

ROMULO MERCADO, PLAINTIFF AND APPELLEE, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 10113. November 22, 1915

Ponente: TORRES, J.

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TORRES, J.:

This appeal was filed by the Attorney-General, in representation of the Collector of Internal Revenue, from the judgment of April 22, 1914, in which the Court of First Instance held that the levy and collection of a tax on plaintiff's sale of firewood produced from bakawan planted and gathered on his land was illegal, and ordered the defendant, the Collector of Internal Revenue, to return to the plaintiff the sum of P29.85, the amount of the tax illegally collected, without special finding as to costs.

On September 27, 1912, counsel for the plaintiff filed a written complaint in the Court of First Instance of Manila, alleging as a cause of action that on April 25, 1912, defendant, as Collector of Internal Revenue, demanded and collected from the plaintiff the sum of P29.85 as a tax on certain bakawan firewood cut by plaintiff on his own land and sold in this city; that the raising of bakawan in the plaintiff's mangrove swamps, where the firewood mentioned was cut, was an agricultural labor and constituted the sole purpose for which the said lands were used; that the plaintiff's preparation of the bakawan for sale consisted exclusively in cutting it on the aforesaid lands; that the plaintiff protested against the collection of the tax above mentioned, paid the same under protest and afterwards forwarded a formal protest to the Collector of Internal Revenue, the defendant, who decided said protest against the plaintiff. Therefore counsel prayed that judgment be rendered holding that the levy and collection of a tax on the sale made by the owners of bakawan planted and gathered by them on their land is illegal, and that the defendant be ordered to return to the plaintiff the sum of P29.85, with the costs against the defendant.

On January 14, 1914, the Collector of Internal Revenue, through the Attorney-General, answered the aforementioned complaint, admitting the allegations therein contained in all the paragraphs thereof, except those of the third paragraph to the effect that raising bakawan in mangrove swamps is a genuine agricultural labor, which he denied.

After a hearing and the introduction of evidence by both parties, the court rendered the judgment before mentioned, to which the defendant excepted and, in writing, moved for a rehearing and a new trial. This motion was denied, with exception by the appellant, and, upon the filing of the proper bill of exceptions, the same was approved and forwarded to the clerk of this court.

The issues raised in this suit are whether firewood, produced from bakawan which was planted or which grew on the plaintiff's land, is an agricultural product in the sense that the owner thereof who cuts it for sale may be termed an agriculturist within the meaning of this word as used in Act No. 1189, and whether he should therefore be exempted from the payment of the tax on the sale of firewood.

The following facts have been admitted in this case: That on April 25, 1912, the defendant, as Collector of Internal Revenue, demanded and collected from the plaintiff the sum of P29.85 as a tax on the bakawan firewood cut by plaintiff on his own land situated in Sexmoan, Pampanga, and sold in Manila; and that the plaintiff paid the said taxes under protest, afterwards submitting to the defendant Collector the proper written protest, which was decided unfavorably to the plaintiff.

The sole point under discussion in the case at bar is whether raising and cutting bakawan in mangrove swamps is a genuine agricultural labor, as the evidence introduced at trial solely tended to prove or refute this point.

The plaintiff's witness stated in an affidavit that almost all the lands of the municipality of Sexmoan, Province of Pampanga, are mangrove swamps and are, for the most part, used for raising bakawan; that his father owned mangrove swamps in Sexmoan, on which small trees or shrubs called bakawan were cut; that, on the trunks and branches of the latter, cut for sale, the defendant Collector of Internal Revenue demanded and collected from the plaintiff the sum of P29.85, as a firewood tax, which was paid under protest; that the land from which this product was obtained was registered in the Bureau of Forestry as forest land. He added, furthermore, that the cultivation of bakawan is an agricultural labor because it is necessary to clear and prepare the land before planting the seeds or sprouts of this plant, and after the planting has been effected it is necessary to clear the land of briers, brush and rubbish to facilitate the growth of the plants, such work having to be done once every four or five months, according to the fertility of the soil, until the plants or shrubs are from seven to nine years old when they are then ready to be cut into firewood for sale.

The photographs, Exhibits A to F, afford more graphic evidence than the affidavit just above mentioned.

The wood expert, F. W. Foxworthy, testifying as a witness for the defendant stated that bakawan does not require planting, for it grows with or without cultivation, and that in his opinion bakawan is a forest product. He added, furthermore, that he had observed that bakawan was planted and cultivated on the plaintiff's lands in Sexmoan.

