44 Phil. 248

[G. R. No. 17597. December 29, 1922]

E. W. MCDANIEL, PETITIONER, VS. GALICANO APACIBLE, SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, AND JUAN CUISIA, RESPONDENTS.

D E C I S I O N

STATEMENT

This is an original proceeding by the petitioner for a writ of prohibition against the respondents. A demurrer, which was filed to the petition argued and submitted, was overruled on February 7, 1922,[1] in an opinion written by Justice Johnson, after which the plaintiff amended his petition to read as follows:

> "I. That plaintiff is of legal age, a citizen of the United States of America, and a resident of the City of Manila, Philippine Islands.
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> "II. That the defendant, Rafael Corpus, is the duly appointed and acting Secretary of Agriculture and Natural Resources of the Philippine Islands, and that the defendant Juan Cuisia is a citizen of the Philippine Islands, of legal age, and a resident of the City of Manila;
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> "III. That on the 7th day of June, 1916, the elamtiff, as attorney-in-fact and agent of an association of persons composed of plaintiff and E. E. Elser, Ida M. Elser, E. E. Calvin, J. C. Calvin, Mateo Cia, E. A. McDaniel and Enrique Pelegrin, all citizens of the United States of America or of the Philippine Islands, entered upon and located, in accordance with the provisions of the Act of Congress of July 1, 1902, and of Act No. 624 of the Philippine Commission, three 'association' petroleum placer claims, each of an area of sixty-four hectares, on unoccupied public land situated in the municipality of San Narciso, Province of Tayabas, Philippine Islands; that on the 5th day of July, 1916, the plaintiff, as attorney-in-

fact and agent of the aforesaid association of persons, recorded in the office of the Mining Recorder, in the municipality of Lucena, Province of Tayabas, Philippine Islands, notices of location of the aforesaid three 'association' petroleum placer claims under the names of 'Maglihi No. 1,' 'Maglihi No. 2,' and 'Maglihi No. 3;'

"IV. That the said association of persons remained in open and continuous possession of the said three 'association' petroleum placer claims from the said 7th day of June, 1916, until the 17th day of October, 1917; that on the said 17th day of October, 1917J by an instrument in writing duly executed, acknowledged, and delivered, the said E. E. Elser, Ida M. Elser, E. E. Calvin, J. C. Calvin, Mateo Cia, E. A. McDaniel and Enrique Pelegrin sold and transferred to the plaintiff all of their right, title, and interest in and to the said three 'association' petroleum placer claims;

"V. That the plaintiff at all times since the said 17th day of October, 1917, has remained in open and continuous possession of the aforesaid three 'association* petroleum placer claims, and that plaintiff, in the year 1917, and in each year thereafter, has performed not less than two hundred pesos (P200) worth of labor on each of the said three 'association' petroleum placer claims;

"VI. That in the year 1918 plaintiff drilled five wells on the said three petroleum placer claims, and by means of such wells, in the said year, made discoveries of petroleum on each of the said three claims;

"VII. That on or about the 18th day of January, 1921, the defendant Juan Cuisia made application to the Secretary of Agriculture and Natural Resources, under the provisions of Act No. 2932 of the Philippine Legislature, for a lease of a parcel of petroleum land in the municipality of San Narciso, Province of Tayabas, Philippine Islands, which said parcel of land included within its boundaries the three said petroleum placer claims 'Maglihi No. 1,' 'Maglihi No. 2,' and 'Maglihi No. 3,' held by plaintiff.

"VIII. That, upon the filing of the said lease application by the defendant Juan Cuisia, plaintiff protested in writing to the said Secretary of Agriculture and Natural Resources against the inclusion in the said lease of the said three mineral claims 'Maglihi No. 1,' 'Maglihi No. 2,' and 'Maglihi No. 3,' held by

plaintiff as aforesaid; that the said Secretary of Agriculture and Natural Resources, on or about the 9th day of March, 1921, denied plaintiff's said protest;

"IX. That plaintiff is informed and believes, and upon such information and belief aver, that the defendant Rafael Corpus, under the supposed authority of Act No. 2932, is about to grant the lease application of the defendant Juan Cuisia, and to place the said defendant Juan Cuisia in possession of the said three petroleum placer claims held by plaintiff.

