

VISAYAN REALTY, INC., PLAINTIFF AND APPELLANT, VS. BIBIANO L. MEER, IN HIS CAPACITY AS COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. L-6763. January 31, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action instituted by the Visayan Realty, Inc., in the Court of First Instance of Cebu against the Collector of Internal Revenue seeking the refund of the sum of P69,138.67 paid as forest charges.

Defendant, in his answer denied the claim and, by way of counterclaim, alleged that plaintiff is still indebted to the Government in the sum of P9,986.70, representing forest charges and surcharges he has not paid during the period from November, 1935 to December, 1940.

The case was submitted on a stipulation of facts, and thereafter the court rendered judgment dismissing both plaintiff's complaint as well as defendant's counterclaim. But, on a motion for reconsideration, the court amended its decision, the dispositive part of which reads as follows:

"In view thereof, this Court, after reconsidering its conclusions in its original decision, Hereby pronounces judgment declaring tha plaintiff entitled to the recovery of P20,716.52, corresponding to the forest charges from December 29, 1928 to November 4, 1940, which they have paid under protest minus the sum of P9,986.70, due in favor of defendant the "Collector of Internal Revenue, or a balance of P10,729.82 which the Court orders said defendant to pay to plaintiff in accordance with the means provided for by law with the costs against the defendant."

From this judgment both parties have appealed, plaintiff from that portion which orders defendant to pay to plaintiff only a balance of P10,729.82 instead of what is claimed in the complaint, and defendant from that portion which declares that plaintiff is entitled to recover the amount of P20,716.52 and not only the amount of P15,940.66, and in any event, from that portion which holds that plaintiff and its predecessors-in-interst were exempted from the payment of the corresponding forest charges mentioned in the complaint.

In 1927, Fortunato S. Veloso, Manuel H. Veloso, Gabino M. Veloso and Buenaventura M. Veloso filed with the Department of Agriculture and Commerce sales applications for four tracts of land situated in barrio Odiongan, municipality of Gingoog, Oriental Misamis, which were numbered 9204, 9207, 9208 and 9269, respectively. On September 8, 1928, the Director of Forestry certified that said tracts of land were not needed for forest purposes subject to the condition that the applicants cannot cut and dispose of for commercial purposes any timber growing thereon without license from the Bureau of Forestry. Said tracts of land were awarded for sale to the aforementioned four persons in the year 1929, the parcel covered by sales application No. 9204 having been awarded on June 10, 1929, that covered by sales application No. 9207 on July 12, 1929; that covered by sales application No. 9208 on February 5, 1929; and that covered by sales application No. 9269 on July 11, 1929.

In 1935, the four awardees transferred their rights and interest under the sales applications to the Visayan Realty, Inc., plaintiff herein. This transfer was approved by the Secretary of Agriculture and Commerce on September 6, 1940, and on November 7, 1940, patents were issued to the plaintiff by the Director of Lands and sent to the Register of Deeds for registration. Accordingly the Register of Deeds issued for each parcel of land Original Certificates of Title Nos. 3, 4, 5 and 6.

It also appears that the Bureau of Forestry issued Ordinary Timber License No. 486-K, on April 16, 1934 and Ordinary Timber License No. 461-A in January, 1936 in favor of the Estate of Mariano G. Veloso, Inc., granting the latter the right to cut timber within an area of 576 hectares covered by the sales applications above mentioned. Subsequently, a similar license was issued to the plaintiff covering the same area which was supplemented by a letter of the Director of Forestry dated August 5, 1937 and, still later, the Bureau of Forestry issued two more licenses to the plaintiff for the same purpose, which were supplemented by letters of the Director of Forestry dated September 22, 1938, February 25, 1939, and June 12, 1940, authorizing plaintiff to cut timber from the four tracts of land above mentioned.

From January 13, 1930 to November 4, 1940 the Collector of Internal Revenue collected from the plaintiff the amount of P69,138.67 representing forest charges for the timber cut and removed from said four tracts of land. The payments made during the period from January 13, 1930 to June 1, 1939 amounting to P53,198.01 were made without protest. However, the payments corresponding to the period from July 3, 1939 to November 4, 1940 amounting to P15,940.66 were made under protest. It also appears that plaintiff had not paid to the Government the amount of P9,986.70 for forest charges and surcharges corresponding to the period from November, 1935 to December, 1940 despite the demand made for its payment by the Collector of Internal Revenue.

