

AMANDO M. DIZON PLAINTIFF AND APPELLANT VS. DEMETRIO B. ENCARNACION, DEFENDANT AND APPELLEE.

G.R. No. 18615. December 24, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Plaintiff Amando M. Dizon seeks the review of an order of the Court of First Instance of Pampanga dismissing the Complaint herein, without costs, upon the ground that venue had been improperly laid.

In a complaint filed with said court, plaintiff, a resident of Pampanga, seeks to recover from defendant Demetrio Encarnacion the aggregate sum of P50,000, by way of damages allegedly suffered by the former in consequence of the filing by the latter, in Special proceeding No. 2025 of the Court of First Instance of Zambales, entitled "Intestate Estate of the Deceased Agustin N. Medina," of a pleading captioned "Manifestation and Refutation," containing statements which are said to be libelous and derogatory to dignity, integrity, reputation and standing of the former, as well as irrelevant to the issues in said special proceeding.

In due course, the defendant moved to dismiss the case upon the theory that, pursuant to Art. 360 of the Revised Penal Code, as amended by Republic Act No. 1289, plaintiff's action should be instituted in the Court of First Instance of Zambales, in which said "Manifestation and Refutation" had been filed. The motion was granted by the Court of First Instance of Pampanga, which accordingly dismissed the present case, without prejudice to its renewal in the "proper court." A reconsideration of the order to this effect having been denied, plaintiff has brought the case to us by record on appeal.

The appeal hinges on said provision of the Revised Penal Code, as amended by Republic Act No. 1289, the pertinent part of which reads:

"* * * The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offence: PROVIDED, HOWEVER, That where the libel is published, circulated, displayed, or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the court of first instance thereof: PROVIDED, FURTHER, That the civil action shall be filed in the same court where the criminal action is filed and vice versa: PROVIDED, FURTHERMORE, That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of: other courts: AND PROVIDED, FINALLY, That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions to which, have been filed in court at the time of the effectivity of this law."

which as contended by the defendant, was construed by the lower court to mean:

"* * * when any of the accused or any of the offended parties resides in a province or city where a written defamation is published, circularized, displayed or exhibited, the action, civil or criminal shall be filed simultaneously or separately with the court of first instance of said province or city; but when the offender or

any of the offenders or the offended party or any of the offended parties does not reside in a province or city, where the publication, circulation, display or exhibition were made, such action must be interposed therein."

We find ourselves unable to concur in this view. The language of the above quoted provision is, to our mind, plain and clear. It establishes a general rule and an exception thereto. Civil actions for damages in cases of written defamation "shall" be filed with the court of first instance of the province or city in which "any of the accused or any of the offended parties resides." In other words, the plaintiff is limited in his choice of venue to the court of first instance of his residence or to that of any of the accused. Plaintiff may not file the action elsewhere, unless the libel is published, circulated, displayed, or exhibited in a province or city wherein neither the offender nor the offended party resides, in which case "the civil and criminal actions may be brought in the court of first instance thereof." The verb "may" is permissive. Hence, it does not necessarily imply a complete abrogation of the general rule laid down in the preceding sentence, except in so far as it broadens the two (2) alternatives therein set forth, by giving the plaintiff a third choice of venue.

Although the term "may" should be taken as "must" or "shall," when the intention of the law maker to give thereto a mandatory or compulsory meaning is patent or manifest, no such intent appears insofar as the above provision is concerned. On the contrary, the use of the word "may" in the second sentence thereof, when contrasted with the term "shall" in the first, clearly suggests that congress meant the second sentence to be merely permissive, not mandatory. Indeed, when the libelous imputation has not been published or circulated in the locality wherein either of the parties resides, the offended party may not wish to initiate the action therein, for the same would have the effect of giving additional publicity to the derogatory statements made by the defendant or defendants, and of increasing the harm already caused to the complainant. As a consequence, he "may" prefer to file suit where the libel had actually been published or circulated. Hence, the provision to this effect has been established, in our opinion, for his benefit, which he may waive.

Otherwise, if the complainant were a resident of Jolo and the defendant, residing in Cebu, had defamed him in Batanes, it would be necessary to bring the action in the latter province, thereby imposing upon the average member of the community a serious hindrance to the vindication of his most precious possession—his good name and reputation. In fact, if the theory advanced by the appellee were upheld, the defendants could purposely choose to publish and circulate their defamatory imputations in a place far away from where they and the offended parties reside in order to make it most inconvenient, if not well-nigh impossible, for the latter to sue the former for redress of the wrong committed by them. Neither the language of the law nor the reasons adduced by herein appellee warrant the belief that Congress intended to create such obstacles to the prosecution of those guilty of the crime of libel.

Wherefore, the order appealed from is set aside and the case hereby remanded to the lower court for further proceedings, with the costs of this instance against the appellee. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angela, Barrera, Regala and Makalintal, JJ., concur.

Order set aside.

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