

JUAN D. EVANGELISTA ET AL., PLAINTIFFS AND APPELLANTS, VS. RAFAEL SANTOS, DEFENDANT AND APPELLEE.

G.R. No. L-1721. May 19, 1950

Ponente: REYES, J.

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REYES, J.:

This is an action by the minority stockholders of a corporation against its principal officer for damages resulting from his mismanagement of its affairs and misuse of its assets.

The complaint alleges that plaintiffs are minority stock-holders of the Vitali Lumber Company, Inc., a Philippine corporation organized for the exploitation of a lumber concession in Zamboanga, Philippines; that defendant holds more than 50 per cent of the stocks of said corporation and also is and always has been the president, manager, and treasurer thereof; and that defendant, in such triple capacity, through fault, neglect, and abandonment allowed its lumber concession to lapse and its properties and assets, among them machineries, buildings, warehouses, trucks, etc., to disappear, thus causing the complete ruin of the corporation and total depreciation of its stocks. The complaint therefore prays for judgment requiring defendant: (1) to render an account of his administration of the corporate affairs and assets; (2) to pay plaintiffs the value of their respective participation in said assets on the basis of the value of the stocks held by each of them; and (3) to pay the costs of suit. Plaintiffs also ask for such other remedy as may be just and equitable.

The complaint does not give plaintiffs' residence, but, for purposes of venue, alleges that defendant resides at 2112 Dewey Boulevard, corner Libertad Street, Pasay, province of Rizal. Having been served with summons at that place, defendant filed a motion for the dismissal of the complaint on the ground of improper venue and also on the ground that the complaint did not state a cause of action in favor of plaintiffs.

In support of the objection to the venue, the motion, which is under oath, states that defendant is a resident of Iloilo City and not of Pasay, and at the hearing of the motion defendant also presented further affidavit to the effect that while he has a house in Pasay, where members of his family who are studying in Manila live and where he himself is sojourning for the purpose of attending to his interests in Manila, yet he has his permanent residence in the City of Iloilo where he is registered as a voter for election purposes and has been paying his residence certificate. Plaintiffs opposed the motion for dismissal but presented no counter proof and merely called attention to the Sheriff's return showing service of summons on defendant personally at his alleged residence at No. 2112 Dewey Boulevard, Pasay.

After hearing, the lower court rendered its order, granting the motion for dismissal upon the two grounds alleged by defendant, and reconsideration of this order having been denied, plaintiffs have appealed to this Court.

The appeal presents two questions. The first refers to venue and the second, to the right of the plaintiffs to bring this action for their benefit.

As to the first question, it is important to remember that the laying of the venue of an action is not left to plaintiff's

caprice. The matter is regulated by the Rules of Court. And in actions like the present, which is one in personam, the regulation applicable is that contained in section 1 of Rule 5, which provides:

"Civil actions in Courts of First Instance may be commenced and tried where the defendant or any of the defendant resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff."

Objection to improper venue may be interposed at any time prior to the trial. (Moran's Comments on the Rules of Court, Vol. I, 2nd ed., p. 108.)

Believing that defendant resided in the province of Rizal, herein plaintiffs brought their action in the Court of First Instance of that province. But that belief proved erroneous, for the lower court found after hearing that defendant had his residence in Iloilo. The finding is based on defendant's sworn statement not rebutted by any proof to the contrary.

There is nothing to the contention that defendant's motion to dismiss necessarily presupposes a hypothetical admission of the allegations of the complaint, among them the averment that defendant is a resident of Rizal province, for the motion precisely denies that averment and alleges that his real residence is in Iloilo City. This, defendant had the right to do in objecting to the court's jurisdiction on the ground of improper venue.

