

**AGO TIMBER CORPORATION, PETITIONER, VS. HON. JESUS S. RUIZ,
COURT OF FIRST INSTANCE OF AGUSAN, EXCELLENT
MANAGEMENT CORPORATION, SHERIFF OF AGUSAN AND SHERIFF
OF MANILA, RESPOND...**

G.R. No. 23887. December 26, 1967

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Petition styled as one for injunction with preliminary injunction.

The petitioner Ago Timber Corporation and the respondent Excellent Management Corporation entered into a contract on 1 August 1963 for the latter to manage the logging operations of the former as set forth in their Memorandum Agreement (Annex "A"); and on the following day the former executed in favor of the latter a contract of management and general power of attorney constituting the latter as the former's general manager in the said industry and providing that the contract is irrevocable for 5 years and is one coupled with a valuable consideration (Annex "B").

On 30 September 1963, however, the petitioner Ago Timber Corporation informed the respondent Excellent Management Corporation that for its failure to perform its part of the contract, the petitioner Ago Timber was taking over the management of its logging operations.

One year thereafter, or on 28 October 1964, the petitioner filed in the Court of First Instance of Manila an action for rescission of the aforesaid contract and revocation of the general power of attorney, with damages. The case was docketed as Civil Case No. 58827. Summons was served on the defendant Excellent Management Corporation on 3 November 1964.

On a date which is in dispute (and discussed later), the respondent filed action in the Court of First Instance of Agusan against the petitioner Ago Timber Corporation and Pastor Ago, for injunction with preliminary injunction, attachment and garnishment, and for damages, praying for the enforcement of the same contract that the petitioner was seeking to rescind in the Court of First Instance of Manila. The case filed in Agusan was docketed therein as Special Civil Case No. 182. On 6 November 1964, the Agusan Court, thru Butuan City Judge Jesus S. Ruiz, for and in the essence of the District Judge, issued ex parte a writ of preliminary injunction and another writ of attachment and garnishment.

The writ of preliminary injunction restrains and prohibits the respondents (herein petitioner Ago Timber Corporation and Pastor Ago) from --

"x x x disturbing, molesting, harassing or interfering with petitioner's possession of the area described in paragraph 4 of the petition in the above-entitled case; restraining and prohibiting the respondents, x x x from threatening, coercing or intimidating the employees, officials and representatives of petitioners; restraining and prohibiting respondents x x x from cutting and hauling logs from the area described in paragraph 4 of the

petition, without previous authority, consent or permission of petitioner x x x; restraining and prohibiting respondent corporation from selling or exporting its logs or transferring the letter of credit in the name of another person without the knowledge and consent of petitioner, commanding and ordering the respondents to comply and respect the terms, conditions and stipulations in the document Annexes A and B of said petition; order-ing the Philippine Constabulary officers of Agusan and Butuan City to enforce whatever writs of injunction or attachment this Court may issue in this case against the respondents, with area is situated at Los Arcos, Prosperidad, Agusan and likewise you are also directed to serve copy each of the order of the Court xxxxx."

The petitioner moved to dismiss Special Civil Case 182 and to dissolve the writs issued thereunder on the ground of pendency of another suit between the same parties,[1] but since action thereon was not forthcoming, the petitioner resorted to this Court.

This Court, by resolution on 7 December 1964, issued a writ of preliminary injunction against the enforcement of the writs issued by the Agusan court, restraining the respondents from entering into, and taking possession of the petitioner's logging area, from seizing or taking the management of the logging operation, from cutting and hauling logs in the area and from preventing or stopping the sale, exportation or shipment of logs by petitioner.

The petitioner alleges that the order of the respondent judge in Special Civil Case No. 182 of Agusan, issuing its writ of preliminary injunction, is null and void because the filing of the petition by Excellent Management Corporation, as well as the injunction bond, were antedated to make it appear that the petition was filed ahead of Civil Case 58827 of the Court of First Instance of Manila, done through connivance of the respondent judge and court personnel in Agusan, aside from the fact that the preliminary injunction was granted without notice or hearing.

