

MAURO LOZANA, PLAINTIFF AND APPELLEE, VS. SERAFIN DEPAKAKIBO, DEFENDANT AND APPELLANT.*G.R. No. 13680. April 27, 1960*

Ponente: LABRADOR, J.

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This is an appeal from a judgment of the Court of First Instance of Iloilo, certified to us by the Court of Appeals, for the reason that only questions of law are involved in said appeal.

The record discloses that on November 16, 1954 plaintiff Mauro Lozana entered into a contract with defendant Serafin Depakakibo wherein they established a partnership capitalized at the sum of P30,000, plaintiff furnishing 60% thereof and the defendant, 40%, for the purpose of maintaining, operating and distributing electric light and power in the Municipality of Dumangas, Province of Iloilo, under a franchise issued to Mrs. Piadosa Buenaflor. However, the franchise or certificate of public necessity and convenience in favor of the said Mrs. Piadosa Buenaflor was cancelled and revoked by the Public Service Commission on May 15, 1955. But the decision of the Public Service Commission was appealed to Us on October 21, 1955. A temporary certificate of public convenience was issued in the name of Olimpia D. Decolongon on December 22, 1955 (Exh. "B"). Evidently because of the cancellation of the franchise in the name of Mrs. Piadosa Buenaflor, plaintiff herein Mauro Lozana sold a generator, Buda (diesel), 75 hp. 80 KVA capacity, Serial No. 479, to the new grantee Olimpia D. Decolongon, by a deed dated October 30, 1955 (Exhibit "C"). Defendant Serafin Depakakibo, on the other hand, sold one Crossly Diesel Engine, 25 h. p., Serial No. 141758, to the spouses Felix Jimenea and Felina Harder, by a deed dated July 10, 1956.

On November 15, 1955, plaintiff Mauro Lozana brought an action against the defendant, alleging that he is the owner of the Generator Buda (Diesel), valued at P8,000 and 70 wooden posts with the wires connecting the generator to the different houses supplied by electric current in the Municipality of Dumangas, and that he is entitled to the possession thereof, but that the defendant has wrongfully detained them as a consequence of which plaintiff suffered damages. Plaintiff prayed that said properties be delivered back to him. Three days after the filing of the complaint, that is on November 18, 1955, Judge Pantaleon A. Pelayo issued an order in said case authorizing the sheriff to take possession of the generator and 70 wooden posts, upon plaintiff's filing of a bond in the amount of P16,000 in favor of the defendant (for subsequent delivery to the plaintiff). On December 5, 1955, defendant filed an answer, denying that the generator and the equipment mentioned in the complaint belong to the plaintiff and alleging that the same had been contributed by the plaintiff to the partnership entered into between them in the same manner that defendant had contributed equipments also, and therefore that he is not unlawfully detaining them. By way of counterclaim, defendant alleged that under the partnership agreement the parties were to contribute equipments, plaintiff contributing the generator and the defendant, the wires for the purpose of installing the main and delivery lines; that the plaintiff sold his contribution to the partnership, in violation of the terms of their agreement. He, therefore, prayed that the complaint against him be dismissed"; that plaintiff be adjudged guilty of violating the partnership contract and be ordered to pay the defendant the sum of P3,000, as

actual damages, P600.00 as attorney's fee's and P2,600 annually as actual damages; that the court order dissolution of the partnership, after the accounting and liquidation of the same.

On September 27, 1956, the defendant filed a motion to declare plaintiff in default on his counterclaim, but this was denied by the court. Hearings on the case were conducted on October 25, 1956 and November 5, 1956, and on the latter date the judge entered a decision declaring plaintiff owner of the equipment and entitled to the possession thereof, with costs against defendant. It is against this judgment that the defendant has appealed. The above judgment of the court was rendered on a stipulation of facts, which is as follows:

