

[With Resolution of June 23, 1965]*G.R. No. L-19432. February 26, 1965*

Ponente: PAREDES, J.

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PAREDES, J.:

Direct appeal from a judgment on the merits of the Court of First Instance of Cotabato, in its Civil Case No. 1694, dismissing the amended and supplementary complaints for replevin and for over P600,000 in damages.

The parties in this case are both producers and exporters of logs and hold separate but adjacent forest concessions which are located in the municipalities of Parang, Pigcawayan, and Nuling province of Cotabato. Parcel No. II of the plaintiff-appellant's ordinary timber license No. 325-59 adjoins that of defendant-appellee's ordinary timber license No. 201-57, their common boundary line running from south to north, along which are points and corners corresponding to the technical description in each license which have, as their common reference survey, the forest zone corner indicated in the control map of the Bureau of Forestry known as Land Classification Map No. 1809. No visible boundary, however, exist on the ground.

On the first cause of action, which refers to a logging operation by the defendant-appellee in 1958 somewhere along the aforesaid border, both the litigating companies claim that the logging took place within its respective licensed area.

On 11 February 1959, the Cotabato Timberland Company, Inc., brought the matter to the attention of the district forestry office and requested for a verification. Upon receipt of the said complaint, the assistant district forester, Ebad Ulangkaya, personally inspected the area, and found the Plaridel Lumber Company, Inc., logging thereon; but Nothing definite was established. To whom the logging pertained remained undecided.

After several months' delay, characterized by many communications to forestry officials, including the director, urging prompt action, intra-office correspondence on the complaint, particularly on the designation of the forestry personnel to undertake an investigation, and when chosen, the postponements at the behest of the defendant-appellee, forester Isabelo Tobias, at last authorized and made a survey of the common boundary of the concession and inventoried the stumps found in the course thereof.

After establishing on the ground a one-meter wide cut of the underbrush of what Tobias believed to be the boundary line, he identified, counted, and measured the stumps (561 in number, fully located in his sketch) and computed the volume of logs that were taken, based on a standard table for the species of trees cut.

On the second cause of action, the plaintiff-appellant prays for damages in the total amount of P57,381.60, representing the commercial value of 756.17 cubic meters of logs (stated in the amended complaint) and 496.43 cubic meters (stated in the supplementary complaint), or for their delivery. These logs were allegedly taken by the defendant-appellee in a second encroachment within the aforesaid Parcel No. II, from November, 1959 to February, 1960.

About one-third of the western portion of this Parcel No. II is occupied by many Edcor settlers. To reach one of

its timber concessions, the Plaridel Lumber Company started in November, 1959 the construction of a road, at the request of the settlers, and then continued it in an easterly direction beyond the settlement and traversing entirely the said Parcel No. II, without, however, notifying the licensee, the Cotabato Timberland Company.

The Plaridel Lumber Company had requested for the road right-of-way from the District Forester, Samuel Fortich, on 23 May 1959 and on 21 December 1959. It knew that the road had to pass through a licensed area. The said official authorized, on 15 January 1960, the road construction, including the hauling of logs already cut, but limiting the cutting of more trees along the surveyed road right-of-way. Then, over the protests of the appellant-licensee, and without the hearing which it had requested, the Director of Forestry, on 17 February 1960, granted the right-of-way permit under the condition that the grantee shall turn over all trees cut along the approved right-of-way to the Cotabato Timberland Company, unless it is not ready to receive them.

The defendant-appellee admits having hauled and removed 600,000 board feet of timber from along the road.

The answer filed by the Plaridel Lumber Co., Inc. denied the alleged invasion of the lumber concession of the plaintiff, Cotabato Timberland Co., Inc., and pleaded that the trees cut along the common boundary claimed by the latter were within the forest concession of defendant; and that the cutting of logs in 1950-1960, alleged in the complaint's second cause of action, was done by defendant with proper authorization from the corresponding administrative authorities. Defendant Plaridel further counter-claimed for damages and attorneys' fees.

After requisite trial, the Court of First Instance found the complaint unsupported by evidence, and consonantly dismissed the original action as well as the counterclaim; whereupon, plaintiff Cotabato Timberland Company appealed directly to this Court in view of the amount involved.

Our review of the evidence on record compels us to agree with the trial court that the resurvey of the common boundary by Forester Isabelo Tobias, Jr., was not accurate, and in fact it was disapproved by the Bureau of Forestry authorities (Exhibits "10" and "10-A"). The result is that the inventory of stumps and computation of logs taken therefrom, coetaneously made by the aforesaid forester, does not furnish adequate support for the damages claimed by plaintiff-appellant company.

We can not close our eyes to the fact that the boundary resurvey by Forester Tobias, upon which appellant rests its case, started at the junction of the Big Patot Creek and Small Patot Creek as Corner No. 6 of the appellee's timber license No. 201-57; but Corner No. 6 is identical to Corner No. 43 of Land Classification Map No. 1809 (Exhibit "D-3-a"), which is a Pls concrete monument. From this indefinite junction of creeks, he proceeded to Corner No. 7, which, according to him, was indicated by a "mayapis" tree, but which, on the map, is, and should be, a Pls monument. Along the zigzagging line from Corner No. 42 to 18 of the said control map, which correspond with, or are identical to, specified points in the timber license, are 25 other Pls monuments, and, therefore, known points on the ground, yet Tobias failed to hit any one of them.

