

VIRGILIO CAPATI, PLAINTIFF-APPELLANT, VS. DR. JESUS P. OCAMPO, DEFENDANT-APPELLEE.

G.R. No. L-28742. April 30, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

We set aside the order of the Court of First Instance of Pampanga in Civil Case No. 3188 which dismissed the plaintiff's complaint on ground of improper venue.

Plaintiff Virgilio Capati, a resident of Bacolor, Pampanga, was the contractor of the Feati Bank for the construction of its building in Iriga, Camarines Sur. On May 23, 1967, plaintiff entered into a sub-contract with the defendant Dr. Jesus Ocampo, a resident of Naga City, whereby the latter, in consideration of the amount of P2,200.00, undertook to construct the vault walls, exterior walls and columns of the said Feati building in accordance with the specifications indicated therein. Defendant further bound himself to complete said construction on or before June 5, 1967 and, to emphasize this time frame for the completion of the construction job, defendant affixed his signature below the following stipulation written in bold letters in the sub-contract: "TIME IS ESSENTIAL, TO BE FINISHED 5 JUNE '67."

Claiming that defendant finished the construction in question only on June 20, 1967, plaintiff filed in the Court of First Instance of Pampanga an action for recovery of consequential damages in the sum of P85,000.00 with interest, plus attorney's fees and costs. The complaint alleged inter alia that "due to the long unjustified delay committed by defendant, in open violation of his express written agreement with plaintiff, the latter has suffered great irreparable loss and damage x x x."

Defendant filed a motion to dismiss the complaint on the ground that venue of action was improperly laid. The motion was premised on the stipulation printed at the back of the contract which reads:

"14. That all actions arising out, or relating to this contract may be instituted in the Court of First Instance of the City of Naga."

Plaintiff filed an opposition to the motion, claiming that their agreement to hold the venue in the Court of First Instance of Naga City was merely optional to both contracting parties. In support thereof, plaintiff cited the use of the word "may" in relation with the institution of any action arising out of the contract.

The lower court, in resolving the motion to dismiss, ruled that "there was no sense in providing the aforequoted stipulation, pursuant to Sec. 3 of Rule 4 of the Revised Rules of Court, if after all, the parties are given the discretion or option of filing the action in their respective residences," and thereby ordered the dismissal of the complaint.

Hence, this appeal.

The rule on venue of personal actions cognizable by the courts of first instance is found in Section 2(b), Rule 4 of

the Rules of Court, which provides that such "actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff," The said section is qualified by the following provisions of Section 3 of the same rule:

"By written agreement of the parties the venue of an action may be changed or transferred from one province to another."

Defendant stands firm on his contention that because of the aforequoted covenant contained in par. 14 of the contract, he cannot be sued in any court except the Court of First Instance of Naga City. We are thus called upon to rule on the issue as to whether the stipulation of the parties on venue is restrictive in the sense that any litigation arising from the contract can be filed only in the court of Naga City, or merely permissive in that the parties may submit their disputes not only in Naga City but also in the court where the defendant or the plaintiff resides, at the election of the plaintiff, as provided for by Section 2(b), Rule 4 of the Rules of Court.

It is well settled that the word "may" is merely permissive and operates to confer discretion upon a party. Under ordinary circumstances, the term "may be" connotes possibility; it does not connote certainty. "May" is an auxiliary verb indicating liberty, opportunity, permission or possibility.[1]

In *Nicolas vs. Reparations Commission*[2], a case involving the interpretation of a stipulation as to venue along lines similar to the present one, it was held that the agreement of the parties which provided that "all legal actions arising out of this contract x x x may be brought in and submitted to the jurisdiction of the proper courts in the City of Manila," is not mandatory.

We hold that the stipulation as to venue in the contract in question is simply permissive. By the said stipulation, the parties did not agree to file their suits solely and exclusively with the Court of First Instance of Naga. They merely agreed to submit their disputes to the said court, without waiving their right to seek recourse in the court specifically indicated in Section 2(b), Rule 4 of the Rules of Court.

Since the complaint has been filed in the Court of First Instance of Pampanga, where the plaintiff resides, the venue of action is properly laid in accordance with Section 2(b), Rule 4 of the Rules of Court.

WHEREFORE, the order appealed from is hereby set aside. Let the records be returned to the court of origin for further proceedings. Costs against defendant-appellee.

SO ORDERED.

Barredo, (Chairman), Aquino, De Castro, and ERICTA, JJ., concur.
Concepcion, Jr., and Abad Santos, JJ., on official leave.

[1] In *Re: Hirsh's Estate* 5A. 2d 160, 163; 334 Pa. 172; *Words & Phrases*, permanent edition, 26a.

[2] 64 SCRA 110.

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