

PATRIA ESUERTE AND HERMINIA JAYME, PETITIONERS, VS. HON. COURT OF APPEALS (ELEVENTH DIVISION), HON. RAFAEL T. MENDOZA, JUDGE, BRANCH VI, COURT AT FIRST INSTANCE OF CEBU AND MA. ...

G.R. No. 53485. February 06, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition, for certiorari with a prayer for preliminary injunction seeks to set aside the decision of the Court of Appeals .in CA G.R. No. SP-08999-R, involving the same parties.

An action for damages was filed by private respondent Beverly Tan against herein petitioners Patria Esuerte and Herminia Jayme with the Court of First Instance (now Regional Trial Court) of Cebu and docketed as Civil Case No. R-17584. The claim for damages arose from an incident involving the parties and summarized by the Court of Appeals, as follows:

"x x x that on September 22, 23 and 27, 1978, private respondent Ma. Beverly Tan, a Junior Resident Physician of Corazon Lacsín-Montelibano Memorial Hospital, Bacolod City, without any justifiable reason shouted at, humiliated and insulted the petitioner, Patria Esuerte, Head Nurse, Medicare Department of the said hospital and as a result of the said incident, said petitioner complained to the Chief of the Hospital, Dr. Teodoro P. Motus, in writing. The other petitioner, Herminia Jayme, who was one of those who were present at the time of the incident also sent a letter to the Chief of the Hospital, Dr. Teodoro Motus, informing the latter of what she had witnessed. As a result thereof, private respondent was advised to explain in writing by the Chief of the Hospital, but private respondent instead of explaining only her side of the incident also complained against the petitioners. The Discipline and Grievance Committee, Corazon Locsin-Montelibano Memorial Hospital, conducted a fact-finding-investigation and later, the Chief of the Hospital, Dr. Teodoro P. Motus, issued a resolution dated November 8, 1978, transmitting the records of the case to the Regional Health Office, No. 6, Jaro, Iloilo City for appropriate action; x x x." (pp. 91-92, Rollo)

Esuerte and Jayme filed a motion to dismiss the complaint on the ground of improper venue and for being premature for failure of Tan to exhaust administrative remedies.

On January 2, 1979, the trial court denied the motion to dismiss. The motion for reconsideration of the denial was likewise denied by the court on February 16, 1979.

Esuerte and Jayme filed a petition for certiorari and prohibition with a prayer for preliminary injunction with the Court of Appeals. On September 18, 1979, the petition was dismissed without pronouncement as to costs. The motion for reconsideration of the decision was likewise denied for lack of merit on February 18, 1980.

The following reasons were advanced by petitioners for the allowance of this petition:

- 1) The Court of Appeals committed gross error and grave abuse of discretion when it dismissed the petition

despite petitioners' overwhelming evidence showing that the venue of private respondent's action (Civil Case No. R-17584) was improperly laid.

2) The Court of Appeals committed gross error and grave abuse of discretion when it dismissed the petition despite petitioners' overwhelming evidence showing that the filing of Civil Case No. R-17584 is premature due to non-exhaustion of administrative remedies.

It is the contention of petitioners that the proper venue of the action filed by Tan should be Bacolod City and not Cebu City. At the time of the filing of her action in court, Tan was actually residing and may be found in Bacolod City. In fact, in her "Statement of Assets and Liabilities," submitted, by Tan to her employer, the Corazon Locsin Montelibano Memorial Hospital, she declared that she is a resident of FRAYU INTERIOR, 6th Street, Bacolod City.

Section 2(b), Rule 4 of the Rules of Court provides:

"Sec. 2. Venue in Courts of First Instance. –

“x x x

"(b) Personal Actions. - All other actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff."

The choice of venue for personal actions cognizable by the Regional Trial Court is given to the plaintiff but not to the plaintiff's caprice because the matter is regulated by the Rules of Court (see *Clavecilla Radio System v. Antillon*, 19 SCRA 379). The rule on venue, like other procedural rules, are designed to insure a just and orderly administration of justice or the impartial and evenhanded determination of every action and proceeding (*Sy v. Tyson Enterprises Inc.*, 19 SCRA 367). The option of the plaintiff in personal actions cognizable by the Regional Trial Court is either the place where the defendant resides or may be found or the place where the plaintiff resides. If plaintiff opts for the latter, he is limited to that place.

"Resides" in the rules on venue, on personal actions means the place of abode, whether permanent or temporary, of the plaintiff or defendants as distinguished from "domicile" which denotes a fixed permanent residence (*Dangwa Transportation Co., Inc. v. Sarmiento*, G.R. No. L-22795, January 31, 1977, 75 SCRA 124). And, in *Hernandez v. Rural Bank of Lucena, Inc.*, G.R. No. L -29791, January 10, 1978, 81 SCRA 75), venue of, personal actions should be at the place of abode or place where plaintiffs actually reside, not in domicile or legal residence.

In *Koh v. CA*, L-40428, December 17, 1975, 70 SCRA 298; 305, We ruled:

"Applying the foregoing observation to the present case, We are fully convinced that private respondent Coloma's protestations of domicile in San Nicolas, Ilocos Norte, based on his manifested intention to return there after the retirement of his wife from government service to justify his bringing of an action for damages against petitioner in the C.F.I. of Ilocos Norte, is entirely of no moment since what is of paramount importance is where he actually resided or where he may be found at the time he brought the action, to comply substantially with the requirements of Sec. 2 (b) of Rule 4, Rules of Court, on venue of personal actions, x x x."

As perspicaciously observed by Justice Moreland, the purpose of procedure is not to restrict the court's jurisdiction over the subject matter but to give it effective facility "in righteous action," "to facilitate and promote the administration of justice" or to insure "just judgments" by means of a fair hearing if the objective is not achieved, then "the administration of justice becomes incomplete and unsatisfactory and lays itself open to criticism." (*Manila Railroad Co. v. Attorney General*, 20 Phil. 523, 530).

There is no question that private respondent as plaintiff in the Civil Case is a legal resident of Cebu City. Her parents live there. However, it cannot also be denied that at the time of her filing of the complaint, against petitioners, she was a temporary resident of Bacolod City. She was then employed with the Corazon Locsin Montelibano Memorial Hospital, Bacolod City, as resident physician. Moreover, the acts complained of were committed in Bacolod City. The private respondents were all residents of Bacolod City at the time of the bringing of the action. Though Tan's employment was only temporary there was no showing when this employment will end. Justice would be better served if, the complaint were heard and tried in Bacolod City where all the parties resided.

The second ground raised by petitioners is devoid of merit. The alleged need by private respondent Tan to exhaust administrative remedies before filing the complaint for damages does not apply to the instant case. Private respondent as plaintiff in the civil case for damages has no administrative remedy available to her. It is true that the same incident complained of in the administrative case filed by petitioners against Tan is the subject of the action for damages filed by Tan against the petitioners in the trial court. However, the cause of action in the administrative case is different from that of the civil case for damages. While the complainant in the administrative case may be a private person, it is the government who is the aggrieved party and no award for damages may be granted in favor of private persons. In the civil action for damages, the trial court's concern is whether or not damages, personal to the plaintiff, were caused by the acts, of the defendants. The civil action for damages can proceed notwithstanding the pendency of the administrative action.

WHEREFORE, the petition is GRANTED. The questioned decision of the Court of Appeals is SET ASIDE. Civil Case No. R-17584 is DISMISSED for improper venue.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco and Griño-Aquino, JJ., concur.

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