

ALIPIO N. CASILAN, ET AL., PLAINTIFFS AND APPELLANTS, VS. RAYMUNDO TOMASSI, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-4294. January 31, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

The plaintiffs, Alipio N. Casilan and Purita Galagnara, filed in the Court of First Instance of Samar a complaint against defendants, Raymundo Tomassi and Santiago Gangcayco, for the recovery of the sum of P3,000 as damages, plus the legal interest. In due time the defendants filed a motion for dismissal on the ground of improper venue, and, acting upon said motion, the Court of First Instance of Samar issued on August 12, 1950, an order dismissing the case with costs. From this order the present appeal was taken by the plaintiffs.

The complaint alleges that plaintiff Alipio N. Casilan resides in the municipality of Tacloban, Leyte; plaintiff Purita Galagnara resides at No. 713 Legarda, Sampaloc, Manila; the defendant Santiago Gangcayco resides at No. 521 Pennsylvania, Malate, Manila, (oftentimes found in Guiuan, Samar); and the defendant Raymundo Tomassi resides in Tacloban, Leyte (oftentimes found in Guiuan, Samar).

Under section 1 of Rule 5 of the Rules of Court, "civil actions in Courts of First Instance may be commenced and tried where the defendants or any of the defendants resides or may be found, or where the plaintiffs or any of the plaintiffs resides, at the election of the plaintiff." Commenting on this provision, Chief Justice Manuel V. Moran, in his Comments on the Rules of Court, 3rd Ed., Vol. I, p. 106, observes: "Actions other than those mentioned in the two succeeding sections are personal actions which may be brought and tried either at the place of residence of any of the defendants or of any of the plaintiffs at the election of the latter. Venue may also be laid in the place where the defendant may be found, if he has no residence in the Philippines." It appearing from the very complaint that it does not involve a real action so as to come under section 3 of Rule 5, or an action against a non-resident defendant so as to come under section 2 of said Rule 5, but a personal action falling under section 1, the lower court committed no error in dismissing the complaint which was filed in the Court of First Instance in the province of Samar wherein neither any of the defendants nor any of the plaintiffs resides.

Section 1 of Rule B was taken from section 377 of Act 190, with the sole difference that the term "brought" used in section 377 of Act 190 was changed to "commenced and tried" in section 1 of Rule 5. This change is not substantial, because an action cannot be commenced and tried unless it is filed.

Wherefore, the appealed order is affirmed with costs against the appellants. So ordered.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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