

**JOSE BARITUA, PETITIONER, VS. HON. COURT OF APPEALS
(ELEVENTH DIVISION); HON. MANUEL D. VICTORIO, JUDGE, RTC, BR.
53, ROSALES-PANGASINAN; AND ROY R. DOMINGO, REPRESENTED BY
HIS A...**

G.R. No. 100748. February 03, 1997

Ponente: PUNO, J.

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PUNO, J.:

Petitioner Jose Baritua raises the question of venue in the filing of a complaint for damages arising from a quasi-delict.

The facts show that on June 26, 1989 private respondent Roy R. Domingo, represented by his attorney-in-fact, Crispin A. Domingo, filed with the Regional Trial Court, Branch 53, Rosales, Pangasinan a complaint against petitioner Jose Baritua as owner and operator of the J.B. Bus Lines. Private respondent sought to recover actual and exemplary damages after a bus owned by petitioner rammed private respondent's car along the Maharlika Highway, Sto. Tomas, Batangas on January 19, 1988. In his complaint, private respondent alleged that:

"1. He is a Filipino, of legal age, married and a resident of Poblacion Rosales, Pangasinan before he went to the United States where he now lives at 4525 Leata Lane, La Cantada, LA 91011. He is being represented by his attorney-in-fact, Crispin A. Domingo, a Filipino, of legal age, married and a resident of No. 47 Yale St., Cubao, Quezon City. Defendant is also a Filipino, of legal age, married and doing business under the business name "J.B. Bus Lines" with business address at Tramo Street, Pasay City where said defendant could be served summons. x x x." [1]

Petitioner moved to dismiss the complaint for improper venue. He alleged that since private respondent was not a resident of the Philippines, the complaint should be filed in the place where petitioner, the defendant, resides which is in Gubat, Sorsogon. The trial court denied the motion to dismiss after finding that private respondent was merely temporarily out of the country and did not lose his legal residence in Rosales, Pangasinan. [2]

The Court of Appeals affirmed the trial court. [3] Hence this petition for certiorari and prohibition.

Petitioner claims that:

"A. RESPONDENT COURT OF APPEALS COMMITTED GROSS ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE PETITION DESPITE PETITIONER'S OVERWHELMING EVIDENCE THAT THE VENUE OF PRIVATE RESPONDENT'S ACTION (CIVIL CASE NO. 915-R) WAS IMPROPERLY LAID;

B. INSPITE ALSO OF THE ADMITTED FACT THAT PRIVATE RESPONDENT ROY DOMINGO HAS REMAINED AN ACTUAL RESIDENT OF 4525 LEATA LANE, LA CANTADA, LA 91011, U.S.A., AT LEAST SINCE FEBRUARY 18, 1988, UP TO THE PRESENT." [4]

A complaint for damages is a personal action. In cases filed before the Regional Trial Court, the venue for

personal actions is laid down in Section 2 (b) of Rule 4 of the Revised Rules of Court which reads as follows :

“Sec. 2. Venue in Courts of First Instance. - -

x x x

(b) Personal actions. - - 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.

x x x”[5]

The complaint in personal actions may be filed in the place where the defendant resides or may be found, or where the plaintiff resides, at the option of the plaintiff. The Rules give the plaintiff the option of choosing where to file his complaint. He can file it in the place (1) where he himself or any of them resides; or (2) where the defendant or any of the defendants resides or may be found. The plaintiff or the defendant must be residents of the place where the action has been instituted at the time the action is commenced.[6]

Section 2 (b) of Rule 4 speaks of the place where the defendant or the plaintiff “resides.” We have held that the residence of a person must be his personal, actual or physical habitation or his actual residence or abode.[7] It does not mean fixed permanent residence to which when absent, one has the intention of returning. The word “resides” connotes *ex vi termini* “actual residence” as distinguished from “legal residence” or “domicile.”[8] Actual residence may in some cases be the legal residence or domicile, but for purposes of venue, actual residence is the place of abode and not necessarily legal residence or domicile.[9] Actual residence signifies personal residence, i.e., physical presence and actual stay thereat.[10] This physical presence, nonetheless, must be more than temporary and must be with continuity and consistency.[11]

The question in this case is whether private respondent had his actual residence in Rosales, Pangasinan or in Los Angeles, California at the time the complaint was filed before the Regional Trial Court of Rosales, Pangasinan.

