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[G.R. No. L-5629. October 11, 1954]

LILI SISON JARANILLA, WITH HER HUSBAND ANTONIO JARANILLA, LITA SISON KALAW, WITH HER HUSBAND AUGUSTO KALAW, ZENAIDA SISON, BONIFACIO SISON JR., AND RUFO SISON, REPRESENTED BY THEIR GUARDIAN AD LITEM LILI SISON JARANILLA, PLAINTIFFS AND APPELLEES, VS. GONSOLACION GONZALES, VICENTA PUZON, WITH HER HUSBAND DOMINGO PARAS, CARLOS PUZON, BELEN PUZON, WITH HER HUSBAND ARTURO DE GUZMAN, ASELA PUZON, SALUD PUZON, ANGELA PUZON AND JOSEFA MACASIEB SISON, DEFENDANTS AND APPELLANTS.

D E C I S I O N

PADILLA, J.:

This is an appeal from a judgment of the Court of First Instance of Pangasinan rendered in civil case No. 11206, which declared that the judgment rendered in civil case No. 8967 of the same Court and the judgment of the Court of Appeals in CA-GR No. 2903-R reversing it on appeal are binding upon plaintiff Lili Sison Jaranilla but that said judgments,, in so far as the plaintiffs Lita Sison Kalaw, Zenaida Sison, Bonifacio Sison, Jr., and Rufo Sison are concerned, are null and void for lack of jurisdiction over their persons by the courts rendering them; that the writ of execution in pursuance thereof issued therein against the aforesaid plaintiffs is null and void; and that after the judgment rendered herein shall have become final, said plaintiffs will be allowed to present evidence in support of the second cause of action alleged in their complaint, without costs. The judgment appealed from was rendered on a stipulation of facts which reads, as follows:

Come now the parties in the above-entitled case and in order to simplify the proceedings agree on the following facts:

1. That in Civil Case No. 8967 of this Court of Pangasinan, Consolacion Gonzales, Vicenta, Carlos, Belen, Asela, Salud and Angela, all surnamed Puzon, widow and children of the deceased Rafael Puzon, respectively, were the plaintiffs, and Lourdes Ichon Vda. de Sison, was the original defendant.
2. That in her amended answer of June 13, 1946, in said case, the defendant therein, Lourdes Ichon Sison, stated that "it would be necessary to include (in the complaint) all the children of the deceased Bonifacio Sison (husband of defendant Lourdes Ichon) in substitution of the deceased; that the legitimate children are: Lili Sison, of legal age, married to Antonio Jaranilla, Lita Amelia Sison, 19 years, Zenaida Sison, 17 years, Bonifacio Sison, Jr., 15 years, and Rufo Sison, 12 years, all residing with defendant Lourdes Ichon de Sison in Urdaneta, Pangasinan, and that inasmuch as the last four are still minors, it would be necessary that a guardian *ad litem* be appointed for them, and it is suggested that defendant Lourdes Ichon de Sison be appointed as such.
3. That on June 25, 1946, the plaintiffs in said case again amended their complaint by naming therein as co-defendants the above-mentioned children of the deceased Bonifacio Sison and requested that their mother, the original defendant, be appointed as their guardian *ad litem* in the case, but Antonio Jaranilla, husband of Lili Sison Jaranilla, however, was not included as one of the party defendants. The age and civil status of the children as stated in paragraph 2 hereof is hereby admitted by the parties to be true and correct at the time of the filing of the amended complaint just mentioned.
4. That on July 1, 1946, the Court issued the following order:

"No objection having been presented by the defendants to the admission of the second amended complaint filed by the plaintiffs in the above-entitled case, the same

is hereby admitted.

“The Clerk of Court is hereby ordered to issue the corresponding summons against the new defendants Lili Sison and the minors Lita Amelia Sison, Zenaida Sison, Bonifacio Sison, Jr., and Rufo Sison, through their guardian *ad litem* Lourdes Ichon.” The plaintiffs herein agree that the above order was in fact issued without admitting that Lourdes Ichon Sison had already then been appointed their guardian *ad litem*.

