining that which he clearly shows himself entitled to have.

The action of forcible entry was then deemed insufficient in that state to prevent acts of trespass interfering with an applicant's possession, so that the court ordered the issuance of an injunction. The main issue involved, however, was whether pending final investigation and award the occupant should be protected in his possession, and the Supreme Court of Oklahoma said it should issuing an injunction to protect said possession.

"The same conclusion was arrived at by the Supreme Court of Washington in the case of *Colwell vs. Smith*, 1 Wash. T. 92, 94, when it held:

We will not decide between two conflicting claimants, both of whom are actually in possession of certain portions of the claim in dispute, who is in the right, so far as to dispossess one or the other from the entire claim, which would render it impossible for him to prove that residence the law requires, and thus contest his claim before the register and receiver; we can and must protect either party from trespass by the other, upon such portion of the claim as may be in the actual exclusive possession of such party.

"Resuming the considerations we have set forth above, we hold that the grant of power and duty to the Lands Department to alienate and dispose of public lands does not divest the courts of their duty or power to take cognizance of actions instituted by settlers or occupants or applicants, against others to protect their

respective possessions and occupations, more especially the actions of trespass, forcible entry and unlawful detainer, and that the exercise of such jurisdiction is no interference with the alienation, disposition, and control of public lands. The question we have proposed to consider must be answered in the affirmative.

"Our resolution above set forth answers defendant-appellant's contention. We have, however, to go further and explore another fundamental question, i.e., whether a public land applicant, such as the plaintiff-appellee herein, may be considered as having any right to the land occupied, which may entitle him to sue in the courts of justice for a remedy for the return of the possession thereof, such as an action of forcible entry or unlawful detainer, or any other suitable remedy provided by law. In the United States a claim 'is initiated by an entry of the land, which is effectual by making an application at the proper land office, filing the affidavit and paying the amounts required by * * * the Revised Statutes. (Sturr vs. Beck, 133 U.S. 541, 10 S. Ct. 350, 33 L. Ed. 761.) 'Entry' as applied to appropriation of land, 'means that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country, by filing his claim.' (Ibid., citing Chotard vs. Pope, 25 U. S. 12 Wheat, 586. 588.) It has been held that entry based upon priority in the initiatory steps, even if not accompanied by occupation, may be recognized as against another applicant.

In *Hastings & Dakota R. v. Whitney*, *ubi supra*, an affidavit for the purpose of entering land as a homestead was filed on behalf of one Turner, in a local land office in Minnesota, on May 8, 1865, Turner claiming to act under section 1 of the Act of March 21, 1864 (13 Stat. 35), now section 2293 of the Revised Statutes of the United States. As a matter of fact, Turner was never on the land and no member of his family was then residing, or ever did reside, on it, and no improvements whatever had ever been made thereon by anyone. Upon being paid their fees, the register and receiver of the land office allowed the entry, and the same stood upon the records of the local land office and upon the records of the General Land Office, uncanceled, until September 30, 1872. Between May, 1865, and September, 1872, Congress made a grant to the State of Minnesota for the purpose of aiding in the construction of a railroad from Hastings, through certain countries, to a point on the western boundary of the State, which grant was accepted by the Legislature of the State of Minnesota and transferred to the Hastings and Dakota Railroad Company, which shortly thereafter definitely located its line of road by filing its map in the office of the commissioner of the General Land Office. All these proceedings occurred prior to the 30th of September, 1872. This Court declared that the almost uniform practice of the Department has been to regard land upon which an entry of record, valid upon its face, has been made, as appropriated and withdrawn from subsequent homestead entry, pre-emption, settlement, sale or grant, until the original entry be cancelled or be declared forfeited, in which case the land reverts to the government as part of the public domain, and becomes again subject to entry under the Land Laws; and it was held that whatever defects there might be in an entry, so long as it remained a subsisting entry of record, whose legality has been passed upon by the land authorities and their action remained unversed, it was such an appropriation of the tract as segregated it from the public domain, and therefore precluded it from subsequent grant; and that this entry on behalf of Turner 'attached to the land' in question, within the meaning of the Act of Congress making the grant (14 Stat. 87), and could not be included within it. And as to mere settlement with the intention of obtaining title under the Pre-emption Law, while it has been held that no vested right in the land as against the United States is acquired until all the prerequisites for the acquisition of title have been complied with, yet rights in parties as against each other were fully recognized as existing, based upon priority in the initiatory steps, when followed up to a patent. 'The patent which is afterwards issued relates back to the date of the initiatory act, and cuts off all intervening claimants.' *Shepley vs. Cowan*, 91 U. S. 330, 337 (23: 424, 426).

"There are compelling reasons of policy supporting the recognition of a right in a bona fide applicant who has occupied the land applied for. Recognition of the right encourages actual settlement; it discourages speculation and land-grabbing. It is in accord with well established practices in the United States. It prevents conflicts and the overlapping of claims. It is an act of simple justice to the enterprise and diligence of the

pioneer, without which land settle-ment can not be encouraged or emigration from thickly populated areas hastened.

"Our answer to the second problem is also in the affirmative, and we hold that even pending the investigation of, and resolution on, an appli-cation by a bona fide occupant, such as plaintiff; appellee herein, by the priority of his applica-tion and record of his entry, he acquires a right to the possession of the public land he applied for against any other public land applicant, which right may be protected by the possessory action of forcible entry or by any other suitable remedy that our rules provide." (At pp. 10-17.)

It is on the basis of the foregoing that I predicate my concurrence.

[1] Lucas v. Durian, L-7886, September 23, 1957.

[2] Ortua v. Singson Encarnacion, 59 Phil. 440, 443.

[3] Pitargue v. Sorilla, 92 Phil. 5.

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