

**LIANGA BAY LOGGING CO., INC., PLAINTIFF-APPELLEE, VS.
NARCISO LANSANG, AGO TIMBER CORPORATION AND PASTOR D.
AGO, DEFENDANTS-APPELLANTS.**

G.R. No. L-21025. June 14, 1969

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Narciso Lansang, Ago Timber Corporation and Pastor D. Ago from the order of the Court of First Instance of Manila dated November 13, 1962 in Civil Case No. 38157 entitled "Liang Bay Logging Co., Inc. vs. Narciso Lansang, et al." dismissing their counterclaims filed there-in.

On October 17, 1958 appellee Lianga Bay Logging Co., Inc. filed an action for damages with the above-named court, with a prayer for the issuance of a writ of preliminary in-junction, against appellant Lansang, the licensee of an ad-joining lumber concession, alleging in its complaint that on or about September 28, 1958 Lansang had entered its lumber concession, constructed a logging road, felled logs within said concession and carted them away, thereby causing appellee to suffer damages in the sum of P10,000.00. Upon the filing of a bond in the amount of P10,000.00, the court issued the writ prayed for.

On December 2, 1958, Lansang filed a motion to dis-solve the aforesaid writ and to dismiss the complaint, with a claim for damages, alleging, among other things, that the lower court had no jurisdiction over the action because appellee had failed to exhaust all administrative remedies available to him, invoking our ruling in *Mauricia Vda. de Villanueva, et al. vs. Montano A. Ortiz, et al.* (G. R. No. L-11412, May 28, 1958).

Appellee opposed the motion on the ground that the ruling relied upon referred to a controversy between two duly licensed adjoining timber concessioners, whereas the present case involved unauthorized logging operations by one without any license nor title over the timber concession affected by his acts. The motion having been denied, Lansang took the matter to Us by certiorari and prohibition (G. R. No. L-14944) but his petition was dismissed on January 27, 1959. Thereafter, Lansang filed his answer to the complaint denying the material allegations thereof, with a counterclaim for damages.

On April 4, 1959, appellee, with previous leave of court, filed an amended complaint to include as parties defendants in the action the other appellants herein, namely, Pastor D. Ago and Ago Timber Corporation, on the ground that, as actual operators of Lansang's timber concession or in col-laboration with the latter, they were likewise responsible for the illegal logging operations complained of.

A motion to dismiss the amended complaint filed by said appellants on the grounds of (a) improper venue and (b) pendency of Civil Case No. 73 of the Court of First Instance of Agusan entitled "Pastor D. Ago vs. Lianga Bay Logging Co., Inc., et al." was denied, and a special civil action for prohibition filed assailing the order of denial was dismissed by the Court of Appeals. This order was subsequently affirmed by Us. As a result, appellants Ago and Ago Timber Corporation filed their answer to the amended complaint, with a counterclaim for damages, alleging that they had never entered any portion of appellee's timber concession nor committed the illegal acts

complained; that they never operated or logged in Lansang's timber concession at any time prior to January 19, 1960 when the eastern part of said concession was transferred to Ago Timber Corporation under Ordinary Timber License No. 1323-'60; that since that date, it had begun logging operations within its forest concession with the Agusan-Surigao Provincial boundary line as the common boundary line between their concession and that of Lianga Bay Logging Co., Inc.

For failure of appellee to appear on the date set for the trial, despite due notice thereof, the court, on September 17, 1962, dismissed the complaint and set the date for the hearing to be held in relation to appellants' counterclaims. Appellee's motion for reconsideration and new trial was denied by the court, and an appeal from the order dismissing the appellee's complaint was taken by it to the Court of Appeals where it is now pending resolution.

