

LAGRIMAS PACAÑA-GONZALES, AS ONE OF THE HEIRS OF LUCIANO PACAÑA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND MANUEL CARBONELL PHUA, RESPONDENTS.

G.R. NO. 150908. January 21, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the February 19, 2001 decision of the Court of Appeals granting a petition, docketed as CA-G.R. SP No. 39112, “Manuel Carbonell Phua v. The Presiding Judges, Branches 10 and 11, Regional Trial Court, Cebu City, et al,” for Annulment of Judgment of the decision of the Regional Trial Court (RTC) of Cebu City, Branch 11 which declared null and void a transfer certificate of title covering a 5,311 square meters of land in Cebu City subject of the present case, the present Petition for Review on Certiorari was lodged before this Court.

The material antecedents of the case are as follows:

The Spouses Enemesio Emerillo and Urbana Taborada (Amarillo Spouses or Spouses Amarillo), registered owners of subject lot, Lot 7746 of the Cadastral Survey of Cebu which was covered by Transfer Certificate of Title (TCT) No. RT-7585, conveyed the same on July 9, 1975 to herein respondent Manuel Carbonell Phua (Phua), following which or on July 14, 1975, the Amarillo Spouses’ title was cancelled and, in its place, TCT No. 62176 was issued in the name of Phua.

More than a decade later or on June 22, 1987, the Heirs of Josefa Gacho Pacaña (Heirs of Pacaña), claiming that the subject lot was originally decreed under Decree No. 74768 issued in 1919, to be registered and “apparently” registered under Original Certificate of Title No. 1684 in the name of Josefa Gacho after she had died, filed before the RTC of Cebu City a Complaint[1] for Declaration of Nullity of Title and Annulment of the Deed of Sale covering subject lot against the Spouses Amarillo and Phua, docketed as Civil Case No. CEB-6057.

Summons together with copy of the complaint was served to the therein defendants Spouses Amarillo but not to Phua who was unknown at his given address at Salinas Compound, Salinas Drive, Lahug, Cebu City.

The Branch Clerk of Branch 11 of the RTC Cebu City, to which Civil Case No. CEB-6057 was raffled, thus effected service of summons to Phua by postal service but the same failed, drawing the Heirs of Pacaña to file a motion to effect service of summons by publication which motion was granted.

Summons and a copy of the complaints were accordingly published once a week for three consecutive weeks or on October 17, 24, 31, 1988 in The Visayan Herald.

No answer having been received from Phua within the reglementary period, the trial court declared him in default and the Heirs of Pacaña were allowed to, as they did, present their evidence ex-parte.

By Decision of April 3, 1991,[2] the trial court rendered judgment in favor of the therein plaintiff Heirs of Pacaña. A copy of the decision was served to the therein defendants Amarillo Spouses and Phua by publication in The

Freeman, a newspaper printed in Cebu City and circulated in the provinces and cities of Cebu and in the rest of the Visayas and Mindanao.

The decision was declared to have become final and executory on August 19, 1991.[3]

Acting upon the motion of the Heirs of Pacaña for declaration of compliance with P.D. No. 1529, Branch 10 of the RTC of Cebu City, in Cadastral Case No. 12, LRC (GLRO) Record No. 9468, “The Director of Lands v. The Heirs of Josefa Gacho, represented by Luciano Pacaña,” reiterating the declaration of nullity of the Spouses Amarillo’s title and that of Phua, directed, by Order of March 24, 1995,[4] the Register of Deeds of Cebu City “to issue a new transfer certificate of title covering [subject lot] in the name of Luciano Pacaña . . . the representative of the Heirs of Pacaña, without need of presentation of the owner’s duplicate copy.”

Getting wind of the decision, Phua filed in November 1995 a Petition for Annulment of Judgment[5] before the appellate court, raising in issue the validity of the service of summons by publication in Civil Case No. CEB-6057.

The appellate court synthesized Phua’s contentions to convince it to rule in the negative in his favor.

