

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. COURT OF FIRST INSTANCE OF MANILA, BRANCH XIII, HON. JESUS MORFE, PRESIDING JUDGE, AND REPUBLIC BANK (ONLY ITS PROVINCIAL BRANCHES),...

G.R. No. L-30839. November 28, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

This is an appeal by certiorari from the orders of the Court of First Instance of Manila, Branch XIII, in Civil Case No. 73707 entitled, "Republic of the Philippines vs. Bank of America, et al.", dismissing the complaint for escheat against the provincial branches of respondent Republic Bank on the ground of improper venue.

The records reveal that on July 25, 1968, the Republic of the Philippines, the herein petitioner, instituted in the Court of First Instance of Manila a complaint for escheat against several banks in the Philippines, including respondent Republic Bank with principal offices in Manila, and all the depositors or creditors of said banks numbering about 55,000. Respondent Republic Bank and its provincial branches have a total number of about 35,000 depositors or creditors with a total deposits of about P90,000.[1]

In its complaint, the petitioner alleged that pursuant to Section 2, Act No. 3936,[2] the defendant banks, including the respondent Bank, forwarded to the Treasurer of the Philippines separate sworn statements of their respective managing officers regarding all deposits and credits held by them in favor of such depositors or creditors known to be dead, or who have not been heard from, or who have not made further deposits or withdrawals during the preceding ten years or more; that upon receipt of the sworn statements from the defendant banks, including respondent Republic Bank, the Treasurer of the Philippines caused said sworn statements to be published in the February 25, March 3 and March 10, 1968 issues of the "Philippines Herald," an English newspaper, and the "El Debate," a Spanish newspaper, both of general circulation in the Philippines, pursuant to Section 2 of Act No. 3936;[3] that said deposits or credits have remained unclaimed up to the present time despite the publication of the aforementioned sworn statements of the deposits or credits. Petitioner therefore prays that the respondent Court of First Instance of Manila issue an order directing the Clerk of Court to issue the summons required in the action and to publish the same, together with the list (Annex A) attached to the complaint, and the notice required in paragraph 2 of said Section 2 of Act No. 3936, once a week for three consecutive weeks in the "Philippines Herald" and the "El Debate".[4]

Accordingly, on August 8, 1968, the Clerk of Court of the respondent Court of First Instance of Manila issued the necessary summons and notice requiring the defendant banks, including the respondent Republic Bank, and all their depositors or creditors appearing in the list (Annex A) to file severally their answers to the complaint with the Office of the Clerk of Court within sixty (60) days from the first publication of the summons, serving copies thereof upon the petitioner, c/o Office of the Solicitor General, Padre Faura, Manila, with the summons carrying a warning that should the defendant banks, including the respondent Republic Bank, and their depositors or

creditors fail to file their answers, the petitioner would move for their default and demand from the respondent Court of First Instance the relief applied for in the complaint.[5] The notice issued was addressed to persons, other than those named as defendants, having interest in the deposits or credits, informing them of the filing of the complaint for escheat in said civil case, requiring them to appear within sixty (60) days after the first publication of the summons and to show cause why the credits or deposits involved in the said action should not be deposited in the National Treasury, as provided for in Act No. 3936, and notifying them that if they do not appear and show cause, the petitioner will apply to the court for relief as demanded in the complaint. Respondent Republic Bank received the summons and a copy of the complaint. Pursuant to the order of the respondent Court of First Instance, the complaint, summons and notice including the list of depositors or creditors (Annex A) with dormant deposits with the banks were published in the "Philippines Herald", an English newspaper, and "El Debate," a Spanish newspaper, both of general circulation in the Philippines, in the issues of August 25, 1968, September 1, 1968 and September 8, 1968.

