

FRANCISOO BOIX AND JOSE SILVESTRE, PETITIONERS, VS. HON. MELQUIADES G. ILAO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES NORTE AND MARICHU BATALLA, RESPONDENTS.

G. R. No. L-20010. October 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

On March 29, 1962, Marichu Batalla, a lumber concessionaire in the barrio of Lalawigan, Municipality of Mercedes in Camarines Norte, filed a complaint in the Court of First Instance of that province (Civil Case No. 1395) against Francisco Boix and his overseer Jose Silvestre, demanding the removal of a roadblock consisting of high fence of poles, constructed by said defendants on a road said to be existing since pre-war days, which prevented the passage of her trucks from the logging area to the loading point in San Miguel Bay. As it was claimed that the obstruction by defendants of said road was causing plaintiff a daily loss of P2,000.00, the court granted her prayer for a writ of preliminary mandatory injunction on March 29, 1962, upon her filing a bond in the sum of P5,000.00, directing the defendants Boix and Silvestre to remove the roadblocks and to refrain from interfering with and stopping plaintiff's delivery or transportation of her logs.

In due time, defendants filed their answer alleging that the fence in question was constructed by defendant Silvestre, upon order and instruction of defendant Boix, on the latter's land; that the log pond claimed by plaintiff to be hers is a portion of the tract of land owned by Boix; that plaintiff's forest concession, on the other hand, also abuts the shores of San Miguel Bay besides having other adequate outlets and means by which she could transport logs from her logging area to the beach of San Miguel Bay; that plaintiff has no right to demand the use of the road and the log pond referred to in the complaint, the same not being owned by her, nor are they properties of public dominion; and that plaintiff has no cause of action against defendants. Attached to the answer were proofs of defendant Boix' ownership of the land on which road in question traverses. As counterclaim, defendants demanded actual, compensatory and moral damages and attorney's fees. Defendants also filed a separate motion for the dissolution of the writ of preliminary injunction on the ground that plaintiff's complaint does not allege sufficient facts entitling to the relief therein demanded or to the said writ of preliminary injunction, considering that the complaint failed to state that plaintiff has a right to the use of the road either as owner thereof, or as possessor of a dominant estate with easement on the property belonging to defendant Boix; that neither has plaintiff the right to demand a right of way over the aforesaid parcel of land because her timber concession abuts the shores of San Miguel Bay and there are other outlets through which plaintiff could transport her logs from the logging area to the public highway or the shores of San Miguel Bay. It was claimed, therefore, that the continuation of the acts complained of by plaintiff will not and cannot work injustice to her.

Acting on this motion to dissolve the preliminary mandatory injunction, the respondent Judge under date of June 18, 1962, issued the following:

"ORDER

"It appearing that the road in question is a private road belonging to defendants and that the plaintiff has not acquired anyright to use the same for her logging purposes; the writ of preliminary injunction issued ex-parte against the defendants on March 29, 1962, is hereby ordered dissolved upon defendants' filing a bond in the amount of P10,000.00 to answer for damages the plaintiff may suffer by reason of this dissolution.

"SO ORDERED."

The bond was filed and the writ of injunction issued therein was actually dissolved on July 6, 1962.

On July 7, 1962, plaintiff Batalla filed an urgent motion for reconsideration of the order dissolving the writ of injunction on the ground that she was scheduled to load 1,000,000 board feet of logs bound for Japan on or about July 15, 1962, and should the road be closed, plaintiff would be unable to fulfill her aforesaid commitment which would result in irreparable damage to her.

This motion was heard on July 13, 1962, and upon determination of the urgency of plaintiff's need to load on or before July 18, 1962, the logs already felled and cut from her concession, the court ordered on the same day the revival or reinstatement of the writ of preliminary mandatory injunction (of March 29, 1962), enjoining defendants and their representatives from interfering with plaintiff's transportation of her logs, and ordering them (defendants) to remove the roadblock serving as obstruction on the road in question.

It is against this second order of the lower court that the defendants, now petitioners here, have filed the instant petition for certiorari seeking to nullify said order of July 13, 1962. And, as prayed for by petitioners, this Court issued a writ of preliminary injunction ordering respondents to refrain from removing the fence and having free access to the road in dispute. Copy of our writ was actually received for respondent Marichu Batalla on July 20.

Under the circumstances above narrated, it is evident that the only purpose of this proceeding is to secure the nullification and dissolution of the writ of preliminary mandatory injunction, which was dissolved and later revived by the lower court, to enable respondent Batalla to make use of the road in order that she may fulfill her business commitments. We are not here, therefore, to rule upon the right of respondent Batalla to use the road, nor on the propriety and sufficiency of the means employed by petitioners for the alleged protection of their property right, but only to determine whether the respondent court abused its discretion in issuing the order of July 13, 1962, reviving the dissolved writ of preliminary injunction issued on March 29, 1962.

It may be observed that the original order of March 29, 1962, granting the writ of preliminary injunction that restrained petitioners from obstructing the passage of Batalla's trucks, was based on the allegation in the complaint of the existence of plaintiff's right to the use of the road. In its order of June 18, 1962 dissolving the writ of injunction, the lower court found otherwise and declared the said road as "belonging to defendants and that plaintiff has not acquired any right to use the same for her logging purposes." Later however, on July 13, 1962, the lower court, without setting aside this order of June 18, 1962, expressly declaring the road as belonging to defendants and that plaintiff has not acquired any right to use the same, the respondent judge revived the injunction on the mere representation of plaintiff that she had to load and ship her lumber on July 18, 1962. This, we believe, constitutes no sufficient justification for her use of petitioner Boix' road, against the latter's will. Upon the facts before the court at the time, it was irregular and improper and was a grave abuse of discretion to issue or revive the mandatory injunction compelling respondent Boix to permit the use of his private road by the plaintiff who up to that time the court has declared not to have acquired any right to use the same.

Counsel for petitioners, in his motion of August 15, 1962, called the attention of this Court to the fact that from August 7 to 14, 1962, and notwithstanding the injunction issued by this Court, of which respondent Batalla had

prior notice, trucks loaded with logs belonging to her forced their way through the road in question. Respondent Batalla, on the other hand, while admitting ownership of the trucks and logs transported across petitioner's land, claims that during the period when the alleged contemptuous acts were committed, she was in Manila and had no opportunity to know the same much less give instruction to do said acts. Under the circumstances, respondent is hereby only given warning that a repetition of similar or other acts in violation of lawful orders or processes of this Court shall be dealt with more severely.

Wherefore, the order of the respondent court of July 13, 1962 is hereby set aside, and the writ of preliminary injunction heretofore issued by this Court, is made permanent. With costs against respondent Batalla. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

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