

HENRY L. MON, PETITIONER, VS. COURT OF APPEALS, HON. LEOPOLDO SERRANO, JR., DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD AND SPOUSES LARRY AND JOVITA VELASCO, RESPONDENTS.

G.R. No. 118292. April 14, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 31763, which affirmed in toto the decision of the Department of Agrarian Reform Adjudication Board Central Office[2] (“DARAB”) in DARAB Case No. 0274. In its decision, the DARAB reversed the ruling of the DARAB Regional Adjudication Office[3] (“Regional Office”) in favor of petitioner Henry L. Mon (“petitioner”) in DARAB Case No. LU-043-89.

The Facts

The petition stems from an affidavit-complaint for ejectment filed on 4 December 1989 by petitioner against private respondents Jovita and Larry Velasco (“Spouses Velasco”) with the Regional Office in San Fernando, La Union. In his complaint, petitioner alleged that he is the owner-administrator of a parcel of land (“land”) planted to rice and tobacco in Sitio Torite, Barangay San Cristobal, Bangar, La Union. Petitioner further alleged that the Spouses Velasco, who cultivate the land, stole one sack of palay from the land’s harvest and subleased the land to a certain Boy or Ansong Maala during the last tobacco season.

In their Answer with Counterclaim, the Spouses Velasco denied petitioner’s allegations as fabricated to achieve his long desired objective to possess and cultivate the land. As affirmative and special defenses, the Spouses Velasco countered that they do not have the slightest intention to cheat petitioner and that the alleged hidden palay represented their lawful share of the harvest for the agricultural year 1988-1989. As counterclaim, the Spouses Velasco pointed out that since the beginning of their tenancy, petitioner had imposed on them a 50-50 sharing agreement, with the Spouses Velasco shouldering all expenses of production. Hence, the Spouses Velasco sought a reliquidation of the previous palay harvests to determine their just share.

After several hearings, the Regional Office required both parties to submit their respective position papers and exhibits. The Spouses Velasco submitted their position paper on 9 May 1990, while petitioner submitted his position paper on 29 June 1990. The parties submitted supporting exhibits on later dates.

On 20 February 1991, the Regional Office issued an Order disposing as follows:

WHEREFORE, judgment is issued in favor of the complainant and against the respondents:

- ORDERING the respondents to vacate and turn-over possession and cultivation to the complainant;
- No pronouncement as to cost

SO ORDERED.[4]

In arriving at its decision, the Regional Office found that Larry Velasco subleased the land to a certain Francisco Maala as shown by the affidavit of one Camilo Mosquito. The Regional Office ruled that Section 27(2) of Republic Act No. 3844 (“RA 3844”) prohibits subleasing and violation of this provision constitutes a ground for ejectment. On the other charge that the Spouses Velasco stole a sack of palay, the Regional Office held that there was no convincing evidence to support this accusation.

Aggrieved, the Spouses Velasco appealed under Section 2, Rule XIII, of the DARAB Revised Rules of Procedure. On 12 July 1993, the DARAB rendered a Decision reversing the Order of the Regional Office as follows:

WHEREFORE, premises considered, the appealed Order dated February 20, 1991, of the Regional Adjudication Officer at (sic) San Fernando, La Union, is hereby SET ASIDE and the instant case is hereby remanded to the DAR Provincial Adjudicator, DAR Provincial Adjudication Office, San Fernando, La Union, for:

- Determination of the lease rentals to be paid by the defendants-tenants, spouses Larry and Jovita Velasco, to the plaintiff-landowner, Henry Mon; and
- Reliquidation of the crop harvests from 1986 up to the time the lease rentals shall have been determined by the Provincial Adjudicator as above ordered; and ordering the plaintiff-landowner Henry Mon to return to the defendants-tenants spouses Larry and Jovita Velasco, the quantity of palay (or its equivalent value in cash) which may have been collected by the said plaintiff-landowner over and above the legal lease rentals as determined by the Provincial Adjudicator.

SO ORDERED.[5]

Unsatisfied with the DARAB Decision, petitioner filed an appeal with the Court of Appeals. On 9 December 1994, the Court of Appeals affirmed in toto the DARAB’s Decision thus:

WHEREFORE, premises considered, this Court AFFIRMS IN TOTO the appealed decision (dated July 12, 1993) of the Department of Agrarian Reform Adjudication Board (Central Office) in DARAB Case No. 0274. No pronouncement as to costs.

