Supreme Court E-Library

It is significant and revealing that petitioner himself admits in his Memorandum, p. 231, Records, that "(o)f course, petitioner, if finally sued in London, (he) could avail himself of remedies available to him." He adds that "such a procedure, if not entirely time-consuming, would actually beg the issue on hand. Petitioner believes that his defenses on the claims ventilated in the court *a quo* can be appreciated only here; elsewhere in view of the peculiar circumstances surrounding Lepanto's claims the basic issue will be obfuscated and perhaps even obliterated by arguments on procedural niceties." However, such a procedural problem is no legal ground to compel allowance of and insist on his intervention.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby dismissed. No costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, De Castro, and *Melencio-Herrera, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-42800. July 30, 1979]

LIM SE and BENITO LIM, *petitioner, vs.* **HON. MANUEL A. ARGEL, Presiding Judge of the Court of First Instance of Rizal, Caloocan City Branch XXXV, JUANA SAN PEDRO-OCAMPO, FRANCISCO SAN PEDRO, GENARO BULOTANO and THE SHERIFF OF BAGUIO CITY and/or his deputy/deputies or DEPUTY SHERIFF ESTEBAN S. PAR,** *respondents.*

Supreme Court E-Library

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; VENUE; RATIONALE BEHIND THE RULE ON VENUE OF REAL ACTIONS.**— Those rules on the venue of real actions are designed to prevent courts sitting in places other than the place where the real property is situated from taking cognizance of actions regarding the possession or ownership of that particular real property. Those rules are dictated by convenience. They forestall the rendition of conflicting decisions by different courts on the issue of ownership or possession.

2. **ID.; ID.; ID.; WISDOM AND EXPEDIENCY OF THE RULES ON VENUE, ILLUSTRATED IN CASE AT BAR.**— The wisdom and expediency of those rules are illustrated in this case where Lim Se, as the tenant of an apartment located in Baguio, has been harassed by the private respondents with an ejectment suit filed *in Cavite* and another ejectment suit filed in *Caloocan City*. At the same time, Lim Se is a defendant in a *Baguio case* where he is being required to recognize the estate of Florencio Reyes, Sr. as the owner of the apartment and not the private respondents. The record contains indications that the private respondents, to suit their purpose, deliberately sought to avoid the Baguio courts as the legitimate forum for their real action to recover the possession of premises located in Baguio. To sanction respondents' flagrant evasion of the rule on the venue of a real action is to tolerate a palpable, manipulatory abuse or perversion of the right to litigate.

APPEARANCES OF COUNSEL

Aruego, Mamaril & Associates for petitioners.

Igmidio G. Bachit and *Ulysses P. Ortillo* for private respondents.

D E C I S I O N

AQUINO, *J.*:

Assailed in these special civil actions of *certiorari,* prohibition and *mandamus*, on the grounds of improper venue and *litis pendentia* is the summary judgment of the Court of First Instance

Supreme Court E-Library

of Rizal, *Caloocan City* Branch XXXV, ejecting Lim Se and Benito Lim from Door No. 72 of the Venancia Building located at 72 Session Road, corner Calderon Street, *Baguio City*.

The antecedents of this case are set forth in the resolution of April 7, 1976 in the contempt incident, *In re* Adaza, 70 SCRA 378, wherein respondents' counsel was found guilty of contempt in *facie curiae* and was severely censured for having used vicious, abusive and disrespectful language in his motion for the lifting of the writ of preliminary mandatory injunction. Hence, only a summary statement of the salient facts will be made herein.

On May 13, 1975, Genaro Bulotano filed a complaint in the Court of First Instance at Caloocan City against Juana San Pedro Ocampo and Francisco San Pedro, the children of Venancia Chiombon, the owner of the Venancia Building, who allegedly sold it to Juana who in turn sold it to Bulotano.

Bulotano prayed that defendants be ordered to deliver to him the possession of Door No. 72, including its mezzanine and the entire basement of the Venancia Building (Civil Case No. C-3547). No reason was adduced in that complaint as to why an action to recover possession of realty located in *Baguio City* was filed in *Caloocan City*.

That action of Bulotano should not occasion any surprise because he had previously filed in the Court of First Instance of Cavite a similar case, Civil Case No. N-1647, against Juana San Pedro Ocampo, Lim Se, Remedios Sarmiento, Jose T. Zabala and Olivia R. Arevalo, as administratrix of the Intestate Estate of Florencio Reyes, Sr.

