

FELICIDAD A. DE PALAD, MATILDE, FRUCTUOSO, FRANCISCO, AND LEONILA, ALL SURNAMED PALAD, PLAINTIFFS AND APPELLEES, VS. K. SAITO AND JOSE MADRAZO, DEFENDANTS AND APPELLANTS.

G.R. Nos. 32482, 32483. March 14, 1931

Ponente: MALCOLM, J.

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MALCOLM, J.:

An important question having to do with the application and interpretation of the law pertaining to conveyances and encumbrances made by persons belonging to the so-called non-Christian tribes, must be considered and decided in this case. The correct resolution of the question makes necessary a narration of the life history of the Bagobo Agol, who in later life went by the name of Santiago Palad.

In 1886, a son was born to the Bagobos Palad and Ontas. He was given the name of Agol. Eight years later the boy was baptized with the name of Santiago Palad. In 1904, Santiago Palad was one of the Bagobos sent from Davao to the St. Louis Exposition in the United States. At that time, he had his ears pierced. While in the United States, Palad was taught by an American to write his name, but otherwise has been unable to read and write. In due time, he married another Bagobo named Oyog, according to Bagobo rites. To that marriage four children were born, Matilde, Fructuoso, Francisco, and Leonila, or to give them their Bagobo names, Inding, Olo, Oska, and Oning. After the death of his wife, Palad was married a second time to Felicidad Ambat in accordance with the ceremonies of the Roman Catholic Church.

After Palad's return from the United States, he assumed the apparel worn by Christian Filipinos. Although lacking instruction, he became a man of considerable importance in the community. In addition to the Bagobo dialect, he spoke and understood the Cebuano dialect and also some Tagalog. In an election, he made speeches for one of the candidates. In business also, Palad was unusually successful. By purchases from other Bagobos and by occupation of unclaimed land, he formed an hacienda containing over 350 hectares. Palad in executing documents was sometimes mentioned as a Bagobo and sometimes not. Palad's manner of living was such that even his attorney was apparently unaware that he was a Bagobo. The same was true of the Japanese K. Saito and the Filipino Jose Madrazo.

In the period between January, 1923, and September, 1924, Palad executed three documents which are of particular interest. The first document in point of time purported to be a contract of antichresis. Palad, in consideration of the amount of P20,925.09, ceded by way of antichresis his abaca plantation, with the exception of a small part thereof, to K. Saito. The P20,925.09 was made up of the accounts of Palad with the Ohta Development Company, the Mintal Plantation Company, Vicente Uy Tan Chang, and K. Saito. The document was verified before a notary public and J. A. Sarenas, the attorney for Palad, signed as one of the instrumental witnesses. Upon the execution of the document, Palad delivered the plantation to Saito, who proceeded to cultivate and develop it. By another document, this time of sale, dated January 26, 1923, Palad transferred to Saito the buildings on the land, five hemp stripping machines, and three carabaos for the sum of P5,333.46. By the

terms of the agreement this sum was to be discounted from the P20,925.09, the consideration of the contract of antichresis. On September 27, 1924, Palad executed a third document, whereby he transferred the abaca plantation to Jose Madrazo for the sum of P3,500. Saito, in turn, consented to the sale, since it was subject to the encumbrance in his favor, by virtue of the contract of antichresis. This document was acknowledged by the parties before the clerk of court of Davao. Palad received P100 in cash, and a promissory note for the remaining P3,400 was signed by K. Ohsihiro. Thereafter, Madrazo attempted to take possession of the plantation. None of these documents, it should be added, were sent to the Director of the Bureau of Non-Christian Tribes for approval.

In the year 1925, two actions were begun which concerned the three documents here described. One was initiated by Jose Madrazo against Joaquin Ferraz, Santiago Palad, and Felicidad de Palad, and had to do with the judgment rendered in case No. 32483.[1] The second action, which is the one before us, was instituted by Santiago Palad against K. Saito and Jose Madrazo as the principal defendants.

Later, on the death of Santiago Palad, his widow and the children by his first marriage succeeded him. The plaintiffs in this action sought to obtain the possession of the plantation, with damages. For this purpose two grounds for the annulment of the three documents known as Exhibits A, B, and C were alleged: First, that Santiago Palad was induced to execute the documents through fraud, deceit, and false representation on the part of the defendants, and second, that Santiago Palad was a Bagobo and, therefore, the approval of the Director of the Bureau of Non-Christian Tribes should have been obtained, and this approval was lacking. The case went to trial on these issues, and, in effect, the trial judge found with the plaintiffs on both grounds. The judgment rendered was conceived in the following language:

"Wherefore, let judgment be entered declaring that lots Nos. 253 and 255 described in the plan of the cadastral proceeding No. 6, Record No. 540, of the municipal district of Guianga, Province of Davao, the boundaries of which are given in the complaint, belong in equal undivided shares to the plaintiffs Matilde, Fructuoso, Francisco, and Leonila, surnamed Palad, the children of the late Santiago Palad by his first wife, Oyog (a Bagobo), now deceased; the preliminary injunction issued in this case is hereby declared absolute and final; and the defendants K. Saito and Jose Madrazo are hereby sentenced to pay to the plaintiffs jointly and severally the sum of P33,267.66 damages, and to pay the costs.

