

**SPOUSES GERMAN ANUNCIACION AND ANA FERMA ANUNCIACION
AND GAVINO G. CONEJOS, PETITIONERS, VS. PERPETUA M.
BOCANEGRA AND GEORGE M. BOCANEGRA, RESPONDENTS.**

G.R. No. 152496. July 30, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a petition for review on certiorari, assailing the Decision,[1] dated November 19, 2001, and the Resolution,[2] dated March 31, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 65516. The CA decision affirmed the Orders dated February 19, 2001[3] and May 16, 2001[4] of the Regional Trial Court (RTC) of Manila, Branch 40 in Civil Case No. 00-98813 which dismissed the complaint[5] for Quieting of Title and Cancellation of TCT No. 122452 of petitioner spouses German Anunciacion and Ana Ferma Anunciacion and their co-petitioner, Gavino G. Conejos.

The facts of the case are as follows:

On September 29, 2000, petitioners filed before the RTC, Manila, a complaint for Quieting of Title and Cancellation of TCT No. 122452, docketed as Civil Case No. 00-98813. The complaint averred that defendants (respondents) may be served with summons and legal processes through Atty. Rogelio G. Pizarro, Jr., with office address at 2830 Juan Luna St., Tondo, Manila.[6] The summons, together with the copies of the complaint, were then served on Atty. Pizarro. The record shows that before the filing of the said complaint, Atty. Pizarro wrote a demand letter[7] on behalf of respondents and addressed to petitioner German Anunciacion, among others, demanding that they vacate the land owned by his clients (respondents), who needed the same for their own use. The said demand letter reads:

2830 Juan Luna St.
Tondo, Manila
August 19, 2000

Mr. German Anunciacion, Mesdames
Liwayway Nava, Evangeline Pineda,
and Ana Ferma
2982 Rizal Ave. Ext.
Sta. Cruz, Manila

Dear Sir and Mesdames:

I write in behalf of my clients, MS. PERPETUA M. BOCANEGRA and MR. GEORGE M. BOCANEGRA, the registered owners of the parcel of land known as Lot 1-B (LRC) PSD-230517 located at 2982 Rizal Ave. Ext., Sta. Cruz, Manila, and duly covered by Transfer Certificate of Title No. 122452, which you are presently occupying.

I would like to inform you that your occupation and possession of the said land is based on mere tolerance of

the owners, and without any payment on your part of any rental. Now, the owners need the subject property for their own use.

In view thereof, I hereby demand that you vacate the said land within a period of fifteen (15) days from receipt of this letter. Otherwise, much to our regret, I shall be constrained to institute the proper criminal and/or civil action against you.

Trusting that you will give this matter your most serious and preferential attention.

Very truly yours,

ATTY. ROGELIO G. PIZARRO, JR.

On October 27, 2000, respondents, through their counsel, Atty. Norby C. Caparas, Jr., filed a Motion to Dismiss[8] on the ground that the complaint stated no cause of action. Petitioners filed their Comment on the Motion to Dismiss[9] on November 6, 2000.

A Supplemental Motion to Dismiss and Reply to the Comment on the Motion to Dismiss[10] dated November 13, 2000 was filed by respondents, alleging an additional ground that petitioners failed to pay the required filing fee. The petitioners filed, on November 27, 2000, their Opposition to the Supplemental Motion to Dismiss and Comment to the Reply to the Comment on the Motion to Dismiss.[11]

Thereafter, respondents filed a Second Supplemental Motion to Dismiss and Manifestation dated November 27, 2000,[12] citing the following grounds:

- 1.) That the court has no jurisdiction over the person of the defending party.
- 2.) That the court has no jurisdiction over the subject matter of the claim.
- 3.) That the pleading asserting the claim states no cause of action.

Petitioners then filed their Additional Comment on the Motion to Dismiss, Supplemental Motion to Dismiss and Comment on the Second Supplemental Motion to Dismiss.[13]

In its order of February 19, 2001, the trial court sustained the respondents and dismissed the complaint for lack of jurisdiction over the persons of respondents as defendants. The trial court ruled as follows:

However, the Court finds for the defendants on the Second Supplemental Motion.

