

## **FORTUNATO GOMEZ AND AURORA GOMEZ, PETITIONERS, VS. COURT OF APPEALS, ADOLFO TROCINO AND MARIANO TROCINO, RESPONDENTS.**

*G.R. No. 127692. March 10, 2004*

Ponente: AUSTRIA-MARTINEZ, J.

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### **AUSTRIA-MARTINEZ, J.:**

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision[1] of the Court of Appeals dated September 30, 1996, in CA-G.R. SP No. 40067, nullifying the decision and orders of the Regional Trial Court of Cebu City (Branch 10) in Civil Case No. CEB-11103, for want of jurisdiction.

Civil Case No. CEB-11103 is an action for specific performance and/or rescission filed by herein petitioners, spouses Fortunato and Aurora Gomez, against the heirs of Jesus J. Trocino, Sr., which include herein respondents and their mother Caridad Trocino.[2]

Filed on December 16, 1991, the complaint alleges: Some time in 1975, the spouses Jesus and Caridad Trocino mortgaged two parcels of land covered by TCT Nos. 10616 and 31856 to Dr. Clarence Yujuico. The mortgage was subsequently foreclosed and the properties sold at public auction on July 11, 1988, and before the expiry of the redemption period, the spouses Trocino sold the property to petitioners on December 12, 1989, who in turn, redeemed the same from Dr. Yujuico. The spouses Trocino, however, refused to convey ownership of the properties to petitioners, hence, the complaint.

On January 10, 1992, the trial court's Process Server served summons on respondents, in the manner described in his "Return of Service," to wit:

Respectfully returned to the Branch Clerk of Court, Regional Trial Court of Cebu, Branch 10, the herein attached original summons issued in the above-entitled case with the information that on January 8, 1992 summons and copies of the complaint were served to the defendants Jacob, Jesus Jr., Adolfo, Mariano, Consolacion, Alice, Racheal thru defendant Caridad Trocino at their given address at Maria Cristina Extension (besides Sacred Heart School for Girls), Cebu City, evidence by her signature found at the lower portion of the original summons.[3]

WHEREFORE I, respectfully return the original summons duly served to the court of origin.

Cebu City, Philippines, January 10, 1992.

(signed)  
DELFIN D. BARNIDO  
RTC Process Server

On January 27, 1992, the defendants, through their counsel Atty. Expedito P. Bugarin, filed their Answer. Defendant Caridad A. Trocino, respondents' mother, verified said pleading.[4]

After trial on the merits, the RTC rendered its decision on March 1993, with the following disposition:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants.

The latter are hereby ordered to jointly and severally execute a Deed of Sale in favor of the plaintiffs and to deliver the owner's duplicate copies of TCT Nos. 10616 and 31856, covering the properties sold, to the plaintiffs within ten (10) days from the finality of the judgment, after which plaintiffs shall pay in turn to the defendants the balance of P2,000,000.00. Otherwise, the sale is rescinded and revoked and the defendants are directed to return to the plaintiffs the amount of P500,000.00, with interest of 12% per annum computed from December 6, 1989, until the full amount is paid.

In addition thereto, defendants are to pay jointly and severally to the plaintiffs, the amount of P50,000.00 as moral damages; P20,000.00 as exemplary damages; P40,000.00 by way of attorney's fees; and P10,000.00 as litigation expenses.

SO ORDERED.[5]

Due to the defendants' failure to deliver the owner's duplicate of TCT Nos. 10616 and 31856, the RTC issued an order on August 29, 1995 declaring said titles null and void, and ordering the Register of Deeds of Cebu City to issue new titles in the name of herein petitioners.[6]

Thereafter, or on March 13, 1996, respondents Adolfo and Mariano Trocino filed with the Court of Appeals, a petition for the annulment of the judgment rendered by the RTC-Cebu (Branch 10) in Civil Case No. CEB-11103. Private respondents alleged that the trial court's decision is null and void on the ground that it did not acquire jurisdiction over their persons as they were not validly served with a copy of the summons and the complaint. According to them, at the time summons was served on them, Adolfo Trocino was already in Ohio, U.S.A., and has been residing there for 25 years, while Mariano Trocino was in Talibon, Bohol, and has been residing there since 1986. They also refuted the receipt of the summons by Caridad A. Trocino, and the representation made by Atty. Bugarin in their behalf. Respondents also contended that they have a meritorious defense.[7] Petitioners filed their Comment/Answer to the petition.[8]

On September 30, 1996, the Court of Appeals issued the assailed Decision granting the petition and annulling the decision of the RTC-Cebu (Branch 10). The decretal portion of the decision reads:

WHEREFORE, the decision of the Regional Trial Court of Cebu City, Branch 10, in Civil Case No. CEB-11103 as well as all Orders issued to implement the same are hereby ANNULLED AND SET ASIDE. The Register of Deeds of Cebu City is hereby ENJOINED from cancelling Transfer Certificates of Title Nos. 10616 and 31856. No pronouncement as to costs.

