

CIPRIANO M. LAZARO, PETITIONER, VS. RURAL BANK OF FRANCISCO BALAGTAS (BULACAN), INC. THE REGISTER OF DEEDS OF VALENZUELA CITY, RESPONDENTS.

G.R. No. 139895. August 15, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review is the Court of Appeals' resolution[1] dated June 15, 1999, in CA-G.R. SP No. 52504, which denied petitioner Cipriano M. Lazaro's petition for declaration of nullity of the decision,[2] dated May 5, 1985 of the Regional Trial Court of Malolos, Bulacan, Branch 11, in Civil Case No. 7355-M, as well as the decision[3] dated August 19, 1988 of the RTC of Valenzuela City, Branch 172 in Civil Case No. 2856-V-88. Likewise assailed herein is the appellate court's resolution,[4] dated August 26, 1999, denying petitioner's motion for reconsideration.

The facts are gleaned from the records including the memoranda of the parties.

Petitioner Cipriano M. Lazaro obtained a loan from respondent Rural Bank of Francisco Balagtas (Bulacan), Inc., (RFBI for brevity). Apparently, Lazaro failed to pay said loan on March 12, 1984. RFBI sued him before the RTC of Malolos, Bulacan, for collection of deficiency in the payment of the loan. The case was docketed as Civil Case No. 7355-M.

In its complaint, RFBI gave Lazaro's address as No. 856 Esteban Street, Dalandanan, Valenzuela, Metro Manila. On March 16, 1984, summons was accordingly served upon petitioner at said address.[5] Petitioner did not answer, hence, the trial court declared him in default. An ex-parte hearing then proceeded. On May 5, 1985, the trial court disposed of Civil Case No. 7355-M as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff, Rural Bank of Francisco Balagtas (Bulacan) Inc. ordering the defendant, Cipriano Lazaro, to pay to the plaintiff, the following:

- (a) The amount of P35,336.41 constituting the deficiency or balance remaining unpaid of the defendants' obligation; plus 5% thereon per annum from date of filing this complaint on March 12, 1984 until the amount shall have been fully paid;
- (b) The amount of P3,000.00 which is fixed by the court as reasonable attorney's fees in this instant, which is not necessarily 10% of the amount of the deficiency involved; and,
- (c) The costs of this action.

SO ORDERED.[6]

Respondent bank then sought to enforce judgment against petitioner's property consisting of a lot and apartment units located at No. 856 Esteban Street, Dalandanan, Valenzuela City and covered by Transfer Certificate of Title

No. T-(168497) 72193.

In 1988, RFBI instituted another suit against petitioner docketed as Civil Case No. 2856-V-88 before the RTC of Valenzuela City. The complaint again indicated petitioner's address as 856 Esteban Street, Dalandanan, Valenzuela City. Summons was again served accordingly.[7] As in Civil Case No. 7355-M, Lazaro failed to file an answer or responsive pleading and the trial court declared him in default. On August 19, 1988, RFBI obtained a favorable decision in Civil Case No. 2856-V-88, in this wise:

WHEREFORE, judgment is hereby rendered in favor of the petitioner and against respondent, directing the:

Respondent Cipriano Lazaro or any person holding the Transfer Certificate of Title No. T-(168497) 72193 to surrender it to the Register of Deeds and/or Provincial Assessor of Valenzuela, Metro Manila within five (5) days from receipt hereof;

Register of Deeds or Provincial Assessor of Valenzuela, Metro Manila to cancel and/or annul Transfer Certificate of Title No. T-168497 and in lieu thereof, issue a new Transfer Certificate of Title in the name of the petitioner Rural Bank of Francisco Balagtas (Bulacan) in the event of the failure and refusal of the respondent to surrender Original/Transfer Certificate of Title No. T-168497;

Respondent to pay the amount of P7,000.00 as reasonable attorney's fees; and

To pay the costs of suit.

SO ORDERED.[8]

A writ of execution was issued and served at petitioner's actual residence at No. 12 Ricardo Street, Brgy. Katipunan, Quezon City. On December 15, 1998, RFBI caused the cancellation of petitioner's title to the subject land and secured a new one in its name. Subsequently, RFBI moved to require the City Assessor of Valenzuela City to issue a tax declaration under its name on the building erected on petitioner's land. However, this motion was denied by the RTC of Valenzuela City in an Order dated April 8, 1999. The trial court ruled that the issuance of a tax declaration was not necessary for its decision to be implemented. It found the tax declaration to be an administrative matter between RFBI and the City Assessor.

