

DIONISIA BAUTISTA, SEVERO ABELLERA AS SHERIFF OF QUEZON CITY AND FILEMON CAJATOR, PETITIONERS AND APPELLANTS, VS. HON. MINERVA R. INOCENCIO PIGUING, ET AL., RESNo. PONDENTS AND ...

G. R. No. L-10006. October 31, 1957

Ponente: FELIX, J.

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FELIX, J.:

Consuelo Vda. de Buencamino purchased from Emilio E. Lim, on installment, 7 dinner sets for 4-persons consisting of 7 steel tables and 28 steel chairs with upholstered seats valued at P2,170. It was embodied in the contract of conditional sale entered into by the parties on January 16, 1954, that the title to said property will only pass to the buyer upon payment of the full purchase price and that default or failure to make 2 installments would cause the-entire remaining obligation to become due and immediately demandable.

On March 8, 1954, a certain Dionisia Bautista brought an action for the recovery of a sum of money in the Municipal Court of Quezon City (Civil Case No. 1250) against Consuelo Vda. de Buencamino and caused the attachment of certain personal properties found in the possession of the latter, including the dinner sets aforementioned. As Consuelo Vda. de Buencamino had made a total payment of only P450 on these sets, Emilio E. Lim filed a third party claim with the Sheriff of Quezon City alleging that he was the owner of said specific personal property, but he was not able to gain custody of the same because Dionisia Bautista posted a bond, undertaken by the First National Surety & Assurance Co., Inc. (Bond No. 1518) in the sum of P1,712, to answer for any damages that the third-party claimant may suffer. Lim, therefore, filed an action for the recovery and possession of the 7 dinner sets with the Municipal Court of Manila (Civil Case No. 31901, Branch IV) against Consuelo Vda. de Buencamino, wherein judgment was consequently rendered in his favor, ordering Consuelo de Buencamino to surrender possession of the property subject of the litigation. The writ of execution subsequently issued by the court was returned unsatisfied because the personal property adjudged to be returned to Lim had already been sold at public auction to Dionisia Bautista on July 16, 1954, by virtue of the writ of execution issued in Civil Case No. Q-1016 of the Court of First Instance of Quezon City (Dionisia Bautista's Consuelo Vda. de Buencamino) and that the amount claimed by Emilio E. Lim could not also be satisfied because Consuelo Vda. de Buencamino was not in a position to pay the same. Thus, Emilio E. Lim filed a complaint for damages with the Municipal Court of Quezon City (Civil Case No. 1578) against Dionisia Bautista, the Sheriff of Quezon City and the First National Surety & Assurance Co., Inc., contending that because of the wrongful attachment of his property by the Sheriff of Quezon City and its subsequent sale at public auction, said plaintiff suffered damages in the amount of P1,712. The surety was joined as defendant because it bound itself solidarily with Dionisia Bautista in the bond posted to answer for damages that the attachment may cause the third party (Lim). It was, therefore, prayed that defendants be ordered to pay, jointly and severally, plaintiff Lim in the sum of P1,712, the value of the property sold at public auction which was the amount of damages suffered by said owner; for attorney's fees and costs.

The First National Surety & Assurance Co., Inc., filed an answer with cross-claim against its co-defendant Dionisia Bautista on the strength of the counterbond in an amount equal to that of the indemnity bond, executed by said defendant and Filemon Cajator in favor of the surety; that under the indemnity clause of the counterbond, cross-defendant Bautista agreed to indemnify the surety for damages, losses, costs, charges and expenses which it may incur or sustain, plus interests thereon and attorney's fees. And with leave of court, said surety company also filed with the court a third-party complaint against Filemon Cajator to hold him solidarily liable with Dionisia Bautista under the counterbond and prayed that said third-party defendant be ordered to indemnify the First National Surety & Assurance Co., Inc. for "whatever amount it may be sentenced to pay in the original case by virtue of Bond No. 1518.