SO ORDERED.[6]

Hence, the instant petition.

The DARAB and the Court of Appeals’ Rulings

In reversing the Regional Office’s Order, the DARAB noted that both the Hearing Officer and the Regional Adjudicator overlooked that the agrarian laws had long abolished and declared illegal share tenancy. The Spouses Velasco had raised in their pleadings before the Regional Adjudication Office the validity of the share tenancy relationship that petitioner imposed on them. The DARAB held that share tenancy can no longer exist between landowner and tenant on rice lands. What the law allows is only a leasehold relationship, under which the tenant shall pay only a fixed rental to the landowner. The DARAB further held that petitioner has made much ado over the supposed “theft” of one sack of palay by Jovita Velasco. However, the DARAB pointed out that petitioner’s insistence on the outlawed 50-50 division of the net harvest deprives the tenants of an even larger amount corresponding to the portion of the harvest legally due to them under leasehold tenancy. The DARAB held that

the parties must comply with the requirements of the law governing the leasehold system particularly on the payment of a fixed rental by the tenant-lessee to the landowner-lessor. However, the records do not contain sufficient data covering the gross harvests and the deductible expenses, which could serve as legal basis for the DARAB to compute the fixed rental the Spouses Velasco should pay petitioner. For this reason, the DARAB remanded the case to the DAR Provincial Adjudicator assigned in San Fernando, La Union. The DARAB ordered the Provincial Adjudicator to reliquidate the crop harvests, determine the gross harvests and compute the lease rental after due notice to the parties and reception of evidence on the matter.

In affirming in toto the DARAB's Decision, the Court of Appeals simply held that there could be no change of theory when a case is already on appeal. The Court of Appeals referred to petitioner's claim that the relationship involved in the case is not that of landlord-tenant under agrarian laws but that of lessor-lessee under the lease provisions of the Civil Code.

The Issues

In his memorandum, petitioner raises the following issues:

I

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN ADOPTING THE POSTURE OF PUBLIC RESPONDENTS THAT PETITIONER CHANGED THE THEORY OF THE CASE ON THE CAUSE OF ACTION AT THIS STAGE OF THE PROCEEDINGS;

II

THE COURT OF APPEALS ERRED IN AFFIRMING IN TOTO THE DECISION OF THE DARAB CENTRAL OFFICE, DILIMAN, QUEZON CITY AND IN DISMISSING THE FINDINGS OF FACT AND THE ORDER OF THE DARAB REGIONAL ADJUDICATION OFFICE OF SAN FERNANDO, LA UNION DATED FEBRUARY 20, 1991, WHICH IS SUPPORTED BY SUBSTANTIAL EVIDENCE.[7]

The Court's Ruling

The petition is bereft of merit.

Changing Theory of the Case

Petitioner argues that from the beginning, the arrangement between him and the Spouses Velasco - that of sharecropping as a means to pay the lease of the land - did not result in an agricultural leasehold contract. Petitioner contends that the Spouses Velasco are civil law lessees, which did not give them the right to be tenants under the agricultural leasehold system. Petitioner insists that since the Regional Office found that the Spouses Velasco sublet the land in violation of Section 27(2) of RA 3844, he has the right under the same RA 3844 to evict the Spouses Velasco from his land.

Petitioner's stance before the Court of Appeals is that the lease provisions in the Civil Code apply to the present case. On the contrary, we find that this is not an ejectment case between a civil law lessor and lessee but a dispute between an agricultural landlord and tenant. If this were an ejectment case between a civil law lessor and lessee, petitioner should have brought his action to the appropriate trial court instead of the DARAB Regional Adjudication Office. Petitioner should also not have invoked subletting as a prohibited act under RA 3844. Obviously, petitioner is clutching at straws in changing his theory of the case on appeal.

The settled rule in this jurisdiction is that a party cannot change his theory of the case or his cause of action on appeal. We have previously held that "courts of justice have no jurisdiction or power to decide a question not in

issue.”[8] A judgment that goes outside the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extra-judicial and invalid.[9] The rule rests on the fundamental tenets of fair play. In the present case, the Court must stick to the issue litigated in the DARAB and in the Court of Appeals, which is whether petitioner has the right to eject the Spouses Velasco from the land under RA 3844.