"X. That Act No. 2932 of the Philippine Legislature, in so far as it purports to declare open to lease lands containing petroleum oil on which mineral claims have been validly located and held, and upon which discoveries of petroleum oil have been made, is void and unconstitutional, in that it deprives plaintiff of his property without due process of law and without compensation, and that the defendant Rafael Corpus is without jurisdiction to lease to the defendant Juan Cuisia the petroleum placer claims described in paragraph III hereof;

"XI. That plaintiff has no plain, speedy, and adequate remedy against the defendants in the ordinary course of law."

For answer, the defendants-

"Admit the allegations contained in paragraphs 1, 2, S, 4, 5, 7, 8 and 9 of the amended complaint, but they deny each and every allegation contained in paragraphs 6, 10 and 11 of the said amended complaint. Tins, without prejudice to the agreed statement of facts prepared and filed by both parties in this case."

The following facts were stipulated:

"I. That the three association claims in question, of sixty-four (64) hectares each, Maglihi No. 1, Maglihi No. 2 and Maglihi No. 3, are contiguous. On October 17, 1917, the seven other members of the association of which the plaintiff was a member and for which the said three claims were previously located, transferred their interests to the plaintiff for the sum of P100, following the failure of the said

seven other members to contribute to the expenditures for the annual assessment work for that year.

"II. That during the latter part of the year 1917 and subsequent to October 17th of that year, plaintiff erected a well-drilling outfit on claim Maglihi No. 2 and drilled to a depth of twenty-four (24) feet, the well being cased part way with an eight (8) inch-diameter casing; that four (4) feet of oil was accumulated in the well at this depth; that drilling on the well was resumed during the year 1918 and carried to a depth of ninety-three (93) feet, forty-two (42) feet of which was cased with a six (6) inch-diameter pipe; that oil and gas were encountered in appreciable quantity during the drilling, a water stratum being finally encountered that flooded out the oil stratum; that later, adjustment of the casing and packing with clay during 1919 and 1920 partially remedied this water seepage and eight (8) feet of oil and a small amount of water thereupon accumulated in the well; that observations made by the plaintiff in the year 1921 showed that a landslide had developed in close proximity to the well, which caused water to come in from a different level; that small quantities of oil thereafter continued to accumulate, together with a brisk water seepage.

"III. That during the year 1917, and subsequent to October 17th of that year, plaintiff erected a well drilling outfit on claim Maglihi No. 3 and drilled to a depth of twenty-six (26) feet, at which depth a four (4) foot column of oil accumulated in the well during twelve (12) hours; that drilling on the said well was resumed in the year 1918 and carried to a depth of ninety-three (93) feet, of which forty-two (42) feet was cased with a six (6) inch diameter pipe, the water being entirely shut off in this well by the first twenty (20) feet of casing; that oil was recovered all the way down during drilling operations; that a short time after drilling operation were suspended on this well, in May, 1918, oil accumulated to a depth of forty (40) feet in the well, with no water seepage.

"IV. That in the month of July, 1918, plaintiff erected a well drilling outfit on claim Maglihi No. 1 and carried down the well to a depth of ninety-four (94) feet, cased to ninety (90) feet with five (5) inch diameter casing; that a showing of oil and some gas was encountered at this depth, but water was not entirely shut off; that drilling was resumed in November, 1919, and carried down to one hundred and twelve (112) feet, at which depth a heavy gas flow was struck, with more showing of oil; that later adjustment to the casing and cementing shut off the

water seepage and an oil column of fifteen (15) feet accumulated in the well.

"V. That all drilling operations referred to herein were made and completed prior to the 31st day of August, 1920.

"VI. That in effecting the drilling operations herein referred to plaintiff expended the sum of approximately twelve thousand pesos (P12,000).

