

## SECOND DIVISION

[ G.R. No. 100748, February 03, 1997 ]

**JOSE BARITUA, PETITIONER, VS. HON. COURT OF APPEALS  
(ELEVENTH DIVISION); HON. MANUEL D. VICTORIO, JUDGE,  
RTC, BR. 53, ROSALES-PANGASINAN; AND ROY R. DOMINGO,  
REPRESENTED BY HIS ATTORNEY-IN-FACT CRISPIN A.  
DOMINGO, RESPONDENTS.  
D E C I S I O N**

**PUNO, J.:**

Petitioner Jose Baritua raises the question of venue in the filing of a complaint for damages arising from a quasi-delict.

The facts show that on June 26, 1989 private respondent Roy R. Domingo, represented by his attorney-in-fact, Crispin A. Domingo, filed with the Regional Trial Court, Branch 53, Rosales, Pangasinan a complaint against petitioner Jose Baritua as owner and operator of the J.B. Bus Lines. Private respondent sought to recover actual and exemplary damages after a bus owned by petitioner rammed private respondent's car along the Maharlika Highway, Sto. Tomas, Batangas on January 19, 1988. In his complaint, private respondent alleged that:

"1. He is a Filipino, of legal age, married and a resident of Poblacion Rosales, Pangasinan before he went to the United States where he now lives at 4525 Leata Lane, La Cantada, LA 91011. He is being represented by his attorney-in-fact, Crispin A. Domingo, a Filipino, of legal age, married and a resident of No. 47 Yale St., Cubao, Quezon City. Defendant is also a Filipino, of legal age, married and doing business under the business name "J.B. Bus Lines" with business address at Tramo Street, Pasay City where said defendant could be served summons. x x x."<sup>[1]</sup>

Petitioner moved to dismiss the complaint for improper venue. He alleged that since private respondent was not a resident of the Philippines, the complaint should be filed in the place where petitioner, the defendant, resides which is in Gubat, Sorsogon. The trial court denied the motion to dismiss after finding that private respondent was merely temporarily out of the country and did not lose his legal residence in Rosales, Pangasinan.<sup>[2]</sup>

The Court of Appeals affirmed the trial court.<sup>[3]</sup> Hence this petition for certiorari and prohibition.

Petitioner claims that:

"A. RESPONDENT COURT OF APPEALS COMMITTED GROSS ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE PETITION DESPITE PETITIONER'S OVERWHELMING EVIDENCE THAT THE VENUE OF

PRIVATE RESPONDENT'S ACTION (CIVIL CASE NO. 915-R) WAS IMPROPERLY LAID;

B. INSPITE ALSO OF THE ADMITTED FACT THAT PRIVATE RESPONDENT ROY DOMINGO HAS REMAINED AN ACTUAL RESIDENT OF 4525 LEATA LANE, LA CANTADA, LA 91011, U.S.A., AT LEAST SINCE FEBRUARY 18, 1988, UP TO THE PRESENT.”<sup>[4]</sup>

A complaint for damages is a personal action. In cases filed before the Regional Trial Court, the venue for personal actions is laid down in Section 2 (b) of Rule 4 of the Revised Rules of Court which reads as follows :

“Sec. 2. Venue in Courts of First Instance. - -

x x x

(b) Personal actions. - - All other actions 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.

x x x”<sup>[5]</sup>

The complaint in personal actions may be filed in the place where the defendant resides or may be found, or where the plaintiff resides, at the option of the plaintiff. The Rules give the plaintiff the option of choosing where to file his complaint. He can file it in the place (1) where he himself or any of them resides; or (2) where the defendant or any of the defendants resides or may be found. The plaintiff or the defendant must be residents of the place where the action has been instituted at the time the action is commenced.<sup>[6]</sup>

Section 2 (b) of Rule 4 speaks of the place where the defendant or the plaintiff “resides.” We have held that the residence of a person must be his personal, actual or physical habitation or his actual residence or abode.<sup>[7]</sup> It does not mean fixed permanent residence to which when absent, one has the intention of returning. The word “resides” connotes ex vi termini “actual residence” as distinguished from “legal residence” or “domicile.”<sup>[8]</sup> Actual residence may in some cases be the legal residence or domicile, but for purposes of venue, actual residence is the place of abode and not necessarily legal residence or domicile.<sup>[9]</sup> Actual residence signifies personal residence, i.e., physical presence and actual stay thereat.<sup>[10]</sup> This physical presence, nonetheless, must be more than temporary and must be with continuity and consistency.<sup>[11]</sup>

The question in this case is whether private respondent had his actual residence in Rosales, Pangasinan or in Los Angeles, California at the time the complaint was filed before the Regional Trial Court of Rosales, Pangasinan.

It is undisputed that private respondent left for the United States on April 25, 1988 before the complaint was filed on June 26, 1989.<sup>[12]</sup> This fact is expressly admitted in the complaint itself where private respondent states that he “is [sic] x x x a resident of Poblacion Rosales, Pangasinan before he went to the United States where he now lives in 4525 Leata Lane, La Cantada, LA 91011.” Furthermore, the special