

**SPS. JAMES L. ARNOLD & MILAGROS BARROZO ARNOLD,
REMEDIOS P. BARROZO AND BIENVENIDO BARROZO, VS. HON.
EMMA M. TORIO, ACTING PRESIDING JUDGE, REGIONAL TRIAL
COURT, BRANCH 40, DAGU...**

CA-G.R. SP NO. 84590, October 27, 2010

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Court of Appeals

Before the Court is a petition filed under Rule 47 of the 1997 Rules of Civil Procedure seeking the annulment of the Decision dated December 29, 2003 of the Regional Trial Court ("RTC") Branch 40, Dagupan City in Civil Case No. 00-0217-D, an action for Annulment of Documents, Recovery of Ownership and Possession with Damages.

The Decision held that:

"...[O]n December 5, 1970 ... Sps. Rizal F. Manaois and Virginia B. Manaois bought a portion of 416 sq.meters of a parcel of residential land denominated as Lot 1, Plan Psu-207138, situated in Salay, Mangaldan, Pangasinan, from Sps. Elpidio U. Barrozo [Sr.] and Maria P. Barrozo. On September 5, 1988, the same parcel of land was sold by Sps. Elpidio Barrozo [Sr.] and Maria P. Barrozo to defendants Sps. James L. Arnold and Milagros B. Arnold, and Remedios P. Barrozo. Included in the sale is the residential house constructed therein, which the [Sps. Manaois] claim to have contributed in its renovation. On the basis of the said Deed of Absolute Sale, defendants transferred the subject parcel of land and residential house in their names and have the same declared in their names.

Apparently, the sale of the 416 sq. meters portion of the subject parcel of land to the defendants is null and void. This is so because when the vendees Sps. Elpidio Barrozo [Sr.] and Maria P. Barrozo sold the said portion to the plaintiffs on December 5, 1970, they ceased to be owners of the said portion and they have no more right to sell or dispose of the same. Defendants therefore did not acquire any right of ownership over the said portion of land. They have no basis in declaring the said portion of land in their names.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs [Sps. Rizal F. Manaois and Virginia B. Manaois] and against the defendants [Sps. James L. Arnold and Milagros B. Arnold, Remedios P. Barrozo and Bienvenido Barrozo] as follows:

- 1.) Declaring null and void the Deed of Absolute Sale dated September 5, 1988 as well as Tax Declaration No. 21762 with respect to the 416 sq. meters (sic) portion of the subject land covered by Deed of Absolute Sale dated December 5, 1970 executed in favor of the plaintiffs;
- 2.) Declaring the plaintiffs absolute owners of the 416 sq. meters of the subject parcel of land covered by the Deed of Absolute Sale dated December 5, 1970;
- 3.) Declaring null and void Tax Declaration No. 21768 and declaring the plaintiffs as co-owners of the residential house in question;
- 4.) Ordering the defendant's to pay, jointly and severally, the amount of P20,000.00 as and for attorney's fees and litigation expenses; and to pay the cost of suits;

5.) Dismissing all other claims for lack of basis.

SO ORDERED." (Rollo, pp. 38-39).

Sps. James L. Arnold and Milagros Barrozo Arnold, Remedios P. Barrozo and Bienvenido Barrozo ("petitioners") are now before the Court praying that the said Decision be declared null and void and that they be awarded moral and exemplary damages, plus attorney's fees and litigation expenses. (Rollo, p. 18).

