

**DAVAO SAW MILL CO., INC., PLAINTIFF AND APPELLANT, VS.
APRONIANO G. CASTILLO AND DAVAO LIGHT & POWER CO.,
INC., DEFENDANTS AND APPELLEES.**

G.R. No. 40411. August 07, 1935

Ponente: MALCOLM, J.

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MALCOLM, J.:

The issue in this case, as announced in the opening sentence of the decision in the trial court and as set forth by counsel for the parties on appeal, involves the determination of the nature of the properties described in the complaint. The trial judge found that those properties were personal in nature, and as a consequence absolved the defendants from the complaint, with costs against the plaintiff.

The Davao Saw Mill Co., Inc., is the holder of a lumber concession from the Government of the Philippine Islands. It has operated a sawmill in the sitio of Maa, barrio of Tigatu, municipality of Davao, Province of Davao. However, the land upon which the business was conducted belonged to another person. On the land the sawmill company erected a building which housed the machinery used by it. Some of the implements thus used were clearly personal property, the conflict concerning machines which were placed and mounted on foundations of cement. In the contract of lease between the sawmill company and the owner of the land there appeared the following provision:

"That on the expiration of the period agreed upon, all the improvements and buildings introduced and erected by the party of the second part shall pass to the exclusive ownership of the party of the first part without any obligation on its part to pay any amount for said improvements and buildings; also, in the event the party of the second part should leave or abandon the land leased before the time herein stipulated, the improvements and buildings shall likewise pass to the ownership of the party of the first part as though the time agreed upon had expired: Provided, however, That the machineries and accessories are not included in the improvements which will pass to the party of the first part on the expiration or abandonment of the land leased."

In another action, wherein the Davao Light & Power Co., Inc., was the plaintiff and the Davao Saw Mill Co., Inc., was the defendant, a judgment was rendered in favor of the plaintiff in that action against the defendant in that action; a writ of execution issued thereon, and the properties now in question were levied upon as personalty by the sheriff. No third party claim was filed for such properties at the time of the sales thereof as is borne out by the record made by the plaintiff herein. Indeed the bidder, which was the plaintiff in that action, and the defendant herein, having consummated the sale, proceeded to take possession of the machinery and other properties described in the corresponding certificates of sale executed in its favor by the sheriff of Davao.

As connecting up with the facts, it should further be explained that the Davao Saw Mill Co., Inc., has on a number of occasions treated the machinery as personal property by executing chattel mortgages in favor of third persons. One of such persons is the appellee by assignment from the original mortgagees.

Article 334, paragraphs 1 and 5, of the Civil Code, is in point. According to the Code, real property consists of—

"1. Land, buildings, roads and constructions of all kinds adhering to the soil;

* * * * * "5. Machinery, liquid containers, instruments or implements intended by the owner of any building or land for use in connection with any industry or trade being carried on therein and which are expressly adapted to meet the requirements of such trade or industry."

Appellant emphasizes the first paragraph, and appellees the last mentioned paragraph. We entertain no doubt that the trial judge and the appellees are right in their appreciation of the legal doctrines flowing from the facts.

In the first place, it must again be pointed out that the appellant should have registered its protest before or at the time of the sale of this property. It must further be pointed out that while not conclusive, the characterization of the property as chattels by the appellant is indicative of intention and impresses upon the property the character determined by the parties. In this connection the decision of this court in the case of *Standard Oil Co. of New York vs. Jaramillo* ([1923], 44 Phil., 630), whether obiter dicta or not, furnishes the key to such a situation.

It is, however, not necessary to spend overly much time in the resolution of this appeal on side issues. It is machinery which is involved; moreover, machinery not intended by the owner of any building or land for use in connection therewith, but intended by a lessee for use in a building erected on the land by the latter to be returned to the lessee on the expiration or abandonment of the lease.

A similar question arose in Puerto Rico, and on appeal being taken, to the United States Supreme Court, it was held that machinery which is movable in its nature only becomes immobilized when placed in a plant by the owner of the property or plant, but not when so placed by a tenant? a usufructuary, or any person having only a temporary right, unless such person acted as the agent of the owner. In the opinion written by Chief Justice White, whose knowledge of the Civil Law is well known, it was in part said:

"To determine this question involves fixing the nature and character of the property from the point of view of the rights of Valdes and its nature and character from the point of view of Nevers & Callaghan as a judgment creditor of the Altagracia Company and the rights derived by them from the execution levied on the machinery placed by the corporation in the plant. Following the Code Napoleon, the Porto Rican Code treats as immovable (real) property, not only land and buildings, but also attributes immovability in some cases to property of a movable nature, that is, personal property, because of the destination to which it is applied. 'Things/ says section 334 of the Porto Rican Code, 'may be immovable either by their own nature or by their destination or the object to which they are applicable/ Numerous illustrations are given in the fifth subdivision of section 335, which is as follows: 'Machinery, vessels, instruments or implements intended by the owner of the tenements for the industry or works that they may carry on in any building or upon any land and which tend directly to meet the needs of the said industry or works.' {See also Code Nap., articles 516, 518 et seq, to and inclusive of article 534, recapitulating the things which, though in themselves movable, may be immobilized.) So far as the subject-matter with which we are dealing—machinery placed in the plant—it is plain, both under the provisions of the Porto Rican Law and of the Code Napoleon, that machinery which is movable in its nature only becomes immobilized when placed in a plant by the owner of the property or plant. Such result would not be accomplished, therefore, by the placing of machinery in a plant by a tenant or a usufructuary or any person having only a temporary right. (Demolombe, Tit. 9, No. 203; Aubry et Rau, Tit. 2, p. 12, Section 164; Laurent, Tit. 5, No. 447; and decisions quoted in Fuzier-Herman ed. Code Napoleon under articles 522 et seq.) The distinction rests, as pointed out by Demolombe, upon the fact that one only having a temporary right to the possession or enjoyment of property is not presumed by the law to have applied movable property belonging to him so as to deprive him of it by causing it by an act of immobilization to become the property of another. It follows that abstractly speaking the machinery put by the Altagracia Company in the plant belonging to Sanchez did not lose its character of movable property and become immovable by destination. But in the concrete immobilization took place because of the express provisions of the lease under which the Altagracia held, since the lease in substance required the putting in of improved machinery, deprived

the tenant of any right to charge against the lessor the cost of such machinery, and it was expressly stipulated that the machinery so put in should become a part of the plant belonging to the owner without compensation to the lessee. Under such conditions the tenant in putting in the machinery was acting but as the agent of the owner in compliance with the obligations resting upon him, and the immobilization of the machinery which resulted arose in legal effect from the act of the owner in giving by contract a permanent destination to the machinery.

* * * * *

"The machinery levied upon by Nevers & Callaghan, that is, that which was placed in the plant by the Altagracia Company, being, as regards Nevers & Callaghan, movable property, it follows that they had the right to levy on it under the execution upon the judgment in their favor, and the exercise of that right did not in a legal sense conflict with the claim of Valdes, since as to him the property was a part of the realty which, as the result of his obligations under the lease, he could not, for the purpose of collecting his debt, proceed separately against." (Valdes vs. Central Altagracia [1912], 225 U. S., 58.)

Finding no reversible error in the record, the judgment appealed from will be affirmed, the costs of this instance to be paid by the appellant.

Villa-Real, Imperial, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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