

IN RE APPLICATION FOR THE REGISTRATION OF LAND, EUGENE MOSS, THROUGH HIS ADMINISTRATOR, DR. TEODORICO H. JACELDO, APPLICANT-APPELLANT, VS. DIRECTOR OF LANDS, OPPOSITOR-APPELLEE.

G.R. No. L-27170. November 22, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

Eugene Moss appealed from the decision of the Court of First Instance of Leyte, Carigara Branch VI, denying his application for the registration of a ten-hectare island on the ground that, being an American citizen or an alien, he is disqualified to acquire lands under section 5, Article XIII of the 1935 Constitution, as held in *Krivenko vs. Register of Deeds*, 79 Phil. 461 (Land Registration Case No. N-68, LRC Record No. N-27971).

The Solicitor General, disagreeing with the trial court, recommends in his brief for the Director of Lands that the decision be reversed and that the application of Moss be granted.

On Carigara Bay there is an islet known as Calumpihan Island within the jurisdiction of Barrio Calumpihan, Capoocan, Leyte. It is planted to coconuts more than sixty to eighty years old in 1966. Fruit trees, corn and tobacco are also grown on the land.

That land was already declared for tax purposes in 1930. It was then owned by Vicente Pragas who had possessed and cultivated it since 1894. On November 14, 1932 Pragas sold the island to Eduardo Cecilio. On March 23, 1937 Cecilio sold it to Catalina Pabilion. Then, on December 23, 1944 the spouses Catalina Pabilion and Guillermo Dadizon sold the land to Rufino M. Pascual who, in turn, sold it on January 20, 1945 for P1,200 to Eugene Moss and Albert Boyd Cassidy, American nationals.

In an action to quiet title filed by Moss against Cassidy, an absentee, Moss was adjudged the sole owner of the land in a decision dated March 27, 1962 rendered by the Court of First Instance of Leyte in Civil Case No. 645.

Moss declared the land for tax purposes on June 27, 1950. He paid the realty taxes on the said land for the years 1945 to 1966. He had it surveyed on November 20, 1962.

On April 3, 1965 Moss, through Dr. Teodorico H. Jaceldo, his administrator and attorney-in-fact, filed an application for the registration of the said land. Moss is a retired army colonel, an American citizen, married to Eileen Moss, and a former resident of 504 Glen Park Drive, Nashville, Tennessee and now Los Fresnos, Texas.

As already stated, the trial court denied the application for registration because Moss is an alien. That holding is erroneous. It is erroneous because while aliens are disqualified to acquire lands under the 1935 Constitution (*Levy Hermanos vs. Ledesma*, 69 Phil. 49; *Krivenko vs. Register of Deeds*, *supra*), citizens of the United States can acquire lands like Filipino citizens.

The trial court overlooked the Ordinance which was appended to the 1935 Constitution by Resolution No. 39 of

the National Assembly dated September 15, 1939. That resolution was approved by the President of the United States on November 10, 1939. It provides as follows:

"ORDINANCE APPENDED TO THE CONSTITUTION

"SECTION 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines -

x x x x x x x x

"(17) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof." (1 Philippine Annotated Laws, pp. 31-34).

That Ordinance was made a part of the 1935 Constitution as directed in section 2 of the Tydings-McDuffie Law or the Independence Law. Subsection (17) quoted above is a reproduction of subsection (16) of section 2(a) of the Independence Law.

Moss validly acquired the island in question under the provisions of subsection (17), section 1 of the aforementioned Ordinance (See sec. 127 of Public Land Law; Republic vs. Quasha, L-30299, August 17, 1972, 46 SCRA 160, 172-173. Note that the instant case is not covered by section 11, Article XVII of the 1973 Constitution and by Presidential Decree No. 713 dated May 27, 1975, 71 O.G. 4115 re residential lands of American citizens).

The proclamation of Philippine independence on July 4, 1946 did not impair Moss' proprietary rights over the said land because the 1935 Constitution provides that upon the proclamation of Philippine independence "all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippines" (Sec. 1[1], Article XVII).

That constitutional provision is implemented in Article VI of the Treaty of General Relations entered into between the Republic of the Philippines and the United States on July 4, 1946 which provides that all existing property rights of citizens and corporations of the United States in the Republic of the Philippines shall be acknowledged, respected and safeguarded to the same extent as property rights of citizens and corporations of the Republic of the Philippines (42 O.G. 1651. See Republic Act No. 76).

When Moss purchased the land, Leyte was already liberated as shown in the proclamation of General Douglas MacArthur dated October 23, 1944. (Moss and Cassidy were allegedly members of the American liberation forces that landed in Leyte). See 41 O.G. 147.

Since Moss and his predecessors in interest have been in possession en concepto de dueño of Calumpihan Island for more than thirty years immediately preceding the filing of his application for confirmation of his title, he is entitled to the registration of his title to the island (Sec. 48[b], Public Land Law, as amended by Republic Act No. 1942).

WHEREFORE, the trial court's decision is reversed and set aside and the application of Eugene Moss, of age, citizen of the United States, married to Eileen Moss, P.O. Box 184, Los Fresnos, Texas, U.S.A., for the confirmation and registration of his title to the land shown in the plan Psu-198022, is hereby granted.

SO ORDERED.

Fernando, (Chairman), Antonio, Concepcion, Jr., and Santos, JJ., concur.
Barredo, J., did not take part.

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