

ANITA MANGILA, PETITIONER,
VS.
COURT OF APPEALS AND LORETA GUINA, RESPONDENTS
G.R. No. 125027; AUGUST 12, 2002
THIRD DIVISION DECISION ; CARPIO

Remedial Law; Civil Procedure; Preliminary Attachment; Alias Summons: The alias summons belatedly served on petitioner cannot be deemed to have cured the fatal defect in the enforcement of the writ. The trial court cannot enforce such a coercive process on petitioner without first obtaining jurisdiction over her person. The preliminary writ of attachment must be served after or simultaneous with the service of summons on the defendant whether by personal service, substituted service or by publication as warranted by the circumstances of the case. The subsequent service of summons does not confer a retroactive acquisition of jurisdiction over her person because the law does not allow for retroactivity of a belated service.

Remedial Law; Civil Procedure: Venue: The rules on venue, like other procedural rules, are designed to insure a just and orderly administration of justice or the impartial and evenhanded determination of every action and proceeding. Obviously, this objective will not be attained if the plaintiff is given unrestricted freedom to choose where to file the complaint or petition.

FACTS:

Mangila is an importer of sea goods who engaged in the services of the private respondent, the owner of a freight forwarding business. Mangila failed to pay the private respondent on several shipments made by the latter.

Private respondent filed a civil action against Mangila Mangila for the collection of sum of money amounting to P106,376. However, the sheriff failed to serve the summons because according to the help found at the Mangila's residence the latter had left for Guam. Construing Mangila's departure from the Philippines as done with intent to defraud her creditors, private respondent filed a Motion for Preliminary Attachment. On Sept. 26, 1988, the trial court issued an Order of Preliminary Attachment against Mangila. The following day, the trial court issued a Writ of Preliminary Attachment.

Subsequently, a Notice of Levy was served upon the help of the Mangila. On Nov. 7, 1988, the Mangila filed an Urgent Motion to Discharge Attachment without submitting herself to the jurisdiction of the trial court. She pointed out that up to then, she had not

been served a copy of the Complaint and the summons. Hence, Mangila claimed that the court had not acquired jurisdiction over her person. The court granted her motion for Discharge of Attachment upon her filing of a counter-bond. However, the court did not rule on its jurisdiction or the writ of preliminary attachment.

On Dec. 26, 1988, private respondent applied for an alias summons, which the trial court issued on Jan. 19, 1988. It was only on Jan. 26, 1989 that summons was finally served on petitioner. Mangila filed a Motion to Dismiss the Complaint on the ground of improper venue. Private respondent's invoice for the freight forwarding service stipulates that "if court litigation becomes necessary to enforce collection xxx the agreed venue for such action is Makati, Metro Manila." Private respondent filed an Opposition asserting that although "Makati" appears as the stipulated venue, the same was merely an inadvertence by the printing press whose general manager executed an affidavit admitting such inadvertence. Moreover, private respondent claimed that petitioner knew that private respondent was holding office in Pasay City and not in Makati. The lower court, finding credence in private respondent's assertion, denied the Motion to Dismiss and gave petitioner five days to file her Answer. Petitioner filed a Motion for Reconsideration but this too was denied. Petitioner filed her Answer¹⁶ on June 16, 1989, maintaining her contention that the venue was improperly laid. The case pursued and on the day of the pre-trial, the trial court issued an Order terminating the pre-trial and allowing the private respondent to present evidence *ex parte*. The trial court ruled in favor of private respondent ordering Mangila to pay private respondent P109,376.95 plus 18% interest per annum, 25% attorney's fees and costs of suit.

On appeal, Mangila included the question of validity of the writ of preliminary attachment. However, the CA affirmed the decision of the trial court and upheld the validity of the writ of preliminary attachment. Hence, this petition for review on certiorari under Rule 45 of the Rules of Court.

ISSUE/S:

1. Whether or not the Writ of Attachment was improperly issued and served; and
2. Whether or not there was improper venue.

