

PABLO C. MONTALBAN, ET AL., PLAINTIFFS-APPELLEES, VS. GERARDO MAXIMO, DEFENDANT-APPELLANT.

G.R. No. L-22997. March 15, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Chronologically, following are the events that spawned the present case:

August 15, 1958. Plaintiffs commenced suit[1] against Fr. Gerardo Maximo who, according to the complaint, was residing at the parish church at Concepcion, Malabon, Rizal. Plaintiffs' cause of action for damages sprang from a motor vehicle accident which occurred at Padre Faura St., Manila, on December 16, 1957. Paul Hershell Montalban, son of plaintiffs, suffered injuries.

August 15, 1958. On this same day that the complaint was filed, summons was served on defendant Fr. Gerardo Maximo at the parish church of Concepcion, Malabon, Rizal, through Fr. Arsenio Bautista - a priest in the same parish church.

August 23, 1958. Fr. Arsenio Bautista sent a letter (dated August 21) to Macario M. Ofilada, Clerk of Court of the Court of First Instance of Manila, informing him that defendant Fr. Gerardo Maximo left for Europe on August 7, and "will be back on the first week of November." Actually, Fr. Maximo returned from abroad "about the second week of October, 1958." [2]

September 20, 1958. The lower court declared defendant in default, on plaintiffs' motion of September 13, 1958.

June 8, 1959. Upon plaintiffs' evidence, the court rendered judgment sentencing defendant to:

- "1. Pay plaintiff Paul Hershell Montalban the amount of P10,000.00 as actual damages for loss of his spleen;
- "2. Pay plaintiff Paul Hershell Montalban the amount of P10,000.00 for loss or impairment of earning capacity, talents and physical strength;
- "3. Pay plaintiff Paul Hershell Montalban the amount of P5,000.00 as moral damages;
- "4. Pay plaintiffs Pablo C. Montalban and Regina Barretto the amount of P5,000.00 as moral damages;
- "5. Pay plaintiffs the amount of P1,000.00 as exemplary damages; and
- "6. Pay plaintiffs attorney's fees [in] the amount of P3,000.00 and the cost of litigation."

December 16, 1959. Plaintiffs themselves wrote defendant Fr. Gerardo Maximo, at the Malabon Catholic Church, informing the latter of the lower court's decision, giving the data: "Re Civil Case No. 37202 (in which the foregoing judgment was rendered) Montalban vs. Maximo," quoting therein the dispositive part of the decision just transcribed, requesting prompt compliance there-with and suggesting that he communicate with or personally see their lawyer, Jose W. Diokno, at the latter's address, 332 Regina Building, Escolta, Manila.

December 20, 1959. Defendant, through his legal counsel, Dr. Nicanor T. Santos, answered the foregoing letter expressing regret that he could not comply with plaintiffs' request, because he (defendant) was not aware of the said civil case, and that, in the criminal action arising out of the same incident, said defendant was acquitted by the Municipal Court of Manila.[3]

January 14 1960. Deputy Sheriff Liberato C. Manalo of Rizal notified defendant of the issuance of the writ of execution dated January 7, 1960, and demanded payment of the amount set forth therein. The Sheriff's return to the writ shows that in response to such demand, defendant alleged that he was then "financially hard up,"[4] and that the Sheriff found no property that could be subject to execution.

January 30, 1962. An alias writ of execution was issued. Copy thereof was received by defendant on February 9, 1962.

February 1, 1962. The Deputy Sheriff attached and levied on a residential house located in Caloocan City and purportedly belonging to defendant.

February 20, 1962. Two years and two months after defendant admittedly learned of the lower court's decision from counsel for plaintiffs herein, said defendant, by counsel, filed a verified motion in the same case praying for the annulment of the entire proceedings. His ground is this: Summons was not duly served upon him "as provided under Sec. 7, Rule 7 of the Rules of Court";[5] accordingly, the lower court "did not acquire jurisdiction over his person"; and "the trial and decision by default" are "null and void." [6]

March 3 1962. The court denied this motion.

March 24 1962. Defendant's move to reconsider was rejected by the court.