5. That on July 1, 1946, the Court issued summons addressed “to Lili Sison, Urdaneta, Pangasinan, and the minors Lita Amelia Sison, Zenaida Sison, Bonifacio Sison, Jr., and Rufo Sison, represented by their guardian *ad litem*, Lourdes Ichon, Urdaneta, Pangasinan,” which was served on Lourdes I. Sison on July 9, 1946, and on Lili Sison Jaranilla on July 15, 1946, but no summons were personally ever served to each of the minors Lita Amelia Sison, Zenaida Sison, Bonifacio Sison, Jr., and Rufo Sison. A certified copy of said summons and its return is attached as Annex “B” of the herein plaintiffs’ motion for reconsideration dated July 14, 1950, and is hereby incorporated by references as part of this stipulation of facts.
6. That the property object of the litigation in said case was originally the conjugal property of the spouses Bonifacio Sison and Lourdes Ichon, which the therein plaintiffs, through Rafael Puzon, claimed to have acquired from Josefa Macasieb Vda. de Sison.
7. That on July 17, 1946, Attorneys Perez, Gayagoy, Abenojar and Ignacio D. Castillo, filed an answer to the amended complaint stated to be on behalf of the new defendants Lili Sison, Lita Amelia Sison, Zenaida Sison, Bonifacio Sison, Jr., and Rufo Sison. This stipulation is subject to the plaintiffs’ reservation in paragraph 14 hereof.

8. That on September 1, 1946, Attys. Perez, Abenojar and Ignacio D. Castillo, filed an answer, special defense and counterclaim, alleging among others, "that the defendant Lourdes Ichon Vda. de Sison and the; other defendants, hereby reproduce all the allegations stated by them in the last answer dated June 13, 1946 and July 17, 1946, filed by them in this case, as their answer to the last and second amended complaint of the plaintiffs." This stipulation is also subject to plaintiffs' reservation in paragraph 14.

9. That Atty.

Ignacio D. Castillo, appearing for the defendants, stated in an affidavit attached to the amended answer of September 5, 1946, "that Lili Sison, Lita Amelia Sison, Zenaida Sison, Bonifacio Sison, Jr., were only summoned last July, 1946, and that they have so far filed only one answer." This stipulation admits as a fact that such affidavit was filed without the herein plaintiffs admitting its materiality and competency which they herewith question and is subject to the reservation in paragraph 14.

10. That upon

petition filed by attorney for the plaintiffs in said case, the hearing of Civil Case No. 8967 was set for September 12, 1946, and on said date the Court issued the following order:

"Upon petition of Atty. Ignacio D, Castillo, the petitioner herein, Lourdes Ichon Vda. de Sison, is hereby appointed as guardian *ad litem* of her minor children, namely, Lita Amelia Sison, Zenaida Sison, Bonifacio Sison, Jr., and Rufo Sison, to represent them in this proceeding. The said petitioner is hereby required to take her oath before discharging her duties as such guardian *ad litem*."

11. That the minutes of the Court on the hearing on September

12. 1946, certifies, among other things, that "before proceeding with the hearing of the case, counsel for the defendants, prayed that defendant

Lourdes Ichon Vda. de Sison be appointed as guardian *ad litem* of her minor children Lita Amelia Sison, Zenaida Sison, Bonifacio Sison, Jr., and Rufo Sison to represent them in this case. The Court granted the petition. Whereupon, defendant Lourdes Ichon Vda. de Sison took her oath as such guardian *ad litem* before Deputy Clerk of this Court, Mr. Genaro Ferrer.

13. That on February 11, 1948, upon motion of the defendants therein, the Court of First Instance rendered an order dismissing the complaint in Civil Case No. 8967 after plaintiffs had introduced all their evidence and after the defendant had presented five witnesses, one of them being Lourdes Ichon who was still testifying: but before the defense had completed their evidence.
14. That the plaintiffs brought up the case on appeal to the Court of Appeals, G. R. No. 2903-K and said Court of Appeals, on September 27, 1949, reversed the order of dismissal and rendered a decision in favor of the plaintiffs, applying the doctrine in the case of *Arroyo vs. Azur*, 43 Off. Gaz., 54.
15. That in the Court of First Instance, in the Court of Appeals and in the Supreme Court, Attys. Perez, Santos & Abenojar, Victoriano Gayagoy, Ignacio D. Castillo, Aquino & Alias and Porfirio V. Sison have made it appear in all their pleadings and appearances that they were appearing for all of the defendants in the case, but the herein plaintiffs deny that they had authorized said attorneys to represent them in any way in said Civil Case No. 8967.
16. That copy of the motion for the execution of the judgment and copy of the writ of execution issued pursuant thereto were served upon the attorney of record of the defendants, but were not served personally again upon the herein plaintiffs.
17. That in accordance with the writ of execution, the Provincial Sheriff of Pangasinan placed the herein defendants in possession of the land

involved in Civil Case No. 8967.

