

**REGALADO P. SAMARTINO, PETITIONER, VS. LEONOR B. RAON,
AGUSTIN G. CRISOSTOMO, THE MUNICIPAL TRIAL COURT OF
NOVELETA, CAVITE, HON. MANUEL A. MAYO, REGIONAL TRIAL
COURT, BRANCH 16...***G.R. No. 131482. July 03, 2002*

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-131482/>**YNARES-SANTIAGO, J.:**

Respondents Leonor Bernardo-Raon and Agustin G. Crisostomo are the surviving sister and spouse, respectively, of the late Filomena Bernardo-Crisostomo, who passed away on May 17, 1994. Among the properties left by the deceased was her one-half share in a parcel of land in Noveleta, Cavite, registered under Transfer Certificate of Title No. T- 131898 in the name of co-owners Lido Beach Corporation and Filomena Bernardo.

On January 25, 1996, respondents instituted against petitioner Regalado P. Samartino a complaint for ejectment, docketed as Civil Case No. 744 of the Municipal Trial Court of Noveleta, Cavite.[1] They alleged that during the lifetime of Filomena Bernardo, she leased her share in the property to petitioner for a period of five years counted from 1986; that the said lease expired and was not extended thereafter; and that petitioner refused to vacate the property despite demands therefor.

Summons was served on Roberto Samartino, brother of petitioner.[2] At the time of service of summons at petitioner's house, he was not at home as he was then confined at the National Bureau of Investigation Treatment and Rehabilitation Center (NBI-TRC), Tagaytay City since January 19, 1996, where he was undergoing treatment and rehabilitation for drug dependency. Thus, on February 2, 1996, a liaison officer of the NBI-TRC appeared before the trial court with a certification that petitioner will be unable to comply with the directive to answer the complaint within the reglementary period, inasmuch as it will take six months for him to complete the rehabilitation program and before he can be recommended for discharge by the Rehabilitation Committee.[3]

The trial court, despite the written certification from NBI-TRC, granted respondents' motion to declare petitioner in default and ordered them to present evidence ex-parte. On March 21, 1996, the trial court rendered judgment in favor of respondents as follows:

FROM THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiffs and against the defendant ordering the latter and other person/s claiming rights under him:

- To vacate immediately the land in question after the finality of the decision.
- For the defendant to pay the plaintiffs the sum of P5,000.00 monthly from January, 1992 up to the time he surrenders the premises considered as damages for the use of the subject land.
- For the defendant to pay the plaintiffs P 10,000.00 as and for attorney's fees with an additional P800.00 as appearance fees.

- To pay the plaintiffs P 100.00 as filing fee.

SO ORDERED.[4]

After learning of the adverse decision against him, petitioner's counsel filed with the Regional Trial Court of Cavite City, Branch 16, a motion to set aside judgment. The motion was treated as an appeal and docketed as Civil Case No. N-6281. On July 18, 1996, the RTC affirmed the decision of the MTC.[5]

The aforesaid decision became final. Accordingly, the court of origin issued on September 17, 1996 a writ of execution.[6] Petitioner was given a grace period of one month within which to vacate the premises. His real property situated in Noveleta, Cavite, covered by Transfer Certificate of Title No. T-283572, was levied and sold at public auction to respondents in full satisfaction of the monetary award.[7]

On November 25, 1996, petitioner filed with the Regional Trial Court of Cavite City, a petition for relief from judgment, docketed as Civil Case No. N-6393.[8] In support thereof, petitioner submitted an affidavit of merit,[9] alleging in fine that the parcel of land from which he was being evicted had been sold to him by Filomena Bernardo-Crisostomo, as evidenced by the Deed of Absolute Sale dated December 13, 1988.[10]

The following day, November 26, 1996, the RTC issued an Order dismissing the petition for relief from judgment.[11] Petitioner's Motion for Reconsideration was denied on December 12, 1996. A second Motion for Reconsideration was likewise denied on January 14, 1997.[12] On the same day, a writ of demolition was issued commanding the sheriff to remove the building and improvements made by petitioner on the subject premises and to deliver the possession thereof to respondents.[13]

Petitioner thus filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 43202.[14] On August 29, 1997, the Court of Appeals dismissed the petition.[15] Petitioner's Motion for Reconsideration was denied on November 14, 1997.[16] Hence this petition for review.

The petition is impressed with merit.

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. If efforts to serve the summons personally to defendant is impossible, 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 residing therein, or by leaving the copies at the defendant's office or regular place of business with some competent person in charge thereof. Otherwise stated, service of summons upon the defendant shall be by personal service first and only when the defendant cannot be promptly served in person will substituted service be availed of.[17]

Rule 14 of the 1997 Rules of Civil Procedure clearly provides:

Sec. 6. Service in person on 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.

