

VICTORIANO ZAMORAS, PETITIONER, VS. ROQUE SU, JR., ANITA SU HORTELLANO AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. NO. 85611. April 06, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The issue in this petition is whether, upon the established facts, the petitioner was an employee or tenant of the private respondents.

The petitioner, Victoriano Zamoras, was hired by the respondent, Roque Su, Jr., in 1957 as overseer of his coconut land in Asenerio, Dapitan City. Zamoras was charged with the task of having the land titled in Su's name, and of assigning portions to be worked by tenants, supervising the cleaning, planting, care and cultivation of the land, the harvesting of coconuts and selling of the copra. As compensation, Su paid Zamoras a salary of P2,400 per month plus one-third (1/3) of the proceeds of the sales of copra which normally occurred every two months. Another one-third of the proceeds went to the tenants and the other third to Su. This system of sharing was regularly observed up to September, 1981. As the coconut plantation yielded an average harvest of 21,000 nuts worth P18,900, based on the current market price of P3 per kilo, Zamoras' share amounted to P6,300 every two months.

In May, 1981, Su informed Zamoras in writing that he obtained a loan from the other respondent, Anita Su Hortellano, and that he authorized her to harvest the coconuts from his property "while the loan was outstanding" (p. 8, Rollo). Su sent Zamoras a letter dated May 29, 1981 informing him that he was being laid-off temporarily until Su could obtain a loan from the Development Bank of the Philippines with which to pay Anita. However, Zamoras was not allowed anymore to work as overseer of the plantation. Without his knowledge and consent, Hortellano harvested the coconuts without giving him his one-third share of the copra sales.

On August 8, 1983, Zamoras filed in the Regional Arbitration Branch of the Ministry of Labor and Employment in Zamboanga City a complaint against Roque Su, Jr. and Anita Su Hortellano for illegal termination and breach of contract with damages of not less than P75,600 as his uncollected share of the copra sales from September 15, 1981 to August 1983.

The officer-in-charge of the NLRC Sub-Regional Office in Dipolog City who investigated the case submitted the following findings which were adopted by the Labor Arbiter:

"The record would show that the respondent, Atty. Roque Su, Jr., is a resident of 976-A Gerardo Avenue Extension, Lahug, Cebu City and at the same time an employee in the government up to the present, while the land wherein the complainant herein was employed by the respondent as overseer of the land since 1957 up to and until his termination from the service sometime in September 1981 without just cause or causes duly authorized by law and after due process. That to prove that complainant was the overseer of the land owned by the respondent are the sworn declaration of the three witnesses, namely: Vicente Amor, Narcisa Arocha, and

Wilfredo Bernaldes who are presently working as tenants of the respondent. That the three witnesses testified that they knew the complainant personally who has been working as overseer of the land because it was thru him, the complainant; that they were allowed to work and/or occupy the land as tenants ever since up to the present. In fact, they further declared that they do not know personally the owner of the land and besides, they have not seen personally the said owner as their dealing were directly done thru the complainant. That they always received their share of the produce from the complainant for every two months up to 1981.

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"It is very clear in the evidence of record that complainant was an employee of the respondent. This fact is even admitted by the respondent in his answer by way of controverting the claim of the complainant." (pp. 44-45, Rollo.)

On July 30, 1986, the Labor Arbiter rendered a decision holding that Zamoras, as overseer of the respondent's plantation, was a regular employee whose services were necessary and desirable to the usual trade or business of his employer. The Labor Arbiter held that the dismissal of Zamoras was without just cause, hence, illegal. The private respondents were ordered to reinstate him to his former position as overseer of the plantation and to pay him backwages equivalent to P31,975.83 in the event that he opted not to be reinstated or that his reinstatement was not feasible.

The private respondents appealed to the National Labor Relations Commission, alleging that the Labor Arbiter erred:

1. in disregarding respondents' evidence (a financial report showing the yearly copra sales from 1973 to 1977), proving that complainant's one-third share of the copra sales amounted to P5,985.16 only and not P6,300 per harvest;
2. in not holding that the complainant can no longer be reinstated for he is already dead; and
3. in not finding that no employer-employee relationship existed between the parties.

