

BONIFACIO BALMES, PLAINTIFF-APPELLEE, VS. FORTUNATO SUSON, DEFENDANT-APPELLANT.*G.R. No. L-27235. May 22, 1969*

Ponente: SANCHEZ, J.

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A case of pre-war vintage covering preferential right to possession of a sixteen-hectare parcel of public land known as Lot 2104, Pls-61, situate in Molave, Zamboanga del Sur, was first decided by the Director of Lands in 1941, affirmed upon reinvestigation in 1954 by the Director of Lands, reaffirmed in 1955 by the Secretary of Agriculture and Natural Resources who, following three motions for reconsideration, declared his decision final in 1956 because the motions for reconsideration were filed out of time, finally landed in the Court of First Instance of Zamboanga del Sur.[1] And this, because the prevailing party in the administrative proceedings, unable to obtain possession of which he was deprived since 1939, came to court for assistance and asked that defendant be directed to vacate said Lot 2104 and that he be awarded damages.

But first to the background facts.

On August 16, 1941, the Director of Lands decided Lands Conflict 374 (pre-war)[2] involving the aforesaid land in favor of plaintiff Bonifacio Balmes, who filed Sales Application 22992, and against defendant Fortunato Suson. Reconsideration of that decision sought by Aproniano Suson, son of contestant Fortunato Suson, was rejected on August 23, 1941 by the Director of Lands. More than seven years passed when on December 6, 1948 Fortunato Suson sought reconsideration in the Lands Office. His reason, amongst others, was that the reconsideration sought by his son Aproniano was without his knowledge and consent. The Lands Bureau reinvestigated. Then, on October 8, 1954, in a lengthy decision discussing the facts, the Director of Lands once again rejected the claim of Fortunato Suson to Lot 2104 [B.L. Claim 188(N)], ruled that the sales application of Bonifacio Balmes "shall be given due course", and made this significant directive: "Fortunato Suson shall vacate the premises and remove all [his] improvements thereon at his own expense within 60 days from the receipt of his copy hereof; otherwise, said improvements will be forfeited in favor of the Government."

Fourteen years after the original decision of the Director of Lands; that is, on August 13, 1955, the Secretary of Agriculture and Natural Resources affirmed on appeal (DANR Case 1170). As afore-said, Suson's three successive motions for reconsideration were denied for having been filed out of time in the Secretary's orders of January 5, 1956, April 26, 1956 and July 16, 1956. In this last named order of July 16, 1956, the Secretary's ruling was pre-dicated upon two grounds: first, that the three motions for reconsideration were time-barred; and second, that the evidence adduced during the reinvestigation of this case and the records existing in the Bureau of Lands established the fact that as between Balmes and Suson, the former had the better right to the disputed land.[3] The order expressly stated that the alleged valuable improvements placed by Suson were without doubt introduced in bad faith. The reason given was that Suson kept on occupying the lot in spite of the adverse decision against him since 1941. In denying the third motion for reconsideration, the Secretary ruled that: "x x x this case insofar as this Department is concerned, is considered a closed matter. Further motion for reconsideration will not

be acted upon and will only be filed for record purposes."

Thereafter, on October 20, 1956, December 5, 1956 and February 2, 1957, Balmes sought execution of the decision of the Director of Lands of October 8, 1954 and paid the required execution fee. On March 11, 1957, the Undersecretary of Agriculture and Natural Resources had to intervene to direct the Lands Director to take immediate action on the execution. However, even with the former's directive that report on the matter be given in ten days, the Director of Lands took no action.

Unable to obtain relief, plaintiff then commenced the present action to settle the issue of possession of the land in the light of the decision of the Director of Lands which plaintiff alleged to be long final and executory.

Defendant Suson, having received copy of the complaint above-mentioned, filed a petition for executive review with the Office of the President of the Philippines. That was on July 3, 1957. On the very same day, he filed in court a motion to dismiss the case upon the ground of prematurity and lack of jurisdiction on the averment that he had elevated the case from the Agriculture Department to the Office of the President,

On July 20, 1957, the trial court rejected the motion to dismiss. This was followed by the order of August 24, 1957 denying reconsideration.

On September 23, 1957, defendant lodged with the Supreme Court a petition for certiorari and prohibition docketed as G.R. L-12868, entitled "Fortunato Suson, Petitioner, versus Honorable Mateo Canonoy, Judge, Court of First Instance of Zamboanga del Sur and Bonifacio Balmes, Respondents." Defendant Suson there emphasized that the court below "may not yet acquire jurisdiction over the case" since the petition for executive review was still pending in the Office of the President and consequently defendant Suson (petitioner therein) had not as yet exhausted "all adminis-trative remedies available." The petition charged that the trial court lacked jurisdiction over the case itself, which petitioner claimed to be for enforcement of the decision of the Director of Lands, and that the order requiring petitioner to answer the com-plaint was without or in excess of the court's jurisdiction. On, October 8, 1957, this Court overturned the petition in a resolution, which reads: "Considering the allegations of the petition filed in case L-12868 (Fortunato Suson vs. Honorable Mateo Canonoy, etc., et al.) for prohibition and certiorari, THE COURT RESOLVED to dismiss the petition for lack of merit." [4] In Suson's petition for reconsideration, he stressed the issue to be: "Does appeal to His Excellency, the President of the Philippines, as the highest adminis-trative officer of the land under the Constitution, from the decision of administrative cases made exclusive and final by law, which in this case is the decision of the Director of the Bureau of Lands, affirmed by the Secretary of Agriculture and Natural Resources, constitute a part of administrative remedies available to an aggrieved party in an administrative case? If so, with said appeal to the President pending, may resort to court be made by a party to an administrative case, and, if that is done, may the Court acquire jurisdiction over the case before the Office of the President has resolved the appeal?" This Court, on October 15, 1957, resolved to deny the reconsideration sought, in a resolution which reads: "The Court, deliberating upon the grounds of the motion for recon-sideration filed by attorneys for the petitioner in case L-12868 (Fortunato Suson vs. Hon. Mateo Canonoy, etc., et al.), RESOLVES to deny the motion." [5] Final judgment was entered by the Clerk of this Court on June 28, 1958 on which date said entry of judgment was forwarded to the clerk of the Court of First Instance of Zambo-anga del Sur.

Back to the court below. Answer with counterclaim having been filed, the parties entered into a stipulation of facts on October 8, 1958. Upon the reservation set forth in the stipulation, the parties presented evidence solely as to the damages claimed by plaintiff in his complaint and by defendant in his counterclaim.

In due course, judgment was rendered "ordering the defendant, Fortunato Suson, to vacate the premises and remove all his improvements inside Lot No. 2104, Pls-61, Molave, Zamboanga del Sur, within two months from

receipt of a copy of this decision; to pay the plaintiff, Bonifacio Balmes the sum of THREE THOUSAND PESOS (P3,000.00) for damages and a further sum of FIVE HUNDRED (P500.00) PESOS for attorney's fees and to pay the costs."

1. The meat of the case is the jurisdictional issue. Tersely stated, such issue simply is: Did the lower court acquire jurisdiction to entertain the case on the face of the pendency of the petition for executive review in the Office of the President of the Philippines? Our view is that it did. And for good reasons.

A recital of the facts leads this Court to believe that all along there was a clear pattern of conduct on the part of defendant with a view to frustrating relief. He indeed resorted to delays. The first adverse decision against him, as we have adverted to earlier, was in August of 1941. A reconsideration filed by his son was thwarted on October 23, 1941. Fortunato Suson did nothing afterwards. He did not appeal to the Secretary of Agriculture and Natural Resources. Meanwhile, he has remained in possession - since 1939 - which he wrested from plaintiff, in the words of the Director of Lands in his decision of October 8, 1954, "by force of arms". He appealed to the Secretary of Agriculture and Natural Resources. Fourteen years after the 1941 decision of the Director of Lands elapsed when on August 13, 1955 the Secretary of Agriculture and Natural Resources ruled that the Director of Lands was right and that Balmes should be given the possession. Defendant's three motions for reconsideration, all filed out of time and held unmeritorious, likewise failed of their purpose. It is to be remembered that he only thought of a petition for executive review on July 3, 1957, almost a year after his third motion for reconsideration was rejected on July 16, 1956, and apparently because plaintiff had sought court protection in the complaint he filed against said defendant on June 18, 1957. Plaintiff, it bears stressing, has not enjoyed possession of the land since 1939 to the present, or a period of thirty years. These facts amply convince this Court that the prime objective of defendant in all of his moves both in the executive department and in the courts was to stave off the inevitable day when he must have to surrender possession of the land to plaintiff. This is an attitude this Court unsympathetically rejects.

