

THIRD DIVISION

[G.R. No. 108338, April 17, 2001]

**CALIXTO SAÑADO, PETITIONERS, VS. THE COURT OF APPEALS
AND SIMEON G. NEPOMUCENO, RESPONDENTS.**

DECISION

MELO, J.:

This case is one of the older ones which was raffled to undersigned *ponente* pursuant to the Court's Resolution in A.M. 00-9-03 dated February 27, 2001 and concerns a petition seeking the reversal of the decision of the Court of Appeals dated September 11, 1992 and its resolution dated October 15, 1992 denying reconsideration. The Court of Appeals modified the decision of Branch 18 of the Regional Trial Court of the Ninth Judicial Region stationed in Pagadian City which was rendered in favor of herein petitioner. Disposed thus the Court of Appeals in its CA-G.R. CV No. 23165 per Justice Montenegro, with Justices Paras and Ordoñez-Benitez concurring:

WHEREFORE, premises considered, judgment is hereby rendered:

(a) affirming the judgment appealed from with modification as follows:

1. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno to pay the share of plaintiff-appellee in the amount of P168,000.00 covering the period of four (4) years from February 19, 1975 to February 19, 1979, with only eight (8) hectares considered to be productive;
2. Ordering defendant-appellant Simeon G. Nepomuceno to pay reasonable rental of the fishpond area in question from February 20, 1979 to March 20, 1980 in the amount of P25,000.00;
3. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and defendant Edgar J. Chu, to jointly pay plaintiff-appellee the reasonable rentals of the fishpond area in question at the rate of P25,000.00 per annum from March 21, 1980 to January 2, 1985;
4. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and defendant Edgar J. Chu, to jointly and severally pay plaintiff-appellee the sum of P100,000.00 as attorney' fees;
5. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and Edgar J. Chu to pay the costs; and

(b) reversing the decision appealed from insofar as it ordered "defendants jointly to restore possession and control of the fishpond area in question to the plaintiff".

(pp. 37-38, Rollo.)

The generative facts are chronicled as follows:

The controversy began on October 28, 1969 when the defunct Philippine Fisheries Commission issued in favor of petitioner Sañado Ordinary Fishpond Permit No. F-5810-X covering an area of fifty hectares situated in Bo. Monching Siay, Zamboanga del Sur. As a consequence, petitioner on January 6, 1972 executed a deed of quitclaim involving twenty hectares of the original area of fifty hectares in favor of his uncle and brother (Decision of the Office of the President, p. 46, Rollo).

On July 16, 1973, petitioner as First Party and private respondent Nepomuceno as Second Party executed a contract entitled "Contract of Fishpond Development and Financing", which pertinently provided:

That the FIRST PARTY is the possessor and holder of a piece of agricultural land with an area of approximately FIFTY (50) HECTARES COVERED BY Ordinary Fishpond Permit No. F-5810-X situated at Monching, Siay, Zamboanga del Sur;

That the SECOND PARTY agreed to undertake full expenses for the development of an area of THIRTY (30) hectares, out of the approximately FIFTY (50) hectares, covered by Ordinary Fishpond Permit No. F-5810-X of the FIRST PARTY and which parcel is described and bounded as follows:

xxx xxx xxx

That the development which shall be undertaken by the SECOND PARTY on the aforesaid area of THIRTY (30) hectares, consists of:

- a -- Construction of dumps; gates, buildings and other accessories pertinent to the full development of the fishpond area;
- b -- Construction of dikes and the purchase of Bangus Fry for the said fishpond;

That the whole amount invested by the SECOND PARTY for the development of the aforesaid area for fishpond shall first be recovered out of the products of the fishpond area;

That after the full investment of the SECOND PARTY shall have been recovered, the sharing basis with the FIRST PARTY shall immediately commence for a period of Four (4) years and the sharing basis shall be in accordance with the following percentage:

THIRTY FIVE PERCENT (35%) of the Net per harvest - FIRST PARTY;

SIXTY FIVE PERCENT (65%) of the Net per harvest - SECOND PARTY;

That after the expiration of the Four (4) years of sharing basis on the Net harvest, this contract of sharing basis shall be renewed at the option of the second party for a period of another Four (4) years;

(pp. 26-27, Rollo.)

On July 18, 1973, the contracting parties executed a handwritten agreement, modifying the earlier agreement by excluding the area of ten hectares already cultivated and fully developed by petitioner and providing that "the contract will be

renewed for another four (4) years with another agreement beneficial to both parties." Simply stated, instead of the renewal being at the option of private respondent, it shall be renewed on terms acceptable to both petitioner and private respondent.

Based on the agreement as modified by the aforestated handwritten agreement, private respondent proceeded with the development of the fishpond area, excluding the area of ten hectares already developed by petitioner.