Counsel for the Collector of Internal Revenue endeavored to prove in the lower court that firewood derived from bakawan is a forest product, and in this instance states that the only question presented is whether or not the plaintiff is exempt from the payment of the said tax, as an agriculturist, "in respect to the products harvested and sold by him," in accordance with subsection (a) of section 142 of Act No. 1189. The plaintiff insists that raising and cutting the plant called bakawan constitute agricultural labor and, therefore, that the firewood obtained from bakawan is an agricultural product, exempt from the payment of any tax.

The trial judge arrived at the conclusion that the labor which the plaintiff performs in raising and deriving benefit from the bakawan plant is an agricultural labor and that the plaintiff cannot be considered either a merchant or a manufacturer, as held by the defendant Collector of Internal Revenue, but must be held to be an agriculturist and therefore exempt from the payment of taxes on the bakawan sold by him.

The provision of law by virtue of which the plaintiff claims to be exempt from the payment of the tax on his bakawan firewood is subsection (a) of section 142, comprised in Chapter XVI of the old Internal Revenue Law (No. 1189) which treats of the tax on business, manufacture and occupation. Section 139 of this Act fixes the tax which must be paid by merchants and manufacturers; but in the list of the exemptions contained in section 142, the following appears:

"The following persons shall be exempted from the payment of the taxes imposed in section one hundred and thirtynine:

"(a) Agriculturists, on all products of their own production sold by them."

Is the plaintiff an agriculturist? The Attorney-General himself, says in his brief that to consider the plaintiff an

agriculturist, there must be proven: (1) that the raising and the cutting of bakawan are agricultural labors, and, (2) that the plaintiff is engaged therein.

The record shows as duly proven that the supply of bakawan is obtained by raising the plants in ground which must be cleared and cultivated for the purpose, in mangrove swamps, the only ground suitable for bakawan during their production and cultivation, from seven to nine years, according to the fertility of the soil, when they are ready to be cut and sold. After each harvest or cutting the land is much overgrown with brush, briers and weeds, as seen by the photograph Exhibit A, and must be thoroughly cleared, after which the bakawan seeds or sprouts are planted (Exhibit B). The land must be kept clear until the plants are three years old.

In view, then, of this uncontradicted evidence, in spite of the statement of the defendant Collector's witness that bakawan can grow even without cultivation—a statement disregarded by the trial judge for the reason that the fact stated by the said witness is true, as that official himself said, only of land whereon bakawan has already been grown—it must necessarily be concluded that the raising of the bakawan plant or shrub and the gathering of its trunk and branches for use as firewood constitute a genuine agricultural labor just as the sowing, planting, harvesting and preparation of other products that are termed strictly agricultural, such as rice, corn and sugar-cane, which require land prepared and cared for in the same manner as bakawan; and, for this reason, the mangrove swamps planted with bakawan were classified as agricultural land by this court in the decisions rendered in the cases of *Mapa vs. Insular Government* (10 Phil. Rep., 175) and *Montano vs. Insular Government* (12 Phil. Rep., 572).

Although uncultivated shrubs or plants may grow wild on a piece of land, as a general rule they are still considered products of agricultural land, as bakawan firewood, which comes from the plant of the same name that grows in mangrove swamps or other marshy land only through man's labor and care. Therefore the cultivation of firewood is like that of the other products of a more or less cultivated soil, and it is unjust to compare bakawan firewood with that derived from the trunks or branches of trees of the forests or the plains, a genuine forest products because such trunks or branches are utilized by man without having either planted or taken care of the tree, or having spent more time and labor than its gathering required—just the contrary to bakawan firewood which is produced from a shrub not found in the woods or on the plains, but in mangrove swamps.

It is, then, unquestionable that bakawan firewood is an agricultural product, differing from other kinds of firewood obtained from forest trees, because the bakawan plant grows only on lands, subject to overflow, which require clearing and care by workers skilled in agricultural pursuits in order that it may thrive. It is also to be noted that up to the present time mangrove swamps have been found suitable for no other useful crop.

The conclusion having been reached that mangrove swamps are neither mineral nor forest land, and that bakawan firewood is an agricultural product of this kind of land, it is superfluous to say that the person who plants and gathers same must be considered an agriculturist; nor is it necessary that the plaintiff should personally have planted the said bakawan shrubs and cut them into firewood, in order to be classed as an agriculturist. It is sufficient that the workmen of the plaintiff, the owner of the land from which the material for this firewood was taken, should have performed the work on his account and in his name, in order that he be exempt from the payment of any tax, in accordance with the provision contained in subsection (a) of section 142 of Act No. 1189, which exempts agriculturists from the payment of the taxes levied on the products harvested on their land and sold by them. Consequently the Collector of Internal Revenue should return to the plaintiff the sum collected, P29.85.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment should be, as it is hereby, affirmed, without special finding as to costs. So ordered.

Arellano, C. J., Johnson, Carson, Trent, and Araullo, JJ., concur.

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