

FILOMENA DOMAGAS, PETITIONER, VS. VIVIAN LAYNO JENSEN, RESPONDENT.

G.R. NO. 158407. January 17, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari, under Rule 45 of the Rules of Court, of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 73995, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 44, in Civil Case No. 2000-0244-D, which declared null and void the decision of the Municipal Trial Court (MTC) of Calasiao, Pangasinan in Civil Case No. 879.[3]

The antecedent facts follow.

On February 19, 1999, petitioner Filomena Domagas filed a complaint for forcible entry against respondent Vivian Jensen before the MTC of Calasiao, Pangasinan. The petitioner alleged in her complaint that she was the registered owner of a parcel of land covered by Original Certificate of Title (OCT) No. P-30980, situated in Barangay Buenlag, Calasiao, Pangasinan, and with an area of 827 square meters. On January 9, 1999 the respondent, by means of force, strategy and stealth, gained entry into the petitioner's property by excavating a portion thereof and thereafter constructing a fence thereon. As such, the petitioner was deprived of a 68-square meter portion of her property along the boundary line. The petitioner prayed that, after due proceedings, judgment be rendered in her favor, thus:

3. And, after trial, judgment be rendered:

- a) DECLARING the writ of Preliminary Mandatory Injunction and Writ of Preliminary Injunction permanent;
- b) ORDERING defendant, his representatives, agents and persons acting under her, to vacate the portion of the property of the plaintiff occupied by them and to desist from entering, excavating and constructing in the said property of the plaintiff described in paragraph 2 hereof and/or from disturbing the peaceful ownership and possession of the plaintiff over the said land, pending the final resolution of the instant action;
- c) ORDERING defendant to pay reasonable rental at FIVE THOUSAND (P5,000.00) PESOS per month from January 9, 1999 up to the time she finally vacates and removes all constructions made by her in the property of the plaintiff and up to the time she finally restores the said property in the condition before her illegal entry, excavation and construction in the property of the plaintiff;
- d) ORDERING defendant to pay actual damages in the amount of TWENTY THOUSAND (P20,000.00) PESOS; moral damages in the amount of TWENTY THOUSAND (P20,000.00) PESOS; attorney's fees of THIRTY THOUSAND (P30,000.00) PESOS in retainer's fee and ONE THOUSAND FIVE HUNDRED (P1,500.00) PESOS per court appearance fee; exemplary damages in the amount of TWENTY THOUSAND (P20,000.00) PESOS, and, costs.

Plaintiff further prays for other reliefs and remedies just and equitable in the premises.[4]

The case was docketed as Civil Case No. 879. The summons and the complaint were not served on the respondent because the latter was apparently out of the country. This was relayed to the Sheriff by her (the respondent's) brother, Oscar Layno, who was then in the respondent's house at No. 572 Barangay Buenlag, Calasiao, Pangasinan. The Sheriff left the summons and complaint with Oscar Layno, who received the same.[5]

Nonetheless, on May 17, 1999, the court rendered judgment ordering the respondent and all persons occupying the property for and in the latter's behalf to vacate the disputed area and to pay monthly rentals therefor, including actual damages, attorney's fees, and exemplary damages. The fallo of the decision reads:

- 1) Ordering the defendant, her representatives, agents and persons acting under her, to vacate the 68-square meters which she encroached upon;
- 2) Ordering the defendant to pay a monthly rental of P1,000.00 to the plaintiff;
- 3) To pay plaintiff actual damages of P20,000.00; attorney's fees of P15,000.00 and exemplary damages in the amount of P20,000.00 plus the costs.

SO ORDERED.[6]

The respondent failed to appeal the decision. Consequently, a writ of execution was issued on September 27, 1999.

