

SALVADOR D. BRIBONERIA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, GERTRUDES B. MAG-ISA, MARRIED TO AND ASSISTED BY PEDRO MAG-ISA, RESPONDENTS.

G.R. No. 101682. December 14, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

On 17 October 1991, the petitioner filed with this Court a petition for review on certiorari of the decision of the Court of Appeals, Eleventh Division,* in CA-G.R. SP No. 20114 dated 13 August 1990 as well as its resolution dated 9 September 1991 denying the petitioner's motion for reconsideration.

Acting upon the petition, the Court required the private respondents to comment thereon. After the private respondents had filed their comment, the Court resolved to consider the comment as answer and to give due course to the petition and the case was deemed submitted for decision.[1]

The antecedents are as follows:

On 23 May 1988, petitioner Salvador D. Briboneria, as plaintiff, filed a complaint[2] for Annulment of Document and Damages, with prayer for preliminary injunction and/or temporary restraining order against private respondent Gertrudes B. Mag-isa, with the Regional Trial Court of Pasig, docketed therein as Civil Case No. 55961, alleging inter alia that:

"x x x

2. Plaintiff, together with his wife Nonita A. Briboneria, are the registered owners (of) a parcel of land located at 59 Amsterdam Street Provident Village, J. de la Pena, Marikina, Metro-Manila, covered under Transfer Certificate of Title No. N-29859 (Copy attached herewith as Annex A) more particularly described as follows:

"A parcel of land xxx situated in the Municipality of Marikina, Province of Rizal, Island of Luzon xxx containing an area of THREE HUNDRED (300) SQUARE METERS, more or less, xxx"

Among the improvements on this parcel of land is plaintiff's residential house where his wife and children used to stay until they migrated to the United States.

3. The abovementioned parcel of land was acquired and the residential house was constructed through plaintiff's hard-earned salaries and benefits from his employment abroad.

4. Plaintiff, as the duly registered owner, has declared the above-described parcel of land and residential house for tax purposes under P.D. No. 464, copies of Declaration of Real Property attached herewith as Annexes B and B-1.

5. Of late, plaintiff was surprised to learn that his wife Nonita A. Briboneria sold to defendant Gertrudis B. Mag-isa by means of a Deed of Absolute Sale, copy attached herewith as Annex C, the abovementioned house and lot.

6. Plaintiff, as the duly registered owner, never authorized or empowered Nonita A. Briboneria or anybody for or on his behalf, stead or represen-tation to enter into any transaction regarding the sale, transfer or conveyance of the abovedescribed house and lot.

7. Plaintiff had all along been expecting that the house and lot shall be for his family, parti-cularly his children.

8. As a result of the unauthorized sale, plain-tiff was denied the use and enjoyment of his properties since defendant Gertrudis B. Mag-isa had even leased the premises to another who in turn had prohibited plaintiff from entering the premises.

9. By reason of the unlawful deprivation from him of his properties, plaintiff suffered serious anxiety, fright, mental anguish and wounded feel-ings and further subjected him to social humilia-tion and embarrassment, particularly considering that the abovementioned properties came from his hard-earned salaries and emoluments from his employment abroad, for which defendants Mag-isa must be adjudged liable for moral damages in an amount not less than ONE MILLION PESOS (P1,000,000.00) or as may be equitably determined by this Honorable Court.

10. In order to serve as an example or correction for the public good, defendants Mag-isa should likewise be adjudged liable for exemplary damages in an amount not less than ONE HUNDRED THOUSAND PESOS (P100,000.00) or as may be equitably deter-mined by this Honorable Court.

11. Plaintiff, in protection of his legitimate right and interests prejudiced by defendants - Mag-isa, was constrained to engage the services of undersigned counsel for P50,000.00, exclusive of appearance fees and expenses.

Plaintiff adopts the foregoing.

12. The next move of defendants - Mag-isa is to consolidate ownership over the properties by means of the Deed of Absolute Sale (Annex C herein) which is ineptually void.

