

CENTRAL AZUCARERA DE TARLAC, PLAINTIFF AND APPELLANT, VS. RICARDO DE LEON AND RAFAEL FERNANDEZ, DEFENDANTS AND APPELLEES.

G. R. No. 35246. September 22, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an appeal from the ruling of the Court of First Instance of Manila sustaining the demurrer filed by the defendants on the ground of lack of jurisdiction over the subject matter of the action.

The plaintiff corporation alleges that it entered into a milling contract with the defendant Ricardo de Leon with reference to certain land situated in the municipality of Lubao, Pampanga, whereby the said defendant bound himself, among other things, to execute the necessary deeds to record the contract in the registry of deeds, and both parties agreed to submit all differences to arbitrators and any litigation to the Court of First Instance of Manila. The complaint also alleges that the defendant Rafael Fernandez, being aware that Ricardo de Leon had contracted these obligations, had the land mentioned in the milling contract conveyed to him, and that as the plaintiff had loaned the defendant Ricardo de Leon some money upon the security of the crops, and as his co-defendant Rafael Fernandez is now disposing of such crops, a receiver should be appointed to avoid damage to the plaintiff. Finally, it is alleged that the defendants refuse to appoint the arbitrators whom, according to the contract it is incumbent upon them to appoint, and to execute the deeds required to record the milling contract in the registry. Wherefore, the complaint prays for the appointment of a receiver to take over the land in question, and for an order addressed to the defendants requiring them to appoint two arbitrators and to execute the necessary deeds for the proper recording of said contract. As we have stated, this complaint was demurred to.

The ruling of the trial court was based upon the allegation that the land, which was the subject matter of the contract sought to be enforced, was situated in the Province of Pampanga, and also upon section 377 of the Code of Civil Procedure.

The Courts of First Instance of these Islands are, by virtue of Act No. 136 (section 56) providing for the organization of courts, vested with jurisdiction in all civil actions which involve the title to or possession of real property, or any interest therein, and section 377 of the Code of Civil Procedure, which only determines the venue, did not deprive them of this jurisdiction. These two laws may stand together: there is no inconsistency between them. Section 56 of Act No. 136 sets forth the jurisdiction of such courts; section 377 of the Code named above establishes the procedure for exercising said jurisdiction, and in prescribing the place where actions with reference to real estate are to be brought, it does not determine the jurisdiction over the subject matter but grants a personal privilege to the parties litigant.

"* * * On general principles, and construing the statutes of venue as a whole, the courts have repeatedly held that enactments which fix the venue of a domestic cause in the county in which the subject of action is situated, although perhaps imperative in their terms, are neither jurisdictional nor mandatory, but give to the party, even

when sued for real estate, the privilege of having the litigation conducted in the county in which the land lies. The result is often in seeming conflict with the letter of the statute. Its ratio decidendi, however, is that statutes of venue regulate, not the jurisdiction of the courts, but only their procedure. As respects jurisdiction of the subject matter, the question is not whether a particular parcel of land lies within the territorial district assigned to the trial court, but whether this court is vested with the right to hear and determine the general subject involved in the action. If a court has the right to try title to land, the fact that the particular land in suit lies within another county of the state does indeed give defendant a right to object, but his objection is grounded in a personal privilege." (40 Cyc, 41-43.)

For this reason in *Manila Railroad Co. vs. Attorney-General* (20 Phil., 523), this court defined the scope of section 377 of the Code of Civil Procedure and stated: "The fact that such a provision appears in the procedural law at once raises a strong presumption that it has nothing to do with the jurisdiction of the court over the subject matter. It becomes merely a matter of method, of convenience to the parties litigant. If their interests are best sub-served by bringing in the Court of First Instance of the City of Manila an action affecting lands in the Province of Ilocos Norte, there is no controlling reason why such a course should not be followed. The matter is, under the law, entirely within the control of either party. * * *" The doctrine laid down in this case of *Manila Railroad Co. vs. Attorney-General*, was followed by this Court in the cases of *Cerf vs. Medel* (33 Phil., 37) ; *Katigbak vs. Tai Hing Co.* (52 Phil., 622) and *Marquez Lim Cay vs. Del Rosario* (55 Phil., 962).

It is further alleged in the complaint that the plaintiff corporation and the defendant Ricardo de Leon agreed—and the defendant Rafael Fernandez is aware of this stipulation—that all litigation arising from the milling contract should be brought in the Court of First Instance of Manila. By this agreement the parties waived the legal venue, and such waiver is valid and legally effective, because it was merely a personal privilege they waived and the complaint does not show that the waiver was contrary to public policy or to the prejudice of third person. (Art. 4, par. 2, Civil Code.)

"It is a general principle that a person may renounce any right which the law gives unless such renunciation is expressly prohibited or the right conferred is of such a nature that its renunciation would be against public policy. This right of renunciation is so thoroughly established, and was at the time of the enactment of the Code of Civil Procedure, that its exercise by a defendant in relation to the venue of an action will not be held to have been abridged by section 377 without very clear provision therein to that effect. There being no part of such section express enough to accomplish such result, such section does not abridge the right of the defendant to renounce the privilege conferred upon him thereby. If the parties consent thereto there is no legal reason why the Court of First Instance of Manila may not take cognizance of and determine a controversy affecting the title to or an interest in real estate situated in Ilocos Norte or any other province." (Syllabus No. 8 of the decision in the case cited of *Manila Railroad Co. vs. Attorney-General*, 20 Phil., 523.)

