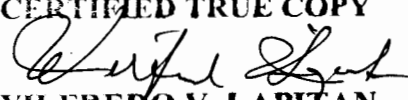




Republic of the Philippines
SUPREME COURT
 Manila

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

JUL 05 2018

THIRD DIVISION

RUDY L. RACPAN,

Petitioner,

G.R. No. 234499

Present:

- versus -

VELASCO, JR., J., Chairperson,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

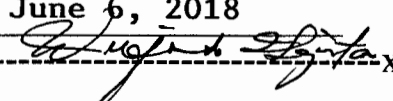
SHARON BARROGA-HAIGH,

Respondent.

Promulgated:

June 6, 2018

X-----

 X

DECISION

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*¹ and August 17, 2017 *Resolution*² 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*"³ 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

¹ Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Ronaldo B. Martin, *rollo*, pp. 48-53.

² *Id.* at 55-56.

³ *Id.* at 74-85.

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.⁴ 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,⁵ 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, 2013⁶ 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.⁷

Petitioner moved for the RTC-Davao to reconsider⁸ its Order dismissing the complaint but the trial court remained steadfast and denied his motion in its June 19, 2004 Order.⁹ Hence, the petitioner came to the CA on appeal.¹⁰

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:

⁴ Id. at 88.

⁵ Id. at 104-110.

⁶ Id. at 116-117.

⁷ Id. at 85, 117. Penned by Presiding Judge Virginia Hofileña Europa.

⁸ Id. at 118-128.

⁹ Id. at 129.

¹⁰ Id. at 130-131.

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.¹¹

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 Carmen, 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, 2017¹² the CA stood its ground by denying the petitioner's Motion for Reconsideration.¹³

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.¹⁴ 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

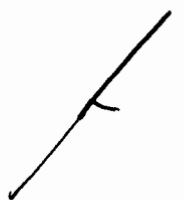
The main and decisive issue for resolution is whether the CA erred in affirming the dismissal of the petitioner's Complaint.

¹¹ Id. at 53.

¹² Id. at 55-56.

¹³ Id. at 58-72.

¹⁴ Id. at 29-30.



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.*,¹⁵ 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

¹⁵ 737 Phil. 38. (2014).

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.¹⁶ 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.*,¹⁷ 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)

¹⁶ *Latorre v. Latorre*, 631 Phil. 88 (2010); citing *Gochan v. Gochan*, 423 Phil. 491, 501 (2001) and *Olympic Mines and Development Corp. v. Platinum Group Metals Corporation*, G.R. Nos. 178188, 180674, 181141 & 183527, May 8, 2009; *Golden Arches Development Corp. v. St. Francis Square Holdings, Inc.*, 655 Phil. 221 (2011).

¹⁷ 508 Phil. 490 (2005); also cited in *Bank of the Philippine Islands v. Hontanosas, Jr.*, supra note 15.

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.¹⁸ 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:

4. Plaintiff was married to Ma. Lucila B. Racpan on 20 December 1978. The latter died on 13 November 2011 at Oroville, California...

5. Plaintiff Racpan purchased a property from his brother Lorezo L. Racpan formerly covered by Transfer Certificate of Title No. T-189893 and located at Carmen, Davao del Norte and the **said property is now covered by Transfer Certificate of Title No. T-142-2011009374.** Hereto attached and marked as Annex "B" is a copy of the **Transfer Certificate of Title No. T-142-2011009374 registered under the name of plaintiff Rudy L. Racpan.** Also attached and marked as Annex "C" is the tax declaration of the subject property to prove that plaintiff is the owner of the same.

6. Plaintiff's wife died at Oroville, California on 12 November 2011. However, her remains were returned to Davao City, Philippines. Nonetheless, it was the daughter of the plaintiff in the person of Lani Racpan who arrived first in Davao City.

x x x x

8. On 12 December 2011, plaintiff's daughter showed to him the subject deed of sale with right to repurchase dated 29 March 2011. Plaintiff was surprised because he did not know or has NO knowledge of the said deed of sale with right to repurchase. **When plaintiff navigated the Deed of Sale, he was surprised because his signature appearing on the same is COMPLETELY FALSIFIED....**

8.a Moreover, **plaintiff did not also execute any special power of attorney in favour of his deceased wife authoring the latter to [sell] the subject property to the defendant.**

8.b On the other hand, **the subject property is registered under the name of plaintiff Rudy Racpan and NOT TO SPOUSES Racpan.** The words "married to Ma. Lucila B. Racpan" only signified the civil status of plaintiff to the latter.

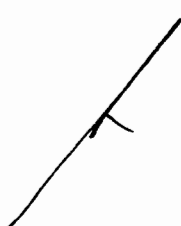
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9.d Evidently, from the foregoing **the (alleged) subject deed of sale with right to repurchase is NULL AND VOID as the same contains the falsified signature of the herein plaintiff.**

x x x x

11. Plaintiff before and during the time of the execution of the subject Deed of Sale with Right to Repurchase dated 29 March 2011 NEVER MET defendant Saigh. It was only sometime in December 7 or 8,

¹⁸ *Rollo*, p. 76.



2011 that he met defendant Saigh during the wake of his wife wherein he was introduced to the former by Orly Gabriel.

