

VALLACAR TRANSIT, INC. AND MARIO HAMBALA, PETITIONERS, VS. CELESTINO YAP AND JENNY YAP AND HON. VICENTE A. HIDALGO (FORMERLY PRESIDED BY HON. EUTROPIO MIGRIÑO) PRESIDING JUDGE, ...

G.R. No. 61308. December 29, 1983

Ponente: ESCOLIN J.

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ESCOLIN J.:

Vallacar Transit, Inc., Vallacar for short, and its driver Mario Hambala filed this petition to annul the order of the then Court of First Instance of Agusan del Sur, dated January 7, 1982, which dismissed their third party complaint against private respondent Hanil Development Co., Ltd. in Civil Case No. 264, entitled "Celestino Yap, et al. vs. Vallacar Transit, Inc., et al."

It appears that on May 16, 1979, Bus No. 646 of Vallacar, with Mario Hambala at the wheel, figured in a collision with a dump truck owned by Hanil Development Co., Ltd., Hanil for short, at the highway at Bo. Talisay, Gingoog City. As a result of the accident, private respondents Celestino Yap and Jenny Yap passengers of the Vallacar Bus, suffered physical injuries, while Eddie Gonzaga, driver of the dump truck, died.

On August 23, 1979, respondents Yap filed an action for damages against Vallacar, Mario Hambala and Hanil in the Court of First Instance of Agusan del Sur, docketed as Civil Case No. 264. The cause of action against Vallacar was based on culpa contractual, while that against Hanil was on quasi-delict.[1]

On October 21, 1979, Vallacar and Mario Hambala filed their answer with cross-claim against Hanil, laying the blame for the accident on the latter's driver Eddie Gonzaga.[2]

Respondents Celestino Yap and Jenny Yap subsequently filed an undated motion to discharge Hanil as party-defendant in said case, on the ground that the latter, whose address was unknown, could not be served with summons. On November 18, 1980, the Court of First Instance of Agusan del Sur issued an order discharging Hanil as defendant.

Meanwhile, on September 30, 1979, Hanil filed a separate complaint for damages against Vallacar before the Court of First Instance of Misamis Oriental, docketed therein as Civil Case No. 6742. Hanil alleged that the accident of May 16, 1979, which resulted in the death of its (Hanil's) driver Eddie Gonzaga and the destruction of its dump truck, was due to the reckless and gross negligence of Vallacar's driver.[3]

On November 5, 1979, Vallacar filed its answer with counter claim in Civil Case No. 6742, alleging that the mishap was due solely to the fault of Hanil's driver and that it exercised due diligence in the selection, recruitment and supervision of its employees.[4]

On August 8, 1981 Vallacar filed in Civil Case No. 264 of the Agusan del Sur Court a motion for leave to file a third party-complaint against Hanil. Said motion was granted by the court. In its third party complaint, Vallacar

sought to hold Hanil liable for damages suffered by its injured passengers as well as its vehicle.[5]

On November 20, 1981, Hanil moved to dismiss the aforesaid third party complaint advancing, as ground therefor, the pendency of Civil Case No. 6742 in the Court of First Instance of Misamis Oriental, involving the same parties, and the same cause and reliefs sought.[6] The Court of First Instance of Agusan del Sur, finding merit in the motion, issued the challenged order of January 7, 1982, dismissing petitioners' third party complaint on ground of *litis pendentia*. [7]

The respondent court pointed out that petitioners, as third party plaintiffs in Civil Case No. 264, alleged gross imprudence and lack of foresight on the part of the respondent Hanil; that identical averments were made in their answer with counterclaim in Civil Case No. 6742; that similarly, respondent Hanil, as plaintiff in Civil Case No. 6742, averred that Vallacar and its driver were guilty of negligence in said mishap; and that the main issue in both cases involved the determination of the party blamable for the accident.

While the respondent is technically correct in dismissing petitioners' third party complaint, such dismissal will not obviate the practical difficulties that may arise in the adjudication of these cases.

We agree with the observation of respondent court that, as between the third party complaint filed by petitioners in Civil Case No. 264 and respondent Hanil's complaint in Civil Case No. 6742, there is identity of parties as well as identity of rights asserted, and that any judgment that may be rendered in one case will amount to *res judicata* in the other. But the pendency of these two (2) cases in two different courts and the possibility of conflicting decisions being rendered by them are factors that will not subserve the orderly administration of justice.

Civil Case No. 6742 should therefore be consolidated and tried with Civil Case No. 264 of the Regional Trial Court of Agusan del Sur. The latter court, to Our mind, is the more suitable forum for the determination of the controversy since Civil Case No. 264, instituted by respondents Yap against Vallacar, Hambala and Hanil, had already been pending before the filing of Civil Case No. 6742. Such consolidation is desirable in order to prevent confusion, to avoid multiplicity of suits, and to save unnecessary cost and expense. Needless to add, this procedure is well in accord with the principle that the rules of procedure "shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding." [8]

WHEREFORE, Civil Case No. 6742 is hereby ordered consolidated with Civil Case No. 264 in the Regional Trial Court of Agusan del Sur. The Regional Trial Court of Misamis Oriental is directed to forthwith transfer the records of Civil Case No. 6742 to the Regional Trial Court of Agusan del Sur. No costs.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.
Makasiar (Chairman), J., no part.

[1] Annex A.

[2] Annex B.

[3] Annex L.

[4] Annex I.

[5] Annexes G and J.

[6] Annex L.

[7] Annex 2.

[8] Rule 1, Sec. 2, Rules of Court.

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