

PATRICIO BELLO, PLAINTIFF-APPELLEE, VS. EUGENIA UBO AND PORFERIO REGIS, DEFENDANTS-APPELLANTS.

G.R. No. L-30353. September 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Defendants-appellants Eugenia Ubo and Porferio Regis pray in this appeal that the following be declared null and void for having been issued without jurisdiction by the Court of First Instance of Leyte, Branch II, in Civil Case No. 4031 which is an action for recovery of real property with damages, namely: (1) the order dated July 22, 1967, declaring defendants-appellants in default; (2) the judgment by default dated July 31, 1967; (3) the order dated September 16, 1967, denying defendants-appellants' motion for relief from judgment; and (4) the order dated January 8, 1968, denying their motion for reconsideration. Defendants-appellants further pray that the case be remanded to the court of origin for further proceedings.

The records of the case bear out the following antecedents:

On April 29, 1967, the plaintiff, thru counsel, filed with the Court of First Instance of Leyte a complaint for recovery of real property with damages against the defendants praying, among other things, that he be declared the true and lawful owner of the parcel of land which had been forcibly occupied by the defendants since 1962 under claim of ownership, and that the defendants be ordered to pay him the sums representing the value of the coconuts harvested from the land since 1962; moral damages in an amount the court may find reasonable; P260.00 for expenses of relocation survey; P300.00 attorney's fees and the incidental expenses and costs of the proceeding.

Summons were issued on May 4, 1967, requiring the defendants to file their answer to the complaint within 15 days from service thereof. A certain Patrolman Castulo Yobia of the Police Department of Jaro, Leyte, served the summons on the defendants on May 15, 1967.

As no answer was filed by the defendants, plaintiff's counsel, on July 17, 1967, filed a motion to declare defendants in default. Acting upon said motion, the Court of First Instance of Leyte issued an order dated July 22, 1967, declaring the defendants in default and directing the plaintiff to present ex- parte his evidence on the 24th day of the same month. Thereafter a judgment by default dated July 31, 1967, was rendered by said court, the dispositive portion of which reads as follows:

"WHEREFORE, and in view of all the foregoing, the Court renders decision declaring the plaintiff the owner of the western portion of the land covered by Original Certificate of Title No. P-225 containing an area of 16,410 square meters as shown in Exhibit "C-1"; ordering the defendants to vacate the said portion occupied by them; to pay the sum of P900.00 a year from July, 1962, up to the time the said defendant will deliver the land in question to the plaintiff; to pay the amount of P300.00 as attorney's fees; and to pay the costs."

The order of default and the judgment by default were received by the defendants on August 2, 1967, and August 11, 1967, respectively.

Upon receipt of the order of default, the defendants contracted the services of Atty. Generoso Casimpan who immediately inquired from Pat. Castulo Yobia about the service of the summons. Pat. Yobia then showed him a copy of the complaint which he failed to deliver to the defendants.

On August 17, 1967, defendants' counsel filed a motion for relief from judgment charging irregularity in the service of the summons and praying that the order of default dated July 22, 1967, and the judgment by default dated July 31, 1967, be set aside and that defendants' answer, which was attached to said motion, be admitted. The defendants alleged in said motion that the subject land was inherited by them so that they have a good and valid right thereto. They further alleged that they had been paying taxes on the land and that the complaint was filed merely to compel them to settle a criminal case for frustrated homicide which they had filed against the plaintiff's son.

On September 16, 1967, the Court of First Instance of Leyte issued an order denying the motion for relief from judgment on the ground that the same was not accompanied by an affidavit of merit. A copy of said order was received by the defendants on September 28, 1967.

On October 4, 1967, defendants' counsel filed a motion for reconsideration contending that since the motion for relief from judgment was predicated on lack of jurisdiction over the person of the defendants, the same need not be accompanied by an affidavit of merit. However, before the court could act on the motion for reconsideration, the defendants' counsel amended the same and attached thereto, their affidavit of merit which reads as follows:

"WE, EUGENIA UBO and PORFERIO REGIS, the mother and son, respectively, the former widow, and the latter married, both of age, Filipinos and residents of Barrio Tuba, Jaro, Leyte, Philippines, after being duly sworn to in accordance with law, hereby depose and say:

"1 . That I, Eugenia Ubo, am the defendant in Civil Case No. 4031, entitled *Patricio Bello vs. Eugenia Ubo, et al.*; that although it appears that in the summons I received a copy of the complaint and served with the summons, the truth of the matter is that I did not receive a copy of the complaint, nor my son, Porferio Regis. Said complaint was served instead to the plaintiff, Patricio Bello, as appearing in the said summons, and that the signature appearing in the said summons is actually not mine, not knowing how to read or write myself;

"2 . That I, Porferio Regis, am a co-defendant in the aforementioned civil case; that the signature in the summons now attached to the record of the case is mine, but although it appears that I was served with summons together with the complaint, the truth about it is that I did not receive the complaint supposed to be delivered to me or my mother; instead, the summons was withdrawn after I had signed it;

"3. That sometime on August 2, 1967, through the aid of our lawyer, Atty. Generoso Casimpan, it was then that we received a copy of the complaint from the serving policeman, Castulo Yobia, in the presence of Attys. Marcelo Caoelin and Alfredo Lastrilla;

"4 . That because of our own ignorance and the mistake of the serving policeman, it was perhaps the reason why the Hon. Judge Lorenzo Garlitos declared us in default and the default judgment rendered copy of which we received on August 11, 1967."

On November 16, 1967, the plaintiff's counsel filed an opposition to the amended motion for reconsideration attaching thereto a counter-affidavit executed before said counsel by Pat. Castulo Yobia, to wit:

"I, CASTULO YOBIA, of age, Filipino, married and a resident of Jaro, Leyte, Philippines, after having been duly sworn to according to law, depose and say:

"1 . That I am presently a member of the Police Force of the Municipality of Jaro, Leyte; and that sometime in the month of May, 1967, I was ordered by our Chief of Police to serve sum-mons to which was attached a copy of the complaint upon the persons of Eugenia Ubo and Porferio Regis, mother and son, respectively, in

the outskirts of Bo. Tuba, Jaro, Leyte, which is three kilometers away from the national road and only accessible on foot as there is no regular trip of passenger vehicle to that place;

"2 . That definitely on May 15, 1967, taking the opportunity that there was a cargo truck which passed by the Municipal Hall going to the aforementioned barrio to get copra, I hurriedly went inside the Office of the Police Department to get the summons and the office clerk readily gave the same to me and to which was attached a copy of the complaint;

"3 . Upon reaching the said barrio I immediately went to the house of Eugenia Ubo, whom I know personally and was also able to contact at the same place Porferio Regis. At first they refused to receive the summons and complaint. However, after explaining to them the nature of the summons and the case against them, both of them signed the summons in my presence reluctantly and I detached the complaint and handed the same to them although refusing. I further advised them to look for a lawyer at once to handle their case;

"4 . That when I returned back to our office in Jaro I was told by the office clerk that there was another copy of the summons and complaint intended for the other defendant;

"5. That in the afternoon of the same day, I incidentally met plaintiff Patricio Bello and his son Juan Bello in the poblacion of Jaro, Leyte, whom I informed that their complaint was already served on defendants that morning and requested Patricio Bello to sign the summons, but was instead signed by the son Juan Bello to show that they were already informed about the service upon defendants and so that they can inform their lawyer, I then requested the said Patricio Bello to give the other copy of the complaint to the other defendant thru anybody in the barrio, as they are the ones that use to frequent the said barrio Tuba of Jaro;

"6 . That almost a month after, the son of Patricio Bello came to my house handing me the copy of the complaint I gave to Patricio Bello to be delivered to the other defendant thru anybody in barrio Tuba, telling me that the same copy of the complaint was not delivered because his father was afflicted with rheumatism the past weeks."

On January 8, 1968, the Court of First Instance of Leyte issued an order denying defendants' motion for reconsideration, to wit:

"After a consideration of the ground of the Opposition to the Motion for Reconsideration, particularly the affidavit of Pat. Castulo Yobia, the serving officer of the summons who had, upon the service of summons, explained to both defendants the nature of the summons and the complaint which should have warned the defendants of the existence of a case against them, especially because a copy of the complaint was delivered to both of them at the time of service, the irregularity consisting in the failure of the serving officer to deliver to each one of them a copy of the complaint is, therefore, neutralized by such explanation made by the policeman to them. It was, therefore incumbent upon the defendants to have checked up their case. Their failure to do so does not constitute excusable negligence, nor could it be said to be one of accident or excusable mistake. For lack of merit of the Motion for Reconsideration therefore, the same is hereby denied."

