

MAXIMINO ENTIENZA, AGRIPINO ENTIENZA AND RAYMUNDO CUBAR, PETITIONERS, VS. HON. ALFREDO C. LAYA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH XII, ARGAO, CEBU AND FILE...

G.R. No. L-45916. October 18, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

The question in this case is whether Civil Case No. AV-251, an ejectment action for the recovery of a piece of agricultural land pending in the Court of First Instance of Cebu, Argao Branch XII, should be referred to the Secretary of Agrarian Reform as required in Presidential Decrees Nos. 316 and 1038.

Filemon Durante is the owner of a parcel of agricultural land with an area of 2,694 square meters situated in Barrio Sayao, Sibonga, Cebu. The land is occupied by Maximino Entienza, Agripino Entienza and Raymundo Cubar. Durante wants to recover the possession of the land from those three persons.

The controversy or "agrarian conflict" was investigated by Mussolini R. Batucan, an acting trial attorney and legal officer of Agrarian Reform Team No. 113 of the Department of Agrarian Reform stationed at Carcar, Cebu. Atty. Batucan's findings are contained in his report dated March 17, 1974.

In that report he stated that, according to Durante, his tenant on the land was Prisco Cubar; that the land used to be occupied by the spouses Fortunato Entienza and Apolonia Cubar, the deceased parents of Maximino Entienza and Agripino Entienza; that later, Pedro Dakay, Durante's son-in-law, planted coconuts on the land and that, when the irrigation canal was extended to his land, Agripino Entienza, Maximino Entienza and Raymundo Cubar (the son of Prisco Cubar) constructed rice paddies on the land.

Atty. Batucan further stated that the two Entienzas claimed to be old tenants of Durante; that they constructed rice paddies and they gave Durante a share in the harvests; that their parents worked on the land and planted coconuts thereon, and that Durante terminated their tenancy.

According to Batucan, at one of the hearings conducted by him, Durante, who was represented by Atty. Abundio Aldemita, the mayor of Carcar, agreed to allow the two Entienzas and Raymundo Cubar to continue their rice cultivation provided that they pay a fixed rental and that the tenancy should not include the portion of the land planted to coconuts.

Prisco Cubar declared before Atty. Batucan that his (Prisco's) son, Raymundo, and his nephews, Agripino Entienza and Maximino Entienza, were allowed to work on the land on condition that Durante would take back the land when he had time to attend to it.

Atty. Batucan found that there was no controversy as to the cultivation of the portion of the land devoted to palay since Durante was willing to allow the three occupants to continue their rice cultivation. As to the portion

planted to coconuts, Atty. Batucan did not make any finding on whether Durante should be allowed to recover possession of that portion. He recommended that Durante should go to court.

On May 6, 1974 Durante sued the two Entienzas and Raymundo Cubar in the Court of First Instance of Cebu to recover possession of the land.

Durante, giving a version different from that which was stated in Batucan's report and assisted by his counsel, Mayor Aldemita, alleged that he asked Prisco Cubar to work on the said land; that Prisco worked on the western side thereof leaving a vacant portion; that in 1969 he asked Prisco to watch and take care of the coconut trees on the said land; that when an irrigation canal was constructed on the said land, the two Entienzas and one Raymundo Cubar forcibly entered the land, worked on the vacant portion thereof and constructed rice paddies thereon; that after Durante had asked the Entienzas and Raymundo Cubar to vacate the land, they complained to the "agrarian authorities, and that an agrarian official (Atty. Batucan), after due investigation, re-commended that Durante should go to court with respect to the portion of the land planted to coconuts and that the Entienzas and Cubar should continue cultivating the riceland because Durante allegedly was agreeable to such a course of action.

The defendants in their answer, which was prepared by the same Atty. Batucan, who had acted as mediator, alleged that they were tenants of Durante who had received from them the landlord's share of the palay and crops. Their allegations on this point are quoted below:

"2. That the complaint does not state a cause or causes of action. Assuming arguendo that it does or do, the same will not prosper because defendants are plaintiff's tenants over the landholding described in the complaint which fact may be shown at the preliminary hearing of this affirmative defense; hence this Honorable Court has no jurisdiction to entertain above caption case.