On August 16, 2000, the respondent filed a complaint against the petitioner before the RTC of Dagupan City for the annulment of the decision of the MTC in Civil Case No. 879, on the ground that due to the Sheriff's failure to serve the complaint and summons on her because she was in Oslo, Norway, the MTC never acquired jurisdiction over her person. The respondent alleged therein that the service of the complaint and summons through substituted service on her brother, Oscar Layno, was improper because of the following: (a) when the complaint in Civil Case No. 879 was filed, she was not a resident of Barangay Buenlag, Calasiao, Pangasinan, but of Oslo, Norway, and although she owned the house where Oscar Layno received the summons and the complaint, she had then leased it to Eduardo Gonzales; (b) she was in Oslo, Norway, at the time the summons and the complaint were served; (c) her brother, Oscar Layno, was merely visiting her house in Barangay Buenlag and was not a resident nor an occupant thereof when he received the complaint and summons; and (d) Oscar Layno was never authorized to receive the summons and the complaint for and in her behalf.[7]

The respondent further alleged that the MTC had no jurisdiction over the subject matter of the complaint in Civil Case No. 879 because the petitioner, the plaintiff therein, failed to show prior possession of the property. She further claimed that the alleged forcible entry was simply based on the result of the survey conducted by Geodetic Engineer Leonardo de Vera showing that the property of the respondent encroached on that of the petitioner.

The respondent filed a Manifestation dated August 31, 2000, and appended thereto the following: (a) a copy[8] of her passport showing that she left the country on February 17, 1999; (b) a copy[9] of the Contract of Lease dated November 24, 1997, executed by her and Eduardo D. Gonzales over her house for a period of three (3) years or until November 24, 2000; (c) her affidavit[10] stating, inter alia, that she owned the house at Barangay Buenlag, Calasiao, Pangasinan, which she leased to Eduardo Gonzales; that she was married to Jarl Jensen, a citizen of Norway, on August 23, 1987 and had resided in Norway with her husband since 1993; that she arrived in the Philippines on December 31, 1998, but left on February 17, 1999; she returned to the Philippines on July 30, 2000 and learned, only then, of the complaint against her and the decision of the MTC in Civil Case No. 879; her brother Oscar Layno was not a resident of the house at Barangay Buenlag; and that she never received the complaint and summons in said case; (d) the affidavit[11] of Oscar Layno declaring that sometime in April 1999, he was in the respondent's house to collect rentals from Eduardo Gonzales; that the Sheriff arrived and served

him with a copy of the summons and the complaint in Civil Case No. 879; and that he never informed the respondent of his receipt of the said summons and complaint; (e) an affidavit[12] of Eduardo Gonzales stating that he leased the house of the respondent and resided thereat; the respondent was not a resident of the said house although he (Gonzales) allowed the respondent to occupy a room therein whenever she returned to the Philippines as a balikbayan; and that Oscar Layno was not residing therein but only collected the rentals.

In her answer to the complaint, the petitioner alleged that the respondent was a resident of Barangay Buenlag, Calasiao, Pangasinan and was the owner of the subject premises where Oscar Layno was when the Sheriff served the summons and complaint; that the service of the complaint and summons by substituted service on the respondent, the defendant in Civil Case No. 879, was proper since her brother Oscar Layno, a resident and registered voter of Barangay. Buenlag, Calasiao, Pangasinan, received the complaint and summons for and in her behalf.

The petitioner appended the following to her answer: (a) a copy[13] of the Deed of Absolute Sale executed by Jose Layno in her favor, dated August 26, 1992, showing that the respondent was a resident of Barangay Buenlag, Calasiao, Pangasinan; (b) a Real Estate Mortgage[14] executed by the respondent, dated February 9, 1999 showing that she was a resident of Barangay Buenlag, Calasiao, Pangasinan; (c) the Joint Affidavit[15] of Vicenta Peralta and Orlando Macalanda, both residents of Barangay Buenlag, Calasiao, Pangasinan, declaring that the respondent and her brother Oscar Layno were their neighbors; that the respondent and her brother had been residents of Barangay Buenlag since their childhood; that although the respondent left the country on several occasions, she returned to the Philippines and resided in her house at No. 572 located in the said barangay; and (d) the Voter's Registration Record[16] of Oscar Layno, approved on June 15, 1997.

After due proceedings, the trial court rendered a decision in favor of the respondent. The dispositive portion reads:

WHEREFORE, judgment is rendered in favor of plaintiff Vivian Layno Jensen and against defendant Filomena Domagas, as follows:

- The Decision of the Municipal Trial Court of Calasiao, Pangasinan in Civil Case No. 879, entitled Filomena Domagas versus Vivian Layno Jensen is declared null and void, for lack of jurisdiction over the person of the plaintiff and the subject matter.
- Defendant Filomena Domagas is ordered to pay plaintiff, the following:
 - a.) Actual damages, representing litigation expenses in the amount of P50,000.00;
 - b.) Attorney's fees in the amount of P50,000.00;
 - c.) Moral Damages in the amount of P50,000.00;
 - d.) Exemplary Damages in the amount of P50,000.00; and
 - e.) Costs of suit.