In that Cavite case, Bulotano prayed that Lim Se, Sarmiento and Zabala be ordered to deliver to him the possession of the same Venancia Building, a part of which is involved in the Caloocan case, Civil Case No. C-3547. This fact shows that Bulotano's counsel has a wanton disregard for the venue of real actions.

Supreme Court E-Library

In the Caloocan case, defendants Juana S. Ocampo and Francisco San Pedro filed against Lim Se and Benito Lim, father and son, *an unverified* third-party complaint (in reality an ejectment action) praying that they be ordered to vacate Door No. 72, the ground floor, mezzanine and basement of the same Venancia Building and to pay the sum of ₱71,200 as back rentals.

That third-party complaint or ejectment action was based on the termination in 1970 of the 1965 lease contract between Lim Se and Francisco San Pedro, as attorney-in-fact of his mother, Venancia Chiombon. It is noteworthy that in that contract it was stipulated that "*in case of suit arising out of this contract, venue thereof shall be the City of Baguio*" (p. 31, *Rollo*).

Lim Se and Benito Lim filed a motion to dismiss the third-party complaint on the grounds of improper venue, *lis pendens* and lack of jurisdiction over the *res*. The lower court denied it. Those grounds were pleaded as affirmative defenses in the answer of Lim Se and Benito Lim.

Thereafter, Juana S. Ocampo and Francisco San Pedro filed an urgent motion for summary judgment. The lower court granted the motion. It ordered Lim Se and Benito Lim to vacate Door No. 72 of the Venancia Building, its mezzanine and basement.

Juana and Francisco then filed a motion for execution pending appeal. They alleged that Lim Se's co-tenants, Zabala and Sarmiento (occupants of Doors Nos. 74 and 76 of the same Venancia Building), were ejected in a decision rendered by Judge Serafin Salvador of the same Caloocan court. Lim Se and Benito Lim opposed the motion.

They filed a motion for the reconsideration of the summary judgment. They alleged that they had leased the disputed premises from the administrator of the estate of Florencio Reyes, Sr. who was the owner of the lot on which the Venancia Building stands. Reyes claimed to have become the owner of the said building after the expiration of the lease of the lot executed between Reyes and Venancia Chiombon.

Supreme Court E-Library

Lim Se and Benito Lim alleged that there was pending in the Court of First Instance of Baguio *Civil Case No. 2817* which was filed by the administrator of the estate of Florencio Reyes, Sr. against Bulotano, Venancia Chiombon, Juana S. Ocampo, Francisco San Pedro, Lim Se and others to settle once and for all the ownership and possession of the Venancia Building.

Lim Se and Benito Lim further alleged that Venancia Chiombon and her son, Francisco San Pedro, executed a simulated and fraudulent sale of the Venancia Building to Venancia's daughter, Juana S. Ocampo, who in turn sold it fictitiously to Bulotano to prevent the building from becoming the property of Reyes.

Lim Se and Benito Lim called the lower court's attention to the fact that in Civil Case No. 1702 of the Caloocan court, Li Hua, the wife of Lim Se, was sought to be ejected from the Venancia Building but Judge Salvador dismissed the case as to her.

The Caloocan court denied the motion for reconsideration. In a separate order dated January 29, 1976 it declared its summary judgment as final and executory and directed the issuance of a writ of possession against Lim Se and Benito Lim. The deputy sheriff ejected Lim Se and Benito Lim from the disputed premises.

After the filing of the instant petition assailing the summary judgment and the writ of possession, this Court issued a writ of preliminary mandatory injunction restoring Lim Se and Benito Lim to the possession of the disputed premises.

We hold that the trial court acted with grave abuse of discretion and in excess of jurisdiction in not dismissing the third-party complaint which was an ejectment suit pure and simple. The venue of that real action was improperly laid in Caloocan City.

Moreover, that action was not maintainable in view of the pendency in the Court of First Instance of Baguio of the aforementioned Civil Case No. 2817 involving the ownership and possession of the Venancia Building. All the parties in the Caloocan case are impleaded in the Baguio case together with

Supreme Court E-Library

the estate of Florencio Reyes, Sr. which asserts ownership over the disputed premises adverse to that of the private respondents herein, Bulotano, Juana S. Ocampo and Francisco San Pedro and their predecessor-in-interest, Venancia Chiombon.