Petitioners claim that they did not receive summons, thus the RTC never acquired jurisdiction over them. The service of summons was made on Elpidio Barrozo Jr. ("Elpidio Jr.") whom respondents, Sps. Rizal and Virginia Manaois, claimed was the administrator of petitioners. Petitioners however deny such claim. Petitioners also aver that the service on Elpidio Jr. was legally defective as it violated Sections 6 and 7 of Rule 14 of the 1997 Rules of Civil Procedure. Also, the Decision is void because it included Bienvenido as one of the defendants when, his name was not included in the complaint as party defendant. (Rollo, p. 10). Petitioners further argue that respondents' action was already barred by laches and prescription. Respondents failed to register in their names the 416 square meter portion of lot sold to them by the late Elpidio Barrozo Sr. ("Elpidio Sr.") in 1970 and they filed a complaint asserting their rights only 20 years later. Remedios and the Sps. Arnold meanwhile immediately registered the Deed of Absolute Sale executed by the late Elpidio Sr. in 1988 with the Register of Deeds and had the title transferred in their names. Having been in possession for a period of more than 12 years, petitioners have already acquired ownership over the subject land by ordinary prescriptive period. (Rollo, pp. 15-16).

The Court gave due course to the petition on October 13, 2004, and summons were served on respondents in accordance with Section 5, Rule 47 of the 1997 Rules of Civil Procedure. (Rollo, p. 47).

Respondents filed their Answer alleging that the subject Decision is valid and in accordance with due process. They insist that petitioners were served with summons through their administrator Elpidio Jr.. Suing petitioners through their representative is allowed under Section 3, Rule 3 of the Rules of Court. While respondents agree that the trial court erred in including the name of Bienvenido in the Decision, they claim that such error may only have been due to the fact that Bienvenido is one of the defendants in another case, Civil Case No. 98-02605-D which was also presided by Judge Emma Torio. (Rollo, pp. 55-57).

Petitioners filed a Reply asserting that there is no proof that Elpidio Jr. was clothed with any authority from them as they did not execute any Special Power of Authority ("SPA") authorizing him to receive any summons or represent them in a case. (Rollo, p. 79).

Both parties were required to submit their respective pre-trial briefs. (Rollo, pp. 86-87). Thereafter, a preliminary conference was conducted on March 28, 2005 where petitioner, through counsel, informed the court that there is no possibility of amicably settling the case. The case was then referred to the Vice-Executive Judge of Dagupan City, for reception of evidence. (Rollo, pp. 106-107).

On August 16, 2005, Elpidio Jr. testified before the RTC and said that he did not receive any summons in connection with the case for annulment of document, recovery of ownership and damages, filed by her elder sister Virginia against his other sisters Milagros and Remedios and brother-in-law James. He also denied that he is the administrator of the three defendants. Elpidio Jr. executed an affidavit (Exh. "H") stating that he was never approached by any sheriff and that the signature appearing in the summons was forged. (TSN, August 8, 16, 2005, pp. 2-4)

Bienvenido, another sibling of Virginia, Milagros, Remedios and Elpidio Jr., also testified and said that he was given a special power of attorney by Remedios, Milagros and James to file the instant petition before the Court of Appeals. Bienvenido testified that while Virginia bought a 416 square meter lot from their father Elpidio Sr. in

1970, Virginia mortgaged the entire 1,000 square meter lot of their father, which included the 416 square meter, with the Mangaldan Rural Bank. The mortgage was foreclosed and sold at public auction and it was Remedios who gave money to redeem the property. A Deed of Absolute Sale was then executed by Elpidio Sr. in favor of Remedios and the Sps. Arnold, (Exh. "M"). Bienvenido also testified that he was surprised to receive the assailed decision and found his name included therein and was even asked to pay penalty, when he never received any summons regarding said case. (TSN, September 1, 2005, pp. 2-11, 19)