SO ORDERED.[9]

Their motion for reconsideration having been denied by the Court of Appeals, petitioners filed the present petition, setting forth the following assignment of errors:

- THE COURT OF APPEALS ERRED IN FINDING LACK OF PRIOR KNOWLEDGE ON THE PART OF RESPONDENTS TROCINO, REGARDING THE PROCEEDINGS BEFORE THE RTC OF CEBU CITY AND IN NOT DISMISSING THE PETITION FOR VIOLATION OF SUPREME COURT CIRCULAR 04-94.
- THE COURT OF APPEALS ERRED IN DECLARING THE NEED FOR PERSONAL AND/OR EXTRATERRITORIAL SERVICE OF SUMMONS, DESPITE THE NATURE OF THE CAUSE OF ACTION BEING ONE IN REM.

- THE COURT OF APPEALS ERRED IN ANNULING THE JUDGMENT, CAUSING FURTHER USELESS LITIGATION AND UNNECESSARY EXPENSE ON PETITIONERS AND RESPONDENTS, ESPECIALLY SINCE RESPONDENTS HAVE NOT SHOWN ANY VALID DEFENSE AS GROUND FOR REVERSAL OF JUDGMENT OF THE RTC.

- THE COURT OF APPEALS ERRED IN RULING THAT ITS JUDGMENT IS APPLICABLE IN FAVOR OF CARIDAD TROCINO.[10]

Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court acquires jurisdiction over his person.[11] Any judgment without such service in the absence of a valid waiver is null and void.[12]

The resolution of the present petition hinges on the issue of whether or not summons was effectively served on respondents. If in the affirmative, the trial court had validly acquired jurisdiction over their persons and therefore its judgment is valid.

To resolve whether there was valid service of summons on respondents, the nature of the action filed against them must first be determined. As the Court explained in *Asiavest Limited vs. Court of Appeals*, it will be helpful to determine first whether the action is in personam, in rem, or quasi in rem because the rules on service of summons under Rule 14 of the Rules of Court of the Philippines apply according to the nature of the action.[13]

In actions in personam, summons on the defendant must be served by handing a copy thereof to the defendant in person, or, if he refuses to receive it, by tendering it to him. This is specifically provided in Section 7, Rule 14 of the Rules of Court,[14] which states:

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.

If efforts to find defendant personally makes prompt service impossible, substituted service may be effected 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 by leaving the copies at the defendant's office or regular place of business with some competent person in charge thereof.[15] In substituted service, it is mandated that the fact of impossibility of personal service should be explained in the proof of service.[16]

When the defendant in an action in personam is a non-resident who does not voluntarily submit himself to the authority of the court, personal service of summons within the State is essential to the acquisition of jurisdiction over his person. This cannot be done if the defendant is not physically present in the country, and thus, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him.[17] An exception was accorded in *Gemperle vs. Schenker* wherein service of summons through the non-resident's wife, who was a resident of the Philippines, was held valid, as the latter was his representative and attorney-in-fact in a prior civil case filed by the non-resident, and the second case was merely an offshoot of the first case.[18]

Meanwhile, in actions in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court provided that the court acquires jurisdiction over the res, although summons must be served upon the defendant in order to satisfy the due process requirements.[19] Thus, where the defendant is a non-resident who is not found in the Philippines, and (1) the action affects the personal status of the plaintiff; (2) the action relates to, or the subject matter of which is property in the Philippines in which the defendant has or claims a lien or interest; (3) the action seeks the exclusion of the defendant from any interest in the property located in the Philippines; or (4) the property of the defendant has been attached in the Philippines, summons may

be served extraterritorially by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.[20]

