

PEDRO MARQUEZ LIM CAY (ALIAS PEDRO MARQUEZ LIM), JOSE MARQUEZ LIM, CONCORDIA AGENCY, AND P. MARQUEZ LIM, INC., PETITIONERS, VS. SIMPLICIO DEL ROSARIO, JUDGE OF FIRST INSTANCE OF...

G. R. No. 35441. August 19, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition for a writ of certiorari filed by Pedro Marquez Lim Cay (alias Pedro Marquez Lim), Jose Marquez Lim, Concordia Agency, and P. Marquez Lim, Inc., against Simplicio del Rosario, as Judge of the Court of First Instance of Manila, Koo Ang Cho and Ang Chay, the latter being administratrix of the intestate estate of the late Lim Cay Til, praying for a preliminary injunction against the respondent judge, or his successor, and against each of the other respondents, enjoining them to abstain from taking any action in civil case No. 37757 of the Court of First Instance of Manila until the disposal of the present case, and, after proper proceedings this court declare null and void the order of the respondent judge dated January 27, 1931, which vacated his former order dismissing said case No. 37757 for lack of jurisdiction, and permitted the respondents herein, as plaintiffs in that cause, to file an amended complaint, on the ground that the aforesaid order of January 27, 1931, was rendered not only with serious abuse of discretion and in excess of its authority and powers, but without any jurisdiction whatsoever.

The relevant facts necessary for the solution of the questions raised in the present case and about which there is no controversy, are as follows:

On August 5, 1930, the respondents Koo Ang Cho and Ang Chay filed a complaint against the petitioner Pedro Marquez Lim Cay wherein it is prayed for a judgment compelling the latter to render an accounting of the conjugal property which he held in trust for them, together with all the rents, income, interest and fruits thereof from the dissolution of the conjugal partnership between Pedro Marquez Lim Keng and Koo Ang Cho, and ordering a partition of said conjugal property, in accordance with the law, between the surviving spouse and the children of said Lim Cay Til, represented by their administratrix, and by the defendant, after the latter has rendered an accounting (Exhibit A).

On August 8, 1930, the defendants in that case and petitioners herein telegraphed Carlos A. Imperial, as judge of the Court of First Instance of Manila, asking him to order the sheriff of the judge of the Court of First Instance of Iloilo to accept the bond which they were willing to give for the dissolution of the attachment issued in said case No. 37757 (Exhibit 1).

On August 9, 1930, the plaintiffs in that case and respondents herein amended their complaint, adding the name of Pedro Marquez Lim as an alias to the defendant's name Pedro Marquez Lim Cay (Exhibit B).

On August 11, 1930, said plaintiffs in that case and respondents herein filed another amended complaint including the firm of P. Marquez Lim, Inc., as party defendant, with the consequent allegations (Exhibit C).

On August 19, 1930, the defendants in that cause and petitioners herein filed a demurrer to the complaint on the ground that the facts therein alleged were not sufficient to constitute a cause of action, inasmuch as there was no description of the property sought to be partitioned, and praying that said demurrer be sustained and the complaint dismissed with costs against the plaintiffs (Exhibit D).

On the said day, that is, August 19, 1930, said defendants filed a motion for the dissolution of the attachment levied upon said property (Exhibit 12).

On September 5, 1930, the Court of First Instance of Manila issued an order sustaining said demurrer and requiring the plaintiffs to amend their complaint within thirty days and to describe therein the property sought to be partitioned (Exhibit E).

On September 15, 1930, said defendants filed a motion praying for the approval of the bond they had furnished for the dissolution of the attachment (Exhibit 14).

On October 6, 1930, the plaintiffs in that cause and respondents herein filed an amended complaint describing the property sought to be partitioned, and including Jose Marquez Lim and Concordia Asency as parties defendant (Exhibit F).

On October 16, 1930, the defendants in that cause and petitioners herein filed, by way of special appearance, a motion to dismiss the complaint with costs against the plaintiffs, on the ground that the Court of First Instance of Manila had no jurisdiction to try the case (Exhibit G).