For the respondents, Virginia testified that Elpidio Jr. was the administrator of Remedios and the Sps. Arnold who are residing in the United States. Virginia claimed that Elpidio Jr. is the one she talks to about the properties and he relays these things to Remedios. Virginia claims that Elpidio Jr. personally received the summons of the complaint since he informed her of such fact. She also clarified that Bienvenido is not a party in the complaint and she does not intend to enforce the subject decision on Bienvenido. She also explained that while she only bought 416 square meters, where the ancestral house which she helped renovate stands, she was able to mortgage the entire 1,000 lot of their parents because her father gave her a special power of attorney. She received less than P50,000.00 out of the P80,000.00 loan as the bank deducted some of their father's loan from the principal. Other properties were also used as collateral for the loan such as the one covered by OCT No. 20786. She also claimed that she paid the monthly dues of the loan, which was an agricultural loan, and it was their father who was supposed to pay the remaining P30,000.00. She likewise related that when her sisters Milagros and Remedios gave money for the redemption of the property, their father sold to them the entire lot as well as the ancestral house. Their father also promised her, Virginia, that he will give her a portion of the lot at the back. But he died without having transferred any title in her name. (TSN, February 21, 2006, pp. 1-6, 11-18).

During the cross-examination, Virginia admitted that after her father executed a Deed of Absolute Sale over the 416 square meter lot in her favor in 1970, she did not have the title transferred in her name. She also admitted that she knew sometime in 1992 that the entire 1,000 lot was sold by her father to Remedios and the Sps. Arnold way back in 1988. She claimed that she confronted their father about it and was told that he was forced to give the property to her sisters because of the money they gave to redeem it. It was also then that their father promised to give her the back portion of the property. She also admitted that while she learned of the sale of the entire property in favor of her siblings in 1992, she only filed a case in 2000. She also clarified that what she redeemed was the property covered by OCT No. 20786. (TSN, March 1, 2006, pp. 2-6).

Leo Beltran, sheriff of RTC Branch 40 Dagupan City, also testified saying that he served the summons of Civil Case No. 2000-0217-D entitled "Sps. Rizal Manaois and Virginia Manaois vs. James Arnold et al." on Elpidio Jr. on July 31, 2000 which fact was reflected in his report. (TSN, June 21, 2006, pp. 2-4).

After both parties presented their respective formal offer of evidence, the records of the case were referred back to this Court per Order dated August 10, 2006. (Rollo, p. 219). The Court then required both parties to submit their memoranda. (Rollo, p. 221).

In their Memorandum, respondents reassert that petitioners were properly served with summons as they were sued through their representative Elpidio Jr. Suing them through their representative is allowed under Sec. 3 Rule 3 of the Rules of Court. The RTC therefore acquired jurisdiction over petitioners' persons. Respondents further aver that Judge Torio of the RTC penned the assailed decision based on the facts and evidence adduced by them after petitioners were properly declared in default. Finally, the subject decision cannot be declared null and void on the basis alone of the inclusion of Bienvenido in the decision. (Rollo, pp. 225-226).

Petitioners meanwhile failed to file their Memorandum despite the order for them to do so. (Rollo, p. 232).

The Court finds merit in the petition.

The resolution of the present petition hinges on the question of whether summons were validly served on petitioners.

Service of summons on a defendant is the means by which the court acquires jurisdiction over him. Summons serves as a notice that an action has been commenced against the defendant, thereby giving him the opportunity to be heard on the claim made against him. This is in accordance with the constitutional guarantee of due process which requires notice and an opportunity to defend oneself. (*Potenciano v. Barnes*, 562 SCRA 483, 489-490 [2008]).

It is settled that jurisdiction over a defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When a defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court which has no jurisdiction over the person of the defendant is null and void. (*Manotoc v. Court of Appeals*, 499 SCRA 21, 33 [2006]).

In this case, respondents claim that summons were validly served on petitioners since it was served on Elpidio Jr., their supposed administrator. The Court does not agree.

In actions in personam, personal service on the defendant is the preferred mode of service, that is by handing a copy of the summons to the defendant in person. If the defendant, for excusable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to. Being extraordinary in character and in derogation of the usual method of service, the rules on substituted service must be faithfully and strictly complied with. (*Manotoc v. Court of Appeals*, supra, p. 33).

