

SOLEDAD DY, DOING BUSINESS UNDER THE NAME AND STYLE RONWOOD LUMBER, PETITIONER, VS. COURT OF APPEALS AND ODEL BERNARDO LAUSA, RESPONDENT.

G.R. No. 121587. March 09, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision[1] of the Court of Appeals in CA G.R. SP 33099 setting aside two orders of the Regional Trial Court of Butuan City (Branch 5) and the appellate court's resolution denying petitioner's motion for reconsideration.

The facts are as follows.

On May 31, 1993, the Mayor of Butuan City issued Executive Order No. 93-01 creating Task Force Kalikasan to combat "illegal logging, log smuggling or possession of and/or transport of illegally cut or produced logs, lumber, flitches and other forest products" in that city.[2] The team was composed of personnel of the Philippine Army, Philippine National Police (PNP), the Department of Natural Resources (DENR), and the Office of the City Mayor of Butuan. Respondent Odel Bernardo Lausa, who was the acting chief of civilian security in the mayor's office, was a member of the team.

On July 1, 1993, the members of the task force received confidential information that two truckloads of illegally cut lumber would be brought to Butuan City from the Ampayon-Taguibe-Tiniwisan area. Accordingly, the team set up a check-point along kilometer 4 in Baan, Butuan City.[3] What happened thereafter is summarized in the following portion of the decision of the Court of Appeals:[4]

At around 10:00 p.m., two trucks with Plate Nos. KAK-542 and KBL-214 and loaded with lumber approached the checkpoint. They were flagged down by the operatives but instead of stopping, they accelerated their speed hence, the task force gave chase. They finally caught up with the two vehicles at the compound of Young Metalcraft and Peterwood Agro-Forest Industries at Baan, Butuan City, about two kilometers from the checkpoint. When requested by the operatives, Pulcita Lucero, caretaker/in charge of the compound could not produce any document as proof of the legality of the origin/possession of the forest products.

Forester Resurreccion Maxilom of the DENR issued a temporary seizure order and a seizure receipt for the two vehicles and their cargo consisting of several pieces of lumber of different sizes and dimensions, but Lucero, the caretaker of the compound where they were seized, refused to accept them. The seized lumber and vehicles were then taken to the City motorpool and placed in the custody of respondent Lausa.

The next day, July 2, 1993, Maxilom submitted a memorandum-report to the Community Environment and Natural Resources Officer (CENRO) of Butuan City on the seizure of the lumber and the two vehicles.[5] On July 6, the CENRO issued a notice of confiscation which was duly posted for three days.

For lack of claimants, DENR Regional Technical Director Raoul Geollegue recommended to the Secretary on

July 29, 1993 the forfeiture of the lumber and the two vehicles.[6]Accordingly, on July 30, 1993, DENR Regional Director De la Rosa ordered the CENRO of Butuan City to issue the requisite forfeiture orders,[7] which CENRO Angelita Orcasitas issued on August 15, 1993.[8]

On October 20, 1993, more than two months after the lumber had been forfeited, petitioner, claiming to be the owner of the lumber, filed a suit for replevin in the Regional Trial Court of Butuan City (Branch 5) for its recovery. The next day, October 21, 1993, the trial court issued a preliminary writ of replevin.

On October 29, 1993, respondent Lausa filed a motion for the approval of a counterbond. Before the court could act on his motion, he moved to dismiss and/or quash the writ of replevin on the ground that the lumber in question, having been seized and forfeited by the DENR pursuant to P.D. No. 705, as amended (Revised Forestry Code), was under its custody and, therefore, resort should first be made to the DENR.

On November 29, 1993, the trial court denied respondent Lausa's application for the approval of the counterbond as well as his motion to dismiss and/or quash the suit for replevin. For this reason, respondent filed a petition for certiorari in the Court of Appeals in which he sought the approval of his counterbond and the nullification of the two orders, dated October 21, 1993 and November 29, 1993, granting petitioner's prayer for a preliminary writ of replevin and denying his Motion to Dismiss Case and/or Quash Writ of Replevin.

On January 19, 1995, the Court of Appeals rendered a decision, the dispositive portion of which reads:

WHEREFORE, the petition is hereby GRANTED, and

- The Orders dated 21 October 1993 and 29 November 1993 are SET ASIDE.

- Respondent judge is directed to approve a duly qualified counterbond to be filed by petitioner, even with a period of at least one year.

No pronouncements as to costs.

