

JORGE C. PADERANGA, PETITIONER, VS. HON. DIMALANES B. BUISSAN, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF ZAMBOANGA DEL NORTE, BRANCH III AND ELUMBA INDUSTRIES COMPANY, REPRESE...

G.R. No. L-49475. September 28, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

We are called upon in this case to determine the proper venue of an action to fix the period of a contract of lease which, in the main, also prays for damages.

Sometime in 1973, petitioner JORGE C. PADERANGA and private respondent ELUMBA INDUSTRIES COMPANY, a partnership represented by its General Manager JOSE J. ELUMBA, entered into an oral contract of lease for the use of a commercial space within a building owned by petitioner in Ozamiz City.[1] The lease was for an indefinite period although the rent of P150.00 per month was paid on a month-to-month basis. ELUMBA INDUSTRIES COMPANY utilized the area under lease as the Sales Office of Allied Air Freight in Ozamiz City.

On 4 April 1977, PADERANGA subdivided the leased premises into two (2) by constructing a partition wall in between. He then took possession of the other half, which repossession was said to have been undertaken with the acquiescence of the local manager of ELUMBA,[2] although private respondent maintains that this is not the case.[3] At any rate, the validity of the repossession is not here in issue.

On 18 July 1977, private respondent instituted an action for damages[4] which, at the same time, prayed for the fixing of the period of lease at five (5) years, before the then Court of First Instance of Zamboanga del Norte based in Dipolog City.[5] Petitioner, a resident of Ozamiz City, moved for its dismissal contending that the action was a real action which should have been filed with the Court of First Instance of Misamis Occidental stationed in Ozamiz City where the property in question was situated.

On 6 November 1978, respondent Judge Dimalanes B. Buissan denied the Motion to Dismiss and held that Civil Case No. 2901 merely involved the enforcement of the contract of lease, and while affecting a portion of real property, there was no question of ownership raised.[6] Hence, venue was properly laid.

Petitioner pleaded for reconsideration of the order denying his Motion to Dismiss. He contended that while the action did not involve a question of ownership, it was nevertheless seeking recovery of possession; thus, it was a real action which, consequently, must be filed in Ozamiz City.[7]

On 4 December 1978, respondent judge denied reconsideration.[8] While admitting that Civil Case No. 2901 did pray for recovery of possession, he nonetheless ruled that this matter was not the main issue at hand; neither was the question of ownership raised. Not satisfied, petitioner instituted the present recourse.

PADERANGA argues that inasmuch as ELUMBA seeks to recover possession of the portion surrendered to him

by the local manager of private respondent, as well as to fix the period of lease at five (5) years, Dipolog City could not be the proper venue of the action. It being a real action, venue is laid in the court having jurisdiction over the territory in which the property lies.

ELUMBA counters that the present action is chiefly for damages arising from an alleged breach in the lease contract; hence, the issue of recovery of possession is merely incidental. ELUMBA further argues that the action is one in personam and not in rem. Therefore venue may be laid in the place where plaintiff or defendant resides at the option of plaintiff.

Private respondent appears to be confused over the difference between personal and real actions vis-a-vis actions in personam and in rem. The former determines venue; the latter, the binding effect of a decision the court may render over a party, whether impleaded or not.

In the case before us, it is indubitable that the action instituted by private respondent against petitioner affects the parties alone, not the whole world. Hence, it is an action in personam, i.e., any judgment therein is binding only upon the parties properly impleaded.[9] However, this does not automatically mean that the action for damages and to fix the period of the lease contract is also a personal action. For, a personal action may not necessarily be an action in personam and a real action may not at the same time be an action in rem. In *Hernandez v. Rural Bank of Lucena, Inc.*, [10] we held thus -

In a personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract or the recovery of damages. In a real action, the plaintiff seeks the recovery of real property, or, as indicated in section 2(a) of Rule 4, a real action is an action affecting title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of a mortgage on, real property.

An action in personam is an action against a person on the basis of his personal liability, while an action in rem is an action against the thing itself, instead of against the person. Hence, a real action may at the same time be an action in personam and not necessarily an action in rem.

Consequently, the distinction between an action in personam and an action in rem for purposes of determining venue is irrelevant. Instead, it is imperative to find out if the action filed is a personal action or a real action. After all, personal actions may be instituted in the Regional Trial Court (then Court of First Instance) 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.[11] On the other hand, real actions should be brought before the Regional Trial Court having jurisdiction over the territory in which the subject property or part thereof lies.[12]

While the instant action is for damages arising from an alleged breach of the lease contract, it likewise prays for the fixing of the period of lease at five (5) years. If found meritorious, private respondent will be entitled to remain not only as lessee for another five (5) years but also to the recovery of the portion earlier taken from him as well. This is because the leased premises under the original contract was the whole commercial space itself and not just the subdivided portion thereof.

While it may be that the instant complaint does not explicitly pray for recovery of possession, such is the necessary consequence thereof.[13] The instant action therefore does not operate to efface the fundamental and prime objective of the nature of the case which is to recover the one-half portion repossessed by the lessor, herein petitioner.[14] Indeed, where the ultimate purpose of an action involves title to or seeks recovery of possession, partition or condemnation of, or foreclosure of mortgage on, real property,[15] such an action must be deemed a real action and must perforce be commenced and tried in the province where the property or any part thereof lies.

Respondent judge, therefore, in denying petitioner's Motion to Dismiss gravely abused his discretion amounting

to lack or excess of jurisdiction.

WHEREFORE, the Petition for Prohibition is GRANTED. The Orders of 6 November 1978 and 4 December 1978 of respondent Judge Dimalanes B. Buissan are SET ASIDE. The branch of the Regional Trial Court of Dipolog City where Civil Case No. 2901 may be presently assigned is DIRECTED to DISMISS the case for improper venue. This decision is immediately executory.

Costs against private respondent ELUMBA INDUSTRIES COMPANY.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.

Griño-Aquino, J., on official leave.

[1] Amended Petition, p. 4; Rollo, p. 78.

[2] Motion to Dismiss, p. 4; Annex "D", Amended Petition.

[3] Complaint, p. 3; Annex "C", Amended Petition.

[4] Docketed as Civil Case No. 2901. Private respondent seeks the following amounts as damages: (a) P100,000.00 as moral damages; (b) P50,000.00 as exemplary damages; (c) P5,000.00 as attorney's fees; and, (d) P1,000.00 as costs of suit.

[5] Raffled to Branch III.

[6] CFI Order, 6 November 1978; Rollo, p. 67.

[7] Motion for Reconsideration, p. 1; Rollo, p. 68.

[8] CFI Order, 4 December 1978; Rollo, p. 72.

[9] Ching v. Court of Appeals, G.R. No. 59731, 11 January 1990, 181 SCRA 9.

[10] No. L-29791, 10 January 1978, 81 SCRA 75, 84-85.

[11] Fortune Motors (Phils.), Inc. v. Court of Appeals, G.R. No. 76431, 16 October 1989, 178 SCRA 565, citing Sec. 1, Rule 4, Revised Rules of Court.

[12] Carandang v. Court of Appeals, No. L-44932, 15 April 1988, 160 SCRA 266.

[13] Tenorio v. Paño, No. L-48117, 27 November 1986, 146 SCRA 74.

[14] Punsalan, Jr. v. Vda. de Lacsamana, G.R. No. 55729, 28 March 1983, 121 SCRA 331.

[15] Sec. 2, par. (a), Rule 4, Revised Rules of Court.

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