If however the action is in rem or quasi in rem, jurisdiction over the person of the defendant is not essential for giving the court jurisdiction so long as the court acquires jurisdiction over the res. In such cases, what gives the court jurisdiction is that it has jurisdiction over the res, i.e., the personal status of the plaintiff who is domiciled in the Philippines or the property litigated or attached. Service of summons in the manner provided in Section 15 of the 1997 Rules of Civil Procedure, (Section 17, prior to the amendment), is not for the purpose of vesting it with jurisdiction but for complying with the requirements of fair play or due process so that the defendant will be informed of the pendency of the action against him and the possibility that the property in the Philippines belonging to him or in which he has an interest may be subjected to a judgment in favor of the plaintiff and he can thereby take steps to protect his interest, if he so chooses. (*Valmonte v. Court of Appeals*, 252 SCRA 92, 100-101 [1996]).

As petitioners herein are nonresidents who are not found in the Philippines, service of summons on them must be in accordance with Section 15 Rule 14 of the 1997 Rules of Civil Procedure. That is, such service to be effective outside the Philippines, it must be made either (1) by personal service; (2) by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court should be sent by registered mail to the last known address of the defendants; or (3) in any other manner which the court may deem sufficient. (See *Valmonte v. Court of Appeals*, supra, p. 102).

While respondents claim that the service of summons on Elpidio Jr. is sufficient service on petitioners, this Court does not agree.

Following the rule on extraterritorial service as provided in Section 15, substituted service must be applied for by motion with the court in writing, supported by affidavit of the plaintiff or some person on his behalf and setting forth the grounds for the application. Petitioners who are nonresidents should also be given, not just 15, but 60 days from notice to file their answer. (See *Valmonte v. Court of Appeals*, supra, p. 103).

As also pointed out by petitioners, they did not appoint Elpidio Jr. as their attorney-in-fact. They did not execute

any special power of attorney to authorize him to receive summons or any other court process in their behalf. As no power of attorney to receive summons was given Elpidio Jr. by herein petitioners, there can be no valid service of summons on them. (See Valmonte v. Court of Appeals, supra, p. 105).

The inclusion of Bienvenido as a defendant in the assailed decision, which even ordered him together with the other petitioners to pay P20,000.00 as attorney's fees and litigation expenses, when he was not a party to the case is clearly improper. In fact, private respondents conceded that his name should be dropped from the subject decision.

Since the trial court never acquired jurisdiction over the petitioners, either by personal or substituted service of summons or by petitioners' voluntary appearance in court and submission to its authority, the RTC's order of default and the subsequent judgment are void for lack of jurisdiction. (Potenciano v. Barnes, supra, p. 494).

As to the damages prayed for by petitioners however, the Court finds no reason to grant the same. Attorney's fees and litigation expenses are proper when the court finds that the civil action or proceeding is clearly unfounded and the party acted in gross and evident bad faith. The award of attorney's fees as damages is the exception rather than the rule and is not to be given to the defendant every time the latter prevails. The right to litigate is of great consequence that a penalty should not be charged on those who may exercise it in good faith. Absent any showing of gross and evident bad faith in filing the action, such award is not in order. (Sps. Provost v. Court of Appeals, 492 SCRA 675, 684 [2006]). In like manner, there is also no showing that respondents Sps. Manaois acted in wanton, fraudulent, reckless, oppressive, or malevolent manner that would justify the award of moral and exemplary damages. (Sps. Rayos v. Reyes, 398 SCRA 24, 37[2003]).

WHEREFORE, the petition is GRANTED. The Decision dated December 29, 2003 of the Regional Trial Court, Branch 40, Dagupan City in Civil Case No. 00-0217-D is hereby REVERSED and SET ASIDE. The damages prayed for however are DENIED.

SO ORDERED.

Salazar-Fernando [**] and Veloso [***] , JJ., concur

[**] New Member per Raffle dated September 26, 2006.

[***] New Third Member, vice J. Ruben T. Reyes, per Raffle dated September 29, 2010.

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