

FRANCISCO J. NICOLAS, PETITIONER AND APPELLANT, VS. THE REPARATIONS COMMISSION AND PEDRO PASTORAL, RESPONDENT AND APPELLEES.

G.R. No. L-28649. May 21, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

The issue posed by this appeal on certiorari is whether the stipulation on venue that "all legal actions arising out of this contract . . . may be brought in and submitted to the jurisdiction of the proper courts in the City of Manila" is restrictive in the sense that suits on the contract can be filed only in the courts in the City of Manila, or merely permissive in that the parties may file their suits not only in Manila but also in the court where the defendant or plaintiff resides, at the election of the plaintiff.

The records show that sometime in 1959, plaintiff-appellant Francisco J. Nicolas filed an application with the defendant-appellee Reparations Commission for the acquisition, thru the Japanese Reparations, of three (3) units, 100 gross tons, Fishing Boats complete with fishing net, gears, and appurtenances. Upon finding by the Commission of the soundness and technical feasibility of the project, the financial ability and other qualifications of the appellant, on February 28, 1961, said Commission procured for plaintiff-appellant one (1) fishing boat with its equipment and appurtenances, under its 5th year schedule which eventually became the 6th year Reparations Schedule.

Upon procurement from Japan of said one (1) unit fishing boat (denominated as M/V "NICFUR"), the Reparations Commission executed in favor of the plaintiff-appellant a Contract of Conditional Purchase and Sale of Reparations Goods (Complete Delivery) for \$158,500.00, payable in eleven (11) equal annual installments, subject to the terms and conditions^[1] contained therein. Incorporated among the terms and conditions in said contract is a stipulation which provides that "It is expressly agreed upon that all legal actions arising out of this contract or in connection with the reparations goods made subject hereof may be brought in and submitted to the jurisdiction of the proper courts in the City of Manila."

On October 25, 1966, the Commission, in view purportedly of the sale by appellant of the said fishing vessel to Rodolfo V. Siojo without previous authority of the Commission "in violation of the End-Use Contract between said end-user and the Commission and/or the pertinent provisions of the Reparations Law," adopted Resolution No. 245(66) directing, among others, its Legal Department to take immediate steps leading to the repossession of the fishing vessel M/V "NICFUR".

Plaintiff-appellant moved for reconsideration of Resolution No. 245(66) but the same was denied on March 17, 1967 by the Commission in its Resolution No. 101 (67), which, at the same time, resolved "to reaward the said vessel to Pedro C. Pastoral (Pastoral Fishing Industries, Inc.), subject to the conditions that said reawardee shall assume all the obligations to the Commission of said original end-user relative to said fishing vessel and comply with all other requirements of the Commission."

Thereafter, or on March 27, 1967, plaintiff-appellant Francisco J. Nicolas filed Civil Case No. 920 of the Court of First Instance of Rizal, Branch VI, against the Reparations Commission and Pedro C. Pastoral for breach of contract with damages, alleging that after he had complied with his obligations under the contract and after an initial investment of P132,000.00 and the payment of the first annual installment on the said vessel in the amount of P15,922.95, the Commission arbitrarily ordered the repossession of the fishing vessel. Plaintiff-appellant claimed therein that the action of the Commission was highly arbitrary and without any factual and legal basis and "deprived him of his property right without due process," as the alleged sale of the M/V "NICFUR" to Rodolfo Siojo was not consummated and was in fact cancelled, in view of the failure of the parties to secure the approval of the Commission. Moreover, the award of M/V "NICFUR" to Pastoral is a nullity because he is "not financially capable of acquiring and operating the boat" and the same was made without public bidding and prior publication in violation of existing law and regulation. Plaintiff-appellant, therefore, prayed, among others, for (1) a writ of preliminary prohibitory injunction restraining the Commission from implementing its Resolution Nos. 245(66), dated October 25, 1966, and 101(67), dated March 17, 1967, and from executing a Contract of Conditional Purchase and Sale over the M/V "NICFUR" in favor of Pastoral or any third party; and (2) a writ of preliminary mandatory injunction directing the Commission and Pastoral and their agents to immediately return the possession of the fishing boat M/V "NICFUR" together with all its equipment and accessories to plaintiff-appellant.

