

**J. M. TUASON & CO., INC., PLAINTIFF AND APPELLEE, VS.
ESPERANZA FERNANDEZ, DEFENDANT AND APPELLANT.***G.R. No. L-19556. October 30, 1964*

Ponente: BAUTISTA ANGELO, J.

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On January 13, 1959, J. M. Tuason & Co., Inc. filed a complaint before the Court of First Instance of Rizal to recover from Esperanza Fernandez a portion of around 100 sq.m. of a parcel of land situated at Quezon City which was allegedly usurped by the latter thru force, strategy and stealth praying that defendant be ordered to pay the sum of P30.00 a month from the date of such usurpation until the restoration of the property to plaintiff.

On March 16, 1959, the sheriff filed a return stating that he served the summons upon defendant "at her given address at A1B Ave., between Quezon Blvd. & Fil- American St., Quezon City, by leaving same thru Jovita C. Arenas, a person of suitable age and discretion, re- siding therein, and who duly affixed her signature at the bottom of the original of the summons to show acknowledgment of receipt thereof." Having Jovita C. Arenas delivered to defendant the summons with a copy of the complaint on April 4, 1959, said defendant on the same date filed an urgent verified motion for an extension of 10 days within which to file her answer, the extension to be reckoned from April 4, 1959.

On April 6, 1959, plaintiff filed a motion to declare defendant in default alleging failure on her part to file her answer within the reglementary period. On April 8, 1959, defendant filed her answer to the complaint, as well as a motion for the admission of a third-party complaint against Florencio Deudor, who was the person who sold to her the land in question on June 2, 1949. On April 11, 1959, three days after the filing by defendant of her answer, the court a quo issued an order declaring said defendant in default and authorizing plaintiff to present its evidence.

On April 17, 1959, plaintiff filed a petition to strike out the answer and the third-party complaint filed by defendant on April 8, 1959 on the ground that they were all filed beyond the reglementary period. On April 18, 1959, defendant in turn filed a motion to set aside the order of default attaching thereto two affidavits of merits stating in detail the facts constituting her failure to answer on time and the good and meritorious defenses she relies upon to controvert the complaint. On April 24, 1959, plaintiff filed an opposition to defendant's motion to set aside the order of default. On May 13, 1959, the court a quo denied defendant's motion to set aside the order of default on the ground that the summons was validly served upon defendant, that she failed to file her answer within the reglementary period, and that she has no meritorious defense. Not satisfied with said order of May 13, 1959, defendant in due time interposed the present appeal.

The main issue to be determined is whether the court a quo acted properly in denying the motion to set aside this order of default in its order of May 13, 1959.

It appears that the complaint in the present case, together with the summons, was served by the sheriff' of Quezon City upon defendant on March 16, 1959 stating in the return he submitted that he served said complaint and summons on said date "upon the defendant Esperanza Fer- nandez at her given address at AIB Ave., between

Quezon Blvd. & Fil-American St., Quezon City, by leaving same thru Jovita C. Arenas, a person of suitable age and discretion, residing therein, and who duly affixed her signature at the bottom of the original of the Summons to show acknowledgment of receipt thereof." It likewise appears that Jovita C. Arenas delivered the complaint and the summons to the defendant only on April 4, 1959 when she went to her residence at A1B Avenue, Quezon City, the residence mentioned in the return of the sheriff, to collect from her the rent for the month of March, 1959. And not wishing to be late in filing her answer to the complaint, defendant on the same date filed a motion for an extension of 10 days within which to file her answer to be reckoned from April 4, 1959. Then on April 8, 1959, she filed her answer to the complaint alleging some special defenses and counterclaims and on the same date she also filed a motion to admit a third-party complaint against Florencio Deudor from whom she bought the land in question on June 2, 1949. But to her great surprise, on April 11, 1959, the court a quo, upon plaintiff's petition, issued order declaring her in default on the alleged ground that she failed to file her answer within the reglementary period. It was only then when she learned that the summons served on Jovita C. Arenas at her address at AID Avenue, Quezon City on March 10, 1959 was declared valid against her under the principle of substituted service as defined in Section 8, Rule 7, of our Rules of Court. So defendant filed on April 8, 1959 a motion to set aside the order of default attaching thereto two affidavits of merit relating in detail the facts constituting the mistake committed in serving the summons that gave rise to the order of default. But this motion was denied by the court a quo.

We submit this to be an error considering that, according to the two affidavits of merits, the contents of which were not disputed, the house located at 20 AIB Avenue, Quezon City, where the summons in question was served, though owned by defendant Fernandez, was then leased to Jovita Arenas, who is not in any way authorized to receive any paper or pleading in her behalf, while defendant was at the time residing at No. 1 South 22 corner Cebu Avenue, Quezon City, which is quite apart from the residence of Jovita Arenas. Such being the case, it cannot be said that the service of the summons made upon Jovita is valid upon defendant under the principle of substituted service, because this presupposes service "by leaving copies of the summons at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein" (Section 8, Rule 7). Since defendant filed a motion for extension of the reglementary period to answer only four days after it has expired, and her answer was already filed when she was declared in default, we consider it an abuse of discretion to deny her motion to set aside the order of default especially when the service of summons is predicated on an erroneous assumption of fact.

On the other hand, we find that defendant has a meritorious defense as set forth in her answer and in her motion for reconsideration. Thus, it appears that defendant acquired the land in question from Florencio Deudor on June 2, 1949 for the sum of P3,000.00 and is one of those purchasers whose rights were recognized in the compromise agreement entered into between J. M. Tuason & Company, plaintiff herein, and Florencio Deudor. She is not, therefore, a usurper, but one who came into the possession of the property in good faith, under a color of title, and for value. It is fair and just that she be given her Day in court.

Wherefore, the order appealed from is set aside. The case is remanded to the lower court for further proceedings. No costs.

Bengzon, C. J., Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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