

**CARMEN ROA-MAGSAYSAY, PETITIONER, VS. CESAR P. MAGSAYSAY
AND HON. RUFINO T. VERIDIANO II AS JUDGE OF THE COURT OF
FIRST INSTANCE OF ZAMBALES, THIRD JUDICIAL DISTRICT,
BRANCH I, ...**

G.R. No. L-49847. July 17, 1980

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari praying for the setting aside as a grave abuse of discretion amounting to lack of jurisdiction, of the action of respondent Court of First Instance of Zambales, Branch I, of insisting to take cognizance of and try until final judgment Civil Case No. 2328-O, filed by herein private respondent Cesar P. Magsaysay against his wife, herein petitioner, Carmen Roa-Magsaysay, notwithstanding that another action by the latter against the former is likewise pending, albeit filed six days later than the Zambales case, before the Juvenile and Domestic Relations Court of Quezon City, Civil Case No. QE-01491.

The complaint in the Zambales court purported to be "for conjugal reliefs under Article 116 of the Civil Code" alleged inter alia that:

"13. At various instances, the wife has: -

(a)

been an incorrigible spend-thrift in the administration of the conjugal affairs;

(b)

withdrawn money surreptitiously, from joint deposit account, without the knowledge of the husband;

(c)

brandished the threat that she would ask for a cool million-peso to waive custody of the child;

(d)

that in prior acts of desertion and abandonment by the defendant-spouse, she had absconded various personal, conjugal properties of considerable material values." (Page 167 Record)

On the other hand, in her complaint in the Quezon City court, which was one asking for "custody of minor and support", herein petitioner alleged that:

"2. That on 15 December 1974, petitioner and respondent were legally married and out of such marriage was born on 22 February 1976 a child named Michael Marc Roa Magsaysay, hereinafter referred to as Michael Marc;

"3. That the petitioner until very recently had been living with the respondent as his lawful wife, endeavoring

to fulfill, to the best of her ability, her obligations as his wife, but petitioner has been constrained and forced to leave the respondent and the conjugal home and to live with her parents, for the following reasons:

(a) that without any provocation on her part, the respondent has, on several occasions, physically maltreated the petitioner by hitting and kicking her;

(b) that without any provocation on her part, the respondent has spat at the petitioner, thereby showing a complete lack of respect for her as wife and as a human person;

(c) that respondent has threatened to kill her;

(d) that respondent has ordered the petitioner to leave him and go her way;

"4. That earnest efforts have been exerted by the petitioner aimed at a reconciliation with the respondent but such efforts have failed and will no longer succeed in view of the acts and attitude taken by the respondent as alleged in the preceding paragraph:

"5. That, under the circumstances above stated, petitioner (even as she lives outside of the conjugal home) is entitled to support from the respondent in such amount as this Honorable Court shall determine after a hearing on the merits;

"6. That, while the child Michael Marc, being below seven (7) years of age, should be in the care, custody and control of the petitioner, the respondent however insists that said child should be, as he actually is, under his care, custody and control, and he has refused to give the petitioner the care, custody and control of said child;

"7. That, under the circumstances above stated, the child Michael Marc is entitled to support from the respondent when he is placed in the petitioner's care, custody and control, in such amount as this Honorable Court shall determine after a hearing on the merits;

"8. That it is to the best interest of the child Michael Marc, considering his tender age, that he should be in the petitioner's (mother's) care, custody and control, and the petitioner is not disqualified to have such custody, care and control of the child, by reason of moral depravity, drunkenness, incapacity or poverty;

"9. That petitioner stands to suffer great and irreparable injury if, during this litigation, the child Michael Marc is not placed under her care, custody and control because it is her indubitable legal and natural right as mother to have Michael Marc (not even two (2) years old) under her care, custody and control;

"10. That immediately after the filing of this Petition, and pending hearing on the merits, respondent should be ordered to turn over custody, care and control of Michael Marc to the petitioner who is willing to post a bond in such amount as this Honorable Court may determine conditioned on the payment of such damages as she may be adjudged liable in the event she is found not entitled to the care, custody and control of Michael Marc;

