

[G.R. No. L-9340. October 24, 1956]

PAULINO NAVARRO, PETITIONER, VS. THE HONORABLE ANTONIO G. LUCERO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, MANUEL H. BARREDO, THE TREASURER OF THE PHILIPPINES, IGNACIO DE GUZMAN AND ALFREDO EDWARD FAWCETT, RESPONDENTS.

D E C I S I O N

CONCEPCION, J.:

Petitioner Paulino Navarro seeks a writ of prohibition, to enjoin the respondent, Hon. Antonio G. Lucero, as Judge of the Court of First Instance of Manila, from hearing and deciding Civil Case No. 17061 of said court.

Said case was instituted by Manuel H. Barredo against (originally) the Treasurer of the Philippines, and Ignacio de Guzman and Alfredo Edward Fawcett, all of whom are respondents in the case at bar. In an amended complaint, dated April 30, 1955, which likewise, included petitioner herein, as defendant, it was alleged, that on September 16, 1944, Barredo purchased from Ana Brodeck a lot situated in the municipality of Pasay, province of Rizal, and covered by Transfer Certificate of Title No. 16372 of the Office of the Register of Deeds of Rizal, subject to redemption within two (2) years; that upon the filing of the corresponding deed of conditional sale with the Office of the Register of Deeds of the City of Manila (of which the municipality of Pasay formed part during the Japanese occupation), said TCT No. 16372 was cancelled, and, in lieu thereof, TCT No. 76578 of said office was issued, on September 18, 1944, in Barredo's name, with an annotation of said option to repurchase, which was not exercised within the period aforementioned; that, claiming to be the only child and legal heir of Brodek, on January 20, 1946, defendant Ignacio de Guzman (one respondents herein) filed a petition with the Court of First Instance of Rizal for the reconstitution of said TCT No. 16372, alleging that its original and the owner's duplicate had been destroyed or lost and could no longer be found although he knew that this was not true and that said TCT No. 16372 had been cancelled on account of the aforementioned conditional sale to Barredo; that, on February 1, 1946, said court

declared said TCT No. 16372 reconstituted, and ordered the Register of Deeds of Rizal to issue its corresponding owner's duplicate; that, soon thereafter, or on July 22, 1946, De Guzman executed an affidavit adjudicating said land to himself as the only child and sole heir of Ana Brodek; that, based upon said affidavit, de Guzman obtained from said court order, dated July 25, 1946, directing the Register of Deeds of Rizal to cancel the "reconstituted" TCT No. 16372 and to issue, in lieu thereof, another certificate of title to his name; that, accordingly, said Register of Deeds issued TCT No. 380-A 49002 in De Guzman's name, in lieu of TCT No. 16372; that, acting in connivance with Alfredo Edward Fawcett (one of the defendants in said case and respondent herein), who was aware of the aforementioned conditional sale by Ana Brodek (his wife), to Barredo, De Guzman executed in favor of Fawcett, a deed of conditional sale of the lot in question, which deed was filed with the office of the Register of Deeds of Rizal, and annotated on said TCT No. 380-A 49002; that, upon expiration of the period of redemption stipulated with de Guzman, November 23, 1948/ said Fawcett fraudulently consolidated his ownership upon said lot and caused TCT No. 862 to be issued in his name, free from liens and encumbrances, in lieu of said TCT No. 380—A 49002; that Fawcett also, conveyed the property to Amado Acayan, and, as a consequence, said TCT No. 862, was cancelled, and another one, bearing No. 863, was issued on the date last mentioned, in favor of Acayan, free from all liens and encumbrances; that, thereafter Acayan assigned the property to herein petitioner, Paulino Navarro, in whose name TCT No. 1371 was issued on September 21, 1949, free from all liens and encumbrances upon cancellation of said TCT No. 863; that, owing to the fraudulent reconstitution of TCT No. 16372, and the subsequent conveyances of the lot in dispute, there are now two (2) certificates of title thereon, namely, TCT No. 76578, in Barredo's name, and TCT No. 1371 in Navarro's name; that TCT No. 1371 is null and void, it being derived from transfer certificates of title which are, also, null and void, for the latter were issued in consequence of the fraudulent reconstitution of another certificates of title (No. 16372), that, the existence of said TCT No. 1371 jeopardizes Barredo's title to the aforementioned property, which is worth P3,000; and that, Barredo has suffered damages in the sum of P1,000.00 representing attorney's fees, in view of the action he has thus constrained to file. His prayer is:

“(a) That Transfer Certificate of Title No. 1371 issued by the Registered of Deeds of Rizal City in the name of Paulino Navarro, be declared null and void, and Transfer Certificate No. 76578 in the warm of plaintiff Manuel H. Barredo, as valid certificate of title over the land in question;

