

INDALECIO DE TORRES, PLAINTIFF AND APPELLEE, VS. VICENTE ONA, DEFENDANT AND APPELLANT.

G. R. No. 43504. October 22, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

The defendant in this case, against whom the Court of First Instance of Batangas rendered judgment ordering him to pay to the plaintiff the sum of P100 plus the legal interest thereon from November 2, 1933, until fully paid, with the costs, appealed to this court asking that said judgment be set aside on the ground that said court erred (1) in sustaining the plaintiffs contention that the deed of sale, Exhibit A, executed by both parties is not null and void, notwithstanding the fact that the transfer of the truck referred to in said contract, from the plaintiff to him (defendant), was not approved by the Public Service Commission; (2) in not holding that the action brought by the plaintiff is premature; and (3) in ordering him to pay to the plaintiff said sum of P100 with the interest thereon, and the costs.

No evidence was presented by the interested parties at the trial. They confined themselves to presenting to the court for decision the following agreed statement of facts:

- That the defendant, through his attorney, has submitted to the court for resolution a motion for the dismissal of the case, this 14th day of September, 1934.
- That the defendant, through his attorney, admits the genuineness and due execution of the document Exhibit A for the plaintiff.
- That the defendant admits that he has not paid the installments corresponding to the months of September and October, 1933."

The English translation from the Tagalog of Exhibit A, referred to by the parties in the foregoing agreement, is as follows:

"I, Indalecio de Torres, of legal age, widower, native and residing in the municipality of Lipa, Province of Batangas, party of the first part, and I, Vicente Ona, married to Simeona Pena, native and residing in the barrio of Pinagtungulan, San Jose, Batangas, by these presents both say:

"First. That, I, Indalecio de Torres, party of the first part, is the owner of a truck for loading (de carga), Chevrolet, with plate No. TH-1795, Motor No. RT-944606, Factory No. LLQ-20167, according to the certificate of registration issued to me by the Bureau of Public Works on the 18th day of March, 1930, when I purchased the said truck from the P. C. C. for the value of P1,750.

"Second. That by virtue of our contract of the party of the second part, Vicente Ona, I hereby sell to him the above-mentioned truck for the value of Five Hundred and Fifty Pesos (P550) and this price shall be paid by him in the manner as follows: On the 15th day of the month of September, 1933, he will give me Fifty Pesos (P50), on the 30th day of the same month of September, 1933, he will pay me again Fifty Pesos (P50) and the balance of Four Hundred and Fifty Pesos (P450) shall be paid to me by installment of Fifty Pesos every last

day of the month for nine months beginning from the month of October, 1933, that is to say, 50 pesos on the last day of October, 1933; 50 on the last day of November, 1933; 50 on the last day of December, 1933; 50 on the last day of January, 1934; 50 on the last day of February, 1934; 50 on the last day of March, 1934; 50 on the last day of April, 1934; 50 on the last day of May, 1934; and 50 also on the last day of June, 1934.

"Third. That, I, Vicente Ona, party of the second part, hereby agree to all of what is stated above by the party of the first part and at the same time I make it clear that if the last day of June, 1934, above-mentioned arrives and I have not paid the value of the truck to the said Indalecio de Torres, I hereby guarantee my house including the lot on which is built, situated in the barrio of Pinagtungulan, San Jose, Batangas, so that if he so desires he may take possession of the same in payment of the balance of the value of the truck above-mentioned.

"In witness whereof we signed our name in Lipa, Batangas, this 8th day of September, 1933."

Under the law, the Public Service Commission has not only general supervision and regulation of, but also full jurisdiction and control over all public utilities including the property, equipment and facilities used, and the property rights and franchises enjoyed by every individual and company engaged in the performance of a public service in the sense this phrase is used in the Public Service Act, or Act No. 3108 (sec. 13, Act No. 3108). By virtue of the provisions of said Act, motor vehicles used in the performance of a service, as the transportation of freight from one point to another, have to this date been considered—and they cannot but be so considered—public service property; and, by reason of its own nature, a TH truck, which means that the operator thereof places it at the disposal of anybody who is willing to pay a rental for its use, when he desires to transfer or carry his effects, merchandise or any other cargo from one place to another, is necessarily a public service property.

In order that a vehicle of the kind above-stated, that is a TH truck, may be sold, alienated, mortgaged or otherwise encumbered, the law requires that the necessary approval of the Public Service Commission must first be obtained. It is so stated clearly in section 16, paragraph (h), of said Act No. 3108. The parts of said section pertinent to the case under consideration, read:

"Sec. 16. No public utility as herein defined shall:

"* * * * *

"(h) Without the approval of the Public Utility Commission first had, sell, alienate, mortgage, encumber, or lease its property, franchises, privileges or rights, or any part thereof; nor merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other public utility as herein defined: * * *"

It is true that said section contains a proviso that the sale, alienation, mortgage or encumbrance, and lease of the property of public utilities which, on account of the nature and conditions of their business, are, in the judgment of the commission, of little importance to the public interest, shall be exempt from the requisite of the approval of the commission; but it is also true that said section provides clearly and emphatically that it is the commission itself, and no one else, which must determine the question whether a public service is of little importance or not.

Consequently, in order that the contract upon which the plaintiff and appellee based his action against the defendant and appellant, for alleged violation of the terms thereof, may be valid, it was necessary for the Public Service Commission to authorize and approve it previously. Not having done so, and as the approval thereof has not been sought either before or after the bringing of this action, the only conclusion arrived at is that the action brought by the plaintiff is premature; and that under the present circumstances, as the contract in question is ineffectual, it cannot and it is without any force to bind the defendant. In other words, the appealed judgment should be reversed. Having arrived at this conclusion, it is unnecessary to discuss the other errors assigned by the defendant and appellant in his brief.

The appealed judgment is reversed, with the costs to the plaintiff and appellee. So ordered.

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

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