

SPOUSES PEPITO AND LORETO LAUS, PETITIONERS, VS. HON. COURT OF APPEALS, HON. SALVADOR C. CEGUERA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY, ...*G.R. No. 101256. March 08, 1993*

Ponente: DAVIDE, JR., J.

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Petitioners seek the review and reversal of the 30 May 1991 Decision[1] of respondent Court of Appeals in CA-G.R. SP No. 22232[2] and the 30 July 1991 Resolution denying their motion to reconsider the said decision. The challenged decision dismissed, for lack of merit, their petition for certiorari, prohibition and injunction to annul the Orders dated 5 March 1990 and 9 July 1990 of Branch 82 of the Regional Trial Court (RTC) of Quezon City in Civil Case No. Q-89-3327 which, respectively, declared them in default and denied their motion to reconsider such declaration.

The antecedents of this case are not controverted.

On 24 August 1989, private respondent Consuelo P. Torres filed against "Loredo (sic) Alfaro-Laus and John Doe" a complaint, docketed as Civil Case No. Q-89-3327, for the collection of a sum of money. The defendants in the said case are the petitioners in the instant petition. The complaint alleges that petitioner Loreto Alfaro-Laus executed a promissory note in favor of the private respondent under which the former undertook to pay the latter the amount of Sixty-Six Thousand Pesos (P66,000.00) after three (3) months from the date thereof. Upon maturity of the said promissory note, however, only Eleven Thousand Pesos (P11,000.00) was paid; despite the receipt of a demand letter from the private respondent, petitioners made no further payments. Thus, the former filed the aforementioned complaint praying for the payment of the unpaid balance of P55,000.00 "plus interest at the rate of ten per cent (10%), compounded monthly beginning February 21, 1989, and twenty-five per cent (25%) of the entire amount due for and as attorney's fees, such being in accordance with the terms and conditions set forth in the promissory note.[3]

On 10 October 1989, Deputy Sheriff Romero S. Cruz proceeded to the petitioners' address at 122 Molave Park Subdivision, Parañaque, Metro Manila to serve the summons and a copy of the complaint. Failing to serve the summons personally upon the petitioners after waiting for ten (10) minutes, he resorted to a substituted service through one Josephine Areola, who purportedly represented herself to be the maid of the said petitioners.[4] On the same date, Deputy Sheriff Cruz executed and filed a return[5] which reads:

"Respectfully returned to the REGIONAL TRIAL COURT Branch 82, QUEZON CITY, the attached original copy of the summons issued in connection with Civil Case No. 89-3327 entitled CONSUELO P. TORRES versus LOREDO (sic) LAUS & JOHN DOE with the information that duplicate copy of the same together with the complaint and its annexes was duly served upon defendant Loredo (sic) Laus of 122 Molave Park Subd. Parañaque M.M. thru JOSEPHINE AREOLA, maid of Loredo Daus (sic) of same address, received as

evidenced by her signature appearing thereon."

The petitioners did not file any answer. Consequently, upon motion of the private respondent, the trial court[6] issued on 29 December 1989 an order declaring the former in default and setting the ex-parte presentation of the private respondent's evidence for 16 January 1990.[7] The petitioners claim that they received this 29 December 1989 Order only on 22 January 1990.

On 24 January 1990, the trial court rendered a judgment by default against the petitioners; it ordered the latter "[T]o pay the plaintiff (private respondent) the amount of FIFTY-FIVE Thousand Pesos (P55,000.00) at the rate of ten per cent (10%), compounded monthly beginning February 21, 1989 up to the present; and ... [T]o pay attorney's fees equivalent to twenty-five percent (25%) of the entire amount due" to the private respondent.[8]

On 2 February 1990, before receiving a copy of the 22 January 1990 decision, petitioners, by way of a special appearance, filed a motion to dismiss the case for lack of jurisdiction over their persons. They allege that the service of summons was ineffective because it was not indicated in the return that the sheriff had first exerted efforts to serve the same personally before resorting to substituted service.[9]

In its Order of 5 March 1990, the trial court denied the motion to dismiss for lack of merit on the ground that it had already rendered a judgment by default on 24 January 1990.[10] Petitioners received a copy of this order on 24 March 1990. In the meantime, the trial court issued a writ of execution.

