

QUIRINO LEE, PETITIONER, V. HON. BERNELITO R. FERNANDEZ, REGIONAL TRIAL COURT OF QUEZON CITY BRANCH 97 AND SIO TIAT KING, RESPONDENTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Order[2] dated February 18, 2011 issued by public respondent Hon. Bernelito R. Fernandez (“respondent Judge” for brevity) of the Regional Trial Court (“respondent court” for brevity) of Quezon City, Branch 97, which set aside its Order[3] dated August 13, 2010 in Civil Case No. Q-09-64500 for “DECLARATION OF NULLITY OF TITLE, RECOVERY OF THE PHYSICAL POSSESSION OF PROPERTY & DAMAGES, with [P]rayer for a Temporary Restraining Order or a Writ of Preliminary Injunction.”[4] The Petition also questions respondent court's Order[5] dated March 8, 2012, which denied petitioner's eventual Motion for Reconsideration[6].

The antecedent facts are as follows:

On March 16, 2009[7], private respondent Sio Tiat King (“private respondent” for brevity) filed before respondent court a Complaint[8] for “DECLARATION OF NULLITY OF TITLE, RECOVERY OF THE PHYSICAL POSSESSION OF PROPERTY & DAMAGES, with [P]rayer for a Temporary Restraining Order or a Writ of Preliminary Injunction”[9] against several defendants[10], including petitioner Quirino Lee (“petitioner Lee” or “petitioner” for brevity) and a certain Co An (“defendant An” for brevity).

On March 25, 2009, petitioner Lee and defendant An, by way of special appearance[11], filed a “Motion to Dismiss”[12] private respondent's Complaint[13]. The rest of the facts are those as stated in respondent court's Order[14] dated August 13, 2010, to wit:

“Before this Court is a Motion filed by defendant Quirino Lee (petitioner here) and Co An, through special appearance of counsel, seeking the dismissal of the instant case on the grounds that: (1) the Court has no jurisdiction over the persons of the defendants, (2) the Complaint contains a defective verification and certification against forum-shopping, (3) the Complaint fails to state a cause of action against the defendants, (4) plaintiff is barred by laches and estoppel and, (5) the plaintiff is guilty of forum-shopping.

When given time (Order, April 3, 2009), the plaintiff filed his Comment-Opposition.

Also on record is the Reply filed by defendants Quirino Lee and Co An.

Defendants Lee and An argue that the service of summons to them undertaken by the plaintiff's counsel is not valid. As such, the Court did not acquire jurisdiction over their persons. Xxx”[15] (Emphasis Supplied)

On August 13, 2010, respondent court issued an Order[16], which granted the “Motion to Dismiss”[17] of petitioner Lee and defendant An, and accordingly ordered the dismissal of private respondent's Complaint[18] as to petitioner Lee and defendant An. The dispositive portion of the Order read as follows:

“In view of the foregoing and absent any proof of service by the Regional Trial Court of Candon City, the

prayer in the instant Motion seeking the dismissal of the instant case is hereby GRANTED. As prayed for, the instant case is hereby DISMISSED in so far as defendants Quirino Lee and Co An are concerned for lack of jurisdiction over their persons.

With the dismissal, the other issues raised in the instant Motion are hereby rendered moot and academic.

SO ORDERED.”[19]

On September 6, 2010[20], private respondent filed a “MOTION FOR RECONSIDERATION AND CLARIFICATION”[21] of respondent court's Order[22] of August 13, 2010, which Order granted the “Motion to Dismiss”[23] of petitioner Lee and defendant An. The rest of the facts are continued in respondent court's assailed Order[24] dated February 18, 2011, as follows:

“Before this Court is the Motion filed by the plaintiff, through counsel, seeking reconsideration of the Order dated August 13, 2010 dismissing the instant case in so far as defendants Quirino Lee and Co An are concerned for lack of jurisdiction.