18. The parties agree that the plaintiffs herein, except Lita Sison, will testify that they had not known of Civil Case No. 8967 until their mother informed them about it after the denial of the Supreme Court of the petition for certiorari, without the defendants admitting the veracity of such fact.
19. That counsel for the plaintiffs herein married the plaintiff Lita Sison on December 16, 1948, and was practising attorney since 1945, but claims that he had no knowledge of Civil Case No. 8967 until he was informed by his mother-in-law, Lourdes Sison, of its defeat.

Wherefore, the parties submit the first cause of action for decision on the above stipulation of facts, with the reservation contained in plaintiffs' motion of September 20, 1951.

Parties further pray that they be granted a period of 10 days from date to submit simultaneous memorandum and an additional 5 days to submit reply memorandum.

Lingayen, Pangasinan, September 20, 1951.

(Sgd.)
AUGUSTO KALAW

(Sgd.) VICENTE BENGZON
Attorney for the plaintiffs

Attorney for the defendants

and the following additional stipulation of facts designated as paragraph 13-a of the stipulation:

That counsel for the defendants filed in the Supreme Court a petition for a writ of certiorari against the decision of the Court of Appeals, G. R. No. L-3444, and the Supreme Court in its resolution of January 31, 1960, ordered the dismissal of the petition for certiorari for lack of merit without requiring the respondents to answer it. This stipulation is subject to the reservation in paragraph 14.

There is no doubt that plaintiff Lili Sison Jaranilla is bound by the judgment rendered in civil case No. 8967 of the Court of First Instance of Pangasinan and reversed on appeal by the Court of Appeals in CA-GR No. 2903-R, because her husband was not a necessary party, the controversy therein involved being her share in the parcels of land which she had inherited from her deceased father.

As to the second point raised and decided in favor of the rest of the plaintiffs by the Court of First Instance of Pangasinan, it appears that the plaintiffs who were minors except Lili Sison Jaranilla were not summoned in the action (civil case No. 8967), as provided for in section 10, Rule 7; that Lourdes Ichon Vda. de Sison, the defendant therein, represented to the Court that as her children were necessary parties they should be joined as defendants; that on 25 June 1946, as prayed for by the defendant therein, the plaintiffs therein amended their complaint impleading said children who, as the agreed statement of facts stipulates with the exception of Lili Sison who was of age, were minors over 15 years of age and Rufo, 12 years old; that on 1 July 1946 the Court admitted the amended complaint and ordered the new defendants to be summoned; that the summons issued on that date by the clerk of court was served on the 9th of that month upon Lourdes Ichon Vda. de Sison and on the 15th of that month upon Lili Sison Jaranilla; that on 17 July 1946 attorneys Perez, Gayagoy, Abenojar and Ignacio D. Castillo filed an answer to the amended complaint in behalf of the impleaded defendants Lili Sison Jaranilla, Lita Sison, Zenaida Sison, Bonifacio Sison, Jr., and Rufo Sison; that on 12 September 1946, as prayed for by the attorney appearing for the defendants therein, Lourdes Ichon Vda. de Sison was appointed guardian *ad litem*

to represent her minor children and qualified as such by taking her oath before deputy clerk¹ of court Genaro Ferrer; and that in the Court of First Instance, Court of Appeals and Supreme Court, attorneys Perez, Gayagoy, Santos & Abenojar, Ignacio D. Castillo, Aquino & Alias and Porfirio V. Sison represented in all their pleadings that they were appearing for all the defendants therein. Taking into consideration all the circumstances of the case, we are of the opinion that the appearance of the attorneys in behalf of the minors in the action is equivalent to service.^[1] The denial by the minors of having authorized said attorneys to represent them may be conceded but such denial does not destroy the presumption that the services of the attorneys had been engaged by the guardian *ad litem* not only to represent her but also the minors. If the duly appointed guardian *ad litem*, who is the mother of the minors, did not consider the summons served on her alone as a summons also on her minor children, or if she did not authorize her attorneys to represent her minor children, she should have raised the question in the case before or during the trial or thereafter but before judgment was rendered. The failure of the guardian *ad litem* and of her attorneys to raise the point of lack of summons service upon the minors personally is a waiver on the part of said minors represented by their mother, their guardian *ad litem*, to question the lack of such service upon them personally. As already stated, the voluntary appearance of the attorneys not only for Lourdes Ichon Vda. de Sison but also for the minors is equivalent to service.

The judgment appealed from, in so far as it annuls the judgment rendered in civil case No. 8967 and the judgment of the Court of Appeals in CA-GR No. 2903-R reversing it on appeal and the writ of execution issued therein, is reversed, without pronouncement as to costs.

Paras, C. J., Pablo, Montemayor, Reyes, A., Jugo, Concepcion, and Reyes, J. B. L., JJ., concur.

^[1] Section 23, Rule 7

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