On 30 March 1990, public respondent Deputy Sheriff Nilo Cabang, pursuant to a writ of execution issued by the trial court, levied upon petitioners' properties consisting of a 1983 Mitsubishi Galant Sedan and a men's ring.

On 3 April 1990, petitioners filed a motion to reconsider the Order of 5 March 1990;[11] they reiterated therein the contention that the trial court did not acquire jurisdiction over their persons because of the defective service of summons, and further aver that:

"Josephine Areola, the person who supposedly received the summons is not even known to the defendants. It turned out from their investigation that said Josephine Areola was just a guest of one of their maid (sic) who stayed for only about a week. Furthermore Josephine Areola was just a child of about ten to eleven years old and would not be expected to know what to do with the documents handed to her. With all due respect it would not be fair for the defendant if the summons would be served upon the defendants through a person who is not of sufficient age and discretion at the time the summons was served, and a transcient (sic) at that." [12]

A hearing on the motion for reconsideration was held and the parties presented evidence on the issue of service of summons. Petitioner Loreto Alfaro-Laus testified that Josephine Areola, who was 11 to 12 years old at that time, was just a guest of her maid and thus stayed in the house for a week. Private respondent, on the other hand, presented evidence to show that Josephine had been staying in the petitioners' house since July 1990 for she was the person who received the demand letter sent to the petitioners on 3 July 1989.[13] Deputy Sheriff Cruz also took the witness stand, identified the affidavit he executed on 27 April 1990[14] and further asserted that he found no one in the house of the petitioners when he arrived on 10 October 1989; he claimed that he waited for ten (10) minutes. Thereupon, two (2) women arrived; the said women told him, upon his inquiry, that the petitioners were not around. He then served the summons through one of them, Josephine Areola.[15]

In its Order of 9 July 1990,[16] the trial court denied the petitioners' motion for reconsideration and held that there was a proper service of summons because contrary to Loreto Alfaro-Laus' statement that Areola was a guest of their maid for a week, it was proven that Areola was in fact the very person who, on 3 July 1989, received the demand letter sent by the private respondent.

On 17 July 1990, petitioners filed with the Court of Appeals a petition for certiorari, prohibition and injunction

with application for a restraining order[17] to set aside the trial court's Orders of 5 March 1990 and 9 July 1990, and to dismiss Civil Case No. Q-89-3327. The petition was docketed as CA-G.R. SP No. 22232. Petitioners insisted therein that the trial court committed grave abuse of discretion and a grave error in denying their motion to dismiss and the motion to reconsider said denial despite the lack of jurisdiction over their persons. They likewise challenged the denial of such motion to dismiss which was based solely on the ground that a judgment by default had already been rendered.[18]

On 30 May 1991, the respondent Court of Appeals promulgated its decision[19] denying the petition for lack of merit. It made the following disquisitions:

"x x x it was the defendants-petitioners who erred in filing a motion to dismiss at that late stage of the proceedings. A motion to dismiss on the ground that the Court has no jurisdiction over the person of the defendants is proper only when made within the reglementary period for filing a responsive pleading and before such responsive pleading is filed (Rule 16, Sec. 1[a]). In this case, the defendants-petitioners' motion to dismiss was filed five (5) months after the complaint was filed and only after a default judgment had already been rendered by the respondent Court. Thus, it was rather too late in the day for the defendants-petitioners' motion to dismiss to be considered by the respondent Court. In the proper exercise of its sound judicial discretion, the respondent Court did not err in denying the motion to dismiss on the ground that a judgment by default had already been rendered.

