

LEONCIO KIMPO, PLAINTIFF AND APPELLANT, VS. NEMESIO T. TABANAR, DEFENDANT AND APPELLEE, DIRECTOR OF LANDS, INTERVENOR AND APPELLEE.

G.R. No. L-16476. October 31, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from an order of the Court of First Instance of Aklan (Capiz), which is before us by virtue of a resolution of the Court of Appeals, the issue raised by appellant being one purely of law.

In his complaint, plaintiff Leoncio Kimpo alleges that he is the owner of a parcel of land of about 60 hectares, more particularly described in said pleading, situated in the barrio of Alibagon, Municipality of Makato, Province of Capiz, and has been in actual possession of said land, as such owner, since December 1925, excluding the possession of his predecessors in interest, who had held it, in the same capacity, for time immemorial; that sometime in 1946, he granted permission to defendant Nemesio Tabañar, upon the latter request, to occupy temporarily a small portion of said land, with an area of about five (5) hectares, to build thereon a nipa hut and raise chicken and pigs; that, sometime in January 1953, in betrayal of the trust and confidence of the plaintiff, Tabanar surreptitiously started to build dikes and unlawfully converted into a fishpond the Northern portion of plaintiff's aforementioned property, with an area of about twenty-five (25) hectares, more or less, and, in the process of such conversion, destroyed improvements consisting of coconut trees and nipa plants, with a market value of P5,000; and that since then Tabanar began to "claim exclusive right of possession over the premises" and, despite repeated demands by the plaintiff, failed and refused to vacate the same and to pay the value of said improvements, to the damage prejudice of the plaintiff, who, accordingly, prayed that defendant be sentenced to vacate said land and restore its possession to him (plaintiff), as well as to pay damages.

Defendant filed an answer denying most of the material allegations of the complaint, alleging as special defense that he is "a legitimate applicant for a fishpond permit of a portion of a communal forest now disestablished for other purposes such as fishpond", and setting up a counterclaim for moral damages and attorney's fees. Plaintiff filed a reply and an answer to said counterclaim.

Subsequently, the Director of Forestry intervened in the case, upon the ground that the land in dispute is part of a public forest belonging to the Republic of the Philippines and under the administration of said officer. In his answer to the complaint of intervention, plaintiff denied the allegations thereof and alleged, inter alia, that said land is his private property, for which he had been required by the Government to pay taxes, which he did; that the Director of Forestry is not a proper party in interest, for this officer had turned over his jurisdiction over the property in question to the Director of Fisheries; and that the complaint in intervention must be dismissed, for the issue therein raised refers to the ultimate ownership over the disputed land, whereas plaintiff's complaint refers to the disturbance of his possession and the damages suffered by him in consequence thereof and of the destruction of improvements on said land by the defendant.

Subsequently, defendant Tabanar filed a motion to dismiss of case upon the ground that there is an administrative case pending in the Department of Agriculture and Natural Resources between the same parties and involving the same subject matter and cause of action; that, by initiating such administrative case, plaintiff had voluntarily submitted himself to the authority and jurisdiction of the Department of Agriculture and Natural Resources, especially the Bureau of Fisheries, and impliedly admitted that the land in question is public land, for which reason he is now in estoppel to claim it as his private property; and that since it would take "an indefinite time to decide" said administrative case, the pendency of the one at bar would cause injustice and prejudice to the defendant. Over plaintiff's objection, this motion was granted, without prejudice, in an order dated February 22, 1955, upon the ground that:

"The Court believes that the ends of justice may be better served if the case before the Department of Agriculture and Natural Resources is first settled. The department has expert investigators at its command and they are more in the position to ferret the truth in the maze of the conflicting claims of the different claimants where question of possession and ownership will be thoroughly threshed in the said administrative case. The Court is interested to know the findings of the department before proceeding to the hearing of this case."

Hence this appeal by the plaintiff, who maintains that as stated in his opposition to said motion to dismiss, the parties, the subject matter and the cause of action involved in the case at bar are not identical to those involved in the administrative case above referred to; that the principle requiring exhaustion of administrative remedies is inapplicable to the present case; and that the lower court should not have dismissed the same.

We find ourselves unable to agree to the view taken in the order complained of. To begin with, the records before us do not show clearly the nature of the issues raised in the administrative case, or the parties therein. Secondly, if, as stated in defendant's motion to dismiss, "the question of whether the property disputed between Kimpo and Tabanar is public land or not has become primarily an administrative matter", it follows that plaintiff must have insisted in the administrative case on his title in fee simple over the property in litigation herein, and, hence, is not estopped therein from denying that it is a public land. Thirdly, plaintiff alleged, in his opposition to said motion to dismiss, and defendant has not denied it, that Gonzalo Relayson, Juan T. Teza, Manuel G. Sarabia and Filemon Tutay, who are not parties in this case, are, also, involved in said administrative case and that the land in question therein has an area bigger than that disputed in this case. Fourthly, even in cases admittedly involving public lands, the courts of justice may decree the restoration of its possession to one who has been illegally divested thereof or is being unlawfully deprived of his right to such possession (*Lopez vs. Santiago*, 107 Phil., 668; 57 Off. Gaz., [31] 5554; *Lequigan vs. Katalbas*, 105 Phil., 645; *Heirs of B. A. Crumb vs. Rodriguez*, 105 Phil., 391; *Mariano vs., De los Santos*, 91 Phil., 191; *Pitarque vs. Sorilla*, 92 Phil., 5; 48 Off. Gaz., [9] 3849; *Bohayang vs. Maceren*, 96 Phil., 390; 53 Off. Gaz., 4105). Fifthly, the rule of exhaustion of administrative remedies is inapplicable to a party who claims the land in dispute as his private property (*Balad-Geujay vs. Castrillo*, 111 Phil., 690, 59 Off. Gaz. [36] 6042 *Genkeko vs. Araneta*, 102 Phil., 706; 54 Off. Gaz., [15] 4494; *Santiago vs. Cruz*, 98 Phil., 168; *Marukot vs. Jacinto*, 98 Phil., 128).

In short, the grounds upon which defendant's motion to dismiss was predicated are not indubitable, for which reasons the better policy would have been to deny the motion, without prejudice to taking such measures as may be proper to assure that the ends of justice be served.

Wherefore, the order appealed from is reversed and the records of the case hereby remanded to the lower court for further proceedings, with the costs of this instance against defendant Nemesio T. Tabanar. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

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