

**LEONARDO ARCENAS REPRESENTED BY HIS ATTORNEY-IN-FACT
CARMELITA ARCENAS VILLANUEVA, PETITIONERS, VS. THE COURT
OF APPEALS, HON. ARMIE E. ELMA, PRESIDING JUDGE OF BRANCH
153, REGI...**

G.R. No. 130401. December 04, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

The decision[1] of the Court of Appeals in CA-G.R. SP No. 43407, dismissing the petition for annulment of judgment filed by petitioner, is impugned in this petition for review on certiorari.

The case takes its roots from Civil Case No. 35349 of the Court of First Instance of Rizal (now Regional Trial Court) which was an action for annulment of the foreclosure sale of a barge. After trial, the trial court rendered judgment on March 21, 1985, the dispositive portion which reads:

"WHEREFORE, judgment is hereby rendered dismissing plaintiff's complaint and sentencing plaintiff Emilio Espino to return the barge "Sta. Lucia Triumph I", as described in the body of this Decision, to the possession of defendant Jose dela Riva, and to pay the said defendant P46,000.00 a month as unrealized profit counted from February 3, 1980, until actual possession of the barge is surrendered to Dela Riva.

"Both plaintiffs Espino and Leonardo Arcenas are also sentenced to pay jointly defendant Dela Riva moral damages in the amount of P20,000.00 and exemplary damages of P10,000.00.

"Both plaintiffs are further ordered to pay jointly defendants Dela Riva and Antonio Sy, Sr., attorney's fees of P15,000.00 each, and the costs of the suit.

"SO ORDERED."

The Court of Appeals affirmed with modification the aforesaid decision reducing the moral damages to P10,000.00 and the exemplary damages to P2,000.00. The said decision became final and executory on November 2, 1987 after this Court dismissed the petition for review filed by the petitioner.

Thereafter, private respondent filed a motion for issuance of a writ of execution with the trial court (the case was subsequently transferred to the Regional Trial Court, Branch 140), which motion was granted on January 25, 1988.[2] However, despite the writ of execution, private respondent failed to enforce the judgment.

On October 13, 1993, or five (5) years from the time of the entry of judgment, private respondent filed a complaint[3] for revival of judgment and sum of money with damages before the Regional Trial Court of Pasig, praying:

"1. Reviving the judgment in Civil Case No. 35349 and thereafter to issue the corresponding writ of execution against defendants for the enforcement thereof; and

"2. Ordering defendants to jointly and severally to pay plaintiff:

- i. The sum of P171,022.00 in their capacities as principals of a surety company under said bond;
- ii The sum of at least P100,000.00 for and as moral, exemplary, temperate and nominal damages, and
- iii The sum equivalent to 35%, or in case of appeal 45% of any and all sums awarded to or recovered by plaintiff plus P500.00 for every court appearance as and by way of attorney's fees.

"Such other reliefs just and equitable under the premises are likewise prayed for."

The complaint alleged that petitioner (defendant therein) could be served with summons at BF Homes, Pamplona Las Piñas, Metro Manila.

On November 29, 1993, Deputy Sheriff Gezzar P. Bote filed a return of service of summons, reading as follows:

"SHERIFF'S RETURN

This is to certify that I tried to serve Summons with Complaint upon the following defendants:

xxx xxx xxx

2. Leonardo Arcenas - on November 8, 1993, I tried to serve Summons with Complaint upon defendant Leonardo Arcenas at No. 206 E. Vital St., BF Homes, Pamplona Las Piñas, M.M., but I was informed by the neighbor that said defendant is already out of the country, however Atty. Rico, counsel for the plaintiff, informed the undersigned that defendant is still here and conducting his business. On November 26, 1993, I went to the place of the defendant and therein I met his mother Carmen Arcenas, but when I tried to serve the Summons with Complaint, she refused to receive it for the reason that said defendant is already in the States since June 1993.

Respectfully returned to the Honorable Court with the information that said Summons were unserved."

On December 15, 1993, private respondent filed a motion to order the sheriff to effect service of summons by substituted service upon petitioner. The motion was granted by the trial court in its order of December 16, 1993.[4]

In compliance with the court's order, the deputy sheriff on February 4, 1994, served a copy of the Alias summons[5] together with the complaint upon petitioner through his mother, Mrs. Carmen Arcenas, who refused to receive and acknowledge the same.[6]

Petitioner failed to file his answer and, upon motion by private respondent, was declared in default.[7] Thereafter, private respondent was allowed to adduce his evidence ex-parte. On March 21, 1994, the trial court rendered a decision[8] against petitioner, the dispositive portion of which reads:

"WHEREFORE, all the foregoing premises considered, judgment is hereby rendered:

"1.) Reviving the decision in Civil Case No. 35349 and for the corresponding writ of execution to be issued.