RULING:

1. Yes. The Supreme Court has long settled the issue of when jurisdiction over the person of the defendant should be acquired in cases where a party resorts to provisional remedies.

Mangila contends that because of failure to serve summons on Mangila or simultaneously with the writ's implementation, Mangila claims that the trial court had not acquired jurisdiction over her person and thus the service of the writ is void. The court agrees with the contention of the Mangila.

Specifically, Rule 57 on preliminary attachment speaks of the grant of the remedy "at the commencement of the action or at any time thereafter." This phrase refers to the date of filing of the complaint which is the moment that marks "the commencement of the action." The reference plainly is to a time before summons is served on the defendant, or even before summons issues. The grant of the provisional remedy of attachment involves three stages: (1) the court issues the order granting the application; (2) the writ of attachment issues pursuant to the order granting the writ; and (3) the writ is implemented. For the initial two stages, it is not necessary that jurisdiction over the person of the defendant be first obtained. However, once the implementation of the writ commences, the court must have acquired jurisdiction over the defendant for without such jurisdiction, the court has no power and authority to act in any manner against the defendant. Any order issuing from the Court will not bind the defendant.

In the instant case, the Writ of Preliminary Attachment was issued on Sept. 27, 1988 and implemented on Oct. 28, 1988. However, the alias summons was served only on Jan. 26, 1989 or almost three months after the implementation of the writ of attachment. The trial court had the authority to issue the Writ of Attachment on Sept. 27 since a motion for its issuance can be filed "at the commencement of the action." However, on the day the writ was implemented, the trial court should have, previously or simultaneously with the implementation of the writ, acquired jurisdiction over the Mangila. Yet, as was shown in the records of the case, the summons was actually served on Mangila several months after the writ had been implemented.

2. Yes. The Court resolved to dismiss the case on the ground of improper venue but not for the reason stated by petitioner.

The Rules of Court provide that parties to an action may agree in writing on the venue on which an action should be brought. However, a mere stipulation

on the venue of an action is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. Thus, absent words that show the parties' intention to restrict the filing of a suit in a particular place, courts will allow the filing of a case in any venue, as long as jurisdictional requirements are followed. Venue stipulations in a contract, while considered valid and enforceable, do not as a rule supersede the general rule set forth in Rule 4 of the Revised Rules of Court. In the absence of qualifying or restrictive words, they should be considered merely as an agreement on additional forum, not as limiting venue to the specified place.

In the instant case, the stipulation does not limit the venue exclusively to Makati. There are no qualifying or restrictive words in the invoice that would evince the intention of the parties that Makati is the "only or exclusive" venue where the action could be instituted. We therefore agree with private respondent that Makati is not the only venue where this case could be filed.

Nevertheless, Pasay is not the proper venue for this case. Under the 1997 Rules of Civil Procedure, the general rule is venue in personal actions is "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 exception to this rule is when the parties agree on an exclusive venue other than the places mentioned in the rules. But this exception is not applicable in this case. Hence, following the general rule, the instant case may be brought in the place of residence of the plaintiff or defendant, at the election of the plaintiff (private respondent herein).

Although petitioner filed an Urgent Motion to Discharge Attachment in the lower court, petitioner expressly stated that she was filing the motion without submitting to the jurisdiction of the court. At that time, petitioner had not been served the summons and a copy of the complaint. Thereafter, petitioner timely filed a Motion to Dismiss on the ground of improper venue. Rule 16, Section 1 of the Rules of Court provides that a motion to dismiss may be filed "Within the time for but before filing the answer to the complaint or pleading asserting a claim." Petitioner even raised the issue of improper venue in his Answer as a special and affirmative defense. Petitioner also continued to raise the issue of improper venue in her Petition for Review before the Supreme Court. Thus, the dismissal of this case on the ground of improper venue is warranted.

The rules on venue, like other procedural rules, are designed to insure a just and orderly administration of justice or the impartial and evenhanded

determination of every action and proceeding. Obviously, this objective will not be attained if the plaintiff is given unrestricted freedom to choose where to file the complaint or petition.