

**CATALINA MATANGUIHAN AND DAMASO BALBA, PETITIONERS, VS.
HON. DAMASO S. TENGCO, JUDGE OF THE COURT OF FIRST
INSTANCE OF BATANGAS (LIPA CITY) AND IRENE MALABANAN,
RESPONDENTS.**

G.R. No. L-27781. January 28, 1980

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari instituted by Catalina Matanguihan and Damaso Balba against Hon. Damaso S. Tengco, Judge of the Court of First Instance of Batangas (Lipa City), and Irene Malabanan seeking the following relief:

"WHEREFORE, petitioners pray this Honorable Court:

- That a writ of certiorari be issued to the respondents directing them to answer this petition within the time fixed by the Revised Rules of Court;
- For the issuance of an order requiring the Clerk of the Court of First Instance of Batangas (Lipa City) to certify to this Court a copy each of the Sheriff's Return dated March 21, 1966; the Memoranda submitted by the parties in this case; the Court Order dated July 5, 1967, and such other evidence pertinent to the issue and part of the records of the case;
- That a preliminary injunction issued forthwith ex-parte restraining the respondent judge and the respondent Malabanan from making any steps for execution against the property of petitioners, and, after hearing, said preliminary injunction be made permanent;
- That upon hearing, the said Order as well as the judgment upon which the same is based, be declared null and void as having been done without jurisdiction;
- That petitioners recover their proper costs; and
- Such other relief and remedy which justice and equity require in the discretion of the Honorable Court.

Manila, Philippines, July 15, 1967."[1]

On July 19, 1967, this Court adopted a resolution directing the respondents to answer within 10 days from notice thereof and ordering the issuance of a writ of preliminary injunction upon the filing of a bond of P200.00 by the petitioners.[2]

The writ of preliminary injunction restraining Judge Damaso S. Tengco and Irene Malabanan from making any step for execution against the property of herein petitioners, subject matter of Civil Case 1709 of the Court of First Instance of Batangas entitled "Irene Malabanan v. Leandro Matanguihan, et al.", was issued on August 4, 1967.[3]

The record discloses that on February 15, 1966, a complaint was filed by Irene Malabanan against Leandro and

Catalina, both surnamed Matanguihan, and Damaso Balba in the Court of First Instance of Batangas (Lipa City Branch); that the complaint was docketed as Civil Case No. 1709; that summons was issued on February 16, 1966; that on March 21, 1966, the Deputy Sheriff for the Province of Batangas executed his return wherein he stated that the defendants Damaso Balba and his wife Catalina Matanguihan who had transferred their residence to Biñan, Laguna five years before said date were served copies of the summons through the defendant Leandro Matanguihan, brother of defendant Catalina; that on April 23, 1966, upon motion of counsel for the plaintiff, all the defendants were declared in default for having failed to file any answer; that thereafter the trial court received evidence for the plaintiff; that on May 19, 1966, the respondent Judge rendered judgment, the dispositive portion of which reads:

"WHEREFORE, finding the averments in the complaint as supported by the evidence reasonable and justified, judgment is hereby rendered x x x ordering them (defendants):

- 1) to execute a formal deed of absolute sale covering that part or portion constituting 314 square meters sold to Faustino Matanguihan by Leon Matanguihan of Lot No. 8696 formerly covered by Original Certificate of Title No. 9127;
- 2) to jointly and severally pay to the plaintiff the sum of P2,000.00 for moral and exemplary damages;
- 3) to jointly and severally pay to the plaintiff the sum of P1,000.00 for attorney's fees; and
- 4) to jointly and severally pay to the plaintiff the costs of this suit x x x";

that on April 24, 1967, counsel for plaintiff filed a Motion for Execution with Bill of Costs; that on May 3, 1967, allegedly having learned of the case for the first time, the petitioners filed an opposition to said motion; that the hearing on the motion and opposition was conducted by the respondent judge; that the parties filed their respective memoranda in support of their contentions emphasizing on two (2) issues: first, whether or not the trial court had acquired jurisdiction to hear and decide the case by virtue of the service of summons to one of the three defendants; and second, whether or not the herein petitioners possess personality to appear and oppose the execution of judgment when they had been declared in default and judgment had already been rendered, and moreover, the period within which a petition for relief under Rule 38 of the Rules of Court had already expired; that on July 5, 1967, the respondent Judge issued an order against the herein petitioners, ruling on the first issue, that there had been substantial compliance with the requirements on service of summons and therefore the trial court had jurisdiction to hear and decide the case and the judgment thereon is valid; and on the second issue, that the herein petitioners have no personality to appear and be represented by counsel for the purpose of opposing the motion for execution of the questioned judgment; and that a copy of the afore-mentioned order was received by counsel for petitioners on July 13, 1967.[4]

The main issue in this case is whether the Court of First Instance of Batangas (Lipa City) has acted without jurisdiction on the person of the petitioners.

It is the contention of the petitioners that the lower court failed to acquire jurisdiction over them. Hence the judgment rendered against them is not valid.

Under Section 7, Rule 14 of the Revised Rules of Court, summons may be served personally by handing a copy thereof to the defendant in person or if he refuses to receive it, by tendering it to him. Personal service means actual delivery or tender of the summons to the defendant personally.

