

PHILIPPINE IRON MINES, INC., PLAINTIFF AND APPELLANT, VS. PEDRO A. VENIDA AND DIRECTOR OF MINES, DEFENDANTS AND APPELLEES.*G.R. No. 12599, August 31, 1961*

Ponente: LABRADOR, J.

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Appeal from an order dated April 29, 1957, of the Court of First Instance of Camarines Norte, Hon. Melquiades G. Ilao, presiding, dismissing the complaint filed in Civil Case No. 899, entitled "Philippine Iron Mines, Inc., plaintiff, vs. Pedro A. Venida and Director of Mines, defendants," on the ground that said "complaint does not state sufficient facts to confer jurisdiction on the Court." Likewise appealed from is another order of even date dismissing the complaint for lack of cause of action insofar as the defendant Director of Mines is concerned.

On March 30, 1957, the Philippine Iron Mines, Inc., a corporation duly organized under the laws of the Philippines, filed said Civil Case No. 899 against Pedro A. Venida and the Director of Mines. The complaint alleges that plaintiff is the sole and exclusive owner of two mineral lode claims, identified as "Villa I and Villa 2", situated within the municipality of Labo, Camarines Norte, having bought the same from Vicente L. Inocalla, who, in turn acquired it from Maximo Villaluz, the locator of said claims; that defendant Pedro A. Venida filed on April 13, 1956 a lode lease application over a certain mineral claim denominated as Paracale "19", located at sitio of Napaod, barrio of Mabilo, municipality of Labo, Camarines Norte, in support of which application he presented a survey plan, Annex "E" and a lease survey plan Annex "F"; that said lode lease application and the lease survey plan and the physical survey made of claim Paracale "19" are null and void, because the same are not based upon the actual location of the mineral claim Paracale "19", as shown on the corresponding declaration of location thereof filed with the Mining Recorder by its original locator; that said Paracale "19" mineral claim has been unjustly and illegally shifted to and over the area covered by plaintiff's mineral claims, "Villa 1 and Villa 2", on the basis of which the survey plan and the lode lease application were prepared and filed by defendant Venida; and that the survey was not made in accordance with law, as the monuments have been placed on areas different from the corresponding declaration of location of said claim.

Plaintiff company also alleges in its complaint that, pursuant to the provisions of Section 73 of the Mining Act, it has filed an adverse claim, Annex "H", with respect to the area sought to be leased by defendant Venida and that unless restrained, defendant Venida will extract ores from the areas covered by plaintiff's mineral claims, in which case the company will suffer irreparable damages. Plaintiff, therefore, prays that the court declare that defendant Venida has no legal right to apply for the lease of the area in question; that defendant Venida's lode lease application and lease survey are null and void; and that plaintiff's mineral claims, "Villa 1 and Villa 2" are free and clear from any conflict. Plaintiff also asks for the issuance of a writ of preliminary injunction to enjoin the defendant Venida from extracting ores from the mines.

On April 6, 1957, defendant Venida filed a motion to dismiss on the grounds that the court has no jurisdiction

over the subject matter because the complaint and the adverse claim filed are fatally defective, that the complaint states no cause of action, and that equitable considerations require an outright dismissal of the action.

Under date of April 11, 1957, defendant Director of Mines filed a separate motion to dismiss for the reason that the complaint states no cause of action against him. On April 13, 1957, plaintiff filed an opposition to the motion of the Director of Lands, and on April 17, 1957, he presented another opposition to the motion of defendant Venida. After a supplementary memorandum of defendant Venida and a reply thereto by plaintiff company were filed, the two motions to dismiss were submitted for decision.

Acting upon the motion of defendant Venida, the lower court dismissed the complaint, holding that the filing of an adverse claim with the Bureau of Mines in accordance with Section 70 of the Mining Act confers jurisdiction upon the courts, and that inasmuch as the adverse claim filed in this case does not state in detail the nature, boundaries and extent of said adverse claim and did not submit all the plans, maps and agreements, it has not acquired jurisdiction over the case. The court also dismissed the case against the Director of Mines, for the reason that the complaint does not show any controversy between the plaintiff and said Director. Against these two orders, the plaintiff has interposed this appeal directly to this Court.