When given time (Order, September 24, 2010), defendants Quirino Lee and Co An filed their Opposition citing as grounds to interpose the failure of the plaintiff to comply with Sections 4, 5 and 6, Rule 15 of the Rules of Court.”[25] (Emphasis Supplied)

On February 18, 2011, respondent court issued the assailed Order[26], which granted private respondent's “MOTION FOR RECONSIDERATION AND CLARIFICATION”[27], and which set aside the dismissal[28] of private respondent's Complaint[29] insofar as petitioner Lee and defendant An were concerned. Respondent court also ordered the issuance of Summons to petitioner Lee and defendant An. The dispositive portion of the assailed Order stated the following:

“In view of the foregoing, the Motion for Reconsideration is hereby GRANTED and the Order dated August 13, 2010 is hereby SET ASIDE. As prayed for, let summons be issued and served to defendants Quirino Lee and Co An.

It appearing that defendant Quirino Lee is a resident of Candon City, let the summons intended for him be immediately referred to the Office of the Clerk of Court acting as ex-officio sheriff, Regional Trial Court, Candon City, Ilocos Sur.

SO ORDERED.”[30]

After petitioner Lee's Motion for Reconsideration[31] was denied by respondent court in its other assailed Order[32] dated March 8, 2012, petitioner filed the Petition at bench praying for the following:

“WHEREFORE, it is respectfully prayed that this Honorable Court give due course to this petition and, upon its filing, issue a temporary restraining order to restrain the respondents from proceeding in any manner in Civil Case No. Q-09-64500 until the application for injunction shall have been heard; and, thereafter, on such bond as it may fix and approve, order the issuance of a writ of preliminary injunction suspending any and all proceedings in Civil Case No Q-09-64500 until this instant case shall have been finally resolved; and, after hearing the case on its merits, render judgment nullifying the aforesaid orders subject hereto; and, instead, directing the respondent Judge to reinstate its Order dated 13 August 2010 dismissing Civil Case No Q-09-64500 as to petitioner.

The petitioner likewise prays for such other measures of relief which this Honorable Court may deem just and equitable under the premises.”[33]

Petitioner raised the following grounds:

“(A)

RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE ORDER DATED 18 FEBRUARY 2011 SETTING ASIDE HIS PREVIOUS ORDER DATED 13 AUGUST 2012 DISMISSING THE CASE A QUO AGAINST PETITIONER NOTWITHSTANDING THAT THE SAID MOTION WAS WITHOUT LEGAL AND FACTUAL BASIS.

(B)

RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE ORDER DATED 18 FEBRUARY 2011 NOTWITHSTANDING THAT SUCH RELIEF WAS NOT SOUGHT FOR BY THE PRIVATE RESPONDENT.

(C)

RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE ORDER DATED 18 FEBRUARY 2011 ACTING UPON AND EVEN GRANTING PRIVATE RESPONDENT'S MOTION FOR RECONSIDERATION AND CLARIFICATION DATED 04 SEPTEMBER 2010 NOTWITHSTANDING THAT THE SAID MOTION WAS FATALLY DEFECTIVE.

(D)

RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDER DATED 18 FEBRUARY 2011 ACTING UPON AND EVEN GRANTING PRIVATE RESPONDENT'S MOTION FOR RECONSIDERATION AND CLARIFICATION DATED 04 SEPTEMBER 2010 AND ORDERING THAT SUMMONS BE ISSUED NOTWITHSTANDING THAT THE ORDER DATED 13 AUGUST 2010 DISMISSING THE CASE AGAINST PETITIONERS HAD ALREADY BECOME FINAL AND EXECUTORY.

(E)

RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE ORDER DATED 08 MARCH 2012 RULING THAT PRIVATE RESPONDENT'S MOTION FOR RECONSIDERATION AND CLARIFICATION DATED 04 SEPTEMBER 2010 WAS FILED WELL WITHIN THE PERIOD PRESCRIBED BY THE RULES NOTWITHSTANDING THE SAID MOTION WAS FATALLY DEFECTIVE.”[34] (Emphasis Supplied)

Contrary to petitioner Lee's arguments in his assigned ground (C), respondent court had properly considered and had properly acted on private respondent's “MOTION FOR RECONSIDERATION AND CLARIFICATION”[35] (“MOTION” for brevity).

Petitioner Lee had raised the following:

“The respondent Judge gravely abused his discretion amounting to lack or excess of jurisdiction when he issued the Order dated 18 February 2011 xxx acting upon and even granting private respondent's Motion for Reconsideration and Clarification dated 04 September 2010 xxx notwithstanding that it was fatally defective. This is demonstrable.

