

**SIMEON CORDOVIS, JUAN RUBIA, ET AL., PLAINTIFFS-APPELLANTS,
VS. BASILISA A. DE OBIAS, ESTRELLA O. ROOHA, ET AL.,
DEFENDANTS-APPELLEES.**

G.R. No. L-21184. September 05, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

A complaint for forcible entry and detainer (Civil Case No. 47) was filed on January 16, 1957 by Basilisa A. de Obias and her husband Hermogenes P. Obias against Simeon Cordovis, Juan Rubio, Juan Cordovis, Patricia Cordovis, Rodrigo Tolero, Nemesia Cordovis, Macario Santelices, Macario Santelices, Jr., Victor Adalla, Catalina Cordovis and Ruben Dacer, in the Justice of the Peace Court of Garchitorena, Camarines Sur. Said court decided against defendants Cordovis, et al. Appeal therefrom was taken by said defendants, to the Court of First Instance of Camarines Sur. The case was docketed therein as Civil Case No. 3991. Notice of the appealed case was sent by the clerk of court to the defendants themselves, not to their lawyer.

Plaintiffs spouses Obias, alleging failure at defendants to answer, moved to have them declared in default. Said motion was granted. And on May 4, 1959, after hearing, the Court of First Instance rendered judgment against defendants in default. Subsequently, the court issued a writ of execution, but the judgment was not fully satisfied because the defendants refused to vacate the premises as ordered. For this refusal, they were charged with con-tempt.

Pending the contempt charge, the court issued, upon motion of plaintiffs Basilisa A. de Obias and the heirs of Hermogenes Obias,[1] a special of demolition, defendants 30 days from July 23, 1962 to demolished their houses, otherwise the matter will be placed into the sheriff's hands. After obtaining an extension of 15 days, defendants on September 5, 1962 filed before the same court a complaint for the annulment of the judgment in Civil Case No. 3991 with a petition ex-parte for the issuance of a writ of preliminary injunction (Civil Case No. T-7), against Basilisa Obias, Estrella Rocha, Rosario Obias Pura Gimeno, Manuel Obias, (heirs of Hermogenes Obias) and the Provincial Sheriff. On the same day, sustaining the allegations of nullity of the judgment in Civil Case No. 3991 because notice of the appealed case was sent to Cordovis, at al. instead of their counsel, and that irreparable injury would result due to the threatened demolition, the Court of First Instance in Civil Case No. T-7 enjoined Obias, at al. from executing the decision in Case No. 3391. Cordovis et al. were required to post a bond of P500.00.

On Octobers 9, 1962, Obias et al. moved to dismiss and set aside the order and writ of preliminary injunc-tion in Civil Casa No. T-7. Over the objection of Cor-dovis et al., the Court, of First Instance on January 18, 1963 dismissed the complaint and dissolved the writ of preliminary injunction. Plaintiffs in Civil Case No. T--7 Cordovis, et al., thereupon appealed to Us directly upon questions purely of law.

Section 7 of Rule 40 of the old Rules of Court (also Sec. 7 of Rule 40 of the Revised Rules) in connection with appeals from the inferior counts to the Courts of First Instance provides:

"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."

On June 2, 1953 Supreme Court, interpreting this provision, held that notice of the appealed case to the parties was sufficient.[2] In 1962 however, in the case of *Elli v. Ditan*, G.R. No. L-17444, June 30, 1962, the provision, taken in conjunction with Sec. 2 of Rule 27 of the old Rules (now Sec. 2 of Rule 13 of the Revised Rules) providing for service of pleadings motions, etc., was held to require that notice of the appealed case to the parties themselves is properly only if the parties are not represented by counsel; so that the moment attorney appears for the parties, the notice should be sent to the attorney, otherwise there is no legal service and there can be no default.

Appellants Cordovis et al. argue that the judgment of default rendered was a nullity because the notice of the appealed case was sent to them not to their counsel, and cite the ruling in *Elli v. Ditan*, supra, as the rule to follow, being allegedly the most recent. This contention must fall. At the time the notice of the appealed case was sent to Cordovis et al., the doctrine prevailing was the rule in *Ortiz v. Mania*, supra, promulgated in 1953. When the *Ditan* case was promulgated in 1962, the judgment in Civil Case No. 3991 had already become final and executory. And moreover, the *Ditan* case was abandoned in *Valenzuela v. Balayo*, G.R. No. L-18748, March 30, 1963 where We held that notice of the appealed case sent to parties themselves, even represented by counsel, is proper, stating that the reason "lies in the fact that on 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 is ready within the court's jurisdiction, the notice taking the place of the summons." [3]

WHEREFORE, the order of dismissal appealed from is hereby affirmed, with costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Hermogenes Obias had died and had been substituted by his heirs.

[2] *Ortiz v. Mania*, L-5147; 93 Phil. 317.

[3] *Ortiz v. Mania*, 93 Phil. 317, 318.

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