Appellant's second assignment of error, which we choose to discuss first, is as follows:

"THE LOWER COURT ERRED IN HOLDING THAT COMPLIANCE WITH SECTION 70 OF THE MINING ACT IS NECESSARY BEFORE IT CAN TAKE COGNIZANCE OF A SUIT BROUGHT PURSUANT TO THE PROVISIONS OF SECTION 73 OF THE SAME ACT."

The above assignment involves the import and application of Section 73 of the Mining Act, which provides in part as follows:

"* * *. Upon the filing of an adverse claim all proceedings except the publication of notice of application for lease and the making and filing of the affidavit in connection therewith, as herein prescribed, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the controversy and to prosecute the same with reasonable diligence to final judgment, and a failure to do so shall be considered as a waiver of his adverse claim * * *."

In accordance with the above-quoted provision, before a claimant can come before a court of competent jurisdiction to contest the application of another for lease of a mining claim, it is necessary that he must file an adverse claim and that a complaint against the other application be presented within 30 days from the filing of such adverse claim. The appellant complied with the above condition precedent, before filing the action to contest the application for lease of the defendant.

However, the trial court held that in the case at bar the adverse claim presented does not fulfill the conditions required in Section 73 of the Mining Act, in that it does not set forth in detail the mates and bounds and extent of applicant's mining claims and that said adverse claim is not accompanied by any plan, document or agreement upon which the adverse claim is based.

The adverse claim that appellant presented before the Director of Mines is set forth in Annex "H" to the complaint (pp. 46 to 50, ROA). The adverse claim states that appellant herein had filed two mining claim applications "Villa 1 and Villa 2", and the appellee Venida one mining claim application for a claim known as Paracale "19"; that the area supposedly covered by Paracale "19" covers in part portions of the mining claims of appellant; that the survey plan does not tally with the locator's plan or sketch contained in the declaration of location. Attached to the adverse claim are the declarations of location of "Villa 1 and Villa 2" and that of Paracale "19". No survey plan

was presented in connection with said adverse claim, but the plan of survey of Paracale "19" was already submitted as Annex "F" of the complaint. The declarations of location of both "Villa 1 and Villa 2" show that portions of Lots Nos. 93, 116 and 519 of the Labo Cadastre are included both in "Villa 1 and Villa 2" and in Paracale "19". This shows that said claims overlap each other. With these facts appearing in the annexes attached to the complaint, we believe that the pleadings and papers show that the area covered by the lease application of defendant-appellee included portions of the mining claims of the appellant. Hence, the finding of the trial court that no sufficient identification of the mining claims has been made is incorrect.

Attention is also called to the fact that since the filing of the complaint, more specifically on April 4, 1957, the Director of Mines had considered the adverse claim of the appellant as duly filed with his office, such that the Bureau has already lost jurisdiction to renew the permit for the lease of the claim known as Paracale "19". If the Director of Mines considered the adverse claim as duly filed, we can not see how we can make a finding that said adverse claim was not sufficient in its details to show the overlapping claims.

The third assignment of error is to the effect that the Director of Mines is a necessary party to the case. We find this claim without merit. Section 73 of the Mining Act, above-quoted, clearly shows that after an adverse claim is duly filed, the matter should be brought to the court of competent jurisdiction and the Director of Mines must act only after a decision thereon has been rendered by the court. The Director acts as a disinterested and impartial party, and, therefore, his joinder as a party is not necessary.

During the pendency of this case in this Court, more specifically on May 27, 1961, the plaintiff-appellee submitted a statement that the mining claim known as Paracale "19", which is the subject of the case at bar, had been transferred by the defendant Pedro A. Venida, to Vein Venida, Inc., a Philippine corporation. This notwithstanding, the case may continue in the name of the original defendant (Sec. 20, Rule 3), as the new owner of the mining claim, subject of the action, has not been impleaded. However, let a copy of this decision be furnished Vein Venida, Inc., in addition to the original parties.

Wherefore, the order dismissing the complaint insofar as the defendant Director of Mines is concerned is hereby affirmed, but that portion thereof dismissing the complaint with respect to defendant Pedro A. Venida is hereby set aside. The case is hereby remanded to the lower court for further proceedings in accordance with this decision. With costs against the defendant-appellee Pedro A. Venida.

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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