SO ORDERED.[9]

Petitioner's subsequent motion for reconsideration was denied in a resolution, dated July 26, 1995. Hence, this petition. Petitioner alleges that:

FIRST ERROR

WITH DUE RESPECT RESPONDENT COURT OF APPEALS ERRED IN RULING THAT THE VERIFICATION MADE BY LORENCIO DY AND NOT BY PETITIONER SOLEDAD Y. DY WAS INSUFFICIENT TO JUSTIFY THE ISSUANCE OF THE REPLEVIN WRIT.[10]

SECOND ERROR

THE RESPONDENT COURT OF APPEALS ERRED IN RULING THAT A COUNTERBOND IN REPLEVIN WHICH IS EFFECTIVE FOR ONLY ONE YEAR IS VALID TO CAUSE THE RETURN OF THE PROPERTY TO DEFENDANT.[11]

THIRD ERROR

THE RESPONDENT COURT OF APPEALS ERRED IN GIVING DUE COURSE TO PRIVATE RESPONDENT'S PETITION FOR CERTIORARI.[12]

The appeal is without merit. The threshold question is whether the Regional Trial Court could in fact take cognizance of the replevin suit, considering that the object was the recovery of lumber seized and forfeited by law enforcement agents of the DENR pursuant to P.D. No. 705 (Revised Forestry Code), as amended by Executive Order No. 277.

The rule is that a party must exhaust all administrative remedies before he can resort to the courts. In a long line of cases, we have consistently held that before a party may be allowed to seek the intervention of the court, it is a pre-condition that he should have availed himself of all the means afforded by the administrative processes. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before a court's judicial power can be sought. The premature invocation of a court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case is susceptible of dismissal for lack of cause of action.[13]

Section 8 of P.D. No. 705, as amended, provides:

SEC. 8. Review. $\frac{3}{4}$ All actions and decisions of the Director are subject to review, motu proprio or upon appeal of any person aggrieved thereby, by the Department Head whose decision shall be final and executory after the lapse of thirty (30) days from receipt by the aggrieved party of said decision, unless appealed to the President in accordance with Executive Order No. 19, series of 1966. The Decision of the Department Head may not be reviewed by the courts except through a special civil action for certiorari or prohibition.

In *Paat v. Court of Appeals*,[14] where, as in the case at bar, the trial court issued a writ of replevin against the DENR, thus allowing the claimant to obtain possession of the conveyance used in transporting undocumented forest products, this Court stated:

Dismissal of the replevin suit for lack of cause of action in view of the private respondents' failure to exhaust administrative remedies should have been the proper cause of action by the lower court instead of assuming jurisdiction over the case and consequently issuing the writ ordering the return of the truck. Exhaustion of the remedies in the administrative forum, being a condition precedent prior to one's recourse to the courts and more importantly, being an element of private respondents' right of action, is too significant to be waylaid by the lower court.[15]

As petitioner clearly failed to exhaust available administrative remedies, the Court of Appeals correctly set aside the assailed orders of the trial court granting petitioner's application for a replevin writ and denying private respondent's motion to dismiss. Having been forfeited pursuant to P.D. No. 705, as amended, the lumber properly came under the custody of the DENR and all actions seeking to recover possession thereof should be directed to that agency.

The appellate court's directive to the trial court judge to allow the respondent agent of the DENR to file a counterbond in order to recover custody of the lumber should be disregarded as being contrary to its order to dismiss the replevin suit of petitioner. For, indeed, what it should have done was to dismiss the case without prejudice to petitioner filing her claim before the Department of Natural Resources (DENR).

In view of the conclusion reached in this case, it is unnecessary to discuss the errors assigned by petitioner. These pertain to the questions whether petitioner's complaint below was properly verified and whether private respondent's counterbond should be approved. Both are based on the premise that the trial court can take cognizance over the case. As shown above, however, such is not the case.

WHEREFORE, the decision of the Court of Appeals, dated January 19, 1995, and its Resolution, dated July 26, 1995, in CA-G.R. SP 33099 are AFFIRMED with the modification that the complaint for recovery of personal property is DISMISSED.

SO ORDERED.

Bellosillo, (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1] Per Associate Justice Buenaventura Guerrero, Chairman, concurred in by Justices Cesar D. Francisco and Celia Lipana-Reyes, members.

[2] CA Rollo, p. 52; Petition, Annex J, p. 2.

[3] Id., p. 120; Private Respondent's Reply to Petitioner's Comment, Annex E, p. 1.

[4] Rollo, p. 28; Decision, p. 2.

[5] CA Rollo,, pp. 61-62; Petition, Annex P.

[6] Id., p. 63; id., Annex Q.

[7] Id., p. 64; id., Annex R.

[8] Id., pp. 49-50; id., Annex I-I-1.

[9] Rollo, p. 32; Decision, p. 6.

[10] Id., p. 19; Petition, p. 9.

[11] Id., p. 21; id., p. 11.

[12] Id., p. 24; id., p. 14.

[13] Paat v. Court of Appeals, 266 SCRA 167, 175 (1997), citing cases.

[14] 266 SCRA 167 (1997).

[15] Id., at 184.

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