Plaintiff-appellant in its first assignment of error contends that the lower court erred in ruling that the ownership of the four tracts of land did not pass to the plaintiff when the award of the sales was made in 1929 but only when the sales patents were "registered in the Office of the Register of Deeds or when the corresponding certification of title covering the lands were issued in favor of the plaintiff. Plaintiff-appellant contends that the title to those four tracts of land passed from the Government to said plaintiff as of the dates when the sales applications of its predecessors-in-interest were approved in 1929 and not when certificates of title were issued by the Register of Deeds in 1940, because the issuance of said certificates of title is but a matter of formality which cannot diminish nor affect the substantial fact that the naked ownership of said lands had already passed from the Government to plaintiff's predecessors-in-interest from the time their sales applications had been awarded to them. From this time, plaintiff contends, the sales became perfected and binding between the parties.

The claim of plaintiff-appellant cannot be entertained. The award of a sales application merely authorizes the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final patent can be issued in his favor (Section 28, Commonwealth Act No. 141).[1] Before these requirements are complied with, the Government still remains the owner thereof, as in fact the application could still be cancelled and the land awarded to another applicant should it be shown that the legal requirements had not been complied with. What divests the Government of its title to the land is the issuance of the sales patent and its subsequent registration in the Office of the Register of Deeds. Such registration is the operative act that would bind the land and convey its ownership to the applicant (Section 107, Commonwealth Act No. 141; Section 122, Act No. 496). Since the timber in question was cut by the plaintiff before the issuance of sales patent in its name or in that of its predecessors-in-interest, it follows that plaintiff was not yet the owner of the lands when the timber growing thereon had been cut, and so it cannot claim exemption from the payment of the forest charges upon the mere plea that it already acquired ownership of said lands.

The case of *Government of the Philippine Islands vs. Wagner & Wagner*, 49 Phil., 944, relied upon by the

plaintiff is not in point. This case is predicated on the concurring opinion of Justice Johnson in another case[2] which has reference to the fulfillment of subsequent conditions or conditions to be complied with after the issuance of the patent, whereas the present case refers to precedent conditions, or conditions to be complied with before the issuance of the patent. The circumstances surrounding the two cases are therefore different.

Moreover, Section 1513 of the Revised Administrative Code[3] expressly provides that forest charges "shall be collected for all wood cut upon any land the title to which is not registered with the Director of Forestry as required by the Forest Law", and, in the absence of such registration, "wood cut and removed from alleged private lands shall be considered as cut and removed under license from public forest or forest reserves." This requirement is mandatory, and failure to comply with it would subject the timber cut to forest charges, and this requirement was not complied with by the plaintiff.

The fact that the Director of Forestry has certified that the four tracts of land in question were not needed for forest purposes and can therefore be opened to public sale does not take said lands out of the operation of said Section 1513 of the Revised Administrative Code for the only reason behind such certification is to remove said land from the classification of timber or mineral lands and transfer it to that of agricultural or alienable lands so that it could be opened to private disposal and be utilized for agricultural purposes. In fact, when said certification was made, it was so made subject to the condition that the applicant can not cut and dispose of for commercial purposes any timber growing thereon without license from the Director of Forestry. And in order to implement this intent of the law, the Bureau of Forestry issued the following administrative order:

"Utilization of Forest Products.—The utilization of forest products which may exist on areas certified as alienable and disposable under this Order or on areas within approved homestead or sales application shall still be subject to the Forest and Internal Revenue Laws and regulations; Provided, however, That the holder of approved homestead or sales, application may be allowed to cut, gather and remove from the land reasonable amount of timber and other products which may need for his own personal use and not for sale or barter, and such forest products shall be considered as cut, gathered and removed under a gratuitous license." (Forestry Administrative Order No. 13—1, Section 7).

Having reached the foregoing conclusion, we don't deem it necessary to discuss the other errors assigned by defendant-appellant for the reason that whether the forest charges in question were paid or not under protest would be immaterial in view of our finding that the plaintiff is not exempted from the payment of said forest charges.

Wherefore, the decision appealed from is reversed. Plaintiff-appellant is hereby ordered to pay to defendant-appellant the sum of P9,986.70 representing the forest charges and surcharges said plaintiff has failed to pay during the period from November, 1935 to December, 1940. without pronouncement as to costs.

Paras, C.J., Pablo, Bengzon, Padilla, Montermyor, Reyes, A., Jugo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Judgment reversed.

[1] Before any patent is issued, the purchaser must show actual occupancy, cultivation, and improvement of at least one-fifth of the land.

[2] *Compana General de Tabacos vs. Topino, et al.*, 4 Phil., 33.

[3] Later superseded by Section 266 of Commonwealth Act No., known as National Internal Revenue Code.

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