471 Phil. 65

FIRST DIVISION

[G.R. No. 118292, April 14, 2004]

HENRY L. MON, PETITIONER, VS. COURT OF APPEALS, HON. LEOPOLDO SERRANO, JR., DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD AND SPOUSES LARRY AND JOVITA VELASCO, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

This is a petition for review assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 31763, which affirmed *in toto* the decision of the Department of Agrarian Reform Adjudication Board Central Office[2] ("DARAB") in DARAB Case No. 0274. In its decision, the DARAB reversed the ruling of the DARAB Regional Adjudication Office[3] ("Regional Office") in favor of petitioner Henry L. Mon ("petitioner") in DARAB Case No. LU-043-89.

The Facts

The petition stems from an affidavit-complaint for ejectment filed on 4 December 1989 by petitioner against private respondents Jovita and Larry Velasco ("Spouses Velasco") with the Regional Office in San Fernando, La Union. In his complaint, petitioner alleged that he is the owner-administrator of a parcel of land ("land") planted to rice and tobacco in Sitio Torite, Barangay San Cristobal, Bangar, La Union. Petitioner further alleged that the Spouses Velasco, who cultivate the land, stole one sack of palay from the land's harvest and subleased the land to a certain Boy or Ansong Maala during the last tobacco season.

In their Answer with Counterclaim, the Spouses Velasco denied petitioner's allegations as fabricated to achieve his long desired objective to possess and cultivate the land. As affirmative and special defenses, the Spouses Velasco countered that they do not have the slightest intention to cheat petitioner and that the alleged hidden palay represented their lawful share of the harvest for the agricultural year 1988-1989. As counterclaim, the Spouses Velasco pointed out that since the beginning of their tenancy, petitioner had imposed on them a 50-50 sharing agreement, with the Spouses Velasco shouldering all expenses of production. Hence, the Spouses Velasco sought a reliquidation of the previous palay harvests to determine their just share.

After several hearings, the Regional Office required both parties to submit their respective position papers and exhibits. The Spouses Velasco submitted their position paper on 9 May 1990, while petitioner submitted his position paper on 29 June 1990. The parties submitted supporting exhibits on later dates.

On 20 February 1991, the Regional Office issued an Order disposing as follows:

> WHEREFORE, judgment is issued in favor of the complainant and against the respondents:
>
> 1. ORDERING the respondents to vacate and turn-over possession and cultivation to the complainant;
>
> 2. No pronouncement as to cost
>
> SO ORDERED.[4]

In arriving at its decision, the Regional Office found that Larry Velasco subleased the land to a certain Francisco Maala as shown by the affidavit of one Camilo Moskito. The Regional Office ruled that Section 27(2) of Republic Act No. 3844 ("RA 3844") prohibits subleasing and violation of this provision constitutes a ground for ejectment. On the other charge that the Spouses Velasco stole a sack of palay, the Regional Office held that there was no convincing evidence to support this accusation.

Aggrieved, the Spouses Velasco appealed under Section 2, Rule XIII, of the DARAB Revised Rules of Procedure. On 12 July 1993, the DARAB rendered a Decision reversing the Order of the Regional Office as follows:

> WHEREFORE, premises considered, the appealed Order dated February 20, 1991, of the Regional Adjudication Officer at (sic) San Fernando, La Union, is hereby SET ASIDE and the instant case is hereby remanded to the DAR Provincial Adjudicator, DAR Provincial Adjudication Office, San Fernando, La Union, for:
>
> 1. Determination of the lease rentals to be paid by the defendants-tenants, spouses Larry and Jovita Velasco, to the plaintiff-landowner, Henry Mon; and
>
> 2. Reliquidation of the crop harvests from 1986 up to the time the lease rentals shall have been determined by the Provincial Adjudicator as above ordered; and ordering the plaintiff-landowner Henry Mon to return to the defendants-tenants spouses Larry and Jovita Velasco, the quantity of palay (or its equivalent value in cash) which may have been collected by the said plaintiff-landowner over and above the legal lease rentals as determined by the Provincial Adjudicator.
>
> SO ORDERED.[5]

