

SPS. ISAGANI MIRANDA AND MIGUELA JOGUILON, PETITIONERS, VS. COURT OF APPEALS, LUCILA L. VDA. DE JAVA (DECEASED) SUBSTITUTED BY THE HEIRS – ESTELLA JAVA BACALLA, ASSISTED BY HER ...

G.R. No. 114243. February 23, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the decision[1] of the Court of Appeals dated February 28, 1994 in CA-G.R. CV No. 20546, which reversed and set aside the judgment of the Regional Trial Court of Manila, Branch 4, in Civil Case No. 112765. The decretal portion of the assailed decision reads:

"WHEREFORE, the appealed judgment is hereby REVERSED and SET ASIDE. The judgment rendered in Civil Case No. 63117 is hereby declared NULL and VOID. The execution, sales and subsequent transfers of the Thames jeep and Lot 8015 are ANNULLED. Defendant-appellees Spouses Miranda are hereby ordered to execute a Deed of Reconveyance over Lot 8015 in favor of plaintiff-appellants.

"No pronouncement as to costs.

"SO ORDERED."[2]

The facts as supported by the records are as follows:

On October 27, 1965, Luneta Motor Company (hereinafter LMC) filed suit against the spouses Lucila and Pablo D. Java, et al., with the former Court of First Instance (CFI) of Manila, which docketed the same as Civil Case No. 63117. LMC sought to recover one "Thames" jeep and the sum of P9, 403.00, plus interest and attorney's fees from defendants.

On March 11, 1966, LMC moved to declare the Java spouses in default for failure to file their answer within the reglementary period, notwithstanding notice. The trial court granted the motion.

On November 9, 1966, the CFI disposed of the case as follows:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendant, ordering the latter to pay plaintiff the amount of P8,354.00, the sum total of the balances on the defendants' promissory notes, plus interest thereon at the rate of 12% per annum from April 7, 1966, until fully paid, plus the sum of P1,000.00 as and for attorney's fees, and the costs of this action.

"The case against John Doe is hereby dismissed.

"SO ORDERED."[3]

Pursuant to the writ of execution, the City Sheriff of Cebu City sold the vehicle at public auction to one Jose Angulo.[4] Also subsequently sold at public auction to LMC, was a parcel of land described as Lot 8015 of the

Cadastral Survey of Cebu, and owned by the Javas.[5] LMC then sold Lot 8015 to petitioners.

On December 19, 1977, Lucila vda. de Java and her daughter Estela Java, filed Civil Case No. 112765 to nullify the judgment in Civil Case No. 63117, as well as the execution sales and subsequent transfers, with the then CFI of Manila. Among those named as defendants were the petitioners herein; and the spouses Ernesto Elizondo and Angeles Java Elizondo, the son-in-law and daughter of Lucila vda. de Java.

On July 19, 1987, Lucila vda. de Java died and was substituted by her heirs.

On November 11, 1988, the trial court decided the case as follows:

"WHEREFORE, premises considered, let this case be, as it is hereby dismissed without pronouncement as to costs for lack of jurisdiction. The Writ of Preliminary Injunction issued by this Court is ordered lifted. The counterclaim of defendants Mirandas, being without merit under the circumstance(s), is likewise ordered dismissed.

"SO ORDERED." [6]

Private respondents appealed to the Court of Appeals, which, as earlier noted, reversed the lower court.

Hence, the instant case relying on the following grounds:

I

THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT NEVER ACQUIRED JURISDICTION OVER LUCILA L. JAVA AND HER HUSBAND SINCE THERE WAS NO PROPER SERVICE OF SUMMONS.

II

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE JUDGMENT IN CIVIL CASE NO. 63117 ENTITLED LUNETA MOTOR COMPANY V. LUCILA JAVA, ET AL., HAD LONG BECOME FINAL AND EXECUTORY

III

THE COURT OF APPEALS ERRED IN HOLDING AS NULL AND VOID THE JUDGMENT RENDERED IN CIVIL CASE NO. 63117 AND ORDERING PETITIONERS TO EXECUTE A DEED OF RECONVEYANCE OVER LOT NO. 8015 IN FAVOR OF THE PLAINTIFFS.[7]

The pivotal issue in this case is whether or not the Court of Appeals committed reversible error in annulling the judgment in Civil Case No. 63117 for want of jurisdiction on the part of the trial court.

