

## **SECOND DIVISION**

**[ CA-G.R. SP NO. 135779, February 25, 2015 ]**

**NELSON LEVISTE, PETITIONER, VS. SPS. TEODORO AND  
VIOLETA LAT AND ALL PERSONS ACTING UNDER THEM,  
RESPONDENTS.**

### **DECISION**

**GONZALES-SISON, M., J.:**

In this petition for review, petitioner seeks to reverse the Decision<sup>[1]</sup> dated October 15, 2013 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 17817.

On June 6, 2005, complainant Nestor Leviste filed a complaint<sup>[2]</sup> for peaceful possession with damages against defendants spouses Teodoro Lat ("Teodoro") and Violeta Macasaet-Lat ("Violeta") and all persons acting under them.

Complainant alleged that he is the agricultural tenant of the defendants in their agricultural land at Poblacion, Malvar, Batangas, with an area of three hectares more or less. His status as such commenced sometime in 1963 when he was allowed by the grandparents and parents of his wife, Erlinda Lat-Leviste ("Erlinda"), to plant agricultural crops like banana, coconuts, corn and other seasonal crops with sharing ratio proceeds agreement of 2/3-1/3. When the ownership of the agricultural land was transferred to the defendants, he continued working on it as tenant. In fact, on December 13, 1995, Erlinda, delivered P100,000.00 to defendant Teodoro as lease rentals for ten (10) years or up to 2005.

Complainant added that sometime in 2004, the defendants demanded from him the return of the agricultural land. When he refused, the defendants installed a security guard and placed a person who gathered the products of the agricultural land amounting to P20,000. Likewise in April 2005, defendant Violeta, accompanied by a policeman from the Malvar Police Station, went to the agricultural land and gathered the fruits of the banana stalks or sheaths amounting to P10,000.00.

Complainant claimed that the aforementioned acts of defendants are against agrarian laws and should be stopped in order to avoid misunderstanding and violence in their locality. He went to the Barangay Agrarian Reform Council (BARC) for amicable settlement but the same proved to be futile thus, upon Certification of the BARC that the parties did not reach amicable settlement, he filed this complaint. He prayed that after proper proceedings, judgment be rendered in his favor by: (1) ordering the defendants to maintain him in peaceful possession and cultivation of the land; (2) directing the defendants to pay him at least P50,000.00 as actual and compensatory damages, and (3) ordering the Municipal Agrarian Reform Officer (MARO) of Malvar, Batangas to mediate and help the parties in the execution of their leasehold contract.

Complainant appended the following documentary evidence to support his claim, viz: (1) Special Power to Withdraw Money in Bank;<sup>[3]</sup> (2) Sinumpaang Salaysay executed by Nolasco Roxas;<sup>[4]</sup> and (3) Tax Declaration No. 4574 covering a riceland located at Malvar, Batangas.<sup>[5]</sup>

After service of summons and notice of hearing, together with the complaint and its annexes, defendant Violeta filed her Answer.<sup>[6]</sup> Violeta averred that complainant is not the tenant of their agricultural land instead, he is merely an intruder and his presence thereon was initially tolerated by her and her spouse, defendant Teodoro, since they were in the U.S.; that they have no sharing agreement in whatever form, and the amount of P100,000.00 received by Teodoro was part of the latter's share from the estate of his late mother, Gliceria Lat.

Defendant Violeta then prayed for the dismissal of the complaint and by way of counterclaim, she asked for moral damages in the amount of P50,000.00; attorney's fees in the amount of P30,000.00 plus accumulated appearance fees, and litigation expenses and cost of the suit.

After the parties submitted their respective position paper,<sup>[7]</sup> and the Provincial Adjudicator submitted for resolution/decision the case, the complainant filed a Verified Motion For a Writ of Preliminary Injunction.<sup>[8]</sup> Complainant prayed that a temporary restraining order be issued to enjoin defendant Violeta, the security guard installed on the land as well as all persons in her behalf to allow him to enter into the land, *and* after due notice and hearing, a preliminary injunction or a status quo order be granted to him.

By decision<sup>[9]</sup> dated May 31, 2006, the PARAD dismissed the complaint for failure of complainant to prove by substantial evidence all the requisites of an agricultural tenancy relationship. Complainant did not present evidence to show that the predecessors-in-interest of defendants agreed to constitute him as tenant of the agricultural land or that the landowners consented to a tenancy relationship; *neither* was it proved that there was sharing of harvests with the landowners *nor* personal cultivation by the complainant on the land, thus:

"Wherefore, premises considered, the instant complaint is DISMISSED. Likewise, the compulsory counterclaim is hereby dismissed.

Accordingly, the application for injunction is denied.

SO ORDERED."<sup>[10]</sup>

A motion for reconsideration<sup>[11]</sup> was filed by the complainant but the same was thumbed down by the PARAD in a Resolution<sup>[12]</sup> on August 16, 2012.

Against the denial of his motion for reconsideration, the complainant filed a notice of appeal<sup>[13]</sup> and submitted his memorandum of appeal.<sup>[14]</sup> He claimed that the Provincial Adjudicator erred in not finding that he is a *bonafide* tenant of the defendants over their agricultural land, entitled to peaceful possession, injunction and damages.

Finding the elements of consent and sharing agreement to be wanting, the DARAB affirmed the decision of the PARAD,<sup>[15]</sup> thus:

“WHEREFORE, the Appeal is Denied for lack of merit. The assailed Decision dated 31 May 2006 is AFFIRMED IN TOTO.

No pronouncements as to costs.

SO ORDERED.”<sup>[16]</sup>

With the denial<sup>[17]</sup> of his motion for reconsideration, the appellant, now petitioner comes before Us *via* this instant recourse claiming that, to wit:

**I.**

**“THE HONORABLE DARAB ERRED IN FINDING THAT THERE IS NO LANDOWNER’S CONSENT TO THE TENANCY RELATIONSHIP.**

**II.**

**THE HONORABLE DARAB ERRED IN RULING THAT THERE IS NO SHARING OF HARVEST BETWEEN THE PETITIONER AND RESPONDENTS/OWNERS.**

**III.**

**THE HONORABLE DARAB ERRED IN DISREGARDING THE EVIDENTIARY VALUE OF THE AFFIDAVIT OF WITNESSES SUBMITTED BY THE PETITIONER.**

**IV.**

**THE HONORABLE ADJUDICATOR AND THE OFFICE OF THE DARAB ERRED IN NOT FINDING APPELLANT AS A BONAFIDE TENANT ON THE SUBJECT LANDHOLDING ENTITLED TO RIGHTS AND PROTECTION GUARANTED BY LAW.**<sup>[18]</sup>

After the defendants, now appellees, failed to file their Comment to the petition, despite receipt of notice to file,<sup>[19]</sup> We directed the parties to simultaneously file their respective Memoranda<sup>[20]</sup> to which, only the appellees complied.

**THE PETITION FAILS.**

The issues raised by petitioner boils into whether or not there is a tenancy relationship between him and the respondents.

Tenancy is a legal relationship established by the existence of particular facts as required by law. For a tenancy relationship to exist between the parties, the following essential elements must be shown: (a) the parties are the landowner and the tenant; (b) the subject matter is agricultural land; (c) there is consent between the parties; (d) the purpose is agricultural production; (e) there is personal cultivation by the tenant; and (f) there is sharing of the harvests between the