"VII. That Exhibit A, attached hereto and made a part of this stipulation, is based upon the result of the investigation and examination of the three claims and tests of the three wells made by a party composed of the plaintiff, Vicente Mills, in charge of the Division of Mines, Bureau of Lands, and Victoriano Elicaño, a geologist employed in the Bureau of Science; that all information contained in the said Exhibit A as to the relative position of the three claims and their respective wells, and the present depth of the latter, and the quantity of oil obtained, are hereby made a part of this stipulation; that the quality of oil obtained from the said three wells is shown by the analysis thereof made by the Bureau of Science and contained in its certificate of May 9, 1922, Laboratory No. 142489, marked Exhibit B and made a part of this stipulation.

"VIII. That at no time since the year 1917 has any one of the three wells produced oil in substantial commercial quantities nor has any one of the three wells produced more than one barrel of oil a day; that plaintiff up to the present time has had no occasion to pay any internal revenue tax on the same as required by section 1534 and section 1535 of the revised Administrative Code; neither has plaintiff attempted to sell any of said oil; that said three claims are situated in a comparatively uninhabited district four (4) miles from the nearest port, and that no roads, other than mountain trails maintained by the plaintiff, exist between the said three claims and the nearest port.

"IX. That the amended complaint filed herewith by the plaintiff shall be substituted for the original complaint and the answer of the defendants is made to the said amended complaint.

"X. That the answer filed by the defendants shall be considered as having been filed in due time, not only by agreement of the parties, but also in accordance with the order of this Honorable Court of March 7, 1922; that the delay in the filing of the answer as well as this stipulation of facts is due to the fact that the

> parties hereto were awaiting the report of the party sent to examine and investigate the claims as well as the analysis of the oil made by the Bureau of Science."

Johns, J.:

The answer is dated July 6, 1922, and was filed on July 7, 1922. The stipulation of facts is dated and filed on July 7, 1922. After making the admissions and denial above stated, the answer says:

> "This, without prejudice to the agreed statement of facts prepared and filed by both parties in this case."

From their analysis, it appears that there is no real conflict between the admissions made in the pleadings and the stipulation of facts upon any one of the material facts. The real purpose of pleadings is to settle and define the issues between the parties, so that the court may be advised as to the questions in dispute.

Where there is no material conflict between the admissions made in the pleadings and the stipulation of facts, in the absence of an amended pleading, any facts admitted in the answer must be deemed and treated as admitted for the purpose of the trial.

By analyzing the pleadings, it will be noted that all the allegations of the amended petition are admitted, except paragraph 6, in which it is alleged that in the year 1918, the plaintiff built five wells on the claims and made discoveries of petroleum on each of them, and paragraph 10, in which it is alleged that Act No. 2932 of the Philippine Legislature is void and unconstitutional in so far as it pertains to mineral locations which were made at the time of its passage, and paragraph 11, in which it is alleged that the plaintiff has no plain, speedy and adequate remedy at law.

Upon the question of the constitutionality of the statute as it relates to valid existing mineral locations, the former opinion of this court is conclusive. It was there held:

> "Inasmuch as the petitioner had located, held and perfected his location of the mineral lands in question, and had actually discovered petroleum oil therein, he had acquired a property right in said claims; that said Act No. 2932, which

> deprives him of such right, without due process of law, is in conflict with section 3 of the Jones Law, and i# therefore unconstitutional and void."

If the facts alleged in the petition are true, the plaintiff does not have any plain, speedy or adequate remedy, hence there is no merit in defendants' denial of paragraph 11.

Hence, the only remaining issues are the allegations made in paragraph 6 of the complaint and defendants' denial. For the purposes of this opinion, all other material facts are admitted by the answer.

