

**MATEO C. BACALSO AND CESAR GONZALEZ, PETITIONERS, VS.
MODESTO R. RAMOLETE, JUDGE OF THE COURT OF FIRST
INSTANCE OF CEBU, AND CELESTINO BACALSO, RESPONDENTS.**

G.R. No. 22488. October 26, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

This is a petition for prohibition with a prayer for preliminary injunction to restrain the respondent Judge from proceeding with the trial of Civil Case No. 7278 of the Court of First Instance of Cebu, entitled Celestino Bacalso versus the Secretary of Agriculture & Natural Resources, Mateo Bacalso and Cesar Gonzalez.

Culled from the pleadings and annexes thereto before Us, the following are the facts pertinent to the issue involved in the present petition:

Dissatisfied with the decision of the Director of Mines, which was affirmed by the Secretary of Agriculture & Natural Resources, declaring that Mateo C. Bacalso and Cesar Gonzalez, petitioners herein, have established superior location rights on certain mining claims situated in the City of Toledo, Cebu, which were in dispute between Celestino Bacalso, on one hand, and Mateo C. Bacalso and Cesar Gonzalez, on the other hand, and pursuant to which decision, the claims of the latter were given due course, on November 10, 1961 Celestino Bacalso filed a complaint in the Court of First Instance of Cebu, against the Secretary of Agriculture & Natural Resources, Mateo C. Bacalso and Cesar Gonzalez, dock-eted as Civil Case No. 7278.

The respondents filed separate motions to dismiss the case, based on a common ground, that the decision of the administrative body had become final and executory. The motions were denied. The private respondents moved to reconsider the order which was also denied. Before the trial on the merits, the private respondents filed an "Ex-parte motion to or-der the clerk of court, Atty. Vicente Miranda, to transfer civil case No. 7278, x x x from branch V to Branch VII, Barili, Cebu", alleging that "x x x in virtue of the Administrative Order No. 302 of the Department of Justice, Series of 1962, as amended by Administrative Order No. 337, in the sense that the City of Toledo be included under the Seventh Branch in Barili, Cebu and considering that the properties involved in the litigation are located in Toledo City as above-stated - compliance to the said Admi-nistrative Orders of the Department of Justice by the clerk of court is necessary."

Resolving the motion, the court denied the same in an order which reads as follows:

"Defendants Mateo Bacalso and Cesar Gonzalez, in their motion ex-parte dated May 15, 1963, ask this court to order the clerk of court to transfer this case to Branch VII of this court at Barili, Cebu, alleging as grounds that after the said additional branch was created, the Department of Justice ordered that all cases originating from Toledo and other southern towns of this province should be heard by the said branch; that this case involves mining claims which are situated in Toledo City, within the jurisdiction of the said branch at Barili, Cebu; and that the trial of this case has not been started yet. The movants attached to their motion certified copies of their mining claims showing that the said claims are situated in the City of Toledo.

"The same motion was submitted for resolution to the Honorable Judge Amador E. Gomez, presiding as vacation judge, who refrained from resolving the same.

"The record shows that this case was filed on November 22, 1961, long before the said Branch VII at Barili, Cebu was created by law, and since then several important incidents have taken place, one of which was a motion to Dismiss the Complaint for lack of jurisdiction, which motion was resolved by this court denying the same. Several motions for reconsiderations had been submitted to, and considered and resolved by this court. Although it is true that the mining claims in this case are situated in Toledo City, within the jurisdiction of this court at Barili, Cebu, the said motion to transfer the case to that branch is not considered well taken by this court by reason of the following grounds:

1. This case had already been assigned to the Fifth Branch of this court long before the Seventh Branch was created and before Administrative Order No. 337 of the Department of Justice was issued;
2. Several important incidents had taken place and resolved by this court, and it is necessary in order to avoid variance and conflict in the rulings on the previous incidents resolved by this court, that this case should remain to be tried by this Branch;
3. The agreement of the judges of this court concerning cases pertaining to the different branches of this court does not cover the present case where several incidents have already been acted upon by this Branch.

WHEREFORE, based on the foregoing considerations, the ex-parte motion to order the clerk of court to transfer this case to Branch VII of this court is hereby denied for lack of merit."

A motion for reconsideration of the order having been denied, the present petition for certiorari with preliminary injunction was filed before this Court on February 28, 1964.

The question presented for review expressed in the terms and circumstances of the case is, whether or not the respondent Judge presiding over branch V of the Court of First Instance of Cebu, to which the case No. 7278 has been assigned by agreement of the Judges presiding over the other branches of the same court, and before whom the case had been partially heard on matters other than the merits, has lost jurisdiction to try and decide the said case by virtue of the Administrative Orders Nos. 302 and 337 of the Secretary of Justice, transferring the cases assigned in branch V, one of which is the case No. 7278, to branch VII of the same court which is stationed at Barili, Cebu.