12. To date, **plaintiff is in possession of the subject property.** However, his daughter has been receiving text message from defendant requiring him to settle the said alleged obligation of his deceased wife to her.¹⁹

Evidently, as the Complaint was not concerned with the title to or recovery of the real property, it was a *personal action*. Thus, Davao City, where both the petitioner and the respondent reside is the proper venue for the complaint. The appellate court therefore committed a reversible error in affirming the trial court's dismissal of the case for improper venue.

The Complaint was exempted from Barangay Conciliation Proceedings

As for petitioner's failure to resort to *barangay* conciliation, Section 412 of the Local Government Code (LGC) provides that parties may go directly to court where the action is coupled with provisional remedies:

SEC. 412. Conciliation. — (a) *Pre-condition to filing of complaint in court.* — No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the lupon chairman or the pangkat, and that no conciliation or settlement has been reached as certified by the lupon secretary or pangkat secretary as attested to by the lupon chairman or pangkat chairman or unless the settlement has been repudiated by the parties thereto.

(b) *Where parties may go directly to court.* — The parties may go directly to court in the following instances:

(1) Where the accused is under detention;

(2) Where a person has otherwise been deprived of personal liberty calling for habeas corpus proceedings;

(3) **Where actions are coupled with provisional remedies such as preliminary injunction**, attachment, delivery of personal property, and support pendente lite; and

(4) Where the action may otherwise be barred by the statute of limitations.

(c) *Conciliation among members of indigenous cultural communities.* — The customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities.

¹⁹ Id. at 75-80; emphasis supplied.

While there is no dispute herein that the present case was never referred to the *Barangay Lupon* for conciliation before petitioner instituted Civil Case No. 34, 742-2012, there is likewise no quibbling that his Complaint was coupled with a prayer for the issuance of a preliminary injunction.²⁰ Hence, it falls among the exceptions to the rule requiring the referral to barangay conciliation.

As good faith is always presumed,²¹ in the absence of proof of improper motive on the part of the petitioner, the Court cannot countenance the appellate court's assumption that petitioner was solely intent on evading the requirements of the LGC in applying for a preliminary injunction. This Court cannot sustain a dismissal of an action on account of an unproven assertion of bad faith.

WHEREFORE, the petition is **GRANTED**. The February 13, 2017 *Decision* and August 17, 2017 *Resolution* of the Court of Appeals in CA-G.R. CV No. 04034-MIN, as well as the *Orders* dated September 18, 2013 and June 19, 2004 of the Regional Trial Court of Davao City, Branch 11, in Civil Case No. 34, 742-2012 are **REVERSED** and **SET ASIDE**. Civil Case No. 34, 742-2012 is hereby ordered **REINSTATED**. The RTC is ordered to proceed with dispatch in the disposition of the mentioned case.

SO ORDERED.

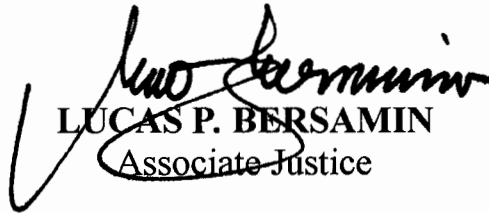


PRESBITERO VELASCO, JR.
Associate Justice

²⁰ *Id.* at 83-84.

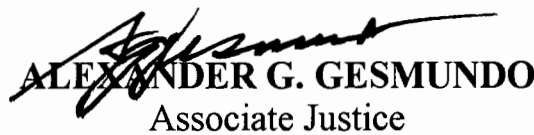
²¹ *Escritor, Jr. v. Intermediate Appellate Court*, 239 Phil. 563 (1987).

WE CONCUR:


LUCAS P. BERSAMIN
 Associate Justice

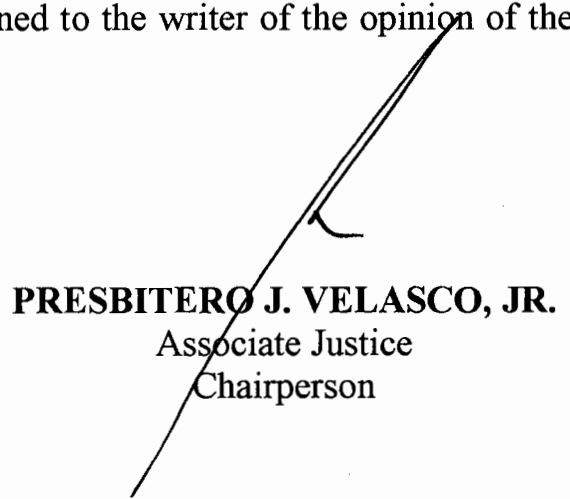

MARVIC M.V.F. LEONEN
 Associate Justice


SAMUEL R. MARTIRES
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice

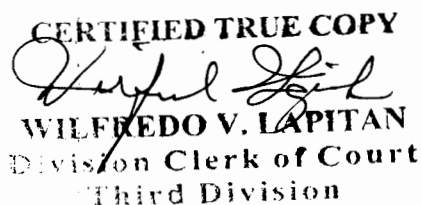
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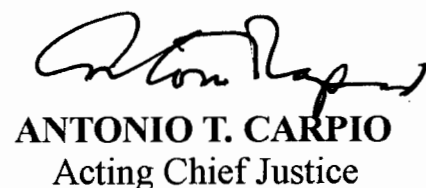
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division


ANTONIO T. CARPIO
 Acting Chief Justice

JUL 05 2018