

BERNARDO BUSUEGO, PETITIONER, VS. HONORABLE COURT OF APPEALS, JOSE LAZARO, ROMEO LAZARO AND VIVENCIO LOPEZ, RESPONDENTS.

G.R. No. L-48955. June 30, 1987

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this petition for review on certiorari, petitioner asks us to set aside the decision of the Court of Appeals in CA-G.R. No. SP-06556, declaring null and void the judgment by default and the orders issued by the Court of First Instance of Pasig[1] in Civil Case No. 18860.

On 20 January 1974, petitioner Bernardo Busuego commenced action[2] before the Pasig Court of First Instance against Jose Lazaro, Romeo Lazaro, Ernesto Lazaro, and Vivencio Lopez (three of whom are respondents herein), to recover possession of a parcel of land and a three (3) unit apartment house standing thereon, situated at No. 260-A, Bonifacio Avenue, Bo. Jesus de la Pena, Marikina, Rizal.

Immediately thereafter, summons was issued in the name of the four defendants and per sheriff's return, was personally served at the address given in the complaint, upon the defendants "through [defendant] Dr. Ernesto Lazaro, personally".

On 13 February 1974, defendants, through Atty. Gerardo B. Roldan Jr., filed a motion for an extension of fifteen (15) days to file answer, stating that "his [Atty. Roldan's] services was (sic) secured by the defendants formally only the other day", and that he "need[ed] sufficient time to study the case, before filing any responsive pleading or pleadings".[3] The motion was granted by the lower court in an order dated 6 March 1974.

On 28 February 1974, defendants through Atty. Roldan asked for another extension of ten (10) days to answer, as "[Atty. Roldan] has not yet conferred with all of [the four (4) defendants] which [was] necessary before any responsive pleading [could be] filed by him." [4] The lower court granted this second extension in an order dated 14 March 1974.

Notwithstanding the extensions granted, no answer was filed by the defendants, for which reason, and upon motion of plaintiff Busuego, the lower court declared the defendants in default in an order dated 20 May 1974. Subsequently, plaintiff's case was heard and his evidence received, and on the basis of that evidence the trial court rendered its decision[5] on 26 August 1974, in favor of the plaintiff.

Almost two years later, on 12 July 1976, plaintiff filed before the lower court an ex parte motion for execution of the default judgment, which the lower court granted in an order dated 16 August 1976.

On 3 September 1976, Romeo Lazaro, one of the defendants and a respondent herein, "on his [own] behalf and on behalf of other defendants", filed motion to hold execution in abeyance praying that "for humanitarian reasons, an extension of 30 days, within which to vacate the premises [be allowed] to give them sufficient time to look for another place where the five families composed mostly of little children, can reside".[6]

On 18 September 1976, the lower court granted Romeo's motion and accordingly, the execution of the default judgment was held in abeyance.

On 28 September 1976, the defendants through Atty. Roldan filed with the lower court a motion for reconsideration of the judgment by default and/or to dissolve the writ of execution, solely on the ground that neither the defendants nor their counsel were ever furnished a copy of the judgment by default. This motion was verified by Romeo Lazaro who described himself as "one of the defendants in the --- case" and as "representing them [the defendants] in the instant pleadings (sic)", and stated that "we [the defendants] have caused the filing of this motion, have read the contents thereof and that all the allegations [therein] are true and correct to the best of our knowledge and belief"[7] (Underscoring and brackets supplied). Upon opposition, of petitioner, the lower court denied the motion by order of 11 October 1976, finding the above-motion to be purely dilatory in nature and plain harassment on the part of the defendants.

On 3 November 1976, the respondents, through their new counsel, Atty. Oliver Lozano, filed with the same court an omnibus motion, which included a motion to lift the order of default, a second motion for reconsideration and a motion to quash the writ of execution issued pursuant to the default judgment, alleging for the first time that their failure to answer was due to lack of notice.

Petitioner opposed vigorously the above motion contending that, the defendants could not pretend absence of proper notice after they, through counsel, had filed the two motions for extension of time to answer.

