

**BENJAMIN LOPEZ, PETITIONER, VS. GREGORIA DE LOS REYES, AND
TEODORO MARQUEZ, RESPONDENTS.***G.R. No. L-23671. January 30, 1970*

Ponente: MAKALINTAL, J.

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This is a petition for review by certiorari of the decision of the Court of Appeals in CA-G. R. No. 34181-R.

On February 16, 1962 Gregoria de los Reyes and Teodoro Marquez filed a complaint against Benjamin Lopez and one "John Doe" in the Court of First Instance of Manila, docketed as Civil Case No. 49615, for the recovery of a truck which plaintiffs had allegedly leased to defendant Lopez, as well as for damages, with a prayer for a writ of replevin. In his answer, the defendant denied the material averments of the complaint and put up a counterclaim for reimbursement of expenses allegedly incurred in the repair of the truck in the sum of P2,017.00, and for moral damages and attorney's fees amounting of P11,000.00. The plaintiffs filed their reply. In the meantime, by virtue of 'the writ of replevin issued by the trial court, the sheriff seized the truck and delivered it to the plaintiffs. Subsequently, the plaintiffs moved for the admission of their amended complaint, which included a claim for unpaid rentals and for the value of missing spare parts of the truck. The complaint, reply, motion, and amended complaint were all signed by the plaintiffs' counsel, Atty. Angel Valladolid, whose address was stated therein as 1622 Peñafrancia, Paco, Manila.

After the hearing of the case, both parties were granted time within which to submit their respective memoranda. On July 25, 1963 Atty. Valladolid, who was then in Nasugbu, Batangas, wrote defendant's counsel, Atty. Liberato C. de Jesus, requesting that a copy of the defendant's memorandum be sent to him in that town. The request was complied with and Atty. Valladolid duly received by registered mail a copy of the defendant's memorandum. Also from Nasugbu, Atty. Valladolid sent to the trial court a copy of the plaintiffs' memorandum at the end of which appears: "Nasugbu, Batangas, for Manila, July 26, 1963" and below his signature, "Counsel for plaintiffs, Nasugbu, Batangas."

With the submission by both parties of their respective memoranda, the trial court, on September 13, 1963, rendered its decision dismissing the plaintiffs' complaint and the defendant's counterclaim. The copy of the decision for the plaintiffs was sent by registered mail to their counsel, Atty., Valladolid, in Nasugbu, Batangas. The first notice was delivered to the Nasugbu Rural Bank, where said counsel used to transact some legal business in connection with collection cases he was handling for that firm, and was received on September 17, 1963 by a certain Socorro Villavirey, an employee of the bank. A week later, a second notice was sent to Atty. Valladolid, and this time it was received by one Marcial Alix, in whose house said counsel usually stayed whenever he went to Nasugbu. In spite of the two notices, the registered letter containing the decision remained unclaimed by the addressee. Having received information to the effect that Atty. Valladolid was in Manila and that it was not known when he would come to Nasugbu, the postmaster caused the return of the registered letter to the Clerk of Court of the Court of First Instance of Manila with the following notations on the envelope: "Rtn" and "In Manila".

On February 29, 1964, eight months after submitting the plaintiffs' memorandum, Atty. Valladolid went to the office of the Clerk of Court in Manila to inquire about the status of the case. He was informed that the case had already been decided, and accordingly furnished a copy of the decision. On March 9, 1964 the plaintiffs moved to reconsider but was turned down in an order of March 17, 1964. Thereupon, they filed a notice of appeal, record on appeal and appeal bond on March 23, 1964. The defendant interposed his opposition thereto, alleging that the decision had become final and, consequently, the plaintiffs had lost their right to appeal. In an order dated May 29, 1964, the trial court upheld the defendant and disapproved the record on appeal.

On June 23, 1964 the plaintiffs went to the Court of Appeals on certiorari and mandamus to compel the trial court to give due course to their appeal. After considering the memoranda of both parties, the appellate court reversed the stand of the trial court and ordered said court "to admit the appeal of the petitioners, pass upon the correctness and sufficiency of their record on appeal, and, thereafter, if found correct and sufficient, to approve and certify it to this Court." Not satisfied, the herein petitioner, defendant in the court a quo, elevated the case on the instant petition for review by certiorari.

The decisive issue is whether the service of a copy of the decision upon counsel for the plaintiffs in Nasugbu, Batangas, was effective under Section 8 of Rule 13, which provides that "service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time." The applicability of this rule, in case the addressee fails to claim his mail, depends in turn upon whether it is sent to the correct address such that his failure is attributable to his own fault.

In this case the address of Atty. Valladolid given in all the pleadings and the papers filed in court, except the memorandum he submitted, was 1622 Peñafrancia, Paco, Manila. This was his address of record. In ruling as it did, the Court of Appeals said:

"His request to respondent's counsel to send him a copy- of the latter's memorandum at Nasugbu, Batangas, is a private arrangement between them and only in connection with the memorandum of respondent's counsel. True it is that the address given in the memorandum filed by petitioner's counsel was Nasugbu, Batangas, but that was because it was prepared in and mailed from said place and such being the case, said address does not supersede his address of record to which notices of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address. (Dabbay vs. Qutoriano, CA-G. R. No. 25055-R Oct. 21, 1959.)"

We are not prepared to reverse the foregoing ruling of the Court of Appeals. The fact that Atty. Valladolid sent a letter to opposing counsel requesting the latter to send a copy of his memorandum to the former at Nasugbu, Batangas, but made no similar request to the Court with respect to matters which would emanate from it and which would require service upon the parties, supports the conclusion that the letter-request was intended merely as a private arrangement with said opposing counsel and only to facilitate receipt of a copy of the memorandum he was to file. Section 5 of Rule 13 requires that if service is made by mail the envelope should be addressed to the party or his attorney at his office, if known, otherwise at his residence, if known. There is no showing that the Nasugbu Rural Bank was Atty. Valladolid's office. All that appears is that he used to be seen there relative to some of the bank's collection cases. Nor was the house of Marcial Alix Atty. Valladolid's residence, although it was there that he used to stay whenever he went to that town.

The fact that below his signature on the memorandum he filed he placed the words "Nasugbu, Batangas," must be considered in relation to the request he made to opposing counsel, and should not be taken as notice to the Court of either a change of address or of another address in addition to that which was already of record. Indeed, the Clerk of Court in Manila was duly apprised of this fact when the copy of the decision was returned to him with

the notation that the addressee was in Manila; and effective service could and should have been made at his address therein which was of record in the case.

There are no circumstances here which would tend to indicate that petitioner's counsel acted with deliberate intent or inexcusable neglect in order to evade service of a copy of the decision upon him; and his appeal therefrom should not be deemed foreclosed as a result.

The decision of the Court of Appeals is affirmed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

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