

44 Phil. 320

[G.R. No. 18009. January 10, 1923]

EMILIO PUNSALAN ET AL., PLAINTIFFS AND APPELLANTS, VS. C. BOON LIAT ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

AVANCEÑA, C.J.:

On or about the 13th of July, 1920, a Moro by the name of Tamsi saw from the Cawit-Cawit shores in the Province of Zamboanga, a big bulky object in the distance which attracted his attention. Thereupon, together with another Moro named Bayrula, he went in a small boat to investigate and found it to be a large fish. They then returned to shore, where they met other Moros and requested their help to catch the fish. They went in three small boats, there being ten in one, seven in the other, and five in the third, twenty-two men in all, twenty-one of whom are plaintiffs herein, and the remaining one named Ahamad is defendant. After having arrived at the place where the fish was, which was found to be a whale, they proceeded to pull it toward the shore up to the mouth of the river, where they quartered it, having found in its abdomen a great quantity of ambergris, which was placed in three sacks, two of which were full and the other half full, and taken to the house of Maharaja Butu, where they left it to the care of Ahamad. Then the contents of the two full sacks were placed in three trunks. All of these twenty-two persons made an agreement that they were to be the sole owners of this ambergris and that none of them could sell it without the consent of the rest. As to the half sack of amber they agreed that some of them should take it to Zamboanga to sell for the purpose of ascertaining the market price of the ambergris, in order that they might dispose of the rest accordingly. Some of them, with Tamsi in charge, went to Zamboanga to sell the half sack of amber where they did dispose of it to a Chinaman, Cheong Tong, for the sum of P2,700, which amount was distributed among all the parties in interest. Then they offered to sell for the sum of P12,000 to the Chinamen,

Cheong Tong and Lim Chiat, the rest of the amber contained in the two sacks which had been left in the house of Maharaja Butu, for safekeeping, and a document (Exhibit A) to this effect was executed by Lim Chiat and Cheong Tong, on the one hand, and Tamsi, Imam Lumuyod, and Imam Asakil, on the other. Thereupon they went to Cawit-Cawit on board the launch *Ching-kang* to get the amber so sold.

It appears that there were other people in Zamboanga who knew of the existence of this ambergris in the house of Maharaja Butu. While the above related events were taking place, Mr. Henry E. Teck, who was one of those having knowledge of the existence of this amber in Cawit-Cawit and of the fact that the launch *Ching-kang* had left for Cawit-Cawit, proposed to the master of the revenue cutter *Mindoro* to go to Cawit-Cawit to seize some supposedly contraband opium. After transmitting this information to the Collector of Customs, he, the master of the *Mindoro*, immediately proceeded to Cawit-Cawit. There were on board the vessel Mr. Teck, some Chinamen, among whom were C. Boon Liat, Ong Chua, and Go Tong, and some Moros who, according to Mr. Teck, were to assist in the arrest of the smugglers. Upon the arrival of the *Mindoro* at Cawit-Cawit, the master, accompanied by Mr. Teck and some Moros, went to the house of Maharaja Butu. As is to be presumed, this information about the supposed contraband opium was but a trick to have the *Mindoro* at their disposal. The master proceeded to search the house, stating that he had information to the effect that there was contraband opium and as a result of the search, he found three large trunks containing a black substance which had a bad odor. He then asked the owner of the house to whom those three trunks belonged, and the latter pointed to Ahamad who was present and who stated that the contents came from the abdomen of a large fish. The master, however, said that it was opium and told Ahamad that he would take the three trunks on board the ship. Then Ahamad and other Moros asked permission of the master to accompany him on the voyage to Zamboanga, to which the master consented. When already on board and during the voyage the master became convinced that the contents of the three trunks were not opium.

During the voyage, Mr. Teck offered to purchase the amber contained in the three trunks, but Ahamad refused to sell it for the reason that he was not the sole owner thereof, but owned it in common with other persons who were in Zamboanga. However Mr. Teck, aided by his companions who wielded some influence

in Zamboanga, insisted that Ahamad should sell them the amber, telling him not to be afraid of his companions, as he would answer for whatever might happen. With this promise of protection, Ahamad decided to sell the amber for P7,500 and received P2,500 as part payment on account of this price, a bill of sale having been signed by Ahamad, Maharaja Butu and three Moros more. The balance of this price was paid later.

When Cheong Tong, Lim Chiat, and the Moros who had gone to Cawit-Cawit on board the launch *Ching-kang* arrived at the house of Maharaja Butu, they found that the amber they had purchased from Tamsi and his companions was no longer there.