"And as illustrations of tenancy:

"(a) On April 10, 1974 plaintiff thru Presco Cubar, father of defendant Raymundo, received 25 gantas of palay from said defendant Raymundo Cubar the same constituting as it does PROVISIONAL RENTAL OF THE RICEHOLDINGS of said defendant in the property described in the complaint;

"(b) In 1967 or thereabouts, defendant Agripino Entienza with the consent and permission of the plaintiff first had cons-tructed rice paddies in the land described in the complaint and, since then until 1970 harvested palay nine (9) times the production of which he shared with the plaintiff-landholder;

"(c) From 1970 - when defendant Agripino Entienza ceased to cultivate his riceholdings aforementioned due to non-availability of water supply for irrigation passing thru the land owned by one BUENAVENTURA ALCOMENDRAS - until the later part of 1973 - when another irrigation supply reached his riceholdings this time from another source, Sitio Langob (Sibonga) - said defendant devoted his tillage to commercial pepper and tomatoes the production of which or its proceeds he shared with plaintiff landholder;

"(d) Since then defendants sometime in November 1973 constructed or reconstructed rice paddies on the land described in the complaint as they are and have been plaintiff's tenants;

"(e) That since the installation as tenant by plaintiff in 1961 defendant Raymundo Cubar has not only planted rice on his holdings (other than the ones described above in letter [d]), but also was made to cultivate/watch the coconuts surrounding the same with the sharing ration of 1/3, 2/3 in plaintiff's favor over its production;

"(f) Thru their father Fortunato Entienza who once lived on the land described in the complaint together with his family, defendants Maximino and Agripino Entienza have been plaintiff's tenants over portions of the land described in the complaint in the same manner as defendant Raymundo Cubar and his father Presco are also tenants on other portions;

"(g) Sometime in 1942 Fortunato Entienza planted 90 coconut trees on the land described in the complaint at the behest of plaintiff's predecessor-in-interest and most of these permanent palm trees are now fruit bearing."

The defendants prayed that the case be referred to the Department of Agrarian Reform pursuant to Presidential Decree No. 316 or dismissed in accordance with the ruling in *Chavez vs. Zobel*, L-28609, January 17, 1974, 70 O. G. 4165, 55 SCRA 26.

The lower court, after a perusal of Batucan's report, concluded that investigator Batucan "did not make any categorical statement that this case involves landlord-tenant relationship".

The said defendants filed in the Court of Agrarian Relations at Cebu City a petition against Durante for the fixing of the rentals due from them (CAR Case No. 1148).

In the ejectment suit the lower court held hearings to determine whether a preliminary mandatory injunction should be issued.

On May 12, 1975 the defendants filed a motion in the lower court for the dismissal of the case on the ground of lack of jurisdiction. The motion was denied in the lower court's order of November 19, 1976. In another order of the same date, the lower court denied defendants' motion for the reconsideration of its order finding that there was no landlord-tenant relationship between the petitioners and Durante.

On February 1, 1977 Atty. Batucan filed a motion for the reconsideration of the order denying his motion to dismiss and for the referral of the case to the Department of Agrarian Reform pursuant to Presidential Decree No. 316. Durante opposed that motion.

The lower court in its order of February 11, 1977 denied the motion for reconsideration on the ground that the defendants were not tenants or, at least, not bona fide tenants. The court required Atty. Batucan to show cause why he should not be held in contempt of court for having mentioned in his motion the lower court's supposed "gross ignorance of law" in hearing the ejectment case.

On April 18, 1977 the petitioners filed in this Court their petition for certiorari. They sought to annul the aforementioned orders of the lower court. The petition was docketed in June, 1977 when the docket and legal research fees were paid. This Court issued a temporary restraining order.

