

**CONSUELO V. CALO, MARCOS M. CALO AND FLAVIO MAKINANO,
PETITIONERS, VS. BISLIG INDUSTRIES INC., AND JUDGE LUIS REYES
OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENTS.**

G.R. No. L-19703. January 30, 1967

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for certiorari and prohibition with preliminary injunction to set aside the orders of respondent judge denying petitioners motion to dismiss Civil Case No. 48455 and to enjoin him from proceeding with the hearing thereof.

Consuelo V. Calo and Bislig Industries Inc., hereinafter referred to as Bislig, are lumber concessioners of adjacent forest lands in the province of Agusan with licenses issued by the Bureau of Forestry.

On October 26, 1961, Bislig filed a complaint in the Court of First Instance of Manila (Civil Case No. 48455) against Consuelo V. Calo, Marcos M. Calo and Flavio Makinano, for damages in the amount of P40,000.00. The complaint alleged that the defendants by themselves and/or through their employees and representatives en-croached and logged within its forest concession an area of about 42 hectares.

Defendant Flavio Makinano filed a motion to dismiss the complaint on the grounds of improper venue, lack of jurisdiction, and failure to state a cause of action due to non-exhaustion of administrative remedies. Bislig opposed the motion to dismiss and filed a counter motion to declare Makinano in default. After due consideration, the respondent Judge denied petitioner's motion to dismiss in an order dated January 15, 1962. The Court, however, did not act on Bislig's motion to declare Makinano in default.

Later, other defendants, the spouses Marcos M. Calo and Consuelo Calo, also filed a motion to dismiss on the same grounds relied upon by Makinano. A supplementary motion to dismiss was filed alleging that a boundary dispute between the parties exists as shown by an order of the Bureau of Forestry requiring both parties to submit their respective memorandum to support their claims. Respondent Judge likewise denied this motion to dismiss in his order of March 7, 1962.

On February 10, 1962, Bislig filed an amended com-plaint which reproduced the original complaint and included an allegation that the license issued to Consuelo V. Calo is null and void, having been issued contrary to the pro-hibition, and under circumstances violative of Section 17 of Article VI of the Constitution of the Philippines.[1]

Defendants (herein petitioners) moved to dismiss the amended complaint raising the same grounds set forth in their motion to dismiss dated January 26, 1962, and added further that the judicial department has no power to make a pronouncement on the validity of the license of defendant Consuelo V. Calo, it being an administrative function exclusively vested in the executive department and properly belonging to the Bureau of Forestry, the Secretary of Agriculture and Natural Resources and ultimately the President of the Philippines. Respondent Judge

denied the motion to dismiss through his order of March 26, 1962.

On April 23, 1962, petitioners filed before Us the present petition for certiorari and prohibition with preliminary injunction, claiming that the respondent judge in issuing the orders of January 15, 1962, March 7, 1962, and March 26, 1962, acted not only with grave abuse of discretion but without jurisdiction because the properties subject of litigation are situated in the provinces of Surigao and Agusan; that the case involves the right to possession or the right to cut and haul logs; that there is no appeal or any plain, speedy or adequate remedy in the ordinary course of law except the filing of the present petition; and that respondent judge is proceeding with the case not merely for the purpose of issuing a writ of injunction. A preliminary injunction was issued shortly after the filing of the petition.

The main issue now before Us is whether the suit is an action in personam or in rem.

Petitioners claim that the issue presented before the court is whether they have a right to cut or continue cutting logs on the area which respondent corporation claims to be within the limits of its concession, so the issue involves the right to possess or enter, occupy and cut logs in an area covered by a timber license, hence, it is a real action and therefore should have been brought in Agusan where the timber concessions are located. Bislig, on the other hand, maintains that the action instituted in the lower court is an action for damages arising from petitioners illegal logging operation within Bislig's timber concession, and therefore it is an action in personam, which can be commended and tried where Bislig resides. Respondent's residence in this case is Manila.

The main complaint in this case is for recovery of damages suffered by Bislig due to the illegal logging operations of petitioners within the timber concession of Bislig. The damages allegedly suffered arose from the violation of Bislig's right to cut, collect and remove timber within the area defined in its license agreement. We agree with the respondents that the recovery of damages in this case is a personal action and therefore it was properly filed in the City of Manila where Bislig has its main office. (Section 1, Rule 5, Rules of Court, now substantially Sec. 2 (b), Rule 4).

A case in point is *Hodges vs. Treasurer of the Philippines*, 50 Phil. 16. It was an action for damages arising from the failure of the Register of Deeds of Negros Occidental to register in due time a real estate mortgage. The jurisdiction of the Court of First Instance of Iloilo was challenged on the ground of improper venue, the property involved being situated in Negros Occidental. Although real estate was truly involved, still the jurisdiction of the Court of First Instance of Iloilo was upheld:

"In the first assignment of error, section 101 of Act No. 496, commonly called the 'Land Registration Act' provides that actions may be brought in any court of competent jurisdiction against the Treasurer of the Philippine Islands for the recovery of damages to be paid out of the assurance fund. The indemnity here claimed is not for damages caused to the property mortgaged the registration of which is under discussion, but for alleged damages caused to the mortgagee C.N. Hodges by the refusal of the register of deeds of Occidental Negros to note his mortgage lien on the land on the back of the certificate of title covering the mortgaged land, having thus lost his preferential right; therefore, that provision of section 377 of the Code of Civil Procedure, which provides that in order to obtain indemnity for damages caused to real property, the action must be brought in the province where the land, or some part thereof, is situated is not applicable; but that which says that all actions not herein otherwise provided may be brought in the province where the defendant or the plaintiff resides, at the election of the latter."

With this authority, it is idle to discuss the other points raised by the petitioners which tend to show that the main suit is a real action and not within the jurisdiction of the Court of First Instance of Manila.

WHEREFORE, the instant petition is hereby dismissed and the writ of injunction heretofore issued dissolved,

with costs against petitioners.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] "Sec. 17. No Senator or Member of the House of Representatives shall directly or indirectly be financially interested in any contract with the Government or any subdivision or instrumentality thereof, of in any franchise or special privilege granted by the Congress during his term of office. . . x x x" (Marcos Calo was then a congressman at the time the license was issued.)

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