

JESUS DACOYCOY, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, HON. ANTONIO V. BENEDICTO, EXECUTIVE JUDGE, REGIONAL TRIAL COURT, BRANCH LXXI, ANTIPOLO, RIZAL, AND RUFINO DE ...

G.R. No. 74854. April 02, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

May the trial court *motu proprio* dismiss a complaint on the ground of improper venue? This is the issue confronting the Court in the case at bar.

On March 22, 1983, petitioner Jesus Dacoycoy, a resident of Balanti, Cainta, Rizal, filed before the Regional Trial Court, Branch LXXI, Antipolo, Rizal, a complaint against private respondent Rufino de Guzman praying for the annulment of two (2) deeds of sale involving a parcel of riceland situated in Barrio Estanza, Lingayen, Pangasinan, the surrender of the produce thereof and damages for private respondent's refusal to have said deeds of sale set aside upon petitioner's demand.

On May 25, 1983, before summons could be served on private respondent as defendant therein, the RTC Executive Judge issued an order requiring counsel for petitioner to confer with respondent trial judge on the matter of venue. After said conference, the trial court dismissed the complaint on the ground of improper venue. It found, based on the allegations of the complaint, that petitioner's action is a real action as it sought not only the annulment of the aforesated deeds of sale but also the recovery of ownership of the subject parcel of riceland located in Estanza, Lingayen, Pangasinan, which is outside the territorial jurisdiction of the trial court.

Petitioner appealed to the Intermediate Appellate Court, now Court of Appeals, which in its decision of April 11, 1986,[1] affirmed the order of dismissal of his complaint.

In this petition for review, petitioner faults the appellate court in affirming what he calls an equally erroneous finding of the trial court that the venue was improperly laid when the defendant, now private respondent, has not even answered the complaint nor waived the venue.[2]

Petitioner claims that the right to question the venue of an action belongs solely to the defendant and that the court or its magistrate does not possess the authority to confront the plaintiff and tell him that the venue was improperly laid, as venue is waivable. In other words, petitioner asserts, without the defendant objecting that the venue was improperly laid, the trial court is powerless to dismiss the case *motu proprio*.

Private respondent, on the other hand, maintains that the dismissal of petitioner's complaint is proper because the same can "readily be assessed as (a) real action." He asserts that "every court of justice before whom a civil case is lodged is not even obliged to wait for the defendant to raise that venue was improperly laid. The court can take judicial notice and *motu proprio* dismiss a suit clearly denominated as real action and improperly filed before it. x x x the location of the subject parcel of land is controlling pursuant to Sec. 2, par. (a), Rule 4 of the New Rules of

Court x x x”[3]

We grant the petition.

The motu proprio dismissal of petitioner's complaint by respondent trial court on the ground of improper venue is plain error, obviously attributable to its inability to distinguish between jurisdiction and venue.

Questions or issues relating to venue of actions are basically governed by Rule 4 of the Revised Rules of Court. It is said that the laying of venue is procedural rather than substantive. It relates to the jurisdiction of the court over the person rather than the subject matter. Provisions relating to venue establish a relation between the plaintiff and the defendant and not between the court and the subject matter. Venue relates to trial not to jurisdiction, touches more of the convenience of the parties rather than the substance of the case.[4]

Jurisdiction treats of the power of the court to decide a case on the merits; while venue deals on the locality, the place where the suit may be had.[5]

In Luna vs. Carandang,[6] involving an action instituted before the then Court of First Instance of Batangas for rescission of a lease contract over a parcel of agricultural land located in Calapan, Oriental Mindoro, which complaint said trial court dismissed for lack of jurisdiction over the leased land, we emphasized:

"(1) A Court of First Instance has jurisdiction over suits involving title to, or possession of, real estate wherever situated in the Philippines, subject to the rules on venue of actions (Manila Railroad Company vs. Attorney-General, etc., et al., 20 Phil. 523; Central Azucarera de Tarlac vs. De Leon, et al., 56 Phil. 169; Navarro vs. Aguila, et al., 66 Phil. 604; Lim Cay, et al. vs. Del Rosario, etc., et al., 55 Phil. 692);

“(2) Rule 4, section 2, of the Rules of Court requiring that an action involving real property shall be brought in the Court of First Instance of the province where the land lies is a rule on venue of actions, which may be waived expressly or by implication.”

