

## FIRST DIVISION

**[ G.R. No. 128734, September 14, 1999 ]**

**ANGEL L. BOLEYLEY, PETITIONER, VS. HON. CLARENCE J. VILLANUEVA, PRESIDING JUDGE, BRANCH 7, REGIONAL TRIAL COURT, BAGUIO CITY, AND ALBERT S. SURLA, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

The case before the Court is a special civil action for certiorari assailing the orders of the Regional Trial Court, Branch 7, Baguio City<sup>[1]</sup> that granted private respondent's motion to dismiss the complaint below on the ground that petitioner did not refer the action to the barangay lupon for conciliation or settlement before filing the case in court, as prescribed in the Revised Katarungan Pambarangay Law.

The facts are as follows:

On August 7, 1996, petitioner Angel L. Boleyley filed with the Regional Trial Court, Baguio City, a complaint against private respondent for collection of a sum of money, as follows:

- "1.) The sum of P530,000.00 for actual damages;
- "2.) The sum of P50,000.00 for moral damages;
- "3.) The sum of P30,000.00 for exemplary damages;
- "4.) The sum of P30,000.00 as attorney's fees plus P1,000.00 per court hearing;
- "5.) The costs of suit."<sup>[2]</sup>

On September 13, 1996, private respondent Albert S. Surla filed with the trial court a motion to dismiss the complaint on the ground that petitioner did not comply with the Revised Katarungan Pambarangay Law requiring as a condition for the filing of a complaint in court referral of the matter to the barangay lupon chairman or the pangkat, for conciliation or settlement.<sup>[3]</sup>

On September 17, 1997, petitioner filed an opposition to motion to dismiss on the ground that private respondent was not a resident of Baguio City so that the dispute involving the parties was not within the authority of the lupon to bring together for conciliation or settlement.<sup>[4]</sup>

On November 29, 1996, the trial court issued an order dismissing the case for being premature, for not having been referred to the barangay lupon.<sup>[5]</sup>

On December 5, 1996, petitioner filed with the trial court a motion for reconsideration on the ground that private respondent could not invoke the Katarungan Pambarangay Law because he was not a resident of Baguio City.<sup>[6]</sup>

On February 17, 1997, the trial court resolved to deny the motion for reconsideration for lack of merit, notice of which denial was received by petitioner on March 4, 1997.<sup>[7]</sup>

Hence, this petition.<sup>[8]</sup>

On July 9, 1997, the Court resolved to require the respondents to comment on the petition within ten (10) days from notice.<sup>[9]</sup>

On August 26, 1997, private respondent filed his comment.<sup>[10]</sup>

On November 10, 1997, petitioner filed a reply,<sup>[11]</sup> in compliance with the resolution of September 29, 1997.<sup>[12]</sup>

At issue is whether or not petitioner was bound to refer the dispute to the barangay lupon or pangkat for conciliation or settlement before he could file an action for collection with the regional trial court.<sup>[13]</sup>

We give due course to the petition.

It is a basic rule of procedure that "jurisdiction of the court over the subject matter of the action is determined by the allegations of the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The jurisdiction of the court can not be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendant."<sup>[14]</sup>

In the complaint filed by petitioner with the Regional Trial Court, Baguio City, he stated that:

#### "COMPLAINT

"COMES NOW the plaintiff by his undersigned counsel and to this Honorable Court respectfully alleges:

"1.) That plaintiff is of legal age, married, Filipino and a resident of No. 100 Imelda Village, Baguio City while defendant is also of legal age, Filipino and with postal office address at C-4 Ina Mansion, Kisad Road, Baguio City where he may be served with summons and other legal processes;" <sup>[15]</sup>

From the above allegations, it is obvious that the parties do not reside in the same city or municipality, and hence, the dispute is excepted from the requirement of referral to the barangay lupon or pangkat for conciliation or settlement prior to filing with the court.<sup>[16]</sup>