

LIBERTAD POBLETE, PETITIONER, VS. MANOTOK SERVICES, INC., RESPONDENT.

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BERSAMIN, L.P., J:

The defendant appeals by petition for review the decision issued on November 2, 2004 in Civil Case No. 108268 entitled *Manotok Services, Inc. v. Libertad Poblete et al.* by the Regional Trial Court (RTC), Branch 47, in Manila,[1] affirming with modification the decision promulgated on August 26, 2003 by the Metropolitan Trial Court (MeTC) of Manila, ordering her and all persons claiming under her to vacate the premises of the plaintiff and to pay the rentals in arrears, attorneys fees and the costs of suit.

The respondent instituted this ejectment suit on October 3, 2001, claiming that it had leased to the petitioner its parcel of land with an area of 105 square meters known as Lot 15, Blk 3, located at 742-A, Avellana St., Tondo, Manila for a 1-year period from January 1, 1999 to December 31, 1999; that during the lease, she had incurred arrears for 9 months starting from April 1, 1999 until December 31, 1999; that she had continued to occupy the premises without paying rentals even after the contract had expired; that as of February 28, 2001, her arrears amounted to P102,916.35, including interests and taxes; and that despite demands to pay the amount due and to vacate the premises, the last demand being the letter sent on March 17, 2001, she maliciously, illegally and with evident bad faith refused to heed the demand.

On September 26, 2002, the petitioner filed a manifestation and dismissal of action for lack of subject matter jurisdiction and jurisdiction over the person.[2]

The respondent also filed its motion to render summary judgment.

On March 17, 2003, the MeTC resolved the 2 motions, to wit:

xxx

It was established that a copy of the summons was not left at the defendant's residence, but at the subject property which the latter was leasing to another person.

This Court maintains that summons was, indeed, improperly served as there was no strict compliance with the requirements of substituted service.

However, this Court believes and so hold (sic) that the complaint should not be dismissed, but the summons should be served anew in accordance with the Rules of Court.

WHEREFORE, plaintiff's Motion to Render Judgment is hereby denied. Let a new summons be served upon the defendant as the Rules of Court provide.

SO ORDERED.[3]

Conformably with the order, the summons and copy of the complaint were served on May 8, 2003 at the residence of the petitioner at No. 21 Clover Street, Doña Manuela Subdivision, Las Piñas City. Branch sheriff Dennis S. Prado of Branch 20, MeTC, then filed his sheriff's return,[4] stating that the summons and complaint had been

served by substituted service pursuant to Sec. 7, Rule 14, Rules of Court, considering that his attempts to effect personal service had failed.

The respondent later presented its motion to render summary judgment dated May 27, 2003,[5] alleging that the petitioner had not filed her answer despite the lapse of more than 10 days from receipt of the summons and copy of the complaint.

On June 25, 2003, the petitioner filed her manifestation and opposition to motion for summary judgment,[6] stating thus:

1. On May 8, 2003, there was a first attempt to serve alleged Summons and Complaint to the Defendant.
2. A relative, Halili Poblete who was temporarily overseeing the house, told persons with alleged documents that the Defendant was out of town and she had told them to come back as she does not want to receive anything because she was just temporarily there and does not know anything or get involved.
3. Plaintiff never received any Summons or Complaint. Also, she was not informed of same by her relative.
4. The, she received this Motion for Summary Judgment from the mail.
5. Libertad Poblete did not receive the alleged Summons and Complaint. However, as soon as she receives same, she will file the necessary pleading.

On July 18, 2003, the MeTC issued an order,[7] as follows:

Finding that the summons together with the copy of the complaint to defendant Libertad Poblete to have been served anew in accordance with the Rules of Court and the latter failed to file her answer within the reglementary period, the Motion to Render Judgment filed by the plaintiff is hereby GRANTED,

Accordingly, let this case be submitted for decision.

SO ORDERED.

On August 26, 2003, the MeTC rendered its decision,[8] disposing thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant and all persons claiming rights under her, ordering the latter the following:

1. to vacate the subject property and restore plaintiff in its possession thereof;
2. to pay the plaintiff the amount of P76,277.70 as rental in arrears from 01 April 1991 until 28 February 2001 plus P4,179.60 per month beginning 01 March 2001 until the premises is finally vacated;
3. to pay plaintiff attorney's fee in the amount of P20,000.00;
4. to pay the costs of suit.

SO ORDERED.[9]

Aggrieved, the petitioner appealed the MeTC decision to the RTC, praying that the decision of the MeTC be set aside and that the case be remanded for trial on the merits because there had been no valid service of summons and copy of the complaint on her. She explained that Halili Poblete, the person who had allegedly been around at the time of the alleged substituted service, was only temporarily overseeing the house but had "told persons with alleged documents that Defendant was out of town and she had told them to come back as she does not want to receive anything because she was just temporarily staying there and does not know anything or get involved (sic);" and that the "persons with the documents were told to come back at a certain day and time." [10]

On November 2, 2004, the RTC affirmed the MeTC,[11] as follows:

The appeal is not meritorious. An issue cannot be raised for the first time on appeal – it must be raised seasonably in the proceedings before the lower court and the question raised on appeal must be within the issues framed by the parties and consequently issues not raised in the trial court cannot be raised for the first time on appeal (Lim v. Queensland Tokyo Commodities Incorporated 373 SCRA 31).