"11. That respondent has more than adequate means and wealth to support the petitioner and the child Michael Marc; to the best of petitioner's knowledge, respondent who is the Executive Vice-President of the Jessmag, Inc. and Managing Director of its or his family's logging concessions in Indonesia, known as P.T. Kayu Siberut, receives no less than P8,000.00 a month by way of salaries and other allowances aside from his income from his investments and/or money placements in the Financial Center of Asia (an investment firm), in the Commercial Bank and Trust Company (COMTRUST) and in other companies mentioned in the attached affidavit;

"12. That, on the other hand, petitioner has no present means of support except to draw on her parents for such support;" (Pp. 1 to 3, Annex D of Petition, pp. 39-41, Rec.)

The Zambales action was filed on January 13, 1978 and summons therefor was served on petitioner on January 23, 1978, whereas the Quezon City case was filed on January 19, 1978, and on January 30, 1978, herein

respondent Magsaysay filed with the latter court a motion to dismiss claiming "prior" jurisdiction of the Zambales court. A similar motion to dismiss the Zambales case was filed by petitioner on even date, January 30, 1978, contending that due to the nature of the controversy between the parties, the Domestic Court had exclusive jurisdiction over the case.

At this point, it is quite relevant to mention that as early as September 19, 1977, petitioner had filed with this Court in G.R. No. L-46992 a petition for habeas corpus wherein she alleged "among other things, that due to marital differences with respondent Cesar Magsaysay who practically drove her out of the conjugal dwelling, petitioner was constrained to live separately from respondent Cesar Magsaysay; that on 12 September 1977, said respondent took Michael Marc from their conjugal home, for a promenade but failed to return him and instead kept said minor in his custody in Castillejos, Zambales; that when petitioner tried to take her said minor son from the respondents' home in Castillejos, Zambales, she met opposition from respondents' guards who inflicted physical violence on her; and that said minor was being unlawfully detained by the respondents, contrary to the provisions of Article 17 of PD 603 which provides that in case of separation of parents, no minor below five (5) years of age shall be separated from his mother unless the court finds compelling reasons to do so." Acting on said petition, We issued the writ prayed for, making it returnable to the Juvenile and Domestic Relations Court of Quezon City. Petitioner, however, because of an attempt of the spouses to "make 'another try'" dropped said petition. Subsequently, petitioner came back to this Court with another petition for habeas corpus in G.R. No. L-47773 filed on February 10, 1978, alleging in said petition that:

"6. That no sooner had respondent Cesar Magsaysay succeeded in convincing petitioner to live once more with him when he became increasingly violent, on a number of occasions, beating up the petitioner, spitting at and kicking her, threatening to kill her and urging her to leave their conjugal dwelling in Castillejos, Zambales.

"7. That after being physically hit by respondent Cesar Magsaysay on 5 January 1978 in the house of respondent Jesus Magsaysay (Cesar's father) in Sandejas, Pasay City, petitioner refused to return to the conjugal home in Castillejos, Zambales.

"8. That on 7 January 1978 petitioner, accompanied by her father Conrado Roa, went to Castillejos, Zambales and succeeded in getting her minor son Michael Marc and from then on, Michael Marc was in the custody of petitioner.

"9. That on or around 11 January 1978, petitioner and respondent Cesar Magsaysay met at the Manila Peninsula Hotel in Makati to talk about the details of a separation (a matter that they had previously been discussing) and in that meeting, respondent Cesar Magsaysay informed petitioner that he was already agreeable that petitioner shall have custody of Michael Marc but he asked to have him up to Sunday of that week (15 January 1978), promising however to return Michael Marc on that Sunday to the petitioner, promising further to keep him until that Sunday in the Sandejas house of his father (respondent Jesus Magsaysay) and not to bring him to Zambales; and petitioner believing in respondent's pretended good faith and sincerity allowed Michael Marc to go with respondent Cesar Magsaysay (but only up to Sunday of that week or 15 January 1978).

