

ploying hundreds of laborers he had the right to employ and discharge laborers or at least the authority to recommend their employment and discharge. Naturally, with such authority, and the laborers knowing it, his urging them to join a certain labor union under threat of dismissal and his requests for loans even when not repaid, could not well be ignored or rejected by them. Of course, as the order appealed from states, the Lumber company cannot be compelled to defend Catalino de los Santos; but that the company should be vitally interested in the investigation against Catalino, there is no doubt. The company is a party to the case. Whether it wants to take part in the investigation and hearing, that is its affair, but it will naturally be bound by any finding and decision of the CIR based on said investigation and hearing. With this understanding and with the consequent modification of the order appealed from, the same is hereby affirmed. No costs.

Paras, Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo, and Labrador, J.J., concur.

X

Larry J. Johnson, Plaintiff-Appellee, vs. Maj. Gen. Howard M. Turner, et al., Defendants-Appellants, G. R. No. L-6118, April 26, 1954, Montemayor, J.

ACTION AGAINST THE GOVERNMENT OF THE UNITED STATES; JURISDICTION. — Philippine courts have no jurisdiction to try cases against the Government of the United States unless said government has given its consent to the filing of such cases.

Sixto F. Santiago for appellants.
Quintin F. Pidal for appellee.

DECISION

MONTEMAYOR, J.:

This is an appeal by the defendants from a decision of the Court of First Instance of Manila ordering them or their successors or representatives to return to plaintiff or his authorized representative the confiscated Military Payment Certificates (SCRIP MONEY) in the reconverted or new series, amounting to \$3,713.00. For purposes of the present appeal the pertinent facts not disputed are as follows.

Plaintiff-Larry J. Johnson, an American citizen, was formerly employed by the U. S. Army at Okinawa up to August 5, 1950, when he resigned, supposedly in violation of his employment contract. In the same month he returned to the Philippines as an American civilian, bringing with him Military Payment Certificates (SCRIP MONEY) in the amount of \$3,713.00 which sum he claims to have earned while at Okinawa. About five months later, that is, on January 15, 1951, he went to the U.S. Military Port of Manila and while there tried to convert said scrip money into U.S. dollars, allegedly for the purpose of sending it to the United States. Defendant Capt. Wilford H. Hudson Jr., Provost Marshal of the Military Port of Manila in the performance of his military duties and claiming that said act of Johnson in keeping scrip money and in trying to convert it into dollars was a violation of military circulars, rules and regulations, confiscated said scrip money, gave a receipt therefor and later delivered the scrip money to the military authorities. Johnson made a formal claim for the return of his scrip money and upon failure of the military authorities to favorably act upon his claim, on July 3, 1951, he commenced the present action in the Court of First Instance of Manila against Major General Howard M. Turner as Commanding General, Philippine Command (Air Force) and 13th Air Force with office at Clark Field; Major Torvald B. Thompson as Finance Officer, Provost Marshal, 13th Air Force with office at Clark Field; and Captain Wilford H. Hudson Jr. as Provost Marshal attached to the Manila Military Port Area, to recover said amount of \$3,713.00 "at the reconverted or new series and to the same

full worth and value." It may be stated in this connection that shortly after the confiscation of the scrip money in Manila on January 15, 1951, an order was issued by the U.S. military authorities for the conversion of all scrip money then outstanding into a new series, thereby rendering valueless and of no use the old series of which the scrip confiscated from Johnson formed a part, and that was the reason why the prayer contained in Johnson's complaint is for the return not of the very same scrip money (old series) confiscated, but the sum "at the reconverted or new series and to the same full worth and value."

The defendants through counsel moved for the dismissal of the complaint on the ground of lack of jurisdiction over their persons and over the subject-matter for the reason that they were being sued as defendants in their respective official capacities as officers of the U.S. Air Force and the action was based on their official actuations, and that the U.S. Government had not given its consent to be sued. The motion for dismissal was denied and the case was heard, after which, the trial court found and held that it had jurisdiction because the claim was for the return of plaintiff's scrip money and not for the recovery of a sum of money as damages arising from any civil liability of the defendants; and that the confiscatory act of the defendants is contrary to the provisions of the Philippine constitution prohibiting deprivation of one's property without due process of law.

