

**CATALINA VDA. DE ROLDAN, PLAINTIFF AND APPELLEE, VS.
MARIANO ROLDAN, FRANCISCO CAPISTRANO, ET AL., DEFENDANTS
AND APPELLANTS.***G.R. No. L-19601. March 31, 1966*

Ponente: BARRERA, J.

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From the decision of the Justice of the Peace Court of Libmanan, Camarines Sur, sustaining the complaint for forcible entry filed by Catalina Vda. de Roldan, the defendants Mariano Roldan, et al., through their counsel, filed and perfected their appeal to the Court of First Instance of Camarines Sur (Civ. Case No. 4633). Thereafter, in connection therewith, the Clerk of the Court of First Instance caused the Chief of Police of Libmanan, Camarines Sur, to serve upon the defendants the notices of the appealed case, and in the return of such service, it appeared that defendants Mariano Roldan, Pedro Roldan, and Francisco Capistrano duly received their copies of the notice on September 5, 1959, while defendant Manuel Roldan was notified thereof on September 28, 1959.

As defendants failed to file the necessary answer, the court, at the instance of plaintiff, entered a default-order and the latter introduced evidence in the absence of said defendants. On December 12, 1959, the court, finding the plaintiff to be the owner of the property described in the complaint ordered defendants, who were in possession of the land, to vacate the same and deliver possession thereof to the plaintiff; to pay her the sum of P350.00, the value of the produce of the land which she failed to receive, and the sum of P900.00 as attorney's fees and other incidental expenses.

A writ of execution was thereafter issued on January 18, 1960. The same, however, was returned unsatisfied with the notation of the Provincial Sheriff that he was told by defendants that "they will vacate the land only over their dead bodies." Said defendants were also found to be without any real or personal property with which to satisfy the money judgment. Later, however, on October 27, 1960, plaintiff was placed in possession of the property in virtue of an alias writ of execution. The following day, defendants, allegedly armed with bolos, re-entered the premises and exercised acts of possession. Consequently, plaintiff filed a motion to declare them in contempt of court. By order of November 16, 1960, said defendants were required to appear in court and explain why they should not be dealt with for contempt.

On December 3, 1960, defendants filed a "special appearance" for the purpose of questioning the jurisdiction of the court to render the decision of December 12, 1959, and to quash the service of notice of appeal upon them. It was their contention that the court did not acquire jurisdiction over their person in view of the fact that the said notices of appeal were served on them and not on their counsel who had filed and perfected the appeal from the Justice of the Peace Court to the Court of First Instance. The mode of service of said notices, through the Chief of Police of Libmanan, Camarines Sur, was also impugned as violative of the provisions of Section 7, Rule 40 of the old Rules of Court.

This motion having been denied, defendants appealed to us, claiming, mainly, that the lower court erred (1) in

holding that the service of the notice of appeal upon the defendants themselves, through the Chief of Police, was valid; (2) in not quashing all the proceedings taken in the case; and (3) in not setting aside the decision for having awarded excessive damages.

Section 7, Rule 40 of the old Rules of Court, pertinent to this case, provides:

"SEC. 7. Reproduction of complaint on appeal.—Upon the docketing of the cause under appeal, the complaint filed in the justice of the peace or municipal court shall be considered reproduced in the Court of First Instance and it shall be the duty of the clerk of court to notify the parties of that fact by registered mail, and the period for making an answer shall begin with the date of the receipt of such notice by the defendant." (Underlining supplied).

Construing the foregoing provision, this Court, citing another case,[1] ruled that the service of the notice of appeal on defendant personally is in order and regular. The reason therefor was given, thus:

"But assuming, for the sake of argument, that said attorneys were, from the time they perfected defendant's appeal, the defendant's lawyers, Section 7 of Rule 40, which governs appeals from justice of the peace courts to Courts of First Instance, expressly provides that notice of the pendency of the appeal be given to the parties. This provision, being express and specific, can not be interpreted to mean that the notice can be given to the lawyer alone. The reason for this provision for notification of parties, and not of the lawyers, lies in the fact that in an appeal from an inferior court, only the complaint in the justice of the peace court is deemed reproduced, and the proceeding immediately following the filing of the complaint is the summoning of the defendant. Instead, however, of being summoned, he is only personally notified because he is already within the court's jurisdiction, the notice taking the place of the summons."

Defendants-appellants lay much emphasis on the fact that the aforequoted provision requires the notice to be sent by registered mail, and in this instance, they were served such notices through the Chief of Police. While this may be true, it was admitted by defendants in their memorandum of December 14, 1960, filed in the lower court, that they actually received such notices through a policeman. There being no damage or injury caused to said defendants by this mode of service, the same may be considered, in connection with this proceeding, to be in substantial compliance with the Rules. With the foregoing conclusion, it follows that the proceedings had and taken in the lower court were regular and valid.

The matter of the reasonableness of the damages and attorney's fees awarded by the lower court can no longer be entertained in this proceeding. The same could have been the proper subject of an appeal from the decision of December 12, 1959, which has now become final and executory.

Wherefore, and for the reasons above stated, the order appealed from is hereby affirmed, without pronouncement as to costs. So ordered.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

[1] Valenzuela vs. Balayo, G.R. No. L-18748, March 30, 1963, citing Ortiz v. Manila, G.R. No. L-5147, June 2, 1953.

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