

**LEONOR P. FERNANDEZ, CONNIE P. HALL, BERNARDO PERALTA AND
MARIANO FERNANDEZ, PETITIONERS, VS. THE HONORABLE
FRANCIS J. MILITANTE, IN HIS CAPACITY AS JUDGE, COURT OF
FIRST INSTAN...***G.R. No. 59801. May 31, 1988*

Ponente: CORTES, J.

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The case at bar involves the assumption of jurisdiction by a trial court over a complaint without prior conciliation proceedings between the parties before the Lupong Tagapayapa as prescribed by Pres. Dec. No. 1508 (Katarungang Pambarangay Law). This Court issued a Temporary Restraining Order on March 9, 1982 enjoining respondent Judge from taking further action in the case during the pendency of the petition.

The facts are simple. Private respondents brought action against petitioners before the then Court of First Instance of Cebu, Branch XII, for "Declaration of Nullity of Deed of Sale and of Transfer Certificates of Title" and docketed as Civil Case No. R-20105. Petitioners filed on March 9, 1981 their answer raising special and affirmative defense including a counter-claim. Subsequently, the case was set for pre-trial and on April 15, 1981, the first pre-trial conference was held.

On May 27, 1981, petitioners filed a Motion to Dismiss on the ground that the court never acquired jurisdiction over the case for non-compliance with the requirement of conciliation before the Lupong Tagapayapa. The trial court overruled the arguments raised by the petitioners and denied their motion on June 17, 1981. Motion for reconsideration was also denied for being filed out of time. Hence, this petition for certiorari and prohibition with preliminary injunction.

The present petition is premised on the argument that inasmuch as the complaint before the trial court is a proper subject of conciliation before the Lupong Tagapayapa, non-compliance with such requirement is a jurisdictional defect which renders the complaint vulnerable to dismissal.

The parties do not dispute the fact that the case now before the lower court was never referred to the Lupong Tagapayapa for conciliation. This Court has repeatedly ruled that the conciliation process at the Barangay level is a condition precedent for filing of actions before the regular trial courts and ordinarily, non-compliance therewith could effect the sufficiency of plaintiff's cause of action and make his complaint vulnerable to dismissal on the ground of lack of cause of action or prematurity [*Royales v. Intermediate Appellate Court*, G.R. No. 65072, January 31, 1984, 127 SCRA 470; *Vda. de Borromeo v. Pogoy*, G.R. No. 63277, November 29, 1983, 126 SCRA 217; *Morata v. Go*, G.R. No. 62339, October 27, 1983, 125 SCRA 444]. However, failure to raise it as a defense in the answer or in a timely motion to dismiss is deemed a waiver of such precondition.

The record shows that petitioners' answer to the complaint never raised the defense that the private respondents' complaint did not comply with the conciliation process prescribed by Pres. Dec. No. 1508. The failure to raise

said defense in the answer is deemed a waiver thereof which no belated motion to dismiss can rectify.

Moreover, there is no merit to the petitioners' contention that private respondents' failure to comply with the conciliation process is fatal to the trial court's jurisdiction. The conciliation procedure under Pres. Dec. No. 1508 is not a jurisdictional requirement and its non-compliance cannot affect the jurisdiction which the court has already acquired over the subject matter or over the person of the defendant. [Gonzales v. Court of Appeals, G.R. Nos. L-59495-97, June 26, 1987, 151 SCRA 287; Millare v. Hernando, G.R. No. L-55480, June 30, 1987, 151 SCRA 484].

It is likewise noteworthy that petitioners have invoked the jurisdiction of the respondent trial court by filing an answer and seeking affirmative relief from it. They cannot now repudiate that jurisdiction to which they have submitted themselves voluntarily [Royales v. Intermediate Appellate Court, citing Tijam v. Sibonghanoy, G.R. No. L-21450, April 15, 1968, 23 SCRA 29].

Even assuming that petitioners' motion to dismiss had been filed on time, it is doubtful whether the Lupon has authority over the controversy considering allegations regarding the residence of the parties involved. Petitioners and private respondents are admittedly all residents of Jones Avenue, Cebu City, with the exception of petitioner Connie P. Hall who is a citizen of the United States of America and a resident of Greenberry Drive, La Puente, California, U.S.A. The ruling in the case of Tavora v. Velasco [G.R. No. 60367, September 30, 1982, 117 SCRA 613] resolves this point.

. . . Section 2 (of Pres. Dec. No. 1508) specifies the conditions under which the Lupon of a barangay "shall have authority" to bring together the disputants for amicable settlement of their dispute. The parties must be "actually residing in the same city or municipality." At the same time, Section 3 — while reiterating that the disputants must be "actually residing in the same barangay" or in "different barangays within the same city or municipality unequivocally declares that the Lupon shall have "no authority" over disputed "involving parties who actually reside in barangays of different cities or municipalities," except where such barangays adjoin each other.

Thus, by express statutory inclusion and exclusion, the Lupon shall have no jurisdiction over disputes where the parties are not actual residents of the same city or municipality, except where the barangays in which they actually reside adjoin each other. [*Italics supplied*].

WHEREFORE, the petition is hereby DISMISSED and the order of the respondent trial court in Civil Case No. R-20105 denying petitioners' motion to dismiss is AFFIRMED. The Temporary Restraining Order issued by this Court on March 9, 1982 is hereby LIFTED and SET ASIDE.

SO ORDERED.

Yap, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Griño-Aquino, JJ., concur.

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