In the instant case, even granting for a moment that the action of petitioner is a real action, respondent trial court would still have jurisdiction over the case, it being a regional trial court vested with the exclusive original jurisdiction over “all civil actions which involve the title to, or possession of, real property, or any interest therein x x x” in accordance with Section 19 (2) of Batas Pambansa Blg. 129. With respect to the parties, there is no dispute that it acquired jurisdiction over the plaintiff Jesus Dacoycoy, now petitioner, the moment he filed his complaint for annulment and damages. Respondent trial court could have acquired jurisdiction over the defendant, now private respondent, either by his voluntary appearance in court and his submission to its authority, or by the coercive power of legal process exercised over his person.[7]

Although petitioner contends that on April 28, 1963, he requested the City Sheriff of Olongapo City or his deputy to serve the summons on defendant Rufino de Guzman at his residence at 117 Irving St., Tapinac, Olongapo City,[8] it does not appear that said service had been properly effected or that private respondent had appeared voluntarily in court[9] or filed his answer to the complaint.[10] At this stage, respondent trial court should have required petitioner to exhaust the various alternative modes of service of summons under Rule 14 of the Rules of Court, i.e., personal service under Section 7, substituted service under Section 8, for service by publication under Section 16 when the address of the defendant is unknown and cannot be ascertained by diligent inquiry.

Dismissing the complaint on the ground of improper venue is certainly not the appropriate course of action at this stage of the proceeding, particularly as venue, in inferior courts as well as in the courts of first instance (now RTC), may be waived expressly or impliedly. Where defendant fails to challenge timely the venue in a motion to dismiss as provided by Section 4 of Rule 4 of the Rules of Court, and allows the trial to be held and a decision to be rendered, he cannot on appeal or in a special action be permitted to challenge belatedly the wrong venue,

which is deemed waived.[11]

Thus, unless and until the defendant objects to the venue in a motion to dismiss, the venue cannot be truly said to have been improperly laid, as for all practical intents and purposes, the venue, though technically wrong, may be acceptable to the parties for whose convenience the rules on venue had been devised. The trial court cannot pre-empt the defendant's prerogative to object to the improper laying of the venue by *motu proprio* dismissing the case.

Indeed, it was grossly erroneous for the trial court to have taken a procedural short-cut by dismissing *motu proprio* the complaint on the ground of improper venue without first allowing the procedure outlined in the Rules of Court to take its proper course. Although we are for the speedy and expeditious resolution of cases, justice and fairness take primary importance. The ends of justice require that respondent trial court faithfully adhere to the rules of procedure to afford not only the defendant, but the plaintiff as well, the right to be heard on his cause.

WHEREFORE, in view of the foregoing, the decision of the Intermediate Appellate Court, now Court of Appeals, dated April 11, 1986, is hereby nullified and set aside. The complaint filed by petitioner before the Regional Trial Court of Antipolo, Branch LXXI is revived and reinstated. Respondent court is enjoined to proceed therein in accordance with law.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Penned by Presiding Justice Ramon G. Gaviola, Jr. and concurred in by Associate Justices Ma. Rosario Quetulio-Losa and Leonor Ines Luciano.

[2] Page 4, Rollo.

[3] p. 69, Rollo.

[4] *Manila Railroad Co. vs. Attorney General*, 20 Phil. 523.

[5] 67 C.J. 12.

[6] G.R. No. L-27145, November 29, 1968, 26 SCRA 306

[7] *Banco Español-Filipino vs. Palanca*, 37 Phil. 921.

[8] Page 3, Rollo.

[9] Section 23, Rule 14, Rules of Court.

[10] Section 6, Rule 6; Section 1, Rule 11, Rules of Court.

[11] *Ocampo vs. Domingo*, 38 SCRA 134 (1971).

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