"Defendant Rafael Castillo is absolved from the complaint and the costs of the trial."

With relation to the consolidated cases, the appellants have assigned twenty-six errors. It would not be profitable to discuss separately all of this varied assortment of questions. As before intimated, the issues were two in number, and the appeal can best be considered by continuing to visualize those issues.

To dispose of the subject of fraud, only a few words are needed. There is more than a suspicion that by various means, the financial necessities of Santiago Palad were taken advantage of to his detriment for the benefit of others. The real party behind the scenes appears to have been the Japanese Saito. We would not go so far as did the trial judge when he found that a plantation worth P200,000 was secured for a very inadequate consideration, but we do conclude that Santiago Palad was overreached when he was led to execute this series of documents. We doubt very much if the Director of the Bureau of Non-Christian Tribes would ever have given his approval to these contracts.

While not inclined to disregard the findings of the trial judge on questions of fact involving allegations and denials of fraud, we prefer to consider in conjunction therewith the admitted lack of confirmation of the conveyances by the Director of the Bureau of Non-Christian Tribes.

Act No. 2874, section 118, provides: "Conveyances and encumbrances made by persons belonging to the so-called 'non-Christian tribes/ when proper, shall not be valid unless duly approved by the Director of the Bureau

of Non-Christian Tribes." Two questions suggest themselves. The first has to do with the scope of section 118 of Act No. 2874, and the second has to do with the interpretation of the phrase "non-Christian tribes." In relation with the latter question, we have the definition of the term "non-Christian" as given in the Organic Law for the Department of Mindanao and Sulu, Administrative Code, section 2576, paragraph 2, where it is said that it "shall include Mohammedans and pagans."

Act No. 2874 is the Public Land Act. It is provided therein that the provisions of the Act shall apply to the lands of the public domain. It has been held that it was the purpose of the Legislature to limit the application of the Public Land Act to lands of the public domain, and that lands held in freehold or fee title, or private ownership, constitute no part of the public domain and cannot possibly come within the purview of said Act. (*Central Capiz vs. Ramirez* [1920], 40 Phil., 883.) Undoubtedly the intention of the Legislature in inserting section 118 in the Public Land Act was to prevent the easy transfers of public lands acquired by non-Christians to other persons who may simply utilize the non-Christians in acquiring lands from the public domain. It would, therefore, be reasonable to conclude that section 118 of the Public Land Act is limited in scope to conveyances made by persons belonging to the so-called non-Christian tribes, of lands which they have acquired from the public domain in accordance with the provisions of the Public Land Act.

Recurring to the facts, we note that the hacienda of Santiago Palad was formed by Palad's purchases of lands from various Bagobos and by his cultivation of about 70 hectares. Section 118 of the Public Land Act would naturally apply to the 70 hectares carved out of the public domain. Further, it does not appear of record that Palad's title, if any, to any part of the land has been confirmed by "judicial legalization," within the meaning of the Public Land Act.

Passing now to the second question, it is to be observed that the words "non-Christian" as descriptive adjectives, applied to "inhabitants" or "tribes" have long been recognized as awkward and unsatisfactory expressions. An authoritative judicial construction of the term "non-Christian" first became necessary in the case of *Rubi vs. Provincial Board of Mindoro* ([1919], 39 Phil., 660). In that case the validity of section 2145 of the Administrative Code, reading: "With the prior approval of the Department Head, the provincial governor of any province in which non-Christian inhabitants are found is authorized, when such a course is deemed necessary in the interest of law and order, to direct such inhabitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the provincial board,"—was challenged. By a vote of five to four, the Supreme Court sustained the constitutionality of this section of the Administrative Code. Among other things, it was held that the term "non-Christian" should not be given a literal meaning or a religious signification, but that it was intended to relate to degree of civilization. The term "non-Christian" it was said, refers not to religious belief, but in a way to geographical area, and more directly to natives of the Philippine Islands of a low grade of civilization.