It is admitted by the pleadings that on June 7, 1916, the plaintiff and his associates located, in accordance with the provisions of the Act of Congress of July 1, 1902, and Act No. 624 of the Philippine Commission, three association petroleum placer claims, each of an area of 64 hectares on the public domain in the Philippine Islands, and that such locations were duly recorded in the office of the Mining Recorder as "Maglihi No. 1," "Maglihi No. 2" and "Maglihi No. 3." Also, that the plaintiff and his associates remained in the open and continuous possession of the three petroleum placer claims from June 7, 1916, until the 17th day of October, 1917, at which time his associates conveyed their respective interests in the claims to the plaintiff. That ever since October 17, 1917, the plaintiff has remained in the open and continuous possession of the claims, and that in the year 1917 and each year thereafter, he has performed not less than P200 worth of labor on each of them.

It is stipulated that on October 17, 1917, the plaintiff's associates conveyed their interests in the claims to him for P100. The pleadings admit that the locations by plaintiff and his associates of the petroleum placer claims were made in accord with the provisions of the Act of Congress of July 1,1902, and Act No. 624 of the Philippine Commission. Such acts specify find point out how and by whom and the conditions under which a mineral location can be made, and, hence, it must follow that any mineral location made in accord with those provisions is a valid location. This legally carries with it the existence of every element, prerequisite and condition necessary or required for the making of a mineral location. Hence, we must assume that the plaintiff and his associates made a good and valid mineral location upon the public domain of the Philippine Islands.

The respondents have cited numerous authorities holding that a location made by an association of persons and the subsequent conveyances of all of them to one of such persons is void *ab initio*. Under the pleadings, such authorities are not in point.

There is no evidence of any corrupt agreement or that at the time of the original location was made there was any understanding or agreement that his associates would convey their interests to the plaintiff. The record shows that the locations were made on June 7, 1916, and the conveyances to the plaintiff were made on October 17, 1917, fifteen months after the locations were made, and it is stipulated that the conveyances were made for a valuable consideration. If it be a fact that at the time the original locations were made there was an agreement among the locators that they would convey all of their interests to one of their number, and that the original locations were made for his use and benefit, under all the authorities, the locations would be void. In the instant case, there is no evidence of any such an agreement, and the record tends to show that all of the original locations were made in good faith.

Again, it having been admitted that the original locations were valid, under all the authorities, it devolved upon the defendants to both allege and prove their forfeiture.

Bishop vs. Baisley (41 Pac, 936), in which the court says:

> "A mining claim, subsequent to a valid location, is property, in the highest sense of the term. It may be bought and sold, and will pass by descent. It carries with it the 'exclusive right of possession and enjoyment of all the surface included within the lines' of location. The right is a valuable one, and is protected by law. It continues until there shall be a failure to represent the claim; that is, to do the requisite amount of work within the prescribed time. The right of possession and enjoyment acquired by location is kept alive by the representation prescribed by law, but, when not thus kept alive, the right is forfeited, and the claim is thereafter open for relocation. In order, therefore, to secure a valid location, it must be established that rights acquired under a prior one upon the same claim have been forfeited. The affirmative of this proposition is always cast upon the party seeking to establish it, and hence, under the rules of pleading, it must be specially pleaded, where opportunity is offered, before a party can be heard to support it with evidence. (Renshaw vs. Switzer [Mont.], 13 Pac, 127; Hammer vs. Milling Co., 130 U. S., 291; 9 Sup. Ct., 548; Belk vs. Meagher, 104 U. S., 279; Morenhaut vs. Wilson, 52 Cal., 263; Wulff vs. Manuel [Mont], 23 Pac, 723; Quigley vs. Gillett [Cal.], 35 Pac, 1040; Mattingly vs. Lewisohn [Mont.] Id., 114.) Furthermore, 'a forfeiture cannot be established, except upon clear and convincing proof of the failure of the former owner to have work performed, or to

> have improvements made, to the amount required by law.' (Hammer vs. Milling Co., supra.) " Lindley on Mines, vol. 2, 3d ed., sec. 643, says:

"Forfeiture as a defense to an action must be specially pleaded." (Citing numerous decisions from the mining states of the United States, including 152 U. S., 505.) [1]

> "Where, however, either abandonment or forfeiture are relied upon, the burden of proof rests with the party asserting it." (Citing numerous decisions, both State and Federal.) As stated, no affirmative defense is alleged in the answer, and the only questions before this court are the allegations made in paragraph 6 of the complaint.

