

## THIRD DIVISION

[ G.R. No. 234499, June 06, 2018 ]

**RUDY L. RACPAN, PETITIONER, VS. SHARON BARROGA-HAIGH,  
RESPONDENT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **Nature of the Case**

This treats of the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the February 13, 2017 *Decision*<sup>[1]</sup> and August 17, 2017 *Resolution*<sup>[2]</sup> of the Court of Appeals (CA) in CA G.R. CV No. 04034-MIN. Said rulings affirmed the dismissal of the petitioner's complaint for improper venue and failure to comply with a condition precedent to its filing.

#### **Factual Antecedents**

Petitioner Rudy Racpan filed a Complaint "*For Declaration For Nullity of Deed of Sale with Right to Repurchase & Attorney's Fees*"<sup>[3]</sup> before the Regional Trial Court of Davao City, Branch 11 (RTC-Davao). In his Complaint, which was docketed as Civil Case No. 34, 742-2012, petitioner alleged that after his wife's death on November 12, 2011, he instructed their daughter to arrange his wife's important documents. In so doing, their daughter discovered a *Deed of Sale with Right to Purchase* dated March 29, 2011. The Deed of Sale was purportedly signed by him and his late wife and appeared to convey to respondent Sharon Barroga-Haigh a real property registered in his name under TCT No. T-142-2011009374 and located in Bo. Tuganay, Municipality of Carmen, Province of Davao del Norte.<sup>[4]</sup> Petitioner maintained that the Deed of Sale was falsified and fictitious as he never signed any contract, not even any special power of attorney, for the sale or conveyance of the property which is still in his possession. Thus, he prayed for the declaration of the Deed of Sale's nullity.

In her Answer with Compulsory Counterclaim,<sup>[5]</sup> respondent contended, by way of affirmative defense, that the venue of the Complaint was improperly laid and that the filing of the case lacks the mandatory requirement of Barangay Clearance. Subsequently, respondent filed a motion for preliminary hearing on her affirmative defenses.

Acting on the motion, the RTC-Davao set the case for preliminary hearing and thereafter issued an Order dated September 18, 2013<sup>[6]</sup> dismissing the petitioner's Complaint as follows:

WHEREFORE, in view of the foregoing, the present case is hereby ORDERED DISMISSED for being improperly filed before the Regional Trial Court of Davao City and for failure to comply with a condition precedent prior to its filing.

SO ORDERED.<sup>[7]</sup>

Petitioner moved for the RTC-Davao to reconsider<sup>[8]</sup> its Order dismissing the complaint but the trial court remained steadfast and denied his motion in its June 19, 2004 Order.<sup>[9]</sup> Hence, the petitioner came to the CA on appeal.<sup>[10]</sup>

### **Ruling of the Court of Appeals**

As stated at the outset hereof, the appellate court affirmed the dismissal of the petitioner's Complaint as follows:

WHEREFORE, the order dated September 18, 2013 of the Regional Trial Court, Branch 11, Davao City in Civil Case No. 34,742-12 is AFFIRMED.

SO ORDERED.<sup>[11]</sup>

The CA explained that petitioner's Complaint is a real action as it wants the court to abrogate and nullify whatever right or claim the respondent might have on the property subject of the Deed of Sale. Hence, for the appellate court, Section 1, Rule 4 of the Rules of Court is applicable. Under this Rule, real actions shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved is situated. As the property involved is located in Bo. Tuganay, Municipality of Cannen, Province of Davao del Norte, the appellate court held that the Complaint should have been lodged with the RTC of Davao del Norte and not the RTC-Davao.

Further, the CA found that the petitioner's prayer for the issuance of a writ of preliminary injunction is a mere ploy to avoid the requirement of a barangay conciliation, as a mere annotation of a notice of *lis pendens* would achieve the same effect without having to undergo trial or post a bond.

In a Resolution dated August 17, 2017<sup>[12]</sup> the CA stood its ground by denying the petitioner's Motion for Reconsideration.<sup>[13]</sup>

Hence, the petitioner's present recourse, it being his contention that the Complaint he interposed with the RTC-Davao is a personal action. He maintains that his Complaint is not concerned with title to or possession of real property, as in fact, no transfer of possession or title of the real property to the respondent has occurred.<sup>[14]</sup> For the petitioner, the Complaint's venue was properly laid in Davao City where both he and the respondent reside.