The jurisdictional issue now raised was previously brought to this Court in an effort to stop the lower court on its tracks. Defendant here then sought relief urging that the pendency of the executive review he sought from the Office of the President of the Philippines should prevent the lower court from proceeding with the case. Denied review on certiorari, he moved to reconsider specifically pointing out that the pendency of such executive review was the core of the case. This Court, passing upon this motion for reconsideration, again overruled defendant. The resolutions denying the petition for certiorari which have achieved finality constitute "the law of the case."

In *Fernando vs. Crisostomo*, 90 Phil. 585, 590, the issues on appeal were found to present substantially the same questions raised in a petition for certiorari with preliminary injunction previously filed before this Court, challenging the jurisdiction of the probate court. This Court, thru minute resolutions, denied the petition for certiorari as well as a motion for reconsideration. And we held that "the resolutions of this Court constitute res judicata and the law of the case with regard to this appeal and they can no longer be questioned and put in issue in the present case."

In *People vs. Olarte*, 19 SCRA 494, 498, we held that a ruling in a previous case constitutes the law of the case, and, even if erroneous, "may no longer be disturbed or modified." We there added that "a subsequent reinterpretation of the law may be applied to new cases but certainly not to an old one finally and conclusively determined (*People vs. Pinuila*, G.R. No. L-11374, May 30, 1958; 55 O.G. 4228)." We there defined the law of the case as meaning "that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. (21 C.J.S. 330)."[6]

Really, since our pronouncement on the question of juris-diction has become final it "is not subject to review or reversal in any court." [7] "The maxim here applicable is non quita movere." [8]

2. No longer is it necessary, however, for the parties to argue about the executive appeal. Because, in the petition filed by plaintiff praying for an early resolution of this case, attention is drawn to the fact that on February 12, 1964, the Office of the President of the Philippines has finally rendered a decision dismissing the appeal. That decision recognized "Balmes' undisputed possession and cultivation of said lot from 1934 until he was forcibly dispossessed in 1939 by Suson who since then has been in possession of the land." This, according to the Presidential decision, is "one lucid conclusion" that "stands out distinctly." The dispositive part of that decision reads: "For all the foregoing considerations, this Office cannot but sustain the DANR ruling that appellee, Bonifacio Balmes, has a better right to the controverted lot and should be awarded the same. The instant appeal is therefore dismissed for lack of merit."

Certainly, plaintiff made out a case for the recovery of the land in question.

3. Also challenged by defendant is the correctness of the award for damages and attorneys' fees. The lower court on this point said: "Considering that the defendant has deprived the plaintiff of his legal right to possess and occupy the property in question and the inconvenience of further court proceedings could have been avoided if the defendant was only sensible and prudent to obey or respect the decision of the Director of Lands, the court believes, that the plaintiff is entitled to reimbursement of the expenses he incurred in the enforcement of his rights and the amount of THREE THOUSAND (P3,000.00) PESOS is believed to be reasonable for actual expenses and the amount of FIVE HUNDRED (P500.00) PESOS for attorney's fees."