On 27 December 1976, the lower court denied the omnibus motion, holding the motion for extension of time to vacate filed by respondent Romeo Lazaro for all the defendants to be equivalent to waiver of service of summons.

On 10 January 1977, defendants, through their new counsel, filed what in effect was a third motion for reconsideration of the judgment by default, alleging that: the lower court never acquired jurisdiction over their persons because of lack of proper service of summons: and that the motion for extension of time to vacate the premises, filed by their co-defendant Romeo Lazaro, after the judgment by default had become executory, was not equivalent to waiver of summons.

The third motion for reconsideration having been denied, defendants brought a petition for certiorari before the Court of Appeals, asserting that the orders, judgment and writs complained of were all void for want of jurisdiction over their persons.

On 13 July 1978, the Court of Appeals promulgated its decision[8], basically upholding the respondents' contention and providing, in its dispositive portion, as follows:

"WHEREFORE, this Court hereby renders judgment as follows:

(a) insofar as the petitioner Ernesto Lazaro is concerned, dismissing the petition; and

(b) insofar as the petitioners Romeo Lazaro, Jose Lazaro and Vivencio Lopez are concerned, granting the petition and the writs prayed for, declaring null and void the order of default, judgment by default, order of execution, writ of execution, notice to vacate, order of December 27, 1976, and order of March 21, 1977, issued in Civil Case No. 18860 of the court below (Annexes B, D, E, I and M, petition and Annexes 6-A and 9, answer), and making permanent the restraining order heretofore issued in these proceedings."

Hence, the petition before us.

In their respective briefs, the parties posed the following issues:

1. whether or not there was a valid service of summons upon the Persons of respondents Romeo Lazaro, Jose Lazaro and Vivencio Lopez.

2. whether or not there was voluntary appearance by the respondents as defendants below, through Atty. Gerardo B. Roldan and their co-respondent Romeo Lazaro.

The issues raised may be further simplified into whether or not jurisdiction was lawfully acquired by the court a quo over the persons of the respondents Jose Lazaro, Romeo Lazaro and Vivencio Lazaro.

Basically, there are two (2) ways by which a court acquires jurisdiction over the person of the defendant or respondent: (a) by service of summons upon the defendant; and (b) by voluntary appearance of the defendant in court and his submission to its authority.

With respect to service of summons, the Revised Rules of Court prescribe that a copy of the summons be served personally upon the defendant by "handing him a COPY thereof in person or if he refuses to receive it, by tendering it to him".[9] Personal service, however, may be dispensed with and substituted service may be availed of if the defendant cannot be served personally "within a reasonable time".[10]

In the present case, it appears that the sheriff had availed of substituted service in seeking to serve the summons upon all the defendants by serving a copy thereof "through Dr. Ernesto Lazaro personally". Perusal, however, of the sheriff's return[11] reveals that the sheriff failed to specify therein what prior efforts, if any, had been exerted to serve summons upon the other defendants personally within a reasonable period of time, and the lack of success of such efforts, before proceeding to substituted service. Such specification in the sheriff's return is essential for enforcement of the rule under the Revised Rules of Court that substituted service may be resorted to only where it is not possible to serve the defendant or defendants promptly in person. As this Court ruled in *Keister vs. Navarro*[12],

"[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 - - -."

We therefore uphold the respondent appellate court's finding that, while Ernesto Lazaro was validly served, with respect to respondents Jose Lazaro, Romeo Lazaro and Vivencio Lopez, there was no valid service of summons effected. We are, nonetheless, unable to sustain its conclusion that the trial court never acquired jurisdiction over the persons of the said respondents.