Dionisia Bautista and the Sheriff of Quezon City and the third-party defendant Filemon Cajator filed separate motions to dismiss contending that venue was improperly laid and that the court acquired no jurisdiction over the persons of the defendants. It was their stand that the action sought to enforce the indemnity bond for P1,712 should have been presented in the Municipal Court of Manila because it appeared that said bond was executed in that city and, consequently, the Municipal Court of Quezon City acquired no jurisdiction over them. After due hearing on the motions to dismiss, the Municipal Judge of Quezon City issued an order denying the same and holding that as the action was one for damages by virtue of the wrongful attachment levied by the Sheriff of Quezon City on certain personal property belonging to Emilio E. Lim, and as defendants Dionisia Bautista and the First National Surety & Assurance Co., Inc., fully aware of the claim of said plaintiff, filed a bond in favor of the Sheriff of Quezon City to answer for whatever damages plaintiff Lim might suffer by reason of that attachment, and as one of the defendants, the Sheriff of Quezon City, resides in said city, venue was properly laid in that case. In a separate order, the same court denied the motion to dismiss filed by Filemon Cajator on the ground that although there was a provision in the counterbond specifying that any question which may arise between them and the surety by reason of the said bond must be submitted for decision before the court of competent jurisdiction in the city of Manila, yet jurisdictional and venue requirements of an independent action need not be met in a third party proceeding since such action was merely ancillary to the original case and the necessity of bringing two or more actions involving the same subject matter should be avoided. Defendants thereafter filed a petition for prohibition with the Court of First Instance of Quezon City to enjoin the Municipal Judge from proceeding with the trial of Civil Case No. 1578, and pursuant to their prayer, a writ of preliminary injunction was issued upon the filing by said petitioners of a bond for P500.00. The First National Surety & Assurance Co., Inc., and Emilio E. Lim filed their respective answers to the petition setting up in their defense the reasons supporting the orders of the Municipal Judge in her denial of the motions to dismiss filed by petitioners. On June 9, 1955, the Court of First Instance of Quezon City affirmed the ruling of the Municipal Judge in so far as the motion to dismiss filed by defendants Dionisia Bautista and the Sheriff was concerned because the proper venue was in Quezon City since the action was one for damages wherein the Sheriff of Quezon City, who had a permanent residence in said place, was made one of the party-defendants. The Court ruled, however, that in view of the waiver clause in the counterbond specifying the place where action should be brought, any question arising from the counterbond between the surety and third-party defendant Filemon Cajator should fall within the jurisdiction of the competent court in the City of Manila.

From this order petitioners Dionisia Bautista and the Sheriff of Quezon City appealed to this Court.

The only issue in the case at bar is whether the action for damages in Civil Case No. 1578 was properly brought in Quezon City and consequently, whether the Municipal Court of said city acquired jurisdiction over the same.

There is no question that the indemnity bond No. 1518 of the First National Surety & Assurance Co., Inc., in the sum of P1,712 was posted by Dionisia Bautista and the surety in favor of the Sheriff of Quezon City to answer for

whatever damages the attachment of the personal property claimed by Emilio E. Lim may produce (although there were originally 7 dinner sets, the Sheriff was able to attach only 6 tables and 24 chairs). There is likewise no controversy that this indemnity bond was executed by the principal and the surety in the City of Manila, as appearing in said instrument. Both parties also claim as supporting their respective views the provisions of section 2 of Rule 4 of the Rules of Court which reads as follows:

"SEC. 2. VENUE IN INFERIOR COURTS.—* * *.

All other civil actions in inferior courts shall be brought:

- (a.) In the place specified by the parties by means of a written agreement, whenever the court shall have jurisdiction to try the action by reason of its nature or the amount involved;
- (b) If there is no such agreement, in the place of the execution of the contract sued upon as appears therefrom;
- (c) When the place of execution of the written contract sued upon does not appear therein, or the action is not upon a written contract, then in the municipality where the defendant or any of the defendants resides or may be served with summons."

Defendants-appellants assert that the action was one to enforce the indemnity bond and therefore, in accordance with paragraph (b) of section 2 of Rule 4 aforequoted, the action should be brought in the place of execution of the contract which in this case is the City of Manila to this, We cannot agree, for defendants started with the wrong premise and consequently arrived at the incorrect conclusion. It requires no clarification that the complaint in Civil Case No. 1578 of the Municipal Court of Quezon City filed by Emilio E. Lim against said defendants was for damages he suffered by reason of the attachment of the personal property belonging to him. There is also no need for explanation that to answer for damages that said attachment may produce, Indemnity Bond No. 1518 was filed by Dionisia Bautista and the First National Surety & Assurance Co., Inc., and thus, when the third-party claimant Emilio Lim failed to recover his property, he filed the corresponding complaint for damages against the principal and surety to the bond. Emilio E. Lim who suffered loss by reason of the attachment certainly is entitled to collect damages for that wrongful act, an eventuality which the execution of the indemnity bond intended to meet. Under the circumstances obtaining in this case Lim could not be held answerable for any terms in said bond, nor could he be governed by the provisions thereof because he was not a party to said contract. The terms of the same would be determinative only of the rights of the signatories therein, the principal and the surety, but not of third persons. In view of the fact that the action for damages was not based on any contract entered into between plaintiff and defendants, paragraph (c) of section 2 of Rule 4 of the Rules of Court is the pertinent provision on the matter and as one of the defendants is a resident of Quezon City, venue was properly laid when the action was commenced in the Municipal Court of said place.

Wherefore, the order appealed from is hereby affirmed, with costs against appellants. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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