13. Defendant Register of Deeds of Marikina would have no other alternative but to give due course to the consolidation of ownership over the proper-ties in the name of defendants - Mag-isa which eventually causes grave and irreparable injury, untold injustice and undue prejudice to plaintiff unless - a Writ of Preliminary Injunction, or at least a Temporary Restraining Order is immediately issued by this Honorable Court enjoining or res-training defendant Register of Deeds of Marikina, Metro-Manila or any person acting on his behalf from consolidating ownership of the house and lot covered under TCT No. N-29895 of the Registry of Deeds for the province of Rizal in the name of defendants - Mag-isa or their heirs or successor-in-interest.

14. Plaintiff is ready and willing to post a bond in such amount as this Honorable Court may equit-able determine subject to such conditions and terms as may be appropriately imposed thereon."

In due time, private respondent Gertrudes B. Mag-isa, as defendant, filed her answer[3] alleging as follows:

"1. Defendants admit their circumstances as alleged in paragraph 1, the age of plaintiff but denies the rest of the allegations therein for lack of knowledge and/or information sufficient to form a judgment as to the truths thereof.

2. Defendants admit the allegations in paragraph 2 that pursuant to Transfer Certificate of Title No. N-29859 (Annex 'A'), plaintiff together with his wife appears to be the registered owners of the subject parcel of land but that is more apparent and (sic) real considering that defendants have admittedly bought the land and the improvements thereon and defendants were purchasers in good faith and for value.

3. Defendants deny the allegations in paragraph 3 for lack of knowledge and information to form a judgment as to the truths, and granting arguendo that the acquisition of the land and the construction of the house came from the salaries and benefits of the plaintiff, said salaries and benefits are considered conjugal.

4. Defendants deny the allegations in paragraph 4 for lack of knowledge and information sufficient to form a judgment as to the truth thereof although it may be of judicial notice that the Office of the Provincial/Municipal Assessor motu proprio accomplishes (sic) Annexes 'B' and 'B-1' and all tax declarations for that matter based on existing records in said office.

5. Defendants admit the allegations in paragraph 5 in so far as the transaction of absolute sale between them and defendant's (plaintiff's) wife who acted not only in her behalf but also as attorney-in-fact of her husband, plaintiff in the instant case, which transaction was actually known by and with the consent of or should at least have been known to and with the consent of plaintiff as evidenced by a letter of plaintiff to his wife, a xerox copy of which is attached hereto as Annex '1' and made an integral part hereof.

6. Defendants deny the allegation in paragraph 6, the truth and fact being that plaintiff's wife was duly authorized by a Special Power of Attorney to transact on and sell the subject house and lot, a xerox copy of which marked Annex '2' is hereto attached and made an integral part hereof.

7. Defendants deny the allegations in paragraph 7 for lack of knowledge and information sufficient to form a judgment as to the truths thereof.

8. Defendants deny the allegations in paragraph 8 to the effect that he was denied the use and enjoyment of his properties for the reason that as the owners of the property, defendants have the absolute rights of use and enjoyment over said properties with the prerogative to lease the same to any party of their choice, the lessee with the right to exclude others from the use and enjoyment of the premises.

9. Defendants deny the allegations in paragraphs 9, 10 and 11 not only for lack of knowledge and information to form a judgment as to the truths thereof but also because said allegations have no factual and legal basis.

10. Defendants admit the allegations in paragraph 12 in so far as the prospective registration of Annex 'C' is concerned but deny the rest of the allegations for reasons stated earlier to the effect that Annex 'C' is a valid and binding sale, with defendants as the purchasers in good faith and for value.

11. Defendants admit the allegations in paragraph 13 in so far as the ministerial functions of defendant Register of Deeds but deny the rest of the allegations the same being without any factual and legal basis for reasons essayed earlier.

12. Defendants deny the allegations in Paragraph 14 for lack of knowledge and information sufficient to form a judgment as to the truths thereof aside from the fact that plaintiff's alleged readiness and willingness to post a bond will simply be exercises in futility."