Presidential Decree No. 316, which prohibits the ejectment of tenant-tillers from their farmholdings pending the promulgation of the rules and regulations implementing Presidential Decree No. 27, provides:

"SECTION 1. - No tenant-farmer in agricultural lands primarily devoted to rice and corn shall be ejected or removed from his farmholding until such time as the respective rights of the tenant-farmer and the landowner shall have been determined in accordance with the rules and regulations implementing Presidential Decree No. 27.

"SECTION 2. - Unless certified by the Secretary of Agrarian Reform as a proper case for trial or hearing by a court or judge or other officer of competent jurisdiction, no judge of the Court of Agrarian Relations, Court of First Instance, municipal or city court, or any other tribunal or fiscal shall take cognizance of any ejectment case or any other case designed to harass or remove a tenant of an agricultural land primarily devoted to rice and corn, and if any such cases are filed, these cases shall first be referred to the Secretary of Agrarian Reform or his authorized representative in the locality for a preliminary determination of the relationship between the contending parties. If the Secretary of Agrarian Reform finds that the case is a proper case for the court or judge or other hearing officer to hear, he shall so certify and such court, judge or other hearing officer may assume jurisdiction over the dispute or controversy." (See sec. 12, P. D. No. 946, June 17, 1976).

Presidential Decree No. 316 is complemented by Presidential Decree No. 1038, which strengthens the security of

tenure of tenant-tillers in non-rice/corn producing private agricultural lands, The latter decree provides:

"SECTION 1. The tenure of the tenant-tillers in private agricultural lands devoted to crops other than rice and/or corn, including but not limited to those primarily planted to abaca, banana, coconut, coffee, mango, durian and other permanent trees, shall be secured and no tenant-tiller shall be removed, ejected, ousted or excluded from his farmholding unless for causes provided by law and directed by a final decision or order of the court.

"SEC. 2. No judge of the courts of agrarian relations, courts of first instance, city or municipal courts, or any other tribunal or fiscal shall take cognizance of any ejectment case or any other case designed to harass or remove a tenant of an agricultural land primarily devoted to rice and/or corn (should be products other than rice and corn), unless certified by the Secretary of Agrarian Reform as a proper case for trial or hearing by a court or judge or other officer of competent jurisdiction and, if any such case is filed, the case shall first be referred to the Secretary of Agrarian Reform or his authorized representative in the locality for a preliminary determination of the relationship between the contending parties. If the Secretary of Agrarian Reform or his authorized representative in the locality finds that the case is a proper case for the court or judge or other hearing officer to hear, he shall so certify and such court, judge or other hearing officer may assume jurisdiction over the dispute or controversy.

"The preliminary determination of the relationship between the contending parties by the Secretary of Agrarian Reform, or his authorized representative, is not binding upon the court, judge or hearing officer to whom the case is certified as a proper case for trial. Said court, judge or hearing officer may, after due hearing, confirm, reverse or modify said preliminary determination as the evidence and substantial merits of the case may warrant.

"SEC. 3. All cases still pending before any court, fiscal or other investigating body which are not yet submitted for decision or resolution shall likewise be referred to the Department of Agrarian Reform for certification as provided in the preceding section."

We hold that under the facts above set forth Civil Case No. AV-251 should be referred to the Secretary of Agrarian Reform pursuant to section 2 of the said decrees and that the trial court acted with grave abuse of discretion in denying petitioners' motion for the referral of the case to the said Secretary.

WHEREFORE, the lower court's orders dated November 19, 1976 and February 11, 1977, insofar as they denied petitioners' motion for the referral of Civil Case No. AV-251 to the Secretary of Agrarian Reform, are reversed and set aside. The lower court is directed to refer the case to the Secretary of Agrarian Reform pursuant to section 2 of Presidential Decrees Nos. 316 and 1038. Costs against private respondent.

SO ORDERED.

Barredo, (Acting Chairman), Antonio, Concepcion, Jr., and Santos, JJ., concur.
Fernando, J., is abroad.

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