Hence, this appeal from the orders of March 3 and March 24, 1962, duly certified to this Court by the Court of Appeals.

September 2, 1965. After the case was submitted for decision, defendant's lawyer informed this Court of the death of defendant on August 1, 1965.

October 18, 1967. Following extensive efforts to have the deceased defendant substituted by any of his heirs or the executor or administrator of his estate, which were to no avail, this Court appointed the Clerk of Court of the Court of First Instance of Manila, representative of the deceased defendant.

1. A question of transcendental importance which necessarily involves an inquiry into procedural due process is whether summons in a suit in personam against a resident of the Philippines temporarily absent therefrom may be validly effected by substituted service under Section 8, Rule 14 (formerly Section 8, Rule 7) of the Rules of Court. A head-on collision of views becomes inevitable considering the diametrically opposing positions taken by plaintiffs, on the one hand, and defendant, on the other. For, plaintiffs make the point that even with defendant temporarily abroad, substituted service is valid under Section 8 by leaving a copy of the summons "at the defendant's dwelling house or residence with some person of suitable age and discretion then residing therein."

Plaintiffs argue that if the ordinary method prescribed by the rules, that is, personal service under Section 7, Rule 14, is not feasible, then the substituted service in Section 8 aforesaid comes into play. Section 8 says:

"SEC. 8. Substituted service. - If the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's dwelling house or residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof."

Upon the other hand, defendant advances the theory that in a situation like the present, where defendant was temporarily abroad, the sole and exclusive method of service of summons in a case in personam is that set forth in Section 18, Rule 14 of the Rules (for merely Section 18, Rule 7), which reads:

"SEC. 18. Residents temporarily out of the Philippines. - When an action is commenced against a defendant who ordinarily resides within the Philip-pines, but who is temporarily out of it, service may, by leave of court, be effected out of the Philip-pines, as under the preceding section."[7]

Section 17 referred to in Section 18 (Section 17, Rule 7 in the old Rules) in turn states:

"SEC. 17. Extraterritorial service. - When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Phil-ippines by personal service as under section 7; or 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 shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a rea-sonable time which, shall not be less than sixty (60) days after notice, within which the defendant must answer."

Historically, in its common-law origin, the jurisdiction of courts to render judgments in personam was grounded on their de facto power over defendant's person. Jurisdiction was based on the power to seize and imprison defendant.[8] If a defendant was absent from the territory, the fact that he was a citizen would not enable the court's officers to seize him and service could not represent this power.[9] Hence, his presence within the territorial juris-diction was a prerequisite to the rendition of a judgment personally binding against him. Anglo-American law then emphasized the power concept of jurisdiction.[10]

Continental law, however, was somewhat different. It had two fundamental principles of Roman origin: (1) in suits in personam and those relating to movables, courts of the domicile of the defendant have general jurisdiction - actor rei forum sequitur; and (2) in actions concerning immovables, the courts of the situs have exclusive jurisdiction.[11]

In the development of the law, the variance between anglo--american law and continental law became "less and less clear-cut" because "American law has had to yield to the increasing necessity of enlarging more and more the catalogue of forums available to the plaintiff." [12]

Thus it is, that American cases forged the doctrine, now long recognized, that domiciliaries of a state, though temporarily out of its territorial jurisdiction, are always amenable to suits in personam therein.[13] And this precept is the foundation for the American rule that declares substituted service binding on absent residents. The leading case of *Milliken vs. Meyer*, [14] furnishes the rationale:"

"x x x the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state. The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties. 'Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable' from the various incidences of state citizenship. x x x The responsibilities of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. One such incident of domicile is amenability to suit within the state even during sojourns without the state, where the state has provided and employed a reasonable method for apprising such an absent party of the proceedings against

him."

There should be no doubt, therefore, that in suits in personam, courts have jurisdiction over residents temporarily out of the country.

This brings us to the question of procedural due process. Substituted service such as one contemplated in Section 8 upon a temporarily absent resident, it has been held, is wholly adequate to meet the requirements of due process.[15] The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied; due process is served.