“(b) *In the event that plaintiff is deprived of, or has lost his title or ownership of the land in question by virtue of the operation of the provisions of Act 496, that defendant Ignacio de Guzman and Alfredo E. Fawcett be ordered to pay, jointly and severally, to the plaintiff the sum of P6,000.00;*

(c) That defendants Ignacio de Guzman and Alfredo Fawcett be ordered to pay, jointly and severally, to the plaintiff the sum of P1,000,00 as attorney’s fees, plus costs;

“(d) *In the alternative paragraphs (b) and (c) above, that defendant Treasurer of the Philippines be ordered to pay to the plaintiff the sum of P6,000.00, in case defendants Ignacio de Guzman and Alfredo F. Fawcett are unable to pay the said amount, or such portion thereof as may remain unpaid, in the. case defendants may partially satisfy the same, plus costs, pursuant to the provisions of Act 496.*

“Plaintiff further prays that he be granted such other relief as, may be just and equitable in the premises.”

Paulino Navarro, as one of the defendants in said civil Case No. 17061, moved to dismiss Barredo’s amended complaint therein, upon the ground “that venue is improperly laid.” Upon denial of this motion, Navarro sought a reconsideration, with the same result. Hence, the present action, in which petitioner assails the jurisdiction of the Court of First of Manila to hear and decide said Civil Case fto. 170(71, the property in question being located in Pasay City,

In his answer to the petition, the Treasurer of the Philippines expressed no interest in the subject matter thereof. Upon the other hand, respondent Manuel H. Barredo asserted, in his answer, that said Civil Case No. 17061 was originally one for damages against de Guzman, Fawcett and the Treasurer of the Philippines; that the latter was sued under section 101 and 102 of the Act No. 496, for recovery of damages from the assurance fund; and that Navarro was later included as party-defendant, since the determination of the validity or nullity of his title is “indispensable” to Barredo’s claim for damages. De Guzman and Fawcett have not been served with summons in the case at bar, for neither could be located. However, the , main party respondent in the present case is respondent Manuel H. Barredo, and, accordingly, we may proceed to pass upon the issue raised by the pleadings, to wit: May the Court of First Instance of Manila entertain Civil Case No. 17061, considering that the property in dispute is located in Pasay City, or outside Manila? Respondent Barredo

maintains the affirmative, relying upon the following authorities:

“Under the Land Registration Act, actions may be brought in any court of competent jurisdiction against the Treasurer of the Philippines Islands for the recovery of damages to be paid out of the assurance fund. As the indemnity here claimed is for alleged damages caused to the mortgages by the refusal of the register of deeds to note his mortgage lien, the provisions of section 377 of the Code of Civil Procedure to the effect that, in order, to obtain indemnity for damages caused to real property, the action must be brought in the province where the land is situated is not applicable; but that which says that all actions not therein otherwise provided may be brought in the province where the defendant or the plaintiff resides at the election of the latter. (Hodges vs. Treasurer of the Philippines, 50 Phil., 16)

“A statute providing that the actions for the recovery of real property or for the determination of any right or interest therein must be tried in the country where the real property is situated is effective only when the real property or title thereto is the *exclusive* subject matter of the action * * * (Turlock Theatre vs. Laws, 120 ALR 786.)”

“Statutes which made local action involving title to real estate do not apply to action in which the question of title is merely incidental to the main controversy.” (Hewitt vs. Price, 102 S.W. 647.)”

These cases are not in point. The first involved *exclusively* a personal action, unlike the case at bar, which mainly seeks to quiet the title to an immovable property, and, hence, it is a real action. The principal relief prayed for in Barredo’s amended complaint is “that TCT No. 1371 issued by the Register of Deeds of Rizal * * * in the name of Paulino Navarro *be declared null and void*,”

The complaint in the Turlock case alleged three separate causes of action, one of which was personal and the others real. Moreover, the question of the venue raised therein hinged on the meaning of sections 392 and 395 of the Code of Civil Procedure of California. Pursuant to section 392, actions for the recovery of real property, or all for the determination of any right or interest therein, shall be tried in the country where the real property, is situated, whereas section 395, declares that “in all other cases, the action must be tried in the county

in which the defendants, or some of them, reside at the commencement of the action.” Construing both provisions, the Supreme Court of California held that the first applied “only when the real property or the title thereto is the exclusive subject matter of the action” and that “all the cases”—including those involving a personal action, in addition to the real action— shall be governed by sections 395.