"10. That respondent Cesar Magsaysay has since failed and refused to return the custody of Michael Marc to the petitioner; instead, he has brought the child to Castillejos, Zambales where he is under guard and petitioner's attempts to establish contact even with the child's attendant have not been allowed by the respondents.

"11. That in further bad faith, respondent Cesar Magsaysay, a day or two after tricking petitioner into allowing him temporary custody of Michael Marc (up to Sunday 15 January 1978), filed in the Court of First Instance of Zambales (the bailiwick of the Magsaysays) a complaint against herein petitioner, docketed therein as Civil Case No. 2328-0, a copy of which complaint is hereto attached as Annex A.

"12. That the CFI of Zambales, on 16 January 1978, without notice to herein petitioner (as defendant in said case) and without any hearing issued an order, copy of which has not been served on petitioner to this date, 'authorizing' respondent Cesar Magsaysay to have custody of the minor Michael Marc pending a determination of the case on the merits and granting herein petitioner-mother mere visitorial rights on weekends, including a right to take out the child on Saturdays or Sundays under escort supplied by respondent Cesar Magsaysay, and to be returned by noon time of said days. A copy of said order is attached hereto as Annex B.

"13. That on 19 January 1978, without petitioner-mother knowing about the complaint filed against her by the respondent Cesar Magsaysay in the CFI of Zambales (summons in said CFI case being served on petitioner only on 23 January 1978), petitioner filed in Juvenile and Domestic Relations Court of Quezon City a complaint against respondent Cesar Magsaysay, docketed therein as Civil Case No. QE-01491, for custody of minor Michael Marc, support with prayer for preliminary mandatory injunction and support pendente lite. A copy of the complaint is attached hereto as Annex C.

"14. That the Juvenile and Domestic Relations Court in Quezon City on the same date (19 January 1978) issued an order, copy of which is attached hereto as Annex D -

(a)

granting the writ of preliminary mandatory injunction (requiring respondent Cesar Magsaysay to turn over Michael Marc to the petitioner-mother) upon filing by petitioner of the required bond,

(b)

requiring respondent Cesar Magsaysay to answer the petition,

(c)

setting the case for hearing on 6 February 1978 to determine whether or not the writ of preliminary mandatory injunction should be made permanent.

"15. That, upon petitioner filing the required bond, the Juvenile and Domestic Relations Court issued the writ of preliminary mandatory injunction, copy of which is attached hereto as Annex E commanding respondent Cesar Magsaysay to turn over to petitioner-mother at her house in 48-B Bohol Avenue, Quezon City the minor Michael Marc within five (5) days from his receipt of the writ and to make a return of the writ on or before 9:00 a.m. of 6 February 1978.

"16. That respondent Cesar Magsaysay has failed to obey and comply with the said writ of preliminary mandatory injunction; instead he has filed a motion to dismiss the complaint in the Juvenile and Domestic Relations Court, alleging 'prior' jurisdiction of the CFI of Zambales in the case he had earlier plotted to file on 13 January 1978. A copy of respondent Cesar Magsaysay's motion to dismiss is attached hereto as Annex F while a copy of the petitioner-mother's opposition to said motion to dismiss is attached hereto as Annex F-1.

"17. That petitioner-mother has in turn filed a motion to dismiss in the CFI of Zambales, a copy of which is attached hereto as Annex G, contending that the Juvenile and Domestic Relations Court has 'exclusive original jurisdiction' over the issues contained in the complaint before said CFI of Zambales, to which motion, respondent Cesar Magsaysay has filed an opposition, copy of which is attached hereto as Annex G-1.

"18. That to this day, the Juvenile and Domestic Relations Court and the CFI of Zambales have not resolved the separate motions to dismiss pending before them.

"19. That the resolutions of said Juvenile and Domestic Relations Court and the CFI of Zambales on the separate motions to dismiss before them will not settle the legal questions therein presented, as the non-prevailing party will most likely elevate the matter and question to a higher Court.