A copy of said order was received by the defendants on January 9, 1968.

On January 23, 1968, the defendants, thru counsel, filed a notice of appeal and a motion to appeal as pauper and submitted to the court for approval their record on appeal. The plaintiff, on the other hand, filed on January 31, 1968, a motion for execution pending appeal.

On February 10, 1968, the Court of First Instance of Leyte issued an omnibus order approving defendants' record on appeal and directing that the appeal be given due course; granting defendants' motion to appeal as pauper; and denying plaintiff's motion for execution pending appeal.

The main thrust of the appeal is that there was no valid and effective service of summons on the defendants and

that, consequently, the Court of First Instance of Leyte did not acquire jurisdiction over their person.

The appellants contend that Pat. Castulo Yobia of the Police Department of Jaro, Leyte, was not a proper person to serve the summons under Sec. 5, Rule 14 of the Rules of Court since he was not a sheriff or a court officer of the province where service was made; and neither was he a person who, for special reasons, was specially authorized to serve the summons by the judge who issued the same. Furthermore, appellants contend that even assuming that said policeman could be considered as a proper person to serve the summons, still there was no valid and effective service since he brought back the summons with him together with the copy of the complaint.

The appellee, on the other hand, admits that the person who served the summons – Pat. Castulo Yobia of the Police Department of Jaro, Leyte – is not one of those enumerated by Sec. 5, Rule 14 of the Rules of Court as the proper person to serve the summons but contends that said provision of the rules is merely directory and its specification of persons who are to serve summons is not exclusive. He claims that Pat. Yobia had duly served the summons upon the defendants and had even explained to them the nature of the summons and advised them to look for a lawyer. He contends that said policeman did equally if not more effectively what a sheriff or his deputy or a court officer was expected to have done and, therefore, said service of summons had the same force and effect as though summons had been served by any of the regular officers mentioned by the Rules.

After consideration of the material antecedents of this case and the pertinent jurisprudence on the matter, We hold that there was no valid service of summons on the defendants and, consequently, the Court of First Instance of Leyte did not acquire jurisdiction over their person.

Sec. 5, Rule 14 of the Rules of Court, expressly provides that summons may be served by the sheriff or other proper court officer of the province or, for special reasons, by a person especially authorized to serve the summons by the judge of the court which issued the same. Contrary to appellee's contention, this enumeration is exclusive. Thus, in *Sequito vs. Letrondo*, G.R. No. L-11588, July 20, 1959, 105 Phil. 1139, We considered as irregular the service of summons by a police sergeant who was not a sheriff or a court officer and who was not authorized by the court to deliver the summons. And in the more recent case of *Spouses Olar vs. Cuna*, G.R. No. L-47935, May 5, 1979, 90 SCRA 114, We ruled that the postmaster of Bato, Leyte, not being a sheriff or court officer, or a person authorized by the court to serve the summons cannot validly serve the summons. There, as in the case at bar where summons was served by one who is not included in the specification of Sec. 5, Rule 14 of the Rules of Court, this Court had to rule that the court which issued the summons did not acquire jurisdiction over the person of the defendants.

Furthermore, the appellants point to other irregularities which attended the service of summons by Pat. Yobia. Thus, it is alleged that said policeman merely tendered the summons to them and did not give them a copy of the same and of the complaint. While it is true that Pat. Yobia had denied such allegation in his counter-affidavit which We have heretofore quoted, nevertheless, We find appellants' version to be more credible. For, the records of the case are replete with indications that the serving policeman was grossly ignorant of the rules concerning summons. Thus, the return of service shows that the summons was first served on the plaintiff (back of p. 3, records). Besides, such return of service was not made under oath – in violation of Sec. 20, Rule 14 of the Rules of Court – which requires that "the proof of service of a summons x x x shall be sworn to when made by a person other than the sheriff or his deputy." And even if We were to give credence to Pat. Yobia's counter-affidavit, We would still find the service of the summons to be irregular since it is expressly admitted therein that only one copy of the summons and of the complaint was served on the two defendants.

Since a court acquires jurisdiction over the person of the defendant only by means of a valid service of summons, trial and judgment without such valid service are, therefore, null and void.

WHEREFORE, the trial court's order of default and judgment by default are set aside and said court is directed to accept defendants-appellants' answer to the complaint and to conduct further proceedings on the case. Costs against plaintiff- appellee .

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ.,concur.

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