Petitioner likewise reiterated that, as his Complaint was coupled with a prayer for the issuance of a writ of preliminary injunction, it is exempt from barangay conciliation proceedings.

### **Issue**

The main and decisive issue for resolution is whether the CA erred in affirming the dismissal of the petitioner's Complaint.

### **Our Ruling**

The petition is impressed with merit.

***The venue was properly laid as the complaint was a personal action.***

By weight of jurisprudence, the nature of an action is determined by the allegations in the complaint. In turn, the nature of the action determines its proper venue. Rule 4 of the Rules of Court provides the rules on the situs for bringing real and personal actions, viz:

#### Rule 4

#### VENUE OF ACTIONS

Section 1. Venue of real actions. - Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

Section 2. Venue of personal actions. - All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

Expounding on the foregoing provisions, the Court delineated the basic distinction between a real and a personal action and their respective venues in *Bank of the Philippine Islands v. Hontanosas, Jr.*,<sup>[15]</sup> stating that:

The determinants of whether an action is of a real or a personal nature have been fixed by the *Rules of Court* and relevant jurisprudence. According to Section 1, Rule 4 of the *Rules of Court*, a real action is one that affects title to or possession of real property, or an interest therein. Such action is to be commenced and tried in the proper court having jurisdiction over the area wherein the real property involved, or a portion thereof, is situated, which explains why the action is also referred to as a local action. In contrast, the *Rules of Court* declares *all other actions* as personal actions. Such actions may include those brought for the recovery of personal property, or for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property. The venue of a personal action is the place where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal

defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff, for which reason the action is considered a transitory one.

Otherwise stated, what determines the venue of a case is the primary objective for the filing of the case.<sup>[16]</sup> On one hand, if the plaintiff seeks the recovery of personal property, the enforcement of a contract or the recovery of damages, his complaint is a personal action that may be filed in the place of residence of either party. On the other hand, if the plaintiff seeks the recovery of real property, or if the action affects title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, then the complaint is a real action that must be brought before the court where the real property is located. Thus, in *Chua v. Total Office Products and Services, Inc.*,<sup>[17]</sup> this Court ruled that where the action is not intended for the recovery of real property but solely for the annulment of a contract, it is a personal action that may be filed in the court where the plaintiff or the respondent resides. It held:

Well-settled is the rule that an action to annul a contract of loan and its accessory real estate mortgage is a personal action. In a personal action, the plaintiff seeks the recovery of personal property, the *enforcement of a contract* or the recovery of damages. In contrast, in a real action, the plaintiff seeks the recovery of real property, or, as indicated in Section 2 (a), Rule 4 of the then Rules of Court, a real action is an action affecting title to real property or for the *recovery of possession, or for partition, or condemnation of, or foreclosure of mortgage on, real property*.

In the *Pascual* case, relied upon by petitioner, the contract of sale of the fishpond was assailed as fictitious for lack of consideration. We held that there being no contract to begin with, there is nothing to annul. Hence, we deemed the action for annulment of the said fictitious contract therein as one constituting a real action for the recovery of the fishpond subject thereof

We cannot, however, apply the foregoing doctrine to the instant case. Note that in *Pascual*, title to and possession of the subject fishpond had already passed to the vendee. There was, therefore, a need to recover the said fishpond. But in the instant case, **ownership of the parcels of land subject of the questioned real estate mortgage was never transferred to petitioner, but remained with TOPROS. Thus, no real action for the recovery of real property is involved. This being the case, TOPROS' action for annulment of the contracts of loan and real estate mortgage remains a personal action.** (emphasis supplied)

In the Complaint filed with the court *a quo*, petitioner sought the nullification of the *Deed of Sale with Right to Repurchase* on the strength of this claim: he did not sign the same nor did he execute any special power of attorney in favor of his late wife to do so in his behalf.<sup>[18]</sup> But, **as there was no allegation that the possession and title to the property have been transferred to respondent, nowhere in the Complaint did petitioner allege or pray for the recovery or reconveyance of the real property.** Pertinent parts of the Complaint read thus: