

**PROVINCIA DEL SANTISIMO NOMBRE DE JESUS DE FILIPINAS DE LA
ORDEN DE ERMITANOS DE NUESTRO PADRE SAN AGUSTIN,
COMMONLY KNOWN AS CORPORACION DE PP. AGUSTINOS,
PLAINTIFF AND APPELLANT**

G. R. No. 40266. February 15, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

The Court of First Instance of Rizal sustained, a demurrer to the petition in this case based on the single ground that the action is in effect a suit against the Government of the United States which the court has no jurisdiction to hear and determine. The plaintiff declined to amend and its petition was dismissed, whereupon this appeal was brought.

On May 13, 1933, the plaintiff, commonly known as the "Corporation of Padres Agustinos", filed a petition in the Court of First Instance of Rizal which, in substance, makes the following allegations: That it is a corporation domiciled in Manila and that the defendant is a Brigadier-General of the Army of the United States in command of Fort Wm. McKinley in the Province of Rizal; that in the year 1909 a Torrens title was issued to the Compania Agricola de Ultramar, later duly transferred to the plaintiff, by which the plaintiff became the absolute owner of the following tracts of land situated in the Province of Rizal, to wit:

"Dos parcelas de terreno conocidas con el nombre de Hacienda de Guadalupe, situadas en el Municipio de San Pedro Macati: Parcela A.—Linda por el N. con la carretera general de Manila al Ft. McKinley; por el S., con la Reserva Militar del Ft. McKinley, separada por el de San Jose y otro sin nombre; por el S. con la Reserva Militar del Ft. McKinley; y por el O. con propiedad de Pedro P. Roxas, separada por el Estero Balisampan.

"Parcela B.—Linda por el N. con el Rio Pasig; por el S. con la carretera de Manila al Ft. McKinley; y por el O., con el Balisampan", that the defendant has charge and possession of the military reservation of Fort McKinley mentioned above, and that the true boundary line between the said reservation and plaintiff's land described in parcel A is the of San Jose.

It is further alleged that in the month of February of 1933, the defendant, in his capacity as Commanding General in charge of Ft. McKinley, ordered monuments to be placed and in fact has placed monuments not along the true boundary line of said of San Jose but within the said parcel A in such a way as to include within said reservation about 2,000 square meters belonging to the plaintiff, thereby interfering with the dominion, possession and enjoyment by the plaintiff of the said portion of parcel A.

It is alleged that the plaintiff is in exclusive possession of said lands and its predecessors in title have been since time immemorial; that notwithstanding the formal protest of the plaintiff against the location of said monuments as aforesaid, the defendant has insisted in his proposal to locate and has in fact located said monuments to the detriment of the ownership, possession and enjoyment of the plaintiff.

The plaintiff prays that the court declare and decree the true boundary line between the land of the plaintiff and the military reservation of Fort McKinley to be the above-mentioned of San Jose; and that the "right of occupancy of said Army extends to the opposite bank of the said " It is further prayed that the defendant, in his said capacity, his agents and subordinates, be ordered to desist from placing any monuments on the plaintiff's side of said of San Jose and that they be required to remove those monuments already placed as aforesaid and further that a perpetual injunction be issued against the defendant in his said capacity as Commanding General of the said Army post, his agents and subordinates, requiring them to cease and desist from any further interference in the property claimed by the plaintiff. There is also a prayer for general relief.

In support of his demurrer and of the judgment of the court below, the Solicitor-General argues that a suit against C. H. Conrad, jr., in his capacity as Commanding General of the United States Army in command at Fort Wm. McKinley, is in effect a suit against the United States Government; and that the Commanding General is immune from suit when he is sued in that official capacity. He relies upon our decision in the case of Tan Te vs. Franklin Bell (27 Phil., 354). But that question was not considered or decided in that case because J. Franklin Bell, W. S. Wood, J. F. Dean and U. G. McAlexander were sued as individuals. The defendants demurred to the complaint on the same ground now advanced by the Solicitor-General in the present case, namely, that the defendant, being the Commanding General, Philippines Division, of the United States Army and the other defendants being officers under his command, represent officially the Government of the United States and there is no law authorizing the plaintiff to bring said suit against the Government. Upon the appeal the defendants Franklin Bell et al. repeated their objection of lack of jurisdiction and this court said:

