

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, PLAINTIFF, VS. ALVARA FAJARDO AND ERIBERTO NAVARRO, DEFENDANTS.*G.R. No. 30242. March 25, 1929*

Ponente: STREET, J.

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This is an original action of replevin instituted in this court pursuant to the provisions of Act No. 1376 by the Roman Catholic Archbishop of Manila, for the purpose of recovering from the defendants, Alvara Fajardo and Eriberto Navarro, an image of Christ lying in the sepulcher, and known popularly as Santo Entierro, Santo Sepulcro, Cristo Yacente, as well as by the name Apung Macalulu, together with the carriage, or litter, in which it is conveyed in procession. The defendants do not deny having possession of the image and carriage, but it appears that Eriberto Navarro is not the real person in interest, being merely the agent of his aunt Alvara Fajardo, who is asserting title to the image and carriage adverse to the plaintiff.

It appears in evidence that eighty or a hundred years ago Macario Paras, parish priest of Angeles, Pampanga, caused this venerated image, popularly known as Apung Macalulu, to be sculptured by a well-known sculptor of that day, named Buenaventura. It was at first installed in a little sanctuary built by Padre Paras on his own premises and there became an object of veneration among the pious inhabitants of the vicinage. The plaintiff has put in evidence an entry in the book of records of the Roman Catholic Church of Angeles from which it appears that the image in question, with the carriage and other appendages, was in 1854 treated as a gift to the church from Padre Paras (Exhibit B). The plaintiff also put in evidence a similar entry found in the church records under date of February 20, 1865, from which it appears that the image in question, with its adornment and carriage, was a gift from Padre Paras and was then in his care. There is further proof showing that about the year 1872 the image, with carriage, was transferred to the church. It there remained until about 1896 or 1897 when, owing to the disturbed conditions of the country, the image and carriage were removed and carried to another municipality for safekeeping. About 1904 it was taken back to the church where it remained, except when taken out on two occasions each year for the purpose of being carried in solemn procession. One of these occasions was the procession celebrated on Friday of Holy Week; and the other was upon the occasion of the proper fiesta of this particular saint held in October. When the image was carried out in procession on Holy Friday of the year 1928, the defendant Eriberto Navarro, acting for his aunt Alvara Fajardo, and with the assistance of numerous other persons acting in collusion with him, caused the image to be taken forcibly from the precincts of the church, when the procession was over, and from thence it was carried to a place that had been constructed for its deposit. It was this act which gave rise to the present action.

The claim put forth by Alvara Fajardo has its origin in the following facts: Padre Paras died about the year 1876, leaving a will in which he instituted his nephew, Mariano V. Henson, as his universal heir, and he is supposed to have inherited the image from Padre Paras. From Henson the image passed by transfer, so it is claimed, to Fernanda Sanchez, and from her to her son, Crispulo Bundoc, and his wife, the defendant Alvara Fajardo. Crispulo Bundoc is now dead, leaving Alvara Fajardo as the only claimant to the image by virtue of alleged title

derived along the line indicated. But the entries in the inventory of properties of the church to which we have referred above show that before his death Padre Paras had given the image to the church or at least that the church was holding it under claim of such gift. It therefore did not pass with other property of Paras to Henson as a result of the will made by Paras in which Henson was instituted as universal heir. More than this, the transfer of the property from Henson to Fernanda Sanchez is not proved by satisfactory testimony. What is proved is that after the death of Padre Paras, Fernanda Sanchez exercised the office of *recamadera* of the image, and this office finally passed to Alvara Fajardo, one of the defendants in this case. The church authorities seem never to have questioned, prior to the institution of this action, the right of Alvara Fajardo to this office. It appears to be the duty of the *recamadera* to keep the image and its carriage in proper condition and to supply proper apparel for it,—all of which is done with money supplied by contributions of the pious. In addition to this, it is the duty of the person filling said office to collect alms with which to pay for the religious services incident to the celebrations devoted to the saint. As a result of these duties, the person filling such office apparently has a right of free access to the image.

We conclude from the evidence that the right pertaining to Alvara Fajardo as *recamadera* does not carry with it the ownership of the image or the carriage; and the church, having had possession of the image, under claim of ownership by gift, for a long period of time, the title of the Archbishop thereto is perfect.

Judgment will therefore be entered for the plaintiff to recover of the defendants the image and carriage which are the subject of this action; and a writ for the delivery of the same to the plaintiff will accordingly issue from this court in due course. So ordered, without costs.

Johnson, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

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