Besides, even if the motion to dismiss was filed on time, and yet, was still denied by the respondent Court, the order of the court denying the motion to dismiss is interlocutory and cannot be the subject of a petition for certiorari, such as this instant petition (National Investment and Development Corp. vs. Aquino, 163 SCRA 153). The denial of a motion to dismiss cannot be questioned in a petition for certiorari, which is an extra-ordinary writ that is not allowed as a substitute for ordinary appeal (Tan vs. Intermediate Appellate Court, 164 SCRA 130).

Be that as it may, the defendants-petitioners had other remedies available to them, but which they failed to avail of. In a long line of cases decided by the Supreme Court, it has been repeatedly provided that the remedies of a defaulted defendant are:

- (a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake, excusable negligence, and that he has a meritorious defense;
- (b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a Motion for New Trial under Section 1[a] of Rule 37;
- (c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Sec. 2 of Rule 38; and
- (d) He may also appeal from the judgment rendered against him as contrary to the evidence or to law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41). (Lina vs. Court of Appeals, 135 SCRA 637; Tiburcio vs. Castro, 161 SCRA 583).

As it is, the defendants-petitioners failed, after they received notice of the order declaring them in default and before the default judgment was rendered, to file a motion, under oath, to set aside the order of default on the ground that they failed to file a timely answer due to fraud, accident, mistake, or excusable negligence, and showing (sic) that they had a meritorious defense.

The other applicable remedy which they failed to employ is the remedy of appeal from the judgment rendered against them as contrary to the evidence or the law, even in the absence of a motion/petition to set aside the order of default. This instant petition for certiorari cannot be a substitute for the remedy of appeal, which the

defendants-petitioners did not pursue, as they must first exhaust the remedies available to them (*Lina vs. Court of Appeals*, supra.). That the judgment by default had already become final and is about to be executed is the result of the defendants-petitioners' failure to file a timely appeal. As such, the default judgment may no longer be challenged (*Tiburcio vs. Castro*, supra.).

Lastly, We find that the respondent Court was liberal enough in hearing the defendants-petitioners' motion for reconsideration of the denial of their motion to dismiss. As the pivotal issue therein, the defendants-petitioners were given their day in court to prove that the service of summons to them was both improper and invalid. After weighing the evidence and testimonies of the parties and other persons involved, the respondent Court ruled that there was valid service of summons. We find no compelling reason to rule otherwise.

There is such a presumption of regularity in the performance of official functions by the sheriff, and it was up to the defendants-petitioners to convince the respondent Court that there was, indeed, invalid service of summons. This they failed to do. They could not substantiate their claim that Josephine Areola was a child of 10 to 11 years who would not know what to do with the court documents received by her. The defendants-petitioners' contention that Josephine Areola stayed with them for only a few days backfired when the private respondent presented documentary evidence to show that Josephine Areola was already residing in the defendants-petitioners' house at least three (3) months before the summons was served. No other proof was presented by the defendants-petitioners to bolster their allegations apart from their self-serving, and sometimes conflicting, testimonies. Thus, We find no error or grave abuse of discretion on the part of the respondent Court in denying the defendants-petitioners' motion for reconsideration."^[20]

Meanwhile, on 13 June 1991, respondent sheriff Nilo Cabang sold at a public auction the levied men's ring -- an oval diamond set in yellow gold -- to the private respondent for P140,000.00, and the Galant car to Atty. Leonardo Perez, Jr., counsel for the latter, for P180,000.00. Both were the highest bidders.^[21]

Their motion for the reconsideration of the aforesaid decision having been denied in the respondent Court's Resolution of 30 July 1991,^[22] petitioners availed of this recourse under Rule 45 of the Revised Rules of Court and raise the following issues:

"1. WHETHER OR NOT THE COURT A QUO ACQUIRED JURISDICTION OVER THE PERSONS OF THE PETITIONERS BY VIRTUE OF THE SUBSTITUTED SERVICE OF SUMMONS EFFECTED BY DEPUTY SHERIFF ROMEO CRUZ;

2. WHETHER OR NOT THE REMEDY OF CERTIORARI CAN BE AVAILED OF BY A PARTY IMPROVIDENTLY DECLARED IN DEFAULT TO CHALLENGE THE ORDER OF DEFAULT AND THE SUBSEQUENT JUDGMENT BY DEFAULT."^[23]

On 10 February 1992, after the filing of the private respondent's comment and the petitioners' reply thereto, We resolved to give due course to the petition and required the parties to file their respective memoranda which they subsequently complied with.

