

LESLIE H. BROWN, REPRESENTED IN THIS PETITION BY HIS ATTORNEY-IN-FACT, MANUEL R. DE CARTAGENA, AND MANUEL R. DE CARTAGENA IN HIS OWN BEHALF, PETITIONERS, VS. SALUD Q. BROWN, AND...*G.R. No. L-17953. October 31, 1961*

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/57b9060b2319/>**LABRADOR, J.:**

On January 13, 1961, Salud Q. Brown presented a "Petition for appointment as administratrix of the conjugal assets" of herself and her husband Leslie H. Brown before the Court of First Instance of Manila. In the petition, she alleges 'that she is married to Leslie H. Brown, a citizen of Canada and a resident of 1218 Penafrancia, Paco, Manila until December 27, 1960, when he went out of the country; that petitioner and respondent Leslie H. Brown are wife and husband respectively, having been married in Manila on July 1, 1946, and that said marriage is still valid and subsisting; that they have four minor children now in the custody of the petitioner; that in the year 1958, her husband, respondent Brown, left the conjugal home then at No. 133, 12th Street, Quezon City and began having relations with the other respondent Pema Lourdes Madrigal Rodriguez, the respondents maintaining a home at No. 1218 Penafrancia, Paco, Manila; that a criminal action for concubinage was filed by petitioner against respondent Brown and that a preliminary investigation was set on December 10, 1960, but the same could not take place; that at the time of the investigation set for January 4, 1961, both respondents failed to appear; that the conjugal partnership of the petitioner and respondent Brown owns a business known as "Brown Studios and Photo Supply" located at corner Escolta and T. Pinpin Streets, the income of which is from P500.00 to P600.00 daily, and that the partnership also had the following motor vehicles; one Packard Sedan, family car, 1951 Model with 1960 plate No. 13300, Manila, one Dodge Weapon's carrier, 1960 plate No. 37476, and one International Pickup Truck, 1959 Plate No. T-2689; that respondent Brown's business had decreased in income because of his infidelity; that the value of the conjugal assets then is about P48,000; that respondent Brown had fled the country and had appointed M. R. Cartagena as manager of the business and other properties of the partnership; that petitioner has the experience and learning to operate the business and the other partnership properties; and that she is willing, ready and able to assume the possession, control and management thereof. She, therefore, prays that she be authorized to take possession, management and control of the business known as "Brown Studios and Photo Supply", that M. R. Cartagena be discharged from the management thereof, and that she be appointed administratrix of the said conjugal properties.

The record of this case (Case No. 46051) in the Court of First Instance of Manila, was borrowed from the Clerk of Court to find out what proceedings took place therein, and the following were found:

The petition dated January 9, 1961 was docketed on January 13, 1961. Summons was issued to M. R. Cartagena, c/o Brown Studios and Photo Supply, Cu Unjieng Building, Corner Escolta and T. Pinpin, Manila, and to him alone. No summons was issued to defendants Leslie H. Brown and Pema Lourdes Madrigal Rodriguez. The summons was returned by the sheriff on January 23, 1961, with a certification that the summons was served on M.

R. Cartagena at his address through one, L. Palis, Secretary. On January 19, 1961 Atty. Romulo L. Chua presented a motion to dismiss, alleging lack of jurisdiction over the person of the defendants and failure to state cause of action. This motion to dismiss was dated January 19, 1961 and was docketed on the same date. On January 16, 1961, the Clerk of Court issued a notice of hearing to Atty. Mariano A. Carbonell, for the petitioner, and Mr. M. R. Cartagena, defendant, setting the case for hearing on January 20, 1961 at 8:00 A. M. On January 20, 1961, the court denied, in open court the motion to dismiss, and the order of denial is attached to the records of this case in this Court as Annex "D". The transcript shows that the lawyers for the petitioner and for the respondents appeared, and that after hearing the court required the parties to submit nomination for a receiver to be appointed by the Court.

The record of the court below also shows that on January 24, 1961, a copy of the writ of preliminary injunction issued by us on January 24, 1961 was received in the afternoon of the same date.

The case before Us, G. R. No. L-17953, is presented by Leslie H. Brown represented by his; attorney-in-Fact M. R. Cartagena, and M. R. Cartagena, in his own behalf, against, Salud Q. Brown, and Judge Bienvenido Tan, respondent for certiorari and prohibition to reverse and set aside the order of respondent Judge, Taji denying the motion to dismiss filed in the court below, by the, petitioner herein, and the annulment of the proceedings therein conducted, and that a writ of prohibition issue commanding respondent judge to desist from proceeding with the case. Upon considering the petition, this Court required the respondent to answer the petition and ordered the issuance of the Writ, of preliminary injunction as prayed for in the petition, upon the filing of a bond in the amount of P500.00

The respondent filed an answer on February 3, 1961 alleging the facts contained in the original petition in the Court of First Instance and admitting that summons was never issued to or served upon the petitioner Leslie H. Brown, and that personal service on him can not be made for the reason that he is a fugitive from justice. They assert that the order of the court denying the motion to dismiss is in order; that the same is interlocutory in nature and not subject to appeal of review while no final judgment has been entered; and that the court below had jurisdiction over the person of the respondent M. R. Cartagena, one of the respondents in the case filed in the court below, and over the subject matter of the action, and that the court below did not err in denying the motion to dismiss. At the same time respondent Salud Q. Brown presented a motion to lift the preliminary injunction, under which she had been authorized to take immediate possession and control of the properties.

