

BALBINO SEQUITO, ET AL., PLAINTIFFS AND APPELLEES, VS. ANATALIO LETRONDO, DEFENDANT AND APPELLANT.

G.R. No. 11588. July 20, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal against a decision of the Court of First Instance of Leyte, Hon. S. C. Moscoso, presiding, awarding to plaintiffs Balbino Sequito, et al., ownership of a parcel of land situated in Dagami, Leyte, and ordering defendant Anatalio Letrondo to vacate the premises and to pay damages in the amount of P4.000.

The record discloses the following: On October 21, 1955, the complaint in this case was filed in court and the summons was served by police sergeant Borja upon defendant's daughter who was then 12 years old and a fourth grade pupil (p. 4 appellant's brief). Defendant failed to file his answer, and so, upon plaintiffs' motion, he was declared in default. Plaintiffs presented their evidence ex-parte; the same consists of the testimony of plaintiff Balbino Sequito only. Upon this testimony the court on February 7, 1956 rendered the judgment appealed from.

On March 13, 1956, the defendant, moved for new trial, alleging that he did not receive the summons and that he came to know about the case only when he received a copy of the decision on February 23, 1956. He attached to his motion affidavits of merit and a copy of a deed of sale of the land. The motion was denied, hence this appeal.

The sole issue is, Did the trial court err in denying appellant's motion for new trial. Resolution of this question depends upon whether or not there had been a valid substituted service of summons in accordance with Section 8, Rule 7 of the Rules of Court.

The record shows that the service of the summons was irregular. It was served by one police sergeant, Pacifico Borja, who was not a sheriff or a court officer, and who was not authorized by the court to deliver the summons. This violates the provisions of Section 5, Rule 7, Rules of Court. The proof of service is also not under oath as required by Section 20 of said rule.

Moreover, even if the summons was really served upon defendant's daughter, still there was no valid substituted service because she, being only 12 years of age and a grade four pupil, could not have appreciated the importance of the paper delivered to her. We can not say with certainty that the daughter was at the time of suitable age and discretion to be entrusted with so important a document as a court summons (Section 8, Rule 7, Rules of Court).

As there is no evidence to show that defendant ever came to know about the case before he received the decision, the irregularity in the service was not cured. Defendant's failure to file his answer is, therefore, justified.

The record would also reveal that the defendant has a valid defense, which consists of Annex "B" (pp. 13-15, R.O.A.), a deed of sale of the land executed by Francisco Sequito, predecessor in-interest of the plaintiffs, in favor of Vicente Capatay, who, in turn, sold it to the defendant (pp. 12-13, R.O.A.). Besides, the defendant claims to have been in possession of the land from the date of purchase up to the present time.

The decision and the order appealed from are hereby set aside and the case remanded to the lower court for further proceedings in accordance with this decision.

Paras C. J., Bengzon, Padilla, Montemayor, Banitista Angelo, Concepcion, Endencia, and Barrera, JJ., concurs.

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