In American jurisprudence, whether a defendant be in another state under the federal system or is abroad in Europe,[16] substituted service is still considered to be valid.[17] The language in *Milliken vs. Meyer*, supra, is expressive: "Its adequacy so far as due process is concerned is dependent on whether or not the form of substituted service provided for such cases and employed is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard. If it is, then traditional notions of fair play and substantial justice (*McDonald vs. Mabee*, supra) implicit in due process are satisfied." [18]

When the framers of our Rules adapted Section 8, it is to be implied that they intended to give the provision the same meaning shaped out by the jurisprudence of the jurisdiction from whence it was patterned. Section 8 is to be viewed in the same context it is understood in the American legal system. The word "defendant" in that provision is to be construed as including any resident of this country. By comparative construction, Section 8 is to be applied to all resident defendants - without distinction as to whether he is physically present in this country or not.

Chief Justice Moran shares this view. Commenting on Section 18, Rule 14, he states: "Since the defendant is residing in the Philippines, jurisdiction over his person may be acquired by Philippine courts by substituted service of summons under section 8. But extraterritorial service is allowed also by leave of court according to the above provision [Section 18]."[19] Justice Martin regards the word "residence" in Section 8 as "the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the state at the time." [20]

This construction is but fair. It is in accord with substantial justice. The burden on a plaintiff is not to be enlarged with a restrictive construction as desired by defendant here. Under the rules, a plaintiff, in the initial stage of suit, is merely required to know the defendant's "dwelling house or residence" or his "office or regular place of business" - and no more. He is not asked to investigate where a resident defendant actually is, at the precise moment of filing suit. Once defendant's dwelling house or residence or office or regular place of business is known, he can expect valid service of summons to be made on "some person of suitable age and discretion then residing" in defendant's dwelling house or residence, or on "some competent person in charge" of his office or regular place of business. By the terms of the law, plaintiff is not even duty-bound to see to it that the person upon whom service was actually made delivers the summons to defendant or informs him about it. The law presumes that for him.

It is immaterial then that defendant does not in fact receive actual notice. This will not affect the validity of the service.[21] Accordingly, the defendant may be charged by a judgment in personam as a result of legal proceedings upon a method of service which is not personal, "which in fact may not become actual notice to him," and which may be accomplished in his lawful absence from the country.[22] For, the rules do not require that papers be served on defendant personally or a showing that the papers were delivered to defendant by the person with whom they were left.[23]

Reasons for the views just expressed are not wanting. A man temporarily absent from this country leaves a definite place of residence, a dwelling where he lives, a local base, so to speak, to which any inquiry about him may be directed and where he is bound to return. Where one temporarily absents himself, he leaves his affairs in the hands of one who may be reasonably expected to act in his place and stead; to do all that is necessary to protect his interests; and to communicate with him from time to time any incident of importance that may affect him or his business or his affairs. It is usual for such a man to leave at his home or with his business associates information as to where he may be contacted in the event a question that affects him crops up. If he does not do what is expected of him, and a case comes up in court against him, he cannot in justice raise his voice and say that he is not subject to the processes of our courts. He cannot stop a suit from being filed against him upon a claim that he cannot be summoned at his dwelling house or residence or his office or regular place of business.

Not that he cannot be reached within a reasonable time to enable him to contest a suit against him. There are now advanced facilities of communication. Long distance telephone calls and cablegrams make it easy for one he left behind to communicate with him.

In the light of the foregoing, we find ourselves unwilling to concede that substituted service provided in Section 8 may be down-graded as an ineffective means to bring temporarily absent residents within the reach of our courts.

As we go back to the case at hand, there is the temporarily absent defendant who was a parish priest. Summons upon him was served upon Fr. Bautista who lived in the same convent where defendant resided. Fr. Bautista, we must assume, is a responsible person. Service upon him is effective.

