

MARIANO L. GUMABON, JOSEFA GUMABON TOLENTINO, TERESA GUMABON EUGENIO, MARIO GUEVARRA, FAUSTINO GUMABON ONDEVILLA, WILFREDO GUMABON, GUILLERMO GUMABON, BRAULIO GUMABON AND NOEL D...

G.R. No. 142523. November 27, 2001

Ponente: VITUG, J.

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VITUG, J.:

The Petition for Review on Certiorari raises before the Court one simple query - Whether or not a trial court judge can *motu proprio* dismiss an action for its improper venue. The Court here rules in the negative.

Petitioners executed, on 29 April 1958, in favor of respondent Aquilino Larin a "Deed of Sale With Right of Repurchase" over a parcel of land covered by Transfer Certificate of Title ("TCT") No. 6643, located in Pangdara, Candaba, Pampanga. The terms of repurchase, spelled out in the deed, were that the vendors, or any one of them, could repurchase the property, or their respective undivided shares, "at any time, from the date of the contract, after each harvest of each crop year," by repaying Larin the purchase price and such other sums of money as might have been or be advanced to them.

Thirty-nine years later, petitioners filed a complaint against respondent before the Regional Trial Court ("RTC") of Quezon City, seeking the return of the certificate of title from Larin who, it was alleged, refused to hand over the certificate despite the full payment, nearly seven times the original amount, of their loan. In his answer with counterclaim, respondent averred that the transaction was not, as petitioners so asserted, an equitable mortgage but a true sale with a right to repurchase; that no repurchase amount was paid to him; and that the period for the right of repurchase had already prescribed. Petitioners filed a reply together with a motion to dismiss the counterclaim which asseverated that the counterclaim contained no certification of non-forum shopping prescribed by Section 5, Rule 7, of the 1997 Rules of Civil Procedure. On 07 November 1997, the RTC dismissed the counterclaim on the basis of that technicality. The failure of respondent and his counsel to submit a pre-trial brief, as well as to attend the pre-trial scheduled on 16 September 1997, enabled petitioners, upon motion, to present their evidence *ex-parte*. Demurring to the evidence and contending that petitioners had no right to the relief sought, respondent moved for the dismissal of the case. The RTC, in its order of 06 May 1999, after noting the exceptions taken by respondent, admitted the offered exhibits of petitioners, denied due course to the demurrer of respondent to the evidence, and gave petitioners thirty days within which to submit their memorandum. On 18 May 1999, respondent moved for the reconsideration of the order asking, at the same time, for the inhibition of Judge Thelma A. Ponferrada from further hearing the case. The motion was objected to by petitioners. Meanwhile, on 14 June 1999, petitioners filed their memorandum. On 24 July 1999, Judge Thelma A. Ponferrada voluntarily inhibited herself.

The case was raffled to Branch 82 of RTC Quezon City, presided over by Judge Salvador C. Ceguera, which forthwith set the motion for reconsideration of respondent for hearing. In due time, Judge Ceguera issued the

assailed order, dismissing the complaint on the ground that, being a real action, the case should have been filed before the RTC of Pampanga, not the RTC of Quezon City, which could validly take cognizance of the controversy. The order came unexpectedly, according to petitioners, for not only was it issued *motu proprio*; it was also made at the homestretch stage of the proceedings.

In questioning the ruling of the trial court in the instant recourse, petitioners would emphasize that respondent Larin never assailed, at any stage theretofore, the venue of the case nor raised in issue the competence of the RTC of Quezon City to try the case. Instead, petitioners pointed out that Larin had impliedly affirmed his assent to venue by persistently seeking affirmative reliefs from the court and a favorable judgment on his demurrer to evidence.

The Court will limit itself to the parameters of the legal inquiry posed, i.e., whether or not the trial court, given the circumstances, has acted correctly in dismissing the case on the ground of improper venue.

Petitioners assert that the relief they seek is not to be declared the owners of the land, as TCT No. 6643 is already in their name, nor to regain possession thereof, as they have been the continuous occupants of the property up until now, but merely to compel respondent to return the certificate of title back to them.