Unsatisfied with the DARAB Decision, petitioner filed an appeal with the Court of Appeals. On 9 December 1994, the Court of Appeals affirmed *in toto* the DARAB's Decision thus:

> **WHEREFORE,** premises considered, this Court **AFFIRMS IN TOTO** the appealed decision (dated July 12, 1993) of the Department of Agrarian Reform Adjudication Board (Central Office) in DARAB Case No. 0274. No pronouncement as to costs.

SO ORDERED.[6]

Hence, the instant petition.

The DARAB and the Court of Appeals' Rulings

In reversing the Regional Office's Order, the DARAB noted that both the Hearing Officer and the Regional Adjudicator overlooked that the agrarian laws had long abolished and declared illegal share tenancy. The Spouses Velasco had raised in their pleadings before the Regional Adjudication Office the validity of the share tenancy relationship that petitioner imposed on them. The DARAB held that share tenancy can no longer exist between landowner and tenant on rice lands. What the law allows is only a leasehold relationship, under which the tenant shall pay only a fixed rental to the landowner. The DARAB further held that petitioner has made much ado over the supposed "theft" of one sack of palay by Jovita Velasco. However, the DARAB pointed out that petitioner's insistence on the outlawed 50-50 division of the net harvest deprives the tenants of an even larger amount corresponding to the portion of the harvest legally due to them under leasehold tenancy. The DARAB held that the parties must comply with the requirements of the law governing the leasehold system particularly on the payment of a fixed rental by the tenant-lessee to the landowner-lessor. However, the records do not contain sufficient data covering the gross harvests and the deductible expenses, which could serve as legal basis for the DARAB to compute the fixed rental the Spouses Velasco should pay petitioner. For this reason, the DARAB remanded the case to the DAR Provincial Adjudicator assigned in San Fernando, La Union. The DARAB ordered the Provincial Adjudicator to reliquidate the crop harvests, determine the gross harvests and compute the lease rental after due notice to the parties and reception of evidence on the matter.

In affirming *in toto* the DARAB's Decision, the Court of Appeals simply held that there could be no change of theory when a case is already on appeal. The Court of Appeals referred to petitioner's claim that the relationship involved in the case is not that of landlord-tenant under agrarian laws but that of lessor-lessee under the lease provisions of the Civil Code.

The Issues

In his memorandum, petitioner raises the following issues:

I

> THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN ADOPTING THE POSTURE OF PUBLIC RESPONDENTS THAT PETITIONER CHANGED THE THEORY OF THE CASE ON THE CAUSE OF ACTION AT THIS STAGE OF THE PROCEEDINGS;

II

> THE COURT OF APPEALS ERRED IN AFFIRMING *IN TOTO* THE DECISION OF THE DARAB CENTRAL OFFICE, DILIMAN, QUEZON CITY AND IN

DISMISSING THE FINDINGS OF FACT AND THE ORDER OF THE DARAB REGIONAL ADJUDICATION OFFICE OF SAN FERNANDO, LA UNION DATED FEBRUARY 20, 1991, WHICH IS SUPPORTED BY SUBSTANTIAL EVIDENCE.[7]

The Court's Ruling

The petition is bereft of merit.

Changing Theory of the Case

Petitioner argues that from the beginning, the arrangement between him and the Spouses Velasco - that of sharecropping as a means to pay the lease of the land - did not result in an agricultural leasehold contract. Petitioner contends that the Spouses Velasco are civil law lessees, which did not give them the right to be tenants under the agricultural leasehold system. Petitioner insists that since the Regional Office found that the Spouses Velasco sublet the land in violation of Section 27(2) of RA 3844, he has the right under the same RA 3844 to evict the Spouses Velasco from his land.