2. The view we take of this case sweeps away defendant's argument that Section 18 is the sole provision that governs summons upon a defendant temporarily absent in an action in personam, as here. Indeed, defendant's posture strikes at the very language employed by this reglementary provision cited by him. The word "may" - in the statement in Section 18 that "service may, by leave of court, be effected out of the Philippines," as under Section 17 - will not support the deduction, without more, that Section 18 is the only provision controlling in this case. On the contrary, the phrase-ology of the rule is a recognition of the fact that substituted service - out of the Philippines - under Section 17 is but one of the modes of effective service to bring a defendant in court. And upon the basic concepts under which our rules governing processes operate, the normal method of service of summons on one temporarily absent is by substituted service set forth in Section 8. And this, because personal service outside the country and service by publication are not ordinary means of summoning defendants.

In practical terms, we perceive that - in suits in personam the more circuitous procedure delineated in Sections 17 and 18 is resorted to by a plaintiff if defendant's dwelling house or residence or place of business in this country is not known; or, if known, service upon him cannot be had thereat upon the terms of Section 8. Here, since personal service is impossible, resort to substituted service becomes a necessity. A comparison between the service in Section 8 and that in Sections 17 and 18 is beside the point. They both provide for substituted service. Anyway, as Goodrich observed: "[I]f a substitute is to be made where an actual personal service is impossible, 'the best is none too good.'"[24]

3. The judgment has long since become final. It enjoys the presumption of regularity. It is, unless stricken down, entitled to respect. Non quita movere. Because "[p]ublic policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law." [25]

The norm of conduct observed by defendant would not, we believe, tilt the scales of justice in his favor. We go to the background facts. Logic and common sense tell us that Fr. Bautista who received the summons and who took interest in the case must have informed defendant, one way or another of the suit, at the latest upon his return in October, 1958. By then there was still time for him to move to set aside the default order of September 20, 1958.

Defendant did not move. It is well to remember also that judgment by default was not rendered against defendant until June 8, 1959, or almost nine (9) months after the default order was issued. Again, defendant did nothing. According to defendant, he learned of that judgment on December 20, 1959. The full impact of the judgment totalling P34,000 must have by then left an indelible mark in his mind. A judgment of a court of justice is no piddling matter. It should not be trifled with. Especially so when the amount is big, as it is here. That same day -December 20 - his attorney took a hand on the matter, wrote back plaintiffs refusing payment of the claim. The first writ of execution was served on defendant on January 14, 1960, That time he did not' pay, because according to the Sheriff's return, defendant then stated that he was "financially hard up."

Defendant did not bestir himself until February 20, 1962, i.e., not less than two years and two months after he learned - by his own admission - of the judgment. And, that was shortly after levy was made on his house in Caloocan. It is in this factual environment that then CFI Judge Magno Gatmaitan, in his order of March 24, 1962, correctly observed that "the Court once again believes that this solution (denial of the motion to reconsider the appealed order) is just because of the apparent intentional inaction of defendant since 20 December, 1959."

Indeed, it was not right that defendant should have supinely sat on the decision, and deliberately disregarded the import thereof. Neither was it correct for him to have waited so long, slept on his rights, and only put plaintiffs to task when his own property was threatened because of the levy and execution thereon.

The decision below may not thus be annulled. Plaintiffs may not be compelled to file a fresh suit. Because, prejudice to plaintiffs, which could have been avoided by defendant, will become a reality. The additional expense, trouble and anxiety need not be essayed. The accident took place on December 16, 1957. The lower court's decision made mention of two eyewitnesses and two doctors of medicine who testified as to injuries. To bring back those witnesses to court becomes a serious problem. Plaintiffs will have to search for them and if found, they may not be able to present to the court a narrative as accurately as they had done before. Time has an unfortunate tendency of obliterating occurrences from a witness' memory. Recollections are apt to be blurred. Human memory can even be treacherous. Lapse of time may also carry with it dissipation of other evidence. Surely, there is great validity to the statement that the march of time is truth in flight.[26] These, in broad outlines, give life to the salutary policy on which laches is founded.

WHEREFORE, the orders appealed from dated March 3, 1962 and March 24, 1962 are hereby affirmed.

Costs against defendant-appellant.

SO ORDERED.

Reyes, Acting C.J., Dizon, Bengzon, Zaldivar, Castro, and Angeles, JJ., concur.

Makalintal, J., in the result.

Concepcion, C.J., on leave.

Fernando, J., no part.