On December 15, 1930, the Court of First Instance of Manila, presided over by the respondent, Simplicio del Rosario, granting said motion, issued an order dismissing the complaint on the ground that he had no jurisdiction to try the case (Exhibit H).

On December 19, 1930, the plaintiffs in that case and respondents herein took exception to that order and filed a motion praying for the reconsideration of said order of December 15, 1930, and that the plaintiffs be granted a period of thirty days within which to amend their complaint (Exhibit I).

On December 23, 1930, the defendants filed in the same case a motion asking that the damages which they sustained by the undue and unjust issuance of the attachment be determined (Exhibit 15).

On December 26, 1930, the defendants in that cause and petitioners herein filed a motion opposing, for the reasons therein given, the plaintiffs' motion for reconsideration, and praying the court to deny the same (Exhibit J).

On January 27, 1931, the Court of First Instance of Manila, then presided over by the said respondent, Simplicio del Rosario, entered an order denying the cancellation of the bond furnished by the defendants and of the *Us pendens* notice made by the registrars of deeds of Iloilo and Occidental Negros on the Torrens titles of the property belonging to the defendants, setting aside the order of dismissal dated December 15, 1930, and granting the plaintiffs a period of thirty days within which to amend their complaint (Exhibit K).

On February 4, 1931, the defendants in that case and petitioners herein, filed a motion praying, for the reasons given, that the ruling of January 27, 1930, be set aside and the order of December 15, 1930, reinstated (Exhibit L).

On February 11, 1931, the plaintiffs in that case and respondents herein, filed a motion opposing, for the reasons therein given, the defendants' motion for reconsideration and praying that the same be denied (Exhibit M).

On February 24, 1931, the plaintiffs in that case and respondents herein, filed another amended complaint eliminating the petition for partition (Exhibit N).

By a ruling dated March 25, 1931, the respondent Simplicio del Rosario, as the judge who had cognizance of the case in the Court of First Instance of Manila, denied the motion for reconsideration filed by the defendants in that case and petitioners herein, on February 4, 1931 (Exhibit O).

On April 7, 1931, the defendants in that case and petitioners herein took exception to the ruling handed down on March 25, 1931 (Exhibit P).

In view of the foregoing facts, the question arises: Did the respondent judge acquire jurisdiction to take cognizance of the complaint filed by the herein respondents as plaintiffs in civil case No. 37757 cited above?

The action instituted in said civil case No. 37757 of the Court of First Instance of Manila is a mixed action, composed of an action or an accounting, which is personal, and another for the partition of conjugal property, which is real.

With respect to the personal aspect of the action there is no question about the respondent judge's jurisdiction. Only jurisdiction over the real aspect need occupy our present attention.

The rule prevailing in the courts of North America, according to the weight of authority, is that the institution of an action in a province not designated by law for that purpose is not a jurisdictional defect, so long as the court has general jurisdiction over the subject matter of the suit, and that statutes fixing the venue of certain actions only confer a personal privilege which may be waived (40 Cyc, 111). This rule has been adopted by this court in *Manila Railroad Co. vs. Attorney-General* ([1911], 20 Phil., 523), in which, interpreting the provisions of section 377 of the Code of Civil Procedure it was held:

"4. ID.; ID.; ID.; ID.; ID.; LAYING OF VENUE IS PROCEDURAL.—The laying of the venue is procedural rather than substantive. It relates to the jurisdiction of the court over the person rather than the subject matter. Provisions of law relating to the same were not intended to take anything from the power of the court but, rather, to grant something to one or both of the parties. They establish a relation, not between the court and the subject matter, but between the plaintiff and the defendant.

* * * * *

"7..ID.; ID.; ID.; ID.; VENUE NOT CONNECTED WITH JURISDICTION; WAIVER BY PARTIES.—Venue is not connected with jurisdiction over the subject matter; and the defendants' rights in respect thereto, as they are conferred by section 377 above referred to, may be waived expressly or by implication. Act No. 136 before referred to having conferred the fullest and completest jurisdiction possible upon Courts of First Instance relative to the real estate of the Islands, section 377 referred to will not be held or construed to restrict or limit that jurisdiction, it not containing express provisions to that end."