Sections 1 and 2, Rule 4, of the 1997 Rules of Civil Procedure, under the title "Venue of Actions," provide:

"Section 1. Venue of Real Actions. Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

"Sec. 2. Venue of personal actions. All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff."

Real actions, as so opposed to personal actions, are those which affect the title to or possession of real property. Where a contrary claim to ownership is made by an adverse party, and where the relief prayed for cannot be granted without the court deciding on the merits the issue of ownership and title, more specifically so as to who, between the contending parties, would have a better right to the property, the case can only be but a real action.

In *Espineli, et al. vs. Santiago*,^[1] cited by Judge Ceguera in dismissing the case, the Court there ruled:

"Under the facts set forth in the complaint and in the motion to intervene filed in said Civil Case No. U-152, the issue therein is, who, as between Mrs. Ramirez, on the one hand, and the Espinelis on the other, has a better right to the aforementioned Lot No. 34, which is situated in Quezon City. The main relief sought therein by Mrs. Ramirez - the delivery of the certificate of title covering said Lot - is entirely dependent upon the aforesaid issue. Thus, it is not possible for the Court of First Instance of Pangasinan to decide the case, without passing upon the claim of the parties with respect to the title and possession of said Lot No. 34, which claim shall be determined - pursuant to the above-quoted provision - 'in the province where' said 'property or any part thereof lies.'"

Referring to the place where a civil action must be tried, venue, unlike jurisdiction which is conferred by law, essentially concerns a rule of procedure which looks primarily at the convenience of the litigants. A plaintiff impliedly elects venue by choosing the court where he files his complaint. Venue can even be the subject of agreement by the parties.^[2] Under Section 4, Rule 4, of the old rules,^[3] such an agreement to venue may be impliedly made by the defendant when he fails to seasonably object to it. While the present 1997 Rules of Civil Procedure, particularly Section 1, Rule 9,^[4] thereof, does not contain provisions similar to Sections 3 and 4 of the old rules, the deletion, however, cannot be taken to mean that objection to venue may now be raised at any time but that, rather, an objection to venue may still be made in an answer if no motion to dismiss is filed.^[5]

As so aptly observed by Mr. Justice Jose A.R. Melo during the deliberations, the motu proprio dismissal of a case was traditionally limited to instances when the court clearly had no jurisdiction over the subject matter and when the plaintiff did not appear during trial, failed to prosecute his action for an unreasonable length of time or neglected to comply with the rules or with any order of the court.[6] Outside of these instances, any motu proprio dismissal would amount to a violation of the right of the plaintiff to be heard. Except for qualifying and expanding Section 2,[7] Rule 9, and Section 3,[8] Rule 17, of the Revised Rules of Court, the amendatory 1997 Rules of Civil Procedure[9] brought about no radical change. Under the new rules, a court may motu proprio dismiss a claim when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter; when there is another cause of action pending between the same parties for the same cause, or where the action is barred by a prior judgment or by statute of limitations. Improper venue not being included in the enumeration, it should follow that motu proprio dismissal on said ground would still not be allowed under the 1997 Rules of Civil Procedure. Sections 6,[10] Rule 16, of the 1997 Rules of Civil Procedure further provides that if no motion to dismiss has been filed, any of the grounds for dismissal provided under the rules, including improper venue, may be pleaded as an affirmative defense in the answer, and upon the discretion of the court, a preliminary hearing may be made thereon as if a motion to dismiss has been filed. But, as it is, improper venue not having been so raised by respondent as a ground to dismiss, he must be deemed to have waived the same.[11]

Jurisdiction, on the other hand, is more substantive than procedural. It refers to the authority of the court to hear and decide a case, and, it is one that is dictated by law,[12] and the matter ordinarily can be raised at any stage of the trial, even upon appeal. The rule, of course, deviates from this general rule in criminal cases where locus criminis itself defines the jurisdiction of the trial court.[13]

