

LAVERN R. DILWEG, PLAINTIFF AND APPELLANT VS. ROBERT O. PHILIPPS, INOCENTES DINEROS AND ISAAC S. ECETA, DEFENDANTS AND APPELLEES.

G.R. No. 19596. October 30, 1964

Ponente: Reyes, J. B. L. J.

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Reyes, J. B. L. J.:

Direct appeal on pure question of law from an order rendered by the Court of First Instance of Rizal Branch II in its Civil Case No. 4850, dismissing plaintiffs complaint as well as from the order denying a motion to reconsider said order of dismissal.

The record disclosed that on 7 February 1958 plaintiff Lavern R. Dilweg, a nonresident American citizen, through counsel, instituted the complaint at bar consisting of six causes of action against defendants Robert O. Phillips, Inocentes G. Dineros, and Isaac S. Eceta, claiming civil damages arising out of alleged libelous and defamatory statements uttered and published in the Philippines by the latter. On 24 February 1958 the first two named defendants presented a motion to dismiss the complaint. Plaintiff interposed an opposition thereto on 7 March 1958.

On 13 May 1958 the trial court, acting on this motion, denied the same; consequently, on 17 May 1958, the two defendants filed their joint answer with six causes of action as counterclaims for damages against the plaintiff. On 24 May 1958, plaintiff answered the defendants' counter-claims.

On 11 June 1958, defendant Isaac S. Eceta, who was represented by a different counsel, filed his answer adopting in toto as his own the answer as well as the counterclaims of his co-defendants. On 26 June 1958, plaintiff answered defendant Eceta's counterclaims.

The trial court, in its order dated 17 September 1958, scheduled the hearing of the case for 10 and 11 December 1958.

On 8 March 1961, in the course of the trial on the merits defendants Robert O. Phillips and Inocentes G. Dineros presented a written motion for reconsideration of the order dated 13 May 1958 denying their motion to dismiss the plaintiff's complaint. An opposition thereto was interposed by plaintiff on 7 April 1961.

On 11 May 1961 the trial court issued an order, which is the subject of the present appeal, the pertinent portion of which is as follows:

"This action is one for damages by reason of alleged libelous statements uttered in the Philippines by the defendants against the plaintiff. In other words, it is an action bared on a tort or act, which under the law of the Philippines, is defined as a criminal offense. At the time the said libelous statements were uttered, the plaintiff was in Washington, D.C. where, he was and has always been a resident. There is no allegation in the complaint that plaintiff has ever been in the Philippines or has resided at anytime therein.

"The general rule in this jurisdiction is that a court acquires jurisdiction over the person of the plaintiff by the

filing of his complaint (*Manila Railroad Co. vs. Attorney General*, 23 Phil. 523). In *King Mau Wu vs. Sycip*, 94 Phil., 784, 50 Off. Gaz., page 5366, April 23, 1954, it was contended that as the plaintiff therein has never been a resident of the Philippines, the courts of this country have not acquired jurisdiction to take cognizance of his action based on a contract which was executed in the State of New York, U.S.A. The Supreme Court held that a non-resident may sue a resident on the courts of his country for the collection of money arising from a contract notwithstanding the fact that said contract was executed outside the country. In *Western Equipment and Supply Co. vs. Reyes*, 51 Phil. 116 it was held that a foreign corporation which has never done any business in the Philippines and which is unlicensed and unregistered to do business here, may sue in the courts of the Philippines for the purpose of restraining certain resident and inhabitants of the Philippines from organizing a corporation in this country bearing the same name as that of the plaintiff because the action involves the use of a tradename and hence, it is one in rem.

"The instant case is however different because it is a personal action based on an act defined as a crime under Philippine Law. It is therefore of first impression. Defendants contend that if a counterclaim is filed against the plaintiff for damages, it cannot be enforced because the Court has not acquired jurisdiction over his person as he has never been and is not now present in this country. It may be stated in addition, that in such a case, if a judgment is rendered against him by this Court since he has no property in the Philippines the decision cannot be enforced because the decision of a court of this country is not enforceable outside of Philippine jurisdiction.

"In some European countries, it is a requirement that before a non-resident alien may file an action, he must file a bond, the so-called 'Judicatum Solvi,' in order to protect the interest of residents from unwarranted actions. There is no law of this kind in this jurisdiction,

"As there are no doctrines in this jurisdiction covering the issue raised by the defendants, this Court is bound to rely on American doctrines for the reason that our rules on jurisdiction have been copied and patterned upon American laws and statutes. The following are some of the doctrines which have some bearing on the case, aside from those cited by the movants:

"A difficulty may sometimes arise, in determining whether a particular law applied to the citizen of a foreign country, and (is) intended to subject him to its provision. But if the law applies to him, and embraces his case, it is unquestionably binding upon him when he is within the jurisdiction of the United States." (*Brown vs. Duchesne*, Mass. 19 How., U.S. 194, 51 L. Ed. 595.) (Ibid).