As earlier noted, jurisdiction over the person of the defendant can also be acquired by his voluntary appearance in court and his submission to its authority, for voluntary appearance is equivalent to service of summons.[13]

As long ago as 1918, the essence of voluntary appearance was explained by this Court through Mr. Justice Johnson in *Flores vs. Zurbito*,[14] as follows:

"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 order-ing 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 court. x x x"

In the case before us, the defendants appeared before the trial court a number of times without raising any objection to the improper service of summons: (1) the defendants, through Atty. Gerardo Roldan, appeared in court and filed two successive motions for extension of time, to file an answer to the complaint; (2) more than two years after rendition of the judgment by default by the trial court, defendants; through their co-defendant Romeo Lazaro, filed a motion for extension of time within which to vacate the premises involved and to look for another place to live in, raising no question concerning the jurisdiction of the trial court over the persons of the defendants; and (3) the defendants, through their counsel Atty. Roldan, moved for reconsideration of the judgment of the trial court and for dissolution of the writ of execution, again without contesting the jurisdiction of the court over their persons. We hold that by anyone or more of these acts, and certainly by the whole series of acts, the defendants, respondents herein, effectively waived the initial lack of jurisdiction over their persons and submitted to the authority of the trial court.

The respondents assert that only voluntary appearance during trial is equivalent to waiver of service, and that therefore, the motion for extension of time within which to vacate the premises filed by Romeo Lazaro after trial and after rendition of judgment, was not equivalent to waiver of summons.

We are not persuaded by this argument of the respondents. In *Soriano vs. Palacio*[15], this Court, speaking through Mr. Justice J.B.L. Reyes, held that:

"Assuming, *aguendo*, that the court below origin-ally did not acquire jurisdiction over petitioner Soriano, the latter certainly submitted to it when he filed his first motion for reconsideration and for annulment of previous proceedings on 14 March 1960. Therefore, the denial of that motion, by the order of 19 March 1960, was binding on petitioner Soriano."

The respondents also cite a joint affidavit dated 5 February 1977 executed by some of them: Jose Lazaro, Ernesto Lazaro and Vivencio Lopez, stating that they had not authorized Atty. Roldan nor Romeo Lazaro to file any pleading on their behalf.[16] In another joint affidavit dated 10 January 1977, Jose Lazaro and Romeo Lazaro asserted that Romeo Lazaro had no authority to file the motion of 3 September 1976 seeking "for humanitarian reasons" an extension of time to vacate the premises in question. In a third affidavit dated 5 February 1977, Atty. Roldan in effect repudiates the motion for extension of time that he had filed on 14 February 1974 with the trial court. In his 1977 affidavit, Atty. Roldan states that he had instructed Mr. Romeo Lazaro to secure the conformity of the other defendants to his serving as their counsel before agreeing to represent them, that he had asked for an extension of time to file an answer without the knowledge of the defendants to gain time to confer with them and obtain a written agreement with respect to his "proposed legal service"; that when the defendants again failed to meet with him, he filed his second motion for extension to file an answer to have "another opportunity to find out if the said defendants would agree that [he] represent them"; that he eventually abandoned the idea of representing the defendants.[17]

We are unable to give the above affidavits any credence or weight. They appear to us as very late second thoughts, transparently devised to conform with the posture of "no voluntary appearance" adopted by the defendants' subsequent counsel. Those affidavits were submitted too late in the day, as it were, to avoid the effect of their voluntary appearance before the trial court. The affidavits concerning lack of authority of respondent Romeo Lazaro to file the motion pleading "for humanitarian reasons" for an extension of time to locate an alternative residence are thoroughly unpersuasive. We note, in this connection, that all the defendants were not only immediate neighbors residing in adjacent units of a single apartment house but also members of the same family. Ernesto Lazaro is the father of respondents Jose Lazaro and Romeo Lazaro. Thus, the natural tendency of Ernesto Lazaro, upon receipt of the summons issued by the trial court must have been to inform his children living beside him about the summons; similarly, the natural tendency of Romeo Lazaro must have been to inform his

father and brother and other relatives living in the same apartment house about the steps taken to defer their ejectment.