The wrong venue in Civil Case No. 97-31709, being merely a procedural infirmity, not a jurisdictional impediment, does not, without timely exception, disallow the RTC of Quezon City to take cognizance of, and to proceed with, the case.[14] In failing to raise his objection to it either in a motion to dismiss or in his answer, coupled by his having sought relief from the court and favorable judgment on his demurrer to evidence, respondent has himself evinced an acceptance on the venue of the action. The court a quo has thus erred in dismissing motu proprio the complaint on the ground of improper venue.[15]

WHEREFORE, the Petition for Review on Certiorari is GRANTED. The orders of the Regional Trial Court of Quezon City, Branch 82, dated 25 October 1999 and 15 March 1999, are SET ASIDE. Civil Case No. Q-97-31709 is ordered REINSTATED, and the case is remanded to the court a quo for further proceedings. No costs.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

Melo, J., (Chairman), please see concurring opinion.

[1] 107 Phil 830, 833.

[2] Section 3, Rule 4. Venue by agreement. By written agreement of the parties the venue of an action may be changed or transferred from one province to another. See also *Manila Railroad Co. vs. Attorney-General*, 20 Phil. 523.

[3] Section 4, Rule 4. Waiver of objection. When improper venue is not objected to in a motion to dismiss it is deemed waived.

[4] Sec. 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

Sec. 1. Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[5] Feria, "Civil Procedure Annotated," Vol. I, 2001 Ed., p. 265.

[6] Section 2, Rule 9, Section 3, Rule 17 of the Old Rules; see also *Hontiveros vs. RTC, Branch 25, Iloilo City*, 309 SCRA 340.

[7] Section 2. Rule 9. Defenses and objections not pleaded deemed waived. Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in section 5 of Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject matter, it shall dismiss the action.

[8] Section 3, Rule 17. Failure to prosecute. If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the Court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

[9] Made effective on 01 July 1997.

[10] Section 6, Rule 16. Pleading grounds as affirmative defenses. - If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.

[11] Citing *Langkaan Realty Development, Inc. vs. UCPB*, G.R. No. 139437, 08 December 2000.

[12] *Manila Railroad Co. vs. Attorney-General*, supra.

[13] *Unimasters Conglomeration, Inc. vs. Court of Appeals*, 267 SCRA 759.

[14] *Ibid.*

[15] *Dacoycoy vs. IAC*, 195 SCRA 641.

CONCURRING OPINION

MELO, J.:

The ponencia so ably written by Mr. Justice Jose C. Vitug readily invites concurrence. I feel constrained, however, to make several observations which I believe will clarify the conclusion arrived at in this particular case.

The questions involved in this case are backdropped by the following antecedent facts:

In a complaint filed with the Regional Trial Court of Quezon City, petitioners Gumabon, et al. sought the return of a certificate of title covering a piece of land located in Pangdara, Candaba, Pampanga from respondent Aquilino T. Larin, on the ground that they had already more than paid the repurchase price thereof under a Deed of Sale with Right to Repurchase, but that despite said payment, respondent - the vendee a retro - refused to hand over said certificate.

Respondent filed an answer with counterclaim, claiming that the Gumabons' had not paid the repurchase price and that the right to repurchase had already prescribed. However, respondent's counterclaim was dismissed, upon motion of petitioners, on the ground that the same did not have a certificate of non-forum shopping.

For failure of respondent and his counsel to submit a pre-trial brief, as well as to attend the pre-trial, petitioners were allowed by the court to present their evidence ex-parte. Respondent then filed a demurrer to evidence and moved for the dismissal of the complaint. The trial court denied the demurrer to evidence and instead gave petitioners thirty (30) days within which to submit their memorandum. Respondent filed a motion for reconsideration and also moved for the inhibition of the trial judge, The Honorable Thelma A. Ponferrada from further hearing the case. Instead of resolving the motion for reconsideration, Judge Ponferrada voluntarily inhibited herself.

The case was thereafter raffled off to Branch 82 of the Regional Trial Court of Quezon City, presided over by Judge Salvador C. Ceguera, who forthwith set the motion for reconsideration for hearing. Thereafter, Judge Ceguera issued the questioned order dismissing the complaint on the ground that the same was a real action which should have been filed with the Regional Trial Court of Pampanga where the property is located, not with the Regional Trial Court of Quezon City.