SO ORDERED.[17]

The trial court declared that there was no valid service of the complaint and summons on the respondent, the defendant in Civil Case No. 879, considering that she left the Philippines on February 17, 1999 for Oslo, Norway, and her brother Oscar Layno was never authorized to receive the said complaint and summons for and in her behalf.

The petitioner appealed the decision to the CA which, on May 6, 2003, rendered judgment affirming the appealed decision with modifications. The CA ruled that the complaint in Civil Case No. 879 was one for ejectment, which

is an action quasi in rem. The appellate court ruled that since the defendant therein was temporarily out of the country, the summons and the complaint should have been served via extraterritorial service under Section 15 in relation to Section 16, Rule 14 of the Rules of Court, which likewise requires prior leave of court. Considering that there was no prior leave of court and none of the modes of service prescribed by the Rules of Court was followed by the petitioner, the CA concluded that there was really no valid service of summons and complaint upon the respondent, the defendant in Civil Case No. 879.

Hence, the present petition.

The petitioner assails the decision of the CA, alleging that the appellate court erred in holding that the respondent's complaint for ejectment is an action quasi in rem. The petitioner insists that the complaint for forcible entry is an action in personam; therefore, substituted service of the summons and complaint on the respondent, in accordance with Section 7, Rule 14 of the Rules of Court, is valid. The petitioner, likewise, asserts that Oscar Layno is a resident and a registered voter of Barangay Buenlag, Calasiao, Pangasinan; hence, the service of the complaint and summons on the respondent through him is valid.

The respondent, on the other hand, asserts that the action for forcible entry filed against her was an action quasi in rem, and that the applicable provision of the Rules of Court is Section 15 of Rule 14, which calls for extraterritorial service of summons.

The sole issue is whether or not there was a valid service of the summons and complaint in Civil Case No. 879 on the respondent herein who was the defendant in the said case. The resolution of the matter is anchored on the issue of whether or not the action of the petitioner in the MTC against the respondent herein is an action in personam or quasi in rem.

The ruling of the CA that the petitioner's complaint for forcible entry of the petitioner against the respondent in Civil Case No. 879 is an action quasi in rem, is erroneous. The action of the petitioner for forcible entry is a real action and one in personam.

The settled rule is that the aim and object of an action determine its character.[18] Whether a proceeding is in rem, or in personam, or quasi in rem for that matter, is determined by its nature and purpose, and by these only.[19] A proceeding in personam is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court.[20] The purpose of a proceeding in personam is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant.[21] Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him.[22] An action in personam is said to be one which has for its object a judgment against the person, as distinguished from a judgment against the propriety to determine its state. It has been held that an action in personam is a proceeding to enforce personal rights or obligations; such action is brought against the person. As far as suits for injunctive relief are concerned, it is well-settled that it is an injunctive act in personam.[23] In *Combs v. Combs*,[24] the appellate court held that proceedings to enforce personal rights and obligations and in which personal judgments are rendered adjusting the rights and obligations between the affected parties is in personam. Actions for recovery of real property are in personam.[25]

On the other hand, a proceeding quasi in rem is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed.[26] In an action quasi in rem, an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property.[27] Actions quasi in rem deal with the status, ownership or liability of a particular property but

which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. The judgments therein are binding only upon the parties who joined in the action.[28]

Section 1, Rule 70 of the Rules of Court provides:

Section 1. Who may institute proceedings, and when. - Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building in force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Under Section 15, Rule 70 of the said Rule, the plaintiff may be granted a writ of preliminary prohibition or mandatory injunction:

Sec. 15. Preliminary Injunction. - The court may grant preliminary injunction, in accordance with the provisions of Rule 58 hereof, to prevent the defendant from committing further acts of dispossession against the plaintiff.

A possessor deprived of his possession through forcible entry or unlawful detainer may, within five (5) days from the filing of the complaint, present a motion in the action for forcible entry or unlawful detainer for the issuance of a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.