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 then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

We have long 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 is only under exceptional terms that the circumstances

warranting substituted service of summons may be proved by evidence aliunde. 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, the resort to a substituted service must be duly justified. Failure to do so would invalidate all subsequent proceedings on jurisdictional grounds.[18]

In this connection, Supreme Court Administrative Circular No. 59 was issued on November 19, 1989 to stress the importance of strict compliance with the requisites for a valid substituted service, to wit:

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 xxx 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.

In the case at bar, the sheriff's Return of Summons simply states:

This is to certify that on this date: 26[th] day of January I have caused the service of summons, together with the attached complaint and its annexes issued in the above entitled case upon defendant REGALADO SAMARTINO thru ROBERTO SAMARTINO, Brother of the defendant acknowledge receipt of said court processes by affixing his signature at the lower left portion of the original summons hereto attached.

WHEREFORE, the attached original summons is hereby respectfully returned to the court of origin duly served for information and record purposes.

Noveleta, Cavite, February 9, 1996.[19]

Clearly, the above return failed to show the reason why personal service could not be made. It failed to state that prompt and personal service on the defendant was rendered impossible. It was not shown that efforts were made to find the defendant personally and that said efforts failed; hence the resort to substituted service. As stated above, these requirements are indispensable because substituted service is in derogation of the usual method of service. It is an extraordinary method since it seeks to bind the defendant to the consequences of a suit even though notice of such action is served not upon him but upon another whom law could only presume would notify him of the pending proceedings. For this reason, failure to faithfully, strictly, and fully comply with the requirements of substituted service renders said service ineffective.[20]

Furthermore, nowhere in the return of summons or in the records of this case is it shown that petitioner's brother, on whom substituted service of summons was effected, was a person of suitable age and discretion residing at

petitioner's residence.

There being no valid substituted service of summons, the trial court did not acquire jurisdiction over the person of petitioner. It should be emphasized that the service of summons is not only required to give the court jurisdiction over the person of the defendant, but also to afford the latter an opportunity to be heard on the claim made against him. Thus, compliance with the rules regarding the service of summons is as much an issue of due process as of jurisdiction. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of his defense. It is elementary that before a person can be deprived of his property, he should first be informed of the claim against him and the theory on which such claim is premised.[21]

By reason of the ineffective service of summons, petitioner was not duly apprised of the action against him. Consequently, he was prevented from answering the claims against him. He was not given a chance to be heard on his defenses. What made matters worse was that the trial court had actual knowledge that petitioner was then indisposed and unable to file his answer to the complaint, as he was then confined at the NBI-TRC. The trial court's failure to give petitioner a reasonable opportunity to file his answer violated his right to due process. Perforce, the judgment rendered against petitioner is nugatory and without effect.

The trial court should not have been too rash in declaring petitioner in default, considering it had actual notice of valid reasons that prevented him from answering. Well-settled is the rule that courts should be liberal in setting aside orders of default for default judgments are frowned upon, unless in cases where it clearly appears that the reopening of the case is intended for delay. The issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.[22]

Suits should as much as possible be decided on the merits and not on technicalities. In this regard, we have often admonished courts to be liberal in setting aside orders of default as default judgments are frowned upon and not looked upon with favor for they may amount to a positive and considerable injustice to the defendant and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that this Court is empowered to suspend its operation, or except a particular case from its operation, when the rigid application thereof tends to frustrate rather than promote the ends of justice. We are not unmindful of the fact that during the pendency of the instant petition, the trial court has rendered judgment against petitioners. However, being the court of last resort, we deem it in the best interest that liberality and relaxation of the Rules be extended to petitioners by setting aside the order of default issued by the trial court and the consequent default judgment; otherwise, great injustice would result if petitioners are not afforded an opportunity to prove their claims.[23]

In addition, the Regional Trial Court committed reversible error in dismissing the petition for relief from judgment for having been filed out of time. According to the Regional Trial Court, the petition for relief, filed on November 25, 1996, was late because petitioner had actual knowledge of the judgment in the ejectment case since March 1996. The period within which to file a petition for relief should have been reckoned from the date petitioner learned of the judgment of the Regional Trial Court. It should not have been counted from the date of the Municipal Trial Court's decision because, precisely, petitioner appealed the same. It was the Regional Trial Court's decision that became final and, hence, was the proper subject of the petition for relief from judgment. It is axiomatic that a petition for relief is only available against a final and executory judgment.[24]

Section 3, Rule 38, of the 1997 Rules of Civil Procedure provides that a verified petition for relief must be filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside

and not more than six (6) months after such judgment or final order has been entered or such proceeding has been taken. It must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting petitioner's good and substantial cause of action or defense.[25]

It is not clear from the records of the case at bar when petitioner learned of the decision of the Regional Trial Court affirming the judgment of the Municipal Trial Court. What appears is that the said decision became final only on August 15, 1996, and must have been entered sometime thereafter. Hence, the petition for relief filed on November 25, 1996 was well within the six-month period prescribed by the Rules.

