

44 Phil. 680

[G.R. No. 19565. March 24, 1923]

**ATKINS, KROLL & CO., PLAINTIFF AND APPELLEE, VS. SANTIAGO DOMINGO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

STATEMENT

The plaintiff is a domestic corporation, and the defendant is a resident of the municipality of Zamboanga.

September 30, 1921, plaintiff filed a complaint against the defendant in which it is alleged that the parties are owners in joint tenancy of lots Nos. 38 and 55 of the cadastral plan of the Zamboanga townsite, *expediente* No. 7880, registered under the Land Registration Act under Transfer Certificates of Title Nos. 3433 and 3435. "That the parties have not been able to make amicable partition of said parcels of land." Wherefore, plaintiff prays that the court order and direct the partition of the land and the improvements thereon between the parties as their interests shall appear, etc. November 1, 1921, the plaintiff filed a motion stating that at the time of filing of the original complaint, through an oversight, lot No. 36 was not included, and that since the filing of said complaint differences have arisen with regard to the accounting for the rental of the properties mentioned and described in the complaint; and that in the interests of both parties and of the proper administration of justice between them, all of their differences respecting said property should be adjusted in one and the same suit. Wherefore, it prays that the court permit the filing of the amended complaint, and that such answer as the defendant desires to make within the time for answer provided by law be also allowed. November 23, 1921, the plaintiff filed a motion for default for the reason "that the defendant does not enter his appearance or file his answer, as required by

law and the rules of the court." This motion was sustained. January 16, 1922, the court rendered a judgment founded upon the amended complaint, dividing the land between the parties according to their respective interests, and awarding the plaintiff judgment for rent on lot No. 36 to December 31, 1921, in the sum of P131.25, and on lot No. 38 for P455.76, or a total of P587.01, together with the costs of the action. February 6, 1922, the defendant appeared and filed a motion to set aside the judgment and to grant a new trial upon the grounds, first, that he had never received personally or through any other person a copy of the complaint or any copy of the summons; second, that after having received the decision of the court by registered mail, he made a thorough investigation of all the inmates of the house, and each one of them denied having received any copy of the summons and complaint; third, that he did not have any knowledge that the case was pending, or that it was set for hearing on a certain date; fourth, that had he known the nature of the complaint and the date of the hearing he would have presented proofs in support of his rights sufficient to obtain a decision in his favor; fifth, that in the interest of justice the decision should be set aside and a new trial granted, in order that the case may be adjudged and decided on the merits.

The court overruled defendant's motion, from which he appeals, claiming that the court erred in declaring the defendant in default by its order of January 9, 1922, and in ordering that the plaintiff and the defendant are the owners in common of the lots, and in sentencing the defendant to pay P587.01 as rents, and in decreeing the partition of the property, and denying defendant's motion for a new trial.

JOHNS, J.:

The facts are all well and clearly stated in the opinion of the trial court. From which it appears that on September 30, 1921, service of the original complaint and summons was made by the deputy of the provincial sheriff, leaving copy with Maximo Domingo, son of the defendant at the usual place of residence of the defendant, and that the son was a person of sufficient age and intelligence upon whom service could be made. November 3, 1921, the plaintiff filed an amended complaint in which it was stated that a copy had been sent to the defendant under registered cover. For the failure of the defendant to appear and answer, on November 23, 1921, the plaintiff filed its motion asking for a

default. December 27, 1921, the deputy clerk of the court sent by registered mail to the defendant a notice that the case would come up for hearing on January 7, 1922. On January 9, 1922, plaintiff's motion for default came on supported by the affidavit of Mr. Armstrong, one of the attorneys for the plaintiff, from which it appears that a copy of the amended complaint, which had been sent to the defendant by registered mail, had been returned undelivered, and that on the 18th of December, 1921, he, Armstrong, had personally delivered a copy of the amended complaint to a son of the defendant over the age of sixteen years, who was living at the residence of the defendant.

The record is conclusive that the service of the original complaint and summons was valid, and if the judgment of the trial court had been founded upon and followed the original complaint, it would have to be sustained. It is also conclusive that the final judgment which was rendered is based upon and follows the amended complaint. If the defendant had appeared in the action, service of the amended complaint upon him in the manner and form stated would have been sufficient. But the defendant never did appear in the action until he filed his motion to set aside and vacate the judgment. For such reason, the service of the amended complaint upon his sixteen-year-old son by the attorney for the plaintiff was not sufficient to give the court jurisdiction over the defendant as to any new matter alleged in the amended complaint. Under the facts shown here, the amended complaint and summons should have been served upon the defendant with the same formalities as the original complaint and summons. Hence, the service of the amended complaint made by the attorney for the plaintiff is not valid and did not give the court jurisdiction to render judgment upon the amended complaint. The defendant has now entered a formal appearance and is in court, and service of the amended complaint can now be made on the defendant or his attorneys of record by the attorney for the plaintiff in compliance with the rules of the court in the same manner as any other pleading or motion can be served when the parties are in court.

For such reasons, the judgment of the lower court is set aside and vacated, and the case is remanded with instructions that a copy of the amended complaint be now served on the defendant or his attorneys under the rules of the court. Should the defendant then make default, judgment may then be entered on the amended complaint. Neither party to recover costs in this court. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Ostrand, and Romualdez, JJ., concur.

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