

81 Phil. 254

[G.R. No. L-825. July 20, 1948]

ROMAN MABANAG, PLAINTIFF AND APPELLANT, VS. JOSEPH M. GALLEMORE, DEFENDANT AND APPELLEE.

D E C I S I O N

TUASON, J.:

This case, here on appeal from an order of dismissal by the Court of First Instance of Occidental Misamis, raises the question of the court's jurisdiction. More specifically, the question is whether the action is *in personam* or one *in rem*. The trial court opined that it is the first and that it "has no authority nor jurisdiction to render judgment against the herein defendant, Joseph M. Gallemore for being a non-resident."

The purpose of the action is to recover P735.18, an amount said to have been paid by the plaintiff to the defendant for two parcels of land whose sale was afterward annulled. The defendant is said to be residing in Los Angeles, California, U.S.A. He has no property in the Philippines except an alleged debt owing him by a resident of the municipality of Occidental Misamis. This debt, upon petition of the plaintiff, after the filing of the complaint and before the suit was dismissed, was attached to the extent of plaintiff's claim for the payment of which the action was brought. But the attachment was dissolved in the same order dismissing the case.

It was Attorney Valeriano S. Kaamiño who as *amicus curiae* filed the motion to dismiss and to set aside the attachment. There is no appearance before this Court to oppose the appeal.

Section 2, Rule 5, of the Rules of Court provides:

"If any of the defendants does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff, or any property of the defendant located in the Philippines, the action may be commenced and tried in

the province where the plaintiff resides or the property, or any portion thereof, is situated or found.”

The Philippine leading cases in which this Rule, or its counterpart in the former Code of Civil Procedure, sections 377 and 395, were *Banco Español-Filipino vs. Palanca*, 37 Phil. 921, and *Slade Perkins vs. Dizon*, 40 Off. Gaz., [3d Suppl.], No. 7, p. p 216 The gist of this Court’s ruling in these cases, in so far as it is relevant to the present issues, is given in I Moran’s Comments on the Rules of Court, 2d Ed., 105:

“As a general rule, when the defendant is not residing and is not found in the Philippines, the Philippine courts cannot try any case against him because of the impossibility of acquiring jurisdiction over his person, unless he voluntarily appears in court. But, when the action affects the personal status of the plaintiff residing in the Philippines, or is intended to seize or dispose of any property, real or personal, of the defendant, located in the Philippines, it may be validly tried by the Philippine courts, for then, they have jurisdiction over the *res, i. e.*, the personal status of the plaintiff or the property of the defendant, and their jurisdiction over the person of the non-resident defendant is not essential. Venue in such cases may be laid in the province where the plaintiff whose personal status is in question resides, or where the property of the defendant or a part thereof involved in the litigation is located.”

Literally this Court said:

“Jurisdiction over the property which is the subject of litigation may result either from a seizure of the property under legal process, whereby it is brought into the actual custody of the law, or it may result from the institution of legal proceedings wherein, under special provisions of law, the power of the court over the property is recognized and made effective. In the latter case the property, though at all times within the potential power of the court, may never be taken into actual custody at all. An illustration of the jurisdiction acquired by actual seizure is found in attachment proceedings, where the property is seized at the beginning of the action, or some subsequent stage of its progress, and held to abide the final event of the litigation. An illustration of what we term potential jurisdiction over the *res*, is found in the proceeding to register the title of land under our system for the registration of land. Here the court, without taking

actual physical control over the property assumes, at the instance of some person claiming to be owner, to exercise a jurisdiction *in rem* over the property and to adjudicate the title in favor of the petitioner against all the world.” (Banco Español-Filipino vs. Palanca, *supra*, 927-928.)

“In an ordinary attachment proceeding, if the defendant is not personally served, the preliminary seizure is to be considered necessary in order to confer jurisdiction upon the court. In this case the lien on the property is acquired by the seizure; and the purpose of the proceedings is to subject the property to that lien. If a lien already exists, whether created by mortgage, contract, or statute, the preliminary seizure is not necessary; and the court proceeds to enforce such lien in the manner provided by law precisely as though the property had been seized upon attachment. (Roller vs. Holly, 176 U. S., 398, 405; 44 Law ed., 520.) It results that the mere circumstance that in an attachment the property may be seized at the inception of the proceedings, while in the foreclosure suit it is not taken into legal custody until the time comes for the sale, does not materially affect the fundamental principle involved in both cases, which is that the court is here exercising a jurisdiction over the property in a proceeding directed essentially *in rem*. (*Id.*, 929-930.)

“When, however, the action relates to property located in the Philippines, the Philippine courts may validly try the case, upon the principle that a ‘State, though its tribunals, may subject property situated within its limits owned by non-residents to the payment of the demand of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State’s jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into the non-resident’s obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-resident has no property in the State, there is nothing upon which the tribunals can adjudicate.” (Slade Perkins vs. Dizon, 40 Off. Gaz. [3d Supplement], No. 7, p. 216.)

A fuller statement of the principle, whereunder attachment or garnishment of property of a non-resident defendant confers jurisdiction on the court in an otherwise personal action, appears in two well known and authoritative works:

The main action in an attachment or garnishment suit is *in rem* until jurisdiction of the defendant is secured. Thereafter, it is *in personam* and also *in rem*, unless jurisdiction of the *res* is lost as by dissolution of the attachment. If jurisdiction of the defendant is acquired but jurisdiction of the *res* is lost, it is then purely *in personam*. * * * a proceeding against property without jurisdiction of the person of the defendant is in substance a proceeding *in rem*; and where there is jurisdiction of the defendant, but the proceeding against the property continues, that proceeding is none the less necessarily *in rem*, although in form there is but a single proceeding, (4 Am. Jur., 556-557.)

As the remedy is administered in some states, the theory of an attachment, whether it is by process against or to subject the property or effects of a resident or nonresident of the state, is that it partakes essentially of the nature and character of a proceeding *in personam* and not of a proceeding *in rem*. And if the defendant appears the action proceeds in accordance with the practice governing proceedings *in personam*. But where the defendant fails to appear in the action, the proceeding is to be considered as one in the nature of a proceeding *in rem*. And where the court acts directly on the property, the title thereof being charged by the court without the intervention of the party, the proceeding unquestionably is one *in rem* in the fullest meaning of the term.

“In attachment proceedings against a non-resident defendant where personal service on him is lacking, it is elementary that the court must obtain jurisdiction of the property of the defendant. If no steps have been taken to acquire jurisdiction of the defendant’s person, and he has not appeared and answered or otherwise submitted himself to the jurisdiction of the court, the court is without jurisdiction to render judgment until there has been a lawful seizure of property owned by him within the jurisdiction of the court.” (2 R. C. L., 800-804.)

Tested by the foregoing decisions and authorities, the Court has acquired jurisdiction of the case at bar by virtue of the attachment of the defendant’s credit. Those authorities and decisions, so plain and comprehensive as to make any discussion unnecessary, are in

agreement that though no jurisdiction is obtained over the debtor's person, the case may proceed to judgment if there is property in the custody of the court that can be applied to its satisfaction.

It is our judgment that the court below erred in dismissing the case and dissolving the attachment; and it is ordered that, upon petition of the plaintiff, it issue a new writ of attachment and then proceed to trial. The costs of this appeal will be charged to defendant and appellee.

Parás, Actg. C.J., Feria, Pablo, Perfecto, Bengzon, Briones, and Padilla, JJ., concur.

Date created: April 24, 2018