Said case has no parity with the one at bar. To begin with, only one cause of action is involved in the latter. Again, Rule 5, sections 1 and 3, of our rules of Court provides:

“Section 1. *General rule.*—Civil action in Courts of First Instance may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.

“Sec. 3. *Real action.*—Actions affecting title to, or for recovery of possession, or for partition or condemnation of, foreclosure of mortgage on, real property shall be commenced and tried in the province where the property or any part thereof lies.”

Pursuant thereto, actions *in personam* are transitory. However, if besides said actions, the complaint sets up a real action, or even an action quasi *in rem*, such as foreclosure of a real estate mortgage (in which plaintiff seeks principally the *recovery of a sum of money*, the foreclosure are to take place only *in the event of failure of the defendant to voluntarily pay said sum*), the case “shall be commenced and tried in the province where the property or any part thereof lies.” Thus, the principle under our Rules of Court is opposite to that obtaining in California, In the languages of the editors of the American Law Reports Annotated:

“* * * in some jurisdictions, as subsequently appears herein, the rule is that the venue of an action relating to real property must be laid in, or changed to, the county in which the property is located, although personal causes of action or personal relief are included which may be tried in Another county, upon the theory that *the purpose of the legislature in enacting the mandatory statute as to the venue of actions relating to land is to have the records of the county in which the land involved is situated show all matters that in any way affect the title of*

such land." (120 A. L. R. 791.) (Italics supplied).

The Hewit case was an action to recover the balance of a promissory note, after deducting the price at which an immovable, given as security therefor, had been sold to the plaintiff in extrajudicial foreclosure proceedings, the legality of which was assailed by the defendant in his answer, upon the ground of inadequacy of the price, lack of notice and fraud or misrepresentation of plaintiff's part. Although the suit was instituted in a county other than that of the situs of the immovable, and defendant's answer questioned plaintiff's title thereto, it was held that the court had the jurisdiction to decide the case, said issue of title being merely *incidental* to the *personal action* for recovery of a sum of money. Such is not the case before" us, for the title to a real property is the *main* point for determination therein. In the words of plaintiff, it is "indispensable" to his cause of action. The rule is set forth in the American Law Reports Annotated as follows:

"There was an ancient right to have an action brought against one in the county of residence so as to protect him from the trouble and expenses of traveling a long distance to defend the action, and in some jurisdictions, as subsequently shown herein, to safeguard this right the venue statute have prescribed the general rule as to venue that an action must be brought in the county of the defendant's residence, and have made the provisions for venue in another county an exception to such rule. In such jurisdictions, where a personal cause of action is joined, or personal relief is prayed, in a complaint in action relating to real property whose venue is laid in the county of the location of such property, the defendant is generally entitled to have the venue changed to another county in which he resides. *There appears to be, however, an exception to this rule where the cause of action as to the real property is the primary object of the action, and the personal cause of action, or the prayer for personal relief, is merely incidental to such object.*

"The is another pertinent principle, subsequently applied herein to the question under annotation, to the effect that where two causes of action are properly joined, which require different places of trial, the venue, as against a motion for its change, *may* be retained of the entire action in the county in which it is laid, if that is the proper venue for one of the causes of action, under the general policy of the law to avoid multiplicity of suits. *This principle appears, however, to be*

made dependent in some cases upon the question whether the statutory designation of the place of trial of the other cause of action in another country uses the word 'may' or 'must..' (120 A. L. R. 790-791.) (Italics supplied.)

As indicated above, whenever a case involves a real action or an action quasi in rem it “shall”, and, therefore, must —“be commenced and tried in the province where the property or any part thereof lies,” pursuant to Rule 5, section 3, of the Rules of Court. Independently of the foregoing, the primary object of the present case— in the light of the allegations of the amended complaint—is to nullify the title of petitioner herein. The alternative relief sought in said amended complaint, to the effect

“* * * that defendant Treasurer of the Philippines be ordered to pay to the plaintiff the sum of P6,000.00 in case defendants Ignacio de Guzman and Alfredo E. Fawcett are unable to pay the said amount, or such portion thereof as may be remain unpaid, in case defendants may partially satisfy the same, plus the costs, pursuant to the provisions of Act 496.”

cannot affect the application of said section of the Rules of Court, inasmuch as Barredo could not possibly recover damages unless Navarro’s title is declared valid, and the venue therefor, is, according to said rules, in the Court of First Instance of Rizal.

Wherefore, the petition is granted, and the Court of First Instance of Manila is hereby enjoined from hearing and deciding the aforementioned Civil Case-No. 17061 thereof, with costs against respondent Manuel H. Barredo, without prejudice to the institution by the latter of the corresponding action before the proper court. It is so ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.