On 13 September 1988, after issues in the case had been joined, petitioner served on the private respondent Mag-isa a request for admission^[4] reading as follows:

"ATTY. ALFREDO A. ALTO

Counsel for Defendant Mag-isa

Balaga-Luna Building

Malolos, Bulacan

Greetings:

Plaintiff, through counsel, respectfully requests your admission within ten (10) days from service hereof pursuant to Rule 26, Rules of Court of the following:

The Material facts

1. That plaintiff, together with his wife Nonita A. Briboneria, are the registered owners of a parcel of land together with the improvements thereon covered under Transfer Certificate of Title No. N-29895 (Annex A-Complaint) located at 59 Amsterdam Street, Provident Village, Marikina, Metro-Manila.
2. That plaintiff, as the duly registered owner has declared for the year 1988 the parcel of land and residential house for tax purposes under P.D. 464.
3. That plaintiff's family used to live at the said residential house.
4. That defendant Mag-isa actually lives near the location address of plaintiff's properties.
5. That defendant Mag-isa knows that plaintiff works abroad but he (plaintiff) regularly comes home and stays with his family at their residential house abovementioned.
6. That the abovementioned house and lot were acquired through plaintiff's hard-earned salaries and benefits from his employment abroad.
7. That plaintiff has reserved the house and lot as a place to stay to (sic) with his family upon his retirement from his employment.
8. That plaintiff had never authorized his wife or anybody for that matter to sell or to dispose of the property covered under TCT No. N-29895.
9. That plaintiff never executed the alleged Special Power of Attorney dated November 14, 1984 appended as Annex 2 - Answer.
10. That the alleged Special Power of Attorney mentions 'Transfer Certificate of Title No. N-29995 issued by the Register of Deeds of Rizal.'
11. That plaintiff never personally appeared before Notary Public Jose Constantino upon whom the acknowledgment of said Special Power of Attorney was made.
12. That plaintiff never sold or disposed of, and never consented to the sale or disposition of the properties covered under TCT No. N-29995.
13. That plaintiff never received the consideration of the alleged sale, and he never benefited therefrom in any manner.
14. That defendant Mag-isa never confirmed with plaintiff notwithstanding their being neighbors, the authenticity of the alleged Special Power of Attorney and the validity of the alleged Deed of Absolute Sale particularly considering that the subject matter thereof involves plaintiff's properties.
15. That plaintiff was denied the use and enjoyment of his properties since defendant Mag-isa had even leased the premises to another who in turn had prohibited plaintiff from entering the premises.

The Material Documents

1. Transfer Certificate of Title No. N-29895 of the Register of Deeds of Rizal, copy attached to the Complaint as Annex A.
2. The Declarations of Real Property filed by Salvador D. Briboneria pursuant to P.D. 464 for the year 1988, copies attached to the Complaint as Annexes B and B-1."

On 10 November 1988, the private respondents filed with the court a quo their Answer to Request for Admission,[5] alleging that most if not all the matters subject of petitioner's request for admission had been admitted, denied and/or clarified in their verified answer dated 20 June 1988, and that the other matters not

admitted, denied and/or clarified were either irrelevant or improper.

On 18 November 1988, petitioner filed a Motion for Summary Judgment,[6] claiming that the Answer to Request for Admission was filed by private respondents beyond the ten (10) day period fixed in the request and that the answer was not under oath; that, consequently the private respondents are deemed to have admitted the material facts and documents subject of the request for admission, pursuant to Section 2, Rule 26 of the Rules of Court. The private respondents filed an opposition[7] to the motion for summary judgment, while the petitioner filed a reply[8] to said opposition.

On 28 December 1988, the trial court issued an order[9] denying the petitioner's motion for summary judgment. Petitioner moved for reconsideration[10] which the court granted in its order dated 20 July 1989, setting aside the order of 28 December 1988.[11] The private respondents, in turn, filed a Motion for Clarification and Reconsideration, to which the petitioner filed an opposition.[12] On 1 February 1989, the trial court issued another order[13] this time setting aside its order of 20 July 1989 and set the pre-trial conference on 22 February 1989.

The petitioner thereupon filed with the Court of Appeals a petition for certiorari, prohibition and mandamus to annul and set aside the order dated 1 February 1989 of the court a quo, alleging that the said order was issued with grave abuse of discretion amounting to lack of jurisdiction. On 13 August 1990, the Court of Appeals rendered a decision,[14] dismissing the petition. Petitioner's motion for reconsideration having been likewise denied,[15] he is now before us in the present petition.