The Director of the Bureau of Non-Christian Tribes, in a circular dated January 22, 1925, provided instructions for conveyances of and encumbrances on land by non-Christians, and in circulars of February 1, 1924, and November 28, 1927, interpreted administratively the meaning of the term "non-Christian." The Director, in part, stated: "The term 'non-Christian' should be applied to natives who, in common parlance, do not come under the classification 'Christian Filipino'. * * * For instance, though Manobos may have been baptized, they still remain non-Christians for the purposes of this circular." In the enforcement of section 118 of the Public Land Act, the Director of the Bureau of Non-Christian Tribes holds, according to our understanding of the matter, that any document executed by a person who by birth belongs to any of the tribal groups classified as non-Christians shall be submitted to the Bureau for action.

Whichever way we turn in attempting to enforce the law, we encounter difficulties. It would appear sound, at first

blush, to concede, since the term "non-Christian" applies to individuals of a low grade of civilization, that any member of a group originally classified as non-Christian could remove himself from that group by maintaining a mode of life different from that of the group, and which is on an entirely superior plane of civilization. To illustrate by the facts before us, we find a Bagobo baptized with a Christian name, commonly known by that name, a man of considerable standing in the community, and of sufficient business acumen to acquire properties of respectable values. To require a man of such native intelligence to secure the approval of the Director of the Bureau of Non-Christian Tribes before he makes conveyances, would seem to be an unnecessary precaution. Or to take a more extreme example of a Moro highly educated and cultured, in truth, far in advance in education and culture of a multitude of Christian Filipinos in other regions of the Islands,—Would it be just to force this Moro to lay his documents before the Director of the Bureau of Non-Christian Tribes for the approval of the latter? The anomaly could exist of a non-Christian becoming a Christian, but still for the purposes of the law being considered a non-Christian.

On the other hand, the prohibition of sales and conveyances for definite classes of people, as for instance, of the Indians in the United States, without the prior approval of some official, as by the Secretary of the Interior in the case of the Indians, is not uncommon and is not an undue interference with personal liberty. It is the best interests of the people affected and not possible inconvenience to individuals which must govern. Actual cases have been decided by this court which have demonstrated the wisdom of provisions requiring contracts with illiterate and ignorant people to be approved by disinterested officials. To illustrate again by the facts before us, the Bagobo was of a class of people easily duped by designing individuals, and it was to protect the patrimony of such persons that the law was enacted. The law can be made a valuable means to keep land from passing by devious means into the hands of those who have no legal right to it. As was done in *Rubi vs. Provincial Board of Mindoro*, supra, when to advance the public welfare, the law was found to be a legitimate exertion of the police power, so in the case at bar should the courts function to work in harmony with legislative and executive officials for the advancement of the good of the greatest number. On the whole, we think that the terms of the law should be given direct application, and that when the law speaks of persons belonging to the so-called non-Christian tribes, it means the persons who by birth are non-Christians, as customarily thus classified.

Appellants rely on the principle of estoppel. As evidencing the principle, they suggest similarity between the facts before us and facts whereby infants near the adult age who pretend to have reached their majority are not permitted to excuse themselves from compliance with the obligations assumed by them, or to seek annulment. We do not think that the analogy holds good. By the paramount law of the land, the defendants were prohibited from taking title, and cannot, therefore, indirectly be permitted to build up one by estoppel.

In President McKinley's Instructions to the Commission of April 7, 1900, reference was made to the policy adopted by the United States for the tribes of North American Indians, and it was suggested that in dealing with the uncivilized tribes of the Islands, the Commission should follow the same course. Indeed, the analogy between the regulations and restrictions provided for the Indians in the United States and the regulations and restrictions provided for the non-Christians in the Philippines is close. In the case of the Indians, it has always been recognized that the relation of the Indian tribes living within the borders of the United States to the people of the United States, is an anomalous one and of a complex character. No all-inclusive definition of the word "Indians" has been attempted either by the courts or by Congress. It has, however, been held that the mere fact that an Indian has abandoned his nomadic life or tribal relations and adopted the manners and habits of civilized people, does not of itself make him a citizen. (*Elk vs. Wilkins* [1884], 112 U. S., 94.) It has also been held as to an allottee Indian, who conveyed by warranty deed before patent and during the period of suspension of alienation without the consent of the Secretary of the Interior, that he acted contrary to the policy of the law and was, therefore, not estopped to deny the validity of the deed after patent, and that the grantee acquired no rights. (*Starr vs. Long Jim*

[1913], 227 U. S., 613.)

Reference has been made to the possible applicability to the facts of sections 145 and 146 of the Administrative Code of the Department of Mindanao and Sulu. We do not think it incumbent upon us to pass upon the question of whether or not these sections of the Administrative Code of Mindanao and Sulu are in force, first, because not put in issue in the lower court, and, second, because a resolution of the question is unnecessary for the disposition of the case. There can simply be noted a decision of the Second Division of this court, entitled *Tomas Mundiz vs. Saudo (Mandaya)*, No. 20722,[1] in which some attention was given to the subject.