. . . Phua asseverated that in 1988, he was employed as Managing Director Syanibat Malayan Adjustment Co., Edu Blvd., Bldg., Kuala Lumpur, Malaysia when the summons was served by publication in a Cebu newspaper. In 1975, he bought Lot 7746 from Spouses Amarillo when he spent his vacation in the house of his brother-in-law at Salinas Compound, Lahug, Cebu City. Instead of using 957-B C. Aragon St., Malate, Manila, which was his residence at the time of the purchase, he merely stated in the Deed of Absolute Sale that he is a resident of Cebu City. Nevertheless, Juanito C. Mendoza, his brother-in-law transferred residence to 26 Paseo Annabelle, Maria Luisa Estate Park, Banilad, Cebu City sometime in 1976. He is presently residing at 31 Vicente R. Jayme St., BF Resort/Vista Grande Village, Las Piñas, Metro Manila.

Phua further claimed that the service of summons by publication suffered from fatal defects, namely: (1) the motion for the service of summons by publication was not supported by an affidavit stating the grounds for the application in violation of Section 19; (2) the editor’s affidavit did not state that The Visayan Herald is a newspaper of general circulation, instead, it merely stated that it is a newspaper printed in Cebu City and circulated in the provinces and cities of Cebu and in the rest of Visayas and Mindanao; (3) there was no affidavit stating that a copy of the summons and order of publication were deposited, postage prepaid, in the post office and directed to the petitioner by registered mail to his last known address and (4) there was no notice of the date, place and time of hearing to the petitioner before issuance of a new title in violation of Section 170 of P.D. 1529, otherwise known as Property Registration Decree. (Emphasis in the original; underscoring supplied)[6]

By the present assailed decision, the Court of Appeals ruled in Phua’s favor in this wise:

First. a careful scrutiny of the pleadings showed that the motion for leave to serve summons to Phua by publication was granted by the court (Memorandum for Respondents, p. 4, Rollo, p. 406) although it was not supported by an affidavit setting forth the grounds relied upon by plaintiffs to effect such service. (Annex 7, Memorandum for Respondents, p. 438)

Respondents, on their part, argued that Phua was not an unknown defendant under the contemplation of Section 16, Rule 14, 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 effected upon him by publication in a newspaper of general circulation and such places and for such time as the court may order.”

The respondents further asserted that the foregoing circumstances (unknown owner, defendant whose address is

unknown and cannot be ascertained by diligent inquiry) were absent. Certainly, Phua was a known buyer of Lot 7746 but he indicated an erroneous address in a public document. No less than the branch clerk of court and the process server exerted diligent efforts to serve the summons by personal service and postal service. They regarded these as substantial compliance with the rules.

We are not convinced.

Section 19, Rule 14 is categorical in requiring the said affidavit. Admittedly, there was failure to comply with the explicit submission of the same. Ineludible, this Court has no authority to dispense with such mandatory requirement. The law is unambiguous and its rationale clear. Time and again, this Court has declared that where the law speaks in clear and categorical language, there is no room for interpretation, vacillation or equivocation; there is room only for application. There is no alternative. The respondents cannot proffer excuse and rely on the efforts exerted by the personnel of the court who were not remised in their duties.

Second. The Visayan Herald is not a newspaper of general circulation.

In the case *Valmonte et al. v. Court of Appeals, et al.*, 303 SCRA 278, 286 citing *Sadang and Lachica v. Government Service Insurance System*, 18 SCRA 491, 494, the Supreme Court ruled that the customary affidavit of the editor of “Voz de Manial,” duly introduced in evidence, that it was published in a newspaper of general circulation constitutes prima facie evidence of such fact. In another case, the High Tribunal regarded the affidavit of publication, executed by the publisher, business/advertising manager of the Luzon Weekly Courier, which states that it is a newspaper of general circulation in Rizal, as sufficient to consider the newspaper one of general circulation. (*Bonnevie et al. v. Court of Appeals, et al.*, 125 SCRA 122)

In the instant suit, there was not even the customary affidavit of editor Jeremias S. Tundag that The Visayan Herald is a newspaper of general circulation. Instead, it merely stated that it is printed in Cebu City and circulated in the province and cities of Cebu and in the rest of the Visayan and Mindanao. Nowhere in the editor’s affidavit was it manifested that The Visayan Herald is published for the dissemination of local news and general information, that it has a bona fide subscription list of paying subscribers and that it is published at regular intervals. (*Basa vs. Mercado*, 61 Phil. 632) Hence, We are of ineluctable conclusion that there was no valid service of summons by publication.

