

DR. ANTONIO A. LIZARES, INC., PETITIONER, VS. HON. HERMOGENES CALUAG, AS JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON CITY AND FLAVIANO CACNIO, RESPONDENTS.*G.R. No. L-17699. March 30, 1962*

Ponente: CONCEPCION, J.

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Appeal by certiorari from a decision of the Court of Appeals dismissing the petition of Dr. Antonio A. Lizares & Co., Inc., for a writ of prohibition, with costs against said petitioner.

On or about June 14, 1960, Flaviano Cacnio instituted Civil Case No. Q-5197 of the Court of First Instance of Rizal, Quezon City Branch, against said petitioner. In his complaint, Cacnio alleged that on April 20, 1955, he bought from petitioner, on installment, Lot 4, Block I of J, the Sinkang Subdivision in Bacolod City, making therefor a down payment of P1,206, the balance of P10,858 to be paid in ten (10) yearly installments of P1,085.80 each, with interest thereon at the rate of 6% per annum; that on March 25, 1960, Cacnio received from petitioner a letter demanding payment of P7,324.69, representing arrears in the payment of installments up to April 20, 1960, plus "regular and overdue" interest, as well as "land taxes up to 70% of 1960"; that the sum then due from Cacnio by way of arrears amounted only to P5,824.69, he having paid P1,500 to petitioner "sometime in 1958"; that in view N of the aforementioned demand of petitioner, Cacnio sent thereto a check for P5,824.69, dated May 26, 1960, drawn by one Antonio Bernardo in favor of said petitioner, in payment of the amount due from Cacnio by way of arrears; that "without legal and equitable grounds" therefor, petitioner returned said check and "refused the/tender of payment" aforementioned; that by reason of said illegal act of petitioner, Cacnio is entitled to compensatory damages in the sum of P5,000, plus P2,000 by way of attorney's fees, Cacnio having been constrained to engage the services of counsel and bring the action; and that petitioner "is doing, threatens, or is about to do, or is procuring or suffering to be done some act in violation of" Cacnio's "rights respecting the subject of the action, viz. the repossession of the lot bought by" the latter, who, accordingly, prayed that petitioner be ordered "to accept the payment being made" by him (Cacnio) and to pay him P5,000 as compensatory damages and P2,000 as attorney's fees, and that, upon the filing of a bond to be fixed by the Court, a writ of preliminary injunction enjoining petitioner and its agents or representatives from repossessing the lot adverted to above be issued. Said writ of preliminary injunction was issued on June 16, 1960.

On July 5, 1960, petitioner moved to dismiss the complaint upon the ground that "venue is improperly laid", for the action affects the title to or possession of real property located in Bacolod City, which was the subject matter of a contract, between petitioner and Cacnio, made in said City. The motion having been denied by the Court of First Instance of Rizal, Quezon City Branch, by an order of July 9, 1960, upon the ground that the action was in personam, petitioner filed with the Court of Appeals a petition, which was docketed as Civil Case CA-G. R. No. 28013-R, praying that said order be set aside and that a writ of prohibition be issued commanding respondent Hon. Hermogenes Caluag, as Judge of said court, to desist from taking cognizance of said Civil Case No. Q-5197. In due course, the Court of Appeals rendered a decision on October 27, 1960, dismissing said petition. Hence this

appeal by certiorari taken by petitioner herein.

The issue is whether or not the main case falls under section 3 of Rule 5 of the Rules of Court, reading:

"Actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property shall be commenced and tried in the province where the property or any part thereof lies."

The Court of Appeals and the Court of First Instance of Rizal, Quezon City Branch, held that Civil Case No. Q-5197 of the latter court is an action in personam, and that, as such, it does not fall within the purview of said section 3, and was properly instituted in the court of first instance of the province in which Cacnio, as plaintiff in said case, resided, pursuant to section 1 of said Rule 5.

We are unable to share such view. Although the immediate remedy sought by Cacnio is to compel petitioner to accept the tender of payment allegedly made by the former, it is obvious that this relief is merely the first step to establish Cacnio's title to the real property adverted to above. Moreover, Cacnio's complaint is a means resorted to by him in order that he could retain the possession of said property. In short, venue in the main case was improperly laid and the Court of First Instance of Rizal, Quezon City Branch, should have granted the motion to dismiss.

WHEREFORE, the decision appealed from is hereby reversed and another one shall be entered directing respondent Judge to desist from taking further cognizance of Civil Case No. Q-5197 of said court, with costs against respondent Flaviano Cacnio. It is so ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Barrera, Paredes, and Dizon, JJ., concur.
De Leon, J., did not take part.

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