First, The said motion of the private respondent was addressed to the Branch Clerk, and not the parties in the instant case in violation of Section 5, Rule 15 of the Revised Rules of Civil Procedure, xxx

xxx

Second[,] The subject motion of the private respondent is fatally defective as it violated Section 4, Rule 15 of the Revised Rules of Civil Procedure xxx

xxx

In the instant case, private respondent's motion was scheduled by him on 10 September 2010. Thus, pursuant to the above-quoted provision it should be served in such manner as to ensure receipt thereof at least three (3) days before 10 September 2010, or on 07 September 2010. However, said motion was served only via registered mail from the post office of Quezon City and thus was received by counsel for petitioner only on 08 September 2010.

Third, There was no proof of service provided in the said motion required under Section 6 of the said Rule, xxx.”[36] (Underscoring and italics were made in the original, emphasis supplied)

Defeating petitioner Lee's arguments however, is that private respondent's “MOTION”[37] was deemed to have substantially complied with the requirements of Notice and Hearing under Sections 4[38], 5[39], and 6[40] of Rule 15 of the Rules of Court. This is because although the Notice of Hearing[41] of private respondent's “MOTION”[42] was defective for having been addressed to the Clerk of Court instead of having been addressed to the parties of the case below pursuant to Section 5[43] of Rule 15 of the Rules of Court, the defect was deemed to have been cured when a copy of private respondent's “MOTION”[44] was furnished the counsel of petitioner Lee and defendant An. As the records revealed, a copy of private respondents' “MOTION”[45] had been stamped as received by the office of the counsel of petitioner Lee and defendant An on September 8, 2010[46]. As a result, petitioner Lee and defendant An were therefore notified of such “MOTION”[47].

That there is substantial compliance with the requirements of Notice and Hearing under Sections 4, 5, and 6 of Rule 15 of the Rules of Court if a copy of a Motion for Reconsideration, such as private respondent's “MOTION”[48] here, was furnished the counsel of the adverse party, is in accordance with the following pronouncement of the Supreme Court in *City of Dumaguete*, herein represented by City Mayor, Agustin R. Perdices vs. Philippine Ports Authority, G.R. No. 168973, August 24, 2011:

“Jurisprudence confirms that the requirements laid down in Sections 4, 5, and 6, Rule 15 of the Rules of Court that the notice of hearing shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion, are mandatory. If not religiously complied with, they render the motion pro forma. As such, the motion is a useless piece of paper that will not toll the running of the prescriptive period.

Yet, again, there were previous cases with peculiar circumstances that had compelled us to liberally apply the rules on notice of hearing and recognize substantial compliance with the same. Once such case is *Philippine National Bank v. Paneda*, where we adjudged:

Thus, even if the Motion may be defective for failure to address the notice of hearing of said motion to the parties concerned, the defect was cured by the court's taking cognizance thereof and the fact that the adverse party was otherwise notified of the existence of said pleading. There is substantial compliance with the foregoing rules if a copy of the said motion for reconsideration was furnished to the counsel of herein private respondents.” (Emphasis Supplied)

Considering that private respondent's “MOTION”[49] had substantially complied with the requirements of Notice and Hearing, then, contrary to petitioner Lee's arguments in his assigned ground (E), the filing of such “MOTION”[50] on September 6, 2010, or which was after a lapse of thirteen (13) days from receipt by private respondent's counsel on August 24, 2010 of a copy of respondent court's Order[51] that was sought to be reconsidered, was done within the reglementary period of fifteen (15) days[52]. Private respondent's

“MOTION”[53] having been timely filed was as also found by respondent court in its other assailed Order[54] of March 8, 2012, to wit:

“Also, records show that the August 13, 2010 Order which was sought to be reconsidered was received by plaintiff's counsel on August 24, 2010. As such, it would appear that the filing of the Motion for Reconsideration on September 6, 2010 is well within the period prescribed by the Rules.”[55] (Emphasis Supplied)

Considering further that private respondent's “MOTION”[56] was timely filed within the reglementary period, then, contrary to petitioner Lee's arguments in his assigned ground (D), respondent court's Order[57] of August 13, 2010 which was sought to be reconsidered, had not become final and executory.