"20. That, meanwhile, the petitioner-mother is deprived of a CLEAR and UNMISTAKABLE RIGHT, the right to the custody of her minor son Michael Marc, which under Article 17 of PD 603 is expressed thus -
' . . . In case of separation of his parents, no child under five years of age shall be separated from his mother, unless the court finds compelling reasons to do so.' (Italics ours)

articulated likewise in Section 6, Rule 99 of the Revised Rules of Court thus -

'No child under seven years of age shall be separated from its mother, unless the court finds there are compelling reasons therefor.'

"21. That the continuing detention of minor Michael Marc by the respondents is a deprivation of his liberty as he can have that liberty, considering his tender age, only when he is in the custody of his mother herein petitioner who has the legal and natural right to his custody.

"22. That respondent Cesar Magsaysay is the Managing Director of respondents' logging interests in P.T. Kayu Siberut Indonesia and he commutes regularly between the Philippines, Indonesia, Singapore, Malaysia, Hongkong and Japan.

"23. That petitioner has well-grounded fears that respondent Cesar Magsaysay is about to take minor Michael Marc to Indonesia where he will be outside the jurisdiction of Philippine courts so that any Court order or judgment restoring his custody to petitioner-mother would then be ineffective and meaningless, thereby making permanent the deprivation of said minor's liberty and the denial of petitioner's custody over him." (Pars. 6 to 23 of Petition in G.R. No. L-47773.)

Again, We issued the writ of habeas corpus prayed for returnable also to the Juvenile and Domestic Relations Court of Quezon City on February 20, 1978. Recounting what happened after We had issued said writ, herein petitioner alleged in her motion dated February 20, 1978, that:

"4. That today, 20 February 1978 at 8:30 a.m., the petitioner with her undersigned counsel were at the Juvenile and Domestic Relations Court of Quezon City expecting that a return of the writ of habeas corpus would be made at said Juvenile and Domestic Relations Court by the officers and respondents directed to make such a return, but the following instead transpired –

"(a) neither the Chief Philippine Constabulary nor the Commanding Officer, CIS, PC, Camp Crame nor their duly authorized representative were present; nor did said officers or their authorized representative produce the body of two year old Michael Marc Roa Magsaysay; nor did such officers or their authorized representative make a return of the writ or explain why they failed to make such a return - all in violation of the directives of said writ and the pertinent provisions of the Rules of Court.

"(b) the respondents did not personally appear but they were represented by counsel who admitted that the respondents were not producing the body of Michael Marc Roa Magsaysay at said hearing before the Juvenile and Domestic Relations Court. Nor was a return made by said respondents, contrary to the directives of the writ and in violation of the pertinent provisions of the Rules of Court.

"5. That respondents' counsel instead manifested to the Honorable Juvenile and Domestic Relations Court that they had filed with this Honorable Supreme Court a so-called 'Urgent Motion to Dissolve or Quash the Writ of Habeas Corpus and Manifestation to Defer the Hearing of the Return of the said Writ', copy of which motion was furnished petitioner's counsel just before the start of the scheduled hearing at 8:30 a.m. before the Juvenile and Domestic Relations Court." (Pp. 84-85, Rec. of G.R. No. L-47773.)

Accordingly, on February 27, 1978, the Court issued the following resolution:

"L-47773 (In the Matter of the Petition for Habeas Corpus of the Minor Michael Marc Roa Magsaysay,

