

OREN IGO (BAGOBO), ET AL., PLAINTIFFS AND APPELLANTS, VS. THE NATIONAL ABACA & OTHER FIBERS CORPORATION, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 13208. May 18, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Davao dismissing the action filed by plaintiffs against defendants for want of jurisdiction.

Plaintiffs are illiterate non-Christian Filipinos belonging to the Bagobo tribe. They claim to be the absolute owners of two parcels of land located in Davao City for having inherited the same from Yoshiko Saito Yoon, Michiko Saito Yoon, Tamiko Saito Yoon and Katsuko Saito Yoon, children of Yoon (Bagoba) born out of an illegitimate relation she had with a Japanese named Kiyosaki Saito.

On July 6, 1948 and April 4, 1949, respectively, the Philippine Alien Property Administrator, treating the lands in question as property of nationals of Japan (the predecessors of plaintiffs), issued Vesting Order No. P-688 and its Supplement vesting the lands in the Government of the United States pursuant to the powers conferred upon him by the Trading with the Enemy Act, as amended. In accordance with the Philippine Property Act of 1946 and the transfer agreements executed between the United States of America and the Republic of the Philippines, the right, title and interest of the former in the properties in question were transferred, conveyed and assigned to the latter. Subsequently, Republic Act No. 477 was enacted providing for the administration, allocation and disposition of the properties vested by the National Abaca and Other Fibers Corporation (NAPCO), and acting under the powers granted by said Act, said corporation sold, ceded and transferred on installments certain portions of the lands in question to the other defendants herein.

On August 27, 1953, plaintiffs filed the present action against defendants in the Court of First Instance of Davao to recover said properties and damages. Its motion to dismiss having been denied, defendant napco filed its answer reiterating therein the special defense that plaintiffs are now barred from bringing the action for having failed to file a claim under oath with the Philippine Alien Property Administrator within two years from the date of vesting pursuant to the provisions of Sections 9 (a) and 33 of the Trading with the Enemy Act, as amended. After trial, the court a quo dismissed the complaint for lack of jurisdiction. Hence the present appeal.

Plaintiffs-appellants claim that the lower court erred in dismissing the action filed by them for their failure to file their claim with the Philippine Alien Property Administrator within two years from date of vesting in accordance with Sections 9 (a) and 33 of the Trading with the Enemy Act. They allege that their action, being one for reivindication, the requirements thus adverted to are not necessary to invest the court with jurisdiction.

To determine whether the present action comes under the Trading with the Enemy Act, as amended, in relation to the Philippine Property Act of 1946, or is an ordinary reivindicatory action as claimed by appellants, an examination is necessary of the averments, nature and prayer of the complaint.[1]

Thus, the complaint avers that plaintiffs are the owners of the lands in question; that said lands had been vested by the Philippine Alien Property Administrator under Vesting Order No. P-688 and its Supplement; that the transfer certificates of title covering said lands were cancelled and in lieu thereof new ones were issued in the name of the Philippine Alien Property Administrator; and that plaintiffs were dispossessed of their lands which were placed in possession of the napco for administration, allocation and distribution. The complaint also prays that plaintiffs be declared absolute owners of the lands in question; that said vesting orders be declared null and void; that the certificates of title issued in the names of parties other than plaintiffs be cancelled and new ones be issued in their favor, and that damages be awarded to them.

From the above, it is clear that plaintiffs were deprived of their lands by virtue of the vesting orders issued by the Philippine Alien Property Administrator pursuant to the powers conferred upon him by the Trading with the Enemy Act, in relation to the Philippine Property Act of 1946. The complaint seeks to declare such vesting orders null and void and in effect to have the transfer of said lands by the United States to the Republic of the Philippines also voided. This action for recovery of the lands in question is, therefore, a direct and frontal attack on the force and effect of the Trading with the Enemy Act, as amended, in relation to the Philippine Property Act of 1946, under whose provisions the vesting orders were issued which deprived appellants of the ownership and possession of the lands. It is not, therefore, an ordinary reivindicatory action as claimed by plaintiffs.

Having ruled that this action of plaintiffs is predicated on the Trading with the Enemy Act, as amended, the issue that now arises is: Are plaintiffs now barred from bringing this action for their failure to comply with the condition precedent set by Sections 9 (a) and 33 of said Act as held by the trial court?

