

REMEGIA RIEGO AND AGAPITO REVILLOSA, PLAINTIFFS AND APPELLANTS, VS. PABLO RIEGO, JACINTO RABE AND CATALINA PADOLINA, DEFENDANTS AND APPELLEES.

G.R. No. L-22531. September 23, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from an order of the Court of First Instance of Marinduque.

The complaint filed by the spouses Remegia Riego and Agapito Revillosa on September 5, 1961 was for the exercise of the right of pre-emption over two parcels of land which were among the properties left by the deceased father of plaintiff Remegia Riego and assigned to her brother, defendant Pablo Riego, in the deed of extrajudicial partition entered into by the heirs of said deceased. The deed contains a stipulation granting any one of the heirs the right of pre-emption with respect to any inherited property assigned to a co-heir and sold by the latter to third parties. Pablo sold one of the parcels to his co-defendant Catalina Padolina, without plaintiffs' having been informed of the sales. Plaintiffs prayed in their complaint that the two deeds of sale be annulled and that the lands be conveyed to them under the same conditions as those stipulated in said deeds.

Defendants Rabe and Padolina moved for dismissal on two grounds: (1) that the complaint stated no cause of action because plaintiffs could not exercise the right of pre-emption until Pablo had given them - and he admittedly had not - written notice of the sales as required by Article 1623 of the New Civil Code, which provides that the right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be; and (2) that if there was any cause of action at all, the same was barred by the statute of limitations, since plaintiffs did not exercise their right of pre-emption within thirty days from December 1960, when they learned of the sales, as required by the same Article 1623. Plaintiffs opposed the motion, but the court, finding it well taken, dismissed the complaint on November 28, 1962. Copy of the order of dismissal was served by mail on plaintiff Revillosa on December 6, 1962. On June 26, 1963 plaintiffs filed a motion for reconsideration, which was opposed by defendants on the ground that the same was filed out of time. On that ground the court denied the motion on August 24, 1963.

It is from this last order that plaintiffs have appealed.

The issue is whether the service of a copy of the order of dismissal upon one of the plaintiffs, Agapito Revillosa, instead of upon their attorney of record, was sufficient for the purpose of computing the thirty-day period within which plaintiffs could appeal or move to reconsider.

Section 2, Rule 13, Revised Rules of Court, formerly Section 2, Rule 27, provides:

"Every order required by its terms to be served, every pleading subsequent to the complaint, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer or judgment or similar papers shall be filed with the court, and served upon the parties affected thereby. If any of

such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court. Where one attorney appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side."

The complaint here was filed by appellants' counsel, "Ortañes de Guia, Buenavista, Marinduque," while the opposition to the motion to dismiss was by "Leonardo, De Guia & Duran by Ortañes de Guia," with the address "Ground Floor, San Luis Terraces, 640 San Luis, Ermita, Manila."

The rule, as aforesaid, is that where a party appears by attorney in an action or proceeding in a court of record, all notices thereafter required to be given therein must be given to the attorney and not to the client, and a notice given to the client and not to his attorney is not a notice in law (*Santiago v. Court of Appeals*, L-12920, February 28, 1959; *Mata v. Legarda*, L-18941, January 31, 1963; *Tolentino v. Ongsiako*, L-17938, April 30, 1963). The exception is when the court orders otherwise (*Tanpinco v. Lozada*, L-17335, January 31, 1962).

In dismissing the motion for reconsideration of the order of dismissal, the lower court said:

"It would be read in the letter of the defendants dated October 5, 1962, that aside from sending a copy of said letter to Atty. Ortañes de Guia, Buenavista, Marinduque, a request was made to the Clerk of Court that a notification be sent also to the plaintiffs, which the Court remembered very well that this Court instructed the Clerk of Court to send notice of said hearing also to the plaintiffs to consider the said Motion to Dismiss. In fact during the hearing of said Motion to Dismiss, the Court inquired from the Clerk of Court if the plaintiffs were notified and the Clerk of Court informed the Court that one of the plaintiffs, Agapito Revillosa was present and that was in compliance with the notification of the Clerk of Court. It would be noted that by the time that the said motion was to be heard on November 28, 1962, the whereabouts of Atty. de Guia could not be ascertained by anybody much less by any person in authority in Marinduque or Manila. Efforts have been exerted by the authorities of those two places, Marinduque and Manila, and Atty. de Guia could still not be found in any place and nobody could tell where his office nor his residence was. In this case, we believe that the notification to the plaintiffs was in order, that is why the order to notify them was given to the Clerk of Court. The notification to the plaintiffs being in order and the said plaintiffs having received the order of Dismissal of this Court on December 6, 1962, and they having filed their Motion for Reconsideration only on July 26, 1963 we believe that the said Motion for Reconsideration was filed too late."

It is therefore clear that it was by order of the trial court that the notice of hearing of the motion to dismiss was served on plaintiffs. From then on service upon them of any subsequent pleading or order was presumably valid service. In making such order the court took into account certain circumstances. Defendants had requested that plaintiffs be the ones furnished with a copy of the notice of hearing. The court was aware that the whereabouts of appellants' counsel could not be ascertained. It took judicial notice of the facts: (1) that in another civil case pending before it (*Modesta Sotejo v. Enrique Salvacion*, Civil Case No. 1213) it had, upon motion of the defendant therein, ordered as early as August 29, 1962 that all motions, pleadings and papers be served on the plaintiff therein because her counsel Attorney Ortañes de Guia (the same lawyer representing appellants) could not be located, "so that she can either contact her lawyer, Atty. de Guia, or retain the services of a counsel if she wishes to do so;" and (2) that in connection with the promulgation of judgment rendered in a criminal case (*Criminal Case No. 1971*), it had issued on October 8, 1962 an order for the arrest of one of the accused, the same Attorney Ortañes de Guia, but the order of arrest was returned unserved by the Manila Police Department because De Guia could not be found at his given address and his whereabouts were unknown. The court was obviously justified in stating, in the order appealed from that "by the time that the said motion was to be heard on November 28, 1962, the whereabouts of Atty. de Guia could not be ascertained by anybody much less by any person in authority in Marinduque or Manila."

Plaintiffs accepted the notice of the hearing of the motion to dismiss. One of them was in fact present at such

hearing, although their counsel failed to appear. That their counsel really could not be located is further shown by the circumstance that by the time they filed their motion for reconsideration of the order of dismissal they were already represented by a different lawyer.

Service on the plaintiffs-appellants being valid, they had thirty days from December 6, 1962 within which to file a motion for reconsideration. They did not file it until August 24, 1963. The denial was therefore correct.

WHEREFORE, the order appealed from is affirmed, with costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.
Regala, J., no part.

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