Again, Act No. J2932 of the Philippine Legislature is entitled:

> "An Act to provide for the exploration, location and lease of lands containing petroleum and other mineral oils and gas in the Philippine Islands."

Section 2 of the Act provides that "All such lands may be leased by the Secretary of Agriculture and Natural Resources in the manner and subject to the rules prescribed by the Council of State."

It is alleged and admitted that the defendant Juan Cuisia has made an application under this Act "for a lease of a parcel of petroleum land in the municipality of San Narciso, Province of Tayabas, Philippine Islands, which said parcel of land included within its boundaries the three said petroleum placer claims 'Maglihi No. 1,'Maglihi No. 2' and 'Maglihi No. 3." It is also alleged and admitted that the defendant Rafael Corpus "is about to grant the lease application of the defendant Juan Cuisia, and to place the said defendant Juan Cuisia in possession of the said three petroleum placer claims held by plaintiff."

Under the provisions of this Act, the authority of the Secretary of Agriculture and Natural Resources to make such a lease is confined to lands "containing petroleum and other mineral oils and gas in the Philippine Islands."

The legal effect of such allegations and admissions in the pleadings is to carry with it and to imply that the lands in question contain petroleum and other mineral oils. Otherwise the

Secretary of Agriculture and Natural Resources would not have any authority to make such a lease, and the defendant Juan Cuisia would not want to lease the lands unless they did contain petroleum and other mineral oils.

The growth and development of minerals add new resources and undiscovered wealth to a country, and provide employment for labor. For such reasons, it has always been the policy of the mining law to encourage the prospector. He has been the pioneer in the discovery of minerals in all countries, and often his task has been sad and lonely, and he has had many bitter disappointments.

In the instant case, the stipulation shows that the mining claims are situated in a comparatively uninhabited district four miles from any port, and that they can only be reached over mountain trails which have been maintained at the expense of the plaintiff. If it be a fact that the claims do contain petroleum in paying quantities, it would be of immense value to the commercial interests of the Philippine Islands. As evidence of his good faith the plaintiff has expended P12,000 in the development of the property, and has found evidence tending to show that the claims do contain petroleum and other mineral oils. At this time and under such circumstances, it would be a gross injustice to deprive him of his property rights through forms and technicalities. The locations were made upon the unappropriated public domain, and to maintain them, and as evidence of good faith, the law requires the performance of the annual assessment work, and that question is not disputed or presented in the record.

To deny the writ would, in legal effect, take from and give to another the P12,000 which the plaintiff has expended in good faith in the development of the property.

A number of important questions have been raised and discussed in the briefs of opposing counsel which, under the pleadings, are unnecessary to the decision of this case. It having been admitted,, in legal effect, that the original locations were valid, and that P12,000 have been expended in development, and there being no plea of forfeiture for failure to do the annual assessment work, and the record tending to show that the original locations were made in good faith, and that the lands in question do contain “petroleum and other mineral oils,” it must follow that the plaintiff is entitled to the writ prayed for in his petition, and it is so ordered. Many of the authorities cited by the defendants are good law, but this decision is based upon, and confined to, the stipulated facts and the admissions made in the pleadings, and for such reasons the authorities are not in point.

Justice Johnson has pointed out that the language in his opinion above quoted may be misleading. The purpose and intent of that decision was to hold that Act No. 2932 was void in so far as it applies to valid mineral locations, which were made prior to the time that Act became a law, and upon which the annual assessment work has been performed after the law was enacted.

In the instant case, we hold that, even though a valid mineral location was made prior to the passage of Act No. 2932 and the annual assessment work has not been performed since the passage of the Act, and that question is raised and presented by an appropriate plea and sustained by the proof, any prior rights under the location would then be forfeited, and such lands would then be subject to, and come under, the provisions of Act No. 2932.

Let the writ issue as prayed for, and without costs to either party.

Araullo, C. J., Johnson, Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

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[1]42 Phil., 749.
[1]Manuel vs. Wulff

Date created: June 06, 2014