On September 28, 1979, the Director of Fisheries and Aquatic Resources recommended to the then Ministry of Natural Resources the conversion of Ordinary Fishpond Permit No. F-5810-X into a 25-year fishpond loan agreement which covered a reduced area of 26.7450 hectares (p. 165, Rollo). Pursuant to said recommendation, Fishpond Lease Agreement No. 3090 was issued to petitioner on October 8, 1979.

On March 20, 1980, private respondent waived his rights, interest, and participation over the fishpond area in favor of one Edgar J. Chu.

On March 28, 1980, apparently to oppose the issuance of the 25-year fishpond lease agreement in favor of petitioner, private respondent informed the Bureau of Fisheries and Aquatic Resources in writing of his financing/development contract with petitioner and that the fishpond was almost fully developed at his expense (*Ibid.*).

Parenthetically, sometime that year, private respondent submitted to petitioner an accounting of the income or proceeds of the fishpond as well as his expenditures in the development thereof (tsn, July 5, 1983, pp. 10-14). This document, marked as Exhibit "D" and dated February 19, 1975, showed earnings of the fishpond in the amount of P98,106.35, expenses and advances in the sum of P87,405.25, and cash on hand of P10,701.10. The original copy thereof was filed with the Bureau of Fisheries and Development as evidenced by the stamp of the office thereon.

On July 17, 1981, petitioner filed a complaint against private respondent and Edgar J. Chu with the regional trial court docketed as Civil Case No. 2085 for recovery of possession and damages, wherein he alleged that on February 19, 1975, private respondent had already recovered his investment in full; that as of said date, the total earnings had amounted to P98,106.35 leaving an excess of P10,701.10 to be divided between petitioner and private respondent at 35-65 sharing; that the 4-year period during which petitioner and private respondent would share the net harvest commenced on February 19, 1975 and expired on February 18, 1979; that after February 18, 1975, private respondent has not accounted for the income of the fishpond and has failed and refused, in gross and evident bad faith despite renewed and repeated demands, to deliver petitioner's share of the net harvest for four years which totaled P250,000.00 more or less.

Meanwhile, during the pendency of the aforesaid Civil Case No. 2085 with the trial court, an order was issued by then Minister of Agriculture and Food Salvador H. Escudero III, on January 28, 1985 **cancelling Fishpond Lease Agreement No. 3090** and forfeiting the improvements thereon in favor of the government. Later, said order was reconsidered to the extent that private respondent was given priority to apply for the area and that his improvements thereon were not considered forfeited in favor of the government. Petitioner elevated the matter to the Office of the President but his appeal was dismissed in a decision rendered on July 31, 1989.

On June 19, 1989, the trial court rendered its decision in Civil Case No. 2085, the dispositive portion of which reads as follows:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. Ordering defendants jointly to restore possession and control of the fishpond area in question to the plaintiff;
2. Declaring the Waiver of All Rights, Interests and Participations Over a Fishpond Area (Part) (Exhibit "E") executed by defendant Nepomuceno in favor of defendant Edgar Chu as null and void;
3. Ordering defendant Simeon Nepomuceno to pay the share of plaintiff in the amount of P168,000.00 covering the period of four years from February 19, 1975 to February 19, 1979, with only eight (8) hectares considered to be productive;
4. Ordering defendants to jointly pay plaintiff the rentals of the fishpond area in question at the reasonable rate of P25,000.00 per annum reckoned from February 19, 1979 up to the time the same fishpond area shall have been duly restored to the possession of the plaintiff;
5. Ordering defendants jointly and severally pay plaintiff the sum of P100,000.00 as attorney's fees; and
6. To pay the costs.

IT IS SO ORDERED.;

(pp. 24-25, Rollo.)

Private respondent and Edgar J. Chu both appealed the trial court's decision. However, for failure to file brief, Chu's appeal was dismissed.

For his part, private respondent maintained that: (a) the trial court erred in ruling that private respondent has fully recovered his financial investment in the fishpond area in question as of February 19, 1975 (hence the sharing of the net harvest should not commence on said date); (b) the trial court erred in ruling that private respondent cannot waive his right to finance the development of the fishpond area; and (c) the trial court committed grave error and injustice in not dismissing petitioner's complaint and in ordering respondent to pay petitioner the amounts of P168,000.00 as petitioner's share covering the period beginning February 19, 1975 to February 19, 1979, P25,000.00 per annum constituting reasonable rentals from February 19, 1979 up to the time the fishpond area shall have been restored to petitioner, as well as P100,000.00 as attorney's fees.

As mentioned earlier, the Court of Appeals affirmed the trial court's decision as regards petitioner's share in the produce from February 19, 1975 to February 19, 1979 (P168,000.00), the reasonable rental of the fishpond area (P25,000.00 per annum) from February 20, 1979 to March 20, 1980 and from March 21, 1980 to January 2, 1986, as well as attorney's fees (P100,000.00), and costs.

The petition before us hinges on the argument that the Court of Appeals entertained evidence and/or other matters not duly covered or taken up in the trial of Civil Case