

JUAN POSADAS ET AL., PETITIONERS, VS. GO HAP ET AL., RESPONDENTS.

G.R. No. 45595. April 21, 1939

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

Prior to July 25, 1935, Martina Fernando was the occupant of stalls Nos. 1342-1345 (sarisari section) in the Divisoria Market of the City of Manila. Ng Woo was the occupant of stalls Nos. 351-354 (fruit section) in the same market. On or about the same date, Go Hap, Cheng Tun, Chua Cua and Chua Si occupied, respectively, stalls 1346-1348, 1349-1352, 1353-1356 and 1357-1360 (sarisari section), which are adjacent to the stalls Occupied by Martina Fernando. On July 25, 1935, Martina Fernando changed the stalls occupied by her for those of Ng Woo, with the approval of the Mayor. On August 8, of the same year, Go Hap, Cheng Tun, Chua Cua and Chua Si presented to the Mayor their right to transfer to the stalls left by Martina Fernando. Although the Mayor first acted favorably on this petition, by cancelling the exchange approved by him of the stalls of Martina Fernando and Ng Woo, nevertheless, he subsequently reversed this ruling and suspended the cancellation and revocation ordered by him.

Go Hap, Cheng Tun, Chua Cua and Chua Si file this petition for mandamus against the Mayor, and ask that they be authorized to transfer to the stalls abandoned by Martina Fernando. This action was originally filed with the Court of First Instance of Manila which denied the same, and on appeal from this ruling to the Court of Appeals, the latter, reversing the ruling of the Court of First Instance, resolved that the defendants Juan Posadas, Mayor of Manila, Victor Alfonso, in charge of the city markets and Felipe Aviado, superintendent, of the city markets, should permit Go Hap, Cheng Tun, Chua Cua and Chua Si to occupy the stalls abandoned by Martina Fernando. From this resolution of the Court of Appeals the respondents have appealed to this court on certiorari.

According to section 8 of the Market Rules, when the occupants of the stalls lose or abandon the privilege to occupy them and the latter become vacant, the occupants of the adjoining stalls shall transfer to them.

In case of the incapacity or death of an occupant, he shall be succeeded by the surviving spouse, and in the absence of the latter, by any of his children who is recommended by the deceased or incapacitated, and in the absence of this recommendation, by the eldest child. These rules were adopted to avoid abuse and irregularities in the supply of stalls in the city markets.

There is no provision in the ordinances authorizing the exchange of stalls among the occupants. On the contrary, from the fact that rules had been adopted for the occupancy of vacant stalls, it is inferred that the ordinances intend not to permit the occupants to exchange their stalls among themselves, at their pleasure, otherwise said vacant stalls would not be occupied according to these rules, but according to the will of the former occupants.

When Martina Fernando abandoned her stalls, they actually became vacant and from that time arose the right of the adjoining occupants to occupy them. While Ng Woo occupied them immediately, he did so illegally, to the prejudice of the adjoining occupants and against the spirit of the ordinances. Nothing is added by the fact that the

Mayor approved the occupation by Ng Woo, because he is not authorized to give such approval and he cannot stamp it upon an act which is impliedly prohibited by the ordinances.

The petition is denied, and the judgment of the Court of

Appeals is affirmed, with the costs to the petitioners.

Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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