Meanwhile, on October 16, 1962, during the trial of appellant's counterclaims, appellee asked for leave to file a motion to dismiss said counterclaims on the following grounds: that appellants had not exhausted all administrative remedies before filing the same; that there were two other actions pending between the same parties involving the same subject matter, and that some of the allegations made in the Counterclaim were premature. Thereafter the court issued an order suspending further proceedings on the counterclaims and allowing appellee to file a motion to dismiss the same. On October 19, 1962, appellee filed said motion based on the grounds mentioned heretofore, and over appellants' opposition, the lower court issued the appealed order.

In spite of the many assignments of error submitted in defendants-appellants brief, the only issue to be resolved is whether the counterclaims interposed by them (Narciso Lansang, Pastor Ago and Ago Timber Corporation) were correctly dismissed by the trial court upon the grounds set forth in the appealed order of dismissal, namely: that the subject matter of the dismissed counterclaims are involved in and covered by the issues litigated in two prior civil actions involving the same parties: Civil Case No. 1416 of the Court of First Instance of Surigao del Sur and Civil Case No. 815 of the Court of First Instance of Agusan, and were also being litigated administratively before the Department of Agriculture and Natural Resources.

Let us start with the administrative case.

The main question between the parties herein is undoubtedly who amongst them is entitled to conduct logging operations within the area of a certain lumber concession mentioned and described in the record. It appears in this connection that pursuant to Sections 5 and 6 of Forestry Administrative Order No. 62 the Lianga Bay Logging Co., Inc., filed a complaint against the Ago Timber Corporation charging the latter with encroachment upon the area covered by its Timber License Agreement No. 49. A similar complaint had been filed earlier by the same party against appellant Narciso Lansang.

After the corresponding investigation the Director of Forestry rendered a decision upholding the boundary of appellee's timber concession as set forth in the aforesaid Timber License Agreement No. 49. Appellant Ago Timber Corporation alone appealed to the Secretary of Agriculture and Natural Resources, an appeal still pending at the time the present case was submitted for decision. As Lansang did not take a similar appeal, the decision of the Director of Forestry became final as against him.

In essence the litigation between the parties herein is a boundary dispute. To determine which of them is entitled to recover damages from the other; to decide who is entitled to eject the other from the disputed area, this boundary dispute must first be resolved by the competent authority before whom it was pending prior to the filing of the dismissed counterclaims.

With respect to the two civil actions between the same parties and involving the same issue as the one raised in

the dismissed counterclaims, the following are pertinent con-siderations.

In Civil Case No. 1416 of the Court of First Instance of Surigao del Sur appellee herein seeks to recover damages from appellants Pastor Ago and Ago Timber Corporation mainly upon the ground that, without any right whatsoever and by means of force and intimidation, they had stopped its logging operations inside the timber concession covered by its Timber License Agreement No. 49. This area from which said operations were allegedly suspended is adversely claimed by said defendants.

It has been alleged, and it has not been sufficiently controverted, that the disputed area involved in Civil Case No. 1416 is the same as that involved in the administrative case pending in the Department of Agriculture and Natural Resources. Neither is it disputed that this civil action was still pending in the Court of First Instance of Surigao del Sur when the dismissed counterclaims were filed.

Upon the other hand, in relation to the second case, it appears that appellant Ago Timber Corporation had filed a complaint for forcible entry in the Justice of the Peace Court of Bah-Bah, Agusan against herein appellee claiming that the latter had encroached upon the forest concession of said corporation covered by Ordinary Timber License No. 1323-60 issued in its favor. The corporation, of course, also sought to recover damages for such encroachment.

Appellee herein (defendant in said case for forcible entry) moved to dismiss the complaint, and said motion was granted. In view thereof, Ago Timber Corporation appealed to the Court of First Instance of Agusan where the case was docketed as Civil Case No. 815 still pending at the time the dismissed counterclaims were interposed. The damages claimed in this Civil Case No. 815 appear to be the same involved in the dismissed counterclaims.

In view of the foregoing, We find that the trial court committed no error in dismissing the counterclaims interposed by defendants-appellants.

WHEREFORE, the order appealed from is hereby affirmed, with costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Concepcion, C.J., and Ruiz Castro, J., on official leave.

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