According to the above-quoted doctrine, a court of general jurisdiction may rightfully take cognizance of a case instituted in it by mistake on account of the place where the subject matter in litigation is situate, if the party to whom the law has given the personal privilege to object to the jurisdiction of the court does not duly exercise such right, which is thereupon deemed waived. This implied waiver may be made in several ways: By entering a general appearance (40 Cyc, 113); by demurring upon a ground that is not exclusively that of lack of jurisdiction over the person or subject matter by reason of the place where the subject matter is situate (4 Corpus Juris, 1337); praying for the dissolution of an attachment and giving a bond therefor, without entering a special appearance objecting to the jurisdiction of the court over the person of the movant (4 Corpus Juris, 1331); etc.

We have seen how, without objecting to the jurisdiction of the respondent judge to try the case on account of the place where the property sought to be partitioned by the defendants in that case and petitioners herein was situate, they asked for the dissolution of the attachment levied upon such property and gave the proper bond. By these acts, said defendants and petitioners submitted to the jurisdiction of the respondent judge and impliedly waived their privilege to have the case tried in the province where the property is situated.

We have also seen that the then defendants and herein petitioners demurred on the ground that the facts alleged in the complaint did not constitute a cause of action because the property sought to be partitioned was not described, and praying that the said complaint be dismissed. This act is also an implied recognition of the jurisdiction of the respondent judge over their persons and, consequently, an implied waiver of their privilege.

Finally, the then defendants and herein petitioners filed a motion in that case praying that the respondent judge determine the amount of damages caused them by the undue and unjust issuance of the attachment mentioned heretofore. This is a positive remedy which may be validly granted on condition that the court from whom it is solicited has jurisdiction to grant it. The said defendants and petitioners having resorted to the respondent judge for such a remedy, impliedly recognized such jurisdiction in him.

It is true that the then defendants and herein petitioners entered a special appearance, questioning the jurisdiction of the respondent judge to try the cause by reason of the place where the conjugal property to be partitioned was situate, but they did so after having submitted to his jurisdiction as stated above. If in the original complaint the respondent judge's lack of jurisdiction to try the case did not appear, and, consequently, they could not demur through a special appearance, in accordance with section 91 of the Code of Civil Procedure, they could have impugned such jurisdiction by means of an answer with a special appearance in accordance with section 92 of said Code, and having failed to do so, they waived such option, according to section 93 of said Code.

It thus follows that the respondent judge acquired jurisdiction to try the complaint filed in the above-mentioned case.

Having reached this conclusion, it necessarily follows that the respondent judge erred in holding that he had no jurisdiction to try the cause, by reason of the place where the subject matter of the action was situate, and in ordering its dismissal. But even if he had not had jurisdiction, the dismissal need only have applied to the petition for the partition of the conjugal property, for he had jurisdiction to hear the petition for an accounting and could have proceeded to do so. In any event, the respondent judge had jurisdiction to set aside his order of dismissal of December 15, 1930 and to permit the amendment of the complaint.

For the reasons stated above, we are of opinion and so hold: (1) That the filing of a demurrer on the ground that the complaint does not allege facts sufficient to constitute a cause of action; the filing of a motion praying for the dissolution of an attachment without objecting to the jurisdiction of the court over the place where the property is situate, by means of a special appearance; the giving of a bond for the dissolution of said attachment; and the filing of a motion praying for the assessment of damages caused by the undue and unjust issuance of said attachment,— imply a submission to the jurisdiction of the court and a waiver of the privilege to impugn such jurisdiction (*Manila Railroad Co. vs. Attorney-General*, 20 Phil., 523); and (2) that the dismissal of a mixed action with reference to the real action does not deprive the court of jurisdiction to take cognizance of the personal action, and it may continue to hear the same (15 *Corpus Juris*, p. 854, sec. 175).

Wherefore, the petition for certiorari is hereby denied, with costs against the petitioners. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Imperial, JJ., concur.

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