If, after due proceedings, the trial court finds for the plaintiff, it shall then render judgment in his or her favor, thus:

Sec. 17. Judgment. - If, after trial, the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. If it finds that said allegations are not true, it shall render judgment for the defendant to recover his costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires.

From the aforementioned provisions of the Rules of Court and by its very nature and purpose, an action for unlawful detainer or forcible entry is a real action and in personam because the plaintiff seeks to enforce a personal obligation or liability on the defendant under Article 539 of the New Civil Code,[29] for the latter to vacate the property subject of the action, restore physical possession thereof to the plaintiff, and pay actual damages by way of reasonable compensation for his use or occupation of the property.[30]

As gleaned from the averments of the petitioner's complaint in the MTC, she sought a writ of a preliminary injunction from the MTC and prayed that the said writ be made permanent. Under its decision, the MTC ordered the defendant therein (the respondent in this case), to vacate the property and pay a "monthly rental" of P1,000.00 to the plaintiff therein (the petitioner in this case).

On the issue of whether the respondent was validly served with the summons and complaint by the Sheriff on April 5, 1999, the petitioner asserts that since her action of forcible entry against the respondent in Civil Case No. 879 was in personam, summons may be served on the respondent, by substituted service, through her brother,

Oscar Layno, in accordance with Section 7, Rule 14 of the Rules of Court. The petitioner avers that Oscar Layno, a person of suitable age and discretion, was residing in the house of the respondent on April 5, 1999. She avers that the fact that the house was leased to and occupied by Eduardo Gonzales was of no moment. Moreover, the Sheriff is presumed to have performed his duty of properly serving the summons on the respondent by substituted service.

The contention of the petitioner has no merit.

In *Asiavest Limited v. Court of Appeals*,^[31] the Court had the occasion to state:

In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the person of a resident defendant who does not voluntarily appear in court can be acquired by personal service of summons as provided under Section 7, Rule 14 of the Rules of Court. If he cannot be personally served with summons within a reasonable time, substituted service may be made in accordance with Section 8 of said Rule. If he is temporarily out of the country, any of the following modes of service may be resorted to: (a) substituted service set forth in Section 8; (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court; or (4) any other manner the court may deem sufficient.^[32]

Thus, any judgment of the court which has no jurisdiction over the person of the defendant is null and void.^[33]

In the present case, the records show that the respondent, before and after his marriage to Jarl Jensen on August 23, 1987, remained a resident of Barangay Buenlag, Calasiao, Pangasinan. This can be gleaned from the Deed of Absolute Sale dated August 26, 1992 in which she declared that she was a resident of said barangay. Moreover, in the Real Estate Mortgage Contract dated February 9, 1999, ten days before the complaint in Civil Case No. 879 was filed, the petitioner categorically stated that she was a Filipino and a resident of Barangay Buenlag, Calasiao, Pangasinan. Considering that the respondent was in Oslo, Norway, having left the Philippines on February 17, 1999, the summons and complaint in Civil Case No. 879 may only be validly served on her through substituted service under Section 7, Rule 14 of the Rules of Court, which reads:

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.

Strict compliance with the mode of service is required in order that the court may acquire jurisdiction over the person of the defendant.^[34] The statutory requirement of substituted service must be followed faithfully and strictly and any substituted service other than that authorized by the statute is rendered ineffective.^[35] As the Court held in *Hamilton v. Levy*:^[36]

... The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, any substituted service made in lieu of personal service cannot be upheld. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute. Here, no such explanation was made. Failure to faithfully, strictly, and fully comply with the requirements of substituted service renders said service ineffective.^[37]

In *Keister v. Narcereo*,^[38] the Court held that the term "dwelling house" or "residence" are generally held to refer to the time of service; hence, it is not sufficient to leave the summons at the former's dwelling house, residence or place of abode, as the case may be. Dwelling house or residence refers to the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of

the country at the time. It is, thus, the service of the summons intended for the defendant that must be left with the person of suitable age and discretion residing in the house of the defendant. Compliance with the rules regarding the service of summons is as much important as the issue of due process as of jurisdiction.[39]

The Return of Service filed by Sheriff Eduardo J. Abulencia on the service of summons reads:

Respectfully returned to the court of origin the herein summons and enclosures in the above-entitled case, the undersigned caused the service on April 5, 1999.

