

**PAPER INDUSTRIES CORPORATION OF THE PHILIPPINES,
PETITIONER VS. JOSE SAMSON, BENJAMIN BARRERA AND THE
COURT OF FIRST INSTANCE OF SURIGAO DEL SUR, RESPONDENTS.**

G.R. No. L-30175. November 28, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Appeal from an order of dismissal, dated September 18, 1968, of the Court of First Instance of Surigao del Sur based on the ground that venue had been improperly laid.

On July 16, 1965, petitioner Paper Industries Corporation of the Philippines, hereafter to be referred to as PICOP, filed with the respondent Court of First Instance of Surigao del Sur a verified complaint for injunction and damages against respondents Jose Samson and Benjamin Barrera, alleging therein, among others, that PICOP is the licensee of a pulpwood and timber concession portions of which are located in the provinces of Surigao del Sur and Agusan; that respondents therein were discovered and verified to have unlawfully entered, trespassed and encroached deep into portions of plaintiff's pulpwood and timber concession in two areas at Pamintigan, Mabtay, Malix, within the province of Surigao del Sur; and that without any title or notice whatsoever felled trees standing thereon and took them away in gross violation of plaintiff's rights; that defendants-respondents have unlawfully logged over a total area of 857 hectares and felled and took away logs with a total volume of 958.60 cubic meters from plaintiff's concession; that because of the continuous unlawful logging operations of defendants inside plaintiff's pulpwood and timber concession, plaintiff as of May 31, 1965, suffered damages amounting to P10,600.00, more or less; and that despite demands that they vacate plaintiff's pulpwood and timber concession and stop their operations, defendants have continued and are continuing their unlawful encroachment and trespass and their spurious logging operations on the plaintiff's concession. Plaintiff, therefore, prayed inter alia that defendants be restrained from carrying on their illegal logging operations by the issuance of a writ of preliminary injunction and furthermore, that they pay for damages incurred by the plaintiff.

Defendants filed a joint answer to the complaint and opposition to PICOP's application for writ of preliminary injunction. In their answer they disputed the material allegations of the complaint and, as their only defense, alleged that they are not the real party in interest as the logging operation in the questioned area is owned and operated by the concessionaire and licensee Lope A. Coñate of Butuan City, and that they (defendants) are mere employees of Coñate. Samson and Barrera filed a motion to dismiss on the ground that venue is improperly laid, defendants' contention being that the action was personal and, therefore, should have been filed either in the province of Agusan or Rizal, the places of residence of the parties therein.

On August 13, 1965, January 1, 1966, and February 5, 1966, without first requiring a ruling on their motion to dismiss, the parties in the lower court proceeded to trial where each party adduced evidence on the issue of injunction.

On August 29, 1965, PICOP filed its Opposition to Motion to Dismiss arguing that the action was principally for

injunction which should be instituted conformably with the principle that the authority of a court to issue writ of injunction is co-terminous with its territorial jurisdiction, or in the Court of First Instance of the province where the acts intended to be restrained are being committed; that the action is one to recover possession and, hence, the proper venue is the place where the concession areas sought to be recovered are situated, and that defendants waived the objection to improper venue when they failed to ask a ruling on their motion to dismiss and went to trial on the question of the propriety of the issuance of the writ of preliminary injunction.

On May 6, 1966, the Court of First Instance, then presided by Judge Ricardo D. Garcia (subsequently he retired), issued an Order granting PICOP's application for a writ of preliminary injunction.

On September 18, 1968, the trial court, with a new presiding judge (Hon. Reynaldo Honrado), issued an Order granting defendants' Motion to Dismiss. The motion for reconsideration of the dismissal having been denied, this petition for certiorari was filed, petitioners claiming grave abuse of discretion in ordering the dismissal of the case.

The main question posed by the petitioner is whether or not the Court of First Instance committed grave abuse of discretion in dismissing its complaint. In other words, was the trial court right in dismissing plaintiff's complaint on the ground of improper venue?

The question whether or not venue has been properly laid depends to a great extent on the kind of action (real or personal) presented by the Complaint. It is defendants' contention, affirmed by the trial court, that the action at bar is personal.

The contention has no merit. A personal action is one that is founded on privity of contract (Moran, Comments on the Rules of Court, Vol. 1, 1970 ed., p. 110). The facts of the case as borne out by the record reveal that no contract is here involved. From a reading of the Complaint petitioner PICOP is interested primarily in recovering its rights to the concession over the land, to have defendants Samson and Barrera vacate the same, to desist from further encroaching on their concession rights and to stop their illegal logging operations in the concession areas. Clearly, therefore, the action is real and in accordance with the Rules of Court, Section 2, Rule 4, the same must be brought in the locality where the land is situated.

"Section 2. Venue in Courts of First Instance. — (A) Real Actions. — Actions affecting title to, or for recovery of possession or for partition or condemnation of, or foreclosure of mortgage on, real property shall be commenced and tried in the province where the property or any part thereof lies."