Consequently, contrary to petitioner Lee's arguments in his assigned grounds (A) and (B), respondent court correctly set aside its Order[58] of August 13, 2010, which granted petitioner Lee and defendant An's “Motion to Dismiss”[59], and accordingly ordered the issuance of Summons to petitioner Lee and defendant An as was prayed for[60] by private respondent in his “MOTION”[61].

On these matters, petitioner Lee had argued as follows:

“In his Order dated 13 August 2010 xxx, respondent Judge dismissed Civil Case No. Q-09-64500 as to herein petitioner and defendant Co An, xxx

xxx

However, the respondent Judge, without any factual and legal basis, issued an Order dated 18 February 2011 setting aside his previous order dismissing the case a quo as against petitioner and defendant Co An.

It bears stressing that nothing had changed the fact that there was no service of summons upon the petitioner and defendant Co An as to justify the issuance of the Order dated 18 February 2011 setting aside the previous order dismissing the case against petitioner and therein defendant Co An.

As recognized by the respondent Judge, the Officer's Return dated 23 March 2009 shows that no summons, complaint and notice of raffle were served upon petitioner as it was taken by private respondent's counsel. While there is no showing as to justify the supposed substituted service to a certain Dimple De Veyra resorted to for the summons due for defendant Co An.

Clearly, such service cannot be allowed for xxx service must be personal, xxx and that improper and unjustified resort to substituted service of summons renders the Court without jurisdiction over the person of the defendant, xxx

Nor can there be a presumption of regularity in the service of summons, xxx

xxx

Verily, since the court a quo has not acquired jurisdiction over the persons of petitioner and defendant Co An for lack of valid service of summons, to proceed against it would be a futility, xxx

xxx

Consequently, the dismissal of the case a quo was proper xxx.

xxx

Verily, there was no factual and legal basis for the issuance of the Order dated 18 February 2011 by the respondent Judge setting aside its previous Order dated 13 August 2010 dismissing the case a quo as against petitioner and therein defendant Co An.”[62] (Underscoring was made in the original; Emphasis Supplied)

Prevailing over petitioner Lee's arguments however, is that respondent court was authorized to issue another Summons in order to properly acquire jurisdiction over the person of petitioner Lee, upon respondent court's discovery that initial service of Summons on the latter was defective.

That respondent court is authorized to issue another Summons, instead of dismissing private respondent's Complaint[63] when the initial service of Summons was found to be defective, is in accordance with the following declaration of the Supreme Court in *Bank of the Philippine Islands vs. Sps. Ireneo M. Santiago and Liwanag P. Santiago, Ventrogen Inc.*, represented by Edwin Santiago, G.R. No. 169116, March 28, 2007:

“Applying the aforesaid principle in the case at bar, we rule that the service of summons on BPI’s Branch Manager did not bind the corporation for the branch manager is not included in the enumeration of the statute of the persons upon whom service of summons can be validly made in behalf of the corporation. Such service is therefore void and ineffectual.

However, upon the issuance and the proper service of new summons on 11 March 2003, before the Writ of Preliminary Injunction was issued on 20 March 2003, whatever defect attended the service of the original summons, was promptly and accordingly cured. (Emphasis and underscoring were made in the original)

It bears stressing, that on 7 March 2003, the Branch Clerk of Court issued a new summons which was properly served upon BPI’s Corporate Secretary on 11 March 2003, as evidenced by the Sheriff’s Return. (Emphasis Supplied)

xxx

Inarguably, before the Order granting the application for Writ of Preliminary Injunction was issued, the RTC already acquired jurisdiction over the person of BPI by virtue of the new summons validly served on the Corporate Secretary. The fact that the original summons was invalidly served is of no moment since jurisdiction over BPI was subsequently acquired by the service of a new summons.

In the case of *The Philippine American Life and General Insurance Company v. Brevea*, we ruled:

A case should not be dismissed simply because an original summons was wrongfully served. It should be difficult to conceive, for example, that when a defendant personally appears before a Court complaining that he had not been validly summoned, that the case against him should be dismissed. An alias summons can be actually served on said defendant.

xxx

xxx It is not pertinent whether the summons is designated as an 'original' or an 'alias' summons as long as it has adequately served its purpose. What is essential is that the summons complies with the requirements under the Rules of Court and it has been duly served on the defendant together with the prevailing complaint. xxx Moreover, the second summons was technically not an alias summons but more of a new summons on the amended complaint. It was not a continuation of the first summons considering that it particularly referred to the amended complaint and not to the original complaint. xxx” (Emphasis and underscoring were made in the original)

Given all these, no cogent reason was therefore shown to justify any deviation from the following findings of respondent court, which were in accordance with the facts and the law:

“It has been held xxx that a case should not be dismissed where summons wrongfully served.