Aggrieved, petitioners now come to this Court seeking the reversal of said order.

Undisputedly, the action filed by petitioners is a real action, involving as it does the title to or possession of the Pangdara, Candaba parcel of land. Petitioners are, thus, guilty of improper venue when they filed their complaint with the Regional Trial Court of Quezon City rather than with the Regional Trial Court of Pampanga where the property is located. However, the core issue for this Court's determination remains whether or not the trial court can *motu proprio* dismiss the action for improper venue.

The answer is in the negative.

Section 2, Rule 9 (Effect of Pleadings) of the old Rules of Court provided that:

Sec. 2. Defenses and objections not pleaded deemed waived - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in Section 5, Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject matter, it shall dismiss the action.

(Italics supplied)

Section 3, Rule 17 (Dismissal of Actions) of the old Rules of Court likewise provided:

Sec. 3. Failure to prosecute- If plaintiffs fail to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any other order of the court, the action may be dismissed upon the motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

(Italics supplied)

Thus, under the old rules, the only instances when the court may *motu proprio* dismiss a case are:

- whenever it appears that the court has no jurisdiction over the subject matter;
- failure of the plaintiff to appear at the time of the trial;
- failure of the plaintiff to prosecute his action for an unreasonable length of time;
- failure to comply with the Rules;
- failure to comply with any other order of the court.

As pointed out in *Hontiveros vs. RTC (Br. 25) Iloilo City (309 SCRA 340 [1999])*:

The court cannot dismiss a case *motu proprio* without violating plaintiff's right to be heard, except in the following instances: if the plaintiff fails to appear at the time of the trial; if he fails to prosecute his action for an unreasonable length of time; or if he fails to comply with the rules or any order of the court; or if the court finds that it has no jurisdiction over the subject matter of the suit.

While the Revised Rules of Court were superseded on July 1, 1997 by the 1997 Rules of Civil Procedure, no radical change was effected therein regarding *motu proprio* dismissals by the court. Thus, Section 3, Rule 17 of the 1997 Rules of Civil Procedure now provides:

Sec. 3. Dismissal due to fault of plaintiff - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

As can be seen, the 1997 rules only slightly modified failure of the plaintiff to appear at the time of trial as a ground for *motu proprio* dismissal by changing the same to "If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief."

On the other hand, Section 1, Rule 9 of the 1997 Rules of Civil Procedure modified Section 2, Rule 9 of the old Rules by expanding the instances when the court may *motu proprio* dismiss the claim, as follows:

Sec. 1. Defenses and objections pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Thus, the 1997 Rules of Civil Procedure now provide that the court may *motu proprio* dismiss the claim when it appears from the pleadings or evidence on the record that:

- the court has no jurisdiction over the subject matter;
- there is another cause of action pending between the same parties for the same cause; or
- where the action is barred by a prior judgment or by statute of limitations.

From the foregoing, it is clear that a court may not *motu proprio* dismiss a case for improper venue, this ground not being among those mentioned where the court is authorized to do so.

In fact, the applicable rule would be Section 1, Rule 9 of the 1997 Rules of Civil Procedure providing that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." Furthermore, Section 6, Rule 16 of the 1997 Rules now provides that if no motion to dismiss has been filed, any of the grounds for dismissal provided in this Rule - which includes the ground that venue is improperly laid (Section 1[c]) - may be pleaded as an affirmative defense in the answer, and in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss has been filed. Respondent not having raised improper venue in a motion to dismiss or in his answer, he is deemed to have waived the same. Well-known is the basic legal principle that venue is waivable. Failure of any party to object to the impropriety of venue is deemed a waiver of his right to do so (*Langkaan Realty Development Inc. vs. UCPB*, G.R. No. 139437, December 8, 2000).

I, therefore, vote to GRANT the instant petition and to SET ASIDE the challenged order of the trial court dismissing plaintiffs' complaint for improper venue.

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