Furthermore, petitioner’s insistence on his new theory is fatal to his cause. This is because in a lease contract under the Civil Code,[10] the rule is that the lessee can sublease the leased property, unless there is an express prohibition against subletting in the contract itself. To bar the lessee from subletting, the contract of lease must expressly stipulate the prohibition on subletting.[11] Petitioner did not allege nor present any contract that prohibited subletting.

Disregarding Issue of Ejectment

Petitioner contends that the Spouses Velasco tried to evade the issue of ejectment by raising the issue of share tenancy and praying for reliquidation of the sharing agreement between them. Petitioner is puzzled that on appeal, the DARAB altogether ignored the issue of ejectment and ruled solely on the issue of share tenancy. Petitioner further argues that the issue of share tenancy does not preclude in any way petitioner from exercising his right to eject his tenants for valid grounds. Petitioner insists that the Spouses Velasco committed theft and subleased the land they were tilling in violation of RA 3844. With these illegal acts of the Spouses Velasco, petitioner claims he could not maintain the relationship knowing that there is always a possibility the Spouses Velasco might commit these illegal acts again. Petitioner asserts that the DARAB justified the “theft” by stating that petitioner’s imposition of share tenancy may have deprived the Spouses Velasco of an even larger amount corresponding to the harvest legally due them. Petitioner counters that landowners also deserve protection from the commission of illegal acts by their tenants.

Section 3 of Republic Act No. 1199 or The Agricultural Tenancy Act of the Philippines (“RA 1199”) defines “agricultural tenancy” as the “physical possession by a person of land devoted to agriculture belonging to, or legally possessed by, another for the purpose of production through the labor of the former and of the members of his immediate farm household, in consideration of which the former agrees to share the harvest with the latter, or to pay a price certain or ascertainable, either in produce or in money, or in both.” Under RA 1199, there are two systems of agricultural tenancy established: (1) the share tenancy and (2) the leasehold tenancy.[12]

“Share tenancy” exists whenever “two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant in proportion to their respective contributions.”[13] On the other hand, “leasehold tenancy” exists “when a person who, either personally or with the aid of labor available from members of his immediate farm household, undertakes to cultivate a piece of agricultural land susceptible of cultivation by a single person together with members of his immediate farm household, belonging to or legally possessed by, another in consideration of a price certain or ascertainable to be paid by the person cultivating the land either in percentage of the production or in a fixed amount in money, or in both.”[14]

On 8 August 1963, RA 3844 or the Agricultural Land Reform Code abolished and outlawed share tenancy and put in its stead the agricultural leasehold system. On 10 September 1971, Republic Act No. 6389 (“RA 6389”) amending RA 3844 declared share tenancy relationships as contrary to public policy. RA 6389 did not entirely repeal RA 1199 and RA 3844 even if RA 6389 substantially modified them.[15] Thus, RA 3844 as amended by RA 6389 (“RA 3844 as amended”) is the governing statute in this case. Petitioner filed his complaint on 8

December 1989 or long after the approval of RA 6389 but before Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 ("RA 6657"). Notably, RA 6657 only expressly repealed Section 35 of RA 3844 as amended.

Section 4 of RA 3844 as amended provides:

SECTION. 4. Automatic Conversion to Agricultural Leasehold. — Agricultural share tenancy throughout the country, as herein defined, is hereby declared contrary to public policy and shall be automatically converted to agricultural leasehold upon the effectivity of this section.

The credit assistance traditionally extended by a land-owner and a local lender to a tenant under the share tenancy systems in agriculture for production loans and loans for the purchase of work animals, tillage equipment, seeds, fertilizers, poultry, livestock feed and other similar items, and advances for the subsistence of a lease and his family, may be continued by said landowner and local lender: Provided, That the total charges on these loans, including interest and service, inspection and issuance fees, shall not exceed fourteen per cent per calendar year and the principal thereof shall not be subject to upward adjustment even in case of extraordinary inflation and/or devaluation: Provided, further, That on all loans or advances other than money, the interest shall be computed on the basis of current price of the goods at the time when the loans or advances were made.

Any work animal and tillage equipment in the possession of a share tenant but owned by a landowner shall automatically be sold to said tenant on installment for a period not exceeding five years and at a price agreed upon by the parties: Provided, however, That the tenant shall pay in advance ten per cent of the price agreed upon.