Carmen Roa Magsaysay vs. Cesario P. Magsaysay, et al.) - Considering that there was no compliance with the writ of habeas corpus issued on February 13, 1978 by Hon. Justice Enrique M. Fernando, Chairman of the Second Division, addressed to the Chief of the Philippine Constabulary, the PC Commanding Officer of the Criminal Investigation Service (CIS) and the respondents, and requiring the appearance and production of the body of the child Michael Marc Roa Magsaysay before the Juvenile and Domestic Relations Court of Quezon City on Monday, February 20, 1978 at 8:30 a.m., the Court Resolved (1) to SET ASIDE the said writ and to ISSUE a new writ requiring the appearance and production of the body of the said child before this Court, 3rd Floor, Session Hall of the Second Division, at 10:30 a.m. on Wednesday, March 8, 1978; (2) to REQUIRE the said peace officers and the respondents to make a RETURN of the said writ on or before March 6, 1978 (not to file a motion to dismiss); (3) to DENY the respondents' urgent motion of February 15, 1978 to dissolve or quash the writ, said motion being improper and unwarranted, and (4) to HOLD in abeyance action on petitioner's motion of February 20, 1978 to cite the Chief of the Philippine Constabulary and/or the PC CIS Commanding Officer and the respondents in contempt of court. Circumvention or avoidance of the writ will not be tolerated."

As may be seen from the foregoing antecedents, one aspect of the controversy between the parties herein – that with reference to the custody of the child Michael Marc Roa Magsaysay – has already been finally resolved by this Court in the sense that petitioner should have, as she is legally entitled thereto, said custody, subject to visitorial rights of her respondent husband. And in connection with the latter matter of visitorial rights, in Our last aforequoted resolution, We have referred the determination of the conditions thereof to the Domestic Relations Court of Quezon City.

Thus, the only question that respondent would consider as still hanging and undetermined is whether or not the other aspects of the controversy between the parties should be tried and decided by the Zambales court or that of Quezon City. In this connection, it may be recalled that in Our resolution of September 13, 1978, We denied respondent's prayer that We order the dismissal of Civil Case No. QE-01491 of the Juvenile and Domestic Relations Court of Quezon City. That resolution together with the later one of December 14, 1979 referring the determination of the conditions of the visitorial rights of respondent to the Quezon City court should more than suggest to respondent that in Our considered view it is in the best interests of justice and, particularly, of the child Michael that the Quezon City court be preferred to the Zambales court for the resolution of the whole controversy outside of the matter of custody, which We have already settled in this Court.

Respondent insists that the Zambales case was filed by him six (6) days earlier than the filing by petitioner of the Quezon City case. It has already been ruled that priority in the filing of one action ahead of another is not decisive on the issue of which one of two identical actions in two separate courts of concurrent jurisdiction should be dismissed, for the ground of dismissal under Section 1 (e) of Rule 16 of the Rules of Court is simply "that there is another action pending between the same parties for the same cause" and not necessarily a "prior" pending action. (Moran, Rules of Court, Vol. I, 487, 1979 ed.)

Withal, the fact that one action is filed ahead of another in different courts by the same parties for the same cause is not strictly a question of jurisdiction where the courts concerned have concurrent jurisdiction, but more a matter of venue. The cases cited by respondent in his rejoinder memorandum, those of *Valdez v. Lucero*, 76 Phil. 356, and *Laquian vs. Baltazar*, 31 SCRA 552 are not exactly controlling here. The *Valdez* case held simply that the accused therein, who claimed to be a member of the army of the Philippines could not be tried by a civil court, since, according to him, he falls under the jurisdiction of a court martial. But there was no showing at all that the military was in any way claiming jurisdiction over him. Unquestionably, therefore, the civil court had the power to proceed trying him. In regard to the case of *Laquian*, what was involved therein was the question of jurisdiction over a libel case in view of the amendment of Article 360 of the Revised Penal Code by Republic Act No. 1289, approved on June 15, 1955. What is relevant here in the ruling of the Court in that case is that there is an express

provision in the aforesaid amendment "that the court where the criminal or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts". Those circumstances in Valdez and Laquian do not obtain in the instant case before Us now.

