

CLARO S. CORTES, PETITIONER-APPELLANT, VS. HON. NELLY L. ROMERO VALDELLON, JUDGE CFI BULACAN, MANUEL F. CRUZ, ALEJANDRO CORREA, AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-40891. April 30, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court reverses the Court of Appeals' decision upholding respondent judge's disputed order setting aside a previous dismissal of respondents' petition for review and reopening of a land registration decree on respondents' bare assertion two years later that they had not been served the dismissal order. Although the registry receipt and return card were not available in the record respondents' bare denial cannot prevail over the certification of the postal officials based on official records conclusively showing the actual fact and specific date of service by registered mail on respondents' counsel, and respondent judge no longer had jurisdiction to disturb or set aside the long final and unappealable dismissal order.

In a land registration decision on October 19, 1965,[1] the land in question was ordered registered and adjudicated in favor of petitioner's predecessor-in-interest (Cristina Villarama) as against respondents Manuel F. Cruz and Alejandro Correa. The order for the issuance of the decree of registration was issued on November 26, 1965.

On December 22, 1965, respondents filed a petition for review in order to set aside the decree and annul the registration. The same was opposed by the original applicant (Cristina Villarama) as well as by her direct successors (Jose and Natividad Fajardo) who were allowed to intervene in September, 1968 and by herein petitioner Claro C. Cortez who was also allowed to intervene in March, 1971 on the ground that he had purchased the land at a foreclosure sale and that the same was already registered in his name.

On November 22, 1971, the lower court issued an order sustaining the oppositions and dismissing respondents' petition for review on the ground that the land had already been transferred to innocent purchasers for value.

The lower court's record indicates that the dismissal order was sent by registered mail on January 21, 1972 to respondents' counsel, Attys. Dakila F. Castro and Associates at their address of record in Quezon City.

But two years later on January 8, 1974, respondents through their same counsel filed a motion for reconsideration of the dismissal order of November 22, 1971 on the ground that they had not been served with the same and were thereby deprived of their right of appeal and alleging that they came to know of the said order only in January, 1974 when they were being ejected from the land.

Petitioner filed his opposition disputing respondents' claim and averring that since the dismissal order had been served on January 21, 1972 on respondents' counsel by registered mail covered by Registry Receipt No. 1796, the order was already final and unappealable.

On May 21, 1974, the lower court presided by respondent judge nevertheless granted respondents' motion for reconsideration, set aside the dismissal order and scheduled anew for trial respondents' petition for review of December 22, 1965.

Upon petitioner's motion for reconsideration which was heard on August 9, 1974, petitioner presented documentary evidence to show that the dismissal order was actually sent to respondents' counsel by registered mail covered by Registry Receipt No. 1796 as per the lower court's mailing clerk's affidavit and that the same was actually mailed to and received on January 29, 1972 by one Tessie Ferrer as the authorized receiving clerk of respondents' counsel, Attys. Dakila F. Castro and Associates as per certification of the Quezon City Postmaster, affidavit of the Quezon City letter-carrier and the very page from the Quezon City Post Office Delivery Book for registered mail showing the signature of respondents' counsel's clerk, Tessie Ferrer, in acknowledgment of receipt of the registered mail containing the dismissal order.

The lower court denied reconsideration on October 12, 1974. On certiorari, respondent Court of Appeals upheld respondent judge's ruling that petitioner failed to prove complete service of the dismissal order of November 22, 1971 on respondents.

Hence, the petition at bar, which the Court in its Resolution of October 10, 1975 treated as a special civil action and declared submitted for decision upon the filing of respondents' comment.

The petition must be granted.

Respondent court in upholding respondent judge's disputed order setting aside its final dismissal order after two years on the bare denial of respondents that they never received the dismissal order and of its equally bare conclusion of failure of proof of service under Rule 13, section 10,[2] because the registry receipt and return card could not be found in the record or rollo of the case below to which they should have been attached, misread the Rule and plainly disregarded and failed to give due weight to the mass of overwhelming documentary evidence submitted by petitioner showing conclusively that service of the dismissal order had in fact been made and completed on January 29, 1972 on respondents' counsel.

The more relevant documentary evidence as listed by respondent court in its decision consisted of:

"5. Certification by the Quezon City Acting Postmaster to the effect that the letter in question addressed to respondents' counsel was taken by the letter-carrier on January 29, 1972 (sic) for delivery to the counsel for private respondents.

"6. Affidavit of the Quezon City letter-carrier, Luciano Mangaldan, stating that the letter in question was delivered to the office of Dakila F. Castro and Associates on January 29, 1972. (sic)

"7. Letter of the Acting Administrative Officer of the Quezon City Post Office addressed to petitioner's counsel informing the latter that the record book was found and that the registered mail matter in question was received by the authorized receiving clerk of Dakila F. Castro & Associates on January 27, 1972.

"8. Certification by the Acting Postmaster of Quezon City Post Office that the registered mail matter in question was delivered to and received by an authorized agent Tessie Ferrer (Secretary of Attorney Armando de Guzman) on January 27, 1972.

