

**MIGUEL OCAMPO, PETITIONER, VS. LIBERATO S. DOMINGO,
VICENTE E. GALANOG, CITY JUDGE OF DAVAO CITY AND ATTY.
ALFREDO ABEJA, CHIEF, DEPUTY SHERIFF OF QUEZON CITY,
RESPONDENTS.**

G.R. No. L-27632. March 27, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An original action for prohibition.

Petitioner instituted this action on June 7, 1967 to enjoin enforcement by the Quezon City sheriff of the writ of execution issued by respondent city court of Davao City pursuant to its final judgment dated January 14, 1967, in Civil Case No. 901-A thereof for illegal detainer entitled "Liberato S. Domingo, plaintiff vs. Miguel Ocampo, defendant" ordering petitioner to vacate the leased property consisting of a 1,000-square meter parcel of land located along España Extension, Quezon City, as well as to restore possession thereof to private respondent Domingo as the lessor-owner thereof and to pay said respondent the unpaid stipulated rentals of P200.00 monthly from September 16, 1965.

On petitioner's verified allegations that "petitioner was very much surprised upon receipt of the said writ of execution for the reason that he was not served any summons or a copy of the complaint filed against him nor a copy of the decision and therefore, the respondent Judge, has acted without or in excess of his jurisdiction or with grave abuse of discretion;"[1] and "granting without admitting that respondent Liberato S. Domingo filed a complaint against petitioner herein before the City Court of Davao City for 'Forcible Entry Into and Detainer of Land or Buildings,' venue was improperly laid as the land in question is situated at España Extension, Quezon City and not in Davao City",[2] the Court required respondent to answer the petition and issued a restraining order against enforcement of the questioned writ of execution.

The answer and annexed documents filed by respondent, however, totally disproved petitioner's allegations. Petitioner had been personally served on December 17, 1966, by the Quezon City sheriff with respondent court's summons and copy of the complaint.[3] Petitioner had duly filed his answer dated December 21, 1966 to the complaint, signing the same on his own behalf and interposing no defense but pleading that he "has not intentionally or deliberately failed or refused to pay the rentals.[4] The duly notarized lease agreement between the parties expressly stipulated that "(V)enue in case of litigation shall be in Davao City, Philippines." [5] Petitioner failed to appear before respondent court, in person or through counsel, at the scheduled hearing on January 9, 1967, and after reception of respondent's evidence, rendered its judgment of January 14, 1967, against petitioner.[6] Copy of respondent court's decision was duly served on petitioner by registered airmail special delivery on January 20, 1967, and personally acknowledged by him on the registry return receipt.[7]

At the hearing of the petition before the Court on August 30, 1967, at which petitioner's counsel failed to appear due to alleged illness and was instead given a period of ten days to submit a memorandum (which he did not avail

of), it was further brought out by respondent, through counsel, that when the Quezon City sheriff served on petitioner on May 20, 1967, the writ of execution, petitioner requested deferment thereof until June 10, 1967, promising to vacate the premises as well as to pay all rentals due to respondent by said date, which promise he wrote down on the reverse side of the writ of execution.[8]

The petition must be dismissed. While Rule 4, section 1 provides that "forcible entry and detainer actions regarding real property shall be brought in the municipality or city in which the subject matter thereof is situated", it is a dogma of procedural law that venue, in inferior courts as well as in the courts of first instance, may be waived expressly or impliedly. Where the defendant fails to challenge timely the venue in a motion to dismiss as provided by section 4 of the same rule, and allows the trial to be held and a decision to be rendered, he cannot on appeal or in a special action be permitted to challenge belatedly the wrong venue, which is deemed waived.[9] The analogy of actions for recovery of real property located in one province being validly instituted and tried in another province where plaintiff resides, when defendant has waived the venue fixed by law, is clearly applicable to the present case.[10]

Even if it were to be assumed that the parties' covenant in the lease agreement fixing the venue in Davao City in case of litigation could be validly repudiated by the defendant on the theory that the provisions of Rule 4, section 1 above-quoted should be considered as mandatory - a contention which petitioner does not make - petitioner, in the light of his actions hereinabove recited, of filing his answer to the complaint, requesting deferment of execution and formally undertaking to vacate the property by June 10, 1967, would be estopped now from making such a volte face, since he "cannot adopt a posture of double-dealing without running afoul of the doctrine of estoppel." [11]

A final note of advertence. The facts of record make out the petition to be a sham petition whereby petitioner flagrantly misled the Court into acting on his petition and issuing a restraining order on the basis of his false representation that he had not been summoned and was completely unaware of the respondent court's judgment against him. Petitioner should reflect on the grave consequences of his contumacious act and on the criminal liability that he may incur for willful commission of falsehood. Petitioner's counsel, too, has failed to live up to his exacting responsibility as an officer of the court to exert the utmost diligence that the petition prepared by him state the facts truthfully and accurately, as well as to deal with the courts in all good faith and candor,[12] in that he failed, upon receipt of respondent's documented answer, to file the necessary rectification of the false allegations in his petition and enable the Court to dismiss forthwith the petition. The Court cannot but express severe condemnation, as it has in the past,[13] for such deceptive tactics which delay due execution of a just and lawful verdict and waste the time that the courts need for the study and resolution of meritorious cases.

ACCORDINGLY, the petition is dismissed, with treble costs. The Court's restraining order of June 15, 1967, is dissolved and enforcement of respondent court's writ of execution may proceed upon promulgation of this decision.

Furthermore, petitioner and his counsel are ordered to show cause within ten (10) days from receipt hereof why they should not be punished for contempt of court for having filed a sham petition, and his counsel is required within the same period to show cause why disciplinary action should not be taken against him.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Petition, par. 4.

[2] *Idem*, par. 5.

[3] Annex B, Answer.

[4] Annex C, Answer.

[5] Annex A, of Complaint, Rollo, pp. 19-20.

[6] Annex D, Answer.

[7] Annex E, Answer.

[8] Rollo, p. 37.

[9] See *Juanillo vs. de la Rama*, 74 Phil. 43 (1942).

[10] See 1 *Moran's Comments*, p. 231, and cases cited.

[11] *People vs. Arcilla*, 1 SCRA 699, cited in *Crisos-tomo vs. Court of Appeals*, 32 SCRA 54 (Mar. 25, 1970). See also *Tijam vs. Sibonghanoy*, 23 SCRA 29 (Apr. 15, 1968).

[12] See *BLTB Co. vs. Cadiao*, 22 SCRA 987 (March 12, 1968) and *Cruz vs. GSIS*, 27 SCRA 174 (February 28, 1969).

[13] *Uyjuangco vs. Equitable Bank*, 27 SCRA 1271 (April 30, 1969) and *Pajares vs. Abad Santos*, 30 SCRA 748, (November 29, 1969).

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