We find merit in this petition.

The focal issue is whether or not the trial court acquired jurisdiction over the persons of the petitioners by virtue of the substituted service of summons effected by Deputy Sheriff Cruz. Since the petitioners did not voluntarily submit to the jurisdiction of the trial court, proper service of summons became imperative. If the service effected in the case at bar was, as claimed by the petitioners, invalid, the trial court acquired no jurisdiction over their persons.^[24] In such an instance, the order of default, judgment by default and writ of execution issued by the trial court would be null and void.^[25]

The general rule in this jurisdiction is that summons must be personally served; pursuant to Section 7, Rule 14 of

the Revised Rules of Court, such personal service is to be accomplished by "handing a copy thereof to the defendant in person, or, if he refuses to receive it, by tendering it to him." However, if this mode of service cannot be effected within a reasonable time, substituted service may be resorted to under Section 8 of the same Rule. Section 8 provides:

"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."

This provision is a reproduction of Section 8, Rule 7 of the 1940 Rules of Court except that *inter alia*, "promptly" in the latter was changed to "within a reasonable time" in the former. "Within a reasonable time" contemplates a period of time longer than that demarcated by the word "prompt," and presupposes that a prior attempt at personal service, within a justifiable time frame as would be necessary to bring the defendant within the jurisdiction of the court, had failed.[26] Since substituted service is in derogation of the common law and is extraordinary in character, it must be used only as prescribed and in the circumstances authorized by statute.[27] Statutes prescribing modes other than personal service of summons must be strictly complied with to give the court jurisdiction, and such compliance must appear affirmatively in the return.[28]

In *Keister vs. Navarro*,[29] this Court described how the impossibility of personal service should be shown:

"Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service (I Moran, Comments on the Rules of Court, 1970 Ed., p. 444). This is necessary because substituted service is in derogation of the usual method of service. It has been held that this

method of service is 'in derogation of the common law; it is a method extraordinary in character, and hence may be used only as prescribed and in the circumstances authorized by statute.' x x x (72 C.J.S. 1053)."

Emphasizing the need for strict compliance with the requirements of substituted service, this Court issued Administrative Circular No. 59, the pertinent portions of which read as follows:

"SUBJECT: Service of Summons.

Delays in court proceedings have been caused by faulty and erroneous implementation of Section 8, Rule 14, Rules of Court on Substituted Service of Summons.

The Trial Judges of all lower courts, as well as the Clerks of Court in their capacity as Ex-Officio Sheriffs together with the Deputy Sheriffs are reminded of the provision of Section 8, Rule 14, Rules of Court on substituted service as follows:

x x x

The manner of effecting substituted service as prescribed in *Venturanza v. Court of Appeals*, 156 SCRA 305, must be strictly complied with, thus:

"The substituted service should be availed only when the defendant cannot be served promptly in person. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts. The statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service.

Substituted service is a method extraordinary in character, and hence may be used only as prescribed in the circumstances authorized by statute. Thus, the statutory requirements of substituted service must be followed strictly, faithfully, and any substituted service other than that authorized by the statute is considered

ineffective.'

For immediate compliance.”

A perusal of the sheriff's return in the case at bar readily reveals that it does not (a) indicate the impossibility of service of summons within a reasonable time, (b) specify the efforts exerted to locate the petitioners and (c) state that it was served on a person of sufficient age and discretion residing therein. The fact of the matter is that as disclosed in his testimony taken in connection with the motion for reconsideration, and the affidavit he prepared in conjunction with such hearing, Deputy Sheriff Cruz resorted to a substituted service on his first -- and only -- attempt to effect a personal service. Upon being informed that the petitioners were not around at that time, he immediately resorted to a substituted service through Josephine Areola, a person whose age he did not even know or attempt to discover. He did not even inquire about the whereabouts of the petitioners, the time they were expected to return home, the hours of the day they could be contacted at their house or the location of their offices, if any, in order that he could faithfully comply with the requirement of personal service. Thus, he declared and admitted:

"Q:

In this case, you went to the residence of the defendant once as you stated on paragraph 3[30] on October 10, 1989?