In declaring the judgment in Civil Case No. 63117 null and void, the appellate court found from the Sheriff's Return of Service,[8] that summons was served on the spouses Java by substituted service without effort at personal service. The court a quo held that the said service was invalid and the lower court never acquired jurisdiction over the persons of defendants (private respondents herein) in Civil Case No. 63117, thus, the execution sale of the "Thames" vehicle, as well as the sale of Lot 8015 to LMC, and the subsequent sale by the latter to petitioners were null and void.

Petitioners contend that the decision of the Court of Appeals that service of summons was invalid is contradicted by the trial court and is not supported by the evidence. Besides, the judgment had already become final since there were no grounds to annul it.

On the question of the validity of service of summons, pertinent is Rule 14 of the Rules of Court, particularly

Sections 7 and 8 which respectively provide:

Sec. 7. Personal service of summons. – The summons shall be served by handing a copy thereof to the defendant in person, or if he refuses to receive it, by tendering it to him.[9]

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 in 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.[10]

Service of summons upon the defendant is essential for the court to acquire jurisdiction over his person.[11] The modes of service should be strictly followed in order that the court may acquire jurisdiction over the person.[12] Thus, it is only when a defendant cannot be served personally "within a reasonable time" that substituted service may be made.[13]

In the instant case, the Sheriff's Return of Service reads:

"Respectfully returned to the Clerk of Court, Court of First Instance, Manila, the herein summons of the above-entitled case, copy of which and a copy of the complaint were served on December 9, 1965 at 11:00 o'clock in the morning by substituted service (stress supplied) through Ernesto Elizondo, son-in-law of defendants Lucila Java and Pablo Java and living together with them." [14]

Even the briefest perusal of the aforementioned Return clearly shows no reason why personal service could not be made. Impossibility of prompt, personal service should be shown by stating in the proof of service that efforts were made to find the defendant personally and that said efforts failed, hence the resort to substituted service.[15] Here, no such explanation was made. Failure to faithfully, strictly, and fully comply with the requirements of substituted service renders said service ineffective.[16]

Petitioners point to the deposition of Ernesto Elizondo to support their argument that there was valid service of summons.[17] Ernesto Elizondo emphatically testified under oath, however, that at the time he allegedly signed for the summons, he was not living in the same house as his parents-in-law, "although I am living within the compound of my father-in-law." [18] Rule 14, Section 8 of the Rules of Court specifically provides that substituted service must be effected by "(a) leaving copies of the summons at the defendant's dwelling house or residence with some person of suitable age and discretion then residing therein." Since Ernesto Elizondo admitted that he was not living with the spouses Java, the requirement that the summons be left with a person of suitable age residing in the same dwelling house or residence as the defendant, for substituted service to be valid, has not been complied with.

For want of proper service of summons upon defendants, the trial court in Civil Case No. 63117 never acquired jurisdiction over the former and hence, could not render valid judgment over their persons. Hence, the execution sales of the "Thames" vehicle and Lot 8015, pursuant to said void judgment, are void ab initio. A final judgment may be annulled upon either of two grounds: (1) extrinsic fraud, and (2) lack of jurisdiction.[19] In the present case, the trial court did not have jurisdiction. No reversible error was thus committed by the Court of Appeals in annulling the judgment in Civil Case No. 63117 for absence of jurisdiction on the part of the court which rendered the same.

IN VIEW OF THE FOREGOING, the instant petition is DENIED and the assailed Decision of the Court of Appeals dated February 28, 1994 in CA-G.R. CV No. 20546 is hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.

Buena, J., on official leave.

[1] Rollo, pp. 36-43.

[2] CA Rollo, p. 41.

[3] Records, pp. 22-23.

[4] Id. at 26-27.

[5] Id. at 35-36.

[6] Id. at 536.

[7] Rollo, p. 17.

[8] Supra Note 2, at 19.

[9] Now 1997 RULES OF CIVIL PROCEDURE, Rule 14, sec. 6.

[10] Now 1997 RULES OF CIVIL PROCEDURE, Rule 14, sec. 7.

[11] Arcenas v. Court of Appeals, 299 SCRA 733, 741 (1998).

[12] Gan Hock v. Court of Appeals, 197 SCRA 223, 232 (1991), Spouses Olar v. Cuna, 90 SCRA 114, 118 (1979).

[13] Keister v. Navarro, 77 SCRA 209, 215 (1977).

[14] Supra Note 7.

[15] Venturanza v. Court of Appeals, 156 SCRA 305, 313 (1987).

[16] Keister v. Navarro, supra.

[17] TSN, July 9, 1988, pp. 4-7.

[18] Id. at 5.

[19] Strait Times, Inc. v. Court of Appeals, 294 SCRA 714, 721 (1998); Salonga v. Court of Appeals, 269 SCRA 534, 543 (1997).

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