100 Phil. 321

[G.R. No. L-10128. November 13, 1956]

MAMERTO C. CORRE, PLAINTIFF AND APPELLANT, VS. GUADALUPE TAN CORRE, DEFENDANT AND APPELLEE.

D E C I S I O N

BAUTISTA ANGELO, J.:

Plaintiff brought this action in the Court of First Instance of Manila seeking his legal separation from defendant, his wife, and the placing of their minor children under the care and custody of a reputable women's dormitory or institution as the court may recommend.

Defendant moved to dismiss the complaint on the ground that the venue is improperly laid. She claims that since it appears in the complaint that neither the plaintiff nor the defendant is a resident of the City of Manila the court where the action was filed is not the proper court to take cognizance of the case. The court upheld the contention of defendant and, accordingly, dismissed the case without pronouncement as to costs. This is an appeal from this decision.

The pertinent portion of the complaint which refers to the residence of both plaintiff and defendant is as follows:

> "1. That plaintiff is an American citizen, 44 years of age, resident of 114 North 1st Street, Las Vegas, Nevada, United States of America, master sergeant in the U. S. Army with military service address of Ro-6739431, Army Section, Military Assistance Advisory Group (MAAG) Formosa, APO 63, San Francisco, California, and for the purpose of filing and maintaining this suit, temporarily resides at 576 Paltoc, Santa Mesa, Manila;
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> "2. That defendant is a Filipino, 40 years of age and resident of the municipality of, Catbalogan, province of Samar, Philippines, where summons may be served;'"

Section 1, Rule 5, of the Rules of Court provides that Civil actions 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." From this rule it may be inferred that plaintiff can elect to file the action in the court he may choose if both the plaintiff and the defendant have their residence in the Philippines. Otherwise, the action can only be brought in the place where either one resides.

It the present case, it clearly appears in the complaint that the plaintiff is a resident of Las Vegas, Nevada, U. S. A. while the defendant is a resident of the municipality of Catbalogan, province of Samar. Such being the case, plaintiff has no choice other than to file the action in the court of first instance of the latter province. The allegation that the plaintiff "for the purpose of filing and maintaining this suit, temporarily resides at 576 Paltoc, Santa Mesa, Manila"' cannot serve as basis for the purpose of determining the venue for that is not the residence contemplated by the rule. If that were allowed, we would create a situation where a person may have his residence in one province and, to suit his convenience, or to harass the defendant, may bring the action in the court of any other province. That cannot be the intendment of the rule.

Indeed, residence as used in said rule is synonymous with domicile. This is define as "the permanent home, the place to which, whenever absent for business or pleasure, one intends to return, and depends on facts and circumstances, in the sense that they disclose intent" (67 C. J., 123-124). This is what we said in the recent case of Evangelista *vs*. Santos, 86 Phil., 387:

> "The fact that defendant was sojourning in Pasay at the time he was served with summons does not make him a resident of that place for purposes of venue. Residence is 'the permanent home, the place to which, whenever absent for business or pleasure, one intends to return * * * (67 C. J. pp. 123-124.) A man can have but one domicile at a time (Alcantara *vs*. Secretary of Interior, 61 Phil. 459), and residence is synonymous with domicile under section 1 of Rule 5 (Moran's Comments, supra, p. 104),"

The case of Dela Rosa and Go Kee *vs*. De Borja, 53 Phil., 990, cited by appellant to support his contention, is not controlling. In that case, the defendant submitted to the jurisdiction of the court and did not raise the point of venue until after judgment had been rendered And so it was held that defendant was estopped to raise this point on appeal, although in passing

the court insinuated that residence for purposes of venue need not be permanent. At any rate, this matter should now be regarded as modified by bur decision in the aforesaid case of Evangelista.

Wherefore, the decision appealed from is affirmed, with costs against appellant.

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

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