

**ISABELO I. PACQUING AND CARMEN B. PACQUING, PETITIONERS
AND APPELLANTS, VS HONORABLE LAURO C. MAIQUEZ, ACTING
JUDGE OF THE MUNICIPAL COURT OF MANILA AND AUYONG HIAN,
RESPONDENTS...**

G.R. No. L-8826. May 18, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal against an order of the Court of First Instance of Manila dismissing a petition for prohibition against the Municipal Court of Manila.

In June, 1954, Auyong Hian filed two complaints in the Municipal Court of Manila. In the first one, Civil Case No. 31998, he seeks to recover a sum of money against Isabelo Pacquing appearing in a vale executed by Pacquing without mention of place of execution. In the second one, Civil Case No. 32003, recovery of another sum is sought against Carmen B. Pacquing on another vale, also without mention of place of execution. In the first case defendant filed a motion to dismiss on the ground that he is a resident of Davao City. In the second, a motion to dismiss was also filed on the ground that defendant is a married woman, whose husband was not joined in the action. The municipal judge denied both motions to dismiss, saying:

"It appearing that the defendants were served with summons thru their daughter Praxedes Pacquing at 1051 Vallejo, Sta. Mesa, Manila, which is their residence and the place where they could be served with summons, the ground for the motion to dismiss is untenable."

In the order of denial the judge set the cases for trial.

Thereupon, the defendants brought this action for prohibition in the Court of First Instance, alleging that the municipal judge acted without or in excess of jurisdiction, or with grave abuse of discretion, because in the first case venue was improperly laid, and in the second, Carmen B. Pacquing can not be sued without joining her husband. Defendant in the prohibition case denied the claim contained in the petition for prohibition that petitioners are residents of Davao City and alleged that the fact is that they are in Davao only on business. It does not appear from the record that there ever was a trial on the above issues where evidence was adduced by the parties. A motion to declare defendant in default was filed and an answer thereto also registered, but no action thereon was taken by the Court. On September 17, 1954, the Court issued an order dismissing the petition for prohibition on the ground that petitioners had not yet exhausted all the remedies they had in the municipal court, such as an appeal. A motion to reconsider this order of dismissal was denied before this appeal was, prosecuted.

The first error imputed to the court a quo is its failure to set the petition for hearing. In petitioner's motion for the reconsideration of the order of dismissal they asked for opportunity to present evidence to support their stand that the municipal judge had no jurisdiction because in one case venue was improperly laid and in the other, the husband of defendant was not joined in the action. But this motion was denied.

There is no question that in the second case in the municipal court, where the husband was not joined in the action, the prohibition does not lie because failure to join the husband is not a jurisdictional objection. The remedy is for the husband to be joined as a party defendant.

In the first case, in which the defendant Isabelo I. Pacquing objected to the venue of the action, on the ground that he is a resident of Davao City, the objection was raised in a motion to dismiss. But rightly or wrongly, the municipal judge found that Isabelo I. Pacquing was not a resident of Davao. Nevertheless, the supposed lack of residence of the defendant was still a defense probable at the trial and the issue thereon was a proper and legitimate question for the municipal judge to try and decide.

So the real question presented to the court a quo in the action for prohibition is: Was the municipal court without power to continue taking cognizance of the case merely upon defendant's claim that he was not a resident of Manila, and did it act in excess of jurisdiction or with grave abuse of discretion in denying the motion to dismiss and setting the case for trial on the merits? The answer to the first question can be no other than that the court had the duty and the right to do so, especially as it had provisionally found that defendant was a resident of Manila. This finding did not deprive defendant of the right to present evidence at the trial to show that he was not a resident of Manila. If at said trial the municipal judge would find that defendant was not a resident, it would then be his duty to dismiss the action on the ground that venue was improperly laid. But in view of his opinion that Isabelo I. Pacquing was a resident of Manila, the only proper course for him to follow was to deny the motion to dismiss and set the cases for trial on the merits as he did. It is clear, therefore, that the municipal judge did not abuse his discretion in denying (the motion to dismiss and in setting the cases for hearing.

The above considerations clearly show that the order dismissing the action for prohibition is correct, even if no hearing was had. It is true that the petitioners, had not yet exhausted their remedies in the municipal court in the two cases pending therein. In the first case where Isabelo I. Pacquing is the defendant, Pacquing should have waited for the trial of his case on the merits. If at the trial he proves that he is not a resident of Manila and the municipal judge does not dismiss the case, that would be the time for him to institute the action for prohibition or to appeal. In the other case, where claim is made that Carmen B. Pacquing is a married woman, as he is married to her, Isabelo I. Pacquing himself should join his wife as a party defendant and not to ask that the case be thrown out of court because he is not joined in the action. It is evident, therefore, that the court a quo was correct in declaring that petitioners had not exhausted the remedies that they could avail of in the municipal court.

The order appealed from is, therefore, affirmed, with costs.

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

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