Section 1 of Rule 5 may seem, at first blush, to authorize the laying of the venue in the province where the defendant "may be found." But this phrase has already been held to have a limited application. It is the same phrase used in section 377 of Act 190 from which section 1 of Rule 5 was taken, and as construed by this Court it applies only to cases where defendant has no residence in the Philippine Islands. This was the construction adopted in the case of *Cohen vs. Benguet Commercial Co., Ltd.*, 34 Phil. 526, which was an action brought in Manila by a nonresident against a corporation which had its residence for legal purposes in Baguio but whose President was found in Manila and there served with summons. This Court there said:

"Section 377 provides that actions of this character 'may be brought in any province where the defendant or any necessary party defendant may reside or be found, or in any province where the plaintiff or one of the plaintiffs resides, at the election of the plaintiff.' The plaintiff in this action has no residence in the Philippine Islands. Only one of the parties to the action resides here. There can be, therefore, no election by plaintiff as to the place of trial. It must be in the province where the defendant resides. The defendant resides, in the eye of the law, in Baguio. Was it 'found' in the city of Manila under section 377, its president being in that city where the service of summons was made? We think not. The word 'found' as used in section 377 has a different meaning that belongs to it as used in section 394, which refers exclusively to the place where the summons may be served. As we have said a summons may be legally served on a defendant wherever he may be 'found,' i. e., wherever he may be, provided he be in the Philippine Islands; but the venue cannot be laid wherever the defendant may be 'found.' There is an element entering in section 377 which is not present in section 394, that is a residence. Residence of the plaintiff or defendant does not affect the place where a summons may be served; but residence is the vital thing when we deal with venue. The venue must be laid in the province where one of the parties resides. If the plaintiff is a nonresident the venue must be laid in the province of the defendant's residence. The venue can be laid in the province where defendant is 'found' only when defendant has no residence in the Philippine Islands. A defendant can not have a residence in one province and be 'found' in another. As long as he has a residence in the Philippine Islands he can be 'found,' for the purposes of section 377, only in the province of his residence. In such case the words 'residence' and 'found' are synonymous. If he is a nonresident then the venue may be laid in the province where he is 'found' at the time the action is commenced or in the province of plaintiff's residence. This applies also to a domestic corporation.

"While the service of the summons was good in either Baguio or Manila we are of the opinion that the objection of the defendant to the place of trial was proper in both cases and that the trial court should have held

that the venue was improperly laid."

And elaborating on the point when the case came up for reconsideration, the Court further said:

"The moving party contends that the venue was properly laid under section 377 in that it was laid in the province where the defendant was found at the time summons was served on its president, he having been found and served with process in the city of Manila. For the purposes of the discussion we assumed in the main case, as the plaintiff claimed, that the defendant was in fact and in law found in the city of Manila; and-proceeded to decide the cause upon the theory that, even if the defendant were found in the city of Manila, that did not justify, under the facts of the case, the laying of the venue in the city of Manila.

"We do not believe that the moving party's objection that our construction deprives the word 'found' of all significance and results, in effect, in eliminating it from the statute, is sound. We do not deprive it of all significance and effect and do not eliminate it from the statute. We give it the only effect which can be given it and still accord with the other provisions of the section which give defendant the right to have the venue laid in the province of his residence, the effect which it was intended by the legislature they should have. We held that the word 'found' was applicable in certain cases, and in such cases gave it full significance and effect. We declared that it was applicable and effective in cases where the defendant is a nonresident. In such cases the venue may be laid wherever he may be found in the Philippine Islands at the time of the service of the process, but we also held that where he is a resident of the Philippine Islands the word 'found' has no application and the venue must be laid in the province where he resides.

