

**JOHN SY AND UNIVERSAL PARTS SUPPLY CORPORATION,
PETITIONERS, VS. TYSON ENTERPRISES, INC., JUDGE GREGORIO G.
PINEDA OF THE COURT OF FIRST INSTANCE OF RIZAL, PASIG
BRANCH XXI AND ...**

G.R. No. 56763. December 15, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case about the venue of a collection suit- On August 29, 1979, Tyson Enterprises, Inc. filed against John Sy and Universal Parts Supply Corporation in the Court of First Instance of Rizal, Pasig Branch XXI, a complaint for the collection of P288,534.58 plus interest, attorney's fees and litigation expenses (Civil Case No. 34302).

It is alleged in the complaint that John Sy, doing business under the tradename, Universal Parts Supply, is a resident of Fuentebella Subdivision, Bacolod City and that his co-defendant, Universal Parts Supply Corporation, allegedly controlled by Sy, is doing business in Bacolod City.

Curiously enough, there is no allegation in the complaint as to the office or place of business of plaintiff Tyson Enterprises, Inc., a firm actually doing business at 1024 Magdalena, now G. Masangkay Street, Binondo, Manila (p. 59, Rollo).

What is alleged is the postal address or residence of Dominador Ti, the president and general manager of plaintiff firm, which is at 26 Xavier Street, Greenhills Subdivision, San Juan, Rizal. The evident purpose of alleging that address and not mentioning the place of business of plaintiff firm was to justify the filing of the suit in Pasig, Rizal instead of in Manila.

Defendants Sy and Universal Parts Supply Corporation first filed a motion for extension of time to file their answer and later a motion for a bill of particulars. The latter motion was denied. Then, they filed a motion to dismiss on the ground of improper venue.

They invoked the provision of Section 2 (b), Rule 4 of the Rules of Court that personal 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."

To strengthen that ground, they also cited the stipulation in the sales invoice that "the parties expressly submit to the jurisdiction of the Courts of the City of Manila for any legal action arising out of the transaction which stipulation is quoted in paragraph 4 of plaintiff's complaint.

The plaintiff opposed the motion to dismiss on the ground that the defendants had waived the objection based on improper venue because they had previously filed a motion for a bill of particulars which was not granted.

The trial court denied the motion to dismiss on the ground that by filing a motion for a bill of particulars the defendants waived their objection to the venue. That denial order was assailed in a petition for certiorari and

prohibition in the Court of Appeals which issued on July 29, 1980 a restraining order, enjoining respondent judge from acting on the case. He disregarded the restraining order (p. 133, Rollo).

The Appellate Court in its decision of October 6, 1980 dismissed the petition. It ruled that the parties did not intend Manila as the exclusive venue of the actions arising under their transactions and that since the action was filed in Pasig, which is near Manila, no useful purpose would be served by dismissing the same and ordering that it be filed in Manila (Sy vs. Pineda, CA-G.R. No. SP-10775). That decision was appealed to this Court.

There is no question that the venue was improperly laid in this case. The place of business of plaintiff Tyson Enterprises, Inc., which for purposes of venue is considered as its residence (18 C.J.S. 583; Clavecilla Radio System vs. Antillon, L-22238, February 18, 1967, 19 SCRA 379), is in Manila and not in Rizal. The residence of its president is not the residence of the corporation because a corporation has a personality separate and distinct from that of its officers and stockholders.

Consequently, the collection suit should have been filed in Manila, the residence of plaintiff corporation and the place designated in its sales invoice, or it could have been filed also in Bacolod City, the residence of defendant Sy.

We hold that the trial court and the Court of Appeals erred in ruling that the defendants, now the petitioners, waived their objection to the improper venue. As the trial court proceeded in defiance of the Rules of Court in not dismissing the case, prohibition lies to restrain it from acting in the case (Enriquez vs. Macadaeg, 84 Phil. 674).

Section 4, Rule 4 of the Rules of Court provides that "when improper venue is not objected to in a motion to dismiss, it is deemed waived" and it can no longer be pleaded as an affirmative defense in the answer (Sec. 5, Rule 16).

In this case, the petitioners, before filing their answer, filed a motion to dismiss based on improper venue. That motion was seasonably filed (Republic vs. Court of First Instance of Manila, L-30839, November 28, 1975, 68 SCRA 231, 239). The fact that they filed a motion for a bill of particulars before they filed their motion to dismiss did not constitute a waiver of their objection to the venue.

