

MARINO A. BAUTISTA, PETITIONER, VS. THE HON. JUAN DE BORJA, JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN AND G. A. MACHINERIES, INC., RESPONDENTS.*G. R. No. L-20600. October 28, 1966*

Ponente: REYES, J.B.L., J.

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Original petition in this Court by Marino A. Bautista for writs of certiorari and prohibition to annul an order denying his two motions to dismiss private respondent's complaint, and another order refusing to reconsider the preceding one, both issued by respondent judge of the Court of First Instance of Bulacan in Civil Case No. 2486 entitled "G. A. Machineries, Inc., plaintiff, versus Marino A. Bautista, defendant", and to prohibit respondent judge from requiring petitioner to enter into the trial of said Civil Case No. 2486 and from further proceeding with said case.

From the record, we find that on 28 December 1961 G. A. Machineries, Inc., commenced said case No. 2486 by a complaint alleging, inter alia, that on or about 27 January 1960 defendant purchased from plaintiff certain personal properties described therein, all valued at P83,800.00, for which the former made a down payment of P12,570.00 and agreed to pay the balance of P71,230.00 in eleven (11) monthly installments starting from 28 February 1960, as evidenced by the sales contract attached therein; that defendant executed a chattel mortgage contract over the same personal properties to secure the payment of the unpaid balance of the purchase price, covered by several promissory notes, copy of which mortgage contract and notes are attached; that the parties agreed that in case defendant should violate any condition thereof, and/or fail to pay any due and demandable note, plaintiff would be entitled to take possession of said personal properties, to extra-judicially foreclose said mortgage, in which event defendant is liable to pay 25% of the total amount due as liquidated damages and attorney's fees; that defendant failed to pay his obligations; that plaintiff applied to the Sheriff of Cotabato for the extra-judicial foreclosure of said mortgage but the latter could not proceed with the auction sale because defendant failed and refused, despite demands made therefor, to deliver and surrender said personal properties. Whereupon, plaintiff prayed that defendant be ordered (a) to deliver said personal properties, and/or that the provisional remedy of replevin be issued upon the filing of the requisite bond; (b) to pay the sum of P20,217.52, as liquidated damages and attorney's fees; and (c) in the event of non-delivery of said personal properties, to pay the sum of P71,230.00 plus interest thereon at the rate of 12% per annum from 28 February 1960 until the same is fully paid; plus costs of the suit.

In due time, after summons, defendant Marino A. Bautista filed, on 2 April 1962, a motion to dismiss the above-mentioned complaint, on the grounds that (a) there is another action pending between the same parties for the same cause, which Marino A. Bautista, together with a certain Leopoldo Jalandoni, as plaintiffs, filed against G. A. Machineries, Inc., as defendant, in the Court of First Instance of Manila and docketed therein as its Civil Case No. 27110, for accounting and damages; and (b) that the filing of the complaint by G. A. Machineries, Inc., in Bulacan constitutes multiplicity of suits, which is not allowed by the Rules of Court.

Plaintiff submitted, on 24 April 1962, its opposition to said motion, to which opposition defendant Bautista presented, on 30 April 1962, his reply. To this reply defendant Joined a supplemental motion to dismiss, setting forth as additional ground therefor that venue was improperly laid, since plaintiff and defendant have expressly stipulated in their sales and chattel mortgage contracts that "in case of any litigation arising (t)herefrom or in connection (t)herewith, the venue of action shall be in the City of Manila, Philippines".

On 8 May 1962, the trial court acted on the original motion to dismiss and issued an order [1], the dispositive part of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court hereby suspends further proceedings in this case as well as suspends the period within which the defendant should file his responsive pleadings until after final determination of Civil Case No. 47110 of the Court of First Instance of Manila, entitled Leopoldo Jalandoni vs. G. A. Machineries, Inc."

Apparently, the parties did not immediately receive copies of the abovequoted order, because plaintiff, on 11 May 1962, filed opposition to the supplemental motion to dismiss, while defendant replied to the opposition on 15 May 1962.

On 17 September 1962, the clerk of the trial court notified the parties that the case was set for hearing on 12 October 1962.

On this last mentioned date, the trial court reconsidered and set aside the order of 8 May 1962 suspending the proceedings; denied defendant's supplemental motion to dismiss; and, at the same time, reset the case for hearing on November 1962.

On 15 October 1962, defendant moved to reconsider the orders of 12 October 1962 and to cancel the scheduled hearing in view of the fact that he had not yet filed his answer to the complaint and, therefore, the issues had not been joined. Plaintiff opposed said motion and countered with a motion to declare defendant in default.

On 22 October 1962, defendant filed a manifestation, advising the trial court that he intends to file a petition for certiorari and prohibition in the Supreme Court for the purpose of annulling the now questioned orders and reiterating his motion to cancel or hold in abeyance the scheduled hearing on 13 November 1962. Defendant attached to this manifestation his answer to the complaint, which requested to be admitted to obviate the possibility of his being declared in default.

On 13 November 1962, the trial court denied both defendant's motion for reconsideration and plaintiff's motion to declare defendant in default; however, it admitted defendant's answer and, at the same time, allowed plaintiff to present its evidence ex parte for failure of defendant and his counsel to appear at the hearing.