[1] Civil Case No. 37202, Court of First Instance of Manila, entitled "Pablo C. Montalban and Regina Barretto, in their own behalf and as natural guardians, in behalf of minor Paul Hershell B. Montalban, Plaintiffs, vs. Gerardo Maximo, Defendant."

[2] Defendant's motion of February 20, 1962, *infra*, Record on Appeal, p. 25.

[3] Record on Appeal, pp. 40-42. Counsel refers to the sentence of acquittal (Record on Appeal, p. 31) in Criminal Case No. J-070083 of the City Court of Manila, for serious physical injuries thru reckless imprudence, entitled

"The People of the Philippines, Plaintiff, vs. Gerardo Maximo de Leon, Accused."

[4] Record on Appeal, p. 21.

[5] Now Section 7, Rule 14 of the new Rules.

[6] Record on Appeal, pp. 21-26.

[7] Emphasis supplied.

[8] *Michigan Trust Co. vs. Ferry*, 228 U.S. 346, 353, 57 L. ed. 867, 874; *International Shoe Co. vs. Washington*, 326 U.S. 310, 316, 90 L. ed. 95, 101-102, citing cases.

[9] *Stimson, Conflict of Laws*, 1963 ed., p. 247.

[10] *Lorenzen, Cases on Conflict of Laws*, 1951 ed., p. 16.

[11] *Ibid.*

[12] *Ibid.*, at p. 17.

[13] *Blackmer vs. U.S.*, 284 U.S. 421, 438, 76 L. ed. 375, 383. See also: 42 Am. Jur., p. 58; 72 C.J.S., p. 997.

[14] 311 U.S. 457, 463, 85 L. ed. 278, 283; emphasis supplied.

[15] *McDonald vs. Mabee*, 243 U.S. 90, 91, 61 L. ed. 608, 609.

[16] *Camden Safe-Deposit & Trust Co. vs. Barbour*, 48 A. 1008-1009, where defendant was in Europe and service was made at the dwelling house at Monmouth Beach, New Jersey, where his wife and family lived.

[17] *Missell vs. Hayes, et al.*, 85 A. 818-819, where summons was left at the father's home in New Brunswick, New Jersey, while defendant was a student at a college in Maryland in preparation for the ministry; *Verdenburgh, et al., vs. Weidmann*, 183 A. 459-460, where summons was left at the father's house in New Jersey while defendant was a student at Yale Law School in New Haven; *Skidmore vs. Green*, 33 F. Supp. 529-530, where summons and complaint were served on a brother's home, considered defendant's usual place of abode since defendant's life was of a migratory nature; *Rovinski vs. Rowe*, 131 F. 2d 687-693, where service had been made upon defendant's mother at her residence in Michigan, although defendant had actually been living in various places in other states for a number of years; *Blaw-Knox Co. vs. Miller's Gold Seal Dairy, Inc.*, 14 Fed. Rules Serv. 4d. 122, Case 1, pp. 16-17, where summons was left with defendant's wife at his usual place of abode (Ohio), to which he returned from time to time, although he took employment at another state (Wisconsin) without any intention to return and the wife was going to follow him when accommodations could be found.

[18] Emphasis supplied

[19] 1 Moran, *Comments on the Rules of Court*, 1963 ed., p. 396; emphasis supplied.

[20] 1 Martin, *Rules of Court in the Philippines*, 1963 ed., pp. 398-399, citing 127 ALR 1273, 1274.

[21] 72 C.J.S., p. 1054.

[22] 126 A.L.R. 1486; emphasis supplied.

[23] *Smith vs. Kincaid*, 249 F. 2d 243, 245, citing *Milliken vs. Meyer*, supra; *U.S. vs. Stabler*, 169 F. 2d 995, 997; *Maher vs. Deam*, 137 N.E. 2d 149.

[24] *Goodrich, Conflict of Laws*, 1938 ed., p. 160, citing *McDonald vs. Mabee*, supra.

[25] Dy Cay vs. Crossfield & O'Brien, 38 Phil. 521, 526.

[26] Pangasinan Transportation Co., Inc. vs. Workmen's Compensation Commission, G.R. No. L-16490, January 30, 1964.

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