

GONZALO R. GONZALES, PETITIONER, VS. STATE PROPERTIES CORPORATION, RESPONDENT.

G.R. No. 140765. January 25, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Rules of Court requires that an initiatory pleading with an application for a writ of preliminary injunction or temporary restraining order filed before a multiple-sala court shall be raffled only after (a) notice to and (b) in the presence of the adverse party or the person to be enjoined. These requirements may be dispensed with, however, in cases where it can be satisfactorily shown that summons could not be served despite diligent efforts. Besides, in the present case, petitioner has no reason to complain because he has been duly served the requirements, and he does not claim to represent the allegedly adversely affected parties.

Statement of the Case

Before this Court is a Petition for Review on Certiorari[1] assailing the November 22, 1999 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 54677. The CA affirmed the Order[3] of the Regional Trial Court (RTC) of Las Piñas City, setting the raffle of Civil Case No. LP-99-0077 even without notice to some of the defendants therein. The dispositive portion of the CA Decision reads as follows:

"WHEREFORE, premises considered, the petition is hereby DISMISSED."[4]

The Facts

The facts are summarized by the Court of Appeals in this manner:

"x x x [R]espondent State Properties Corporation filed a verified complaint for Recovery of Property based on ownership on March 23, 1999 with the Regional Trial Court of Las Piñas against Petitioner Gonzalo R. Gonzales and his brothers and sisters, all heirs of the late Benito Gonzales. The complaint, accompanied [by] an application for temporary restraining order and/or preliminary injunction, prayed that after trial, the Court render judgment confirming its right to take and enjoy possession of the property covered by Transfer Certificate of Title No. S-17992 together with all improvements thereon to the exclusion of the heirs of Benito Gonzales, inclusive of herein petitioner.

"The case was raffled to Branch 253 of the Regional Trial Court of Las Piñas and summons [was] duly served on Petitioner Gonzalo Gonzales.

"On April 15, 1998, Petitioner Gonzalo Gonzales filed an Omnibus Motion, praying among others, that another raffle be held because the other defendants therein did not receive any notice of raffle as required by Administrative Circular No. 20-95.

"In order to expedite the disposition of its application for injunctive relief, private respondent filed a manifestation expressing that it interpose[d] no objection to the said Omnibus Motion. Petitioner Gonzalo Gonzales then filed his Answer.

"Meanwhile, private respondent filed a Motion for Service of Summons by Publication on all the defendants

therein, except Petitioner Gonzalo Gonzales, for the reason that their residences [could] not be ascertained despite diligent inquiry. The Court (Branch 253) granted the said motion at the hearing on May 21, 1999.

"Subsequently, private respondent received a Notice of Raffle from the Office of the Clerk of Court of the Regional Trial Court of Las Piñas enjoining private respondent to attend the raffle of the case before the sala of herein public respondent on July 30, 1999 at 1:00 p.m.

"On the said date, the counsel of Petitioner Gonzales and counsel of private respondent appeared but petitioner's counsel opposed the holding of the raffle on the ground that the other defendants were not duly notified of the raffle, again invoking Administrative Circular No. 20-95. This was granted by public respondent in his Order, to wit:

`WHEREFORE, no raffle will be conducted. The Court advises the parties affected to do what is to be done for the final determination of the meaning of Administrative Circular No. 20-95, par. (1) when there are other parties whose addresses are not alleged in the complaint or with the unknown addresses.' (p. 22, Records, Annex A)

"To this Order, private respondent filed a Motion for Reconsideration to which petitioner filed an opposition.

"On August 30, 1999, public respondent issued the now assailed order which reconsidered his July 30, 1999 Order. Thus, the instant case was set for regular raffle on September 8, 1999." [5]

Ruling of the Court of Appeals

Citing Section 4, Rule 58 of the Rules of Court, the Court of Appeals ruled that, necessarily, if summons could not be served, notice for the raffle could not be served either. The CA also held that the logic of petitioner, who insisted otherwise, was flawed. Herein respondent, it pointed out, would have no remedy in case the other defendants choose to make their whereabouts unknown.

Hence, this recourse. [6]

Issues

In his Memorandum, [7] petitioner raises the following issues:

"1.

Respondent Court of Appeals acted with grave abuse of discretion tantamount to lack or excess of jurisdiction in holding that if summons could not be personally served, raffle could likewise be held without notice to parties;

2.

Respondent Court of Appeals acted with grave abuse of discretion tantamount to excess or lack of jurisdiction in holding that in a case where the parties are unknown, the case will have to be raffled first before the court can act on the motion for leave to serve summons by publication;

3.