On November 15, 1968, the petitioner filed with the respondent Court of First Instance a motion to declare in default some defendant banks, including respondent Republic Bank, and all their depositors or creditors whose names appear in the list (Annex A) for failure to file severally their answers within the period of sixty (60) days from the first publication of the summons and notice in the "Philippines Herald" and "El Debate" issues of August 25, 1968, their period for filing their answers having already prescribed on October 24, 1968.[6]

On November 26, 1968, respondent Court declared in default some defendant banks, including respondent Republic Bank and their respective depositors or creditors for their failure to file their answers on time.[7]

On December 10, 1968, respondent Republic Bank filed with the respondent Court of First Instance a motion to dismiss the complaint for escheat insofar as its provincial branches are concerned on the ground of improper venue which it claimed is in the provinces where said branches are located.[8]

On December 20, 1968, the petitioner filed its opposition[9] to the motion to dismiss the complaint for escheat contending that respondent Republic Bank is only a nominal party and therefore cannot move to dismiss the complaint for escheat, the real party in interest being the depositors or creditors themselves; that its provincial branches have no direct and separate personality of their own; that pursuant to Sections 1, 2 and 3 of Act No. 3936, all banks with dormant deposits or credits of all persons in the Philippines may be included in one single action, whether these banks are found in one province or in all provinces of the Philippines; that the institution of a complaint by the petitioner in the Court of First Instance of Manila impleading the defendant banks, including the respondent Republic Bank and its provincial branches, is in accordance with the provisions of Act No. 3936; that under Section 3 of said Act, the convenience or inconvenience of the depositors is not really the primary factor to be considered in determining the venue of action in escheat proceedings; that the avowed purpose of Act No. 3936 is to benefit the government by escheating unto itself dormant bank deposits, and this purpose will be defeated if escheat proceedings will be instituted in each and every province where a branch of the bank is located because of huge publication expenses; that Section 2(b) of Rule 4 of the Revised Rules of Court, supplements the provisions of Act No. 3936 on venue and gives the Republic of the Philippines the option to file the complaint for escheat in the City of Manila, where its residence is; that in view of Rule 144 of the Revised Rules of Court, which provides that all cases brought after the effectivity of the Rules on January 1, 1964 shall be governed by the provisions of the Rules of Court, Section 2(b) of Rule 4,[10] on venue is applicable and available to the petitioner; that Section 3 of Act No. 3936 cannot be considered as an exception to the provisions of the Rules of Court on venue under Section 5, Rule 4[11] of the said Rules; and that the rule on venue must be liberally construed, it being for plaintiffs or petitioner's convenience.

On March 3, 1969, respondent Court of First Instance granted the aforesaid motion to dismiss, dated December

10, 1968, filed by respondent Republic Bank and dismissed the complaint against it.[12]

On April 8, 1969, petitioner filed a motion for reconsideration and clarification of the order of March 3, 1969. Accordingly, on June 27, 1969, the respondent Court of First Instance modified the said order, by dismissing the complaint insofar as the provincial branches of respondent Republic Bank are concerned.[13]

Hence, this petition to annul and set aside the aforementioned orders of March 3, 1969 and June 27, 1969.

The petitioner presses upon the respondent Court the following errors:

1. In not finding that respondent Republic Bank is not a real party in interest in the escheat proceedings.
2. In not finding that venue of action in escheat proceedings has been properly laid in the City of Manila, since all the defendants Bank were, wherever they may be found may be included in one single action pursuant to the provisions of Act No. 3936.
3. In not finding that Section 2(b) of Rule 4 of the Revised Rules of Court on venue of action likewise covers escheat proceedings instituted by petitioner Republic in the Court of First Instance of Manila.