On April 29, 1999, Lazaro filed a petition, docketed as CA-G.R. CV No. 52504, for declaration of nullity of judgments in Civil Case No. 7355-M and Civil Case No. 2856-V-88 before the Court of Appeals on the grounds of fraud and misrepresentation. Lazaro alleged that RFBI did not indicate in its complaints his true address thereby depriving him the opportunity to participate in the hearing of said cases. Hence, his right to due process was violated and this rendered the judgments in the trial courts void ab initio.

On June 15, 1999, the Court of Appeals denied the petition. The appellate court pointed out that Lazaro failed to justify why he did not avail of the other ordinary and appropriate remedies provided in Section 1,[9] Rule 47 of the 1997 Rules of Civil Procedure, before filing CA-G.R. CV No. 52504. The appellate court likewise found nothing fraudulent in the misstatement of petitioner's real address as petitioner also owned the property found in the address indicated in the complaints. Regardless of whether or not it was his actual residence, according to the appellate court, petitioner would eventually receive all his mail matters addressed thereat. Finally, the Court of Appeals declared that the action to annul judgment had already prescribed because Section 3,[10] Rule 47, gave petitioner only four (4) years from discovery of fraud within which to file his action. Lazaro supposedly learned of the alleged fraud sometime in 1985 and on May 5, 1988, respectively and yet he only filed CA-G.R. CV No. 52504 on April 28, 1999, or after almost 11 years after discovery of the alleged fraud.

Lazaro then moved for reconsideration, but this was likewise denied by the appellate court.

Hence, the instant petition raising the following issues:

- WHETHER OR NOT THE PETITION FOR ANNULMENT OF JUDGMENTS FILED WITH THE COURT A QUO FAILED TO ALLEGE THAT THE ORDINARY REMEDIES OF NEW TRIAL, APPEAL, PETITION FOR RELIEF FROM JUDGMENT OR OTHER MORE APPROPRIATE REMEDIES WERE NOT AVAILABLE TO HIM AFTER THE ASSAILED DECISIONS HAVE BEEN RENDERED.
- WHETHER OR NOT THE PETITION BEFORE THE COURT A QUO STATES A VALID GROUND FOR ANNULMENT OF JUDGMENTS.[11]

On the first issue, petitioner contends that since he became aware of the judgments in Civil Cases Nos. 7355-M and 2856-V-88 only when RFBI tried to enforce the writs of execution, this is sufficient reason why the ordinary remedies enumerated in Section 1, Rule 47 of the 1997 Rules of Civil Procedure, were no longer available to him.

Let it be stressed at the outset that before a party can avail of the reliefs provided for by Rule 47, i.e., annulment of judgments, final orders, and resolutions, it is a condition sine qua non that one must have failed to move for new trial in, or appeal from, or file a petition for relief against said issuances or take other appropriate remedies thereon, through no fault attributable to him. If he failed to avail of those cited remedies without sufficient justification, he cannot resort to the action for annulment provided in Rule 47, for otherwise he would benefit from his own inaction or negligence.[12]

In the instant case, not only did petitioner fail to avail of the ordinary and appropriate remedies in assailing the questioned judgments of the trial courts, but he also failed to show to the satisfaction of this Court that he could not have availed of the ordinary and appropriate remedies under the Rules. According to petitioner, he allegedly learned of the cases filed against him by respondent bank only when writs of execution were issued against him. At the very least then, he could have moved to quash the writs of execution. In the alternative, he could have filed a petition for relief of judgment under Rule 38.[13] Instead, petitioner merely alleged that he approached Atty. Gregorio Salazar, the bank's counsel, for clarification and assistance, which is not one of the ordinary and appropriate remedies contemplated by the Rules. Petitioner's failure to explain why he failed to avail of said remedies, which were still available to him at that time, in both Civil Case No. 7355-M and Civil Case No. 2856-V-88, is fatal to his cause. To be sure, a petition for annulment of judgment under Rule 47 is not a substitute for one's own neglect in not availing of the ordinary and appropriate remedies, but a peculiar remedy granted under certain conditions to those who failed to avail of the ordinary remedies without their fault. Thus, in our considered view, based on the cited reasons and circumstances, the Court of Appeals did not err when it denied the petition for annulment of judgment.

