

**GREGORIO ARINES AND JULIA BORROMELO, PETITIONERS, VS. EMILIO CUACHIN, ELIZABETH FEDERIS, HON. COURT OF APPEALS, AND HON. ULPIANO SARMIENTO, JUDGE OF THE COURT OF FIRST INSTANCE O...**

*G.R. No. L-30014. July 31, 1978*

Ponente: ANTONIO, J.

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**ANTONIO, J.:**

Petition for certiorari, mandamus and prohibition seeking: (1) the issuance of a writ of preliminary injunction enjoining respondent Judge Ulpiano Sarmiento of the Court of First Instance of Camarines Sur, Naga City, from acting on a motion for execution until after final determination of this proceeding; (2) the nullification of the resolutions of respondent Court of Appeals dated November 27, 1968 and December 17, 1968; (3) the vacation of the entry of judgment of respondent Court of Appeals in CA-G. R. No. 34525-R; and (4) that petitioners be allowed to perfect their appeal by certiorari from the judgment of the Court of Appeals within the period this Court may fix.

Upon the filing of the requisite bond, a writ of preliminary injunction was issued on February 12, 1969. The facts from which the present proceedings arose are as follows:

On December 12, 1962, respondents Emilio Cuachin and Elizabeth Federis instituted an action against petitioners Gregorio Arines and Julia Borromeo "To Declare Pacto De Retro as Loan With Mortgage" in the Court of First Instance of Camarines Sur (Civil Case No. 5546).

After due trial, the Court of First Instance of Camarines Sur rendered judgment, the dispositive portion of which reads as follows:

"WHEREFORE, decision is hereby rendered DISMISSING the amended complaint and complaint in intervention, ordering the plaintiffs to execute a deed of sale for the properties described in TCT No. 4323 and TCT 4455 and the intervenor, for the property described in TCT 4454 in favor of the defendants in the form prescribed under Act 496, and ordering the Register of Deeds, after the said document had been executed, to issue in favor of the defendants the corresponding transfer certificate of title based on the said documents, with costs against plaintiffs."

On appeal, the aforesaid judgment was affirmed and reversed in part by the Court of Appeals on May 15, 1968. Its dispositive portion states:

"WHEREFORE, except that portion of the judgment dismissing the complaint in intervention which should be, and is, hereby affirmed, the judgment appealed from is reversed in all other aspects. Appellees are ordered to give up the possession of the parcels of land in question to the appellants upon the latter's payment of P600.00.

No interest will be paid as appellees received the products of the land in lieu of the payment of interest. Appellees are further ordered to pay attorney's fees in the sum of P500.00, plus judicial costs."

Petitioners received, thru their counsels, copy of the aforesaid judgment on May 28, 1968. Later, in a motion dated June 11, 1968, the petitioners moved for reconsideration of the decision. This was denied by the Court of Appeals on July 9, 1968. The copy of the resolution denying the motion for reconsideration was sent by registered mail to "Atty. Silvestre S. Felix and Associates, Naga City". The letter was returned to sender for the reason that delivery to the addressee of the registry notices was not effected by the letter carriers as addressee was unknown and/or cannot be located (Exhibits "B-1" and "H-1").

Upon the return of said Registered Letter No. 440, the Court of Appeals entered its judgment and remanded the record of the case to the Court of First Instance of Camarines Sur. According to petitioners, they discovered the denial of their motion for reconsideration only on October 4, 1968, when their counsel received from the Clerk of Court of the Court of First Instance of Camarines Sur a notice that the records of the case were already received from the Court of Appeals.

On October 17, 1968, petitioners filed with the Court of Appeals a "Petition to Vacate Entry of Judgment and to Fix Period Within Which to Appeal Judgment by Certiorari to Supreme Court" on the ground that they were not properly served with the resolution of denial dated July 9, 1968. This petition was denied on November 27, 1968, basically because of petitioners' counsels' failure to claim the registered letter containing the resolution of July 9, 1968 sent to them at their address of record. Their motion for reconsideration of the resolution dated November 27, 1968 having been denied on December 17, 1968 by a Special Division of Five Justices, petitioners filed the present petition.

The issue now before this Court is, whether or not petitioners were completely served by registered mail with a copy of the Court of Appeals' resolution dated July 9, 1968, denying their motion for reconsideration of the decision dated May 18, 1968.

