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[illegible]

P1,850.80

Petitioners (defendants below), in October, 1966 - so the complaint further avers - sought to unjustly deprive Maxima de Jesus of her 10% compensation. And, to fraudulently escape such obligation, they surreptitiously instructed Shell not to pay their share in the rentals through said Maxima de Jesus but directly to them.

As against Shell, the complaint states:

"x x x Pero ahora la compañía demandada esta vacilando si va a cambiar esa FORMA DE PAGO, para seguir dicho aviso de los 3 demandados individuales, de que ellos pague directamente a ellos sus 'shares' de P1,850.80 mensuales, dejando a la demandante fraudulenta y despojada de su 10% de compensación que asciende a P185.08 mensuales."

The complaint winds up with the prayer:

"POR TANTO, pedimos respetuosamente al Hon. Juzgado se sirva expedir una inmediata orden de interdicto prohibitorio preliminar a la pagadora compañía demandada, para que se abstenga de cambiar la presente FORMA DE PAGO, x x x; y, después de los trámites judiciales correspondientes, que el Hon. Juzgado se sirva dictar sentencia declarando definitivo el mismo interdicto prohibitorio, y condenando a los 3 demandados individuales Manuela de Jesus, Engracia de Jesus y Pablo de Jesus a pagar dicho 10% de compensación, deduciendo de sus P1,850.80 de 'shares' o participaciones respectivas en la renta mensual, de acuerdo con la presente forma de pago. x x x." [3]

Upon the foregoing complaint filed on October 3, 1966, the respondent judge, on a P500.00-bond, issued ex-parte, on October 4, 1966, a writ of preliminary injunction, which reads:

"It is hereby ordered by the undersigned Judge of the Court of Manila City that, until further orders, you, the said The Shell Co. of the Philippines, Ltd. and all your attorneys, representatives, agents, and any other person assisting you, refrain from modifying the present 'FORMA DE PAGO': The Shell Co. of the Philippines, shall pay the monthly rentals with check to be issued in the name of Maxima de Jesus alone, who shall cash and distribute the amount of same, among the ten co-owners, previous deduction of ten per cent (10%) thereof."

On the same date, October 4, 1966, in obedience to the writ of preliminary injunction, Shell delivered to Maxima de Jesus the sum of P3,500.00, covering the October, 1966 rental.

The jurisdictional question having been brought direct to this Court, we issued, on application, a cease-and-desist order bearing date of November 18, 1966.

1. As starting point, we have the rule - long in standing and frequent in application - that jurisdiction over the subject matter is conferred only by the Constitution or law. It cannot be fixed by the will of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties. Neither is it conferred by acquiescence of the court.[4] Constitutionally viewed, apportionment of jurisdiction is vested in Congress.[5] Congress may not delegate that power.[6] We may not even look to the Rules of Court in search of jurisdictional boundaries. For indeed, the constitutional authority of the Supreme Court on this point is circumscribed in the zone properly denominated as the promulgation of "rules concerning pleading, practice, and procedure in all courts and the admission to the practice of law";[7] and, consequently, to determine the "means, ways or manner in which said jurisdiction, as fixed by the Constitution and acts of Congress, shall be exercised".[8] Rules of Court must yield to substantive law[9] of which jurisdiction is a segment. A mistake in statutory jurisdiction may not be corrected by executive fiat, "but by legislation".[10]

Well may we profit from the wise pronouncement in *Manila Railroad Co. vs. Attorney-General*, supra, at pages 529-530, thus:

"Certain statutes confer jurisdiction, power, or authority. Others provide for the procedure by which that power or authority is projected into judgment. The one class deals with the powers of the court in the real and substantive sense; the other with the procedure by which such powers are put into action. The one is the thing it-self; the other is the vehicle by which the thing is trans-ferred from the court to the parties. The whole purpose and object of procedure is to make the powers of the court fully and completely available for justice. x x x The purpose of such a procedure is not to restrict the jurisdiction of the court over the subject matter, but to give it effective facility in righteous action. x x x"

2. And now we come to the jurisdictional area allocated to inferior courts. A rule, the validity of which is recognized, is that jurisdiction of an inferior court will not be presumed; "it must appear clearly from statute or it will not be held to exist." [11] Such jurisdiction cannot be broadened upon "doubtful inferences" drawn from statutes. Absent a statutory grant, neither convenience nor assumed justice or propriety of the exercise thereof in a particular class of cases "can justify the assumption of jurisdiction" by said courts. [12]

3. Jurisprudence teaches that the averments of the complaint, taken as a whole, are what determine the nature of the action, and therefore, the court's jurisdiction. [13]

But just exactly what does Maxima de Jesus desire in her complaint below? In plain language, she asks of the court to compel two sets of defendants to toe the line: Shell to continue with the previous manner of payment (forma de pago) of rentals by means of a check drawn in her favor alone; and the dissenting co-owners to pay her the 10% of the rentals as compensation to which she claims she is entitled as administratrix of the property - per agreement. By this she hopes to pay herself, as against her defendant co-owners, the 10% of the latter's share in the month-ly rentals (P1,850.80 from October 1966, to December 31, 1975; and P2,074.07 from thence to December 31, 1980). A careful and considerate examination of the complaint below as a whole brings to the fore the fact that plaintiff Maxima de Jesus asks that these defendants comply faith-fully with their respective commitments. Implicit, too, in the complaint is the demand that her said co-owners recognize her as administratrix. It is in the context just recited that plaintiff's action below comes within the concept of specific performance of contract. And in this posture, we express the view that jurisdiction resides in the court of first instance. For, specific performance - the subject of the litigation - "is not capable of pecuniary estimation". [14]

A case with factual environment similar to the present is *Manufactur-er's Distributors, Inc. vs. Yu Siu Liong*, G.R. No. L-21285, April 29, 1966. There, plaintiff sued defendant in the City Court of Manila to accept de-liv-ery of 74,500 pieces of plastifilm bags, balance of 100,000 pieces ordered by defendant, which the latter for no justifiable reason refused to accept. The prayer of the complaint is that defendant be ordered to pay plaintiff P3,376.00, total value of the 100,000 pieces of plastifilm bags. Defendant moved to dismiss. Ground: The subject matter of the litigation is "specific performance" and, therefore, within the exclusive jurisdiction of the court of first instance. The City Court upheld defendant, dismissed the complaint. And the Court of First Instance affirmed. Before this Court, plaintiff contended that "the subject of the litigation was the 100,000 pieces of plastifilm bags contracted for by defendant at a total price of P3,376.00, and, therefore, it was susceptible of pecuniary estimation". This Court, in an opinion by Mr. Justice Jose B. L. Reyes, ruled that the City Court of Manila had no jurisdiction, and declared:

"That plaintiff's complaint also sought the payment by the defendant of P3, 376.00 plus interest and attorney's fees, does not give a pecuniary estimation to the litigation, for the payment of such amounts can only be ordered as a consequence of the specific performance primarily sought. In other words, such payment would be but an incident or consequence of defendant's liability for specific performance. If no such liability is judicially declared, the payment can not be awarded. Hence, the amounts sought do not repre-sent the value of the subject of litigation."

This Court there lifted from *Mebane Cotton Breeding St'n. vs. Sides*, 257 SW 302; 21 C.J.S., 59, note, the following, which is indeed illuminating:

"The Court has no jurisdiction of a suit for specific performance of a contract, although the damages alleged for its breach, if permitted, are within the amount of which that court has jurisdiction."

It will avail respondents nothing when they say that what they seek is to prevent Maxima de Jesus from being defrauded of her 10% compensation to only P185.08, covering the October, 1966 rental; and that should defendants below insist in defrauding her of her share corresponding to any other month, in respondents' language, "entonces se podra repetir igual demanda por ese mess'."[15] Reasons there are which will stop us from giving our imprimatur to this advocacy. Courts will be swamped with her complaints. Multiplicity of suits is obnoxious to the administration of justice. Besides, the breach of contract charged against defendants below is total and indivisible. Monthly rentals will have to run through a number of years. There is an unqualified refusal to perform the contract. Such refusal goes to the entire contract. It is treated as a complete breach. Therefore, but one action - specific performance - may be presented. For that action may not be split; successive actions may not be maintained.[16] Especially is this principle true in the case before us. For, nowhere in the complaint filed on October 3, 1966, is there an averment that at the time jurisdiction was sought in the City Court, the October, 1966 rental was already due and payable. As a matter of fact, in Annex 2 of respondents' answer before this Court, which is Shell's answer to the complaint below, the following averment in paragraph 13 appears: "SHELL has to pay the monthly rentals of P3, 500 within the first ten (10) days of each contract month."

Nothing in the statute books would confer jurisdiction on city courts over actions where specific performance of contract is primarily sought. Result: The city court has no jurisdiction over the subject matter.[17]

4. Nor does the law grant the city courts power to take cognizance of a case for final injunction. On the contrary, such authority is expressly granted by statute to courts of first instance in the exercise of their original jurisdiction.[18] And the city court is without jurisdiction to hear and determine the case for final injunction against Shell.

5. But let us assume that what plaintiff below claims, as against her co-owners, is but a judgment for the small sum of P185.08, her compensation for the month of October, 1966. Nonetheless, the city court remains without jurisdiction. This is because the sum of money action may not be divorced from the injunction suit. Both of them are the subject of only one complaint. For, really, without a mandatory injunction to Shell to issue the checks in plaintiff's favor, the certainty of collecting her alleged compensation becomes problematical. The action then is indivisible. And, the city court's jurisdiction must yield to the jurisdiction of the higher court of first instance. Expediency and convenience so demand.[19]

6. Where much space was devoted by counsel for the parties herein is on the question of the power of the city court to issue the disputed writ of preliminary injunction earlier transcribed.

Historically speaking, the 1901 original organic act of courts in the Philippines (Act 136 of the Philippine Commission) was silent on the power of the city (justice of the peace) court to issue preliminary injunction. Neither did the old 1901 Code of Civil Procedure (Act 190) grant this power to said court. When a later statute, Act 2041 of the Philippine Legislature (1911), did empower said court to issue preliminary injunction, its exercise was limited to cases involving forcible entry. And, subsequent legislations also carry this provision, viz: Act 2131, effective February 1, 1912; Act 3764, effective November 26, 1930; Act 3881, effective November 14, 1931; and the present Judiciary Act of 1948, as amended.

To be sure, temporary injunctions could also be issued in cases other than forcible entry; but then only municipal courts in provincial capitals are privileged to grant the same, and solely in the absence of the district judge.[20]

In *Piit vs. de Lara*, 58 Phil. 765, 766-767,[21] this Court was asked to rule on the question of whether a justice of the peace may issue a writ of preliminary injunction in an illegal detainer suit. The answer was "No". Because the law limits the issuance of such writ only to forcible entry cases. We then ruled out the preliminary injunction in the illegal detainer case as in excess of his jurisdiction.

The strongpoint on which respondents herein root their argument is Section 2 of Rule 58, which reads:

"SEC. 2. Who may grant preliminary injunction. ? A preliminary injunction may be granted by the judge of any court in which the action is pending, or by a Justice of the Court of Appeals or of the Supreme Court. It may also be granted by the judge of a Court of First Instance in any action pending in an inferior court within his district."

They place the accent on the phrase "any court in which the action is pending". Argue respondents: Since the case is pending in the city court, it has jurisdiction to issue preliminary injunction. This ratioci-nation suffers from infirmities. First, we have ruled that the city court has no jurisdiction over the subject matter; in consequence, it is powerless to grant an ancillary remedy therein. Second, the first sentence of Section 2 should be read in context. The last sentence of the quoted statute, namely, that injunction "may also be granted by the judge of a Court of First Instance in any action pending in an inferior court within his district", emphasizes the point that the city court, except in the cases where it is specifically authorized by statute, cannot grant preliminary injunction. Third, as adverted to elsewhere in this opinion, absent an explicit and precise grant of jurisdiction in the city court, no amount of expansive construction would give such court that jurisdiction. At any rate, the party plaintiff is not without speedy remedy. He may seek injunctive assistance from the court of first instance.

Upon the view we take of this case, we hereby grant the petition for certiorari and prohibition; the preliminary injunction we issued herein is declared final; and the respondent court is directed to dismiss Civil Case No. 153460, entitled "Maxima de Jesus, asistida de su marido, Salvador Barrios, Demandantes, versus Manuela de Jesus, Engracia de Jesus, Pablo de Jesus, y The Shell Company of the Philippines, Ltd., Demandados". Costs against respondents other than the respond-ent judge.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Regala, Makalintal, Bengzon, Zaldivar, and Castro, JJ., concur.

[1] Civil Case No. 153460, entitled "Maxima de Jesus, asistida de su marido Salvador Barrios, Demandantes, vs. Manuela de Jesus, Engracia de Jesus, Pablo de Jesus, y The Shell Company of the Philippines, Ltd., Demandados." Motion to dismiss filed on October 8, 1966 was denied on October 15, 1966. Motion to reconsider filed on October 26, 1966 was denied on November 2, 1966.

[2] Manuela de Jesus, Engracia de Jesus, Pablo de Jesus (petitioners), Maxima de Jesus, (respondent), and Consuelo de Jesus, Felicidad del Rosario, Antonio del Rosario, Rodolfo del Rosario, Andrea Ta-gayon and Maria Tagayon.

[3] Emphasis supplied.

[4] *Molina vs. de la Riva*, 6 Phil. 12, 15-16; *Manila Railroad Company vs. Attorney-General*, 20 Phil. 523, 531; see also Concurring opinion of Justice Pablo in Resolution on Motion for Reconsideration in *Avelino vs. Cuenco*, 83 Phil. 17, 74; *Squillantini vs. Republic*, 88 Phil. 135, 137; *Cruzcosa vs. Concepcion*, 101 Phil. 146, 150; *Lumpay vs. Mos-coso*, G.R. no. L-14723, May 29, 1959; *Espiritu vs. David*, G.R. No. L-13135-36, May 31, 1961.

- [5] Sections 1 and 2, Article VIII of the Constitution.
- [6] *University of Santo Tomas vs. Board of Tax Appeals*, 93 Phil. 376, 382.
- [7] Section 13, Article VIII, Constitution.
- [8] *Escudero vs. Lucero*, 54 O.G. No. 23, pp. 6068, 6070.
- [9] *Reyes vs. Luz*, 88 Phil. 580, 584-585; *Primicias vs. Ocampo*, 93 Phil. 446, 453-455.
- [10] *Largado vs. Masaganda*, G.R. No. L-17624, June 30, 1962.
- [11] *Africa vs. Gronke*, 34 Phil. 50, 53.
- [12] *Tuason vs. Crossfield*, 30 Phil. 543, 546-547.
- [13] *Suanes vs. Almeda Lopez*, 73 Phil. 573; 574; *Lopez vs. Matias Vda. de Tinio*, 94 Phil. 187, 188; *Jornales vs. Central Azucarera de Bais*, G.R. No. L-15287, September 30, 1963; *Asturias vs. Court of Appeals*, G.R. No. L-17895, September 30, 1963; *Serrano vs. Serrano*, G.R. No. L-19562, May 23, 1964; *Tuvera vs. Guzman*, G.R. No. L-20547, April 30, 1965; *Pamintuan vs. Court of Appeals*, G.R. No. L-19670, June 24, 1965; *Malayang Mangga-gawa sa Esso vs. Esso Standard Eastern, Inc.*, G.R. No. L-24224, July 30, 1965; *Atlantic, Gulf and Pacific Company of Manila, Inc. vs. Olivar*, G.R. No. L-19526, September 20, 1965; *Gaspar vs. Dorado*, G.R. No. L-17884, November 29, 1965; *Claridades vs. Mercader*, G.R. No. L-20341, May 14, 1966; *Bay View Hotel, Inc. vs. Manila Hotel Workers' Union*, G.R. No. L-21803, December 17, 1966.
- [14] Section 44(a), Judiciary Act of 1948.
- [15] Respondents' memorandum dated January 23, 1967.
- [16] *Blossom & Company, Inc. vs. Manila Gas Corporation*, 55 Phil. 226, 240-244, and cases cited.
- [17] See Section 88 of the Judiciary Act of 1948.
- [18] Section 44(h), Judiciary Act of 1948.
- [19] *Rizal Surety & Insurance Company vs. Manila Railroad Company*, G.R. No. L-20875, April 30, 1966; *Switzerland General Insurance Co., Ltd. vs. Java Pacific & Hoegh Lines*, G.R. No. L-21760, April 30, 1966, citing 21 C.J.S. p. 81; *Hanover Insurance Company vs. Manila Port Service*, G.R. No. L-20976, January 23, 1967.
- [20] Section 88, last paragraph, Judiciary Act of 1948, as amended.
- [21] See also *Sevilla vs. de los Santos*, 83 Phil. 686, 687.

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