Respondent Court of Appeals acted with grave abuse of discretion tantamount to excess or lack of jurisdiction in dismissing the petition;

4.

There are special and important reasons to warrant a review." [8]

In the main, the issue before us is whether a case may be raffled, even when some of the parties could not be served notice because their whereabouts are unknown.

The Court's Ruling

The Petition has no merit.

Main Issue:

Notice Requirement Prior to Raffle

Petitioner contends that under Section 4 (c) of Rule 58, a case may be raffled only after notice to and in the presence of the adverse party. These requisites, according to him, are mandatory. Furthermore, he maintains that the latter part of the rule, which allows service of summons to be dispensed with in case the adverse party cannot be located despite diligent efforts, should not be isolated from other related provisions. He refers specifically to Section 5 of Rule 58, which provides that no writ of preliminary injunction shall be granted without hearing and prior notice to the adverse party.[9]

Petitioner's argument is incorrect. Administrative Circular No. 20-95,[10] which provided for the requisites of a raffle of cases, has been incorporated into Section 4 (c), Rule 58 of the 1997 Rules of Civil Procedure. The provision now reads as follows:

"(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

"However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply."

From the foregoing, it is clear that the prerequisites for conducting a raffle when there is a prayer for a writ of preliminary injunction or temporary restraining order are (1) notice to and (b) presence of the adverse party or person to be enjoined. The above rule also provides that the notice shall be preceded or accompanied by a service of summons to the adverse party or person to be enjoined.

The second paragraph clearly states, though, that the required prior or contemporaneous service of summons may be dispensed with in the following instances: (a) when the summons cannot be served personally or by substituted service despite diligent efforts, (b) when the adverse party is a resident of the Philippines temporarily absent therefrom, or (c) when such party is a nonresident.

In such event, the notice of raffle and the presence of the adverse party must also be dispensed with. As pointed out by respondent, "the requirement of notice of the raffle to the party whose whereabouts are unknown does not also apply x x x because the case will have to be raffled first before the court can act on the motion for leave to serve summons by publication." [11]

Under the interpretation of petitioner, however, defendants, by the simple expedient of concealing their whereabouts and thereby preventing the holding of a raffle, can bar a trial court from acting on a case or from allowing a service of summons by publication. Clearly, such interpretation would result in absurdity and should not be countenanced.[12]

Moreover, in his commentary on the 1997 Rules of Civil Procedure, Justice Jose Feria explains that "[p]aragraphs (c) and (d) [of Section 4, Rule 58,] are based on paragraphs 1 and 2 of Administrative Circular No. 20-95, with the modification that the notice to the adverse party shall be preceded or contemporaneously accompanied by service of summons as required in *Davao Light & Power Co., Inc. vs. Court of Appeals*, with the same exceptions in Section 5 of Rule 57 but excluding actions in rem or quasi in rem." [13]

In *Davao Light*,^[14] the Court held:

"For the guidance of all concerned, the Court reiterates and reaffirms the proposition that writs of attachment may properly issue *ex parte* provided that the Court is satisfied that the relevant requisites therefor have been fulfilled by the applicant, although it may, in its discretion, require prior hearing on the application with notice to the defendant; but that levy on property pursuant to the writ thus issued may not be validly effected unless preceded, or contemporaneously accompanied, by service of summons, a copy of the complaint x x x, the application for attachment (if not incorporated in but submitted separately from the complaint), the order of attachment, and the plaintiff's attachment bond." (Emphasis supplied.)

In *H.B. Zachry v. CA*,^[15] the Court expounded on the aforecited ruling as follows: "[A] distinction should be made between the issuance and the enforcement of the writ. The trial court has unlimited power to issue the writ upon commencement of the action even before it acquires jurisdiction over the person of the defendant, but enforcement thereof can only be validly done after it shall have acquired jurisdiction."

In this light, it may be stressed that pursuant to *Davao Light* and the subsequent cases prior to the 1997 Rules, a writ of attachment may be issued *ex parte*, but it cannot be implemented if the trial court has not yet acquired jurisdiction over the person of the defendant. In the present case, the notice of raffle is required to be served prior to or contemporaneously with the summons -- a requirement absent from the pre-1997 Rules. This requirement shows the intention of the new Rules to ensure the implementation of the writ of preliminary injunction and preclude the defense that the trial court has no jurisdiction over the defendant.