This ruling on venue was laid down in the early case of Cayetano de la Cruz vs. El Seminario de la Archdiocesis de Manila et al.,^[1] where it was held:

"If the action is founded on privity of contract between the parties, then the action whether debt or covenant, is transitory. But if there is no privity of contract and the action is founded on privity of estate only, such a covenant that runs with the land in the hands of the remote grantees, then the action is local and must be brought in the country wherein the land lies."

From an analysis of the complaint and other pleadings filed by petitioner, We find that the main complaint in this case is for recovery of possession. The claim for damages is of no material consequence as it is only an incident to the principal claim. As well stated by this Court:^[2]

"In other words, the respondent Lim sought to establish an interest in the Hacienda de Leon that ran with the land and one that must be respected by the purchaser, even if the latter was not a party to the original lease contract. That being the case, whether the standing crop is or is not immovable property is not relevant, for venue is determined by the nature of the principal claim. It is apparent that the plaintiff is primarily interested

in establishing his right to recover possession of the crop. Hence, his action is real and must be brought in the locality where the land is situated."

Petitioner was only cognizant of the lack of jurisdiction of Courts of First Instance to issue injunction writs to control acts outside of their provinces or districts; hence it acted right in filing its action in Surigao del Sur rather than in the province of Agusan or Rizal. The courts of Rizal or Agusan could not have issued the writ of injunction consistent with the rules, Sec. 2, Rule 58,[3], and the Judiciary Act, Section 44(h)[4], for such writs cannot effectively reach acts being perpetrated outside of their districts or, in particular, in Surigao del Sur. It is now settled that a Court of First Instance cannot restrain or enjoin acts being perpetrated or will be perpetrated outside of its territorial boundaries.

In *Hacbang, et al. vs. The Leyte Autobus Co., et al.*,[5] this Court held —

"The jurisdiction of Courts of First Instance to control or restrain acts by means of a writ of injunction is limited to act being committed or about to be committed within the territorial boundaries of their respective provinces and districts."

Cudiamat, et al. vs. Torres (L-24225, February 22, 1968) reiterates this rule, viz:[6]

"The preliminary injunction that maybe granted by a CFI under said Section 2 is, in its application, co-extensive with the territorial boundaries of the province or district in which the said court sits. Consequently, a Court of First Instance may not issue a writ of preliminary injunction which will be enforced outside the territorial boundaries of its province and district."

As petitioner did right in filing their Complaint in the Court of First Instance of Surigao del Sur, We see no further need for discussing at length the other issue of waiver of venue. Suffice it to say that respondents herein went to trial, cross-examined PICOP's witnesses and adduced evidence without first requiring a ruling on their motion to dismiss. This is waiver of venue, pure and simple.

In *Pangasinan Transportation Co., vs. Yatco, et al.*, G.R. No. L-23090 October 31, 1967, 21 SCRA 658, 660, We said:

"The petition is untenable because the objection to venue is deemed waived. The filing of Pantranco's counterclaim in the CFI of Rizal, and, later, of Pantranco's third party complaint against the La Mallorca-Pambusco, necessarily implied a submission to the jurisdiction of said court, and, accordingly, a waiver of such right as the Pantranco may have had to object to the venue, upon the ground that it had been improperly laid. The introduction of the part of the evidence for the Pantranco after the denial of its motion to dismiss and before the institution of the prohibition suit tended, also, to have the same effect."

WHEREFORE, the order appealed from is hereby set aside and the case remanded to the respondent court for further proceedings. Costs against respondents.

IT IS SO ORDERED.

Makasiar, Muñoz Palma, and Martin, JJ., concur.

Castro, (Chairman), and Teehankee, JJ., concur in the result.

[1] 18 Philippine Reports pp. 330, 333

[2] *Land Tenure Administration, et al. vs. Hon. Macadaeg, et al.*, No. L-13280, February 25, 1960, 107 Phil. 83, 86.

[3] "Section 2, Rule 4. Venue in Courts of First Instance. — (a) Real Actions. — Actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property shall be commenced and tried in the province where the property or any part thereof lies."

[4] Sec. 44. Original jurisdiction. — Court of First Instance shall have original jurisdiction. (h) Said court and their judges, or any of them, shall have the power to issue writs of injunction, mandamus, certiorari, prohibition, quo warranto and habeas corpus in their respective provinces and districts, in the manner provided in the Rules of Court.

[5] G.R No. L-17907, May 30, 1963 as cited in Martin, Rules of Court in the Philippines, 2nd ed. vol. 3 p. 62.

[6] Other cases supporting this ruling are Polcom vs. Bello, L-29959-60 January 30, 1971, 37 SCRA 230, 240-241 citing cases; People vs. Mencias L-19633 November 28, 1966, 18 SCRA 807, 810; Alhambra Cigar and Cigarette Manufacturing Co., Inc. vs. National Administrator of Regional Office No. 2, Department of Labor, L-20491, August 31, 1965, 14 SCRA 1019, 1024-1025; CB vs. Cajigal L-19278, December 29, 1962, 6 SCRA 1972, 1076; Director of Forestry vs. Ruiz, L-24882, April 30, 1971, 38 SCRA 559, 565.

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