"2.) Ordering defendant Leonardo Arcenas to pay plaintiff.

"3.) a.) P171,022.00 in his capacity as one of the principals under the surety bond.

b.) P10,000.00 as moral and exemplary damages;

c) 15% of the amount recoverable as and by way of attorney's fees.

"SO ORDERED."

On March 8, 1995, a writ of execution was issued and petitioner's properties were levied.

On February 17, 1997, petitioner through his attorney-in-fact Carmelita A. Villanueva, filed with the respondent Court of Appeals a petition[9] to annul the judgment of the RTC. Petitioner asserts that the trial court never acquired jurisdiction over his person because there has been no valid service of summons. He posits that the service of summons is improper and invalid since he was already living in the United States when the summons was served and that it was served at the wrong address. Petitioner also contended that the decision of the trial court is void because it substantially amended the original decision of the RTC in Civil Case No. 35349 absolving him of any liability with regard to the return of the barge.

On June 3, 1997 the respondent Court of Appeals rendered a decision dismissing the petition and declaring that the petitioner was validly served with summons. The respondent court noted:

" xxx xxx xxx

"Considering the diametrically opposed asseverations of the petitioner and private respondent, this Court took a close look at the record and noticed the following:

"-- Intriguing circumstances. In her affidavit, Carmelita A. Villanueva, sister and attorney-in-fact of petitioner Leonardo Arcenas, averred that her brother left the Philippines 'on or about April 19, 1991' and that 'since then, my brother has not returned.' (Annex "N" of the Petition). On the other hand, the Sheriff's Return of November 29, 1993 showed that petitioner's mother, Carmen Arcenas, refused to receive the summons being served because the petitioner was allegedly 'already in the States since June 1993.' Such conflicting dates baffled this Court, taking note further of the Sheriff's Return of April 15, 1994 portraying a statement of BF Homes Security Guard Rolly Penaflorida that defendant Leonardo Arcenas, petitioner herein, 'occasionally visit the place.' Worse as already stated, no evidence was presented, as to when the petitioner actually left the Philippines -- if he really did leave. Where in the United States do the petitioner and wife stay, assuming they are actually abroad? Was the alleged departure designed to escape liability in the Philippines?

"-- Presumption of regularity. The afore-mentioned Sheriff's Returns, as aptly stated by the private respondent, are clothed with the mantle of presumption of regularity under Section 3(m), Rule 131 of the New Rules on Evidence (Capulong vs. Court of Appeals, 185 SCRA 215) -- and said presumption was not punctured. Thus, as between the unsubstantiated and self-serving pretensions of the petitioner and the return of the respondent sheriff, whose motive was not impeached by evidence, this Court is more inclined to give credence to the latter. xxx xxx xxx." [10]

Petitioner now impugns the aforequoted decision, assigning the following errors:

- 1 The original decision of the Regional Trial Court as modified by the Court of Appeals and affirmed by the Supreme Court is already final and executory, hence, it could no longer be amended or altered.
2. The decision of the RTC modified and altered the original decision.
3. Petitioner has already satisfied the judgment rendered in Civil Case No. 63751.
4. Petitioner's right to due process of law was violated.

The question that we shall first address and which is the focal point in the case is whether or not the trial court acquired jurisdiction over the person of the petitioner.

Service of summons upon the defendant is essential in order for the court to acquire of jurisdiction over his person. The summons must be served to the defendant in person "by handing a copy thereof to the defendant in person, or, if he refuses to receive it, by tendering it to him." [11] If personal service cannot be effected within a reasonable time, 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

defendants' office or regular place of business with some competent person in charge thereof.[12]

If the defendant is temporarily out of the country, summons may, by leave of court, be effected outside of the Philippines by substituted service or by publication.[13] However, if the defendant does not reside and is not found in the Philippines, summons may be effected, by leave of court, by personal service or by publication; or other sufficient manner as determined by the court, provided that the action affects the personal status of the plaintiff residing in the Philippines; or when the action relates to, or the subject of which involves property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; or when the relief demanded on such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; or when the non-resident defendant's property has been attached within the Philippines.[14]

Petitioner is no longer residing and found in the Philippines. He left for the United States in June of 1993 as evidenced by the Sheriff's Return. Hence, summons may be served on him either personally or by publication. However, since the complaint filed against him is one in personam (a personal action) and does not involve the personal status of the private respondent, nor any property in the Philippines in which petitioner has or claim or an interest, or which the private respondent has attached, summons should be served on him personally. The deputy sheriff can not serve the summons by substituted service.