Pursuant to rules and regulations as well as the practice in U.S. military establishments in Okinawa and the Philippines, military payment certificates popularly known as "scrip money" is issued to military and authorized personnel for use exclusively within said military establishments and as sole medium of exchange in lieu of U.S. dollars, the issuance of said scrip money being restricted to those authorized to purchase tax free merchandise at the tax-free agencies of the U.S. Government within its military installations. It is said to be intended as a control measure and to assure that the economy of the Republic of the Philippines will be duly protected.

The confiscation of Johnson's scrip money is allegedly based on Circular No. 19, Part I, par. 7(a) of the GHQ, Far East Command, APO 500, dated March 15, 1949, the pertinent provisions of which read thus:

"7. Disposition of Military Payment Certificates.

A. Personnel authorized to hold and use military payment certificates prior to departing on leave, temporary duty, or permanent change of status from a military payment certificate areas to areas where military payment certificates are not in authorized use will dispose of their military payment certificates holding prior to departure. Similarly authorized personnel who lose their authorized status are required at the time of such loss to dispose of their military payment or certificate holdings."

It is the claim of the defendants that Johnson should have disposed of or converted his scrip money into dollars upon his resignation as employee of the U.S. Government when he lost his authorized status, and prior to his departure from Okinawa, and that his possession of said scrip money in the Philippines, particularly in the Manila Military Port Area was illegal, hence the confiscation.

Believing that the main and most important question involved in the appeal is that of jurisdiction, we shall confine our considerations to the same. In the case of *Syquia v. Lopez, et al.*, 47 O.G. 665, where an action was brought against U.S. Army officers not only for the recovery of possession of certain apartments occupied by military personnel under a contract of lease, but also to collect back rents and rents at increased rates including damages, we held:

"We shall concede as correctly did the Court of First Instance, that following the doctrine laid down in the cases of U.S. vs. Lee and U.S. vs. Tindal, supra, a private citizen claiming title and right of possession of a certain property, may, to recover possession of said property, sue as individuals, officers, and agents of the Government who are said to be illegally withholding the same from him, they in doing so, said officers and agents claim that they are acting for the Government and the court may entertain such a suit although the government itself it not bound or concluded by the decision. The philosophy of this ruling is that unless the courts are permitted to take cognizance and to assume jurisdiction over such a case, a private citizen would be helpless and without redress and protection of his rights which may have been invaded by the officers of the Government professing to act in its name. In such a case the officials or agents asserting rightful possession must prove and justify their claims before the courts, where it is made to appear in the suit against them that the title and right of possession is in the private citizen. However, and this is important where the judgment in such a case would result not only in the recovery of possession of the property in favor of said citizen but also a charge against or financial liability to the Government, then the suit should be regarded as one against the government itself, and consequently, it cannot prosper or be validly entertained by the courts except with the consent of said Government."

In the present case, if the action were merely for the return of the scrip money confiscated from plaintiff Johnson, it might yet be said that the action was for the recovery of property illegally withheld by officers and agents of a government professing to have acted as its agents. However, as already stated, the present action is for the recovery not of the very scrip money confiscated but for the amount of said scrip in the new series of military payment certificates, and this was the relief granted by the lower court. Furthermore, if the relief is to be of any benefit to plaintiff and since he has already lost his authorized status to possess and use said scrip money, he will have to be given the equivalent of said scrip money in dollars. It is therefore, evident that the claim and the judgment will be a charge against and a financial liability to the U.S. Government because the defendants had undoubtedly acted in their official capacities as agents of said Government, to say nothing of the fact that said defendants had long left the Philippines possibly for other assignments; that was the reason the decision appealed from directs the return of the scrip money by the defendants or their successors. Consequently, the present suit should be regarded as an action against the United States Government.

It is not disputed that the U.S. Government has not given its consent to be sued. Therefore, the suit cannot be entertained by the trial court for lack of jurisdiction.

Another point may be mentioned, the incidentally, namely, that before the decision was rendered by the lower court the plaintiff filed his claim for the same amount of \$3,713.00 with the Claims Division, General Accounting Office, Washington, D.C. However, the record fails to show the action taken, if any, on said claim.