Petitioner assails the respondent appellate court in holding that the matters of fact and the documents requested to be admitted are mere reiterations and/or reproductions of those alleged in the complaint. He claims that the material facts and documents described in the request for admission are relevant evidentiary matters supportive of his cause of action. He further argues that the private respondents have impliedly admitted the material facts and documents subject of the request for admission on account of their failure to answer the request for admission within the period fixed therein, and for said answer not being under oath.

The petition can not be upheld; the petitioner's contentions are devoid of merit.

To begin with, a cursory reading of the petitioner's complaint and his request for admission clearly shows, as found by respondent appellate court, that "the material matters and documents set forth in the request for admission are the same as those set forth in the complaint which private respondents either admitted or denied in their answer." [16] The respondent court therefore correctly held that this case falls under the rule laid down in *Po vs. Court of Appeals*. [17] wherein this Court held:

"A party should not be compelled to admit matters of fact already admitted by his pleading and concerning which there is no issue (*Sherr vs. East*, 71 A2d, 752, *Terry* 260, cited in 27 C.J.S. 91), nor should he be required to make a second denial of those already denied in his answer to the complaint. A request for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but should set forth relevant evidentiary matters of fact, or documents described in and exhibited with the request, whose purpose is to establish said party's cause of action or defense. x x x."

Moreover, under Section 1, Rule 26 of the Rules of Court,[18] the request for admission must be served directly upon the party; otherwise, the party to whom the request is directed cannot be deemed to have admitted the genuineness of any relevant document described in and exhibited with the request or relevant matters of fact set forth therein, on account of failure to answer the request for admission.[19]

In one case, namely, CA-G.R. No. 20561-R, entitled "*Jose Ledesma, Jr., Plaintiff-Appellee, versus Guillermo*

Locsin, Defendant-Appellant", [20] the Court of Appeals in favorably resolving the defendant-appellant's motion for reconsideration of its earlier decision (wherein it affirmed the summary judgment of the Court of First Instance of Negros Occidental in favor of plaintiff Jose Ledesma, Jr. upon failure of defendant Guillermo Locsin to answer a request for admission served upon his counsel by the plaintiff) held in its Resolution dated 1 June 1963, as follows:

"The issue raised by the first two assigned errors is whether or not a request for admission must be served directly on a party, and not his counsel, in order that said request can be considered as validly served. In our decision which is sought to be reconsidered, we held that a request for admission may be validly served upon party's counsel. After a further review of the facts of the case and the circumstances surrounding the same, we are now fully convinced that it should not be so.

"The general rule as provided for under Section 2 of Rule 27 (now Section 2, Rule 13) of the Rules of Court is that all notices must be served upon counsel and not upon the party. This is so because the attorney of a party is the agent of the party and is the one responsible for the conduct of the case in all its procedural aspects; hence, notice to counsel is notice to party. The purpose of the rule is obviously to maintain a uniform procedure calculated to place in competent hands the orderly prosecution of a party's case (*Chainani v. Judge Tancinco*, G.R. No. L-4782, Feb. 29, 1952; *Cabili v. Badelles*, G.R. No. L-17786, Sept. 29, 1962). However, the general rule cannot apply where the law expressly provides that notice must be served upon a definite person. In such cases, service must be made directly upon the person mentioned in the law and upon no other in order that the notice be valid.

'Whenever notice is necessary, it must appear that it was served on the proper person, and there must be strict compliance with a statute requiring service on a particular person, so that service on another person is not sufficient.'

'In general, service of notice of a modal or formal step in a proceeding on the attorney of record is sufficient, if not otherwise specifically provided by statute or rule of court.' (66 C.J.S. 658)

"Thus, we see that section 7 of Rule 40, with regard to notice of pendency of an appeal from an inferior court to a Court of First Instance, provides that 'it shall be the duty of the clerk of the court to notify the parties of that fact by registered mail', and the Supreme Court construing said section held, in *Ortiz v. Mania*, G.R. No. L-5147, June 2, 1953, that the notice of the pendency of the appeal must be served upon the parties for said section being express and specific cannot be interpreted to mean that the notice can be given to the lawyer alone.

"Similarly, section 1 of Rule 20 (now Section 1, Rule 25) provides that 'any party may serve upon any adverse party written interrogatories', and Chief Justice Moran commenting on this rule states that 'the written interrogatories referred to in the instant provision should be delivered directly to the adverse party'. We see no valid reason why a different rule should govern request for admission inasmuch as written interrogatories and request for admissions are both modes of discovery.