It will be recalled that the trial judge allowed the plaintiffs damages in this case in the amount of P33,267.66, and in the companion case damages in the amount of P8,300. These sums impress us as exorbitant. The defendants have improved the plantation to the advantage of the plaintiffs. The defendants have also assumed debts of the plaintiffs amounting to somewhere near P20,000. It would not be far from justice to permit the benefits derived from the defendants to balance the damages caused by the defendants, permitting, of course, Jose Madrazo to withdraw the P3,400 which has been deposited in court.

After a decision had been handed down in this case, the original attorneys for the appellants submitted a motion for reconsideration and additional counsel for the appellants submitted another motion for reconsideration which presented for the first time questions not theretofore pressed upon the court for ruling. Counsel for the appellees was given an opportunity to answer these motions, as was the Attorney-General who, at the request of the court, intervened as *amicus curi*. The motions and answers have thrown new light on the case and have resulted in a modification of certain expressions of opinion by the court. However, we are not persuaded that the decision suffers fundamentally from any serious defects. Nor do we consider that it is imperative either to permit the Director of Lands to file a complaint in intervention or to await the conclusion of the trial of the cadastral case of the/municipal district of Guianga, Province of Davao. We hold that fraud was present in the securing of the execution of the challenged documents, and that such fraud, in conjunction with the lack of approval of the conveyances, renders the documents voidable. We hold that section 118 of the Public Land Act refers to conveyances and encumbrances made by persons belonging to the so-called non-Christian tribes, of lands which they have acquired from the public domain in accordance with the provisions of the Public Land Act. We hold that the Bagobo Agol, or Santiago Palad, was a person belonging to a non-Christian tribe within the meaning of section 118 of the Public Land Act. We hold that Santiago Palad was not estopped to deny the validity of the contracts. We hold finally that the damages due and claimed by either party offset each other. It follows that the judgment of the trial court will be affirmed, with the elimination therefrom of so much as condemns the defendants, jointly and severally, to pay the plaintiffs the amount of P33,267.66. The motions of reconsideration will be denied. So ordered; without express pronouncement as to costs in this instance.

Avanceña, C. J., Street, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

[1] Promulgated December 19, 1930, not reported.

[1] Promulgated September 27, 1923, not reported.

DISSENTING

JOHNSON, J.:

There is absolutely no analogy between the relation of the non-Christian people of the Philippine Islands to the Philippine Government as compared with the relation of the American Indians to the American Government. The Philippine Government is without authority to impose upon any of its inhabitants a condition that he must secure

the consent or permission of the Director of the Bureau of Non-Christian Tribes or any other person to sell or dispose of his private property acquired from the public domain or otherwise. (Carino vs. Insular Government, 7 Phil., 132; Carino vs. Insular Government, 212 U. S., 449; 53 Law. ed., 594; 41 Phil., 935.)

A citizen of the Philippine Islands, whether non-Christian or Christian, has a perfect right to dispose of his private property freely and without the necessity of securing the consent of any person or of the Government. To hold otherwise, would be tantamount to holding that private property is held by the citizens of the Philippine Islands with the restriction upon their ownership, that they cannot dispose of the same without first securing the consent of the Director of the Bureau of Non-Christian Tribes or some other person. Hundreds and thousands of the non-Christian people of the Philippine Islands have, through their industry and intelligence, become the absolute owners of private property. Any restraint upon their right to dispose of such property is illegal and contrary to the provisions of the Organic Act of the Philippine Islands. Any restraint or obstacle imposed upon the private owner of property to freely dispose of the same is illegal and unconstitutional. A restriction upon the right of one to dispose freely of his private property is, to a degree, a deprivation of the right to freely enjoy his own property.

In the United States the Government distributed lands freely to the American Indians and the only condition which was imposed upon that gift was the fact that they were not permitted to dispose of the same without the consent of the Secretary of the Interior. The Government having given to the Indian his land without cost, it had a perfect right to impose such condition upon the disposition of the same as the Government might deem wise. In the Philippine Islands, however, the non-Christian people have never been given land by the Government. They are therefore under no obligation to the Government with reference to the lands they acquire.

Act No. 2874 refers to public lands only and has no application whatever to private property. (Central Capiz vs. Ramirez, 40 Phil., 883.) The moment that it appears that the land involved in a litigation is private property, said Act can have no application thereto. Section 118 of said Act must also refer to public lands only. In the present case the record clearly shows that the land in question is private property and therefore Act No. 2874 or any of its provisions can have no force or effect.

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