SPOUSES MARIANO MADRIGAL AND JULIETA MADRIGAL, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, THE HONORABLE PRESIDING JUDGE, BR. 139, RTC, CITY OF MAKATI & SPOUSES JOSEPH AND ...

G.R. No. 129955. November 26, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Review on Certiorari, under Rule 45 of the Rules of Court, assailing the decision[1] of the Court of Appeals, which dismissed the special civil action for certiorari seeking to annul the trial court's Order of Default, dated July 6, 1995, Order dated May 20, 1996, denying the Motion to Lift Order of Default, and Resolution, dated July 16, 1997, denying petitioners' Motion for Reconsideration.[2]

The facts that matter are undisputed.

On December 12, 1991, Joseph Aquino and Josefina Aquino (SPOUSES AQUINO) brought a Complaint for recovery of possession with damages against Mariano F. Madrigal (MARIANO) and Intercity Properties, Inc., (INTERCITY), docketed as Civil Case No. 91-3427 before the Regional Trial Court of Makati City, Branch 139, which issued on June 25, 1993 the corresponding summons.

On July 1, 1993, the summons and complaint were duly served on INTERCITY but not on MARIANO, as reported in the Return of the Process Server.[3]

Thus, on September 6, 1993, alias summons issued upon motion of the SPOUSES AQUINO. On December 20, 1993, since MARIANO was not in his residence despite several attempts to look for him, substituted service of summons was resorted to by "leaving a copy of the summons together with the complaint and its annexes to his wife, Julieta S. Madrigal, a person of suitable age and discretion and who acknowledged receipt thereof xxx." The return of service bore her signature.[4]

When the case was called for pre-trial, the co-defendant, INTERCITY and its counsel failed to appear, despite due notice. So, upon motion of the private respondents (plaintiffs below), INTERCITY was declared in default in the Order[5] issued on July 6, 1995.

For failure to file an answer or any responsive pleading, MARIANO was declared in default and the SPOUSES AQUINO adduced their evidence ex-parte, on the basis of which a Judgment by Default[6] was rendered on October 9, 1995. Copy of such decision was duly received by MARIANO on October 19, 1995.

On October 29, 1995, a Motion to Lift Order of Default was presented by MARIANO, contending that the trial court never acquired jurisdiction over his person as he was not personally served with summons together with the complaint, and that the complaint was defective because his wife who, according to movant, is an indispensable party, was not impleaded as a party. On December 29, 1995, the same motion was amended to pray for the setting

aside of the said decision. But in the Orders, dated May 20 and June 14, 1996, respectively, both motions were denied. Mariano's Motion for Reconsideration met the same fate. It was also denied.

On June 25, 1996, MARIANO, with his wife, JULIETA F. Madrigal, (JULIETA, for brevity), as co-petitioner, brought an original action for Certiorari before the Court of Appeals, to annul the aforesaid orders allegedly issued with grave abuse of discretion. But on July 30, 1996, the Court of Appeals dismissed[7] the petition.

Undaunted, they (petitioners) found their way to this Court via the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court, posing as issues: (1) whether or not there was invalid service of summons on petitioner MARIANO; (2) whether or not the Order denying the motion to lift order of default, after rendition of the decision by the trial court, was proper; and (3) whether or not JULIETA is an indispensable party in the action for recovery of possession of property with damages against MARIANO.

Anent the first issue, petitioners theorize that there was no valid service of summons because the substituted service of summons effected by Deputized Process Server Jose Manabat on JULIETA was improper, absent any proof of impossibility of personal service as required under Section 6, Rule 14 of the Rules of Court.

In upholding the questioned substituted service of summons, the Court of Appeals opined that "the averments in the Officer's Return dated December 20, 1993, coupled with the finding by the lower Court that as early as July 1, 1993, there had been earlier attempts to serve summons upon the petitioner, are sufficient compliance with the requirements for substituted service."

Section 6, Rule 14 of the Rules of Court, reads:

> Sec. 6. "Service in person or in defendant - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him."

The aforecited rule in point requires that summons must be served personally on the defendant. However, should personal service be unattainable, substituted service may be availed of under Section 7, Rule 14, which provides:

> Sec. 7. "Substituted Service.- If, for justifiable causes, 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 residence with some person of suitable age and discretion residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof."

In a long line of cases,[8] this Court held that the impossibility of personal service justifying availment of substituted service should be explained in the proof of service; why efforts exerted towards personal service failed. The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, the substituted service cannot be upheld. It bears stressing that since service of summons, especially for actions in personam, is essential for the acquisition of jurisdiction over the person of the defendant,[9] the resort to a substituted service must be duly justified. Failure to do so would invalidate all subsequent proceedings on jurisdictional grounds.

Administrative Circular No. 59[10] was precisely issued by this Court to stress the importance of strict compliance with the requisites for a valid substituted service.

To determine whether there was such an observance and substituted service was warranted under the premises, it is necessary for the Court to carefully peruse and evaluate the Sheriff's Return[11] which reported: (1) That on several occasions, at reasonable hours of the day, the Deputized Process Server, Jose T. Manabat, tried to serve upon MARIANO the summons together with the complaint; (2) That diligent efforts were exerted by the said Deputized Process Server; (3) That service of summons was then made on MARIANO's wife, JULIETA, a person

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of suitable age and discretion who acknowledged receipt thereof.[12]

The Sheriff's certificate of service of summons is prima facie evidence of the facts therein set out. To overcome the presumption of regularity of performance of official functions in favor of such Sheriff's Return, the evidence against it must be clear and convincing. Petitioner having been unable to come forward with the requisite quantum of proof to the contrary, the presumption[13] of regularity of performance on the part of the Sheriff in the case stands.

