

CARLOS BELL RAYMOND AND AGUSTIN ALBA, PETITIONERS, VS. HON. COURT OF APPEALS, HON. RICARDO M. ILARDE, ETC., AND SANTIAGO BITERA, RESPONDENTS.*G.R. No. 80380. September 28, 1988*

Ponente: NARVASA, J.

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The petition for review on certiorari filed with this Court by the petitioners Raymond and Alba seeks reversal of the decision of the Court of Appeals which dismissed for lack of merit their petition for certiorari and prohibition; that petition, in turn, had assailed the refusal of the respondent Judge to dismiss the action filed against petitioners by private respondent Santiago Bitera on the ground of improper venue. By Resolution dated February 1, 1988, this Court required the respondents to comment on the petition within a ten-day period which expired on February 29, 1988. Upon motions timely filed by private respondent, said period was extended by a total of thirty (30) days. This notwithstanding, no word has been received from private respondent on whom is reposed, by established rule, the function of sustaining the challenged action of the respondent Courts. Be this as it may, since the relevant facts are not and cannot be disputed, and only one legal issue is raised, the Court has resolved to give due course to the petition and decide that issue on the merits.

A complaint for damages was filed with the Regional Trial Court of Iloilo by Santiago Bitera against Carlos Bell Raymond and Agustin Alba. The latter moved to dismiss the action on the ground of improper venue. They argued that although Bitera's complaint gives his address as 240-C Jalandoni Street, Iloilo City, he is, and for many years has been, actually residing at the so-called UPSUMCO Compound, Bais City, he being the officer-in-charge of the business firm known as UPSUMCO, which has offices at Bais and Manjuyod, Negros Oriental, and that, indeed, his affidavit, appended to his complaint, contains his affirmation that he is "a resident of the UPSUMCO Compound, City of Bais," and shows (in the jurat) that his residence certificate had been issued at Manjuyod, Negros Oriental. The Trial Court however denied their motion to dismiss. They then filed a special civil action of certiorari and prohibition with the Court of Appeals. But, as above stated, they fared no better in that court. It dismissed their petition, saying:

"Why Bitera chose to file this action for damages in Iloilo City instead of in Dumaguete City is beyond this Court, even as the pleadings show that plaintiff is actually residing at UPSUMCO, the defendants are both residents of UPSUMCO, the cause of damages arose out of a controversy in the UPSUMCO and because of plaintiff's and defendants' positions as officer and board members of UPSUMCO.

"While it would seem the height of inequity were We to allow plaintiff to bring suit in Iloilo City instead of in Dumaguete City on the basis of his allegation that his permanent place of abode is in Iloilo City and he only temporarily resides in Bais City, Dumaguete City, it is, however, the plaintiff who is given the right to elect where to bring his action, As plaintiff chose his legal domicile or residence, We cannot compel him to bring suit in the place where he has his temporary residence."[1]

According to Section 2, Rule 4 of the Rules of Court, personal actions, such as Bitera's, "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." The term, where a person "resides," or "residence", may be understood as synonymous with domicile: as referring to a person's "permanent home, the place to which, whenever absent for business or pleasure, one intends to return," and it has been held that "a man can have but one domicile at a time." [2] The term may also be taken in another sense, and it is this which is germane to the determination of venue, as meaning a person's actual residence, different and distinct from his permanent one, or domicile, where he was born and reared, and, e.g., where he usually casts his vote during elections. Thus this Court has held that venue was improperly laid in a case where the complaint was filed in the Court of First Instance of Ilocos Norte by the plaintiff who was born and reared in that province, but whose actual residence at time of suit was admittedly at Quezon City. [3] In another case, where the plaintiffs instituted a personal action [4] in the Court of First Instance at Lipa City, claiming that their domicile was San Juan, Batangas, the Court declared the venue to be erroneously selected in view of the fact that the plaintiffs' place of abode, where they actually reside, was at Quezon City. [5]

Garcia Fule v. Court of Appeals [6] definitively explained and settled the meaning to be put to the words "reside" or "residence" as used in the venue provisions:

"2. But, the far-ranging question is this: What does the term 'resides' mean? Does it refer to the actual residence or domicile of the decedent at the time of his death? We lay down the doctrinal rule that the term 'resides' connotes *ex vi termini* 'actual residence' as distinguished from 'legal residence or domicile.' This term 'resides,' like the terms 'residing' and 'residence,' is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed. In the application of venue statutes and rules -- Section 1, Rule 73 of the Revised Rules of Court is of such nature -- residence rather than domicile is the significant factor. Even where the statute uses the word 'domicile' still it is construed as meaning residence and not 'domicile' in the technical sense. Some cases make a distinction between the terms 'residence' and 'domicile' but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term 'inhabitant.' In other words, 'resides' should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. In this popular sense, the term means merely residence, that is, personal residence, not legal residence or domicile. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile. ***." [7]

It therefore clearly appears that both the respondent Judge and the Court of Appeals, the former in the first instance and the latter on review, committed reversible legal error, if not grave abuse of discretion, in not dismissing Bitera's action despite the fact that its venue had clearly been improperly laid, and had been seasonably objected to on that ground by petitioners in a motion to dismiss. [8]

WHEREFORE, the questioned Order of the respondent Judge denying petitioners' motion to dismiss and the Decision of the Court of Appeals affirming said order are REVERSED AND SET ASIDE. Civil Case No. 17354 of the Regional Trial Court of Iloilo City, Branch XXVI, is hereby DISMISSED on the ground that venue has been improperly laid. No pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 15-16

[2] See Feria, J., Civil Procedure, 1969 ed., p. 175, citing Evangelista v. Santos, 86 Phil. 387, 393, which in turn cites 61 C.J., pp. 123-124, Alcantara v. Secretary of Interior, 61 Phil. 459 and Moran's Comments, Vol. 1, p. 104;

reference being also made to *Corre v. Corre*, Nov. 13, 1956, 53 O.G. 642

[3] *Koh v. C.A.*, 70 SCRA 298

[4] To compel their mortgagee to accept payment of the redemption price

[5] *Hernandez v. Rural Bank of Lucena*, 81 SCRA 75

[6] 74 SCRA 189, 199, citing *McGrath v. Stevenson*, 77 P2d 608; *In re Jones*, 19 A 2d 280; 77 C.J.S. 286; 92 C.J.S. 813-814; *Cuenco v. Court of Appeals*, 53 SCRA 377.

[7] Emphasis supplied

[8] Sec. 4, Rule 4, and Sec. 1 (c), Rule 16, Rules of Court

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