Petitioners were represented in the Court of Appeals by the law offices of Silvestre S. Felix and Borja & Naval. Thus, the pleadings of petitioners in the Court of Appeals bear the following, as counsel:

"Silvestre S. Felix  
and  
Borja & Naval  
Counsel for the Appellees  
City of Naga

By:

(Sgd.) DAVID C. NAVAL"

The resolution of July 9, 1968 of the Court of Appeals denying petitioners' motion for reconsideration was contained in an envelope (Exhibit "F") posted as Registered Letter No. 440 at Manila and addressed to: "Attys. Silvestre S. Felix and Associates, Naga City". The same envelope also shows that it is stamped "Return to Sender Reason Unclaimed" but the word "Unclaimed" appears to be deleted by a line. The certification of the Postmaster of the City of Naga (Exhibit "H-1") shows that "registry notices were issued for delivery to the addressee by the letter carriers but the delivery of the same was not effected for the reason that the addressee was unlocated" and a letter (Exhibit "B-1") of the same Postmaster to Atty. David C. Naval, one of the lawyers of petitioners, states that

"registered letter No. 440 addressed to Attys. Silvestre S. Felix and Associates, Naga City, \* \* \* according to record, was returned to sender for the reason that the addressee was unknown to the letter carriers."

Petitioners aver that it was error for the Court of Appeals to have sent the registered mail to "Attys. Silvestre S. Felix and Associates, Naga City". They claim that Atty. Silvestre S. Felix is not known in Naga City as he is a resident of Iriga, Camarines Sur. And since no registry notice pertaining to the said registered letter was received by them, service by registered mail of the Court's resolution should not be deemed completed and effected upon addressee's failure to claim his mail on the fifth day after the first notice of the postmaster as contemplated in Rule 13, Section 8 of the Rules of Court. They further aver that subsequent registered mails sent by the Court of Appeals addressed to "Attys. Silvestre S. Felix and Borja & Naval, Naga City" (Exhibits "G" and "G-1") were properly delivered to the addressees.

Upon the other hand, private respondents argued that the address appearing in the pleadings, petition and motions of petitioners clearly show that the address of the latter's three counsels is Naga City, without indicating any separate address for Atty. Silvestre S. Felix. It was, therefore, argued that the Court of Appeals was justified and authorized under Section 2, Rule 13 of the Rules of Court to pick out the name of only one of petitioners' lawyers.

It must be noted that the pleadings of petitioners in the Court of Appeals were actually signed by Atty. David C. Naval and not by Atty. Silvestre S. Felix. Common sense and due diligence should have impelled the Clerk of Court of the Court of Appeals to address the letter to Atty. David C. Naval or to Attys. Borja & Naval of Naga City and not to Atty. Silvestre S. Felix whose address is not indicated. It is true that "where a party is represented by two attorneys, the rule is that the notice may be made either upon both attorneys or upon one of them, regardless of whether they belong to the same law firm or are practising one independently of the other",<sup>[1]</sup> but this presupposes that the address of said attorneys is known. We have previously ruled that it is incumbent upon a party, who relies on constructive service under Section 5 of Rule 13 of the Rules, to prove that the first notice of the registered letter was sent and delivered to the addressee.<sup>[2]</sup> Since the postal authorities informed the Court of Appeals that the delivery of the registry notice to Atty. Silvestre S. Felix was not made because "the addressee was unlocated", the provisions of Section 6 of Rule 13 could have been availed of. Pursuant to Section 6, if service cannot be made personally or by registered mail, the office and place of residence of the party or his attorney being unknown, service may be made by delivering the copy to the Clerk of Court, with proof of failure of both personal service and service by mail. This was not done by the Appellate Court. It could not, therefore, be concluded that petitioners were duly served a copy of said order.

We find it relevant, however, to remind counsels for petitioners that they were also remiss in their duties. It was their duty to inform the Court that Atty. Silvestre S. Felix had his office in Iriga, Camarines Sur, which was distinct from the office of Borja & Naval in Naga City. As this Court emphasized in *Babala v. Court of Appeals*,<sup>[3]</sup> "it is the duty of counsel to adopt and strictly maintain a system that efficiently takes into account all court notices sent to him." This is necessary for the orderly, efficient and prompt administration of justice.

WHEREFORE, the instant petition is hereby GRANTED and the resolutions of the Court of Appeals dated November 27 and December 17, 1968, as well as its Entry of Judgment in CA-G.R. No. 34525-R are hereby set aside. No special pronouncement as to costs.

Fernando, (Chairman), Aquino, Concepcion, Jr., and Santos, JJ., concur.

Barredo, J., concurs, additionally, he points out that the clerk of the Court of Appeals should not have addressed the notice to Atty. Silvestre S. Felix and associates because there is no evidence that Attys. Borja and Naval are associates in the law office of Atty. Felix.

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[1] Don Lino Gutierrez & Sons, Inc. v. Court of Appeals, 61 SCRA 87; Magpayo, et al. v. Court of Appeals, 61 SCRA 119.

[2] Barrameda v. Castillo, 78 SCRA 4.

**[3] 31 SCRA 398.**

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