In point is Section 3, Rule 3 of the same Rules, which reads -

"Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. x x x x"

In the case at bar Atty. Pizarro, Jr., has not been shown to be a trustee of an express trust, a guardian, or any of the above for the action to be allowed to be defended by a representative.

The fact that Atty. Pizarro, Jr., was the lawyer of the defendants in the demand letters do not per se make him their representative for purposes of the present action. To this effect, service on lawyer of defendant is an invalid service of summons. (Cordova v. Provincial Sheriff of Iloilo, 89 SCRA 59)

Going to the other raised issue, Section 20, Rule 14 of the 1997 Rules of Civil Procedure provides -

"The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall

not be deemed a voluntary appearance."

The presentation of all objections then available as was done by the movants subserves the omnibus motion rule and the concomitant policy against multiplicity of suits.

WHEREFORE, premises considered, on the ground that the Court has no jurisdiction over the persons of the defendants, the case is hereby DISMISSED.

The motion for reconsideration filed by the petitioners was denied for lack of merit.

Aggrieved, petitioners filed before the CA a Petition for Certiorari, seeking the nullification of the RTC Orders dated February 19, 2001 and May 16, 2001, on the ground that the said orders were issued with grave abuse of discretion.

On November 19, 2001, the CA dismissed the petition upon finding that there was no waiver of the ground of lack of jurisdiction on the part of respondents in the form of voluntary appearance. Applying Section 20, Rule 14 of the 1997 Rules of Civil Procedure, the CA held that although the grounds alleged in the two (2) earlier Motion to Dismiss and Supplemental Motion to Dismiss were lack of cause of action and failure to pay the required filing fee, the filing of the said motions did not constitute a waiver of the ground of lack of jurisdiction on their persons as defendants. The CA then concluded that there was no voluntary appearance on the part of respondents/defendants despite the filing of the aforesaid motions. The CA also rejected petitioners' contention that the service made to Atty. Rogelio Pizarro, Jr. was deemed service upon respondents/defendants, thus:

First of all, Atty. Rogelio Pizarro cannot be considered as counsel of record wherein We could apply the jurisprudential rule that notice to counsel is notice to client. Atty. Pizarro cannot be deemed counsel on record since Defendants were not the one's (sic) who instituted the action, like plaintiffs who did the same thru counsel and therefore, obviously the one who signed the pleadings is the counsel on record. Sadly, the Motion to Dismiss filed by Private Respondents were signed not by Atty. Pizarro but by someone else. How then could Petitioners claim that Atty. Pizarro represents Private Respondents?

Secondly, the fact that Atty. Pizarro was the one who wrote and signed the August 19, 2000 letter, on behalf of Private Respondents, demanding that Petitioners vacate the premises of the former's land does not fall under the substituted service rule. To be sure, Section 7 of Rule 14 of the 1997 Rules, provide thus:

Sec. 7. Substituted Services - If, for justifiable causes the defendant cannot be served within a reasonable time as provided in the preceding section; service maybe reflected (a) by leaving copies of the summons at the defendants' residence with some person of suitable age and discretion then residing therein or (b) by leaving the copies at defendant (sic) office or regular place of business with some competent person in charge thereof.

In the case at bench, service upon Atty. Pizarro did not fall under the aforequoted rule and therefore cannot qualify as substituted service. Since the service made by Petitioners was defective, the Public Respondent court never did acquire jurisdiction over the persons of defendants and therefore correctly ordered the dismissal of the complaint.[14]

Petitioners moved for a reconsideration of the decision but it, too, was denied by the CA in its Resolution of March 31, 2002.

Hence, the instant petition which raises the following assignment of errors:

1. THAT THE HONORABLE COURT OF APPEALS ERRED ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR IN EXCESS OF JURISDICTION WHEN IT DID NOT CONSIDER THAT THE FILING OF THE MOTION TO DISMISS AND THE SUPPLEMENTAL MOTION TO DISMISS BY RESPONDENTS AMOUNTS TO VOLUNTARY

APPEARANCE BEFORE THE REGIONAL TRIAL COURT AND THEREFORE CONFERS JURISDICTION OF THE REGIONAL TRIAL COURT ON THE PERSON OF RESPONDENTS.

