

ELMER PEREGRINA, ADELAIDA PEREGRINA AND CECILIA PEREGWNA, PETITIONERS, VS. HON. DOMINGO D. PANIS, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF ZAMBALES & OLONGAPO CITY, BRANCH II...

G.R. No. 56011. October 31, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Respondent Court's assumption of jurisdiction, without prior conciliation proceedings between the parties in the Lupon Tagapayapa, is questioned in this Petition for Certiorari and Prohibition with Preliminary Injunction. We issued a Temporary Restraining Order enjoining respondent Judge from taking further action in the case pending resolution of the controversy.

The Complaint filed below by the SPOUSES Procopio and Carmehta Sanchez against PETITIONERS Elmer, Adclaida and Cecilia, all surnamed Peregrina, is a civil action for damages for alleged disrespect for the dignity, privacy and peace of mind of the SPOUSES under Article 26 of the Civil Code, and for alleged defamation under Article 33 of the same Code.

Admittedly, the parties are actual residents of the same barangay in Olongapo City. In fact, they are neighbors. Unquestionably, too, no conciliation proceedings were filed before the Lupon. It is not surprising then that the Complaint is silent regarding compliance with the mandatory requirement nor does it allege that the dispute falls within the excepted cases.[1]

PETITIONERS, as defendants below, moved for the dismissal of the Complaint. Before filing an Opposition, the SPOUSES applied for a Writ of Preliminary Attachment. Thereafter, the SPOUSES presented their Opposition claiming that, under Section 6(3) of P.D. No. 1508, the parties may go directly to the Courts if the action is coupled with a provisional remedy such as preliminary attachment.

In resolving the Motion to Dismiss, respondent Judge at first, dismissed the Complaint for failure of the SPOUSES to comply with the pre-condition for amicable settlement under P.D. No. 1508. stating that the application for a provisional remedy was merely an afterthought. On motion for reconsideration by the SPOUSES, however, respondent Judge denied PETITIONERS' Motion to Dismiss on the ground that under Rule 57, Section 1 of the Rules of Court, the application for attachment can be made at the commencement of the action or any time thereafter. PETITIONERS now assail that Order of denial before us We uphold PETITIONERS. Section 3 of P.D. No. 1508 specifically provides:

"Disputes between or among persons actually residing in the same barangay shall be brought for amicable settlement before the Lupon of said barangay. x x x"

It is also mandated by Section 6 of the same law:

"SECTION 6. Conciliation, pre-condition to filing of complaint. - No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated. x x x"

Thus, *Morata vs. Go*, 125 SCRA 444 (1983), and *Vda.de Borromeo vs. Pogoy*, 126 SCRA 217(1983) have held that P.D. No. 1508 makes the conciliation process at the Barangay level a condition precedent for the filing of a complaint in Court. Non-compliance with that condition precedent could affect the sufficiency of the plaintiff's cause of action and make his complaint vulnerable to dismissal on the ground of lack of cause of action or prematurity.[2] The condition is analogous to exhaustion of administrative remedies[3], or the lack of earnest efforts to compromise suits between family members[4], lacking which the case can be dismissed,[5]

The parties herein fall squarely within the ambit of P.D, No, 1508. They are actual residents in the same barangay and their dispute does not fall under any of the excepted cases.[6]

It will have to be held, therefore, that respondent Judge erred in reconsidering his previous Order of dismissal on the ground that the provisional remedy of attachment was seasonably filed. Not only was the application for that remedy merely an afterthought to circumvent the law, but also, fundamentally, a Writ of Attachment is not available in a suit for damages where the amount, including moral damages, is contingent or unliquidated.[7] Prior referral to the Lupon for conciliation proceedings, therefore, was indubitably called for.

WHEREFORE, respondent Judge's Order, dated November 17. 1980, is SET ASIDE, and the Complaint in Civil Case No. 2946-0 for damages is DISMISSED, without prejudice. The Temporary Restraining Order heretofore issued is hereby made permanent. No costs.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr. and de la Fuente, JJ., concur.

[1] Sections 2 and 6, P.D. No. 1508.

[2] *Royales vs. Intermediate Appellate Court*, 127 SCRA 470 (1984).

[3] *Gone vs. District Engineer*, 66 SCRA 335 (1975).

[4] *Versoza vs. Versoza*, 26 SCRA 78 (1968).

[5] Sections (g) & (j), Rule 16, Rules of Court.

[6] SECTION 6. Conciliation, pre-condition to filing of complaint.-xxx However, the parties may go directly to court in the following cases:

- (1) Where the accused is under detention;
- (2) Where a person has otherwise been deprived of personal liberty calling for habeas corpus proceedings;
- (3) Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support pendente lite; and
- (4) Where the action may otherwise be barred by the Statute of Limitations.

[7] *Salas vs. Adil*, 90 SCRA 121 (1979).

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