Nonetheless, the 1997 rule barring the raffle of these cases without effecting the service of summons is not absolute. As earlier noted, the second paragraph of Section 4 (c) of Rule 58 clearly provides that the service of summons may be dispensed with "where the summons could not be served personally or by substituted service despite diligent efforts." Furthermore, even Justice Feria opines that the exceptions to the rule are the same as those in Section 5 of Rule 57, the second paragraph of which reads thus:

"The requirement of prior or contemporaneous service of summons shall not apply where the summons could not be served personally or by substituted service despite diligent efforts, or the defendant is a resident of the Philippines temporarily absent therefrom, or the defendant is a non-resident of the Philippines, or the action is one in *rem* or quasi in *rem*."

In the present case, respondent was able to show that the whereabouts of the other defendants were unknown, and that summons could not be served personally or by substituted service. Hence, it cannot be required to serve such summons prior to or contemporaneous with the notice of raffle. The raffle, therefore, may proceed even without notice to and the presence of the said adverse parties.

Indeed, contrary to the argument of petitioner, allowing the raffle to proceed in a case like this is not inconsistent with Section 5 of Rule 58, which reads as follows:

"SEC. 5. Preliminary injunction not granted without notice; exception. - No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

"However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the

applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein." (Emphasis supplied.)

Furthermore, petitioner makes much ado about the requirement of notice of raffle. In ordinary suits,[16] notice of a raffle is given to the parties in order "to afford [them] a chance to be heard in the assignment of their cases." [17] According to Justice Feria, the raffle of cases is done in open session with adequate notice, "so that parties or their counsel will be prevented from choosing judges to hear their case." [18]

Petitioner has no ground to object, since he himself had been given notice prior to the holding of the raffle. Furthermore, he has no standing to complain on behalf of the other parties, because he does not claim to represent them. [19]

In any event, the other defendants had been located and served summons. In fact, the case was subsequently raffled on December 8, 1999, and a pretrial conducted on May 9, 2000. [20] The other defendants have not complained of any impropriety in the raffle. Their silence on this question demonstrates the utter lack of merit of petitioner's contention.

WHEREFORE, the Petition is hereby DISMISSED, and the assailed Decision AFFIRMED. Double costs against petitioner.

SO ORDERED.

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

[1] Rollo, pp. 3-9.

[2] Rollo, pp. 107-111. Penned by Justice Eloy R. Bello Jr., with the concurrence of Justices Jainal D. Rasul (Division chairman) and Ruben T. Reyes.

[3] Written by Executive Judge Manuel B. Fernandez Jr.

[4] CA Decision, p. 5; rollo, p. 111.

[5] CA Decision, pp. 1-3; rollo, pp. 107-109.

[6] This case was deemed submitted for resolution on June 5, 2000, upon receipt by this Court of respondent's Memorandum signed by Attys. Loreto C. Ata, Alfred S. Jacinto and Joseph B. Sagandoy Jr. of Ata Jacinto & Montales. Filed earlier on June 2, 2000, was petitioner's Memorandum signed by Atty. Arcangelita M. Romilla-Lontok.

[7] Rollo, pp. 192-200.

[8] Petitioner's Memorandum, p. 6; rollo, p. 197.

[9] Petitioner's Memorandum, pp. 7-8; rollo, pp. 198-199.

[10] Paragraph 1 of Administrative Circular No. 20-95 reads: "1. Where an application for temporary restraining

order (TRO) or writ of preliminary injunction is included in a complaint or any initiatory pleading filed with the trial court, such complaint or initiatory pleading filed with the trial court, shall be raffled only after notice to the adverse party and in the presence of such party or counsel."

[11] Respondent's Memorandum, p. 9; rollo, p. 177. Section 14 of Rule 14 provides: "In any action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order." (Emphasis supplied.)

[12] See *Cosico v. NLRC*, 272 SCRA 582, May 23, 1997; *Camacho v. CA*, 287 SCRA 611, March 19, 1998; *Matuguina Integrated Wood Products v. CA*, 263 SCRA 490, October 24, 1996.

[13] *Feria*, 1997 Rules of Civil Procedure, p. 239.

[14] 204 SCRA 343, 357, November 29, 1991, per Narvasa, J.

[15] 232 SCRA 329, 342-343, May 10, 1994, per Davide, J. See also *Oñate v. Abrogar*, 241 SCRA 659, February 23, 1995.

[16] Section 2, Rule 20.

[17] *Commissioner of Immigration v. Reyes*, 12 SCRA 728, 732, December 28, 1964, per Bengzon, J.

[18] *Feria*, supra, p. 73.

[19] Petition, p. 10; rollo, p. 14.

[20] Respondent's Memorandum, pp. 7-8; rollo, pp. 175-176.

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