It would seem unnecessary to stress that the duty of Tobias, in making his resurvey, was to follow as closely as possible the footsteps of the original surveyor who located and placed the Pls monuments in the corners of the original line. It is an established rule that in regard to boundaries "monuments control courses and distances as well as the calculated area" (Gov't. of P. I. vs. Abad, 47 Phil. 573; Higuera vs. U.S., 18 Law Ed. (US) 469; Cornelison vs. Hammond, 224, N.C. 757, 32 S.E. 2d, 326), and in the course of his resurvey Tobias relied almost exclusively on courses and distances.

The appellant claims that the computations of Tobias should prevail over the monuments because the latter could be moved. But there is no evidence that the location of the PLs monuments indicated in the control map has been changed. And as the interference with, or removal of land survey monuments is made a criminal act, and

penalized by statute (Adm. Code, Act 2711, sec. 2753), such removal or alteration is not to be assumed without adequate evidentiary support, which, in the present case, does not exist.

It may be added that if plaintiff-appellant believed that the Tobias resurvey of the common boundary of its timber concession and that of the defendant-appellee was erroneously or improperly refused confirmation by the officials of the Bureau of Forestry, it could have had their action reviewed and corrected by the Department Secretary. As it failed to take steps to do so, the rejection of the Tobias report is final against appellant Cotabato Timberland Co., Inc., and its case can not be built thereon.

The plaintiff-appellant, Cotabato Timberland Company, Inc., stands on a more solid ground in its second cause of action. It is not seriously controverted that, as previously narrated, the defendant, Plaridel Lumber Co., Inc., entered and started building a road across Parcel II of plaintiff's concession on November 1959, continued it entirely across the said parcel, and subsequently cut, hauled, and removed around 600,000 board feet of timber along the road, besides using it for hauling its own forest products. All of this was done without previous notice" to the licensee of the area, plaintiff-appellant Cotabato Timberland Company.

That this intrusion by the appellee, Plaridel Lumber Company, was illegal is self-evident. Plaridel sought to excuse its depredations, relying on the authorization it secured from District Forester Samuel Fortich on 15 January 1960 to build the road, and an alleged request of the settlers, through the Edcor area on the western side of appellant's Parcel II. The Court of First Instance upheld this defense and exonerated defendant-appellee from liability. Plainly this was error. The request of the Edcor settlers and administrators did not constitute valid authority for Plaridel upon the territory of another licensee without its previous knowledge and consent; nor was this invasion validated by the District Forester's permit, since the latter was secured only on January, 1960, months after the defendant's illegal entry.

It is true that, over protests of appellant, the Director of Forestry, on 17 February 1960, granted Plaridel a right-of-way permit, subject to the condition that the grantee would turn over all trees cut along the right-of-way, to the Cotabato Timberland Company, unless the latter was not ready to receive them. But this grant of right-of-way obtained when the road was nearly completed, like that of District Forester Fortich, could in no way cure the prior unauthorized entry, roadbuilding, and removal of logs inside Cotabato's timber concession. Nothing in the permit indicates that it was intended to have such retroactive effect.

The law is clear that—

"Where a license is issued for the taking of forest products and a person other than the licensee unlawfully enters or operates without license in the territory covered thereby and cuts, gathers or removes any forest products contrary to the terms of said license, or attempts to remove any products so cut or gathered, the same may be seized and delivered to the proper licensee, upon the payment of the regular charges thereon, free from any claim on the part of the offended person. * * *" (Sec. 1837, Rev. Adm. Code)

Considering the quoted legal provision and the condition imposed by the Director of Forestry that logs cut along the right-of-way authorized should be turned over to the rightful concessionaire, Cotabato Timberland Company, the liability of the appellee for the value of an said log, which it did not so turn over, is beyond question.

Referring to the logs that were taken inside the Edcor settlement, which is also inside the concession in question, the appellee claims that the appellant has no right to them because the farm lot owners have been issued homestead titles; and under the appellant's license, it is not allowed to gather forest products on private lands without express authority. This argument is untenable because the condition in the appellee's road right-of-way permit from the Bureau of Forestry obligates the appellee to turn over the logs to the appellant, and the permit did not exempt the logs that were taken inside the Edcor settlement. Note that the appellant's license preceded the

appellee's permit.

The court a quo found that the plaintiff-appellant was not entitled to the trees cut along the approved road because it was not ready to receive them for lack of a road of its own. We disagree. Lack of a road does not necessarily connote unpreparedness to receive the logs; and, even assuming that the appellant was unprepared, the appellee certainly contributed thereto by cutting and hauling logs within a licensed area without previously notifying the license of its operation and without having offered to deliver or turn over the logs. The lack of a road does not exclude other possibilities or remedies that the appellant, Cotabato Timberland Company, could have taken in order to receive, remove, or dispose of the logs.