In the present case, petitioners' cause of action in Civil Case No. CEB-11103 is anchored on the claim that the spouses Jesus and Caridad Trocino reneged on their obligation to convey ownership of the two parcels of land subject of their sale. Thus, petitioners pray in their complaint that the spouses Trocino be ordered to execute the appropriate deed of sale and that the titles be delivered to them (petitioners); or in the alternative, that the sale be revoked and rescinded; and spouses Trocino ordered to return to petitioners their down payment in the amount of P500,000.00 plus interests. The action instituted by petitioners affect the parties alone, not the whole world. Hence, it is an action in personam, i.e., any judgment therein is binding only upon the parties properly impleaded.[21]

Contrary to petitioners' belief, the complaint they filed for specific performance and/or rescission is not an action in rem. While it is a real action because it affects title to or possession of the two parcels of land covered by TCT Nos. 10616 and 31856, it does not automatically follow that the action is already one in rem. In *Hernandez vs. Rural Bank of Lucena, Inc.*, the Court made the following distinction:

In a personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract or the recovery of damages. In a real action, the plaintiff seeks the recovery of real property, or, as indicated in section 2(a) of Rule 4, a real action is an action affecting title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of a mortgage on, real property.

An action in personam is an action against a person on the basis of his personal liability, while an action in rem is an action against the thing itself, instead of against the person. Hence, a real action may at the same time be an action in personam and not necessarily an action in rem.[22]

The objective sought in petitioners' complaint was to establish a claim against respondents for their alleged refusal to convey to them the title to the two parcels of land that they inherited from their father, Jesus Trocino, who was one of the sellers of the properties to petitioners. Hence, to repeat, Civil Case No. CEB-11103 is an action in personam because it is an action against persons, namely, herein respondents, on the basis of their personal liability. As such, personal service of summons upon the defendants is essential in order for the court to acquire of jurisdiction over their persons.[23]

A distinction, however, must be made with regard to service of summons on respondents Adolfo Trocino and Mariano Trocino. Adolfo Trocino, as records show, is already a resident of Ohio, U.S.A. for 25 years. Being a non-resident, the court cannot acquire jurisdiction over his person and validly try and decide the case against him.

On the other hand, Mariano Trocino has been in Talibon, Bohol since 1986. To validly acquire jurisdiction over his person, summons must be served on him personally, or through substituted service, upon showing of impossibility of personal service. Such impossibility, and why efforts exerted towards personal service failed, should be explained in the proof of service. The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return. Failure to do so would invalidate all subsequent proceedings on jurisdictional grounds.[24]

In the present case, the process server served the summons and copies of the complaint on respondents Jacob, Jesus, Jr., Adolfo, Mariano, Consolacion, Alice and Racheal,[25] through their mother, Caridad Trocino.[26] The return did not contain any particulars as to the impossibility of personal service on Mariano Trocino within a reasonable time. Such improper service renders the same ineffective.

Due process of law requires personal service to support a personal judgment, and, when the proceeding is strictly in personam brought to determine the personal rights and obligations of the parties, personal service

within the state or a voluntary appearance in the case is essential to the acquisition of jurisdiction so as to constitute compliance with the constitutional requirement of due process.[27]

Moreover, inasmuch as the sheriff's return failed to state the facts and circumstances showing the impossibility of personal service of summons upon respondents within a reasonable time, petitioners should have sought the issuance of an alias summons. Under Section 5, Rule 14 of the Rules of Court, alias summons may be issued when the original summons is returned without being served on any or all of the defendants.[28] Petitioners, however, did not do so, and they should now bear the consequences of their lack of diligence.

The fact that Atty. Expedito Bugarin represented all the respondents without any exception does not transform the ineffective service of summons into a valid one. It does not constitute a valid waiver or even a voluntary submission to the trial court's jurisdiction. There was not even the slightest proof showing that respondents authorized Atty. Bugarin's appearance for and in their behalf. As found by the Court of Appeals:

While Caridad Trocino may have engaged the services of Atty. Bugarin, it did not necessarily mean that Atty. Bugarin also had the authority to represent the defendant heirs. The records show that in all the pleadings which required verification, only Caridad Trocino signed the same. There was never a single instance where defendant heirs signed the pleading. The fact that a pleading is signed by one defendant does not necessarily mean that it is binding on a co-defendant. Furthermore, Caridad Trocino represented herself as the principal defendant in her Motion to Withdraw Appeal. (Rollo, p. 80)

Since the defendant heirs are co-defendants, the trial court should have verified the extent of Atty. Bugarin's authority when petitioners failed to appear as early as the pre-trial stage, where the parties are required to appear. The absence of the defendant heirs should have prompted the trial court to inquire from the lawyer whether he was also representing the other petitioners. As co-defendant and co-heirs over the disputed properties, the defendant heirs had every right to be present during the trial. Only Caridad Trocino appeared and testified on her own behalf. All the defenses raised were her own, not the defendant heirs.[29]

Consequently, the judgment sought to be executed against respondents were rendered without jurisdiction as there was neither a proper service of summons nor was there any waiver or voluntary submission to the trial court's jurisdiction. Hence, the same is void, with regard to private respondents except Caridad Trocino.

