

FORTUNATA MERCADO, BASILIA CUEVAS MERCADO, SOTERA MERCADO AND TRINIDAD MERCADO, PETITIONERS, VS. HON. ALBERTO Q. UBAY, AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL...

G.R. No. L-35830. July 24, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court with a prayer for the issuance of a writ of preliminary injunction. Petitioners seek to enjoin and restrain respondent judge from further proceeding with Civil Case No. C-2442 in the Court of First Instance of Rizal (now Regional Trial Court) on the ground of lack of jurisdiction to annul a final and executory judgment rendered by the Court of First Instance of Cavite (now Regional Trial Court) in Civil Case No. TM-223.

The antecedent facts are as follows:

On May 18, 1966, petitioners filed an action for partition with the Court of First Instance of Cavite, Branch I, docketed as Civil Case No. TM-223, against Antonio, Ely and respondents Lucina and Trinidad, all surnamed Samonte and who are brothers and sisters.

On June 27, 1966, the defendants were served with a copy of the complaint and summons thru their co--defendant Antonio Samonte who acknowledged receipt thereof.

On July 11, 1966, all the defendants in the above-numbered case, thru counsel, Atty. Danilo Pine, filed their answer to the complaint. Later, on January 4, 1967, the said defendants, thru the same counsel, filed their amended answer.

On July 31, 1970, the Court of First Instance of Cavite (now RTC) rendered judgment in favor of the petitioners and against all the defendants in the civil case, including private respondents. Since no appeal was made by any of the defendants from the decision of the trial court, the same became final and executory and the court issued the corresponding writ of execution.

However, before the writ could be carried out by the provincial sheriff, all the defendants, thru the same counsel, Atty. Danilo Pine, filed a petition for certiorari and mandamus with the Court of Appeals seeking to annul the writ of execution issued by the trial court in Cavite in Case No. TM-223. On July 9, 1971, the Court of Appeals dismissed the petition for lack of merit.

On May 27, 1972, respondents Lucina Samonte and Trinidad Samonte brought an action before the Court of First Instance of Rizal (now RTC) docketed as Case No. C-2442, for the annulment of the final judgment rendered by the trial court in Cavite in Case No. TM-223, alleging the following matters: that they did not authorize anyone including Atty. Danilo Pine to file an answer in their behalf as defendants in Case No. TM-223, and that the filing

of the petition for certiorari with the Court of Appeals to annul the writ of execution in the same case was without their knowledge and participation.

Petitioners' motion to dismiss the action was denied by the CFI of Rizal. Thus, the instant petition was filed.

The issue to be resolved in this case is whether or not the Court of First Instance of Rizal (now RTC) committed grave abuse of discretion or acted without jurisdiction in denying the petitioners' motion to dismiss the action for annulment of the final and executory judgment rendered by the CFI of Cavite.

The applicable law is Republic Act No. 296, as amended, otherwise known as "The Judiciary Act of 1948," which was the law in force when the disputed action for annulment was filed on May 27, 1972 in the CFI of Rizal. This is based on the principle that the facts alleged in the complaint and the law in force at the time of commencement of action determine the jurisdiction of a court (*Lum Bing v. Ibañez*, 92 Phil. 799; *Rodriguez v. Pecson*, 92 Phil. 172; *Salao v. Crisostomo*, No. L-29146, August 5, 1985, 138 SCRA 17; *Tolentino v. Social Security Commission*, No. L-28870, September 6, 1985, 138 SCRA 428; *Philippine Overseas Drilling, etc. v. Minister of Labor*, G.R. No. 55703, November 27, 1986, 146 SCRA 79).

Section 44(a) of the Revised Judiciary Act of 1948 then vested original jurisdiction in the Courts of First Instance over all civil actions in which the subject of the litigation is not capable of pecuniary estimation and an action for the annulment of a judgment and an order of a court of justice belongs to this category (*Vda. de Ursua v. Pelayo*, 107 Phil. 622). A court of first instance or a branch thereof has the authority and the jurisdiction as provided for by law to annul a final and executory judgment rendered by another court of first instance or by another branch of the same court. This was the ruling laid down in the cases of *Dulap v. Court of Appeals*, No. L-28306, December 18, 1971, 42 SCRA 537; *Gianan v. Imperial*, No. L-37963, February 28, 1974, 55 SCRA 755 and *Francisco v. Aquino*, Nos. L-33235-36, July 29, 1976, 72 SCRA 149 which overturned the contrary rulings in *Mas v. Dumara-og*, No. L-16252, September 29, 1964, 12 SCRA 34; *J.M. Tuason & Co. v. Torres, et al.*, No. L-24717, December 4, 1967, 21 SCRA 1169; and *Sterling Investment Corporation, et al. v. Ruiz, etc., et al.*, No. L-30694, October 31, 1969, 30 SCRA 318). Thus, in an action to annul a final judgment or order, the choice of which court the action should be filed is not left to the parties; by legal mandate the action should be filed with the Court of First Instance. The question is in what place (with what particular court of first instance) the action should be commenced and tried (*Dulap, supra*). The issue therefore to be resolved in the instant case is not one of jurisdiction but of venue--whether it was properly laid in the Court of First Instance of Rizal for the annulment of the judgment rendered by the CFI of Cavite.