That the plaintiff-appellant herein was justified in seeking judicial relief without further ado is emphasized by the circumstances of the case. The defendant-appellee, when told to stop by forestry officials in the field, refused to obey; it continued its road construction and hauling of logs although it did not have the proper permit to construct, nor the proper license to gather forest products in the area. Neither the Director of Forestry nor the Department Head could have given relief to the appellant because the Director authorized, on 22 January 1960 (the Present case was filed on 9 February 1960), the release of the 600,000 board feet of timber to the appellee on a measly bond of P7,200.00 to answer for damages to the licensee. And upon the release of the logs, the appellee no time in exporting them to Japan, 'hereby terminating these officials' administrative control over the disputed lots and rendering futile further administrative processes, including an appeal.

"The failure of a litigant to exhaust his administrative remedies does not bar an action for damages where the circumstances of the case are such that he is excused from exhausting such remedies, as where the exhaustion of administrative remedies would be completely futile and meaningless." (73 CJS 359)

Of the 600,000 board feet released to the appellee, Plaridel Lumber Company, the plaintiff-appellant admitted receipt of 169.68 cubic meters (Exhibit "O"; Tsn. p. 355) and 38.66 cubic meters (Tsn., p. 665), or a total of 208.34 cubic meters, which is equivalent to 88,333.16 board feet of timber. What has not been turned over, therefor, amounts to 551,663.84 board feet, which commands an export value in the sum of P61,399.66, at the price of P120.00 per thousand board feet (Exhibit "O").

The original unauthorized intrusion of appellee Plaridel Lumber Company into the land covered by the license of appellant was aggravated by Plaridel's subsequent defiance of the forestry officers that vainly sought to stop it from constructing its road and bar it from committing further acts on dispossession (L-1) pending approval of its right-of-way application; and the record reveals a deplorable tendency on the part of said defendant-appellee to further its economic interest in utter disregard of the rights of other licensees. This rebellious disregard of administrative authority and reckless preemption of appellant's rights are incompatible with a healthy respect for the rule of law. If Plaridel believed that the acts of the forestry officials were unjust or illegal, it should have availed of the corresponding administrative and judicial remedies, instead of taking the law in its hands and recording to forcible defiance of the orders received. In our opinion, to discourage repetition of such brave conduct, an award is required of exemplary damages, under section 5, chapter 3, Book IV, of our new Civil Code, in the amount of P10,000.00 over and above the value of the logs to be paid by said defendant-appellee to plaintiff-appellant.

And because appellant was forced by appellee's conduct to institute court proceedings to protect itself, in view of Plaridel Lumber Company's open defiance of its rights and of the orders of administrative officials, the defendant company should be sentenced further to pay attorney's fees to the plaintiff-appellant in the sum of P5,000.00 (Article 2208, pars. 1, 2 and 11, Civil Code).

WHEREFORE, the decision appealed from is reversed, and the appellee Plaridel Lumber Company, Inc., is

sentenced to pay to the appellant Cotabato Lumber Company, Inc., the sum of P61,399.66 as compensatory damages, plus P10,000.00 exemplary damages, and, in addition, P5,000.00 for attorney's fees. Costs in both instances against appellee Plaridel Lumber Company, Inc.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

RESOLUTION

June 23, 1965

REYES, J. B. L., J.:

Appellee Plaridel Lumber Co., Inc. has moved to reconsider our decision of February 26, 1965, on the ground that the damages awarded to appellant Cotabato Timberland Co., Inc., are excessive in that the cost of production of the 551,663.84 board feet that appellee failed to turn over to appellant should be deducted from the export price. Otherwise, it is claimed, appellant would be unjustly enriched.

The motion is without merit, for the following reasons:

1. The right of way permit issued to Plaridel by the forestry authorities provides for the turn over of the logs cut to Cotabato Timberland Co., Inc., subject to only one condition: that it is ready to receive them. Said permit does not provide for the deduction of the cost of production.
2. The law expressly frees the offended licensee from any claim (which should include the cost of production) when forest products which have been unlawfully gathered from his licensed area are seized and delivered to him.

"Where a license is issued for the taking of forest products and a person other than the licensee unlawfully enters or operates without license in the territory covered thereby and cuts, gathers, or removes any forest products contrary to the terms of said license, or attempts to remove any products so cut or gathered, the same may be seized and delivered to the proper licensee, upon the payment of the regular charges thereon, free from any claim on the part of the offended person. * * * (Sec. 1837, Rev. Adm. Code). (Italics supplied: quoted on p. 8, main decision)

3. There is no evidence on either the cost of the road construction or the cost of production of the logs. In fact, the log-production was but a consequence of Plaridel's road-building.
4. It would be Plaridel, not Cotabato, that would be unjustly enriched if cost of production, if any, is deducted from the compensatory damages because Plaridel would have built its road to the double prejudice of Cotabato: (a) the invasion of its licensed area; (b) with Cotabato bearing the expenses.

WHEREFORE, the motion to reconsider is denied.

Bengzon, C.J., Concepcion, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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