Defendant Vivian Layno Jensen is out of the country as per information from her brother Oscar Layno, however, copy of summons and enclosures was received by her brother Oscar Layno on April 5, 1999 as evidenced by his signature appearing in the original summons.

Calasiao, Pangasinan, April 6, 1999.

(Sgd.)

EDUARDO J. ABULENCIA

Junior Process Server[40]

As gleaned from the said return, there is no showing that as of April 5, 1999, the house where the Sheriff found Oscar Layno was the latter's residence or that of the respondent herein. Neither is there any showing that the Sheriff tried to ascertain where the residence of the respondent was on the said date. It turned out that the occupant of the house was a lessor, Eduardo Gonzales, and that Oscar Layno was in the premises only to collect the rentals from him. The service of the summons on a person at a place where he was a visitor is not considered to have been left at the residence or place or abode, where he has another place at which he ordinarily stays and to which he intends to return.[41]

The Voter's Registration Record of Oscar Layno dated June 15, 1997 wherein he declared that he was a resident of No. 572 Barangay Buenlag, Calasiao, Pangasinan, as well as the Joint Affidavit of Vicenta Peralta and Orlando Macasalda cannot prevail over the Contract of Lease the respondent had executed in favor of Eduardo Gonzales showing that the latter had resided and occupied the house of the respondent as lessee since November 24, 1997, and the affidavit of Eduardo Gonzales that Oscar Layno was not residing in the said house on April 5, 1999.

In sum, then, the respondent was not validly served with summons and the complaint in Civil Case No. 879 on April 5, 1999, by substituted service. Hence, the MTC failed to acquire jurisdiction over the person of the respondent; as such, the decision of the MTC in Civil Case No. 879 is null and void.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring; Rollo, pp. 25-33.

[2] Penned by Judge Crispin C. Laron (Retired).

[3] Entitled "Filomena Domagas v. Vivian Layno Jensen."

[4] Records, p. 13.

[5] Id. at 20.

- [6] Id. at 79.
- [7] Records, p. 2.
- [8] Id. at 54-56.
- [9] Id. at 57-58.
- [10] Id. at 53.
- [11] Id. at 60.
- [12] Id. at 59.
- [13] Id. at 46.
- [14] Id. at 47.
- [15] Id. at 50
- [16] Exhibit “6.”
- [17] Records, p. 126.
- [18] National Surety Co. v. Austin Machinery Corporation, 35 F.2d 842 (1929).
- [19] Sandejas v. Robles, 81 Phil. 421 (1948).
- [20] Id. at 424.
- [21] Asiavest Ltd. v. Court of Appeals, 296 SCRA 539 (1998).
- [22] Hughes v. Hughes, 278 S.W. 121 (1925).
- [23] Green Oaks Apartments, Ltd. v. Cannon, 696 S.W. 2d 415 (1985).
- [24] 60 S.W. 2d 368 (1933).
- [25] PNB v. Court of Appeals, 153 SCRA 435 (1987).
- [26] Freeman v. Alderson, 30 L.Ed.372 (1886).
- [27] Banco do Brasil v. Court of Appeals, 333 SCRA 545 (2000).
- [28] Perry v. Young, 182 S.W. 577 (1916).
- [29] ART. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.
- possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.
- [30] Progressive Development Corporation, Inc. v. Court of Appeals, 301 SCRA 637 (1999).

[31] 296 SCRA 539 (1998).

[32] Id. at 552-553.

[33] Lam v. Rosillosa, 86 Phil. 447 (1956).

[34] Venturanza v. Court of Appeals, 156 SCRA 305 (1987).

[35] Umandap v. Sabio, Jr., 339 SCRA 243 (2000).

[36] 344 SCRA 821 (2000).

[37] Id. at 829.

[38] 77 SCRA 209 (1977).

[39] Ang Ping v. Court of Appeals, 310 SCRA 343 (1999).

[40] Records, p. 20.

[41] John Hancock Mutual Life Insurance Co. v. Gooley, 118 ALR 1484 (1938); Albers v. Bramberg, 32 N.E. 2d 362 (1941).

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