A:

Yes, sir.

Q:

And you did not wait the (sic) defendant to come because according to you in paragraph 4, you were informed that the defendant was not around, is that correct?

A:

According to the maid.

Q:

So upon being informed that the defendant was not around you served the summons, according to paragraph 4 to one Josephine Ariola, is that correct?

A:

Yes, sir.

Q:

In other words, you relied on the information given to you by somebody that the defendant was not around?

A:

I waited there for around ten (10) minutes and then two (2) women arrived in the tricycle and I waited them (sic) to get inside and I asked them if Mr. and Mrs. Laus will be coming.

Q:

And they answered they were not around at that time?

A:

Yes, sir.

Q:

So, you immediately served the summons upon the persons arriving (sic)?

A:

Yes, sir.

Q:

And who were these persons who arrived?

A:

Josephine Ariola.

Q:

And who is her companion?

A:

I did not ask anymore.

x x x

Q:

Who is older, is this Josephine Ariola or her companion?

A:

Josephine Ariola, she was the one who signed the summons.

Q:

Did you ask her age?

A:

I did not ask anymore because she look already (sic) of sufficient age.

Q:

That's your conclusion?

A:

Yes because she was the maid there and she was the older one."[31]

As it turns out, the un rebutted evidence for the petitioners establishes that Areola (or Ariola) was only 11 to 12 years old at the time substituted service was attempted.[32]

It is all too obvious that no earnest efforts were exerted by Deputy Sheriff Cruz to effect the personal service of summons. His testimony thus attests to an undue, if not indecent, haste to serve the summons at the first attempt without making sure that personal service was, by then and even thereafter, an impossibility because either the petitioners had left for a foreign country or an unknown destination with no definite date of returning within a reasonable period or had gone into hiding to avoid service of any process from the courts. If he had only made the

inquiries suggested above, he could have returned in the evening of 10 October 1989 or on any of the succeeding days -- including the following Saturday and Sunday. Service of summons may be made at night as well as during the day, or even on a Sunday or holiday because of its ministerial character.[33]

Since the substituted service of summons in this case was not validly effected, the trial court did not acquire jurisdiction over the persons of the petitioners. The order of default, the judgment by default, the writ of execution issued by it, as well as the auction sale of the petitioners' properties levied on execution are, therefore, all null and void.

There is more in this case which further unmasks the nullity of the decision of the trial court. Both parties agree that the petitioners were the defendants in Civil Case No. Q-89-3327. However, petitioner Loreto Alfaro-Laus is erroneously mentioned in the complaint as Loreda. On the other hand, petitioner Pepito Laus, the husband of Loreto, is merely designated as JOHN DOE. The latter was impleaded as a co-defendant presumably on the theory that the liability sought to be enforced is a conjugal partnership liability. In short, Loreto's husband was sued as an indispensable party; it is clear that the trial court treated him as such when in its decision, it ordered the defendants, not just Loreto, to pay the adjudged amounts.

The sheriff's return of service indisputably discloses that no summons was even attempted to be served on petitioner Pepito Laus. Sheriff Cruz unequivocally states therein that the "duplicate copy of the same together with the complaint and its annexes was duly served upon defendant Loreda (sic) Laus of 122 Molave Park Subd. Parañaque M.M. thru JOSEPHINE AREOLA, maid of Loreda Daus (sic) of same address, x x x." [34]

Neither Deputy Sheriff Cruz nor the private respondent had volunteered additional information to the effect that at some other time, summons was in fact served on Pepito Laus. Accordingly, the trial court never acquired jurisdiction over his person. And yet, while it concedes in its 29 December 1989 Order that the substituted service of summons was valid only for Loreto, it declared the defendants -- and not only her -- in default. The court could have easily avoided this misdoing if it only examined the records before issuing the order. On this score alone, the judgment by default is fatally flawed.