Section 2, Rule 4 of the Rules of Court fixes the venue in Courts of First Instance, as follows:

"SEC. 2. Venue in Courts of First Instance-- (a) Real actions. -- 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.

"(b) 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.

"x x x."

The complaint filed by respondents with the CFI of Rizal for the annulment of judgment states that they reside at Caloocan City and that petitioners, as defendants, reside at Cavite (p. 48, Rollo). Since the action for annulment of judgment is a personal one, the venue of the action in this case should be either CFI of Caloocan or CFI of Cavite at the election of the plaintiff. Clearly, venue was improperly laid in the CFI of Rizal and respondent judge should

have dismissed the action for annulment of judgment on the ground of improper venue.

It is significant to state at this point that although the prevailing rule before B.P. 129 was that courts of first instance and their branches have jurisdiction to annul each other's final judgments and orders as ruled in *Dulap* and subsequent cases, fundamental principles still dictate that the better policy, as a matter of comity or courteous interaction between courts of first instance and the branches thereof, is for the annulment cases to be tried by the same court or branch which heard the main action sought to be annulled (*Gianan v. Imperial*, supra). Moreover, despite the re-examination by this Court of the old ruling in *Mas v. Dumara-og*, supra, recent decisions still uphold its rationale that pursuant to judicial stability, the doctrine of non-interference should be regarded as highly important in the administration of justice whereby the judgment of a court of competent jurisdiction may not be opened, modified or vacated by any court of concurrent jurisdiction (*Ngo Bun Tiong v. Sayo*, No. L-45825, June 30, 1988, 163 SCRA 237; *Republic v. Reyes*, Nos. L-30263-65, October 30, 1987; *Parco v. Court of Appeals*, No. L-33152, January 30, 1982, 111 SCRA).

While the foregoing discussion may no longer find any application at this time with the effectivity of *Batas Pambansa*, Blg. 129, enacted on August 10, 1981, which transferred the jurisdiction over actions for annulment of judgment to the Court of Appeals, it was deemed necessary if only to bring light and settle the existing confusion and chaos among judges of the different courts of first instance and their branches concerning the application of the old laws on jurisdiction and venue over this kind of action. Probably, this confusion was the underlying reason of the Legislature behind the transfer of jurisdiction over annulment of judgments from the trial courts to the Court of Appeals under B.P. 129.

Even if We were to disregard, for the sake of argument, the issue on jurisdiction of and venue in the Court of First Instance of Rizal in the annulment suit, We found, upon perusal of the records, that no sufficient grounds exist to justify the annulment of the final judgment of the Cavite court. Certain requisites must be established before a judgment can be the subject of an action for annulment. A judgment can be annulled only on two grounds: (a) the judgment is void for want of jurisdiction or for lack of due process of law, or (b) it has been obtained by fraud (*Santiago v. Ceniza*, No. L-17322, June 30, 1962, 5 SCRA 494).

None of the aforementioned grounds was shown to exist to support the annulment action. The contention of private respondents that they were not served with summons in Case No. TM-223 in the Cavite court is untenable. In their memorandum filed with this Court, they admit that they were served with summons thru their co-defendant Antonio Samonte who acknowledged receipt thereof. The receipt of summons is shown by the return submitted by the sheriff to the Court of First Instance of Cavite. Apart from the presumption that the sheriff had regularly performed his functions, records amply show that all the defendants, including private respondents had filed their answer in Case No. TM-223 thru counsel, Atty. Danilo Pine. And when final judgment had been rendered by the CFI of Cavite against respondents and a writ of execution issued by the trial court, the private respondents, thru the same counsel, Atty. Pine even instituted a petition for certiorari and mandamus to enjoin the execution of the judgment of the Cavite court. Respondents now allege that they have not authorized Atty. Danilo Pine to appear in their behalf as defendants in Case No. TM-223 or to file the petition for certiorari with the appellate court. Such allegation is devoid of merit.

An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client (Sec. 21, Rule 138, Rules of Court). The fact that private respondents had not personally appeared in the hearings of Case TM-223 in the trial court is immaterial. The filing of the answer by and appearance of Atty. Danilo Pine in their behalf are sufficient to give private respondents standing in court. It is hard to believe that a counsel who has no personal interest in the case would fight for and defend a case with persistence and vigor if he had not been authorized or employed by the

party concerned. It is obvious that since the appellate court had decided adversely against private respondents in their petition for certiorari, the latter filed the annulment suit for a second chance at preventing petitioners from enforcing the decision rendered by the Cavite court in favor of the latter.

It is an important fundamental principle in Our judicial system that every litigation must come to an end. Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, unscrupulous litigants will multiply in number to the detriment of the administration of justice (*Ngo Bun Tiong v. Sayo*, supra; *Pacquiring v. Court of Appeals*, G.R. 52498, July 19, 1982, 115 SCRA 117).

ACCORDINGLY, the petition is GRANTED and the respondent judge of the Court of First Instance of Rizal (now Regional Trial Court) is ORDERED to dismiss Civil Case No. C-2442. The temporary restraining order issued by this Court is hereby made permanent.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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