Administrative Order No. 302, dated August 20, 1962, states that, in view of the addition of two branches of the Court of First Instance of Cebu from six to eight branches by virtue of Republic Act No. 2613, approved in August 1, 1959, and pursuant to the provisions of Section 57 of the Judiciary Act, as amended, that the cases coming from the different municipalities of the Province of Cebu, are hereby distributed between the eight branches of the court as follows:

(Here follows the list of cities and municipalities, included among them the City of Toledo, as corresponding to the six branches of the Court; the municipality of Barili, among other municipalities, corresponding to Branch VII.)

As already stated, the case No. 7278, by agreement of the judges presiding over the six branches of the court, was assigned to Branch V, presided over by the respondent Judge. On September 10, 1962, Administrative Order No. 337 was issued by the Secretary of Justice, amending Administrative Order No. 302, providing that "the City of Toledo be included under the Seventh Branch in Barili, Cebu."

We start with the statement that it is a settled rule that jurisdiction is conferred only by the Constitution or the law. It cannot be fixed by the will of the parties; it cannot be acquired through, enlarged or diminished by any act of

omission of the parties. Constitutionally viewed, apportionment of jurisdiction is vested in Congress. As this Court has said, thru Justice Concepcion (now Chief Justice) in *Gumpal v. CFI of Isabela, et al.*, L-16409 and 16416, November 29, 1960:

"It is trite to say, however, that the validity of a given judicial action is dependent upon the jurisdiction of the court taking it, and that, by specific constitutional mandate, the power to define, prescribe and apportion the jurisdiction of the various courts, is subject to the limitations set forth in the fundamental law, within the exclusive province of Congress. Since, being legislative, said power cannot be delegated to the Secretary of Justice x x x."

The foregoing statement of the law on the fountain source and extent of the jurisdiction of the court is beyond debate. It is incorrect to assume, as the respondent Judge did assert in his order complained of, that because the case No. 7278 has been assigned to Branch V, by agreement of the Judges presiding over the six branches of the Court of First Instance of Cebu, that he has acquired exclusive jurisdiction to try and decide the case to the exclusion of the other Judges presiding over the other branches of the same court. The various branches of the Court of First Instance of Cebu under the Fourteenth Judicial District, are a coordinate and co-equal courts, and the totality of which is only one Court of First Instance. The jurisdiction is vested in the court, not in the judges. And when a case is filed in one branch jurisdiction over the case does not attach to the branch or judge alone, to the exclusion of the other branches. Trial may be held or proceedings continue by and before another branch or judge. It is for this reason that Section 57 of the Judiciary Act expressly grants to the Secretary of Justice, the administrative right or power to apportion the cases among the different branches, both for the convenience of the parties and for the coordination of the work by the different branches of the same court. The apportionment and distribution of cases does not involve a grant or limitation of jurisdiction; the jurisdiction attaches and continues to be vested in the Court of First Instance of the province, and the trials may be held by any branch or judge of the court.

In the case at bar, the respondent Judge grievously erred in not complying with the directive of the Secretary of Justice in Administrative Order No. 337, on a flimsy, nay, self-conceited reasons that because -

"2. Several important incidents had taken place and resolved by this Court, and it is necessary, in order to avoid various and conflicting rulings on the previous incidents resolved by this Court, that this case should remain to be tried by this Branch."

The apportionment of cases among the different branches of the same court, as ordained by the Secretary of Justice, must be respected by the Judges in the interests of order and coordination in the dispatch of cases.

Be all that as it may, however, the legal question under consideration has become moot and academic, because on June 22, 1963, or more than a year before the present petition was filed, Republic Act No. 3729 amending Republic Act No. 296, otherwise known as the Judiciary Act of 1948, went into effect, increasing the number of branches of the Court of First Instance in the 14th Judicial District, comprising Cebu, Toledo, and Bohol from 11 to 14 branches, and as ordained in Section 6 of the law -

"Wherever an additional branch or branches of the Court of First Instance is or are established in this Act in the same place where there is an existing court or courts of first instance, all cases already filed in the latter court or courts shall be heard, tried and decided by such latter court or courts." [Underscoring Ours.]

which means that branch V of the Court of First Instance of Cebu shall retain jurisdiction to try and decide the case No. 7278.

WHEREFORE, the petition is dismissed, and the writ of preliminary injunction heretofore issued is hereby dissolved. On equitable considerations, no costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

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