Defendants-appellees Reparations Commission and Pedro Pastoral filed separately a motion to dismiss on April 3 and 4, 1967, respectively, on the principal ground that the venue of the present action was improperly laid (Sec. 1[c], Rule 16, Revised Rules of Court) in that the stipulation in paragraph 3 of the Terms and Conditions (Annex "B") of the Contract (Annex "A") expressly provides that "all legal actions arising out of this contract . . . maybe brought in and submitted to the jurisdiction of the proper courts in the City of Manila," thereby indicating clearly the intention of the parties to exclude all courts other than those of the City of Manila, and that the use of the word "may" shall be construed as mandatory, claiming that the reason behind the aforesaid stipulation as to venue is precisely to prevent the institution by or against the Commission of any suit in any place other than those which had been covenanted upon by the parties.

On April 5, 1967, plaintiff-appellant Francisco J. Nicolas filed his opposition to defendants-appellees' motions to dismiss, contending, among others, that the word "may" as used in the covenant with respect to venue is permissive and not mandatory in character and does not prohibit any of the parties from instituting their actions in courts other than that of Manila. It was also asserted that no beneficial purpose could be achieved by restricting the venue of the action to Manila, since the plaintiff-appellant is a resident of Makati, Rizal, while the Commission has its offices in Quezon City, and defendant-appellee Pastoral likewise resides in Quezon City.

On April 14, 1967, the Court a quo granted the motion to dismiss, on the ground that venue is improperly laid.

Asserting that in its view the stipulation on venue "was precisely made and primarily intended to be compulsory for the benefit of the Reparations Commission . . ." the trial court, on July 14, 1967, denied plaintiff-appellant's motion for reconsideration, hence the present appeal.

We have heretofore ruled that statutes on venue regulate not the jurisdiction of the courts, but only their procedure and, therefore, questions on venue involve a procedural, not a jurisdictional matter. Venue is waivable. Waiver may be made, either expressly, as by agreement, or impliedly, as by failure to object on time to the improper venue. In this jurisdiction, written agreement between the parties on the venue of an action is expressly authorized.[2]

At the time of the execution of this contract on November 23, 1965, the head office of the appellee Commission was at the 5th Floor, D.B.P. Building, No. 2, Port Area, Manila, while appellant's business address was at No.

1632, Rizal Avenue, Manila.

When the complaint was filed on March 27, 1967, the principal office of the Commission was at the 12th Floor, Social Security Building, East Avenue, Quezon City, while appellant's residence is at 103 Antipolo St., Bel-Air Subdivision, Makati, Rizal, and defendant-appellee Pedro Pastoral is residing at 119 Standord, Quezon City.

Although the term "may" should be taken as "must" or "shall" when the intention of the parties is to give it a mandatory or compulsory meaning, is manifest, We find that no such intent appears insofar as the aforementioned stipulation is concerned.

It must be noted that the venue in personal actions is fixed for the convenience of the plaintiff and his witnesses and to promote the ends of justice. We Cannot conceive how the interests of justice may be served by confining the situs of the action to Manila, considering that the residences or offices of all the parties, including the situs of the acts sought to be restrained or required to be done, are all within the territorial jurisdiction of Rizal.

While the parties have agreed to submit their dispute to the jurisdiction of the Manila courts, there is nothing in the language used in the aforementioned stipulation which clearly shows that the intention of the parties was to limit the venue of the action to the City of Manila only. Such agreements should be construed reasonably and should not be applied in such a manner that it would work more to the inconvenience of the parties without promoting the ends of justice.

In *Polytrade Corporation vs. Blanco*,^[3] this Court held that a stipulation in the agreement of the parties which provides that "The parties agree to sue and be sued in the Courts of Manila", when accurately read, "does not preclude the filing of suits in the residence of plaintiff or defendant". This Court observed that

"[t]he plain meaning is that the parties merely consented to be sued in Manila. Qualifying restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom. We cannot read into that clause that plaintiff and defendant bound themselves to file suits . . . only or exclusively in Manila. For that agreement did not change or transfer venue. It simply is permissive. The parties solely agreed to add the courts of Manila as tribunals to which they may resort. They did not waive their right to pursue remedy in the courts specifically mentioned in Section 2[b] of Rule 4. *Renuntiatio non praesumitur*."

