

EUSEBIA BARRAMEDA, PLAINTIFF-APPELLANT, VS. ENGRACIO CASTILLO, DEFENDANT-APPELLEE.

G.R. No. L-27211. July 06, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the effectiveness of the service of a court's decision by registered mail.

Eusebia Barrameda sued Engracio Castillo in the municipal court of Lopez, Quezon Province in Civil Case No. 269. (The record does not show the nature of the suit). A copy of the court's decision, which was adverse to Barrameda, was sent by registered mail on January 28, 1966 to her lawyer at San Pablo City. That mail was received in the city post office on the following day, January 29. On that day and on February 3 and 9, 1966 the city postmaster's office supposedly sent to Barrameda's counsel three notices regarding the registered mail.

Barrameda's lawyer did not claim that mail. It was returned to the municipal court and was received there on March 3, 1966 as unclaimed mail.

Eusebia Barrameda must have been informed that the adverse decision could not be served upon her lawyer. On March 9, 1966 she received personally a copy of the decision. (Whether she got it or it was served upon her is not clear in the inadequate record on appeal.)

Through a lawyer, Barrameda filed a notice of appeal on March 11, 1966. Castillo did not interpose in the municipal court any objection to her appeal. The court gave it due course. The record was transmitted to the Court of First Instance where the case was docketed as Civil Case No. C-232.

On April 21, 1966 Castillo filed in the Court of First Instance a motion to dismiss the appeal on the ground that it was filed out of time. His theory was that the fifteen-day reglementary period within which Barrameda could appeal should be counted from the expiration of five days from the date of the first notice sent by the postmaster to Barrameda's lawyer.

In this case, the supposed first notice was sent on January 29, 1966, when the mail in question was received in the San Pablo City post office (not January 28, 1966, as erroneously assumed by Castillo and the lower court). The five days counted from that date expired on February 3, 1966 when the second notice was allegedly sent to Barrameda's lawyer.

Eusebia Barrameda opposed Castillo's motion to dismiss her appeal. She contended that Castillo failed to prove that her counsel actually received the supposed three notices sent by the postmaster. She argued that because in the municipal court Castillo did not object to her appeal, his motion could no longer be entertained in the Court of First Instance.

The trial court granted the motion and dismissed the appeal. It assumed that the fifteen-day period should be counted from February 7, 1966, the date of the third notice (the third notice was allegedly sent on February 9,

1966) and the period expired on February 21, 1966, according to the trial court's computation.

Eusebia Barrameda appealed to this Court. She specified that she was going to question the legality of the order of dismissal.

Rule 13 of the Rules of Court provides:

"SEC. 7. Service of final orders or judgments. - Final orders or judgments shall be served either personally or by registered mail. x x x.

"SEC. 8 Completeness of service. - Personal service is complete upon actual delivery. x x x 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."

In service by registered mail, the general rule is that service is complete upon actual receipt by the addressee. The exception is that when the addressee does not claim his mail within five days from the date of the first notice of the postmaster, then the service takes effect at the expiration of such time.

As illustrated by Justice Cesar Bengzon, if the first notice is received by the addressee on December 1, and he gets his mail on December 3, the service is complete on December 3, the date of the actual receipt (general rule).

But if the addressee gets his mail only on December 15, service is deemed complete on December 6 or five days from December 1, the date of the first notice (exception).

If the addressee never gets the mail, service is also deemed complete on December 6, as provided in the exception to the general rule. If he receives his mail two months after it is registered and there is no proof of the first notice, then service is complete on the date of actual receipt, following the general rule. (*Grospe vs. Court of Appeals and Uera*, 106 Phil. 1144, 1148-9).

Bearing in mind that the exception in service by registered mail refers to constructive service, not to actual receipt of the mail, it is evident that the fair and just application of that exception depends upon conclusive proof that a first notice was sent by the postmaster to the addressee. The presumption that official duty has been regularly performed should not be applied to such a situation.

Therefore, to obviate injustice, it is incumbent upon a party, who relies on constructive service or who contends that his adversary was served with a copy of a final order or judgment upon the expiration of five days from the first notice of registered mail sent by the postmaster, to prove that that first notice was sent and delivered to the addressee. A certification from the postmaster would be the best evidence of that fact (*Grafil vs. Feliciano*, L-27156, June 30, 1967, 20 SCRA 616). The mailman's testimony may also be adduced to prove that fact, as was done in *Aldecoa vs. Hon. Arellano and Siguenza*, 113 Phil. 75, 78.

The postmaster's certification as to the sending of the first notice "should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the delivery thereof was made." (*Hernandez vs. Navarro*, L-28296, November 24, 1972, 48 SCRA 44, 64, per Barredo, J.).

As stressed by Justice Barredo in a recent case, "there must be clear proof of compliance with the postal regulations governing the sending and receipt of the notice referred to in" section 8 of Rule 13 (*Vecino vs. Court of Appeals*, L-38612, March 29, 1977). The mere exhibition in court of the envelope containing the unclaimed mail is not sufficient proof that a first notice was sent.

Note that in a certain case a first notice was sent but it was received by the addressee's eleven-year old child who

did not deliver it to the addressee himself. It was held that to apply the presumption in that case and to insist on constructive service would work an injustice rather than promote justice (*Cabuang vs. Hon. Bello*, 105 Phil. 1135, 1138).

In the instant case, there is no evidence that the first notice was sent to Barrameda's lawyer and that it was delivered to him or should have been received by him. The envelope containing the unclaimed mail was presented in court. The face of the envelope contains the notation "Returned to sender. Reason: Unclaimed". Above the stamp, on the back of the envelope, with the legend "City of San Pablo, Philippines, Jan. 29, 1966", are written the dates, "2-3-66 and 2-9-66". Written also on the back of the envelope are the following: "R to S, notified 3/3/66".

Relying on those notations on the envelope, the trial court literally and rigidly applied the presumption as to constructive service. It did not require appellee Castillo to present the postmaster's certification that a first notice was sent to Barrameda's lawyer and that the notice was received by the latter.

Under those circumstances, the trial court's order dismissing Barrameda's appeal is fraught with injustice.

WHEREFORE, the trial court's order of dismissal is reversed and set aside. It is directed to give due course to the appeal of Eusebia Barrameda. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, and Concepcion, JJ., concur.

Antonio, J., see concurring opinion.

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CONCURRING OPINION

ANTONIO, J.:

I concur. In case the service of the order or judgment is sought to be effected by registered mail, but there is no proof that the notice for the registered mail was received by the addressee, the presumption, under Section 8 of Rule 13 of the Rules of Court, of the delivery of the registered mail or completion of the service after five (5) days from date of the first notice, certainly does not arise.

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