

LEVY HERMANOS, INC., PETITIONER, VS. BENJAMIN A. LEDESMA, AS PROVINCIAL SHERIFF OF OCCIDENTAL NEGROS, RESPONDENT.

G.R. No. 46386. October 26, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

By this petition for mandamus, we are asked to order the provincial sheriff of Occidental Negros to execute the deed of sale in favor of the petitioner, Levy Hermanos, Inc., of seven parcels of land which, by virtue of an execution, were levied upon and sold to it at public auction. The sheriff refuses to execute the deed of sale on the ground that the petitioner is a corporation composed of French shareholders and, as such, is not qualified to acquire and hold any private agricultural land under section 5, Article XII, of the Constitution of the Philippines.

The petition alleges that, under the provisions of section 125 of the Public Land Act (Commonwealth Act No. 141), the petitioner is entitled to acquire and hold lands in the Philippines, as recognized by the commercial treaty known as the "Consular Convention between the United States of America and France," concluded on February 23, 1853 and proclaimed by the same nation on August the 12th of the said year. The petitioner avers that the said treaty is applicable to the Philippines because the words "United States of the Union", used in section 7 of the said treaty, do not only mean the various States composing the Union, but also all the organized and unorganized territories and the insular possessions to which the sovereignty of the United States extends.

We believe, however, that the contention of the petitioner is devoid of merit, first, because Philippine laws do not give a foreigner or a foreign corporation the right to acquire and hold public or private lands; and, second, because the Philippines is neither a State nor an organized or incorporated territory of the United States.

- Under the provisions of section 7 of the aforesaid treaty of 1853, the French citizens shall have the right to hold personal and real property by the same title and in the same manner as the citizens of the United States, in all those States of the Union whose existing laws so permit. The pertinent portion of the said section 7 reads as follows:

"In all States of the Union whose existing laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as the citizens of the United States." (Italics ours.)

Now, then: it being prohibited, under sections 22, 23, 33, 122 and 123 of the Public Land Act (Commonwealth Act No. 141), for any person or corporation to acquire, purchase or hold or lease any public land of whatever kind, except citizens of the Philippines who are of age and corporations and associations of which at least 60 per centum of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippines, and except also citizens and corporations of the United States under section 1 (17) of the Ordinance appended to the Constitution; there is, consequently, lacking the essential condition required by section 7 of the aforesaid treaty of 1853 in order that the petitioner may acquire the lands in question.

- Moreover, the Philippines is not a State or a territory incorporated to the United States by an Act of Congress.

(In re Stanley Allen, 2 Phil., 630, 633; Dorr vs. United States, 195 U. S., 138; 49 Law. ed., 128; U. S. vs. Bull, 15 Phil., 7, 27.) On the other hand, the Filipinos are not citizens of the United States. (Philippine Constitutional Law, Malcolm & Laurel, pp. 143, 145.)

Wherefore, the petition is denied, with the costs to the petitioner. So ordered.

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

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