Considering that the ground relied upon by his Court in dismissing the instant case is the absence of any return and/or report on the service of summons to defendants Quirino Lee and Co An and with the cited ruling, the Order dated August 13, 2010 deserves a second look.

On the failure to comply with the requirements of notice of hearing, liberal construction of the requirement of notice of hearing has been allowed where the interest of substantial justice will be served. xxx”[64] (Emphasis Supplied)

After careful consideration of all the facts, arguments, and issues appearing on the records as well as of the pertinent laws and jurisprudence, and in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

IN VIEW OF ALL THESE, the Petition for Certiorari is DENIED.

SO ORDERED.

Didican (Chairman) and Dimagiba,[*] JJ., concur.

[*] Acting Junior Member vice J. Paredes per Office Order No. 34-14-RSF dated January 30, 2014.

[1] Rollo, pp. 3-37

[2] Rollo, pp. 38-39.

[3] Rollo, pp. 98-99

[4] Rollo, p. 98.

[5] Rollo, pp. 40-41

[6] Rollo, pp. 127-136

[7] Rollo, p. 42

[8] Rollo, pp. 42-49

[9] Rollo, p. 42.

[10] “MICHAEL GEORGE, MATHEW VINCENT, MOISES JOHN, all surnamed LIM, QUIRINO LEE, CO AN, Spouses EVELYN & VICTORIANO, both surnames CALIDGUID, and the REGISTRY OF DEEDS OF QUEZON CITY”, Rollo, p. 42

[11] Rollo, p. 66

[12] Rollo, pp. 66-79

[13] Rollo, pp. 42-49

[14] Rollo, pp. 98-99

[15] Rollo, p. 98

[16] Rollo, pp. 98-99

[17] Rollo, pp. 66-79

[18] Rollo, pp. 42-49

[19] Rollo, p. 99

[20] Rollo, p. 41

[21] Rollo, pp. 100-101

[22] Rollo, pp. 98-99

[23] Rollo, pp. 66-79

[24] Rollo, pp. 38-39.

[25] Rollo, p. 38

[26] Rollo, pp. 38-39.

[27] Rollo, pp. 100-101

[28] Order of August 13, 2010, Rollo, pp. 98-99

[29] Rollo, pp. 42-49

[30] Rollo, p. 39

[31] Rollo, pp. 127-136

[32] Rollo, pp. 40-41

[33] Rollo, pp. 33-34

[34] Rollo, pp. 14-15

[35] Rollo, pp. 100-101

[36] Rollo, pp. 24-26

[37] Rollo, pp. 100-101

[38] Section 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (4a)

[39] Section 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (5a)

[40] Section 6. Proof of service necessary. — No written motion set for hearing shall be acted upon by the court without proof of service thereof. (6a)

[41] Rollo, p. 101

[42] Rollo, pp. 100-101

[43] Section 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (5a) (Emphasis Supplied)

[44] Rollo, pp. 100-101

- [45] Rollo, pp. 100-101
- [46] Rollo, p. 101
- [47] Rollo, pp. 100-101
- [48] Rollo, pp. 100-101
- [49] Rollo, pp. 100-101
- [50] Rollo, pp. 100-101
- [51] Rollo, pp. 98-99
- [52] Rule 37, Section 1, in relation to Rule 41, Section 3 of the Rules of Court
- [53] Rollo, pp. 100-101
- [54] Rollo, pp. 40-41
- [55] Rollo, pp. 40-41
- [56] Rollo, pp. 100-101
- [57] Rollo, pp. 98-99
- [58] Rollo, pp. 98-99
- [59] Rollo, pp. 66-79
- [60] Rollo, p. 101
- [61] Rollo, pp. 100-101
- [62] Rollo, pp. 15-21
- [63] Rollo, pp. 42-49
- [64] Rollo, p. 38

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