"The construction which the moving party asks us to place on that provision of section 377 above quoted would result in the destruction of the privilege conferred by the section upon a resident defendant which requires the venue to be laid in the province where he resides. This is clear; for, if the venue may be laid in any province where the defendant, although a resident of some other province, may be found at the time process is served on him, then the provision that it shall be laid in the province where he resides is of no value to him. If a defendant residing in the province of Rizal is helpless when the venue is laid in the province of Mindoro in an action in which the plaintiff is a nonresident or resides in Manila, what is the value of a residence in Rizal? If a defendant residing in Jolo is without remedy when a nonresident plaintiff or a plaintiff residing in Jolo lays the venue in Bontoc because the defendant happens to be found there, of what significance is a residence in Jolo? The phrases 'where the defendant * * * may reside' and 'or be found' must be construed together and in such manner that both may be given effect. The construction asked for by the moving party would deprive the phrase 'where the defendant * * * may reside' of all significance, as the plaintiff could always elect to lay the venue in the province where the defendant was 'found' and not where he resided; whereas the construction which we place upon these phrases permits both to have effect. We declare that, when the defendant is a resident of the Philippine Islands, the venue must be laid either in the province where the plaintiff resides or in the province where the defendant resides, and in no other province. Where, however, the defendant is a nonresident the venue may be laid wherever defendant may be found in the Philippine Islands. This construction gives both phrases their proper and legitimate effect without doing violence to the spirit which informs all laws relating to venue and which insists always that the action shall be tried in the place where the greatest convenience of the parties will be served. Ordinarily a defendant's witnesses are found where the defendant resides; and plaintiff's witnesses are generally found where he resides or where the defendant resides. It is, therefore, generally desirable to have the action tried where one of the parties resides. Where the plaintiff is a nonresident and the contract upon which suit is brought was made in the Philippine Islands it may safely be asserted that the convenience of the defendant would be best served by a trial in the province where he resides."

The fact that defendant was sojourning in Pasay at the time he was served with summons does not make him a resident of that place for purposes of venue. Residence is "the permanent home, the place to which, whenever absent for business or pleasure, one intends to return, * * *" (67 C. J., pp. 123-124.) A man can have but one

domicile at a time (*Alcantara vs. Secretary of Interior*, 61 Phil., 459), and residence is synonymous with domicile under section 1 of Rule 5 (*Moran's Comments*, supra, p. 104).

In view of the foregoing, we hold that the objection to the venue was correctly sustained by the lower court.

As to the second question, the complaint shows that the action is for damages resulting from mismanagement of the affairs and assets of the corporation by its principal officer, it being alleged that defendant's maladministration has brought about the ruin of the corporation and the consequent loss of value of its stocks. The injury complained of is thus primarily to the corporation, so that the suit for the damages claimed should be by the corporation rather than by the stockholders (3 *Fletcher*, *Cyclopedia of Corporation* pp. 977-980). The stockholders may not directly claim those damages for themselves for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of section 16 of the Corporation Law, which provides:

"No corporation shall make or declare any stock or bond dividend or any dividend whatsoever except from the surplus profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution."

But while it is to the corporation that the action should pertain in cases of this nature, however, if the officers of the corporation, who are the ones called upon to protect their rights, refuse to sue, or where a demand upon them to file the necessary suit would be futile because they are the very ones to be sued or because they hold the controlling interest in the corporation, then in that case any one of the stockholders is allowed to bring suit (3 *Fletcher's Cyclopedia of Corporations*, pp. 977-980). But in that case it is the corporation itself and not the plaintiff stockholder that is the real party in interest, so that such damages as may be recovered shall pertain to the corporation (*Pascual vs. Del Saz Orosco*, 19 Phil. 82, 85). In other words, it is a derivative suit brought by a stockholder as the nominal party plaintiff for the benefit of the corporation, which is the real party in interest (13 *Fletcher*, *Cyclopedia of Corporations*, p. 295).

In the present case, the plaintiff stockholders have brought the action not for the benefit of the corporation but for their own benefit, since they ask that the defendant make good the losses occasioned by his mismanagement and pay to them the value of their respective participation in the corporate assets on the basis of their respective holdings. Clearly, this cannot be done until all corporate debts, if there be any, are paid and the existence of the corporation terminated by the limitation of its charter or by lawful dissolution in view of the provisions of section 16 of the Corporation Law.

It results that plaintiffs' complaint shows no cause of action in their favor so that the lower court did not err in dismissing the complaint on that ground.

While plaintiffs ask for a remedy to which they are not entitled unless the requirement of section 16 of the Corporation Law be first complied with, we note that the action stated in their complaint is susceptible of being converted into a derivative suit for the benefit of the corporation by a mere change in the prayer. Such amendment, however, is not possible now, since the complaint has been filed in the wrong court, so that the same has to be dismissed.

The order appealed from is therefore affirmed, but without prejudice to the filing of the proper action in which the venue shall be laid in the proper province. Appellants shall pay costs. So ordered.

Moran, C.J., Ozaeta, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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