There is still another fact which betrays the trial court's unusual haste in rendering the judgment by default. In the dispositive portion of the decision, the defendants were ordered, *inter alia*:

"1. To pay the plaintiff the amount of FIFTY-FIVE Thousand Pesos (P55,000.00) at the rate of ten per cent (10%), compounded monthly beginning February 21, 1989 up to the present;" [35]

While this rate of ten per cent (10%) could only refer to the imposable interest, the court failed to state whether its application shall be on a monthly or yearly basis. The body of the decision, however, speaks of ten per cent (10%) interest PER MONTH; [36] this seems to have been the basis relied on by respondent sheriff Cabang in computing for the petitioners' alleged liability for purposes of execution. [37] This award of interest -- in effect amounting to one hundred twenty per cent (120%) per annum -- and the additional twenty-five per cent (25%) of the total amount due ordered paid as attorney's fees, are unreasonable and unconscionable.

Since the trial court's default order and judgment by default are null and void, the respondent Court gravely erred in affirming them.

Some further comments, *en passant*, on the ratiocination of the respondent Court are in order. It is not accurate for the latter to have said that the petitioners' motion to dismiss was not filed seasonably because it was filed beyond the reglementary period provided in the Revised Rules of Court. Such a conclusion would doubtless be correct if there was a valid service of summons. If, however, a defendant had not been properly summoned, the period to file a motion to dismiss for lack of jurisdiction over his person does not commence to run until he voluntarily

submits to the jurisdiction of the court, since the court has no jurisdiction to adjudicate the controversy as to him until such time.[38] In this case, petitioners did not voluntarily submit to the jurisdiction of the trial court. Consequently, the period to file a responsive pleading did not even commence to run.

Nor are We persuaded by the respondent Court's declaration that even if the motion to dismiss had been filed on time, the trial court's order denying the same, being interlocutory, still cannot be the subject of a petition for certiorari. To be sure, this rule admits of an exception, as when the trial court clearly acted outside of its jurisdiction or with grave abuse of discretion in denying the motion to dismiss.[39] This is exactly what happened in the case while it was pending before the trial court; the denial of the motion to dismiss was based solely on the ground that a judgment by default had already been entered. Certainly, this does not constitute a valid ground for the denial because the motion raises a fundamental and prejudicial issue affecting the validity of the decision by default.

Equally unmeritorious is the respondent Court's statement that the failure of the petitioners to appeal from the judgment by default rendered such judgment final and unassailable. In the first place, it is axiomatic that a void judgment can never become final and executory and may even be assailed or impugned at any time.[40] An action to declare the nullity of a void judgment does not prescribe.[41] Secondly, the motion to dismiss in this case was filed before the petitioners received a copy of the decision by default. Since the said motion is based on the lack of jurisdiction over the persons of the petitioners which, if true -- in fact, We have found it to be so -- would result in the nullification not only of the default order but of the decision as well, then for all legal intents and purposes, the latter was covered by the motion. This was precisely the orientation of the trial court when it allowed the parties to submit evidence to support the motion to reconsider the Order of 5 March 1990 denying the motion to dismiss. It would certainly not have gone that far if it thought otherwise for by then, the decision had already become final.

Its suggestion that the petitioners should have filed a motion to set aside the order of default on the ground that they had failed to file the answer on grounds of fraud, accident, mistake or excusable negligence or a motion for new trial or a petition for relief from judgment, is untenable for it begs the question. Besides, as shown above, petitioners' failure to file the answer was not based on any of these grounds, but stood on the void service of summons.

