

**QUIRINO RICAFFRENTE AND FORTUNATO TIANGCO, PETITIONERS,
VS. GUILLERMO CABRERA, MUNICIPAL JUDGE, BRANCH II, CITY OF
MANILA, AND MIGUEL TOLENTINO, RESPONDENTS.**

G.R. No. L-3271. May 29, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is a petition to prohibit Judge Guillermo Cabrera of the Municipal Court of Manila from compelling the petitioner to go into trial in Civil Case No. 6883.

Petitioner Quirino Ricafrente was the owner of a jeep station wagon driven by petitioner Fortunate Tiangco, and respondent Miguel Tolentino was the owner of a car. On November 6, 1948, the two vehicles collided between Tagaytay City and Batangas resulting in the alleged damage to Tolentino's car in the amount of P962.63. Action by Tolentino to recover this amount was instituted in the Municipal Court of Manila and the petitioners, defendants in the civil case, filed a motion to dismiss, alleging lack of jurisdiction of the respondent Judge to try the suit for the reason that the plaintiff was a resident of Manila and the defendants of Cavite City. The motion was denied, hence this petition.

Tolentino, answering the present petition alleges that there was a verbal agreement, which he sets out in his complaint, entered into in the City of Manila whereby the petitioners, defendants in the civil case, bound themselves to pay the damage suffered by him (Tolentino), and he maintains from this that the suit was properly brought in that city, citing Section 2, Rule 4, of the Rules of Court.

The Rule relied upon reads:

"Sec. 2. Venue in inferior courts.

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"All other civil actions in inferior courts shall be brought:

"(a) In the place specified by the parties by means of a written agreement, whenever the court shall have jurisdiction to try the action by reason of its nature or the amount involved;

"(b) If there is no such agreement, in the place of the execution of the contract sued upon as appears therefrom;

"(c) When the place of execution of the written contract sued upon does not appear therein, or the action is not upon a written contract, then in the municipality where the defendant or any of the defendants resides or may be served with summons."

A close reading of the foregoing Rule will show that verbal agreements do not come within the exceptions to the requirement that actions shall be brought in the municipality where the defendant or any of the defendants resides.

In an action for recovery of personal property, or collection of debt, or claim upon a tort, the venue depends upon whether or not a written agreement is sued upon. Where there is such agreement, the venue is the municipality agreed upon by the parties in such writing; otherwise, the venue is the municipality where the written agreement was executed if such place of execution appears on the face of the writing. Where the place of execution is not shown by writing, or the action is not upon a written agreement, but upon an oral one or upon a tort, the venue is the municipality where the defendant resides. (I Comments on-the Rules of Court, Moran, 15.)

The motion to dismiss therefore is well taken and :the petition will be granted with costs against respondent Miguel Tolentino. It is so ordered.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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