In *Panteleon vs. Asuncion*[15] we ruled:

"x x x, it is a well-settled principle of Constitutional Law that, in an action strictly in personam, like the one at bar, personal service of summons, within the forum, is essential to the acquisition of jurisdiction over the person of the defendant, who does not voluntarily submit himself to the authority of the court. x x x

'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.'"

Having failed to serve the summons on the person of the petitioner, the Regional Trial Court did not validly acquire jurisdiction over him. Consequently, the proceedings held is null and void.

Even assuming that the trial court had acquired jurisdiction over the person of the petitioner, still, the judgment rendered by it is a nullity for the reason that the original judgment which was the subject of the action for revival was substantially modified.

In Civil Case No. 35349, the judgment of the trial court ordered only petitioner's co-defendant Emilio Espino to return the barge 'MV Sta. Lucia I' to private respondent Jose de la Riva and to pay P 48,000.00 a month as unrealized profit from February 3, 1980 or until June 18, 1980. The said judgment absolved petitioner from any liability insofar as the barge is concerned but found him jointly liable to private respondent and Antonio Sy, Sr., for moral and exemplary damages.

On the other hand, the revived judgment now subject of this case, substantially modified the original judgment by directing petitioner to pay private respondent the sum of P171,022.00 representing double the value of the barge; P10,000.00 as moral and exemplary damages; and 15% of the amount recoverable by way of attorney's fees.

These new monetary awards can not be allowed since they were not adjudged in the original judgment which had long become final and executory. For, it is a fundamental rule that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of

whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The only recognized exceptions are the correction of clerical errors or the making of so-called nunc pro tunc entries which cause no prejudice to any party, and, of course, where the judgment is void.[16] Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.[17]

The purpose of the action for revival of a judgment is not to modify the original judgment subject of the action but is merely to give a creditor a new right of enforcement from the date of revival.[18] The rule seeks to protect judgment creditors from wily and unscrupulous debtors who, in order to evade attachment or execution, cunningly conceal their assets and wait until the statute of limitation sets in.[19]

WHEREFORE, the petition is hereby GRANTED. The Decision of the Court of Appeals dated June 3, 1997 in CA-G.R. SP. No. 43407 is hereby REVERSED and SET ASIDE.

SO ORDERED.

Melo (Acting Chairman), Puno, and Mendoza JJ., concur.

[1] Penned by Justice Ramon Mabutas, Jr. and concurred in by Justices Portia Aliño-Hormachuelos and Bernardo LL. Salas, pp. 29-39, Rollo.

[2] Annex "D", p. 52, Rollo.

[3] Annex "F", pp. 54-60, Id.

[4] P.106, Rollo.

[5] P. 63, Ibid.

[6] P. 63, Ibid.

[7] P. 108, Ibid.

[8] Annex "H". pp. 65-70, Ibid.

[9] Annex "I", pp. 71-88, Rollo.

[10] Annex "A", pp. 9-10; CA Decision, pp. 37-38, Rollo

[11] Sec. 6, Rule 14, 1997 Rules of Civil Procedure.

[12] Sec. 7, Rule 14, Ibid.

[13] Sec. 16 Rule 14, Ibid.

[14] The Dial Corporation vs. Soriano, 161 SCRA 740.; Sec.15, Rule 14, Ibid.

[15] 105 Phil. 765, cited in Magdalena Estate, Inc. vs Nieto, 125 SCRA 761.

[16] Manning International Corporation vs. NLRC, 195 SCRA 155, 161 [1991], cited in Nuñal vs. Court of Appeals, 221 SCRA 26, 32 [1993].

[17] Francisco vs. Bautista, 192 SCRA 388, 392 [1990], cited in Nuñal vs. Court of Appeals, ibid.

[18] Companña General de Tabacos vs. Maritnez, 29 Phil. 515, 519, cited in Philippine National Bank vs.

Bondoc, 14 SCRA 771.

[19] Philippine National Bank vs. Bondoc, *supra*.

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