- "1. That on November 16, 1954, in the City of Iloilo, the aforementioned plaintiff, and the defendant entered into a contract of Partnership, a copy of which is attached as Annex "A" of defendant's answer and counterclaim, for the purpose set forth, therein and under the national franchise granted to Mrs. Piadosa Buenaflor;
2. That according to the aforementioned Partnership Contract, the plaintiff Mr. Mauro Lozana, contributed the amount of Eighteen Thousand Pesos (P18,000.00); said contributions of both parties being the appraised values of their respective properties brought into the partnership;
3. That the said Certificate of Public Convenience and Necessity was revoked and cancelled by order of the Public Service Commission dated March 15, 1955, promulgated in case No. 58188, entitled) "Piadosa Buenaflor, applicant", which order has been appealed to the Supreme Court by Mrs. Euenafloor;
4. That on October 30, 1955, the plaintiff sold properties brought into by him to the said partnership in favor of Olimpia Decolongon in the amount of P10,000.00 as per Deed of Sale dated October 30, 1955 executed and ratified before Notary Public, Delfin Demaisip, in and for the Municipality of Dumangas, Iloilo and entered in his Notarial Registry as Doc. No. 832; Page No. 6; Book No. XIII; and Series of 1955, a copy thereof is made as Annex "B" of defendant's answer and counterclaim;
5. That there was no liquidation of partnership and that at the time of said Sale on October 30, 1956, defendant was the manager thereof;
6. That by virtue of the Order of this Honorable Court dated November 18, 1955, those properties sold were taken by the Provincial Sheriff on November 20, 1955 and delivered to the plaintiff on November 25, 1955 upon the latter posting the required bond executed by himself and the Luzon Surety Co., dated November 17, 1955 and ratified before the Notary Public, Eleuterio del Rosario in and for the province of Iloilo known as Doc. No. 200; Page 90; Book No. VII; and Series of 1955; of said Notary Public;
7. That the said properties sold are now in the possession of Olimpia Decolongon, the purchaser, who is presently operating an electric light plant in Dumangas, Iloilo;
8. That the defendant sold certain properties in favor of the spouses, Felix Jimenea and Felisa Harder contributed by him to the partnership for P3,500.00 as per Deed of Sale executed and ratified before the Notary Public Rodrigo J. Harder in and for the Province of Iloilo, known as Doc. No. 76; Page 94; Book No. V; and Series of 1955, a certified copy of which is hereto attached marked as Annex "A", and made an integral part hereof;" (pp. 27—29 ROA).

As it appears from the above stipulation of facts that the plaintiff and the defendant entered into the contract of partnership, plaintiff contributing the amount of P18,000, and as it is not stated therein that there has been a liquidation of the partnership assets at the time plaintiff sold the Buda Diesel Engine on October 15, 1955, and since the court below had found that the plaintiff had actually contributed one engine and 70 posts to the partnership, it necessarily follows, that the Buda diesel engine contributed by the plaintiff had become the property of the partnership. As properties of the partnership, the same could not be disposed of by the party contributing the same without the consent or approval of the partnership or of the other partner. (Clemente vs.

Galvan, 67 Phil., 565).

The lower court declared that the contract of partnership was null and void, because by the contract of partnership, the parties thereto have become dummies of the owner of the franchise. The reason for this holding was the admission by defendant when being cross-examined by the court that he and the plaintiff are dummies. We find that this admission by the defendant is an error of law, not a statement of a fact. The Anti-Dummy law has not been violated as parties plaintiff and defendant are not aliens but Filipinos. The Anti-Dummy law refers to aliens only (Commonwealth Act 108 as amended).

Upon examining the contract of partnership, especially the provision thereon wherein the parties agreed to maintain, operate and distribute electric light and power under the franchise belonging to Mrs. Buenaflor, we do not find the agreement to be illegal, or contrary to law and public policy such as to make the contract of partnership, null and void ab initio. The agreement could have been submitted to the Public Service Commission if the rules of the latter require them to be so presented. But the fact of furnishing the current to the holder of the franchise alone, without the previous approval of the Public Service Commission, does not per se make the contract of partnership null and Void from the beginning and render the partnership entered into by the parties for the purpose also void and non-existent. Under the circumstances, therefore, the court erred in declaring that the contract was illegal from the beginning and that parties to the partnership are not bound therefor, such that the contribution of the plaintiff to the partnership did not pass to it as its property. It also follows that the claim of the defendant in his counterclaim that the partnership be dissolved and its assets liquidated is the proper remedy, not for each contributing partner to claim back what he had contributed.

For the foregoing considerations, the judgment appealed from as well as the order of the court for the taking of the property into custody by the sheriff must be, as they hereby are set aside and the case remanded to the court below for further proceedings in accordance with law.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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