2. THAT THE HONORABLE COURT OF APPEALS ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DID NOT CONSIDER THAT THE SECOND SUPPLEMENTAL MOTION ALLEGING THAT THE HONORABLE TRIAL COURT HAD NO JURISDICTION OF THE PERSONS OF THE DEFENDANTS IS ALREADY LATE FOR THE FIRST MOTIONS, NAMELY, THE "MOTION TO DISMISS" AND THE "SUPPLEMENTAL MOTION TO DISMISS AND REPLY TO THE COMMENT TO THE MOTION TO DISMISS", WHICH HAD BEEN OPPOSED, ONE AFTER THE OTHER, BY PETITIONERS, HAD ALREADY CONFERRED JURISDICTION OF THE HONORABLE TRIAL COURT ON THE PERSONS OF DEFENDANTS.

3. THAT THE HONORABLE COURT OF APPEALS ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT CONSIDERED THAT THESE 3 MOTIONS OF RESPONDENTS ARE BEING TREATED AS OMNIBUS MOTION AND ARE COVERED BY SECTION 20 RULE 14 OF THE 1997 RULES ON CIVIL PROCEDURE.

4. THAT THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DID NOT CONSIDER ATTY. ROGELIO PIZARRO, JR., AS THE AUTHORIZED REPRESENTATIVE OF RESPONDENT TO RECEIVE THE SUMMONS AND COMPLAINT.

In the Resolution dated July 14, 2003, the Court gave due course to the petition and required the parties to submit their respective memoranda. In compliance, the respondents filed their Memorandum on September 8, 2003,[15] while the petitioners filed their Memorandum on September 24, 2003.[16]

We find merit in the petition.

While it is a settled doctrine that findings of fact of the CA are binding and not to be disturbed, they are subject to certain exceptions for very compelling reasons, such as when: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact of the CA are contrary to those of the trial court; (6) said findings of fact are conclusions without citation of specific evidence on which they are based; and (7) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[17] The Court finds here cogent reason to take exception from the general rule.

Respondents, through counsel, filed a motion to dismiss dated October 25, 2000,[18] with only one ground, i.e., that the pleading asserting the claim "states no cause of action." Under this ground, respondents raised the issues quoted hereunder:

- Defendants[19] anchored their complaint on a WRONG Decree of Registration;
- The Government of the Republic of the Philippines has recognized the authenticity of TCT No. 122452; and
- Plaintiffs do NOT have the legal personality to 'quiet the title' of the subject property.

Section 20, Rule 14 of the 1997 Rules of Civil Procedure (the Rules) states:

Sec. 20. Voluntary Appearance - The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (Underscoring ours)

The filing of the above-mentioned Motion to Dismiss, without invoking the lack of jurisdiction over the person of

the respondents, is deemed a voluntary appearance on the part of the respondents under the aforequoted provision of the Rules. The same conclusion can be drawn from the filing of the Supplemental Motion to Dismiss and Reply to the Comment on the Motion to Dismiss dated November 13, 2000 which alleged, as an additional ground for the dismissal of petitioners' complaint, the failure of plaintiffs to pay the required filing fee again but failed to raise the alleged lack of jurisdiction of the court over the person of the respondents.

It was only in respondents' Second Supplemental Motion to Dismiss dated November 27, 2000 that respondents for the first time raised the court's lack of jurisdiction over their person as defendants on the ground that summons were allegedly not properly served upon them. The filing of the said Second Supplemental Motion to Dismiss did not divest the court of its jurisdiction over the person of the respondents who had earlier voluntarily appeared before the trial court by filing their motion to dismiss and the supplemental motion to dismiss. The dismissal of the complaint on the ground of lack of jurisdiction over the person of the respondents after they had voluntarily appeared before the trial court clearly constitutes grave abuse of discretion amounting to lack of jurisdiction or in excess of jurisdiction on the part of the RTC.

Quite apart from their voluntary appearance, respondents' Supplemental Motion to Dismiss and Second Supplemental Motion to Dismiss were clearly in violation of Rule 15, Section 8 in relation to Rule 9, Section 1 of the Rules.