Initially, petitioner Republic questions the personality of respondent Republic Bank to move for the dismissal of the complaint on the ground of improper venue, contending that the "real party in interest" are the depositors or creditors themselves whose dormant bank accounts are directly affected by the escheat proceedings. We agree with the petitioner's contention that the depositors or creditors of the respondent Republic Bank are the real party in interest who can move for the dismissal of the complaint for escheat inasmuch as what are being escheated in favor of the Government are their own unclaimed or dormant deposits and not the money of the respondent Republic Bank. Of course, it may be contended that the summons and notice duly served on and received by the depositors or creditors of the provincial branches of respondent Republic Bank pursuant to Section 3 of Act No. 3936, were published only in Manila and not in the locality where the branches are located. However, Act No. 3936 allows publications of the summons and notice in the City of Manila, if, in the locality where the defendant bank or banks are situated, there are no publications of at least two newspapers of general circulation, one in English and another in Spanish. It can hardly be disputed that in the provinces where the provincial branches of the respondent Republic Bank are located, there are no newspapers of general circulation published in Spanish. Such being the case, the publication of the subject summons and notice in the City of Manila is permissible under Act No. 3936. Besides, there is nothing in the records to show that the depositors or creditors of the provincial branches of respondent Republic Bank have moved for the dismissal of the complaint for escheat. Likewise, respondent Republic Bank and its depositors or creditors have filed no answer to the complaint for escheat, despite the order of the lower court of November 18, 1968 requiring the defendant banks, including the respondent Republic Bank and its depositors or creditors to file their answers to the complaint within fifteen (15) days from receipt thereof. The very order of the lower court of November 26, 1968 declaring in default all defendant Banks, including respondent Republic Bank and its depositors or creditors in the provincial branches, has not even been questioned. Said order of default is explicit in its terms:

"For failure to file the requisite answer to the complaint in the instant case, notwithstanding notice by publication, all the defendant banks and depositors-creditors listed in Annex A to the complaint except Security Bank and Trust Co., Philippine National Bank, Bank of the Philippine Islands, Kaluyagan Rural Bank, Inc., Mr. Ong Ke, Mr. Alfredo Alcala and Mrs. Lydia Ferreol, are hereby declared in default as prayed for in plaintiff's motion of November 18, 1968."

Since the foregoing order of default has not been set aside by the respondent Court, it remains binding upon the parties so declared.[14] A defendant in default loses his standing in court and consequently cannot appear in court, adduce evidence, and be heard, and is not entitled to notice.[15] The only exception is when the defendant

in default files a motion to set aside the order of default on the grounds provided for in Section 3, Rule 18 "in which event he is entitled to notice of all further proceedings regardless of whether the order of default is set aside or not." [16] The lower court therefore erred in dismissing the complaint for escheat on ground of improper venue insofar as the depositors or creditors of its provincial branches are concerned, considering that they had already been declared in default for failure to file their answers on time. Well-settled is the rule that the motion to dismiss for improper venue should not be entertained unless made within the period for filing an answer. [17] It is generally irregular to enter judgment by default while a motion remains pending and undisposed of. [18] This is what the lower court did in this case. It dismissed petitioner's complaint as to the provincial depositors or creditors of respondent Republic Bank although these depositors or creditors had already been declared in default. It is even worse when it dismissed the complaint after it has already conducted a series of proceedings in the case, without respondent Republic Bank's depositors or creditors moving for the dismissal of the complaint on ground of improper venue. Moreover, the circumstances show that respondent Republic Bank knew from the beginning that the venue of the complaint against it has been improperly laid and yet it proceeded to the trial of the case. By so acting, respondent Republic Bank was deemed to have impliedly waived the improper venue, for which it cannot later on appear in court and raise for the first time any question thereon especially when a judgment has already been rendered. [19] Venue involves no more no less than a personal privilege which may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct. [20] Furthermore, the objection of improper venue was not even pleaded, or even if it were pleaded, is merely a waivable procedural defect which may result from laches as where a party who had been properly summoned, allowed the proceedings to continue for some time before moving for the dismissal of the complaint. Moreover, this Court is not inclined to annul proceedings regularly had in a lower court although not the proper venue of the action, if the net result would be to have the same proceedings repeated in some other courts of similar jurisdiction. [21] There can be no doubt that the escheat proceedings which may be had in the Courts of First Instance in the provinces where the respondent bank's branches are situated would exactly be the same as those that may be held in Court of First Instance of Manila.

