

AGNO RIVER GOLD DREDGING CO., INC., PETITIONER, VS. DIONISIO DE LEON, JUDGE OF FIRST INSTANCE OF PANGASINAN, AND AGNO PLACER MINING CO., RESPONDENTS.

G.R. No. 43027. February 19, 1935

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is a petition for a writ of certiorari filed by the petitioner to annul and set aside two orders entered by the respondent judge in civil case No. 6886 of the Court of First Instance of Pangasinan, the one directing the issuance of a writ of preliminary injunction against said petitioner, its agents or representatives and the other denying its motion for reconsideration. The petitioner prays that, pending final determination and upon the filing of a bond to be fixed by the court, a writ of preliminary injunction be issued restraining the respondents from enforcing the writ of preliminary injunction heretofore issued.

The pertinent facts are as follows:

The respondent Agno Placer Mining Co., as plaintiff, instituted civil case No. 6886 in the Court of First Instance of Pangasinan alleging substantially in its complaint that it was the owner and possessor of 66 individual mining claims covering an area of 520 hectares situated in the municipalities of San Manuel, San Nicolas, Tayug and Santa Maria, Province of Pangasinan; that on April 18, May 2 and 10, October 12 and November 6 and 22, 1933, it filed with the office of the mining recorder for the province the declaration of location of said mining claims and the other necessary papers, all of which were duly registered in the records of said official; and that the petitioner, as defendant, alleged and claimed that it had rights adverse to those claimed by the plaintiff, and through its employees, agents and representatives, performed acts of possession and ownership in said mining claims to the prejudice of the plaintiff's interest. Upon these allegations under oath, the respondent prayed that before trial and upon filing the bond which the court may fix, a writ of preliminary injunction be issued restraining the petitioner, its employees, agents and representatives from performing any act of possession and ownership in said mining claims or tending to hinder or molest the respondent, its agents or employees in the enjoyment thereof; that the petitioner be required to show and prove its alleged rights and after the trial, judgment be rendered declaring the respondent the owner entitled to possess and exploit said mining claims, to the exclusion of the petitioner, and that the writ of preliminary injunction be made final and permanent.

The petitioner opposed the ex-parte issuance of the writ of preliminary injunction applied for and, to show that the remedy did not lie, alleged that it was the owner and possessor of 26 mining claims covering an area of 64 hectares adjoining those of the respondent; that the descriptions of these claims in the complaint were imperfect and insufficient ; that it had complied with the mining laws before taking possession of and exploring its claims and, lastly, it and its agents and employees performed the acts complained of within the boundaries of its said mining claims and in the exercise of its rights acquired in accordance with the laws.

The respondent judge set the petition for hearing during which the parties, through their respective attorneys,

presented their documentary and oral evidence.

Thereafter the respondent judge, upon the facts established by the evidence, granted the writ of preliminary injunction applied for in an order of January 3, 1935, directing the clerk of court to issue the corresponding writ as soon as the respondent has filed a bond for P30,000 to the satisfaction of the court. The bond was filed and approved and the writ was finally issued.

Said order does not state the established facts, but Exhibit 1 presented by the attorney for the respondent during the oral argument in this case and admitted without any objection on the part of the attorney for the petitioner, consisting of the transcript of stenographic notes taken at said hearing in the Court of First Instance of Pangasinan, discloses prima facie that the respondent was in the peaceful possession of its claims; that when its engineer Eusebio M. Agonias went to said claims in April, 1934, for the purpose of evaluating 21 of them, he found 30 laborers of the petitioner panning gold; that he sought the aid of the Constabulary and with 3 soldiers succeeded in driving away said laborers; that in May of said year, he met in the said place Mr. Federle, general manager of the petitioner, and upon being asked about his mission there, Federle answered that the mining claims belonged to the petitioner and from 1915 or 1916 he had placed stakes to locate them; that prior to the year 1934 the petitioner did not take possession of any of the respondent's mining claims and from 1915 to 1933 said petitioner had not filed any report on the value of the work done on its claims.

The petitioner contends that the respondent judge exceeded his discretion in issuing the writ of preliminary injunction in question. Upon the facts above stated, this court is of the opinion that said contention is unfounded. The issuance of a writ of injunction, as an ancillary or preventive remedy to secure the existing rights of a party to a pending case, is entirely within the sound discretion of the courts vested with said power. The only limitation upon this discretionary power consists in that the writ should be issued upon the grounds and in the manner prescribed by law (section 164 of the Code of Civil Procedure; *Manila Electric Railroad & Light Co. vs. Del Rosario and Jose*, 22 Phil., 433). And if, as in this case, the remedy is granted after hearing has been held and the parties have presented evidence, from which it appears that the court was justified in proceeding in said manner, this court, in certiorari proceedings, should refrain from interfering with said court's exercise of its sound discretion.

The petitioner invokes the ruling laid down by this court in the case of *Wagan and Garcia vs. Sideco and Natividad* (60 Phil., 685), but there is no similarity between the facts of the former and those of this case. In the former case the evidence presented to the court established the fact that the petitioner was in the possession and enjoyment of a certain portion of the land claimed by the respondent and, naturally, there was a necessity of protecting his rights and maintaining the status quo until judgment was rendered on the merits of the case. In the case at bar the evidence presented at the hearing of the incident, which this court has reviewed, and the allegations of the petition and answer support prima facie the order sought to be annulled.

Without intending to prematurely pass upon the merits of the principal case now pending in said court, this court declares that the respondent judge did not abuse his sound discretion in issuing the writ of preliminary injunction sought to be dissolved and, consequently, the petition for a writ of certiorari should be, as it is hereby denied, with costs against the petitioner. So ordered.

Malcolm, Villa-Real, Hull, and Butte, JJ., concur.

Writ denied.

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