The letter of the provincial deputy sheriff to the Clerk of Court of the Court of First Instance of Lipa City reads:

"Sir:

I have the honor to return herewith the attached original summons issued in Civil Case No. 1709, IRENE MALABANAN, plaintiff, versus LEANDRO MATANGUIHAN, et als, defendants, with information that copies of the same together with the attached complaint, were PERSONALLY SERVED to the defendants named therein in their residence in Barrio Luyos, Tanauan, Batangas on March 14, 1966. I wish to apprise your Honor that Mr. & Mrs. Damaso Balba received copies of the same thru defendant Leandro Matanguihan, brother of defendant Catalina, for apparent reasons that they have transferred their residence to Biñan, Laguna five years ago. The proof of service appears at the back of the attached original summons.

Batangas, Batangas, March 21, 1966.

Very truly yours,

FOR THE PROVINCIAL SHERIFF:

(SGD.) PABLO G. EVANGELIO
Provincial Deputy Sheriff"[5]

The return of the sheriff clearly shows that the defendants Damaso Balba and Catalina Matanguihan were not properly served with summons. No summons was actually delivered or tendered to them. Delivering the copies of the summons intended for Damaso Balba and Catalina Matanguihan to their co-defendant Leandro Matanguihan whose residence was in Luyos, Tanauan, Batangas is not the personal service contemplated by the Rules. Moreover, by serving the summons on Leandro Matanguihan, the deputy sheriff violated two (2) provisions of the Rules of Court on summons.

Section 2, Rule 14, reads:

"SEC. 2. Defendants residing in different provinces. - If the defendants reside in different provinces, one summons shall issue for all the defendants residing in one province and another for all the defendants residing in another province, and in the same way until summons have been issued for all the defendants.

A copy of the complaint and order for appointment of guardian ad litem, if any, shall be attached to the original and each copy of the summons."

Leonardo Matanguihan resided in Batangas while Damaso Balba and Catalina Matanguihan resided in Laguna. A separate summons should have been issued for the two defendants residing in Biñan, Laguna.

Section 5, Rule 14, provides:

"SEC. 5. By whom summons may be served. - The summons may be served by the sheriff or other proper court officer of the province in which it is to be made, or for special reasons by any person especially authorized by the judge of the court issuing the summons."

It is obvious that the petitioners were not legally served with summons. Leonardo Matanguihan was neither the sheriff, nor a court officer, nor a person specially authorized by the judge to serve the summons in the province of Laguna.

Inasmuch as summons is the writ by which the defendants are notified of the action against them and since the service of such writ is the means by which the court acquires jurisdiction over their person, it is clear that the trial court acquired no jurisdiction over the person of the petitioners. The judgment against them is consequently nugatory and without legal effect.[6]

The respondents contend that certiorari is not the proper remedy of the petitioners because the petitioners failed to ask for the reconsideration of the order of the lower court dated July 5, 1967 denying their petition for relief and granting the motion for execution of the judgment before going to the Supreme Court;[7] that appeal is the plain,

speedy, and adequate remedy of petitioners;[8] and that following the ruling in the case of *Inocencia Cavan v. Filomeno Galan, et al.*,[9] the petitioners should have filed an action for the annulment of judgment.

As a general rule, a petition for certiorari can not prosper, unless the court a quo has been given the opportunity to re-examine the legal aspect of the case by means of a motion for reconsideration. When, however, the order or judgment complained of is a patent nullity, a motion for reconsideration is not required.[10]

It is also the general rule that certiorari can not be maintained if appeal is available as a plain, speedy and adequate remedy. An exception to this rule is when ordinary appeal would be inadequate as a remedy.[11] In the instant case, ordinary appeal is an inadequate remedy for the petitioners. An appeal will not promptly relieve them from the injurious effects of the judgment. Besides, a party may resort to the remedy of certiorari rather than appeal where the proceeding in the trial court has gone so far out of hand as to require prompt action.[12]

An action for an annulment of judgment is not a plain, speedy and adequate remedy.

WHEREFORE, the petition for writ of certiorari is granted and the judgment of the respondent Judge dated May 19, 1966, and the order dated July 5, 1967, are nullified and set aside. The temporary restraining order heretofore issued is made permanent.

Civil Case No. 1709 is remanded to the trial court for further proceedings, without pronouncement as to costs.

SO ORDERED.

Makasiar, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.
Teehankee, (Chairman), reserved his vote.

[1] Rollo, p. 5.

[2] Rollo, p. 24.

[3] Rollo, p. 31.

[4] Ibid., pp. 51-53.

[5] Rollo, p. 7.

[6] *Litonjua v. Court of Appeals, et al.*, 80 SCRA 246.

[7] Rollo, p. 79.

[8] Ibid., p. 80.

[9] 83 Phil. 970.

[10] *Luzon Surety Co., Inc. v. De Marbella*, 109 Phil. 734.

[11] *Jose v. Zulueta*, L-16598, May 31, 1961, 2 SCRA 574.

[12] *Lim Tanhu v. Ramolete*, 66 SCRA 425.

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