

ANDRES PITARGUE, PLAINTIFF AND APPELLEE, VS. LEANDRO SORILLA, DEFENDANT AND APPELLANT.*G.R. No. L-4302. September 17, 1952*

Ponente: LABRADOR, J.

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On July 30, 1941, plaintiff-appellee filed a miscellaneous sales application for a parcel of land known as cadastral lot No. 2777 situated at Elang, Kidapawan, Cotabato, and paid a deposit of P5 therefor (Exhibit F). The Bureau of Lands acknowledged receipt of his application on November 22, 1941 (Exhibit E), and informed that it had been referred to the district land office of Cotabato, Cotabato. Upon receipt of his acknowledgment he started the construction of a small house on the lot, but the same was not finished because of the outbreak of the war. In 1946 he had another house constructed on the lot, which he used both as a clinic (he is a dentist) and as a residence. He introduced other improvements on the land and these, together with the house, he declared for tax purposes (Exhibit B), paying taxes thereon in 1947 and 1948 (Exhibits C and D). He placed one Cacayorin in charge of the house, but Cacayorin left it on December 13, 1948. Thereupon defendant-appellant herein demolished the house and built thereon one of his own. On December 17, 1948, plaintiff went to defendant and asked the latter why he had constructed a building on the land, and the latter gave the excuse that there was no sign of interest on the part of the one who had applied for it.

On March 9, 1949, plaintiff-appellee instituted this action of forcible entry in the justice of the peace court, praying that defendant be ordered to vacate the lot usurped and remove the construction he had made thereon, with monthly damages at P10. Thereupon defendant filed a motion to dismiss the action on two grounds, namely, (1) that the court has no jurisdiction over the subject matter, as the same falls under the exclusive jurisdiction of the Bureau of Lands, and (2) that the action is barred by a prior judgment, because a previous criminal action for usurpation of real property filed by plaintiff against him had been dismissed. The justice of the peace court denied the motion on the ground that the issue involved is as to who was in the actual possession of the lot in question on December 14, 1948, which issue can be resolved only after the presentation of evidence (Record on Appeal, pp.26-27). Thereupon defendant filed an answer denying plaintiff's possession since 1946, and alleging as special defenses (1) that the lot is an unawarded public land, which is already under investigation by the Bureau of Lands, and (2) that defendant was already acquitted of a criminal charge filed by plaintiff against him for usurpation of real property. By way of counterclaim he demanded P2,800 from plaintiff (Record on Appeal, pp. 27-33). On June 4, 1949, the justice of the peace court declared itself without jurisdiction to try the case for the reason that the subject matter of the action is the subject of an administrative investigation (*Ibid.*, p. 39). Against this judgment plaintiff appealed to 'the Court of First Instance. At first this court refused to take cognizance of the case, but upon the authority of the case of *Mago vs. Bihag*, 44 Off. Gaz., (12) 4934, decided by the Court of Appeals, it proceeded to try the case on the merits. After trial it found the facts already set forth above, and sentenced the defendant to vacate the land and indemnify the plaintiff in the sum of P100, with costs. Against this judgment this appeal has been presented, the defendant-appellant making the following assignments of error in his brief:

- The lower Court erred in trying the case when the land involved is a public land and jurisdiction of which belong to the Land Department of the Philippines.
- The lower Court erred in trying the case when prior to the commencement of this action an administrative case was (is) pending between the parties over the same land in the Bureau of Lands and, as such, the latter has acquired first jurisdiction over the subject-matter of the action,
- The lower Court erred in trying the case when the cause of this action is barred by a prior judgment.
- The lower Court erred in trying the case and rendering a decision on the merits when its duty after it had determined that the Justice of the Peace Court has jurisdiction is to reverse the order of dismissal of the inferior court and remand to it for further proceedings.

Under the facts and circumstances of the case the question now before us is as follows: Do courts have jurisdiction to entertain an action of forcible entry instituted by a bona fide applicant of 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 award and pending investigation of the application? Defendant-appellant contends that as the administrative disposition and control of public lands is vested exclusively in the Lands Department, cognizance of the forcible entry action or of any possessory action constitutes a "prejudicial interference" with the said administrative functions, because there is an administrative case pending in the Bureau of Lands between the same parties over the same land. The record contains a certificate of a land inspector to the effect that the investigation of the conflict between plaintiff-appellee herein and the defendant-appellant has been suspended because of the trial of the criminal case for usurpation filed by plaintiff against defendant-appellant. (See Record on Appeal, pp. 25-26.) We note from the certificate, however, that while plaintiff's application is registered as MSA 9917, defendant-appellant does not appear to have made any formal application at all.

It must be made clear at the outset that this case does not involve a situation where the Bureau of Lands has already made an award of, or authorized an entry into, the public land. It is purely a possessory action by a bona fide applicant who has occupied the land he has applied for before the outbreak of the war under the ostensible authority of his application, which was given due course for investigation, but as to which no approval has been given because investigation has not yet been finished.

An ideal situation in the disposition of public lands would be one wherein those alienable and disposable are yet unoccupied and are delivered to the applicants upon the approval of their application, free from other occupants or claimants. But the situation in the country has invariably been the opposite; lands are occupied without being applied for, or before the applications are approved. In fact, the approval of applications often takes place many years after the occupations began or the application was filed, so that many other applicants or claimants have entered the land in the meantime, provoking conflicts and overlapping of applications. For some reason or other the Lands Department has been unable to cope with the ever increasing avalanche of applications, or of conflicts and contests between rival applicants and claimants.

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 action interdicted, 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 been 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 Ba'cioco 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 and 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 override 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 ease 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. V. 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 is 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 E. 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, preemption, 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 unreversed, 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 Preemption 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 this 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 settlement 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 application by a bona fide occupant, such as plaintiff-appellee herein, by the priority of his; application 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.

Having disposed of the most important questions raised on this appeal, we will next consider the procedural question, i.e., that the Court of First Instance, after deciding the question of jurisdiction of the justice of the peace favorably, should have remanded the case to that court for trial. The record discloses that upon the docketing of the case in the Court of First Instance on appeal, defendant-appellant filed a motion to dismiss, which the Court of First Instance granted. However, upon motion for reconsideration filed by plaintiff, the trial court vacated this order of dismissal, and thereupon the defendant presented his answer. There was no need of remanding the case to the justice of the peace court for trial, because this court had already heard and tried the case evidently on the merits. The case was, 'therefore, brought before the Court of First Instance on appeal and for a new trial, not only on the question of jurisdiction but on the merits also.

The claim of bar by a prior judgment, because the action for usurpation of real property instituted by plaintiff-appellee against defendant-appellant was dismissed, can not be sustained, for not only are the parties in the previous criminal action and in this action of forcible entry not identical, but the causes of action involved are also different.

The judgment appealed from is hereby affirmed, with costs against the appellant.

Pablo, Bengzon, Padilla, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

Paras, C. J., concurs in the result.

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