

FELIPE C. ALVIAR ET AL., PLAINTIFF-APPELLANTS, VS. RURAL PROGRESS ADMINISTRATION ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-1736. June 30, 1950*

Ponente: BENGZON, J.

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The plaintiff Felipe C. Alviar, together with other fifty-five individuals (whose names this record does not disclose), filed in the Court of First Instance of Laguna a complaint against the Rural Progress Administration; the Superior of the Jesuit Order in the Philippines; Mgr. William Piani, Apostolic Delegate; and Jorge B. Vargas, Secretary to the President of the Commonwealth.

The complaint was filed to allege and prove the right of ownership and possession of the fifty-six plaintiffs to the residential lots they were occupying in the municipality of San Pedro Tunasan and to prevent their ejectment therefrom as planned and announced by the Rural Progress Administration. The complaint makes assertions from which it would appear that complainants were occupying portions of the Hacienda San Pedro Tunasan (formerly belonging to the Colegio de San Jose) purchased by the Commonwealth and administered by the Rural Progress Administration. Then it argues that the Colegio de San Jose has no juridical personality nor any right to hold such property and that the sale thereof made by the said Colegio de San Jose to the Commonwealth was null and void, etc. It concludes by asking the court to declare specifically:

1.o Que declare nula, sin efecto, ilegal, invalida y anticonstitucional la Ley No. 1724 de la Comision Civil de Filipinas; 2.o Que declare igualmente nulo, sin efecto ni valor alguno, ilegal e invalido el contrato o documento unido a esta demanda como Exhibit "A" otorgado en cualquiera de las fechas 31 de Agosto o 27 de Septiembre de 1939 por los demandados Rev. P. John F. Hurley, Monsenor William Piani y Jorge B, Vargas;

3.o Que declare igualmente que el denominado "Colegio de san Jose" que trato de incorporar el P. Francisco Tena, S.J., carece de personalidad juridica por defectos esenciales y fatales en su solicitud de incorporacion el 5 de junio de 1915;

On October 31, November 6 and November 18, 1946, other four hundred and forty occupants were allowed to intervene.

On October 23, 1946, the Rural Progress Administration moved for an order requiring the plaintiffs to make a more definite statement or bill of particulars of the respective parcels of land individually claimed by each, with sufficient definiteness or particularity to enable said defendant to prepare its defense properly. The motion was granted over the opposition of plaintiffs, who were given a period which (with extensions) expired on December 5, 1946. For plaintiffs' refusal to comply with the order, the Rural Progress Administration prayed that the case be dismissed for failure to prosecute. On March 10, 1947) the judge dismissed the case saying, among other things:

There is no question that plaintiffs failed to comply with the order of this Court, dated December 13, 1946, for bill of particulars, although a partial bill of particulars was filed by the attorney for plaintiffs on February 11, 1947. Said bill of particulars was not only filed out of time but incomplete, and hence, is not in conformity

with the aforesaid order of the Court. The attorney for the Rural Progress Administration has the perfect right to file the motion to dismiss the complaint for their failure to prosecute further. Besides, it is apparent from the partial bill of particulars filed, that the action plaintiffs should take individually and not as a class suit, because the subject matter of the controversy is not one of common and general interest, but individually and separately, and thus depriving the Government of fees that should be charged to each of the plaintiffs.

Hence this appeal.

In our opinion, inasmuch as plaintiffs prayed for protection of their rights of possession and ownership over the portions occupied by them, it was proper for the court to require them to describe such portions so that the remedy prayed for may be — in time — granted. And non-compliance with such order was sufficient ground for dismissal (Rule 30, sec. 3). It is true that on February 11, 1947, some of the occupied lots were described in a bill of particulars submitted to the court. But it was belated and partial. And under the circumstances we are not inclined to reverse, specially because it is quite probable that after the promulgation of this Court's views in the other case entitled "Felipe C. Alviar et al. vs. Rev. Leo A. Cullum, S.J., G. R. No. L-2523, April 24, 1950 (in which the attorney for plaintiffs is the same attorney of herein appellants), this suit will not be further pressed, because it is based mainly upon the propositions that the Colegio de San Jose has no personality and that the Jesuit Order in the Philippines may not validly acquire real property here, considering the Pragmatica Sancion issued by King Charles III of Spain on April 2, 1767, and the Real Cedula of October 19, 1852. Both these propositions were overruled — and rightly — in the above-mentioned recent decision.

This will render it unnecessary to decide the incidental point as to whether this was a class suit.

The order of dismissal is affirmed, with costs against appellants.

Ozaeta, Actg. C.J., Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

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