We are inclined to uphold the affirmative. Section 9(a) of the Trading with the Enemy Act, as amended, provides that "any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him * * * may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; * * *." And Section 33 of the same Act also provides:

"SEC. 33. Return of property; notice; institution of suits; computation of time.—No return may be made pursuant to section 9 or 32 unless notice of claim has been filed: (a) in the case of any property or interest acquired by the United States prior to December 18, 1941, by August 9, 1948; or (b) in the case of any property or interest acquired by the United States on or after December 19, 1941 by April 30, 1949, or two years from the vesting of the property or interest In respect of which the claim is made, whichever is later. No suit pursuant to section 9 may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 or 32 (a) hereof." (USCA, Tit. 50 App., p. 216.)

It is clear from the above provisions that in order that a suit for the return of any vested property under the Trading with the Enemy Act may prosper, it is necessary that it be filed not later than April 30, 1949, or within two years from the date of vesting, whichever is later. Since the vesting orders were issued on July 6, 1948 and April 4, 1949, respectively, and there is no pending suit or claim for the return of the lands in question to toll the two-year period provided for in said Act, there is no doubt that plaintiffs were already barred from bringing their action on August 27, 1953, which is more than four years from the date of vesting. This is what we said in a similar case:

"On the other hand, lots 1 and 2 were vested by the Alien Property Custodian on March 14, 1946. The

two-year period, therefore, within which to file a suit for their return expired on March 14, 1948. As no suit or claim for the return of said properties pursuant to sections 9 or 32(a) of the Trading with the Enemy Act was filed by plaintiff within two years from the date of vesting, 'later' date and the last on which suit could be brought was April 30, 1949. The claim filed by plaintiff with the Philippine Alien Property Administration on November 15, 1948 obviously could not toll the two-year period that had already expired on March 14, 1948. And the complaint in the present case having been filed only on November 13, 1950, the same is already barred. (*Pass vs. McGrath*, 192 F. 2d 415; *Kroll vs. McGrath*, 91 P. Supp. 173.) The lower court, therefore, had no jurisdiction to entertain the action insofar as these lots are concerned." (*Lim vs. Brownell, Jr., et al.*, 106 Phil., 344; 60 Off. Gaz. [26] 3744.)

Another error assigned by plaintiffs-appellants is that, since the condition precedent provided by the Trading with the Enemy Act applies only to suits filed against the United States Government or its representatives and not to defendants herein, the latter cannot invoke in their favor the immunity of the State from suit without its consent. They contend that since the defense of immunity from suit is a personal defense of the State, defendants cannot arrogate unto themselves the sovereign rights, powers and privileges of the Government of the United States.

While we may agree with appellants that this suit is not directed actually against the Government of the United States and that private persons cannot invoke in their favor the defense of immunity from suit it being a sovereign and personal defense of the State, still we believe that appellants cannot recover the lands in question. What is being invoked by appellees herein is not immunity from suit but the defense of prescription, that is, since plaintiffs failed to bring their action within two years from the date of vesting as provided for by law, they are now precluded from instituting the same not only against the United States Government but also against defendants or persons who derive their title from said government.

"Needless to say, the defense of limitations as contained in section 33 of the Trading with the Enemy Act, as amended, may be invoked not only the defendant Attorney General of the United States but also by the intervenor Republic of the Philippines to which the lands in question were transferred. To sustain plaintiff's claim and preclude the Republic from putting up that defense would render nugatory the provisions of the Act. For in such a case, the claimant who has failed to file his claim or suit within the period provided for in section 33 of the Act and consequently has forfeited whatever rights he may have therein, could easily circumvent the law. It would also mean that the transfer of vested property to the Republic would have the effect of permitting re-examination of the title to such vested property which has already become absolute in the name of the United States, the transferor, for failure of the claimant to assert his claim within the prescribed time. The absurdity, to say the least, cannot be countenanced." (*Lim vs. Brownell, Jr., et al.*, supra.)

Having arrived at the foregoing conclusions, we deem it unnecessary to discuss the other errors assigned by plaintiffs-appellants.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

[1] *Brownell, Jr. vs. Bautista*, 95 Phil., 853; 50 Off. Gaz. (10) 4772.

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