Finally, the records show that petitioner raised a meritorious defense in his affidavit of merit. He alleged therein that the property from which he was being ejected had been sold to him by its registered owner. Ownership is a valid defense in unlawful detainer cases. While possession is the main issue in ejectment, it is also one of the essential attributes of ownership. It follows that an owner of real property is entitled to possession of the same. Petitioner can, therefore, properly plead his right of possession to defeat that of respondents. Indeed, an owner who cannot exercise the seven "juses" or attributes of ownership — the right to possess, to use and enjoy, to abuse or consume, to accessories, to dispose or alienate, to recover or vindicate and to the fruits — is a crippled owner.[26]

All told, the Municipal Trial Court of Noveleta and the Regional Trial Court of Cavite City did not have jurisdiction over the person of petitioner. Hence, all proceedings had as regards petitioner were null and void. Necessarily, the enforcement of the writ of execution as well as the sale at public auction of petitioner's real property to satisfy the void judgment must also be declared of no legal effect.

There is a real need to resolve the issue of ownership over the premises in order to determine who, as between petitioner and respondents, has a better right to possess the property in dispute. This can only be done in the proper proceeding before the trial court wherein petitioner will be afforded every right to present evidence in his behalf.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 43202 is REVERSED and SET ASIDE. This case is REMANDED to the Municipal Trial Court of Noveleta, Cavite, which is directed to continue proceedings in Civil Case No. 744 by affording petitioner Regalado P. Samartino a chance to file his answer and present evidence in his defense, and thereafter to hear and decide the case. The Writ of Execution dated September 17, 1996, the Writ of Demolition dated January 14, 1997, and the certificate of sale over Transfer Certificate of Title No. T-283572, as well as all acts and deeds incidental to the judgment in Civil Case No. 744, are declared NULL AND VOID.

SO ORDERED.

Davide, Jr., C.J., Vitug, Kapunan, and Austria-Martinez, JJ., concur.

[1] Rollo, pp. 37-40.

[2] Ibid., p. 41.

[3] Ibid., pp. 51-52.

[4] Ibid., pp. 42-46, at 46; penned by Judge Antonio G. Mirano.

[5] Ibid., pp. 53-63; penned by Judge Manuel A. Mayo.

[6] Ibid., pp. 66-67.

- [7] Ibid., pp. 71, 199.
- [8] Ibid., pp. 77-90.
- [9] Ibid., pp. 73-74.
- [10] Ibid., pp. 75-76.
- [11] Ibid., pp. 91-93; penned by Judge Rolando D. Diaz.
- [12] Ibid., p. 120.
- [13] Ibid., pp. 155-156.
- [14] Ibid., pp. 121-154.
- [15] Ibid., pp. 172-180; penned by Associate Justice Delilah Vidallon-Magtolis; concurred in by Associate Justices Cancio C. Garcia and Hilarion L. Aquino.
- [16] Ibid., p. 196.
- [17] Talsan Enterprises, Inc. v. Baliwag Transit, Inc., 310 SCRA 156, 162-163 [1999].
- [18] Madrigal v. Court of Appeals, 319 SCRA 331, 336 [1999].
- [19] Rollo, p. 41.
- [20] Hamilton v. Levy, 344 SCRA 821, 829 [2000]; Umandap v. Sabio, 339 SCRA 243, 248 [2000], citing Venturanza vs. Court of Appeals, 156 SCRA 305 [1987]; Miranda v. Court of Appeals, 326 SCRA 278, 283 [2000].
- [21] Ang Ping v. Court of Appeals, 310 SCRA 343, [1999].
- [22] Lorbes v. Court of Appeals, 351 SCRA 716, 724 [2001].
- [23] Diaz v. Diaz, 331 SCRA 302, 322-323 [2000].
- [24] Valencia v. Court of Appeals, 352 SCRA 72, 81 [2001].
- [25] Public Estates Authority v. Yujuico, 351 SCRA 280, 291 [2001].
- [26] Bustos v. Court of Appeals, 350 SCRA 155, 161-162 [2001].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.