

VICENTA PANTALEON, PLAINTIFF AND APPELLEE, VS. HONORATO ASUNCION, DEFENDANT AND APPELLANT.

G.R. No. 13141. May 22, 1959

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by defendant Honorato Asuncion from an order denying a petition for relief from an order declaring him in default and a judgment by default.

On June 12, 1953, plaintiff, Vicenta Pantaleon, instituted this action, in the Court of First Instance of Nueva Ecija, to recover, from said Asuncion, the sum of P2,000.00, with interest thereon, in addition to attorney's fees. The summons originally issued was returned by the sheriff of Nueva Ecija unserved, with the statement that, according to reliable information, Asuncion was residing in B-24 Tala Estate, Caloocan, Rizal. An alias summons was issued, therefore, for service in the place last mentioned.

However, the provincial sheriff of Rizal returned it unserved, with the information that Asuncion had left the Tala Estate since February 18, 1952, and that diligent efforts to locate him proved to no avail. On plaintiff's motion, the court ordered, on March 9, 1955, that defendant be summoned by publication, and the summons was published on March 21 and 28, and April 4, 1955, in the "Examiner", said to be a newspaper of general circulation in Nueva Ecija. Having failed to appear or answer the complaint within the period stated in the summons, defendant was, by an order dated July 12, 1955, declared in default. Subsequently, or on September 8, 1955, after a hearing held in the absence of the defendant and without notice to him, the court rendered judgment for the plaintiff and against said defendant, for the sum of P2,300.00, with interest thereon at the legal rate, from October 28, 1948, and costs.

About forty-six (46) days later, or on October 24, 1955, the defendant filed a petition for relief from said order of July 12, 1955, and from said judgment, dated September 8, 1955, upon the ground of mistake and excusable negligence. Annexed to said petition were defendant's affidavit and his verified answer. In the affidavit, Asuncion stated that, on September 26, 1955, at 34 Pitimine Street, San Francisco del Monte Quezon City, which is his residence, he received notice of a registered letter at the Post Office in San Jose, Nueva Ecija, his old family residence; that he proceeded immediately to the latter municipality to claim said letter, which he received on September 28, 1955; that the letter contained copy of said order of July 12, 1955, and of the judgment of September 8, 1955, much to his surprise, for he had not been summoned or notified of the hearing of this case; that had copy of the summons and of the order for its publication been sent to him by mail, as provided in Rule 7, section 21, of the Rules of Court said summons and order would have reached him, "as the judgment herein had"; and that his failure to appear before the court is excusable it being due to the mistake of the authorities concerned in not complying with the provisions of said section.

Upon denial of said petition for relief, defendant perfected his present appeal, which is predicated upon the theory that the aforementioned summons by publication had not been made in conformity with the Rules of Court. More

specifically, defendant maintains that copy of the summons and of the order for the publication thereof were not deposited "in the post office, postage prepaid, directed to the defendant by ordinary mail to his last known address", in violation of Rule 7, section 21, of the Rules of Court, and that, had this provision been complied with, said summons and order of publication would have reached him, as had the decision appealed from. Said section 21 reads:

"If the service has been made by publication, service may be proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager, to which affidavit a copy of the publication shall be attached, and by an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by ordinary mail to his last known address** (Italics supplied.)

Plaintiff alleges, however, that the provision applicable to the case at bar is not this section 21, but section 16, of Rule 7, of the Rules of Court, which provides:

"Whenever the defendant is designated as an unknown owner, or the like, or whenever the address of a defendant is unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effect upon him by publication in such places and for such times as the court may order."

It is, moreover, urged by the plaintiff that the requirement, in Said section 21, of an affidavit showing that copy of the summons and of the order for its publication had been sent by mail to defendant's last known address, refers to the extraterritorial service of summons, provided for in section 17 of said Rule 7, pursuant to which:

"When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 7; or by registered mail; or by publication in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by ordinary mail to the last known address of the defendant; or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer."

Said section 21, however, is unqualified. It prescribes the "proof of service by publication", regardless of whether the defendant is a resident of the Philippines or not. Section 16 must be read in relation to section 21, which complements it. Then, too, we conceive of no reason, and plaintiff has suggested none, why copy of the summons and of the order for its publication should be mailed to non-resident defendants, but not to resident defendants. We can not even say that defendant herein, who, according to the return of the Sheriff of Nueva Ecija, was reportedly residing in Rizal—where he, in fact (San Francisco del Monte and Quezon City used to be part of Rizal), was residing—could reasonably be expected to read the summons published in a newspaper said to be a general circulation in Nueva Ecija.