The defendant Ricardo de Leon did not file a brief. Counsel for the appellee Rafael Fernandez contends in his brief that the doctrine laid down in *Manila Railroad Co. vs. Attorney-General*, cited above, is not applicable to the case at bar because in that case it was the plaintiff who petitioned for the dismissal of the case on the ground of wrong venue, while in the instant case it is the defendants who, upon the same ground, ask for dismissal. Counsel contends that only the defendant may object to the venue. We find no ground for this reasoning. The doctrine laid down in the case of *Manila Railroad Co. vs. Attorney-General* has the same force and scope whether the venue is objected to by the defendant or by the plaintiff. It was there held that the *Manila Railroad Co.* was stopped from assailing the jurisdiction of the court to which it had voluntarily submitted. If that party had not thus voluntarily waived discussion of jurisdiction, it would not have lost the privilege of having its case tried and adjudged by the court in the place where the real property involved was situated. (Vide syllabus No. 11, 20 Phil, 526.)

Counsel for the defendant Rafael Fernandez contends that his client cannot be bound by the milling contract in

question, which is not recorded on the back of the Torrens transfer certificate of title to the land, citing section 39 of Act No. 496. The provision cited refers to liens and encumbrances, to real rights, whereas the waiver of venue attributed to the defendant Fernandez refers not to a real right, but to a personal privilege; and there is no special form required to give legal effect to the waiver of rights of this kind, so much so that the mere failure to object to a wrong venue is generally held to constitute a sufficient waiver.

"Failure specifically to object to a wrong venue before demurring or pleading to the merits is generally held sufficient to constitute a waiver." (27 R. C. L., 784.)

According to the complaint under consideration, this defendant, Rafael Fernandez, knowing the obligations that his co-defendant Ricardo de Leon had contracted, entered into negotiations with him, and had the latter convey to him the title to the land mentioned in the milling contract. (Paragraph V, complaint.)

There are other reasons for holding that the Court of First Instance of Manila has acquired jurisdiction over the subject matter of the action as well as jurisdiction over the defendants.

Inasmuch as said court, according to section 56 of Act No. 136, had universal jurisdiction (so-called by this court in the aforementioned case of Manila Railroad Co. vs. Attorney-General) over cases like the present, the general appearance of the defendants conferred upon the Court of First Instance of Manila—which, as stated in the beginning, already had it—full jurisdiction.

"It being a fundamental principle of the law that consent of parties cannot give to a court jurisdiction of the subject matter, and that the question of want of such jurisdiction may be raised at any stage of the proceedings, even on appeal, it follows that a general or voluntary appearance does not give jurisdiction of the subject matter, whatever may be its effect as regards jurisdiction of the person. But where the court possesses jurisdiction of the general class of cases to which a particular suit belongs, it will acquire jurisdiction over the subject matter on the parties' voluntarily coming before the court, the one demanding relief and the other defending. * * *

"Where the court has jurisdiction of the subject matter of the suit, a general or voluntary appearance by defendant is so far equivalent to the service of process as to confer on the court jurisdiction of his person, and thereafter he is estopped to object for the want of such jurisdiction." (4 C. J., 1349-1351; Italics ours.)

That the defendants in this case entered a voluntary appearance is borne out by the record.

The defendant Rafael Fernandez before demurring, filed a pleading objecting to the court's jurisdiction to try the case and praying that the plaintiff's motion for the appointment of a receiver be denied. (Pp. 14-18, Bill of Exceptions.) The defendant Ricardo de Leon in like manner filed a pleading which may be seen on pages 19 and 20 of said Bill of Exceptions. The two defendants then filed separate demurrers, that of Rafael Fernandez based upon lack of jurisdiction over the subject matter, and the failure of the complaint to state facts sufficient to constitute a cause of action, and that of Ricardo de Leon upon the ground that the complaint was ambiguous, unintelligible, and vague, and that the court had no jurisdiction over the subject matter of the action.

These pleadings, even that of Rafael Fernandez which states that it was a special appearance, constitute, in our opinion, a voluntary general appearance. Whenever, as in the instant case, the defendant opposes the plaintiff's motion or demurs upon other grounds than lack of jurisdiction over the person of the defendant, he is deemed thereby to submit to the court, and his appearance is held to be a general and voluntary appearance.

"Acts Recognizing Case as in Court.—1. Generally.— Broadly stated, any action on the part of a defendant, except to object to the jurisdiction over his person which recognizes the case as in court, will constitute a general appearance. Thus a party makes a general appearance by objecting to the jurisdiction of the court over the subject matter of the action, whether objection is made by a motion or by formal pleading. * * * A general appearance is

also made, * * * by contesting or resisting a motion; * * V (4 C. J., 1333, 1334.)

"The filing of a demurrer, unless based solely on the ground of lack of jurisdiction of the person, constitutes a general appearance, whether it is filed to plaintiff's original pleading, to an amended or substituted pleading, or to a counterclaim or a cross complaint." (4 C. J., 1337, 1338; *Italics ours.*)

The order appealed from is hereby reversed, and the judgment rendered in consequence thereof, set aside, and it is ordered that the record be remanded to the court below for further proceedings in the premises.

We make no pronouncement of costs.

Avanceña, C. J., Johnson, Villa-Real, and Imperial, JJ., concur.

STREET, MALCOLM, VILLAMOR, and OSTRAND, JJ., dissent.

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