Defendant charges as erroneous the award of P3,000 for damages mainly because there is no claim or allegation in plain-tiff's complaint that the latter incurred alleged expenses and that it is not prayed for in the complaint. What the complaint indeed asks are damages for the use and enjoyment of the land. We, however, examined the transcript of the stenographic notes. We did so, for the reason that, as heretofore adverted to, evidence was taken only on the question of the damages claimed respectively by plaintiff and defendant. Plaintiff's evidence shows that the litigation expenses he incurred from the time the land had been in dispute was P3,000. No objection to such evidence having been interposed by defendant during the trial, the latter cannot now claim that the nature of the evidence proven in court is different from that averred in the com-plaint. He is barred. [9]

This Court notes that the attorneys' fees awarded below and challenged here amount to only P500. The court's power to grant attorneys' fees is well within the ambit of Article 2208(11) of the Civil Code where attorneys' fees, other than judicial costs, may be recovered "[i]n any other case where the court deems it just and equitable that attorney's fees x x x should be recovered." [10]

Again, from the transcript we read that plaintiff testified on direct examination - without objection from defendant's counsel - that he paid around P1,000 to his other lawyers; and that on cross-examination, plaintiff clarified that this was apart from the P500 he prayed for in the complaint, which last amount was for his present counsel.

Besides, the attorneys' fees granted below amounting to P500 are only for services rendered in the lower court. They do not cover those rendered on appeal. For certainly, the trial judge may not be in a position to appreciate the factors which govern the assess-ment of counsel fees beyond his court.

As we view the record, we are impelled to say that upon reason-able appraisal, the attorneys' fees both in the lower court and in this Court should be fixed at P1,500.

For the reasons given, the judgment under review is hereby modified, only in the sense that defendant is hereby

ordered to pay plaintiff P1,500 by way of attorneys' fees. In all other respects, the said judgment is affirmed.

The Court directs that defendant-appellant pay plaintiff-appellee treble costs.

SO ORDERED.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Fernando, and Capistrano, JJ., concur.

Teehankee and Barredo, JJ., took no part.

Concepcion, C.J., and Ruiz Castro, J., on official leave.

[1] Civil Case 356, entitled "Bonifacio Balmes, Plaintiff, versus Fortunato Suson, Defendant."

[2] Some parts of the record give the number as 874.

[3] On the authority of the Director of Lands and the Secretary of Agriculture and Natural Resources, see Sections 3, 4 and 5, Commonwealth Act 141, as amended.

[4] Emphasis supplied.

[5] Emphasis supplied.

[6] See also: Padilla vs. Paterno, 93 Phil. 884, 887; People's Homesite and Housing Corporation vs. Mencias, 20 SCRA 1031, 1041; NAWASA vs. NWSA Consolidated Union, L-26894-96, February 28, 1969, citing People vs. Olarte, supra, and Kabigting vs. Acting Director of Prisons, L-15548, October 30, 1962.

[7] Compagnie Franco-Indochinoise v. Deutsch-Australische Damps-chiffs Gesellschaft, 39 Phil. 474, 476, cited in NAWASA vs. NWSA Consolidated Union, supra.

[8] Banco Español-Filipino vs. Palanca, 37 Phil. 921, 942.

[9] Section 36, Rule 132, Rules of Court; Marella vs. Reyes, 12 Phil. 1, 3-4; U.S. vs. Chao Tong, 22 Phil. 562, 564; U.S. vs. Ong Shiu, 28 Phil. 242, 244; Beam vs. Yatco, 82 Phil. 30, 37-38; People vs. Young, 83 Phil. 702, 707; 4 Martin, Rules of Court in the Philippines, 1966 ed., pp. 561-562; 6 Moran, Comments on the Rules of Court, 1963 ed., p. 129, citing People vs. Yatco, 51 O.G. 6187. See also: Bersabal vs. Bernal, 13 Phil. 463, 465; Kuenzle & Streiff vs. Jiongco, 22 Phil. 110, 112; Geraldo vs. Arpon, 22 Phil. 407, 410; Asombra vs. Dorado, 36 Phil. 883, 884; Hodges vs. Salas, 63 Phil. 567, 573, citing cases.

[10] See: Necesito vs. Paras, 104 Phil. 75, 86; Fores vs. Miranda, 105 Phil. 266, 272-273.

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