Considering the summary nature of the proceedings before the Court, the award of P20,000.00 as attorney's fees appears exorbitant and is therefore reduced to P10,000.00.

Finding no reversible error in the assailed Decision of the lower Court, the same is hereby AFFIRMED except only as to the award of attorney's fees which is hereby reduced to P10,000.00.

SO ORDERED.[12]

The defendant sought reconsideration,[13] insisting that the issue of lack of jurisdiction over her person had been raised in the MeTC and that there had been improper service of summons due to lack of strict compliance with the requirement for substituted service.

Nonetheless, on May 13, 2005, the RTC denied the motion for reconsideration.[14]

Hence, this appeal, wherein the petitioner submits:

THERE WAS NO VALID SERVICE OF SUMMONS AND COMPLAINT BY SUBSTITUTED SERVICE FOR THE COURT TO HAVE ACQUIRED JURISDICTION OVER THE PERSON OF DEFENDANT.

THE PREVIOUS AND INITIAL NON-SERVICE OF SUMMONS AT A PLACE DEFENDANT DOES NOT RESIDE ALSO SHOWS NO JURISDICTIONAL DEMAND THAT RESULTS IN LACK OF SUBJECT MATTER JURISDICTION.[15]

The petition has merit.

In civil cases, a trial court acquires jurisdiction over the person of the defendant either through a valid service of summons or through the person's voluntary appearance in court and his submission to its authority.[16]

As a rule, summons is served personally on the defendant "by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him." [17] Where the summons cannot be served personally within a reasonable period of time, substituted service may be resorted to.[18]

Under the Rules of Court,[19] the following modes of substituted service are allowed, viz:

- a) By leaving the summons and copy of the complaint at the defendant's residence with some person of suitable age and discretion then residing therein; or
- b) By leaving the summons and copy of the complaint at defendant's office or regular place of business with some competent person in charge thereof.

It is clear that under the Rules of Court, the serving officer can resort to substituted service only when personal service cannot be made promptly.

Herein, the MeTC ordered that the summons and copy of the complaint (with its annexes) be served anew on the petitioner. Yet, the sheriff effected substituted service because he did not find the petitioner home. He then submitted the corresponding return, reading as follows:

SHERIFF'S RETURN

This is to certify that on May 8, 2003 the undersigned Sheriff went to No. 21 Clover Street, Dona Manuela Subdivision, Las Pinas City to serve anew the summons together with the copy of the complaint to the defendant Libertad Poblete.

That according to a certain Halili Poblete a relative who resides thereat, a person of suitable age and discretion told the undersigned that the defendant went to Bataan for some business transaction. She likewise declined to receive copy of the summons and complaint but the undersigned left copies of the said documents in the mail box of defendant in full view of the said person.

Attempts to personally serve the summons and complaint to the defendant failed, hence the same were served by substituted service pursuant to Sec. 7, Rule 14 of the Rules of Courts.

DENNIS S. PRADO
Sheriff III[20]

It was on the basis of the foregoing sheriff's return that the MeTC granted the respondent's motion to render judgment.

Was the substituted service of summons valid and effective?

We rule in the negative.

As stated herein, the rules require that summons must be served upon the defendant in person. The importance of such manner of service of the summons is not only to give the court jurisdiction over the person of the defendant, but also to afford the defendant an opportunity to be heard on the claim being made against her.[21] Hence, compliance with the rules on service of summons is as much an issue of due process as of jurisdiction. To safeguard such compliance, the Supreme Court explicitly ruled in *Keister v. Navarro*: [22]

[T]he impossibility of prompt service in person should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service.

Reiterating *Keister*, the Supreme Court expounded on the nature of substituted service of summons and when it may be availed of in *Ang Ping v. Court of Appeals*, [23] to wit:

It is only when the defendant cannot be served personally within a reasonable time that substituted service may be resorted to and such impossibility of prompt service should be shown by stating that efforts have been made to find the defendant personally and that such efforts have failed. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute.

In case of substituted service, therefore, the proof of service of the summons must (a) indicate the impossibility of service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant.[24] We underscore that the facts attesting to the compliance should be detailed in the proof of service.

This action for ejectment is undoubtedly in personam. The judgment sought would be binding on the petitioner and all persons claiming under her. Hence, personal service of the summons on the petitioner was not to be lightly regarded. Thus, the effort of the serving officer must be primarily directed at effecting personal service before substituted service could be validly resorted to.

Yet, by his own admission in his officer's return, the sheriff attempted to serve the summons and complaint anew

on the petitioner at No. 21 Clover Street, Doña Manuela Subdivision, Las Piñas City on May 8, 2003. That was his first and only attempt as of then because the officer's return did not indicate otherwise. According to him, however, a certain Halili Poblete, whom he claimed was the petitioner's relative who resided in the address and was a person of suitable age and discretion, informed him that the petitioner had gone to Bataan for some business transaction; and that he then (presumably) tendered the summons and copy of the complaint to Halili Poblete but the latter declined to receive the papers, leaving him to decide to leave the papers in the petitioner's mail box in full view of Halili Poblete.

