

**CITY OF CEBU, PETITIONER, VS. HON. FELIMON R. CONSOLACION,
JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH VII,
RESPONDENT.***G.R. No. L-26068. March 29, 1971*

Ponente: DIZON, J.

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This is an original action for certiorari, prohibition, and mandamus, with a prayer for the issuance of a Writ of Preliminary Injunction, filed by the City of Cebu against the Hon. Felimon R. Consolacion, Judge of the Court of First Instance of Cebu, Branch VII. The material facts alleged in the petition are as follows:

On August 6, 1965, a complaint was filed in the Court of First Instance of Cebu by Gov. Rene Espina, the Province of Cebu, and the Municipalities of Barili, Ronda, Bogo and others, against Mayor Sergio Osmeña, Jr., City of Cebu, Priscillano Almendras, Nazario Pacquiao and other public officials. Although the complaint was entitled "for injunction, etc.," the action was in reality one to declare "Resolution No. 186 of the Province of Cebu and the Deed of Donation executed pursuant thereto, null, void and inexistence or in the alternative, to order its annulment and revocation for breach of its Principal Terms and Conditions," (Civil Case No. 238-BC).

Upon the filing of the complaint, the same was submitted to the respondent judge who, in accordance with the petition for the ex parte issuance of a Writ of Preliminary Injunction, issued the aforesaid writ enjoining the defendants named in the complaint to refrain "from selling, transferring, or in any way disposing of any of the 210 province-owned lots subject matter of the questioned donation and from executing any deed of sale, transfer, conveyance or confirmation purporting to convey title to any of the lots referred to in favor of any person, firm or corporation."

On August 16, 1965, one of the defendants – the herein petitioner City of Cebu – filed a motion to dismiss the complaint on the grounds of: (1) plaintiffs' lack of legal capacity to sue, and (2) improper venue.

After Mayor Sergio Osmeña, Jr. automatically ceased to be Mayor of the City of Cebu upon the filing of his certificate of candidacy for senator on September 9, 1965, Carlos J. Cuizon was substituted in his place in his capacity as Mayor of the City of Cebu. Thereafter he filed a similar motion to dismiss the complaint citing in support thereof Our decision in Norberto Lumpay vs. Hon. Segundo Moscoso, G.R. L-14723 (promulgated on May 29, 1959). On December 1, 1965, the respondent judge denied the motion to dismiss and ordered the defendants to answer the complaint within the reglementary period.

On December 16, 1965, the City of Cebu filed its answer assailing in one of the affirmative defenses set forth therein the authority of the respondent judge to take cognizance of the case.

On January 31, 1966, petitioner City of Cebu filed a motion for the reconsideration of the respondent judge's order of December 1, 1965 insofar as it denied the transfer of the case to the proper branch of the Court of First Instance stationed at Cebu City. This motion was denied by the respondent judge on February 9, 1966, and

subsequently, set the case for pre-trial.

According to the petition at bar, the Seventh Branch of the Court of First Instance of Cebu presided over by the respondent judge, is a new branch created by Rep. Act 2613, amending the Judiciary Act of 1948, providing for eight judges to preside over the Court of First Instance of the Province of Cebu and the City of Cebu, six of them to be stationed in the City of Cebu, and one each of the remaining two in the Municipalities of Barili and Bogo. The law just mentioned, however, did not determine the particular municipalities over which Branch VII of the Court of First Instance of Cebu would exercise judicial authority until the Department of Justice issued under date of August 20, 1962 Administrative Order 302, pursuant to Sec. 27 of the Judiciary Act of 1948, which provided that said branch would take cognizance of cases coming from the twelve municipalities therein mentioned, all situated on the western part of the Province of Cebu.

Upon the foregoing facts, petitioner contends that inasmuch as the 210 lots subject matter of the resolution of the Provincial Board of Cebu and of the Deed of Donation sought to be annulled were within the territorial limits of the City of Cebu, Civil Case No. 238-BC should be taken cognizance of by any of the judges presiding over any of the six branches of the Court of First Instance of Cebu stationed in said city; that, as the respondent judge pre-sided over Branch VII stationed in the Municipality of Barili, he had no authority to take cognizance of said case and, as a result, all his actuations therein are void.

We have noticed that Administrative Order 302 at-tached as Annex B to the petition, after enumerating the different municipalities and apportioning among the eight branches of the Court of First Instance of Cebu the cases filed therein, says "that whenever the interest of the ad-ministration of justice so requires, any judge of the eight branches of the Court of Cebu may try any case coming from any municipality, with the previous approval of this De-partment." In plain words, with the previous approval of the Department of Justice, the respondent judge would be competent to take cognizance of Civil Case No. 238-BC. In this connection, We find that nowhere in the petition be-fore Us is it alleged that the respondent judge had taken cognizance of said case and issued orders therein without previous approval of the Department of Justice. We deem an allegation to this effect as vital and indispensable for the petition under consideration to state a case of lack of authority on the part of the respondent judge be-cause, without such allegation, the presumption must be that His Honor was acting regularly, and that official duty in connection with the transfer of the case from any of the branches of the Court of First Instance of Cebu stationed in Cebu City to Branch VII stationed in the Municipality of Barili had been duly complied with.

We have arrived at the above conclusion on the strength of the following considerations:

Whether plaintiffs' action subject of Civil Case No. 238-BC is a personal action or a real action, it cannot be denied that any of the branches of the Court of First Instance of the Province of Cebu, whether stationed in the City of the same name or in any of the municipalities of the province, would be proper venue for its trial and de-termination, it being admitted that the parties are resi-dents of the Province of Cebu and the lands in question are within its territorial limits. It is only by reason of the apportionment of cases effected through Administra-tive Order No. 302 that it may be claimed that the Seventh Branch stationed in the Municipality of Barili has no au-thority to take cognizance of the aforesaid case. But, as already adverted to, said Executive Order recognizes the authority of any of the branches of the Court of First Instance of Cebu to take cognizance of any case coming from any City or Municipality of the province, if the interest of the administration of justice so demands and the approval of the Department of Justice had been pre-viously secured. It is clear therefore that, for a party who assails the authority of Branch VII of the Court of First Instance of Cebu to take cognizance of Civil Case No. 238-BC, said party must allege affirmatively that the approval of the Department of Justice had not been pre-viously secured and that the exercise of authority over the case by the aforesaid branch was not demanded by

the interest of the administration of justice.

WHEREFORE, the petition under consideration is dismissed, with costs.

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

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