

**SULPICIO A. GARCIA, PETITIONER, VS. COLONEL PAUL C. MATHIS,
IN HIS CAPACITY AS BASE COMMANDER, CLARK AIR FORCE BASE
(CAFB) OR HIS SUCCESSOR, AND THE HONORABLE COURT OF FIRST
INS...**

G.R. No. L-48577. September 30, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petition for certiorari to set aside the Order of the respondent judge, dated June 4, 1978, dismissing petitioner's Complaint against the private respondent and another Order, dated July 7, 1978, denying a motion to reconsider the aforesaid order.

The factual background can be briefly stated as follows:

In Civil Case No. D-4097 of the Court of First Instance of Pangasinan presided by the respondent judge, Sulpicio Garcia, the petitioner herein, sued Colonel Paul C. Mathis in his capacity as Base Commander, CAFB, acting for and in behalf of the United States of America. The complaint, which was filed on November 8, 1977, alleged that Garcia was a civilian employee at Clark Air Force Base from May 26, 1949, to August 23, 1956, when he was dismissed for alleged bribery and collusion. He prayed, inter alia, that he be reinstated to his former position, and paid back wages, moral damages, attorney's fees and costs of the suit.

The defendant Mathis entered a special appearance and filed a motion for the dismissal of the complaint upon the ground that the trial court had no jurisdiction over his person because he was being sued as the representative of a foreign sovereign "which has not consented and does not now consent to the maintenance of the present suit."

On June 7, 1978, the respondent judge issued an Order as aforesaid the text of which reads as follows:

"Without considering the issue of jurisdiction raised by the defendant in his motion to dismiss the above-entitled case, the Court finds that the cause of action has already prescribed, because paragraphs 3 and 5 of the complaint alleged that the services of the plaintiff has been terminated on August 23, 1956.

WHEREFORE, the above-entitled case is hereby dismissed."

The only issue in this case is whether or not the respondent judge committed a grave abuse of discretion amounting to lack of jurisdiction when he dismissed the complaint on the ground of prescription which the defendant did not raise in any of his pleadings.

It is true that an action will not be held to have prescribed if prescription is not expressly invoked. However there are exceptions to this rule and one of them is when the plaintiff's own allegations in his complaint show clearly that the action has prescribed. (Philippine National Bank vs. Pacific Commission House, G.R. No. L-22675, March 28, 1969, 27 SCRA 766.) In this case the complaint shows clearly that the plaintiff's action had prescribed for he alleged that he was removed on August 23, 1956 (par. 5) but the case was filed only on November 18,

1977, after a lapse of more than 21 years. Prescinding, therefore, the defense of jurisdiction which is apparently meritorious, the complaint was properly dis-missed.

It is not amiss to state here that because of the special appearance which the defendant had entered, he was constrained to confine himself to showing that the trial court did not have jurisdiction over his person and had to exclude all other non-jurisdictional grounds in his motion to dismiss otherwise he could be deemed to have abandon his special appearance and voluntarily submitted himself to the juris-diction of the court. (Republic vs. Ker & Co., Ltd; G.R. No. L-21609, Sept. 29, 1966, 18 SCRA 207.)

WHEREFORE, finding the petition to be without merit, the same is hereby dismissed without any special pronouncement as to costs.

SO ORDERED.

Guerrero[*] and De Castro, JJ., concur.

Barredo, (Chairman), J., concurs, without necessarily agreeing that the ruling in Rep. vs. Ku is correct in all instances.

Aquino, J., concurs and wish to add that respondent Base Commander cannot be sued because of the rule that a State may not be sued without its consent (Sec. 16, Art. XV, Constitution; Baer vs. Tizon, L-24294, May 3, 1974, 57 SCRA 1, 70 O. G. 7361).

[*] Justice Guerrero was designated to sit temporarily in the Second Division during the absence of Justice Concepcion.

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