

CARIDAD ESTATE OP CAVITE, INC., PLAINTIFF AND APPELLANT, VS. VICENTE AVILA, PROVINCIAL TREASURER AND ASSESSOR OF CAVITE, AND ASUNCION SAMONTE, MUNICIPAL TREASURER OF CAVITE, CAV...*G.R. No. 45687. April 14, 1939*

Ponente: MORAN, J.

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Plaintiff-appellant, Caridad Estate of Cavite, Inc., sued for a writ of mandamus to compel defendants-appellees herein, Vicente Avila and Asuncion Samonte as provincial and municipal treasurers of the Province of Cavite and the municipality of Cavite, Cavite, respectively, to accept payment of the land tax for a parcel of land due thereon for the year 1937. It is alleged that tender of such payment was made, first, to the municipal treasurer and, then, to the provincial treasurer but was refused by both on the ground that the parcel in question, which was originally assessed at P13,870, had been reassessed at P33,550; that the reassessment was unlawful because arbitrary, unjust, unauthorized by law and had been made without notice to plaintiff-appellant; and that there exists no other plain, adequate and speedy remedy in the ordinary course of law except the issuance of the writ prayed for. A demurrer was interposed, which was sustained, and the action dismissed. Hence, the plaintiff's appeal.

We hold that the demurrer had been rightly sustained because appellant, under the circumstances, had no cause of action. Section 59 of Act No. 3995 provides as follows:

"Restriction upon power of court to impeach tax.—"No court shall entertain any suit assailing the validity of a tax assessed under this Act until the taxpayer shall have paid, under protest, the taxes assessed against him, nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of the taxes, or of a failure to perform their duties within the time herein specified for their performance, unless such irregularities, informalities, or failures shall have impaired the substantial rights of the taxpayer; nor shall any court declare any tax assessed under the provisions of this Act invalid except upon condition that the taxpayer shall pay the just amount of his tax, as determined by the court in the pending proceeding."

The present action, though ostensibly for mandamus seeking to compel the appellees to accept payment of the land tax under the old assessment, is, in legal effect, a suit assailing the validity of the tax under the new assessment. This is so, not only because appellant directly impeaches the legality of the new assessment, but also because the remedy prayed for cannot be granted unless the reassessment complained of is declared null and void. Appellant should have paid under protest the tax under the new assessment if it is to acquire any standing in court, and, failing to do so, the court, by express direction of the statute, is without authority to entertain the action. (*Sarasola vs. Trinidad*, 40 Phil., 252.)

Appellant contends that under the second part of section 59 of Act No. 3995 above quoted, payment of taxes under protest is not a condition precedent where the action is founded on irregularities committed by the officers

concerned.

The contention rests on a misconception of the law. The provision means that the taxpayer should pay under protest the tax assessed as a prerequisite to any action he may wish to file assailing the validity of the tax so assessed. After payment, the court then may entertain his action, and may declare the tax invalid on ground of irregularities or informalities which have impaired his substantial rights. But the court shall not declare any tax invalid on any ground except on condition that the taxpayer shall pay the just amount of his tax as determined by the court in the pending proceeding.

We have noticed that in the order sustaining the demurrer the action was dismissed without affording the plaintiff an opportunity to amend its complaint. There being, however, no assignment of error to that effect, we will presume the plaintiff as having chosen to stand on said complaint.

Order is affirmed, with costs against appellant.

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

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