"While the presence of the res or property within the territorial limits of the sovereignty under which the court acts may confer jurisdiction in rem on the court, in personal actions jurisdiction both of the subject matter and of the person or any party whose rights are to be effected are essential, and a state court can acquire no jurisdiction where neither the person nor any property of defendant can be found within the state. (*Emmanuel vs. Ferris*, 41 S.E. 20, 63 S. C. 104). If a court having jurisdiction of the subject matter acquires jurisdiction of the person it has the right and power to hear and determine the particular case; and unless jurisdiction of the subject matter and of the person exist it is the duty of the court to decline to do more than ascertain and declare that it has no power to examine or to decide the merits of the case . . . While a court may have general jurisdiction of the subject matter of a class of action, it does not necessarily follow that it may hear and determine a particular case submitted for its consideration. (21 C.J.S. 43-44)

"In *El Banco Espanol Filipino vs. Palanca*, 37 Phil 921, and *Perkins vs. Dizon*, 69 Phil. 189, it has been also held that in order that the court may validly try a case, it must have jurisdiction over the subject matter and over the persons of the parties. Jurisdiction over the persons of the parties is acquired by their voluntary appearance in court and their submission to its authority, or by the coercive power of legal process exerted over their persons.

"Applying the principles laid down in the above-quoted doctrines and those cited in the motion for reconsideration" the defendants, the Court has come to conclusion that in order that it may validly try this case, it

must have jurisdiction not only over the persons of the parties and over the subject matter and the plaintiff must be a resident within the territorial of this Court in order that jurisdiction over his person can be acquired, otherwise the Court will not be able to render a valid judgment against him.

"IN VIEW OF THE FOREGOING CONSIDERATIONS and of the fact that the question of jurisdiction may be raised at any time, the Court hereby grants the motion for reconsideration: sets aside the former order denying defendant's motion to dismiss and hereby dismisses this case, without costs.

"So ORDERED." (Rec. on Appeal, pp. 99-103)

On 28, June 1961, a motion to have the above-quoted order reconsidered was presented by the plaintiff and an opposition thereto was filed by the defendants on 10 July 1961. Plaintiff, in turn, submitted a reply to said opposition on 22 July 1961. On 7 November 1961, the trial court, acting on said motion, denied it; hence, the present appeal.

The sole issue posed in the present appeal is whether or not our Philippine courts can rightfully refuse to assume jurisdiction over a personal action instituted by a nonresident alien who is not within the territorial jurisdiction of our courts.

In refusing to assume jurisdiction over this case, the court below upheld defendants contention that in a personal action it can only acquire jurisdiction over the person of the plaintiff if he resides within our territorial jurisdiction. We believe and hold that the trial court is in error in this point. In fact, this Court only recently has upheld the right of nonresidents to maintain personal actions against our residents in Philippine courts (*Sharuff vs. Bubla*, G.R. No. L-17029, September 30, 1964).

In an American case with facts similar to those obtaining in the case at bar, and in which the same identical issue was raised, the Court of Appeals of New York held:

"There is no objection to the maintenance of the action in our courts in the fact that the plaintiff was an English subject or he was a non-resident. As a personal action sounding in tort, it was transitory in its nature, following the person of the defendant. Our courts were open to the plaintiff for redress of any personal injury suffered by reason of defendants' acts. Story's Conflict of Laws, Sec. 625; Wharton's Conflict of Laws, Secs. 478, 707, 743; *Cardner vs. Thomas*, 14 Johns. 134, 7 Am. Dec. 445; *De Witt vs. Puchapan*, 54 Barb. 31." (*Crashley vs. Press Pub. Co.*, 71 N. E. 258, 259).

This position is supported by practically unanimous American authority (3 Am. Jur. 2d, Aliens, Sec. 43, p. 895; 21 C.J.S. (Courts), sec. 75, pp. 112-113).

It is thus evident that, contrary to the conclusion reached by the court below, it is not indispensable for a foreigner to establish a residence, nor need he be physically present in a state of which he is not a resident or citizen in order that he may initiate or maintain a personal action against a resident or citizen of that other state for rights of action arising in, or for violations of laws committed within, the territorial jurisdiction of that other state. In this jurisdiction, no general law has come to our knowledge or notice which restricts the right of nonresident aliens to sue in our courts. It is not disputed that plaintiff's causes of action arose in, and that the defendants are within, our territorial jurisdiction. It is conceded by both parties that the law under which the instant case falls is silent on the matter of the right of an Alien to sue in our courts. On the other hand the particular law evidently availed of by the plaintiff in filing his complaint is Article 33 of the Civil Code of the Philippines, which provides:

"In cases of defamation, fraud, and physical injuries, a civil action for damages entirely separate and distinct from the criminal action may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution and shall require only preponderance of evidence."

The above-quoted provision of law does not make any distinction as to whether the "injured party." who may maintain an action for damages based on defamation, is a Filipino citizen or resident or an alien.

The American decisions cited in the order of 11 May 1961 are not applicable to the case at bar because there the defendants invoked the issue of lack of jurisdiction over their own persons and not against the person of the plaintiff.

The fact that there are counterclaims against the non-resident plaintiff does not alter the case. The Rules of Court provide for remedies against nonresident defendants. Wherefore, the order appealed from is set aside, and the case is ordered remanded to the court below for further proceeding consonant with this opinion. Costs against respondents Phillips, Dineros and Eceta.

Bengzon C. J., Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

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