

JOSE M. HERNANDEZ, PETITIONER, VS. DEVELOPMENT BANK OF THE PHILIPPINES AND COURT OF FIRST INSTANCE OF BATANGAS, LIPA CITY BRANCH, RESPONDENTS.

G.R. No. L-31095. June 18, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

This is a case which involves the question of proper venue in a real action.

Petitioner Jose M. Hernandez was an employee of private respondent Development Bank of the Philippines in its Legal Department for twenty-one (21) years until his retirement on February 28, 1966 due to illness. On August 12, 1964, in due recognition of his unqualified service as Assistant Attorney in its Legal Department, the private respondent awarded to the petitioner a lot identified as Lot No. 15, Block No. W-21, in the private respondent's Housing Project No. 1 at West Avenue, Quezon City, containing an area of 810 square meters with a Type E house. On August 31, 1968, after the petitioner received from the private respondent's Housing Project Committee a statement of account of the purchase price of the said lot and house in the total amount of P21,034.56, payable of a monthly amortization of P153.32 for a term of fifteen (15) years, he sent to the said Committee a Cashier's Check No. 77089 CC, dated October 21, 1968, issued by the Philippine Banking Corporation in the name of his wife in the sum of P21,500.00 to cover the cash and full payment of the purchase price of the lot and house awarded to him. However, more than a week thereafter, or on October 29, 1968, the Chief Accountant and Comptroller of the private respondent returned to the petitioner the aforementioned check, informing him that the private respondent, through its Committee on Organization, Personnel and Facilities, had cancelled the award of the lot and house previously awarded to him on the following grounds: (1) that he has already retired; (2) that he has only an option to purchase said house and lot; (3) that there are a big number of employees who have no houses or lots; (4) that he has been given his retirement gratuity; and (5) that the awarding of the aforementioned house and lot to an employee of the private respondent would better subserve the objective of its Housing Project. Petitioner protested against the cancellation of the award of the house and lot in his favor and demanded from private respondent the restoration of all his rights to said award. However, private respondent refused.

On May 15, 1969 the petitioner filed a complaint in the Court of First Instance of Batangas against the private respondent seeking the annulment of the cancellation of the award of the lot and house in his favor and the restoration of all his rights thereto. He contends that the cancellation of said award was unwarranted and illegal for he has already become the owner of said house and lot by virtue of said award on August 12, 1964 and has acquired a vested right thereto, which cannot be unilaterally cancelled without his consent; that he had requested the private respondent to restore to him all his rights to said award but the latter refused and failed and still refuses and fails to comply with said request.

Private respondent filed a motion to dismiss the complaint on the ground of improper venue, contending that since the petitioner's action affects the title to a house and lot situated in Quezon City, the same should have been

commenced in the Court of First Instance of Quezon City, where the real property is located and not in the Court of First Instance of Batangas where petitioner resides. On July 24, 1969, the respondent Court sustained the motion to dismiss filed by private respondent on the ground of improper venue.

Hence, the instant petition to review the order of respondent Court.

The only issue in this petition is whether the action of the petitioner was properly filed in the Court of First Instance of Batangas. It is a well settled rule that venue of actions or, more appropriately, the county where the action is triable^[1] depends to a great extent on the nature of the action to be filed, whether it is real or personal.^[2] A real action is one brought for the specific recovery of land, tenements, or hereditaments.^[3] A personal action is one brought for the recovery of personal property, for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property.^[4] Under Section 2, Rule 4 of the Rules of Court, "actions affecting title to, or for recovery of possession, or for partition, or condemnation of, or foreclosure of mortgage on real property, shall be commenced and tried in the province where the property or any part thereof lies. All other actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff".

A close scrutiny of the essence of the petitioner's complaint in the court a quo would readily show that he seeks the annulment of the cancellation of the award of the Quezon City lot and house in his favor originally given him by respondent DBP in recognition of his twenty-one years of service in its Legal Department, in pursuance of his contention that he had acquired a vested right to the award which cannot be unilaterally cancelled by respondent without his consent.

The Court agrees that petitioner's action is not a real but a personal action. As correctly insisted by petitioner, his action is one to declare null and void the cancellation of the award of the lot and house in his favor which does not involve title and ownership over said properties but seeks to compel respondent to recognize that the award is a valid and subsisting one which it cannot arbitrarily and unilaterally cancel and accordingly to accept the proffered payment in full which it had rejected and returned to petitioner.

Such an action is a personal action which may be properly brought by petitioner in his residence, as held in the case of *Alamos vs. J. M. Tuason & Co., Inc.*^[5] where this Court speaking through former Chief Justice Querube C. Makalintal distinguished the case from an earlier line of *J. M. Tuason & Co., Inc.* cases involving lot purchasers from the Deudors^[6] as follows:

****. All the allegations as well as the prayer in the complaint show that this is not a real but a personal action - to compel the defendants to execute the corresponding purchase contracts in favor of the plaintiffs and to pay damages. The plaintiffs do not claim ownership of the lots in question: they recognize the title of the defendant *J. M. Tuason & Co., Inc.* They do not ask that possession be delivered to them, for they allege to be in possession. The case cited by the defendants (*Abao, et al. vs. J. M. Tuason & Co., Inc.*, G.R. No. L-16796, Jan. 30, 1962) is therefore not in point. In that case, as stated by this Court in its decision, the 'plaintiffs' action is predicated on the theory that they are 'occupants, landholders,' and 'most' of them 'owners by purchase' of the residential lots in question; that, in consequence of the compromise agreement adverted to above, between the Deudors and defendant corporations, the latter had acknowledged the right and title of the Deudors in and to said lots; and hence, the right and title of the plaintiffs, as successors-in-interest of the Deudors; that, by entering into said agreement, defendant corporations, had also, waived their right to invoke the indefeasibility of the Torrens title in favor of *J. M. Tuason & Co., Inc.*; and that defendants have no right, therefore, to oust plaintiffs from the lots respectively occupied by them and which they claim to be entitled to hold. Obviously, this action affects, therefore, not only the possession of real property, but, also, the title thereto. Accordingly, it should have been instituted in the Court of First Instance of the Province of Rizal in

which said property is situated (Section 3, Rule 5 of the Rules of Court)."

WHEREFORE, the order of dismissal appealed from is set aside and the case is remanded for further proceedings and disposition on the merits. No costs.

Teehankee, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concurring.

[1] 36 Am. Jur. 4.

[2] Caviezez vs. Sanchez, et al., 94 Phil. 760.

[3] Linscott vs. Fuller, 57 Mo. 406; 1 C.J. 933.

[4] 31 C.J. 932.

[5] 25 SCRA 529, 534 (Oct. 14, 1968).

[6] See Ruiz vs. J. M. Tuason & Co., Inc., 7 SCRA 202 (Jan. 31, 1963); Torres vs. J. M. Tuason & Co., Inc., 12 SCRA 174.

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