In contrast and more in point is *Alimajen vs. Valera, et al.*, 107 Phil. 244, where it was held that:

"While the choice of the court where to bring an action, where there are two or more courts having concurrent jurisdiction thereon, is a matter of procedure and not jurisdiction, as suggested by the appellant, the moment such choice has been exercised, the matter becomes jurisdictional. Such choice is deemed made when the proper complaint or information is filed with the court having jurisdiction over the crime, and said court acquires jurisdiction over the person of the defendant; from which time the right and power of the court to try the accused attaches (see *People vs. Blanco*, 85 Phil., 296; 47 Off. Gaz., [7] 3425; *Crisologo vs. People*, 94 Phil., 477; 50 Off. Gaz., [3] 1021). It is not for the defendant to exercise that choice, which is lodged upon those who may validly file or subscribe to the complaint or information under sections 2 and 3 of Rule 106 of the Rules of Court." (Italics ours.)

This ruling is particularly interesting here, considering respondent's contention that it is the date of filing of the complaint and not the service of summons that is controlling in the situation that confronts Us in the case at bar. Mr. Justice J.B.L. Reyes cited in his opinion in *Alimajen*, the case of *Crisologo vs. People of the Philippines*, 94 Phil. 477, wherein it was held that:

"As to the claim that the military court had no jurisdiction over the case, well known is the rule that when several courts have concurrent jurisdiction of the same offense, the court first acquiring jurisdiction of the prosecution retains it to the exclusion of the others. This rule, however, requires that jurisdiction over the person of the defendant shall have first been obtained by the court in which the first charge was filed. (22 C.J.S., pp. 186-187.) The record in the present case shows that the information for treason in the People's Court was filed on March 12, 1946, but petitioner had not yet been arrested or brought into the custody of the court—the warrant of arrest had not even been issued—when the indictment for the same offense was filed in the military court on January 13, 1947. Under the rule cited, mere priority in the filing of the complaint in one court does not give that court priority to take cognizance of the offense, it being necessary in addition that the court where the information is filed has custody or jurisdiction of the person of defendant."

In any event, since We are not really dealing with jurisdiction but mainly with venue, considering both courts concerned do have jurisdiction over the causes of action of the parties herein against each other, the better rule in the event of conflict between two courts of concurrent jurisdiction as in the present case, is to allow the litigation to be tried and decided by the court which, under the circumstances obtaining in the controversy, would, in the mind of this Court, be in a better position to serve the interests of justice, considering the nature of the controversy, the comparative accessibility of the court to the parties, having in view their peculiar positions and capabilities and other similar factors. Without in any manner casting doubt as to the capacity of the Court of First Instance of Zambales to adjudicate properly cases involving domestic relations, it is easy to see that the Juvenile and Domestic Relations Court of Quezon City which was created in order to give specialized attention to family problems, armed as it is with adequate and corresponding facilities not available to ordinary courts of first instance, would be able to attend to the matters here in dispute with a little more degree of expertise and experience, resulting in better service to the interests of justice. A reading of the causes of action alleged by the contending spouses and a consideration of their nature, cannot but convince Us that, since anyway, there is an available Domestic Court that can legally take cognizance of such family issues, it is better that said Domestic Court be the one chosen to settle the same as the facts and the law may warrant.

Before closing, it is pertinent to state that what the Court is doing here is in the exercise of its power now expressly conferred upon it by the Constitution of the Philippines of 1973 "to order a change of venue or place of

trial to avoid a miscarriage of justice." (Section 5 (4), Article X, Constitution of the Philippines of 1973.) In other words, the general rule of exclusive jurisdiction based on prior acquisition of jurisdiction, even as already qualified in *Alimajen*, *supra*, must yield to the constitutional authority of this Court to take the measure indicated in the cited provision of the fundamental law of the land.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered directing respondent judge to set aside his orders dated November 22, 1978 and January 16, 1979 in deference to the above choice of venue made by this Court; the restraining order of this Court of February 12, 1979 is hereby made permanent, except for the purpose of having Civil Case No. 2328-0 of the Court of First Instance of Zambales dismissed, without prejudice to the causes of action alleged by herein respondent in his complaint there being alleged by him as defenses or counterclaims in Civil Case No. QE-01491 of the Juvenile and Domestic Relations Court of Quezon City, which court is hereby recognized as having sole and exclusive authority to try and decide the family controversy between petitioner and respondent. No costs in this instance.

Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

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