On September 16, 1988, the NLRC rendered a decision reversing the Labor Arbiter. It held that "the right to control test used in determining the existence of an employer-employee relationship is unavailing in the instant case and that what exists between the parties is a landlord-tenant relationship" (p. 32, Rollo), because such functions as introducing permanent improvements on the land, assigning portions to tenants, supervising the cleaning, planting, care and cultivation of the plants, and deciding where and to whom to sell the copra are attributes of a landlord-tenant relationship, hence, jurisdiction over the case rests with the Court of Agrarian Relations.

Zamoras filed this petition, assailing the NLRC's decision.

There is merit in the petition.

The NLRC's conclusion that a landlord-tenant relationship existed between Su and Zamoras is not supported by the evidence which shows that Zamoras was hired by Su not as a tenant but as overseer of his coconut plantation. As overseer, Zamoras hired the tenants and assigned their respective portions which they cultivated under Zamoras' supervision. The tenants dealt directly with Zamoras and received their one-third share of the copra produce from him. The evidence also shows that Zamoras, aside from doing administrative work for Su, regularly managed the sale of copra processed by the tenants. There is no evidence that Zamoras cultivated any portion of Su's land personally or with the aid of his immediate farm household. In fact the respondents never raised the issue of tenancy in their answer.

Under Section 5(a) of R. A. No. 1199, a tenant is "a person who by himself, or with the aid available from within his immediate household, cultivates the land belonging to or possessed by another, with the latter's consent for purposes of production, sharing the produce with the landholder or for a price certain or ascertainable in produce or in money or both, under the leasehold tenancy system" (*Matienzo vs. Servidad*, 107 SCRA 276). Agricultural tenancy is defined as "the physical possession by a person of land devoted to agriculture, belonging to or legally possessed by another for the purpose of production through the labor of the former and of the members of his immediate farm household in consideration of which the former agrees to share the harvest with the latter or to pay a price certain or ascertainable, whether in produce or in money, or both" (Sec. 3, R. A. No. 1199; 50 O.G. 4655-56; *Miguel Carag vs. CA, et al.*, 151 SCRA 44).

The essential requisites of a tenancy relationship are: (1) the parties are the landholder and the tenant; (2) the subject is the agricultural holding; (3) there is consent between the parties; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and (6) there is a sharing of harvests between landlord and tenant (*Antonio Castro vs. CA and De la Cruz*, G.R. L-34613, January 26, 1989; *Tiongson vs. CA*, 130 SCRA 482; *Guerrero vs. CA*, 142 SCRA 138).

The element of personal cultivation of the land, or with the aid of his farm household, essential in establishing a landlord-tenant or a lessor-lessee relationship, is absent in the relationship between Su and Zamoras (*Co vs. IAC*, 162 SCRA 390; *Graza vs. CA*, 163 SCRA 39), for Zamoras did not cultivate any part of Su's plantation either by himself or with the help of his household.

On the other hand, the following circumstances are indicative of an employer-employee relationship between them:

1. Zamoras was selected and hired by Su as overseer of the coconut plantation.
2. His duties were specified by Su.
3. Su controlled and supervised the performance of his duties. He determined to whom Zamoras should sell the copra produced from the plantation.
4. Su paid Zamoras a salary of P2,400 per month plus one-third of the copra sales every two months as compensation for managing the plantation.

Since Zamoras was an employee, not a tenant of Su, it is the NLRC, not the Court of Agrarian Relations, that has jurisdiction to try and decide Zamoras' complaint for illegal dismissal (Art. 217, Labor Code; *Manila Mandarin Employees Union vs. NLRC*, 154 SCRA 368; *Jacqueline Industries Dunhill Bags Industries, et al. vs. NLRC, et al.*, 69 SCRA 242).

WHEREFORE, the assailed decision is reversed and a new one is entered, declaring Zamoras to be an employee of respondent Roque Su, Jr. and that his dismissal was Illegal and without lawful cause. He is entitled to reinstatement with backwages, but because he is dead and may no longer be reinstated, the private respondents are ordered to pay to his heirs the backwages due him, as well as his share of the copra sales from the plantation for a period of three (3) years from his illegal dismissal in September, 1981, plus separation pay in lieu of reinstatement. Costs against the private respondents.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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