"Upon this point we think it sufficient to say that it is alleged in the complaint that the 'defendants illegally, wrongfully, and by force, and without any due process of law whatsoever, took from the plaintiff' the property in question, and 'that said property is wrongfully detained by the defendants.' In *Tindal vs. Wesley* (167 U. S., 204), the court, after reviewing many of its decisions, said: 'But the eleventh amendment gives no immunity to officers or agents of a State in withholding the property of a citizen without authority of law. And when such officers or agents assert that they are in rightful possession, they must make good that assertion when it is made to appear in a suit against them as individuals that the legal title and right of possession is in the plaintiff.' "

The appellant here relies principally upon the cases of *United States vs. Lee* (106 U. S., 196; 27 Law. ed., 171); *Stanley vs. Schwalby* (147 U. S., 507; 37 Law. ed., 259) ; and *Tindal vs. Wesley* (167 U. S., 204; 42 Law. ed., 137). In all of these cases the defendants were named and sued only as individuals, no allegation appearing in the complaint that they performed the acts complained of in their capacity as officers of the Government. The latter fact was first brought out in their respective answers in which they asserted that they were acting or holding as officers of the Government and disclaimed any personal interest or title.

In the case now before us the defendant Conrad is sued by his official title and it is alleged that the acts complained of were performed in his official capacity as Commanding General in charge of the military reservation at Fort McKinley; and the prayer asks, amongst other things, that the defendant, in his official capacity as Commanding General, be perpetually enjoined from erecting the monuments which he asserts mark the true boundary line of the said reservation.

The petition in this case is inaptly drawn, as was in effect conceded by counsel upon the oral argument of this cause when he contended that C. H. Conrad, jr., the defendant, was being sued only as an individual, thus bringing the present case in line with the authorities above cited upon which the appellant relies.

This ambiguity in the petition, which should have been cured, upon motion of the defendant, if necessary, before this cause came to this court, has caused us some difficulty in determining the law applicable to the case. Clearly

this court will not enjoin the Commanding General of the United States Army in the Philippine Islands by perpetual injunction from performing any acts within his official capacity. An officer of the Government who commits a trespass such as alleged in the present case and admitted by the demurrer, steps out of his official capacity and can only be held to act unlawfully as an individual. Such should be the substance of the complaint. When sued as an individual for a trespass, his mere assertion by way of answer that he performed the act complained of as an officer of the Government does not exculpate him. But if, after hearing upon the merits, judgment is rendered against him, it can only be as an individual. The United States is not a party to the present suit and no judgment rendered therein is binding on the United States. No question of title, as between the plaintiff and the United States, which holds a Torrens title to the military reservation at Fort McKinley, can be adjudicated in this suit.

Adopting the construction, more or less forced, that what the plaintiff intended to set out in his petition was a cause of action for an alleged unlawful trespass committed by C. H. Conrad, jr., under the guise of military authority, we sustain the jurisdiction of the court upon the authorities above cited.

We deem it proper to state that the present suit seems to us ill advised, in view of the adequate remedy open to the plaintiff under section 112 of Act No. 496. It is a fact of record in this court that in March, 1912, Major-General Bell, on behalf of the United States, filed a petition in the Land Registration Court under the said section to correct the certificate of title to the military reservation of Fort McKinley; and in like manner invoking the same section 112 of Act No. 496, likewise affecting a controversy as to the correct boundary between an adjoining estate and the military reservation of Fort McKinley, suit was brought by Jacobo Zobel et al. against the Commanding General in Land Registration Case No. 2484 in the Court of First Instance of Rizal, whose decision was affirmed by this court on December 3, 1926. (See G. R. No. 25890, Zobel vs. Commanding General of the United States Army, not reported.)

The judgment of the court below is reversed and the cause remanded with directions to permit the defendant Conrad to further plead and for other proceedings not inconsistent with this opinion. Without special pronouncement as to costs.

Street, Malcolm, Villa-Real, Abad Santos, Hull, Imperial, Goddard, and Diaz, JJ., concur.

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