

**SPOUSES JUAN P. PUERTOLLANO AND ELENA A. PUERTOLLANO,
PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT; DELFIN
DELAVIN, REGALADO DABLEO, DAMIAN ESCOREL, ALBERTO
ESCOREL AND JU...**

G.R. No. 73698. December 03, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

On January 30, 1985, Juan P. Puertollano filed a complaint for ejectment and damages in the Regional Trial Court of Masbate against Delfin Delavin, Regalado Dableo, Damian Escorel, Alberto Escorel and Jun Almodal, who allegedly entered portions of the grazing land located at Sitio Taheran, Barangay Sta. Rosa, San Jacinto, Masbate, belonging to Puertollano, constructed nipa huts thereon and cultivated the same without the knowledge, permission and consent of Puertollano and that the complaint was filed only after efforts to have defendants to vacate the land through the Barangay Captain failed. On February 15, 1985, said defendants filed a motion to refer the case to the Ministry of Agrarian Reform claiming that they are bona fide tenants of Puertollano on said property, on February 18, 1985, the Regional Trial Court issued the order of referral as follows:

"As prayed for by the counsel for the defendants to refer this instant case to the Ministry of Agrarian Reform, pursuant to PD 316 and 1038, the Branch Clerk of Court is hereby ordered to refer the above-entitled case to the Ministry of Agrarian Reform Office, Legaspi City. Let copy of this Order be furnished the plaintiff.

SO ORDERED."[1]

An opposition to the motion was filed by Puertollano before he learned of said order of the trial court and on March 14, 1985 Puertollano filed a motion for reconsideration of said order. However, on April 2, 1985 Puertollano also filed a notice of appeal of the order. The case was elevated to the Intermediate Appellate Court wherein on January 28, 1986 a decision was rendered in AC-G.R. SP No. 06543-CAR dismissing the appeal for lack of merit with costs against the appellants.

Hence, the herein petition for review on certiorari raising the following legal issues:

"I. IS PETITIONERS' APPEAL OF THE ORDER DATED FEBRUARY 18, 1985 PREMATURE OR NOT?

II. IS THE ORDER DATED FEBRUARY 18, 1985 ORDERING THE REFERRAL OF CIVIL CASE NO. 3529 TO THE MINISTRY OF AGRARIAN REFORM PURSUANT TO PRESIDENTIAL DECREES NOS. 316 AND 1038 INTERLOCUTORY OR FINAL IN CHARACTER?

III. IS THE MERE CLAIM OR ALLEGATION OF PRIVATE RESPONDENTS HEREIN IN THEIR MOTION FOR REFERRAL THAT THEY ARE THE DULY INSTITUTED OR BONA-FIDE TENANTS OF HEREIN PETITIONERS SUFFICIENT BASIS TO JUSTIFY THE REFERRAL OF CIVIL CASE NO. 3529 TO THE MINISTRY OF AGRARIAN REFORM PURSUANT TO PRESIDENTIAL DECREES NOS. 316 AND 1038 CONSIDERING THAT IT HAS NOT YET BEEN FIRST ESTABLISHED THAT PRIVATE

RESPONDENTS HEREIN ARE BONA-FIDE TENANTS OF PETITIONERS HEREIN ON SUBJECT PARCELS OF LAND AND THAT IN THE CASE OR BENIGNO CASTRO, ET AL. VERSUS COURT OF APPEALS, ET AL., G.R. NO. L-44727, SEPT. 11, 1980, 99 SCRA 722 IT WAS EXPRESSLY STATED THAT 'FOR THE ACTION TO COME WITHIN THE REFERRAL PROVISIONS OF PRES. DECREES NOS. 316 AND 946, IT MUST FIRST BE ESTABLISHED THAT THE ACTION INVOLVES TENANTS' AND THAT PRESIDENTIAL DECREES NOS. 27, 316 AND 946 'CAN ONLY APPLY TO BONA-FIDE TENANTS' AND CONSIDERING ALSO THE PROVISION OF SECTION 7, RULE 133 OF THE REVISED RULES OF COURT?[2]

Firstly, in the questioned decision, the appeal was considered premature as there was still a motion for reconsideration pending before the trial court which had yet to be resolved. However, considering that thereafter a notice of appeal from the order was filed by petitioners, the legal effect thereof is that petitioners abandoned their motion for reconsideration and opted for the remedy of appeal. The appeal, therefore, is not premature.

Secondly, the appellate court also observed that the order sought to be appealed is interlocutory and not final in character for it only seeks a preliminary determination of the relationship between the parties by the Ministry of Agrarian Reform.

The issue of whether an order is a final order is its effect on the rights of the parties. A final judgment, order or decree is one that finally disposes of, adjudicates or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside.[3] No doubt said order settles definitely the issue of whether the case should be referred to the Ministry of Agrarian Reform pursuant to Presidential Decree Nos. 316 and 1038 so that no further questions can come on the issue before the trial court except the execution of the order. Said order concludes the right of private respondent to such referral until it is reversed or set aside. It is thus a final order that is appealable.