Respondent Republic Bank submits that this Court has no jurisdiction over this appeal on the ground that the order of March 3, 1969, insofar as its provincial branches are concerned, had already become final and unappealable, since the notice of the appeal from said order had only been made on July 14, 1969, or more than three months after it was received on March 18, 1969. This is not correct. The records show that the order dated June 27, 1969 of the lower court, clarifying and amending its order of March 3, 1969 which dismissed the complaint insofar as the provincial branches are concerned, was received by petitioner on July 9, 1969, so that it had until August 8, 1969 to file a petition for review or appeal from the questioned order. On August 12, 1969, however, this Court granted petitioner an extension of fifteen (15) days from August 2, 1969 within which to file its petition for review. With the extension granted the present petition filed on August 12, 1969 is definitely on time.

IN THE LIGHT OF THE FOREGOING, the order of the lower court on March 2, 1969, as amended by its order dated June 27, 1969, reinstating petitioner's complaint against respondent Republic Bank and its Manila extension or branches is hereby affirmed, while its amended order dismissing the complaint against respondent Bank's provincial branches and its depositors or creditors is reversed and set aside. However, in view of Presidential Decree No. 679 dated April 2, 1975 amending Act No. 3936, upon which the present petition is based, the case is hereby remanded to the lower court for further appropriate proceedings in accordance with said Presidential Decree.

SO ORDERED.

Castro, (Chairman), Teehankee, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] The list containing the names and addresses and amount of deposits is contained in Annex A of the complaint.

[2] Sec. 2, Act No. 3936. Immediately after the taking effect of this Act and within the month of January of every odd year, all banks shall forward to the Insular Treasurer a statement, under oath of their respective managing officers, of all credits and deposits held by them in favor of persons known to be dead, or who have not made further deposits or withdrawals during the preceding ten years or more, arranged in alphabetical order according to the names of depositors, and showing:

(a) The names and last known place of residence or post-office addresses of the persons in whose favor such credit or deposits stand;

(b) The amount and date of the outstanding credit or deposit and whether the same is in money or in security, and if the latter, the nature of the same;

(c) The date when the person in whose favor the credit or deposit stands died, if known, on the date when he made the last deposit or withdrawal; and

(d) The interest due on such credit or deposit, if any, and the amount thereof Immediately upon receipt of the above statement the Insular Treasurer shall publish the same once a week for three consecutive weeks in at least two newspapers of general circulation in the locality where the bank or banks are situated, if there be any, and if there is none, in the City of Manila, one in English and one in Spanish. The cost of such publication shall be paid by the Treasury Bureau and the latter shall be reimbursed out of the escheated fund.

It shall be the duty of the Insular Treasurer to inform the Attorney-General from time to time of the existence of unclaimed balances held by banks

[3] Annexes B.B-1, B-2 and C, C-1, C-2 of the complaint.

[4] p. 3, Complaint.

[5] Annex C of the Petition.

[6] Annex H of the Petition.

[7] Annex I of the Petition.

[8] Annex J of the Petition.

[9] Annex K of the Petition.

[10] Sec. 2(b), Rule 4. Personal actions. — All other 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.

[11] Sec. 5, Rule 4. When rule not applicable. — This rule shall not apply in those cases where a specific rule or law provides otherwise.

[12] Annex L of the Petition.

[13] Annex M of the Petition.

[14] 31 Am. Jur.

[15] Lim Toco vs. Go Fay, 80 Phil. 166.

[16] Section 9, Rule 13.

[17] Fort Wayne Corrugated Paper Co. vs. Anchor Hocking Corp., U.S. District Ct., Western District, Pennsylvania, January 24, 1940.

[18] Mapua vs. Mendoza, 45 Phil. 424.

[19] Juanillo vs. De la Rama, 74 Phil. 43.

[20] 56 Am. Jur.

[21] Uriarte vs. Court of First Instance of Negros Occidental, 33 SCRA 252.

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