

MAGDALENA RULLAN, ET AL., PLAINTIFFS AND APPELLANTS, VS. BERNARDO O. VALDEZ, DEFENDANT AND APPELLEE.

G. R. No. 20031. November 28, 1964

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On November 24, 1961, Bernardo O. Valdez filed with the Bureau of Mines an application for the lease of certain public mineral lands comprising the amended locations of the SILICA and SELECTA Placer Mining Claims which was ordered published according to law. The first publication was made on December 3, 1961.

During the period of the publication of the application, Magdalena Rullan and George Alabanza filed with the Bureau of Mines an opposition in the form of adverse claim to the application alleging, among other things, the following: Sometime in February, 1958, Bernardo O. Valdez and his associates executed certain documents stating that they are the members of the Baguio-Loakan Placer Mining Association the whole interest of which is divided into 10,000 units and each unit being valued at P5.00.

The interest of Valdez is only 4,000 units. Sometime in 1957, the Association located two placer mining claims, namely, morning glory containing an area of 45 hectares, and silica containing an area of 8 hectares. Then, sometime in January or February, 1959, Magdalena Rullan bought 1,000 units of the Association, while George Alabanza 300 units, thereby becoming members thereof.

After some associates had sold their participation in the Association to third persons, Valdez, without the knowledge or consent of his associates, reduced the area comprising the SILICA Placer Mining Claim from 8 to 6.1284 hectares by excluding therefrom the southeastern portion having an area of 1.8716 hectares which he added to the original area of 4 hectares that comprises the SELECTA Placer Mining Claim which he located and the lease of which he applied for with the Bureau of Mines. And pending consideration of their adverse claims filed with the Bureau of Mines, Magdalena Rullan and George Alabanza commenced the present action on January 10, 1962 before the Court of First Instance of Baguio setting forth the foregoing facts and praying that their rights and interests as co-lessees of the 8 hectares of public mineral land originally comprising the SILICA Placer Mining Claim be declared and recognized irrespective of the amended location made by defendant insofar as the SELECTA Placer Mining Claim is concerned.

Defendant Valdez filed a motion to dismiss on the ground that, not having alleged that they are locators, holders or owners of the mining claims in question, plaintiffs cannot be considered adverse claimants within the purview of Section 73 of Commonwealth Act No. 137, as amended.

To this motion plaintiffs filed their opposition. On February 13, 1962, the court a quo denied the motion to dismiss. On February 21, 1962, defendant filed a motion for reconsideration alleging that the court a quo had not acquired jurisdiction over the case inasmuch as the Director of Mines had not given due course to the adverse claim of plaintiffs for which reason they filed a motion for reconsideration which at that time has not yet been acted upon. And on February 26, 1962, the court a quo issued an order declaring itself without jurisdiction

considering that the Director of Mines had not yet acted on the motion for reconsideration filed by the plaintiffs. And vi-en their motion for reconsideration was denied, plain- tiffs interposed the present appeal.

The only issue to be determined is whether the court a quo has jurisdiction to act on the case considering that action on the adverse claim herein involved is still pending in the Office of the Bureau of Mines. It appears that the Director of Mine has not yet acted one way or the other on the motion for reconsideration filed by the plaintiffs. The law applicable to the issue before us is Section 73 of Commonwealth Act No. 137. as amended by Republic Act No. 743, which we quote:

"SEC. 73. At any time during the period of application, any adverse oMm may be filed wider oath with the Director of Mines. and shall state in full detail the nature, boundaries, and extent of the adverse claim, and shall be accompanied by all plans, documents, and agreements upon which such adverse claim is based: * * * Upon the filing of any adverse claim all proceedings except the making and filing of the affidavit in connection there- with, 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 commenre 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.* * *"

The above statutory provision prescribes the method by which a person having an adverse claim to a certain mineral and can have his day in court. If he fails to file an adverse claim within the time therein provided for or fails to commence the proceeding within the statutory period, his claim is deemed waived. Any person who has an adverse interest in the whole or to a portion of the surface of a mining claim for which a lease is applied for by another may file an adverse claim which must state in full the nature, boundaries and extent thereof, to be accompanied by the necessary plans, documents and agreements upon which the same is based. The filing of said adverse claim produces the effect of staving all the proceedings on the application filed with the Bureau of Mines, except only in relation to the publication and proof of notice, until the controversy shall have been decided by a court of competent jurisdiction. Since then the functions of the Bureau of Mines are suspended to await the action of the court.

This is the situation herein obtained. After plaintiffs bad filed their adverse claim with the Bureau of Mines with regard to the lease application of certain mining claims filled by defendant, they at the same time commenced the present action wherein they squarely brought to the fore the issue of ownership over the mining claim controverted. The question, therefore, comes well within the jurisdiction of the court a quo regardless of whether the action of the Director of Mines on the adverse claim filed in his office is still pending. This is the reverse situation of a case involving .the ownership of a portion of public land wherein exhaustion of administrative remedies is required, for here the law is specific that the question of ownership affecting an adverse claim must first be determined by the competent court before administrative action could proceed to its termination. It is, therefore, error for the court a quo to dismiss the complaint on the ground that plaintiffs have not exhausted their administrative remedies before coming to court. The situation obtained herein is just the contrary.

Wherefore, the order appealed from is set aside. This case should be remanded to the court a quo for further proceedings. Costs against appellee.

Concepcion, Reyes, J. B. L., Paredes, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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