The sheriff inexcusably fell short in his compliance with the strict requirements on effecting substituted service of summons. His officer's return did not indicate that he had exerted any effort to effect personal service other than when he went to the petitioner's residence on May 8, 2003. All that he mentioned was that his effort to serve personally had failed. Also, his officer's return showed that he just left the summons and copy of the complaint in the mailbox within the full view of Halili Poblete. This action of the sheriff's rendered clear that he immediately decided to effect substituted service without even considering his going back to the house of the petitioner another time, that is, when she was expected to be home. He also obviously disregarded the requirement for substituted service by his act of simply leaving the papers "in the mailbox of the defendant in full view of the said person" when he should have instead left the papers in the hands of Halili Poblete or tendered them to her, assuming that Halili Poblete fulfilled all the requirements for a proper substitute.

The failure to comply strictly and fully with the requirements of substituted service renders the service of summons ineffective.[25] In *Madrigal v. Court of Appeals*,^[26] the Supreme Court, discussing the requirements of substituted service, stated:

It bears stressing that since service of summons, especially for actions in personam, is essential for the acquisition of jurisdiction over the person of the defendant, the resort to a substituted service must be duly justified. Failure to do so would invalidate all subsequent proceedings on jurisdictional grounds.

We conclude that the substituted service of summons, being defective, did not vest in the MeTC personal jurisdiction over the petitioner. Hence, its judgment was void and ineffectual for lack of due process. It is of the essence of due process that a party is given a reasonable opportunity to be heard and to submit any evidence the party may have in support of his defense.[27] As a consequence, the decision of the RTC is not the proper subject to our review.

In view of the outcome of the first assigned error, we deem any discussion of the second assigned error to be unnecessary.

WHEREFORE, the PETITION FOR REVIEW is GIVEN DUE COURSE and GRANTED.

The decision dated November 2, 2004 of the Regional Trial Court, Branch 47, in Manila and the decision dated August 26, 2003 of the Metropolitan Trial Court, Branch 20, of Manila are NULLIFIED AND SET ASIDE.

The Regional Trial Court, Branch 47, in Manila is ORDERED to remand the records of the case to the Metropolitan Trial Court for appropriate proceedings.

SO ORDERED.

Villarama, JR., and Arevalo-Zenarosa, JJ., concur.

[1] Rollo, pp. 19-21.

[2] Annex F, petition.

[3] Annex G, petition.

[4] Annex H, petition.

[5] Annex I, petition.

[6] Annex J, petition.

[7] Annex K, petition.

[8] Annex L, petition.

[9] Rollo, p. 48.

[10] Annex M, petition.

[11] Annex A, petition.

[12] Rollo, pp. 20-21.

[13] Annex B, petition.

[14] Annex C, petition.

[15] Rollo, p. 12.

[16] Sec. 20, Rule 14, Rules of Court; according to *Flores v. Zurbito*, 37 Phil 746, 750:

A voluntary appearance is a waiver of the necessity of a formal notice. An appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. While the formal method of entering an appearance in a cause pending in the courts is to deliver to the clerk a written direction ordering him to enter the appearance of the person who subscribes it, an appearance may be made by simply filing a formal motion, or plea or answer. This formal method of appearance is not necessary. He may appear without such formal appearance and thus submit himself to the jurisdiction of the court. He may appear by presenting a motion, for example, and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person. When the appearance is by motion objecting to the jurisdiction of the court over his person, it must be for the sole and separate purpose of objecting to the jurisdiction of the court. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby submits himself to the jurisdiction of the court. xxx

[17] Sec. 6, Rule 14, Rules of Court; see *Bank of the Philippine Islands v. Sps. Evangelista*, 441 Phil. 445; 393 SCRA 187 (2002); *Arcelona v. Court of Appeals*, 280 SCRA 20.

[18] *Bank of the Philippine Islands v. Sps. Evangelista*, supra.

[19] Sec. 7, Rule 14, Rules of Court.

[20] Annex H, petition; rollo, p. 41.

[21] *Samartino v. Raon*, 383 SCRA 664: (It should be emphasized that the service of summons is not only required to give the court jurisdiction over the person of the defendant, but also to afford the latter an opportunity to be heard on the claim made against him. Thus, compliance with the rules regarding the service of summons is as much an issue of due process as of jurisdiction. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of his defense.).

[22]77 SCRA 209 at 215 (1977),

[23]310 SCRA 343; citing *Keister v. Navarro*, 77 SCRA 209 (1977).

[24]*Jose v. Boyon*, 414 SCRA 216; *Oaminal v. Castillo*, 413 SCRA 189; *Umandap v. Sabio, Jr.*, 339 SCRA 243; *Laus v. Court of Appeals*, 219 SCRA 688.

[25]*Miranda v. Court of Appeals*, 326 SCRA 278.

[26]319 SCRA 331.

[27]*Air Phils. Corp. v. International Business Aviation Services Phils.*, 438 SCRA 51.

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