

FORTUNATO ORTUA, PLAINTIFF AND APPELLEE, VS. EULOGIO RODRIGUEZ, SECRETARY OF AGRICULTURE AND COMMERCE, AND SIMEON RAMOS, DIRECTOR OF LANDS, DEFENDANTS AND APPELLANTS.*G. R. No. 43238. November 28, 1936*

Ponente: ABAD SANTOS, J.

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This suit grew out of an application for the purchase of a tract of public land filed by the plaintiff and appellee with the Bureau of Lands. The case was submitted to the court below upon an agreed statement of facts, from which it appears that the sales application was approved and given entry S. A. No. 4546 by the Bureau of Lands in the same year in which it was filed, that is, 1920. It appears also that after the filing of the application, the appellee took possession of the land and introduced improvements thereon consisting of a big concrete warehouse, a house, and 180 coconut trees. It further appears that eight years after the occupation of the land by the appellee, one Honesto Obias filed a protest stating, among other things, that the appellee had no right to purchase public land by reason of his being a citizen of the Chinese Republic. Acting upon that protest, the Director of Lands ordered the cancellation of the appellee's sales application, and required him to pay the sum of P3,000 as rentals for the occupation of the land. This decision of the Director of Lands was appealed to the Secretary of Agriculture and Natural Resources, who affirmed the same but reduced the amount required to be paid thereunder from P3,000 to P400, which latter amount was paid by the petitioner under protest.

Thereafter, the appellee instituted a mandamus proceeding in the Court of First Instance of Camarines Sur for the purpose of compelling the Secretary of Agriculture and Commerce and the Director of Lands to give due course to his sales application. This action was dismissed on demurrer interposed by the respondents therein, but on appeal to this court the order of dismissal was set aside.^[1] This court held that the appellee herein was "a Philippine citizen and so qualified under the Public Land Law to purchase public agricultural lands."

Upon the pleadings and agreed statement of facts filed by the parties in this case, the main question raised by this appeal is whether the appellee was entitled to recover the sum of P400 paid by him under protest. The court below decided the question in his favor, and ordered the Director of Lands to return said amount to the appellee.

In seeking a reversal of the judgment below, the contention of the appellant is based on the theory that "the said sales application had never been approved nor had any entry number given thereto." This theory, however, flies in the teeth of the facts agreed to by the parties and upon which the case was submitted to the court below for decision. Paragraph II of the agreed statement of facts reads as follows: "That the sales application was approved and given entry number, S. A. No. 4546 by the Bureau of Lands on the same year."

It has been held that where stipulations have been entered into between counsel, one of the parties will not be allowed to withdraw from the agreement thus made without the consent of the other, except by leave of court upon cause shown. (*Aurrecoechea vs. Bangs*, 110 U. S., 217; 28 Law. ed., 125.) We believe that the rule thus laid

down should be followed in this case not only because it is sound, but because it comes within the spirit of section 333 of the Code of Civil Procedure, (*Irlanda vs. Pitargue*, 22 Phil., 383.) Counsel for the appellants made no attempt whatever to obtain leave of the court below to withdraw from the stipulations entered into in this case, and we see nothing in the record that might have justified the granting of such leave.

The exaction of the amount of P400 having been made upon a ground which was found to be erroneous by this court, and the money having been paid under protest, the appellee is entitled to recover the same.

The judgment appealed from is affirmed without pronouncement as to costs.[1] So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

[1] 59 Phil., 440.

[1] Resolution of December 18, 1936.

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