Existing share tenancy contracts may continue in force and effect in any region or locality, to be governed in the meantime by the pertinent provisions of Republic Act Numbered Eleven hundred and ninety-nine, as amended, until the end of the agricultural year when the President of the Philippines shall have organized by executive order the Department of Agrarian Reform in accordance with the provisions of this amendatory Act, unless such contracts provide for a shorter period or the tenant sooner exercises his option to elect the leasehold system: Provided, That in order not to jeopardize international commitments, lands devoted to crops covered by marketing allotments shall be made the subject of a separate proclamation by the President upon the recommendation of the department head that adequate provisions, such as the organization of cooperatives, marketing agreement, or other similar workable arrangements, have been made to insure efficient management on all matters requiring synchronization of the agricultural with the processing phases of such crops.

In case some agricultural share tenants do not want to become agricultural lessees of their respective landholding, they shall, with the assistance of the Bureau of Agrarian Legal Assistance, notify in writing the landowners concerned. In such a case, they shall have one agricultural year from the date of the notice to accept leasehold relationship, otherwise the landowner may proceed to their ejectment. (Emphasis supplied)

Section 5 of RA 3844 as amended reiterated the automatic conversion of share tenancy to agricultural leasehold thus -

SECTION 5. Establishment of Agricultural Leasehold Relation. — The agricultural leasehold relation shall be established by operation of law in accordance with Section four of this Code and, in other cases, either orally or in writing, expressly or impliedly. (Emphasis supplied)

An agricultural leasehold relationship exists by operation of law when there is concurrence of an agricultural lessor (one who furnishes the land as owner, civil law lessee, usufructuary or legal possessor) and agricultural lessee (the person who personally cultivates the land). This is clearly stated in Section 6 of RA 3844 as amended, which reads:

SECTION 6. Parties to Agricultural Leasehold Relation. — The agricultural leasehold relation shall be limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor, and the person who personally cultivates the same.

The essential requisites of tenancy relationship are: (1) the parties are the landholder and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; and (5) there is consideration.[16] The records establish that the Spouses Velasco are agricultural tenants of petitioner under the legal definitions. There is no dispute that petitioner is the owner-administrator of agricultural land planted to rice and tobacco by the Spouses Velasco who petitioner himself referred to as his “tenants.” There is also no dispute that the “50-50 share cropping system between them was agreed upon by their predecessors and was subsequently carried by consensual agreement of the parties up to the present.” Taken together, all these clearly establish the status of the Spouses Velasco as agricultural tenants. Moreover, whether a person is an agricultural tenant or not is basically a question of fact. As a rule, this Court does not disturb the findings of fact of the DARAB when affirmed by the Court of Appeals as in the present case.[17]

Section 7 of RA 3844 as amended provides that once there is a leasehold relationship, as in the present case, the landowner cannot eject the agricultural tenant from the land unless authorized by the court for causes provided by law. RA 3844 as amended expressly recognizes and protects an agricultural leasehold tenant’s right to security of tenure, as follows:

SECTION 7. Tenure of Agricultural Leasehold Relation. — The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided. (Emphasis supplied)

RA 3844 as amended vests the Spouses Velasco, as agricultural leasehold tenants, certain specific rights. These rights include the right to continue working the land as well as the right against ejectment from the land except for causes provided by law as determined by the courts. This is the clear import of Section 36 of RA 3844 as amended:

SECTION 36. Possession of Landholding; Exceptions. — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: Provided; That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor, is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: Provided, further, That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossessions.

(2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or force majeure;

(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been

previously agreed upon;

(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;

(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6) The agricultural lessee does not pay the lease rental when it falls due: Provided, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five per centum as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

Under Section 37 of the same RA 3844, the burden of proving lawful cause for ejecting the lessee falls on the lessor-landowner, thus -

SECTION 37. Burden of Proof. — The burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee shall rest upon the agricultural lessor.

The Regional Office found the allegation of theft unsupported by evidence while that of subleasing as proven by the statement of a certain Francisco Maala and affidavit of one Camilo Moskito. Both the DARAB and the Court of Appeals did not make a finding on this point. Not being a trier of facts, this Court cannot pass upon these factual issues. It is futile to determine the truth or falsity of these accusations in view of the equity principle that the DARAB applied. In reversing the Regional Office's decision to turn over possession of the land to petitioner, the DARAB applied the equity principle that he who comes to court must come with clean hands.[18] Otherwise, he not only taints his name, but also ridicules the very structure of established authority.[19] A court may deny a litigant relief on the ground that his conduct has been inequitable, unfair, dishonest, fraudulent, or deceitful as to the controversy in issue.[20] We agree with the DARAB that we cannot close our eyes and remain indifferent to the perpetuation of an act that the law has long ago declared illegal and contrary to public policy. The Court cannot allow petitioner to invoke Section 27(2) of RA 3844 prohibiting subletting when he himself violated Sections 4 and 5 of the same RA 3844 outlawing share tenancy.

