

**PANGASINAN TRANSPORTATION CO., INC. (PANTRANCO),
PETITIONER, VS. HONORABLE NICASIO A. YATCO, IN HIS CAPACITY
AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH V
(QUEZON C...**

G.R. No. L-23090. October 31, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an original action for prohibition with preliminary injunction, to restrain respondent, Honorable Nicasio A. Yatco, then Judge of the Court of First Instance of Rizal, Branch V, from proceeding with the hearing of Civil Case No. 7237- Q thereof.

Soon after the filing of the petition herein, we issued the writ of preliminary injunction prayed for, upon the submission and approval of the requisite bond.

The pertinent facts are: On November 6, 1962, res-pondent Elpidio O. Dizon boarded bus No. 635 of petitioner, Pangasinan Transportation Co., Inc. - hereinafter referred to as Pantranco - as a paying passenger bound for Dagupan City. While the vehicle was cruising along the national highway, in the municipality of Apalit, Pampanga, it collided with a La Mallorca-Pambusco truck, in consequence of which Dizon and four (4) other passengers of said Pantranco Bus No. 635, suffered serious physical injuries, which caused the death of one of them. Inasmuch as the Pantranco had refused to heed his demands for the payment of damages, on or about April 30, 1963, Dizon filed in the Court of First Instance of Rizal a complaint - which was docketed as Civil Case No. 7237 of said Court - against the Pantranco, for the recovery of damages. After submitting its answer, with a counterclaim for P5,000.00, dated May 27, 1963, the Pantranco filed a third-party complaint against La Mallorca-Pambusco and its driver Benjamin Cruz.

In his complaint, as well as in his amended complaint in said case, Dizon alleged that he was a resident of No. 140 Talayan Road, San Francisco del Monte, Quezon City. At the hearing on June 1, 1964, Dizon testified, however, that he was a resident of Dagupan City, he being merely taking a vacation in Quezon City. Thereupon, the Pantranco moved to dismiss the complaint upon the ground of improper venue, but, the then presiding Judge of the Lower court, Honorable Nicasio A. Yatco, one of the respondents herein, denied the motion. Upon the conclusion of the evidence for Dizon, as plaintiff in the case for damages, the Pantranco proceeded to introduce its own evidence. Before the completion thereof, it, however, commence the present action for prohibition, in the Supreme Court, to restrain the lower court from proceeding with the hearing of the case, upon the theory that venue had been improperly laid.

The petition herein is untenable, not so much because the objection to venue is deemed waived, when, as in the present case, it is not set up before the filing of the answer in the lower court,[1] as because the filing of Pantranco's counterclaim in the Court of First Instance of Rizal, and, later, of Pantranco's third-party complaint against the La Mallorca-Pambusco, necessarily implied a submission to the jurisdiction of said court, and,

accordingly, a waiver of such right as the Pantranco may have had to object to the venue, upon the ground that it had been improperly laid.[2] The introduction of part of the evidence for the Pantranco after the denial of its motion to dismiss and before the institution of the present case tended, also, to have the same effect.

WHEREFORE, the petition herein should be, as it is hereby dismissed, the writ prayed for denied and the writ of preliminary injunction heretofore issued, dissolved, with costs against the Pantranco.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Sections 1 and 5, Rule 16, of the Rules of Court. Section 8, Rule 15, of the Rules of Court.

[2] "Objection to the venue is usually held to have been waived by filing x x x cross bills, asking affirmative relief against plaintiff, x x x" (67 C. J. p. 93; Slator vs. Trostel, et al.; 21 SW 285; Maverick Oil & Gas Co. vs. Howell, 237 S. W. 40).

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