

FELIX POTENCIANO, AS JUDICIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF THE LATE POLICARPO CALMA, PETITIONER, VS. ANDRES ESTEFANI, RESPONDENT.

G.R. No. L-7690. July 27, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

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This is a petition for review of a decision of the Court of Industrial Relations dated December 29, 1953, which was affirmed by the court in banc on March 8, 1954, ordering Felix Potenciano, petitioner herein, to deliver to Andres Estefani, respondent, 81.2 cavans of palay, or their current market value, for damages suffered by the latter as a consequence of his illegal ejectment from the land he was working on as tenant.

Andres Estefani was formerly a tenant of a parcel of land containing 4-1/2 hectares situated in Magarao, Camarines Sur. The land belonged to Policarpo Calma, deceased, and was under the administration of Felix Potenciano. The land was allegedly leased to one Cenon Armendi who sometime in February, 1951 ejected Estefani from the land and threatened to demolish the house he had thereon. So on February 19, 1951 he filed a complaint against Felix Potenciano and Cenon Armendi with the Court of Industrial Relations praying for a liquidation of the harvest for 1950 and for his reinstatement as tenant of the land (Tenancy Case No. 1406-R). After the usual hearing, the court found that, while the harvest of the land since the crop of 1947 had been liquidated on the 60-40 ratio in favor of the tenant, the 70-30 ratio should be the one to be reckoned with for the year 1950, and ordered that the complainant be paid the difference of 10% or 5.8 cavans of palay. The court also ordered Felix Potenciano to reinstate the complainant and to pay him the losses and damages he may have sustained as a consequence of his unlawful dismissal.

Because Andres Estefani has not been reinstated immediately as ordered in the decision, and fearing that he may be deprived of his share of the harvest for several years, he filed a second complaint against the same parties praying that the court fix the damages he is entitled to in line with said decision (Tenancy Case No. 4079-R). Respondents resisted this claim alleging that, during the pendency of the first case, tenant Estefani cultivated a neighboring property thus making his claim for damages made, and that, even if he were entitled to damages, the expenses of cultivation, harvesting, irrigation and the like which he would have spent if he had personally cultivated the land should be deducted from his claim for damages. The court found this pretense untenable and, on December 29, 1953, ordered Felix Potenciano to deliver to Andres Estefani 81.2 cavans of palay, or their

current market value, as damages suffered by the latter during the crop years of 1951 and 1952. This decision having been affirmed by the court in banc, Felix Potenciano interposed the present petition for review.

It appears proven in the decision that the share of the tenant for the agricultural year immediately preceding his ejectment, or the year 1950, was equivalent to 70% of the net harvest of 58 cavans of palay, or a total of 40.6 cavans, and that, from the time the tenant was illegally ejected up to the time of his reinstatement, a period of two agricultural years had elapsed. And so the court ordered that the tenant be paid 81.2 cavans of palay for said agricultural years. The question now to be determined is: In computing the damages to which the tenant is entitled as a consequence of his illegal ejectment is the landlord entitled to be reimbursed of the expenses of planting, cultivation, harvesting and other similar expenses which the tenant would have spent had he worked the land personally?

The law on this point is Section 19 of Act No. 4054. Said section provides that "The landlord shall not dismiss his tenant without just and reasonable cause, otherwise the former shall be liable to the latter for losses and damages to the extent of his share in the product of the land entrusted to the dismissed tenant." These provisions are clear and simple. They provided for the measure of the losses and damages to which a dismissed tenant is entitled. They employ the phrase "to the extent of his share in the product" which can only mean the share the tenant should receive if he had personally worked the land. And, as we know, this share is arrived at after deducting the expenses of harvesting and threshing from the gross produce as provided for by law (Section 8, Act No. 4054). The tenant therefore is entitled to this share without diminution. This is precisely what was done in the present case. The court fixed the net produce and on this basis awarded to the tenant the share of 70% for the agricultural years 1951 and 1952. Thus, the court said that the tenant was entitled to a share "equivalent to 70% of the net harvest of 58 cavanes or a total amount of 40.6 cavanes of palay" for each year. The court therefore interpreted correctly the law on this matter.

But there is merit in the contention that the income which the tenant had earned during the period of his ejectment should at least be deducted from his claim for damages if we are to equalize the equities of both parties in the determination of their rights and liabilities. It is true that there is nothing in the special law (Act No. 4054) on which we may predicate the right of a landlord to deduct the income which a dismissed tenant may have earned during his ejectment from the damages he may be liable to pay as a result of the ejectment, but in such a case the general principles of law should apply. This is a matter of equity. Thus, the new Civil Code provides "The party suffering loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question" (Article 2203). And this Court has held that "an employee who is improperly discharged is under an obligation to use reasonable diligence to obtain other suitable employment and that in assessing the damages for the period which is still to run after the breach, the court may properly take into account the probability that the discharged employee will be able to earn money in other employment." (*Garcia Palomar v. Hotel de France Co.*, 42 Phil., 660, quoted in *Sotelo v. Behn, Meyer & Co.*, 57 Phil., 775.) Since there is evidence to show that during his ejectment the tenant was able to cultivate the ricelands of Regino Cano and Paula Arce containing an area of almost two hectares and that during the two agricultural years of 1951 and 1952 he received a share of at least 8 cavans of palay for each year, or a total of 16 cavans, it is the sense of this Tribunal that this earning should be deducted from the cavans of palay awarded to him in the decision appealed from.

With regard to the defense of *res adjudicata* set up by the landlord, we find that it was not raised in the trial court. This defense is therefore deemed waived (Section 10, Rule 9, Rules of Court). However, even if this defense were available, same has no merit for it appears that the first case (Case No. 1406-R) refers to a liquidation of the crop for the years 1951, whereas the second case (Case No. 4079-R) is an action for damages for the years 1951 and

1952. The two cases therefore refer to a different subject-matter.

Wherefore, the decision of the lower court dated December 29, 1953 is hereby modified in the sense that the 16 cavans of palay which were earned by the tenant during his ejectment should be deducted from the total of 81.2 cavanes of palay awarded to him in said decision. No costs.

Bengzon, Padilla, Montemayor, Reyes, Jugo, Labrador, Concepcion, and Reyes, J.B.L., concur.

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