As to the third issue, Section 2 of Presidential Decree Nos. 316 and 1038 respectively provide:

"SECTION 2 - Unless certified by the Secretary of Agrarian Reform as a proper case for trial or hearing by a court or judge or other officer of competent jurisdiction, no judge of the Court of Agrarian Relations, Court of First Instance, municipal or city court, or any other tribunal or fiscal shall take cognizance of any ejectment case or any other case designed to harass or remove a tenant of an agricultural land primarily devoted to rice and corn, and if any such cases are filed, these cases shall first be referred to the Secretary of Agrarian Reform or his authorized representative in the locality for a preliminary determination of the relationship between the contending parties. If the Secretary of Agrarian Reform finds that the case is a proper case for the court or judge or other hearing officer to hear, he shall so certify and such court, judge or other hearing officer may assume jurisdiction over the dispute or controversy."

"SEC. 2. No judge of the courts of agrarian relations, courts of first instance, city or municipal courts, or any other tribunal or fiscal shall take cognizance of any ejectment case or any other case designed to harass or remove a tenant of an agricultural land primarily devoted to rice and/or corn, unless certified by the Secretary of Agrarian Reform as a proper case for trial or hearing by a court or judge or other officer of competent jurisdiction and, if any such case is filed, the case shall first be referred to the Secretary of Agrarian Reform or his authorized representative in the locality for a preliminary determination of the relationship between the contending parties. If the Secretary of Agrarian Reform or his authorized representative in the locality finds that the case is a proper case for the court or judge or other hearing officer to hear, he shall so certify and such court, judge or other hearing officer may assume jurisdiction over the dispute or controversy."

The preliminary determination of the relationship between the contending parties by the Secretary of Agrarian Reform, or his authorized representative, is not binding upon the court, judge or hearing officer to whom the case is certified as a proper case for trial. Said court, judge or hearing officer may, after due hearing, confirm,

reverse or modify said preliminary determination as the evidence and substantial merits of the case may warrant."

From the foregoing provisions of the law it is clear that the trial court cannot take cognizance of any "ejectment case or any other case designed to harass or remove a tenant in an agricultural land primarily devoted to rice and corn" without first referring the same to the Secretary of Agrarian Reform or his authorized representative in the locality for a preliminary determination of the relationship between the contending parties. If said officer finds that the case is proper for determination by the court it shall so certify and thence said court may assume jurisdiction over the dispute or controversy. Such preliminary determination of the relationship, however, is not binding upon the court. Said court may after due hearing confirm, reverse or modify said preliminary determination as the evidence and substantial merit of the case may warrant.

It is mandatory for the trial court to refer the case to the Secretary of Agrarian Reform or his authorized representative for a preliminary determination of the relationship between the contending parties if it is a case of ejectment or attempt to harass or remove a tenant in an agricultural land primarily devoted to rice and corn. Even without a motion, the trial court may *motu proprio* order such referral.

Petitioners contend that the landholding is a grazing land and not an agricultural land within the contemplation of the law. With more reason that such preliminary determination should be made by the Secretary of Agrarian Reform so that the nature of the landholding and whether it is covered by the law may be inquired into.

Petitioners cite the ruling of the court in the case of *Castro versus Court of Appeals*,^[4] wherein this Court held "that for the land subject of the action to come under Operation Land Transfer under Presidential Decree No. 27, there must first be a showing that they are tenanted lands and for the action to come within the referral provisions of Presidential Decree Nos. 316 and 946 it must first be established that the action involved tenants". Petitioners interpret this to mean that the trial court must first determine if private respondents are tenants of petitioners before the case may be referred to the Secretary of Agrarian Reform or his authorized representative for preliminary determination. On the contrary, such referral is for the Secretary of Agrarian Reform or his authorized representative to make such a preliminary determination if there is such a tenancy relationship and not for the trial court to undertake this task.

Castro involves an action filed by the alleged tenants against the land owner to seek the nullity of their contract as hired tillers and to be declared tenants. After the trial court found that they were not bona fide tenants they then sought to have the matter referred to the Ministry of Agrarian Reform. This Court said it is not a case of harassment of tenants but a suit instituted by the alleged tenant to harass the land owner and that there was no more need of such preliminary determination of the relationship by the Ministry of Agrarian Reform as it had been so determined by the trial court that there is no such landlord and tenant relationship.

In the present case such a referral is precisely required for a preliminary determination if private respondents are bona fide tenants before the trial court can assume jurisdiction over the ejectment case. The *Castro* ruling cannot be invoked in this case.

WHEREFORE, the petition is dismissed without pronouncement as to cost.

SO ORDERED.

Teehankee, C.J., Narvasa, Paras and Cruz, JJ., concur.

[1] Page 10, Rollo.

[2] Pp. 12-13, Rollo.

[3] Antonio vs. Samonte, 1 SCRA 1074; Dela Cruz vs. Hon. Paras, 69 SCRA 556, 560, Feb. 27, 1976.

[4] Castro vs. CA, 99 SCRA 722, 739, Sept. 11, 1980.

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