It must be pointed out that while it was the spouses Jesus and Caridad Trocino who sold the properties to petitioners, their right to proceed against Jesus Trocino when he died was passed on to his heirs, which includes respondents and Caridad Trocino. Such transmission of right occurred by operation of law, more particularly by succession, which is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance of a person are transmitted.[30] When the process server personally served the summons on Caridad Trocino, the trial court validly acquired jurisdiction over her person alone. Hence, the trial court's decision is valid and binding with regard to her, but only in proportion to Caridad Trocino's share. As aptly stated by the Court of Appeals:

This Court's decision is therefore applicable to all the defendant heirs with the exception of defendant Caridad Trocino considering that it was the latter who entered into the alleged sale without the consent of her husband. She is therefore estopped from questioning her own authority to enter into the questioned sale. Moreover, Caridad Trocino was validly served with summons and was accorded due process.[31]

WHEREFORE, the petition for review is DENIED. The decision of the Court of Appeals in CA-G.R. SP No. 40067 is AFFIRMED.

Costs against petitioners.

**SO ORDERED.**

Quisumbing, (Acting Chairman), Callejo, Sr., and Tinga, JJ., concur.  
Puno, (Chairman), J., on leave.

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[1] Penned by Justice Consuelo Ynares-Santiago (now Associate Justice of the Supreme Court), and concurred in by Justice Fidel P. Purisima (retired Associate Justice of the Supreme Court), and Justice Ruben T. Reyes.

[2] CA Rollo, p. 20, Annex “A”.

[3] Id., p. 25, Annex “B”.

[4] Id., p. 29, Annex “C”.

[5] Id., pp. 34-35, Annex “D”.

[6] Id., p. 49, Annex “F”.

[7] Id., pp. 2-13, Petition.

[8] Id., pp. 52-55.

[9] Id., p. 117.

[10] Rollo, p. 15.

[11] Licaros vs. Licaros, G.R. No. 150656, April 29, 2003.

[12] Umandap vs. Sabio, G.R. No. 140244, August 29, 2000, 339 SCRA 243-247.

[13] G.R. No. 128803, September 25, 1998, 296 SCRA 539, 552.

[14] Section 7, Rule 14 is now reproduced in Section 6, Rule 14 of the 1997 Rules of Civil Procedure.

[15] Section 8, Rule 14 of the Rules of Court.

[16] Supra, Asiavest Limited case.

[17] Banco de Brasil vs. Court of Appeals, G.R. Nos. 121576-78, June 16, 2000, 333 SCRA 545, 557.

[18] Supra., Asiavest Limited case.

[19] Ibid.

[20] Rule 14, Section 15 of the Rules of Court.

[21] Paderanga vs. Buissan, G.R. No. 49475, September 28, 1993, 226 SCRA 786, 790.

[22] G.R. No. L-29791, January 10, 1978, 81 SCRA 75, 84-85.

[23] Arcenas vs. Court of Appeals, G.R. No. 130401, December 4, 1998, 299 SCRA 733, 741.

[24] Madrigal vs. Court of Appeals, G.R. No. 129955, November 26, 1999, 319 SCRA 331, 336.

[25] Also referred to as Rachel in the pleadings.

[26] Supra., Note No. 3.

[27] Supra., Arcenas case.

[28] Rule 14, Section 5 of the Rules of Court provides:

If a summons is returned without being served on any or all of the defendants, the server shall also serve a copy of the return on the plaintiff's counsel, stating the reasons for the failure of service, within (5) days therefrom. In such a case, or if the summons has been lost, the clerk, on demand of the plaintiff, may issue an alias summons.

[29] Rollo, pp. 90-91.

[30] *Emnace vs. Court of Appeals*, G.R. No. 126334, November 23, 2001, 370 SCRA 431, 445.

[31] Rollo, p. 96.

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