On the second issue, petitioner argues that lack of jurisdiction is one of the grounds for annulment of judgment, which an aggrieved party can file before he is barred by laches or estoppel. He insists that the respective RTCs, which rendered the assailed judgments in Civil Cases Nos. 7355-M and 2856-V-88, did not acquire jurisdiction over him because he was not properly served with summons at his actual residence at No. 12 Ricardo Street, Brgy. Katipunan, Quezon City, where he had been residing since 1983. Although he owned the property located at No. 856 Esteban Street, Dalandanan, Valenzuela, Metro Manila, he did not actually reside thereat and hence, the trial courts acted contrary to the provisions of Section 7, Rule 14,[14] which requires that service be done by leaving copies of the summons at the defendant's residence. Hence, the certifications of the respective process servers of the two trial courts that they personally served summons to him were not true, for they could not possibly reach him in his actual residence which was not indicated in the complaint. Further, the certifications submitted by respondents were not even certified true copies, he added, hence they do not have any probative value.

FRBI replies that petitioner was personally served with summons by the process servers, as evidenced by the certified true copies of the process servers' respective returns.[15]

Service of summons upon the defendant is necessary in order that a court could acquire jurisdiction over his person.[16] In this case, despite petitioner's asseverations, we find sufficient basis to conclude that the respective summons in both Civil Case No. 7355-M and Civil Case No. 2856-V-88 were properly served on him.

Section 6 of Rule 14, Rules of Court, lays the rule in this jurisdiction that summons must be served personally on the defendant.[17] Said provision requires that summons, whenever practicable, be served personally to the defendant, or if he refuses to receive and sign for it, by tendering it to him.[18] Service to be done personally does not mean that service is possible only at the defendant's actual residence. It is enough that defendant is handed a copy of the summons in person by anyone authorized by law. This is distinct from substituted service under Section 7, Rule 14 of the Revised Rules of Court,[19] relied upon by petitioner. Substituted service which requires that summons be served at the defendant's residence in the event personal service is not possible within a reasonable time for justifiable reasons, finds no application in this case.

That petitioner was personally served with summons in Civil Cases No. 7355-M and 2856-V-88 is attested to by the certified true copies of the process server's returns.[20] The sheriffs' 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. Unless petitioner could come forward with the requisite quantum of proof to the contrary, the presumption of regularity on the part of said sheriffs' certificate stands.[21] That private respondent did not present said certificate before the Court of Appeals is of no moment, for it was not private respondent RFBI but herein petitioner who raised the failure of personal service of summons as an issue. The burden of proving lack of jurisdiction because of lack of valid service of summons fell upon petitioner. That burden has not been satisfactorily discharged by him.

WHEREFORE, the petition is DENIED for lack of merit, and the resolutions of the Court of Appeals in CA-G.R. SP No. 52504 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Callejo, Sr., J., on leave.

[1] Rollo, pp. 40-50.

[2] Records, pp. 31-32.

[3] CA Rollo, pp. 74-76.

[4] Rollo, p. 52.

[5] Records, p. 11.

[6] Id. at 32.

[7] Rollo, p. 156.

[8] CA Rollo, p. 39.

[9] SEC. 1. Coverage. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial,

appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

[10] SEC. 3. Period for filing action. - If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel.

[11] Rollo, p. 202.

[12] Republic v. Sandiganbayan, G.R. No. 140615, 19 February 2001, 352 SCRA 235, 250.

[13] SEC. 3. Time for filing petition; contents and verification. - A petition provided for in either of the preceding sections of this Rule must be verified, 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 was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

[14] SEC. 7. Substituted Service. - If, for justifiable causes, the defendant can not 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.

[15] Rollo, pp. 154, 156.

[16] Umandap v. Sabio, Jr., G.R. No. 140244, 29 August 2000, 339 SCRA 243, 247.

[17] Ibid.

[18] 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.

[19] Supra, note 14.

[20] Rollo, pp. 154, 156.

[21] Madrigal v. Court of Appeals, G.R. No. 129955, 26 November 1999, 319 SCRA 331, 337.

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