We uphold the remand of the case to the DAR Provincial Adjudicator to determine and fix the rentals in accordance with Section 34 of RA 3844 as amended. The law mandates that not more than 25% of the average normal harvest shall constitute the just and fair rental rate for leasehold.[21] Section 34 of RA 3844 as amended reads:

SECTION 34. Consideration for the Lease of Riceland and Lands Devoted to Other Crops. — The consideration for the lease of riceland and lands devoted to other crops shall not be more than the equivalent of twenty-five per centum of the average normal harvest or if there have been no normal harvests, then the estimated normal harvest during the three agricultural years immediately preceding the date the lease-hold was established after deducting the amount used for seeds and the cost of harvesting, threshing, loading, hauling and processing, whichever are applicable: Provided, That if the land has been cultivated for a period of less than three years, the initial consideration shall be based on the average normal harvest, or if there have been no normal harvests, then the estimated normal harvest during the preceding years when the land was actually cultivated, or on the harvest of the first year in the case of newly cultivated lands, if that harvest is normal harvest, the final consideration shall be based on the average normal harvest during these three preceding agricultural years.

In the absence of any agreement between the parties as to the rental, the Court of Agrarian Relations shall

summarily determine a provisional rental in pursuance of existing laws, rules and regulations and production records available in the different field units of the department, taking into account the extent of the development of the land at the time of the conversion into leasehold and the participation of the lessee in the development thereof. This provisional rental shall continue in force and effect until a fixed rental is finally determined. The court shall determine the fixed rental within thirty days after the petition is submitted for decision.

If capital improvements are introduced on the farm not by the lessee to increase its productivity, the rental shall be increased proportionately to the consequent increase in production due to said improvements. In case of disagreement, the Court shall determine the reasonable increase in rental.

WHEREFORE, we DENY the petition and AFFIRM the assailed Decision dated 9 December 1994 of the Court of Appeals in CA-G.R. SP No. 31763. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago and Azcuna, JJ., concur.

[1] Penned by Associate Justice Ramon Mabutas, Jr. with Associate Justices Nathanael P. De Pano, Jr. and Artemon D. Luna concurring.

[2] Composed of Ernesto D. Garilao as Chairman with Leopoldo M. Serrano, Jr., Jose C. Medina, Jr., Renato B. Padilla, Lorenzo R. Reyes and Hector D. Soliman as members.

[3] Hearing Officer Atty. Santiago T. Livara, Jr. and concurred in by Regional Adjudicator Atty. Hermogenes S. Reña.

[4] Rollo, p. 23.

[5] Ibid., pp. 32-33.

[6] Ibid., p. 42.

[7] Rollo, p. 159.

[8] *Bernas v. Court of Appeals*, G.R. No. 85041, 5 August 1993, 225 SCRA 119.

[9] Ibid.

[10] ART. 1650. When in the contract of lease of things there is no express prohibition, the lessee may sublet the thing leased, in whole or in part, without prejudice to his responsibility for the performance of the contract toward the lessor.

[11] *Filoil Refinery Corporation v. Mendoza*, No. L-55526, 15 June 1987, 150 SCRA 632.

[12] *Ganzon v. Court of Appeals*, G.R. No. 136831, 30 July 2002, 385 SCRA 399.

[13] Sec. 4, RA 1199.

[14] Ibid.

[15] *Guerrero v. CA*, 226 Phil. 62 (1986).

[16] *Spouses Cayetano, et al. v. CA, et al.*, 215 Phil. 430 (1984).

[17] Guerrero v. CA, supra, note 15.

[18] Jimenez v. Court of Appeals, G.R. No. 106136, 13 June 1994, 233 SCRA 93.

[19] Marcos II v. CA, 339 Phil. 253 (1997).

[20] Pilapil v. Hon. Garchitorena, 359 Phil. 674 (1998).

[21] Cabatan v. Court of Appeals, Nos. L-44875-76; No. L-45160; Nos. L-46211-12, 22 January 1980, 96 SCRA 323.

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