Considering that strict compliance with the terms of the statute is necessary to confer jurisdiction through service by publication (*Bachrach Garage and Taxi Co. vs. Hotchkiss and Co.*, 34 Phil., 506; *Banco Espanol-Filipino vs. Palanca*, 37 Phil., 921; *Mills vs. Smiley*, 9 Idaho 317, 325, 76 Pac. 785; *Charles vs. Marrow*, 99 Mo. 638; *Sunderland*, *Cases on Procedure, Annotated, Trial Practice*, p. 51), the conclusion is inescapable that the lower court had no authority whatsoever to Issue the order of July 12, 1955, declaring the defendant in default and to render the decision of September 8, 1955, and that both are null and void ab initio.

Apart from the foregoing, 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. In other words, summons by publication cannot—consistently with the due process clause in the Bill of Rights— confer upon the court jurisdiction over said defendant.

"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. * * *

"Although a state legislature has more control over the form of service on its own residents than nonresidents, it has been held that in actions in personam * * * service by publication on resident defendants, who are personally within the state and can be found therein is not 'due process of law', and a statute allowing it is unconstitutional" (16A C.J.S., pp. 786, 789; Italics ours.)

Lastly, from the viewpoint of substantial justice and equity, we are of the opinion that defendant's petition for relief should have been granted. To begin with, it was filed well within the periods provided in the Rules of Court. Secondly, and, this is more important, defendant's verified answer, which was attached to said petition, contains allegations which, if true, constitute a good defense. Thus, for instance, in paragraph (2) of the "special denials" therein, he alleged:

"That it is not true that he failed to pay the said indebtedness of his said wife, as alleged in paragraph 3 of the complaint, for as a matter of fact, plaintiff and defendant agreed upon a settlement of the said indebtedness of the latter's deceased wife on December 5, 1948, whereby defendant was allowed to pay it out of his monthly salary by installment of P10.00 monthly beginning January, 1949, and in accordance therewith, defendant paid unto plaintiff the following sums:

Instalment for January—February, 1948

March 1949—

P 30.00

paid personally

April 2, 1949—

10.00

by money order

7483

May 11, 1949—

10.00

by money order

7921

June 10, 1949—

10.00

by money order

8230

July 11, 1949—

10.00

by money order

8595

August 10, 1949—

10.00

by money order

8943

September 1949—

10.00

paid personally

October 1949—

10.00

paid personally

November 14, 1949—

10.00

by money order

9776

December 13, 1949—

10.00

by money order

10076

January 10, 1950—

10.00

by money order

10445

February 9, 1950—

10.00

by money order

10731

March 10, 1950—

10.00

by money order

1149

April 10, 1950—

10.00

by money order

11387

May 11, 1950—

10.00

by money order

11990

June 12, 1950—

10.00

by money order

61055

July 11, 1950—

10.00

by money order

58850

August 11, 1950—

10.00

by money order

59293

September 6, 1950—

10.00

by money order

59618

October 10, 1950—

10.00

by money order

60008

November 8, 1950—

10.00

by money order

60369

December 1950—

10.00

paid personally

January 2, 1951—

10.00

paid personally

February 10, 1951—

10.00

paid personally

March 12, 1951—

10.00

paid personally

April 1951—

10.00

paid personally

May 1951—

10.00

paid personally

June 1951—

10.00

paid personally

July 1951—

10.00

paid personally

August 1951—

10.00

paid personally

September 1951—

10.00

paid personally

November 1951—

10.00

paid personally

December 1951—

10.00

paid personally

September 1952—

30.00

paid personally

December 1952—

20.00

paid personally

January 1953—

10.00

paid personally

February 1953—

10.00

paid personally

March 1953—

10.00

paid personally

April 1953—

10.00

paid personally

May 1953—

10.00

Total paid —P460.00"

The specification of the dates of payment, of the amounts paid each time, of the manner in which each payment was made, and of the number of the money orders in which eighteen (18) payments had been effected, constitutes a strong indication of the probable veracity of said allegation, fully justifying the grant of an opportunity to prove the same.

Wherefore, said order of July 12, 1955, and the aforementioned decision of September 8, 1955, are hereby set aside and annulled, and let the record of this case be remanded to the lower court for further proceedings, with costs against plaintiff-appellee. It is so ordered.

Paras, C, J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Endencia, JJ., concur.

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