In conclusion, we find and hold that the present action because of its nature is really a suit against the Government of the United States, and because said Government has not given its consent thereto, the courts, particularly the trial court have no jurisdiction to entertain the same. Because of this, we deem it unnecessary to discuss and rule upon the propriety and legality of the confiscation made by the defendants, particularly Capt. Wilford H. Hudson, of the scrip money from the plaintiff, and whether or not the latter's filing of his claim with the U.S. Government through its Claims Division, constitutes an abandonment of his claim or suit with the Philippine court.

In view of the foregoing, the decision appealed from is hereby reversed and the complaint is dismissed. No pronouncement as to costs.

Paras, Pablo, Bengzon, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, J.J., concur.

Mr. Justice Padilla did not take part.

XI

Aurelio G. Gavieres, Plaintiff-Appellant vs. Emilio Sanchez, Lorenzo T. Ona, the President of the Hacarin Dairy Farm, Inc., and the President of the Rehabilitation Finance Corporation, Defendants-Appellees G.R. No. L-6206, April 13, 1954, Montemayor, J.

CIVIL ACTION; VENUE. — In several decisions rendered by the Supreme Court, as late as 1950, we have held that under Section 3, Rule 5 of the Rules of Court, an action affecting title to or recovery of possession of real property must be commenced and tried in the province where said property lies; that an action for the annulment or rescission of the sale of property does not operate to efface the fundamental and prime objective and nature of the action which is to recover said real property.

Aurelio G. Gavieres for appellant.

Crispulo T. Manubay, Sixto de la Costa, Alejo F. Cavdilo and Dominador A. Rodriguez for appellee.

DECISION

MONTEMAYOR, J:

On December 23, 1950, plaintiff-appellant AURELIO G. GAVIERES filed a complaint in the Court of First Instance of Rizal against EMILIO SANCHEZ, LORENZO T. ONA, the President of the HACARIN DAIRY FARM CORPORATION, and the President of the REHABILITATION FINANCE CORPORATION, alleging that in 1931 he was the registered owner and possessor of 1/3 of No. 2386 of Cadastre No. 13 of San Miguel de Mayumo, Bulacan, covered by Original Certificate of Title No. 12463; that on February 6, 1931, he sold his one-third share of the parcel to Emilio Sanchez for P10,000.00 payable as follows: P200.00 on February 6, 1931, P1,800.00 at the end of the month, and the balance of P8,000.00 in April of the same year; that Sanchez immediately took possession of the property purchased and that although he had paid only P2,470.00 of the entire price of P10,000.00, in the same year he sold the property to Lorenzo T. Ona with right to repurchase for P4,000.00 and upon his failure to make the repurchase ONA consolidated his ownership and secured the cancellation of Original Certificate of Title No. 12463 and the issuance to him of Transfer Certificate of Title No. 6640; that in 1941 ONA sold the same property to the HACARIN DAIRY FARM CORPORATION resulting in the cancellation of Transfer Certificate of Title No. 6640 and the issuance of Transfer Certificate of Title No. 27257 in the name of the purchaser; and that on September 29, 1947, the Hacarin Dairy Farm Corporation mortgaged the property to the Rehabilitation Finance Corporation in the amount of P100,000.00. The complaint prays among other things that plaintiff be declared real owner and possessor of the property; that the sale of the same to Sanchez be declared null and void because of failure to fulfill the conditions of the sale; that the *pacto de retro* sale to Ona be declared illegal, including the issuance of Transfer Certificate of Title No. 6640 to him; that the sale by Ona to the Hacarin Dairy Farm Corporation be declared invalid and illegal, including the issuance of the corresponding transfer certificate of title and that the mortgage in favor of the Rehabilitation Finance Corporation be declared illegal and invalid, and that furthermore defendants be made to pay damages in the sum of P20,000.00.

Sanchez filed an answer stating that the facts alleged in the complaint did not constitute sufficient cause of action; that the action had already prescribed, and that the court had no jurisdiction to hear and decide the case. Ona filed a motion to dismiss on the ground of improperly laid venue. The Hacarin Dairy Farm Cor-