"9. A page of the delivery book showing the signature of Tessie Ferrer on January 27, 1972, an employee of private respondents' counsel, for receipt of the registered letter containing the order in question.

"10. Affidavit of Lucio Clemente, mailing clerk of the court a quo stating that the order of dismissal was sent by registered mail to counsel for private respondents bearing Registry Receipt No. 1796." [3]

Respondent court's constricted reading of the Rule was that "service by registered mail shall be proved by the affidavit of service and the registry receipt. They go together or they do not go at all" and that since the registry receipt and return card were not in the record "the above documents and certifications submitted by the petitioner do not constitute sufficient proof of service under section 10 of Rule 13", adding that "while there may be a presumption that in the ordinary course of events and disputed mail matter was delivered to the addressee, the fact of receipt by the addressee is denied."

This is clear error. The ordinary normal proof of registered-mail service as provided by the cited Rule is the affidavit of mailing and registry receipt, with the Rule providing for the sender's filing of the registry return card upon its receipt or in lieu thereof the unclaimed letter together with the postmaster's certified copy of the notice as given to the addressee.[4]

Where as in the case at bar, the registry receipt and return card were somehow not attached to the record (whether by design or negligence) but the lower court's mailing clerk had duly executed the affidavit of mailing of the dismissal order as covered by Registry Receipt No. 1796 and duly so recorded in the lower court's mailing log book, the above-listed documentary exhibits dug up and submitted by the petitioner (in view of the lower court's seeming apathy to the apparent loss or misplacing of the registry receipt and return card) tracing the delivery and receipt thereof on January 27, 1972 by respondents' counsel's authorized agent together with a page of the official delivery book showing the agent's signature thereon in acknowledgment, all of which were duly certified by the postal officials of the Quezon City Post Office, constitute just as primary, if not more direct, proof of service as the registry receipt and return card.

The certifications from the official record book and delivery book of the Post Office together with the very page of the delivery book showing the acknowledgment of receipt on January 27, 1972 of the registered mail matter as per signature of respondents' counsel's authorized clerk are the direct and primary evidence of completion of service, even more so than the registry receipt and return card which the Rule accepts as such proof of service for practical purposes (since it would be too cumbersome to require similar detailed certifications and exhibits as those presented by petitioner as proof of service for each of the tens if not hundreds of thousands of registered mail matter involved in court proceedings).

Respondent court's dictum that without the registry receipt, all is lost and the presumption of delivery of mail matter in the ordinary course of events would not hold in the face of the addressee's bare denial of receipt goes against the consistent doctrine of this Court in the analogous cases of service of unclaimed registered mail matter being deemed completed after the fifth day of receipt of the postmaster's notice,[5] that as between the denial of a party of receipt of such notice and the positive assertion of a postal official whose duty is to send such notices, the choice is not difficult for the party's denial cannot prevail over the contrary statement of postal officials based on official records who further have the presumption in their favor that official duty was regularly performed.[6]

This holds true all the more when it is noted that other than the bare denial of receipt of the dismissal order as served by registered mail, respondents and their counsel have made no attempt to deny, refute or explain in any way the facts shown by the postal officials' certifications and records that their counsel's authorized agent by the name of Tessie Ferrer did on January 27, 1972 receive and sign for the dismissal order, or to question or disclaim her authority to receive the said order in their behalf. Nor is there any claim that the envelope containing the order (per Registry Receipt No. 1796) was ever returned as unclaimed to the lower court.

In resume, the mass of incontrovertible documentary evidence conclusively shows that service of the dismissal order was in fact made and completed by registered mail on January 27, 1972 on respondents' counsel and therefore respondents' bare denial two years later of the fact of such receipt is futile and of no value.

Even if petitioner's evidence had been not quite so overwhelming, still respondents' bare denial two years later could not in law prevail against the contrary documented certifications of the postal officials as fortified by the legal presumption that official duty was regularly performed.

The lower court's order setting aside the dismissal after two years on respondents' bare denial of the fact of receipt thereof as upheld by respondent appellate court must therefore be set aside as having been issued with grave abuse of discretion and in a capricious and whimsical manner. It is patent that since the dismissal of respondents' petition for review had long become final and unappealable, respondent judge had no jurisdiction two years later to disturb the same or set it aside and order a reopening of the case below.

ACCORDINGLY, respondent court's decision is reversed and instead judgment is rendered setting aside respondent judge's disputed order of May 21, 1974. The temporary restraining order issued on October 29, 1975 against the enforcement of said order of May 21, 1974 is hereby made permanent. With costs in both instances against private respondents.

SO ORDERED.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

[1] Case No. 2074-M of the Court of First Instance of Bulacan.

[2] "Sec. 10. Proof of service. — * * * If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon receipt thereof by the sender, or in lieu thereof the letter unclaimed together with the certified or sworn copy of the notice given by the postmaster to the addressee." (Rule 13)

[3] Court of Appeals' decision, Rollo, pp. 30-32.

[4] As to completion of service, Rule 13, sec. 8 provides that "* * Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time."

[5] Rule 13, sec. 8, *supra*.

[6] See *Grafil vs. Feliciano*, 20 SCRA 616; *Fojas vs. Navarro*, 32 SCRA 476.

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