The private respondents contend that since the Caloocan court had jurisdiction over the main action, it had also jurisdiction over the third-party complaint. They cite the ruling that "where a court has jurisdiction of a claim and the parties in the principal action, it *generally* has jurisdiction also of a suit or proceeding which is a continuation of or incidental and ancillary to the principal action, even though it might not have jurisdiction of the ancillary proceeding if it were an independent and original action or proceeding" (1 Moran's Comments on the Rules of Court, 1970 Ed., p. 279, citing *Republic vs. Central Surety & Ins. Co.*, L-27802, October 26, 1968, 25 SCRA 641, 648-9).

That contention is wrong and misleading. The principal action in Civil Case No. C-3547 was denominated "specific performance with damages." Actually, it was a real action to recover "the possession of Door No. 72, its mezzanine floor and the entire basement of the Venancia Building" located in Baguio City. That principal action should have been brought in Baguio and not in Caloocan City.

Defendants Juana S. Ocampo and Francisco San Pedro did not impugn the venue of the principal action in Civil Case No. C-3547 because, according to petitioners' theory, Bulotano, the plaintiff in Civil Case No. C-3547, was merely a dummy of Juana and her brother, Francisco, and the said principal action was a collusive suit between Bulotano and the San Pedros.

If the venue of the principal action was improperly laid in Caloocan City, then the venue of the third-party complaint, which the private respondents characterize as an action ancillary to the main action but which in reality was a variant of the main action, was likewise improperly ventilated in Caloocan City just as a prior similar action was improperly brought in Cavite.

Supreme Court E-Library

Also untenable is the theory of private respondents Juana S. Ocampo and Francisco San Pedro that they could eject Lim Se and Benito Lim from the Venancia Building even if respondents' ownership of that building is being questioned by the estate of Florencio Reyes, Sr. in Civil Case No. 2817 where Lim Se and private respondents were impleaded as defendants.

Section 1, Rule 4 of the Rules of Court provides that "forcible entry and detainer actions regarding real property shall be brought in the municipality or city in which the subject matter thereof is situated." Section 2 of Rule 4 provides that "actions affecting title to, or for recovery of possession" of real property shall be commenced and tried in the province where the property or any part thereof is situated.

Those rules on the venue of real actions are designed to prevent courts sitting in places other than the place where the real property is situated from taking cognizance of actions regarding the possession or ownership of that particular real property. Those rules are dictated by convenience. They forestall the rendition of conflicting decisions by different courts on the issue of ownership or possession.

The wisdom and expediency of those rules are illustrated in this case where Lim Se, as the tenant of an apartment located in Baguio, has been harassed by the private respondents with an ejectment suit filed *in Cavite* and another ejectment suit filed in *Caloocan City*. At the same time, Lim Se is a defendant in a *Baguio case* where he is being required to recognize the estate of Florencio Reyes, Sr. as the owner of the apartment and not the private respondents.

The record contains indications that the private respondents, to suit their purpose, deliberately sought to avoid the Baguio courts as the legitimate forum for their real action to recover the possession of premises located in Baguio. To sanction respondents' flagrant evasion of the rule on the venue of a real action is to tolerate a palpable, manipulatory abuse or perversion of the right to litigate.

Supreme Court E-Library

In this Court's resolution of February 7, 1979, the parties were directed to state whether this case has become moot and academic due to supervening events.

In compliance with that resolution, the petitioners manifested that they are still in possession of the disputed premises, that Civil Case No. 2817 is still pending, that the issue as to the ownership and possession of the Venancia Building is as yet unresolved and that this case has not become moot.

On the other hand, the private respondents' stand is that this case has become moot and academic because the Baguio court in its order of March 20, 1979 has recognized their right to collect the rentals from the tenants of the Venancia Building.

That order of the Baguio court strengthens the view that, in the orderly administration of justice, private respondents' remedy is in the Baguio case and not in the Caloocan case since the disputed premises are outside the territorial jurisdiction of the Caloocan court.

WHEREFORE, the partial summary judgment and the writ of possession issued by the lower court against the petitioners are set aside. The lower court is directed to dismiss, on the grounds of improper venue and *litis pendentia,* the third-party complaint against the petitioners. The writ of preliminary mandatory injunction is made final and permanent. Costs against the private respondents.

SO ORDERED.

Barredo (Chairman), Antonio, Concepcion Jr., and *Guerrero, JJ.*, concur.

Santos and *Abad Santos JJ.*, are abroad.