It is undisputed that private respondent left for the United States on April 25, 1988 before the complaint was filed on June 26, 1989.[12] This fact is expressly admitted in the complaint itself where private respondent states that he “is [sic] x x x a resident of Poblacion Rosales, Pangasinan before he went to the United States where he now lives in 4525 Leata Lane, La Cantada, LA 91011.” Furthermore, the special power of attorney in favor of Crispin A. Domingo was drawn and executed by private respondent on February 18, 1988 before the Philippine Consul in Los Angeles, California.[13] In said special power of attorney, private respondent declared that he was a resident of Los Angeles, California.[14]

Private respondent was not a mere transient or occasional resident of the United States. He fixed his place of abode in Los Angeles, California and stayed there continuously and consistently for over a year at the time the complaint was filed in Rosales Pangasinan.[15]

Contrary to the lower courts’ finding the temporary nature of private respondent’s “working non-immigrant” visa did not make him a non-resident of the United States. There is no showing as to the date his temporary employment in the United States ended.[16] There is likewise no showing much less any allegation, that after the filing of the complaint, private respondent actually returned to the Philippines and resumed residence in Rosales, Pangasinan. In fact petitioner’s claim that private respondent resided in the United States continuously and consistently since 1988 until the present has not been refuted.[17]

We previously held that:

“We are fully convinced that private respondent Coloma’s protestations of domicile in San Nicolas, Ilocos

Norte, based on his manifested intention to return there after the retirement of his wife from government service to justify his bringing of an action for damages against petitioner in the C.F.I. of Ilocos Norte, is entirely of no moment since what is of paramount importance is where he actually resided or where he may be found at the time he brought the action, to comply substantially with the requirements of Sec. 2(b) of Rule 4, Rules of Court, on venue of personal actions x x x.”[18]

It is fundamental that the situs for bringing real and personal civil actions is fixed by the rules to attain the greatest convenience possible to parties litigants and their witnesses by affording them maximum accessibility to the courts of justice.[19] The choice of venue is given to the plaintiff but is not left to his caprice.[20] It cannot unduly deprive a resident defendant of the rights conferred upon him by the Rules of Court.[21]

When the complaint was filed in Rosales, Pangasinan, not one of the parties was a resident of the town. Private respondent was a resident of Los Angeles, California while his attorney-in-fact was a resident of Cubao, Quezon City. Petitioner’s “business address” according to private respondent is in Pasay City,[22] although petitioner claims he resides in Gubat, Sorsogon.[23] The venue in Rosales, Pangasinan was indeed improperly laid.

IN VIEW WHEREOF, the petition is granted and the decision of the Court of Appeals in CA-G.R. SP No. 20737 is reversed and set aside. The complaint in Civil Case No. 915-R is dismissed for improper venue. No costs. SO ORDERED.

Regalado, (Chairman), Romero and Torres, Jr., JJ., concur.

Mendoza, J., took no part; having taken part in decision of the Court of Appeals.

[1]Annex “I” to the Petition, Rollo, p. 36.

[2] Order dated April 23, 1990, Civil Case No. 915-R, Annex “L” to the Petition, Rollo, pp.44-45.

[3] Decision dated November 29, 1990, CA-G.R. SP No. 20737; Annex “A” to the Petition, Rollo, pp. 18-21.

[4] Petition, p.2, Rollo, p.4.

[5] Emphasis supplied.

[6] De la Rosa v. De Borja, 53 Phil. 990, 998 [1929]; see Hernandez v. Rural Bank of Lucena, 81 SCRA 75, 85 [1978]; Koh v. Court of Appeals, 70 SCRA 298, 305 [1976]; see also Regalado, Remedial Law Compendium, vol. I, p. 71 [1988].

[7]Bejer v. Court of Appeals, 169 SCRA 566, 571 [1989]; Garcia Fule v. Court of Appeals, 74 SCRA 189, 199 [1976].

[8] Bejer v. Court of Appeals, supra; Dangwa Transportation Co., Inc. v. Sarmiento, 75 SCRA 124, 129 [1977].

[9] Hernandez v. Rural Bank of Lucena, supra, at 85.

[10]Raymond v. Court of Appeals, 166 SCRA 50, 54 [1988]; Garcia Fule v. Court of Appeals, supra.

[11] Bejer v. Court of Appeals, supra; Dangwa Trans. Co., Inc. v. Sarmiento, supra.

[12]Petition, pp. 10-11, Rollo, pp. 12-13; Memorandum of Petitioner, pp. 8-9, Rollo, pp. 106-107.

[13] Annexes “D” and “E” to the Petition, Rollo, pp.26-27.

[14] Annex “D,” supra.

[15] Compare with *Bejer v. Court of Appeals*, supra, at 569, 571, where petitioners, residents of Bauan, Batangas, were declared mere occasional visitors of their children who lived in Pandacan while schooling in Manila.

[16] *Esuerte v. Court of Appeals*, 193 SCRA 541, 545 [1991].

[17] Petition, pp. 10-11, Rollo, pp. 12-13; Memorandum of Petitioner, pp. 8-9, Rollo, pp. 106-107.

[18] *Koh v. Court of Appeals*, 70 SCRA 298, 305 [1976].

[19] *Koh v. Court of Appeals*, supra, at 304-305; *Nicolas v. Reparations Commission*, 64 SCRA 110, 116 [1975].

[20] *Esuerte v. Court of Appeals*, supra, at 544; *Clavecilla Radio System v. Antillon*, 19 SCRA 379, 382 [1967].

[21] *Portillo v. Reyes*, 3 SCRA 311, 312-313 [1961].

[22] Complaint, Annex “I” to the Petition, p.1, Rollo, p.36.

[23] Motion to Dismiss, Annex “J” to the Petition, Rollo, p.39.

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