MARIANO theorized that he was completely unaware of subject action brought against him and he only learned about it when his sister-in-law handed to him a brown envelope containing a copy of the Decision rendered on October 9, 1995 by Branch 139 of the Regional Trial Court of Makati City. According to him, he was separated from his wife, JULIETA, at the time of service of summons, and was then a stay-in employee of Via Marine Corporation. To buttress his submission, he attached a Certification issued by his said employer.[14]

To support his Motion to Set Aside Order of Default, MARIANO should have produced enough evidence to negate the presumption of regularity featuring the Process Server's Return. The aforesaid certification issued by Via Marine Corporation is purely self-serving and did not suffice to establish that he was truly a stay-in employee.

As between the Sheriff's Return on the substituted service, which carries with it a presumption of regularity, and MARIANO's self-serving assertion that he only came to know of the case against him, when his sister-in-law delivered to him the decision of the lower court, the Sheriff's Return is undoubtedly more deserving of faith and credit.

To save his cause, MARIANO invited attention that the subject Sheriff's or Process Server's Return is couched in broad and general terms, and does not state the material dates when the Process Server tried to serve the summons.

While the Sheriff's Return of December 23, 1993 is silent on the facts and circumstances engendering the impossibility of personal service of summons upon MARIANO, within a reasonable time, it can be deduced therefrom that alias summons had to be issued. Under the Rules of Court, alias summons is issued when the summons is returned without being served on any of the defendants.[15]

Petitioners' reliance on the ruling in Venturanza vs. Court of Appeals, 156 SCRA 305, is misplaced. In that case, the Sheriff's Return was declared invalid for failure to include material statements on the address of the person on whom substituted service was effected, and on the fact that diligent efforts were exerted to locate the defendant. Conformably, the Court ruled that "the presumption of regularity of performance of official functions by the sheriff is not applicable in this case wherein it is patent that the sheriff's return is defective."

Granting ex-gratia argumenti that the substituted service under scrutiny was not valid, MARIANO's cause could not prosper just the same, since the remedy he opted to avail of is not the proper recourse under the attendant circumstances. The next to resolve therefore, is the second issue raised by petitioners.

The remedies for an Order of Default are as follows:

> "Under the Rules of Court there are several remedies available to a defaulted party, namely:
>
> `(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 or excusable neglect, and that he has meritorious defenses; (Sec. 3, Rule 18)
>
> `(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;

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> `(c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and
>
> `(d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Tiburcio vs. Judge Castro, G.R. No. L-58997, May 28, 1988)"[16]

In the case under consideration, MARIANO avers that it was only on October 19, 1996 that he came to know of the case filed against him, when his sister-in-law gave him a brown envelope containing the said decision adverse to him. Assuming such allegation to be true, he could have interposed a motion for reconsideration or for new trial and should such a motion be denied or not ruled upon with dispatch by the trial court, petitioners could have appealed the judgment by default within the reglementary period.

The next contention of MARIANO is that his wife JULIETA is an indispensable party such that the failure to implead her is a jurisdictional infirmity rendering the decision a complete nullity, as their property involved is conjugal. This issue is of no moment in the present case. The Court is bound by the factual finding a quo that SPOUSES AQUINO, herein private respondents, not petitioners, are the registered owners of subject lot covered by Transfer Certificate Title No. 152633 of the Registry of Deeds in Makati City, which they (SPOUSES AQUINO) purchased from INTERCITY.

As a general rule, in an appeal by certiorari under Rule 45, questions of fact are not to be delved into and passed upon by this Court, which is bound by the factual findings by the trial court. Verily, the Court is not a trier of facts. It should not anymore examine the evidence introduced by private respondents below and to determine if the trial court correctly assessed and duly evaluated the evidence on record.[17]

WHEREFORE, the Petition is DENIED and the decision of the Court of Appeals, dated July 30, 1996, in C.A. G.R. SP No. 41014 AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo (Chairman) Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] In CA G.R. SP No. 41014, dated July 30, 1996, Special Sixth Division - Justice Ricardo P. Galvez, ponente, with Justices Antonio M. Martinez and Hilarion L. Aquino, members.

[2] Issued by Judge Florentino A. Tuason, Jr.

[3] Annex "E", Rollo, p. 39-44.

[4] Officer's Return dated 20 December 1993, Records, p. 47; Rollo, p. 31.

[5] Judge Jaime D. Discaya.

[6] Annex "D", Rollo, p. 37.

[7] Annex "A", Rollo, pp. 37-38.

[8] Regalado, Florenz. Rules of Civil Procedure, 1997 ed., p. 219, citing the cases of Busuego vs. CA, et. al., 151 SCRA 376; Arevalo vs. Quilatan, 116 SCRA 700; Venturanza vs. CA, 156 SCRA 305.

[9] Keister vs. Navarro, 77 SCRA 209.

[10] 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:

> xxx
>
> The manner of effecting substituted service as prescribed in Venturanza vs. 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 authorized by the statute is considered ineffective.'
>
> For immediate compliance."

[11] Supra.

[12] Rollo, Annex "F", p. 23 of Court of Appeals Records.

[13] Orosa vs. Court of Appeals, 261 SCRA 376, citing Vargas and Co. vs. Chan Hang Chiu, 29 Phil 446 (1915)

[14] Petition, p. 2; Rollo, p. 14.

[15] Rule 14, Sec. 5. ISSUANCE OF ALIAS SUMMONS. - 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.

[16] Construction Services of Australia-Philippines, Inc. vs. Peralta, 173 SCRA 344, 349-350.

[17] Alucbusan vs. CA, 269 SCRA 336.

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