Plaintiff was unable to finish presenting its evidence on the same day and the trial court continued the hearing of the case for 11 December 1962, at which later date defendant and his counsel again failed to attend; but they sent, instead, a copy of the petition filed in this Court. Notwithstanding, the trial court allowed plaintiff to proceed and terminate presenting its evidence and had the case submitted for decision.

The record also disclosed that petitioner filed, on 11 December 1962, the instant petition which was, at first, dismissed for lack of supporting papers; but later, upon motion, the dismissal was reconsidered and the petition given due course. This Court did not, however, issue any writ of preliminary injunction to stop the proceedings in the court below, since it was not asked in the petition.

Petitioner Bautista now contends that respondent judge acted with patent and grave abuse of discretion, amounting to lack or excess of jurisdiction, in denying his original and supplemental motions to dismiss private

respondent's complaint and in allowing it to proceed ex parte with the trial of Civil Case No. 2486. It is insisted that when G. A. Machineries, Inc., filed its complaint in the Court of First Instance of Bulacan, venue was improperly laid, since they (plaintiff and defendant therein) expressly stipulated in the sales and chattel mortgage contracts that any action arising between them in connection therewith should be instituted in the City of Manila, and this express stipulation amounts to a clear, valid and effective waiver on the part of plaintiff to Invoke the right of election granted it, as plaintiff, under the Rules of Court, to choose the venue; and that this stipulation was embodied in their contracts for his (Bautista" s) benefit and advantage because he has his principal office, and conducts principally his business, in the City of Manila.

Lastly, the petitioner avers that as soon as he manifested his decision to file a petition for certiorari and prohibition in the proper court, for the purpose of questioning the validity of the orders now complained of, respondent judge should have desisted or refrained from proceeding with the trial of said Civil Case No. 2486.

Respondent G. A. Machineries, Inc., on the other hand, maintains that the express agreement on venue invoked by petitioner was intended solely for its convenience and benefit, and it still, therefore, retained the privilege or option to choose the venue granted it under Section 4, Rule 5, of the old Rules of Court (now Section 3, Rule 4, Revised Rules of Court), and since its (the corporation's) residence or domicile is in Polo (now Valenzuela), Bulacan, the Bulacan Court of First Instance may properly take cognizance of said Civil Case No. 2486.

Respondent further maintains that since jurisdiction over the subject-matter or over the person is not in issue in the case at bar; that as improper venue does not constitute jurisdictional issue; that respondent judge has not been shown to have committed any grave abuse of discretion in denying petitioner's motions to dismiss; and that as the remedy of appeal is available to petitioner, the writs of certiorari and prohibition would be unavailing and ineffective remedies in the case at bar.

The parties do not dispute that, in the written contracts sued upon, it was expressly stipulated that "in case of any litigation arising (t)herefrom or in connection (t)herewith, the venue of action shall be in the City of Manila, Philippines". We note that neither party to the contracts reserved the right to choose the venue of action as fixed by law (i.e., where the plaintiff or defendant resides, at the election of the plaintiff (par. (b), Section 2, Rule 4, Revised Rules of Court) ,as is usually done if the parties purported to retain that right of election granted by the Rules. Such being the case, it can reasonably be inferred that the parties intended to definitely fix the venue of action, in connection with the written contracts sued upon, in the proper courts of the City of Manila only, notwithstanding that neither party is a resident of Manila. The Rules expressly sanction such stipulation by providing that " by written agreement of the parties the venue of action may be changed or transferred from one province to another" (Section 3, Rule 4, Revised Rules of Court), and, as aptly held in the case of *Central Azucarera de Tarlac vs. De Leon*, 56 Phil. 169,-

"By said agreement the parties waived the legal venue, and such waiver is valid and legally effective, because it was merely a personal privilege they waived, which is not contrary to public policy or to the prejudice of third persons. It is a general principle that a person may renounce any right which the law gives unless such renunciation is expressly prohibited or the right conferred is of such nature that its renunciation would be against public policy."

It appearing that the action was brought in a place other than that fixed by the parties in their valid written contracts; that the ground of improper venue is clear and patent on the record of the case, the written contracts having been attached and made an integral part of the complaint; that the impropriety of the venue was properly and timely raised in a motion to dismiss; and that a writ of prohibition is a proper remedy when a trial court erroneously denies a motion to dismiss based on the ground of improper venue [2]; we are constrained to rule that the trial court acted with grave abuse of discretion in denying petitioner's motions to dismiss based on the

above-stated ground.

With the above conclusion, it becomes unnecessary to consider the other issues raised by petitioner.

WHEREFORE, the writ of prohibition prayed for is hereby granted, and the respondent trial court is ordered to dismiss the complaint of G. A. Machineries, Inc., without prejudice to the filing of said complaint in the proper court. Costs against private respondent G. A. Machineries, Inc.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] The order stated that plaintiff did not file any opposition, when it did, in fact, submit one; and the trial court failed to resolve the supplemental motion to dismiss, apparently because it had not yet been received.

[2] In Enriquez vs. Macadaeg, 84 Phil 674; Tiangco vs. Cabrera, 86 Phil. 502; and Portillo vs. Reyes, L-17707, 27 October 1964, this Court granted the writ of prohibition and ordered, upon a motion based on improper venue, the dismissal of the complaint.

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