The main issue presented before Us is, Has the court below acquired jurisdiction over the person and property of petitioner herein Leslie H. Brown, such that it can grant the petition, to have the respondent herein Salud Q. Brown appointed administratrix, or a receiver of the conjugal properties appointed by the court below?

From the allegations of the original petition for the appointment of administratrix filed by herein respondent Salud Q. Brown in the court below we find that Leslie H. Brown separated from his wife, Salud Q. Brown, in the year 1958, when the husband abandoned the conjugal home established at 133, 12th Street, Quezon City; that when Leslie H. Brown left the conjugal home in 1958, he began to live with Pema Lourdes Madrigal as husband and wife at 1218 Penafraancia, Paco, Manila; that Leslie H. Brown has failed to appear during the continuation of the preliminary investigation being set for hearing on January 4, 1961. On the other hand, we find from the records of the case in the court below that no summons was ever issued to petitioner Leslie H. Brown, perhaps, because of the allegations contained in the petition of the absence of Leslie H. Brown from the country.

It is an elementary rule or principle in the procedure that before the rights of an absentee or non-resident over properties existing in the Philippines may come under the jurisdiction of Philippine courts and become subject to their orders, summons must served upon said absentee or non-resident, thus:

"Sec. 17.—When the defendant does not reside and is not found in the Philippines and the action affects; the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be affected out of the Philippines by personal service as under section 7; or by registered mail; or by publication in such places and for such time as the court may order, in which case a copy of the summon and order of the court shall be sent by ordinary mail to the last known address of the defendant; or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer." (Sec. 17, Rule 7)

The action instituted in the case at bar is an action quasi in rem as explained by this Court in *Banco Espanol Filipino vs. Palanca*, 37 Phil., 921 in which "an individual is named as defendant, and the purpose of the proceeding is to subject his interest therein to the obligation or lien burdening the property". In the case at bar the property or res is made subject to the alleged right thereto of the wife as co-owner of the conjugal property, to administer the same during the absence of her husband.

Before Leslie H. Brown disappeared from the Philippines, he was a resident thereof, and according to the petitioner in the lower court, respondent herein Salud Q. Brown, he had abandoned the conjugal home and established a residence at 1218 Penafancia, Paco, Manila. But according to the petition in the lower court, Leslie H. Brown had abandoned the Philippines since 1960 and did not even appear during the preliminary investigation of his case in 1961. Under these facts, it can not be said that Leslie H. Brown is still a resident of the Philippines because he has escaped to his country and is therefore an absentee in the Philippines. In accordance with the above-quoted provision of the Rules and the decision of this Court in the case of *Bank of the Philippines vs. De Koster*, 47 Phil. 594, Leslie H. Brown should be summoned in the same manner as one who does not reside or is not found in the Philippines.

The court below would seem to believe that the service of the summons upon the person to whom the properties of the non-resident was entrusted, is sufficient to confer jurisdiction to the court. In the first place the Rules require that actions be brought in the name of or against the real party in interest (Rule 3, Sec. 2). An apoderado or attorney-in-fact is not the real party in interest. (*Arroyo vs. Granada*, 18 Phil. 484; *Marcelo vs. De Leon*, 105 Phil., 1195; 56 Off. Gaz., [37] 5738.) (Note: Copy of the appointment of Cartagena does not appear in the record.) In the second place service upon the attorney-in-fact did not have the effect of service on his principal. No rule allows service of summons upon an agent. Service must be made on the petitioner herein Leslie H. Brown himself, by substituted service or by registered mail, or by publication, if his properties are desired to be affected by the proceedings. (*Banco Espanol Filipino vs. Palanca*, 37 Phil. 921; *Idonah Slade Perkins vs. Dizon, et al.*, 69 Phil. 186; *Ng Si Choc vs. Vera*, 64 Phil. 1066).

Consequent to the above rule and principle, that the court below did not acquire jurisdiction over the petitioner herein Leslie H. Brown in Civil Case No. 46051 or over his properties, all the proceedings conducted in that court, such as the hearings, consideration of the motion to dismiss, order for appointment of receiver etc. are hereby declared null and void and of no effect. Before the court below can act upon the original petition of Salud Q. Brown, which seeks to deprive the petitioner herein Leslie H. Brown, or his attorney-in-fact of the possession, management and control of the properties of the conjugal partnership, the court must first have the summons served upon the respondent Leslie H. Brown, in accordance with the provisions of the Rules.

Wherefore, the orders entered by the court below, especially that for the appointment of a receiver, are hereby set aside, and the case remanded to the court below with the instructions that summons first be served upon Leslie H. Brown before the case can proceed. Without costs.

Bengzon, C. J., Bautista Angela, Paredes, Dizon, and De Leon, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.