Third, the trial court, having failed to acquire jurisdiction over the person of Phua in Civil Case No. 6057, the order of the cadastral court in Cadastral Case No. 12 LRC (GLRO) REC. NO. 9468 cancelling TCT Nos. RT-7585 and RT-62176, in favor of Spouses Amarillo and Phua, respectively and the issuance of a new transfer certificate to Luciano Pacaña pursuant to Section 107 of P. D. No. 1529, is null and void.

Finally, although the Court is not unaware of the fact that the respondents deposited the copy of the summons and the order of publication by registered mail in the post office, postage prepaid and were directed to the last known address of the petitioner pursuant to Section 21, service of summons by postal service is, regrettably not one of the modes sanctioned under the Rules. (Emphasis and italics in the original; underscoring supplied)[7]

Accordingly, the Court of Appeals disposed as follows:

WHEREFORE, the petition is GRANTED and the Decision of the Regional Trial Court of Cebu City, Branch 11 in Civil Case No. 6057 dated April 3, 1991 and the Order of the Regional Trial Court, Cebu City, Branch 10 in Cadastral Case No. 12 LRC (GLRO) REC. NO. 9468 dated March 24, 1995, are declared NULL and VOID for lack of jurisdiction over the person of the defendant. The Register of Deeds of Cebu City is ordered to cancel TCT No. 131189 and reinstate TCT No. 62176 in favor of the petition.

SO ORDERED. (Emphasis in the original)[8]

Hence, the present petition of “Lagrimas Pacaña-Gonzales as one of the heirs of Luciano Pacaña.”

In her petition, petitioner alleges that she is filing the petition “in her own behalf as heir and successor-in-interest of Luciano Pacaña,” to whom, it bears recalling, the cadastral court directed the issuance of new title to subject lot.

Petitioner argues, in the main, that assuming arguendo that “an affidavit is necessary to effect service of summons by publication . . . its absence will not affect the legality and validity of the proceedings in the lower courts,” technicalities not being permitted to sway the broader interest of justice.

Petitioner’s case fails.

In 1988, when leave to serve summons by publication was filed, the pertinent rules which have been substantially restated in the present rules provided:

SEC. 16. Service upon an unknown defendant. — 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 effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order. (Underscoring supplied)

SEC. 19. Leave of court. — Any application to the court under this rule for leave to effect service in any manner for which leave of court is necessary shall be made by motion in writing, supported by affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application. (Underscoring supplied)

SEC. 21. Proof of service by publication. — 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 registered mail to his last known address. (Underscoring supplied)

Since Phua’s whereabouts were unknown and could not be ascertained by diligent inquiry, service of summons by publication was correctly availed of by the Heirs of Pacaña.

From the above-quoted Section 19, the motion to be allowed to serve summons by publication required a supporting “affidavit of the plaintiff or some person on his behalf setting forth the grounds for the application.”

The “Motion for Service of Summons by Publications” (sic)[9] filed by the counsel of the Heirs of Pacaña bears no supporting affidavit, however. It did not thus comply with the Rules.

Furthermore, it has not been shown that the Heirs of Pacaña had complied with the rule on the presentation of proof of service by publication which, as above-quoted Section 21 provides, may be proved by an affidavit of the printer . . . 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 of publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address. Nor that The Visayan Herald is a newspaper of general circulation.

Petitioner’s appeal for liberality in the application of the rules, “technicalities not being permitted to sway the broader interest of justice,” does not lie. Modes of service of summons must be strictly followed in order that the court may acquire jurisdiction over the person of the defendant. The purpose of this is to afford the defendant an opportunity to be heard on the claim against him.[10] The summons intended for Phua being invalid, the trial court did not acquire jurisdiction over him and could not as it did not render a valid judgment against him.

WHEREFORE, the petition is hereby DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Records at 1-6.

[2] Id. at 81-84.

[3] Id. at 91.

[4] Id. at 166.

[5] CA Rollo at 2-52.

[6] Rollo at 38-39.

[7] Id. at 40-42.

[8] Id. at 42.

[9] Records at 20-21.

[10] Bank of the Philippine Islands v. Evangelista, 393 SCRA 187 (2002); Gan Hock v. Court of Appeals, 197 SCRA 223 (1991).

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