"Section 1 of Rule 23 (now Section 1, Rule 26) of the Rules of Court which expressly states that 'a party may serve upon any other party a written request' should receive no other construction than that the request for admission must be served directly on the party and not on his counsel. Section 2 of Rule 27 (now Section 2, Rule 13) of the Rules of Court does not control the mode of service of request for admission. It should be observed that the orders, motions and other papers mentioned in said section have this property in common: they have to be filed with the court. A request for admission, on the other hand, need not be filed with the court; it was intended to operate extra-judicially and courts are not burdened with the duty to determine the propriety or impropriety of the request for admission (*I Moran's Comments on the Rules of Court*, 1957 ed., 372-73; *I Francisco's Rules of Court*, Part 2, p. 282).

'x x x Permission of the court is not required to make such a request or demand, or to file it, or serve it on the adverse party; but service must be made in the manner specified by the statute or rule.' (27 C.J.C. 277)

And the answer to the request for admission is likewise not a matter of record and would require another step in procedure to bring it on record (Seranton Lackawanna Trust Co, vs. McDermont, 1 Pa. Dist. & Co. 2nd 539, 55 Lack. Jur. 265, cited in 27 C.J.S. 277, fn 19). Section 2 of Rule 27 governs only those papers that have to be filed in court and does not govern papers which, by the rules of procedure, do not have to be filed in court.

"In view of the foregoing, it is our considered opinion that the request for admission made by plaintiff was not validly served and that, therefore, defendant cannot be deemed to have admitted the truth of the matters upon which admissions were requested and, consequently, the summary judgment rendered by the court a quo has no legal basis to support it. This conclusion renders it unnecessary to discuss the other assigned errors."

The plaintiff-appellee Jose Ledesma, Jr. filed with this Court a petition for review on certiorari of the aforesaid resolution, docketed as G.R. No. L-21715. On 2 October 1963, this Court denied the petition, thus -

"After a consideration of the allegations of the petition filed in case L-21715 (Jose Ledesma, Jr. vs. Guillermo Locsin), for review of the decision of the Court of Appeals referred to therein, THE COURT RESOLVED to dismiss the petition for lack of merit."

In the present case, it will be noted that the request for admission was not served upon the private respondent Mag-isa but upon her counsel, Atty. Alfredo A. Alto. Private respondent Mag-isa, therefore, cannot be deemed to have admitted the facts and documents subject of the request for admission for having failed to file her answer thereto within the period fixed in the request.

WHEREFORE, the petition should be, as it is hereby, DENIED. The decision of the Court of Appeals dated 13 August 1990 is AFFIRMED.

SO ORDERED.

Cruz, (Chairman) and Grino-Aquino, JJ., concur.
Bellosillo, J., no part.

* Composed of Justices Josue N. Bellosillo, as Chairman, Alfredo Marigomen and Filemon H. Mendoza, as members, with Justice Alfredo Marigomen as ponente

[1] Resolution dated 11 November 1991. Rollo, p. 105

[2] Rollo, p. 25

[3] Ibid., p. 31

[4] Ibid., p. 37

[5] Ibid., p. 41

[6] Ibid., p. 46

[7] Ibid., p. 55

[8] Ibid., p. 54

[9] Ibid., p. 61

[10] Ibid., p. 63

[11] Ibid., p. 73

[12] Ibid., p. 76

[13] Ibid., p. 83

[14] Ibid., p. 81

[15] Ibid., p. 88

[16] Rollo, p. 85

[17] G.R. No. L-34341, 22 August 1988, 164 SCRA 668, 670

[18] Section 1, Rule 26 provides as follows: "At any time after the issues have been joined, a party may serve upon any other party a written request for admission by the latter of any relevant documents described in and exhibited with the request or of the truth of any relevant matters set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished."

[19] Section 2 of Rules 26 provides s follows: "Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than ten (10) days after service thereof, or within such further time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either deny-ing specifically the matters of which an admission is requested or setting forth in detail the reason why he cannot truthfully either admit or deny those matters.

"Objections on the ground of irrelevancy or impropriety on the matter requested shall be promptly submitted to the court for resolution."

20 Unreported

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