It should be noted that the provision of Section 377 of the Code of Civil Procedure that "the failure of a defendant to object to the venue of the action at the time of entering his appearance in the action shall be deemed a waiver on his part of all objection to the place or tribunal in which the action is brought" is not found in the Rules of Court.

And the provision of Section 4 of Rule 5 of the 1940 Rules of Court that "when improper venue is not objected to prior to the trial, it is deemed waived" is not reproduced in the present Rules of Court.

To repeat, what Section 4 of Rule 4 of the present Rules of Court provides is that the objection to improper venue should be raised in a motion to dismiss seasonably filed and, if not so raised, then the said objection is waived. Section 4 does not provide that the objection based on improper venue should be interposed by means of a special appearance or before any pleading is filed.

The rules on venue, like the 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. Obviously, this objective will not be attained if the plaintiff is given unrestricted freedom to choose the court where he may file his complaint or petition.

The choice of venue should not be left to the plaintiff's whim or caprice. He may be impelled by some ulterior motivation in choosing to file a case in a particular court even if not allowed by the rules on venue.

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 that objective is not achieved, then "the administration of justice becomes incomplete and unsatisfactory and lays itself open to grave criticism." (Manila Railroad Co. vs. Attorney General, 20 Phil. 523, 530.)

The case of *Marquez Urn Cay vs. Del Rosario*, 55 Phil. 962, does not sustain the trial court's order of denial because in that case the defendants, before filing a motion to dismiss on the ground of improper venue, interposed a demurrer on the ground that the complaint does not state a cause of action. Then, they filed a motion for the dissolution of an attachment, posted a bond for its dissolution and later filed a motion for the assessment of the damages caused by the attachment. All those acts constituted a submission to the trial court's jurisdiction and a waiver of the objection based on improper venue under Section 377 of the Code of Civil Procedure.

The instant case is similar to *Evangelista vs. Santos*, 86 Phil. 387, where the plaintiffs sued the defendant in the Court of First Instance of Rizal on the assumption that he was a resident of Pasay City because he had a house there. Upon receipt of the summons, the defendant filed a motion to dismiss based on improper venue. He alleged under oath that he was a resident of Iloilo City.

This Court sustained the dismissal of the complaint on the ground of improper venue, because the defendant was really a resident of Iloilo City. His Pasay City residence was used by his children who were studying in Manila. Same holding in *Casilan vs. Tomassi*, 90 Phil. 765; *Corre vs. Corre*, 100 Phil. 321; *Calo vs. Bislig Industries, Inc.*, L-19703, January 30, 1967, 19 SCRA 173; *Adamos vs. J.M. Tuason, Co., Inc.*, L-21957, October 14, 1968, 25 SCRA 529.

Where one Cesar Ramirez, a resident of Quezon City, sued in the Court of First Instance of Manila Manuel F. Portillo, a resident of Caloocan City, for the recovery of a sum of money, the trial court erred in not granting Portillo's motion to dismiss the complaint on the ground of improper venue. This Court issued the writ of prohibition to restrain the trial court from proceeding in the case (*Portillo vs. Judge Reyes and Ramirez*, 113 Phil. 288).

WHEREFORE, the decision of the Court of Appeals and the order of respondent judge denying the motion to dismiss are reversed and set aside. The writ of prohibition is granted. Civil Case No. 34302 should be considered dismissed without prejudice to refile it in the Court of First Instance of Manila or Bacolod City at the election of plaintiff which should be allowed to withdraw the documentary evidence submitted in that case. All the proceedings in said case, including the decision, are also set aside. Costs against Tyson Enterprises, Inc.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero and Abad Santos, JJ., concur.

De Castro, J., I concur, because as stated in the main opinion, the residence of the plaintiff is not alleged in the complaint. The fact of improper venue is, therefore, not manifest on the face of the complaint. Were it so manifest, I would say, along with Justice Escolin, that, in filing a motion for a bill of particulars, petitioners as defendants in Civil Case No. 34302 of the Court of First Instance of Rizal, waived objection to improper venue.

Escolin, J., I dissent. It is my view that petitioners, by filing a motion for a bill of particulars, had submitted themselves to the jurisdiction of the respondent court, and had thus waived their objection to the venue of action.

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