WHEREFORE, the appealed Orders of April 14 and July 14, 1967 are hereby set aside. Let the records of this case be remanded to the court a quo for further proceedings, with costs against the defendants-appellees.

Fernando, Chairman, Barredo, Aquino and Concepcion Jr., JJ., concur.

[1] The full text of the Terms and Conditions of said Contract follows:

"1. It is hereby covenanted and agreed upon that the Conditional Vendee shall not transfer the reparations goods to other places from where they were originally installed, without the knowledge and consent of the Conditional Vendor, and shall not remove, alter or deface the name-plate, number or other identification marks affixed or stamped on the capital goods.

2. All rights and powers of the Conditional Vendor under this contract shall remain in full force and effect notwithstanding any delay in the enforcement thereof, or of any indulgence or forbearance given or continued to be given to the Conditional Vendee, or in the return of the reparations goods subject matter of this agreement.

3. The Conditional Vendee agrees to pay the Conditional Vendor whatever is due the latter at its office in the City of Manila. It is expressly agreed upon that all legal actions arising out of this contract or in connection with the reparations goods made subject hereof may be brought in and submitted to the jurisdiction of the

proper courts in the City of Manila.

4. Should the Conditional Vendee fail to pay any of the yearly installments when due, or utilize the goods for any illicit purpose or for purposes other than that for which the goods have been procured, or otherwise fail to comply with any of the terms and conditions of this contract, or with any of the applicable provisions of the Reparations Law and/or of the Rules and Regulations promulgated pursuant thereto, then the Conditional Vendor is hereby given the option either to rescind the contract upon notice to the Conditional Vendee, in which case all sums already paid by the Conditional Vendee shall be forfeited as rentals in favor of the Conditional Vendor, and also that the Conditional Vendee shall deliver peacefully to the Conditional Vendor the property subject of this contract or to sue for specific performance in which case the whole amount remaining unpaid under this contract shall immediately become due and payable, and in either case whether the suit is for rescission or specific performance, the Conditional Vendee shall be liable to pay to the Conditional Vendor in the concept of liquidated damages equivalent to 10% of the total procurement value of the goods.

5. It is also agreed, covenanted and stipulated by and between the parties hereto that in the event that the Conditional Vendor cancels or rescinds this contract in accordance with paragraph 4 hereof, and the Conditional Vendor decides to sell the said reparations goods to other parties at a price less than the consideration herein stipulated, the Conditional Vendee hereby obligates itself to pay the Conditional Vendor the difference in price in concept of additional liquidated damages.

6. The Conditional Vendee hereby acknowledged to have received the subject reparations goods in good state and condition.

7. It is further covenanted and agreed upon that the Conditional Vendee hereby agrees to allow the examination and/or audit of pertinent books, documents and other papers relative to this contract by the authorized representatives of the Conditional Vendor and/or the Commission Auditor for as long as the Conditional Vendee has not fully paid its obligations to the herein Conditional Vendor by and in pursuance of this Contract.

It is finally covenanted and agreed upon that in the event of an increase or decrease in the total price of the reparations goods described in the contract, as evidenced by a 'Modified Summary Statement of Cost of Reparations Goods' submitted by the Tokyo Mission, the parties hereby agree to have the aforesaid total price adjusted in the Schedule of Payments."

[2] Sec. 3, Rule 4, Revised Rules of Court. Same as the first sentence of Section 4 of former Rule 5, which was taken from Article 4, Section 5 of the Rules of Civil Procedure by American Judicature Society. *Central Azucarera de Tarlac vs. De Leon*, 56 Phil. 169; *Navarro vs. Aguila*, 66 Phil. 604.

[3] G.R. No. L-27033, Oct. 31, 1969, 30 SCRA 187, 191.

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