Rule 15, Section 8 of the Rules provides:

Sec. 8. Omnibus motion. - Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived. (emphasis ours)

Rule 9, Section 1, in turn, states:

Sec. 1. Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by statute of limitations, the court shall dismiss the claim. (emphasis ours)

Applying the foregoing rules, respondents' failure to raise the alleged lack of jurisdiction over their persons in their very first motion to dismiss was fatal to their cause. They are already deemed to have waived that particular ground for dismissal of the complaint. The trial court plainly abused its discretion when it dismissed the complaint on the ground of lack of jurisdiction over the person of the defendants. Under the Rules, the only grounds the court could take cognizance of, even if not pleaded in the motion to dismiss or answer, are: (a) lack of jurisdiction over the subject matter; (b) existence of another action pending between the same parties for the same cause; and (c) bar by prior judgment or by statute of limitations.

We likewise cannot approve the trial court's act of entertaining supplemental motions to dismiss which raise grounds that are already deemed waived. To do so would encourage lawyers and litigants to file piecemeal objections to a complaint in order to delay or frustrate the prosecution of the plaintiff's cause of action.

Although the CA correctly observed that Atty. Pizarro, as the lawyer of the respondents in the demand letters, does not per se make him their representative for purposes of the present action, a scrutiny of the record shows that the address of Atty. Pizarro and Atty. Norby Caparas, Jr., (the counsel who eventually entered his appearance for respondents) is the same. This circumstance leads us to believe that respondents' belated reliance on the purported improper service of summons is a mere afterthought, if not a bad faith ploy to avoid answering the complaint.

At this point, we find it appropriate to cite *Philippine American Life & General Insurance Company v. Breva*,^[20] where this Court held that:

The trial court did not commit grave abuse of discretion when it denied the motion to dismiss filed by the petitioner due to lack of jurisdiction over its person. In denying the motion to dismiss, the CA correctly relied on the ruling in *Lingner & Fisher GMBH vs. Intermediate Appellate Court*, thus:

A case should not be dismissed simply because an original summons was wrongfully served. It should be difficult to conceive, for example, that when a defendant personally appears before a Court complaining that he had not been validly summoned, that the case filed against him should be dismissed. An alias summons can be actually served on said defendant

In the recent case of *Teh vs. Court of Appeals*, the petitioner therein also filed a motion to dismiss before filing his answer as defendant in the trial court on the ground of failure to serve the summons on him. In that case, the Court agreed with the appellate court's ruling that there was no abuse of discretion on the part of the trial court when the latter denied the petitioner's motion to dismiss the complaint and ordered the issuance of an alias summons.

To be sure, a trial court should be cautious before dismissing complaints on the sole ground of improper service of summons considering that it is well within its discretion to order the issuance and service of alias summons on the correct person in the interest of substantial justice.

Accordingly, the Court finds that the CA erred in dismissing the petition and affirming the challenged orders of the RTC which dismissed the complaint on the ground of lack of jurisdiction over the person of the respondents who were the defendants.

WHEREFORE, the petition is hereby GRANTED. The CA's Decision dated November 19, 2001 and the Resolution dated March 31, 2002 in CA-G.R. SP No. 65516 affirming the Orders dated February 19, 2001 and May 16, 2001 of the RTC in Civil Case No. 00-98813 are reversed and set aside. Consequently, Civil Case No. 00-98813 is hereby ordered REINSTATED. Let the records of this case be remanded to the court of origin for further proceedings.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Bersamin, JJ., concur.

[1] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justice Perlita J. T. Tria Tirona (ret.) and Associate Justice Mariano C. Del Castillo, concurring; rollo, pp. 6-13.

[2] Id. at 15.

[3] Id. at 79-81.

[4] CA Record, p. 25.

[5] Rollo, pp. 45-51.

[6] Paragraph 3 of the Complaint, id. at 45.

[7] Id. at 52.

[8] Id. at 53-60.

[9] Id. at 61-62.

[10] Id. at 63-65.

[11] Id. at 66-68.

[12] Id. at 69-73.

[13] Id. at 74-78.

[14] Id. at 11-13.

[15] Id. at 113-126.

[16] Id. at 127-132.

[17] *Danan v. Court of Appeals*, G.R. No. 132759, October 25, 2005, 474 SCRA 113, 124.

[18] *Supra* note 8.

[19] Should be Plaintiffs.

[20] G.R. No. 147937, November 11, 2004, 442 SCRA 217, 223.

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