On this point, we observe that on the upper right-hand corner of the first page of the petition in Special Civil Case 182, Court of First Instance of Agusan, a rubber receiving stamp mark of the court was impressed, bearing "Nov 19" as its date of receipt; but on this supposed date of receipt was superimposed the handwritten date "Oct 24 64". (Annex "N-1", p. 168, Rec.).[2] The order of the court granting the preliminary injunction was dated 6 November 1964 (Annex "1") but the bond was dated one day before, on 5 November 1964 (Annex "G", Rec. p. 56). The official receipt evidencing payment of the filing fee was dated 6 November 1964 (Annex "D", Rec. p. 34). Godofredo G. Enriquez, deputy clerk of court, and Orlando Polon, one of the clerks in the office of the clerk of court, justified the foregoing discrepancies with the explanation that they received the petition and immediately entered it on the docket book on 24 October 1964; that Atty. Tranquilino Calo, Jr., counsel for the petitioner therein, did not have sufficient cash to pay the filing fee but left the petition and promised to return; that he returned and paid the filing fee on 6 November 1964. (Annexes 1-3 on pages 93-95 of the Record). For his part, Judge Ruiz, in an affidavit, denied his alleged connivance but stated that he ordered the issuance of the writs "after reading the contents of the petition x x x and was convinced that there was an urgent need for the immediate granting of the relief prayed for x x x." (Annex "7", p. 99, Rollo). Respondent judge offered, however, no explanation why the bond was prepared earlier than his orders granting the writs.

We perceive that, whether by design or plain imprudence, an irregularity involving the integrity of a court record has been committed. Be that as it may, the date that should be reckoned as the filing of the petition in Special Civil Case 182 of the Agusan Court is when the filing fee was paid, 6 November 1964, and not when the petition was received on 24 October 1964. (See Sec. 1, Rule 13 and Sec. 1, Rule 141, Rules of Court.)

Since the case in Manila was filed earlier than the case in Agusan and the parties, in their respective motions to dismiss had pleaded pendency of another action between the same parties for the same cause, allegations that they are now estopped from denying or varying, it was incumbent upon the Agusan court to grant the petitioner's

motion to dismiss Special Civil Case No. 182, not only as a matter of comity with a coordinate and co-equal court (Laureta & Nollado, Commentaries & Jurisprudence on Injunction, p. 79, citing *Harrison v. Littlefield*, 57 Tex. Div. A. 617, 619, 124 SW 212) but also to prevent confusion that might seriously hinder the administration of justice. (*Cabigao, et al. vs. Del Rosario, et al.*, 44 Phil. 182)

The respondents, as defendants in Civil Case 58827 (Manila) received the summons on 3 November 1964, yet, they filed their petition in Special Civil Case 182 in Agusan only on 6 November 1964. It is, therefore, plain that they resorted to the Agusan court with unclean hands and wangled therefrom, under dubious circumstances, an ex parte preliminary injunction.

The petition in this although captioned as for injunction with preliminary injunction[3] is, in substance, one for certiorari and should be considered as such. While it is true that the respondent court of Agusan had jurisdiction in Special Civil Case 182, the acts complained of by the petitioner constitute grave abuse of discretion and injudiciousness on the part of the respondent court, combined with trickery on the part of the private respondent.

For the foregoing reasons, the writ of certiorari is hereby granted, and the writs of preliminary injunction and attachment and garnishment issued by the respondent court are hereby set aside and declared null and void. The respondent Court of First Instance of Agusan is hereby directed to dismiss its Special Civil Case No. 182. The preliminary injunction heretofore issued by this Court is hereby made permanent. Costs against the respondent Excellent Management Corporation.

Let a copy of this decision be furnished to the Honorable Secretary of Justice for his information and for whatever action may be proper on the alteration of court records herein described.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.
Fernando, J., did not take part.

[1] The respondent in turn filed a motion to dismiss Civil Case 58827 of the Court of First Instance of Manila on the same ground of pendency of another action. The motion was dated 10 November 1964 and denied by the Court on 8 December 1964. (Annexes "P" & "O", pages 184-186 and 180-183 of the Record).

[2] It will be recalled that petitioner's action in Manila was filed on 28 October 1964.

[3] The Supreme Court has no jurisdiction in an original action for injunction. (*Watson v. Enriquez*, 1 Phil. 480; *Gavieres v. Robinson, et al.*, 8 Phil. 322; *Madarang v. Santamaria*, 37 Phil. 304)

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