

**PLACIDO NOCEDA, PLAINTIFF AND APPELLANT, VS. MARCOS ESCOBAR, DEFENDANT AND APPELLEE.***G.R. No. L-2939. August 29, 1950*

Ponente: OZAETA, J.

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Plaintiff-appellant was the owner of a motor cutter named "N.S. del Rosario I." which was registered in his name in the office of the Insular Collector of Customs, Manila, on Jan. 19, 1939, and which, according to said plaintiff, had cost him about P16,000. He used it to transport passengers and cargo between Albay and Catanduanes. On February 11, 1942, that is to say, during the enemy occupation of the Bicol provinces, the Japanese armed forces seized the said vessel and utilized it during the progress of the war in transporting troops, ammunition, and supplies.

After the liberation of the Philippines from the Japanese, the United States armed forces found said vessel in Cebu and, on fey 17, 1945, thru the PCAU, sold it as enemy property to one Vicente Asuncion for P100. The bill of sale executed by Lt. Col. Pete W. Scott, "CO. PCAU 15, Agent, United States Government," described said vessel as a "Japanese fishing type boat approximately 60 feet in length \* \* \* now partially submerged and beached between Gebu City, Cebu, and the town of Mandawe, Cebu." The bill of sale further recited: "It is expressly understood that party of the first part warrants nothing in this transaction except transfer of title to said property." On August 14, 1945, Vicente Asuncion sold said vessel for P8,000 to the defendant Marcos Escobar, who registered the deed of sale in the office of the Collector of Customs of Cebu on October 25, 1945. Thereafter Escobar caused extensive repairs to be made on the vessel and named it "Long Distance."

The present action was instituted by the plaintiff in the Court of First Instance of Cebu to recover from the defendant the possession of said vessel or its value in the sura of P20,000, plus damages in the sum of P5,000.

Upon the trial of the cause, in which the principal issue was the identity of the vessel, the trial court, after an ocular inspection of the vessel in question and after hearing the testimony of witnesses, found in effect that the vessel now named "Long Distance" in the possession of the defendant is the same vessel formerly named "N.S. del Rosario I," which the Japanese armed forces had seized in Albay from the plaintiff in February, 1942. The trial court, however, held that the boat in question had been lawfully seized and confiscated by the Japanese armed forces and that "as a necessary consequence of the validity of the seizure by the Japanese of the vessel in dispute, the United States armed forces acquired a valid title over the same when the course of the liberation of the Philippines said authority took possession of the vessel in Philippine waters." Further holding that the defendant had acquired a valid title to said vessel, the trial court dismissed plaintiff's complaint, without costs. From that judgment the plaintiff appealed.

Appellant's contention is predicated on article 3, Chapter II of the Hague Conventions of 1907 relating to the exercise of the rights of capture in naval war, which reads as follows:

"Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from

capture, as well as their appliances, rigging, tackle, and cargo."

We think this article is not applicable, for the reason that when the Japanese armed forces seized the vessel in question in the Bicol provinces on February 11, 1942, they were already in military occupation of that territory. The vessel was not captured in the course of a naval war, but was seized by the military occupant, who used it in the prosecution of the war. We think the provision of the Hague Conventions of 1907 that is applicable here is the second paragraph of article 53 of the "Regulations Respecting the Laws and Customs of War on Land," which reads as follows:

"Art. 53. An army of occupation can only take possession of the cash, funds, and realizable securities belonging strictly to the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

"All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, apart from cases governed by maritime law, depots of arms and, generally, all kinds of war material may be seized, even though, belonging to private persons, but they must be restored at the conclusion of peace, and indemnities paid for them." (italics ours.)

The second paragraph of article 53 above quoted was quoted by the trial court in support of its view that the Japanese Army was authorized under international law to seize the vessel in question. And we think that was correct. But we are clearly of the opinion that the trial court erred in holding that the Japanese Army could and did lawfully confiscate said vessel. Although the regulations quoted authorized the seizure of the vessel in question, they did not authorize its confiscation. On the contrary, it is expressly provided therein that the things seized "must be restored at the conclusion of peace and indemnities paid for them." It is clear, therefore, that the title to the vessel in question did not pass to the Japanese but remained in the owner, the plaintiff herein. In other words, said vessel did not become enemy property and was not such when the PCAU sold it to Vicente Asuncion. Hence said sale was not valid as against the plaintiff, and the defendant acquired no valid title to said vessel by virtue of his purchase from Vicente Asuncion.

A question which was not passed upon by the trial court remains to be resolved, namely, the right of the defendant to be reimbursed by the plaintiff for necessary and useful expenditures on said vessel and the corresponding obligation of said defendant to account to the plaintiff for the earnings of the vessel during the pendency of this action.

Upon the facts proven, we may concede that the defendant-appellee was a purchaser in good faith. But we hold that he ceased to be a possessor in good faith from the moment the plaintiff, as owner of the vessel, claimed it from the defendant judicially or extrajudicially. From that moment the defendant was not unaware that his possession was wrongful. (See art. 435, Civil Code; *Ortiz vs. Fuentebella*, 27 Phil. 537.)

Article 451 of the old Civil Code provides that "fruits received by one in possession in good faith, before possession is legally interrupted, become his own." And article 453 says that "necessary expenditures shall be refunded to every possessor; but only the possessor in good faith may retain the thing until they are repaid to him. Useful expenditures shall be paid the possessor in good faith \* \* \*"

It follows that the defendant must account to the plaintiff for the net earnings of the vessel from the time the plaintiff claimed said vessel from him judicially or extra-judicially, and whatever necessary expenditures he may have made on said vessel as well as all useful expenditures made before the possession was legally interrupted, may be deducted from or set off against said earnings.

Finding that the plaintiff is entitled to the vessel in question, we reverse the judgment appealed from and order the

case remanded to the court of origin for further proceedings in accordance with this decision, with costs against the appellee.

Moran, C.J., Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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