The affidavit of Atty. Roldan is particularly deplorable. An attorney is presumed to be authorized by his client in a case in which he appears.[18] Thus, Atty. Roldan was correctly presumed by the trial court to have been authorized by the defendants below to appear on their behalf when he filed the motions for extension of time to answer and what is more, when he filed the first motion for reconsideration of the judgment of the trial court. Either Atty. Roldan's 1977 affidavit is plain perjury or he was misleading and trifling with and imposing upon the trial court back in 1974. Even when an attorney is employed by an unauthorized person to represent a client, the client will be bound where he has knowledge of the fact that he is being represented by an attorney in a particular litigation and takes no prompt measure to repudiate the assumed authority. The security and finality of judicial proceedings are matters of insistent public policy and require that the evasions and tergiversations of unsuccessful litigants and their counsel be firmly rejected and not permitted to overcome the presumption of authority the part of an attorney.[19]

WHEREFORE, the decision of the Court of Appeals is hereby REVERSED and SET ASIDE insofar as concerns respondents Romeo Lazaro, Jose Lazaro and Vivencio Lopez. With respect, however, to defendant Ernesto Lazaro, same decision is hereby AFFIRMED. This decision is immediately executory. Costs against respondents.

Furthermore, Atty. Gerardo B. Roldan, Jr. and Atty. Oliver O. Lozano are hereby required to show cause, within ten (10) days from notice hereof, why they should not be subject to disciplinary action for abusing court proceedings.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, Gancayco, and Sarmiento, JJ., concur.

[1] Judge Reynaldo P. Honrado, presiding.

[2] Complainant alleged that he was the registered owner of a piece of land with an apartment house consisting of three units; that respondents have been occupying the said apartment house for more than a year without paying the corresponding rentals; and that despite repeated demands, the respondents consistently refused and failed to pay the necessary rentals and vacate the premises.

[3] As quoted in the Brief for Petitioner, p. 10.

[4] As quoted in the Brief for Petitioner, p. 12.

[5] The Court ordered each defendant to pay a rental of P200.00 a month, except for Vivencio Lopez whose rental was P100.00, a month, from 24 January 1973 until they vacate the premises occupied by them; to vacate the premises particularly the apartment house consisting of three units located at No. 260 A Bonifacio Avenue, Bo. Jesus de la Pena, Marikina, Rizal and restore possession thereof to petitioner; and to pay P500.00 each to petitioner as attorney's fees plus expenses of litigation and costs.

[6] As quoted in the Brief for the Respondents, p. 37.

[7] As quoted in the Brief for the Petitioner, p. 19.

[8] The decision was written by Busran, J. with San Diego and Jimenez, JJ., concurring.

[9] Section 7, Rule 14, Revised Rules of Court.

[10] Section 8, Rule 14, Revised Rules of Court provides:

"Substituted service. If the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's dwelling house or residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof."

[11] The sheriff's return reads: "that on January 31, 1974, copy of the herein summons and complaint addressed to Jose Lazaro, Romeo Lazaro, Dr. Ernesto Lazaro and Vivencio Lazaro at No. 260 A. Bonifacio, Bo. Jesus de la Pena, Marikina, Rizal issued by the Honorable Court in the above-entitled case was caused to be served personally upon him/her it at the address therein designated. (through Dr. Ernesto Lazaro personally), a person/officer, working/ residing therein and of sufficient age and discretion duly authorized to receive service of this nature) as shown by the signature appearing thereon." See Brief for Petitioner, pp. 8-9.

[12] 77 SCRA 209 at 215 (1977); underscoring supplied.

[13] Rule 14, Section 23, Revised Rules of Court.

[14] 37 Phil. 746, at 750; underscoring supplied. See also, *Menghra vs. Tarachund and Rewachand* 67 Phil. 286 (1939); *Ocampo v. Mina and Arejola* 41 Phil. 308 (1920); *Sharruf v. Bubla* 12 SCRA 79 (1964); *Tenchavez v. Escano* 17 SCRA 684 (1966).

[15] 12 SCRA 447, at 449 (1965); Underscoring supplied.

[16] Brief for the Respondents, p. 54-55.

[17] Brief for Respondents, p. 59-61.

[18] Rule 27, Section 20, Revised Rules of Court.

[19] *Tan Lua vs. O'Brien*, 55 Phil. 53 (1930); see also *Ramos vs. Manalac* 89 Phil. 270 at 274 (1951).

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