

ANGEL L. BOLEYLEY, PETITIONER, VS. HON. CLARENCE J. VILLANUEVA, PRESIDING JUDGE, BRANCH 7, REGIONAL TRIAL COURT, BAGUIO CITY, AND ALBERT S. SURLA, RESPONDENTS.

G.R. No. 128734. September 14, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is a special civil action for certiorari assailing the orders of the Regional Trial Court, Branch 7, Baguio City[1] that granted private respondent's motion to dismiss the complaint below on the ground that petitioner did not refer the action to the barangay lupon for conciliation or settlement before filing the case in court, as prescribed in the Revised Katarungan Pambarangay Law.

The facts are as follows:

On August 7, 1996, petitioner Angel L. Boleyley filed with the Regional Trial Court, Baguio City, a complaint against private respondent for collection of a sum of money, as follows:

- "1.) The sum of P530,000.00 for actual damages;
- "2.) The sum of P50,000.00 for moral damages;
- "3.) The sum of P30,000.00 for exemplary damages;
- "4.) The sum of P30,000.00 as attorney's fees plus P1,000.00 per court hearing;
- "5.) The costs of suit."[2]

On September 13, 1996, private respondent Albert S. Surla filed with the trial court a motion to dismiss the complaint on the ground that petitioner did not comply with the Revised Katarungan Pambarangay Law requiring as a condition for the filing of a complaint in court referral of the matter to the barangay lupon chairman or the pangkat, for conciliation or settlement.[3]

On September 17, 1997, petitioner filed an opposition to motion to dismiss on the ground that private respondent was not a resident of Baguio City so that the dispute involving the parties was not within the authority of the lupon to bring together for conciliation or settlement.[4]

On November 29, 1996, the trial court issued an order dismissing the case for being premature, for not having been referred to the barangay lupon.[5]

On December 5, 1996, petitioner filed with the trial court a motion for reconsideration on the ground that private respondent could not invoke the Katarungan Pambarangay Law because he was not a resident of Baguio City.[6]

On February 17, 1997, the trial court resolved to deny the motion for reconsideration for lack of merit, notice of which denial was received by petitioner on March 4, 1997.[7]

Hence, this petition.[8]

On July 9, 1997, the Court resolved to require the respondents to comment on the petition within ten (10) days from notice.[9]

On August 26, 1997, private respondent filed his comment.[10]

On November 10, 1997, petitioner filed a reply,[11] in compliance with the resolution of September 29, 1997.[12]

At issue is whether or not petitioner was bound to refer the dispute to the barangay lupon or pangkat for conciliation or settlement before he could file an action for collection with the regional trial court.[13]

We give due course to the petition.

It is a basic rule of procedure that “jurisdiction of the court over the subject matter of the action is determined by the allegations of the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The jurisdiction of the court can not be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendant.”[14]

In the complaint filed by petitioner with the Regional Trial Court, Baguio City, he stated that:

“COMPLAINT

“COMES NOW the plaintiff by his undersigned counsel and to this Honorable Court respectfully alleges:

“1.) That plaintiff is of legal age, married, Filipino and a resident of No. 100 Imelda Village, Baguio City while defendant is also of legal age, Filipino and with postal office address at C-4 Ina Mansion, Kisad Road, Baguio City where he may be served with summons and other legal processes;” [15]

From the above allegations, it is obvious that the parties do not reside in the same city or municipality, and hence, the dispute is excepted from the requirement of referral to the barangay lupon or pangkat for conciliation or settlement prior to filing with the court.[16]

It is true that plaintiff's complaint should have alleged defendant's place of actual residence, not his postal office address. The allegation of defendant's actual residence would have been ideal to determine venue, which is plaintiff's choice of either his place of residence or that of the defendant or any of the principal defendants.[17] “In procedural law, however, specifically for purposes of venue it has been held that the residence of a person is his personal, actual or physical habitation or his actual residence or place of abode, which may not necessarily be his legal residence or domicile provided he resides therein with continuity and consistency, thus:

“x x x We lay down the doctrinal rule that the term ‘resides’ connotes ex vi termini ‘actual residence’ as distinguished from ‘legal residence or domicile’. The term ‘resides’, like the term ‘residing’ or ‘residence’ is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed. x x x In other words, ‘resides’ should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. x x x No particular length of time of residence is required though; however, the residence must be more than temporary” (Italics supplied),”[18]

Nevertheless, the complaint clearly implies that the parties do not reside in the same city or municipality.

The venue of the action is not affected by the filing of defendant’s (respondent’s) motion to dismiss stating that he also resided in Baguio City. That is not decisive to determine the proper venue.

Consequently, we rule that there is no need of prior referral of the dispute to the barangay lupon or pangkat in the

absence of showing in the complaint itself that the parties reside in the same city or municipality.[19]

In thus dismissing the complaint for insufficiency of cause of action or pre-maturity, the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction, entitling petitioner to the relief prayed for.

WHEREFORE, the Court hereby GRANTS the petition for certiorari and ANNULS the orders of the Regional Trial Court, Baguio City, Branch 07, dated November 20, 1997, and April 28, 1998, in Civil Case No. 3483-R.

The Court orders the trial court to forthwith deny private respondent's motion to dismiss, and proceed to the disposition of the case with all deliberate dispatch.

No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Presided over by Judge Clarence J. Villanueva.

[2] Petition, Annex "C", Rollo, pp. 23-28.

[3] Petition, Annex "D", Rollo, pp. 29-32.

[4] Petition, Annex "E", Rollo, pp. 33-35.

[5] Petition, Annex "A", Rollo, pp. 20-21.

[6] Petition, Annex "F", Rollo, pp. 36-38.

[7] Petition, Annex "B", Rollo, p. 22.

[8] Filed on April 8, 1997, by registered mail.

[9] Rollo, p. 45.

[10] Rollo, pp. 49-56.

[11] Rollo, pp. 58-60

[12] Rollo, p. 57.

[13] Petition, Rollo, pp. 10-19 at p. 13.

[14] Serdoncillo vs. Benolirao, G. R. No. 118328, October 8, 1998; San Miguel Corporation vs. NLRC, 255 SCRA 133 [1996]; Citibank, N. A. vs. Court of Appeals, G. R. No. 108961, November 27, 1998.

[15] Annex "C", Petition, Rollo, pp. 23-25.

[16] Bejer vs. Court of Appeals, 169 SCRA 566 [1989]; Candido vs. Macapagal, 221 SCRA 328 [1993].

[17] Rule 4, Section 2, 1997 Rules of Civil Procedure.

[18] Bejer vs. Court of Appeals, supra, citing Dangwa Transportation Co., Inc. vs. Sarmiento, 75 SCRA 124 [1977].

[19] Section 408 [f], R. A. 7160; Agbayani vs. Belen, 145 SCRA 635 [1986].

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