Petitioner's stance before the Court of Appeals is that the lease provisions in the Civil Code apply to the present case. On the contrary, we find that this is not an ejectment case between a civil law lessor and lessee but a dispute between an agricultural landlord and tenant. If this were an ejectment case between a civil law lessor and lessee, petitioner should have brought his action to the appropriate trial court instead of the DARAB Regional Adjudication Office. Petitioner should also not have invoked subletting as a prohibited act under RA 3844. Obviously, petitioner is clutching at straws in changing his theory of the case on appeal.

The settled rule in this jurisdiction is that a party cannot change his theory of the case or his cause of action on appeal. We have previously held that "courts of justice have no jurisdiction or power to decide a question not in issue."[8] A judgment that goes outside the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extra-judicial and invalid.[9] The rule rests on the fundamental tenets of fair play. In the present case, the Court must stick to the issue litigated in the DARAB and in the Court of Appeals, which is whether petitioner has the right to eject the Spouses Velasco from the land under RA 3844.

Furthermore, petitioner's insistence on his new theory is fatal to his cause. This is because in a lease contract under the Civil Code,[10] the rule is that the lessee can sublease the leased property, unless there is an express prohibition against subletting in the contract itself. To bar the lessee from subletting, the contract of lease must expressly stipulate the prohibition on subletting.[11] Petitioner did not allege nor present any contract that prohibited subletting.

Disregarding Issue of Ejectment

Petitioner contends that the Spouses Velasco tried to evade the issue of ejectment

by raising the issue of share tenancy and praying for reliquidation of the sharing agreement between them. Petitioner is puzzled that on appeal, the DARAB altogether ignored the issue of ejectment and ruled solely on the issue of share tenancy. Petitioner further argues that the issue of share tenancy does not preclude in any way petitioner from exercising his right to eject his tenants for valid grounds. Petitioner insists that the Spouses Velasco committed theft and subleased the land they were tilling in violation of RA 3844. With these illegal acts of the Spouses Velasco, petitioner claims he could not maintain the relationship knowing that there is always a possibility the Spouses Velasco might commit these illegal acts again. Petitioner asserts that the DARAB justified the "theft" by stating that petitioner's imposition of share tenancy may have deprived the Spouses Velasco of an even larger amount corresponding to the harvest legally due them. Petitioner counters that landowners also deserve protection from the commission of illegal acts by their tenants.

Section 3 of Republic Act No. 1199 or The Agricultural Tenancy Act of the Philippines ("RA 1199") defines "agricultural tenancy" 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, either in produce or in money, or in both." Under RA 1199, there are two systems of agricultural tenancy established: (1) the share tenancy and (2) the leasehold tenancy.[12]

"Share tenancy" exists whenever "two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant in proportion to their respective contributions."[13] On the other hand, "leasehold tenancy" exists "when a person who, either personally or with the aid of labor available from members of his immediate farm household, undertakes to cultivate a piece of agricultural land susceptible of cultivation by a single person together with members of his immediate farm household, belonging to or legally possessed by, another in consideration of a price certain or ascertainable to be paid by the person cultivating the land either in percentage of the production or in a fixed amount in money, or in both."[14]

On 8 August 1963, RA 3844 or the Agricultural Land Reform Code abolished and outlawed share tenancy and put in its stead the agricultural leasehold system. On 10 September 1971, Republic Act No. 6389 ("RA 6389") amending RA 3844 declared share tenancy relationships as contrary to public policy. RA 6389 did not entirely repeal RA 1199 and RA 3844 even if RA 6389 substantially modified them. [15] Thus, RA 3844 as amended by RA 6389 ("RA 3844 as amended") is the governing statute in this case. Petitioner filed his complaint on 8 December 1989 or long after the approval of RA 6389 but before Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 ("RA 6657"). Notably, RA 6657 only expressly repealed Section 35 of RA 3844 as amended.

Section 4 of RA 3844 as amended provides: