

**MANUEL F. PORTILLO, PETITIONER, VS. HON. LUIS B. REYES, JUDGE,
COURT OF FIRST INSTANCE OF MANILA AND CESAR RAMIREZ,
RESPONDENTS.**

G.R. No. L-17707. October 27, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioner Manuel F. Portillo applies for a writ of prohibition with this Court to enjoin respondent judge, Honorable Luis B. Reyes, of the Court of First Instance of Manila, from further proceeding with Civil Case No. 44181 on the ground of improper venue.

The records disclose that respondent Cesar Ramirez filed with the lower court a complaint for the recovery of a sum of money, totalling P5,250.00, exclusive of interest, against the petitioner Portillo. The complaint stated plaintiff's residence to be at No. 7 Atok Street, Quezon City, but made no mention of defendant Portillo's residence, except that the latter might be served with summons at "c/o Boulevard Theatre, Quezon Boulevard, Manila."

Portillo filed a verified motion to dismiss the complaint, averring that he has his domicile in Caloocan, Rizal, and that since neither he nor the plaintiff resides in Manila, then venue was improperly laid with the Manila court. The motion was denied; hence, this petition.

In Courts of First Instance, the matter of venue in civil actions is regulated by section 1, Rule 5 of the Rules of Court, which reads:

"Civil actions in Courts of First Instance may be commenced and tried where the defendant or any of the defendant resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff." (Italics supplied)

Respondents argue that the phrase "or may be found" (referring to the defendant or defendants) sufficiently authorizes the bringing of the suit with the court of first instance of the place where the defendant or any of the defendants may actually be found when the complaint is filed. That same contention was made and rejected in *Evangelista, et al. vs. Santos*, 86 Phil., 387, wherein, among other things, we said:

"Section 1 of Rule 5 may seem, at first blush, to authorize the laying of the venue in the province where the defendant 'may be found.'. But this phrase has already been held to have a limited application. It is the same phrase used in section 377 of Act 190 from which section 1 of Rule 5 was taken, and as construed by this Court it applies only to cases where defendant has no residence in the Philippine Islands. This was the construction adopted in the case of *Cohen vs. Benguet Commercial Co., Ltd.*, 34 Phil., 526, which was an action brought in Manila by a nonresident against a corporation which had its residence for legal purposes in Baguio but whose President was found in Manila and there served with summons. * * *" (Italics supplied)

In effect, this Court in the cited case reiterated the rule that as long as the defendant is a resident of the

Philippines, the words "residence" and "found" are synonymous terms, meaning "domicile" (see also *Cohen vs. Benguet Commercial Co. Ltd.*, 34 Phil., 526; *Casilan vs. Tomassi, et al.*, 90 Phil., 765; 52 Off. Gaz., 806; *Corre vs. Tan Corre*, 100 Phil., 321; 53 Off. Gaz., No. 3, 642).

Plaintiff's argument that the foregoing rule should not apply where defendant's residence is unknown to the plaintiff, fails to consider that even then the latter has an equally, if not more, convenient remedy of filing the action with the court of his own residence. And even as the regulation of venue is primarily for the convenience of the plaintiff, as attested by the fact that the choice of venue is given to him, it should not be construed to unduly deprive a resident defendant of the rights conferred upon him by the Rules of Court.

Wherefore, the writ of prohibition is granted and the respondent enjoined from the, further proceeding with Civil Case No. 44181. The complaint in said case is, further more, ordered dismissed, without prejudice on the part of plaintiff to file another action with the proper court. Costs against respondent Cesar Ramirez.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, and De Leon, JJ., concur.

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