Finally, respondent Court's reliance on the presumption of regularity in the performance of official functions is misplaced. We have held that such a presumption does not apply where it is patent that the sheriff's return is defective.[42]

WHEREFORE, the Decision of the respondent Court of Appeals of 30 May 1991 and the Resolution dated 30 July 1991 in CA-G.R. SP No. 22232 are hereby REVERSED and SET ASIDE. The Order of Branch 82 of the Regional Trial Court of Quezon City of 29 December 1989 (Civil Case No. Q-89-3327) declaring petitioners in default, its Decision of 24 January 1990, Orders of 5 March 1990 and 9 July 1990 and the writ of execution issued therein, as well as all proceedings had pursuant to the writ of execution, are declared NULL and VOID. The case is hereby remanded to the court of origin for further proceedings which shall include the valid service of summons.

SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Romero, and Melo, JJ., concur.

[*] Associate Justice Hugo E. Gutierrez, Jr., Chairman, is on terminal leave.

[1] Per Associate Justice Venancio D. Aldecoa, Jr., concurred in by Associate Justices Jose C. Campos, Jr. and

Filemon H. Mendoza.

[2] Entitled "Spouses Pepito and Loreto Laus vs. Hon. Salvador C. Ceguera, et al."

[3] Rollo, 21.

[4] Rollo, 21.

[5] Id., 28.

[6] Per Judge Salvador C. Ceguera.

[7] C.A. rollo, 20.

[8] C.A. rollo, 27.

[9] Id., 22-25.

[10] Id., 13.

[11] C.A. rollo, 28-31.

[12] Id., 30.

[13] Id., 82-83.

[14] Id., 37-38.

[15] Pages 2 & 3, Order of 9 July 1990; Rollo, 80-81.

[16] Id., 79.

[17] C.A rollo, 2-12.

[18] Id., 7.

[19] C.A. rollo, 50-56; Rollo, 20-26.

[20] C.A. rollo, 54-56; Rollo, 24-26.

[21] Certificates of Sale; Id., 55-56.

[22] Rollo, 27.

[23] Id., 12.

[24] Keister vs. Navarro, 77 SCRA 209 [1977]; Litonjua vs. Court of Appeals, 80 SCRA 246 [1977].

[25] Delta Motor Sales Corp. vs. Mangosing, 70 SCRA 598 [1976].

[26] Mapa vs. Court of Appeals, G.R. Nos. 79374 and 82986, 2 October 1992.

[27] 72 C.J.S. 1053.

[28] 62 Am Jur 2d., 950.

[29] Supra.; see also, Busuego vs. Court of Appeals, 151 SCRA 376 [1987]; Venturanza vs. Court of Appeals, 156 SCRA 305 [1987]; Paluwagan ng Bayan Savings Bank vs. King, 172 SCRA 60 [1989].

[30] This refers to paragraph 3 of the 27 April 1990 Affidavit of Romeo Cruz; Rollo, 37-38.

[31] Quoted in the trial court's Order of 9 July 1990 from TSN, 10 May 1990, 5-7; Rollo, 80-81.

[32] *Id.*, 82.

[33] 62 Am Jur 2d., 816.

[34] *Supra.*

[35] C.A. rollo, 27.

[36] *Id.*, 26.

[37] Certificate of Sale; Rollo 55-56.

[38] FRANCISCO, V.J., *The Revised Rules of Court*, Vol. I; 2nd ed., 880, citing *Orange Theatre Corp. vs. Rayhertz Amusement Corp.*, 139 F. (2d) 871.

[39] *Sanchez vs. Zosa*, 68 SCRA 171 [1975]; *Manalo vs. Mariano*, 69 SCRA 80 [1976]; *Quisumbing vs. Gumban*, 193 SCRA 520 [1991]; *Mendoza vs. Court of Appeals*, 201 SCRA 343 [1991].

[40] *Zaide vs. Court of Appeals*, 184 SCRA 531 [1990].

[41] *Paluwagan ng Bayan Savings Bank vs. King*, *supra.*; *Vda. de Macoy vs. Court of Appeals*, 206 SCRA 244 [1992].

[42] *Venturanza vs. Court of Appeals*, *supra.*

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