The plaintiffs are twenty-one of the twenty-two Moros who had caught the whale, and Lim Chiat and Cheong Tong, who had purchased from Tamsi and his companions the amber contained in the three trunks deposited in the house of Maharaja Butu for safekeeping. They claim the 80½ kilos of ambergris contained in the three trunks, or its value in the amount of P60,000, and damages in the sum of P20,000. This action is brought against C. Boon Liat, Ong Chua, Go Tong, Henry E. Teck, and the Moro, Ahamad, the first four being the persons who purchased this same amber from the one last named while on board the revenue cutter *Mindoro*.

It appears from the foregoing that the amber in question was the undivided common property of the plaintiffs (with the exception of Lim Chiat and Cheong Tong) and the defendant Ahamad. This common ownership was acquired by occupancy (arts. 609 and 610 of the Civil Code), so that neither Tamsi, Imam Lumuyod, or Imam Asakil had any right to sell it, as they did, to Lim Chiat and Cheong Tong, nor had the Moro Ahamad any right to sell this same amber, as he did, to C. Boon Liat, Ong Chua, Go Tong, and Henry E. Teck. There was an agreement between the coowners not to sell this amber without the consent of all. Both sales having been made without the consent of all the owners, the same have no effect, except as to the portion pertaining to those who made them (art. 399, Civil Code).

Although the original complaint filed in this case was entitled as one for replevin, in reality, from its allegations, the action herein brought is the ordinary one for the recovery of the title to, and possession of, this amber. It is no bar to the bringing of this action that the defendant Ahamad is one of the

coowners. The action for recovery which each coowner has, derived from the right of ownership inherent in the coownership, may be exercised not only against strangers but against the coowners themselves, when the latter perform, with respect to the thing held in common, acts for their exclusive benefit, or of exclusive ownership, or which are prejudicial to, and in violation of, the right of the community. (Decision of the supreme court of Spain of June 22, 1892.) In this case the selling of the amber by the defendant Ahamad as his exclusive property and his attitude in representing himself to be the sole owner thereof place him in the same position as the stranger who violates any right of the community. He is not sued in this case as a coowner, for the cause of action is predicated upon the fact that he has acted not as a coowner, but as an exclusive owner of the amber sold by him.

As to the sale made by Ahamad, it is urged that the purchasers acted in good faith. It is contended that the latter did not know that the amber belonged to some others besides Ahamad. But the evidence shows otherwise. Henry E. Teck himself admitted that on the occasion of the sale of the amber he really had promised Ahamad to protect him, and although he said that the promise made by him had reference to the contingency of the amber proving to be opium, as the master of the revenue cutter *Mindoro* believed, this is incredible, because he could not make Ahamad such a promise, nor could such a promise, if made, have any influence on the mind of Ahamad, inasmuch as the latter knew that the amber was not opium. If, as Henry E. Teck admits, he made Ahamad this promise of protection, it should have been only on account of Ahamad's refusal to sell the amber due to the fact that he was not the sole owner thereof.

With regard to the action of the trial court in not admitting Exhibits 1 and 2 offered by the defendants, we believe that it was no error. These documents are affidavits signed by Paslangan, and the best evidence of their contents was the testimony of Paslangan himself whom the plaintiffs had the right to cross-examine. Moreover, they are substantially the same as the statements made by Paslangan at the trial when testifying as witness for the defendants, and for this reason the ruling of the trial court excluding these documents would not, at all events, affect the merits of the case.

In the complaint it is alleged that the value of the amber is P60,000. Upon the evidence adduced on this point, and taking into account that the defendant,

Henry E. Teck, himself, testifying as witness, has stated that this amber was worth P1,200 per kilo, we accept this estimated value set forth in the complaint.

The decision of the court below contains the following order for judgment:

“Wherefore, it is the judgment and order of the court that the defendants C. Boon Liat, Henry E. Teck, Ahamad, Ong Chua, and Go Tong deliver to the plaintiffs, Emilio Punsalan, Bayrula, Daring Gumuntol, Mohamad, Insael, Dunkalan, Tahil, Dambul, Dagan, Sabay, Sahibul, Pingay, Mujahad, Amilol, Baraula, Saraban, Lim Chiat, and Cheong Tong twenty-twenty-firsts (20/21) of the amber in question, or, in default thereof, to pay them its value of twelve thousand pesos (P12,000), less one-twenty-first of said amount.”

Therefore, the judgment appealed from is affirmed, with the only modification that the value of the amber which is the subject-matter of this action shall be P60,000, without special finding as to the costs of this instance. So ordered.

Araullo, C.J., Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.
Street, J., reserves his vote.