

**ABUBAKAR A. AFDAL AND FATIMA A. AFDAL, PETITIONERS, VS.
ROMEO CARLOS, RESPONDENT.***G.R. No. 173379. December 01, 2010*

Ponente: CARPIO, J.

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This is a petition for review[1] of the 3 January 2005[2] and 16 June 2006[3] Orders of the Regional Trial Court, Branch 25, Biñan, Laguna (RTC) in Civil Case No. B-6721. In its 3 January 2005 Order, the RTC ordered the dismissal of petitioners Abubakar A. Afdal and Fatima A. Afdal's (petitioners) petition for relief from judgment. In its 16 June 2006 Order, the RTC denied petitioners' motion for reconsideration.

The Facts

On 18 December 2003, respondent Romeo Carlos (respondent) filed a complaint for unlawful detainer and damages against petitioners, Zenaida Guijabar (Guijabar), John Doe, Peter Doe, Juana Doe, and all persons claiming rights under them docketed as Civil Case No. 3719 before the Municipal Trial Court, Biñan, Laguna (MTC). Respondent alleged that petitioners, Guijabar, and all other persons claiming rights under them were occupying, by mere tolerance, a parcel of land in respondent's name covered by Transfer Certificate of Title No. T-530139[4] in the Registry of Deeds Calamba, Laguna. Respondent claimed that petitioner Abubakar Afdal (petitioner Abubakar) sold the property to him but that he allowed petitioners to stay in the property. On 25 August 2003, respondent demanded that petitioners, Guijabar, and all persons claiming rights under them turn over the property to him because he needed the property for his personal use.[5] Respondent further alleged that petitioners refused to heed his demand and he was constrained to file a complaint before the Lupon ng Tagapamayapa (Lupon). According to respondent, petitioners ignored the notices and the Lupon issued a "certificate to file action." [6] Then, respondent filed the complaint before the MTC.

According to the records, there were three attempts to serve the summons and complaint on petitioners - 14 January, 3 and 18 February 2004.[7] However, petitioners failed to file an answer.

On 2 June 2004, respondent filed an ex-parte motion and compliance with position paper submitting the case for decision based on the pleadings on record.[8]

In its 23 August 2004 Decision,[9] the MTC ruled in favor of respondent. The dispositive portion of the 23 August 2004 Decision reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants as follows:

1. Ordering defendants Abubakar Afdal, Zenaida Guijabar and all persons claiming rights under them to vacate the subject property and peacefully turn-over possession of the same to plaintiff;
2. Ordering defendants to pay plaintiff the amount of TEN THOUSAND PESOS (P10,000.00) as rental arrears

from August 25, 2003 up to the date of decision;

3. Ordering defendants to pay plaintiff the amount of TEN THOUSAND PESOS (P10,000.00) a month thereafter, as reasonable compensation for the use of the subject premises until they finally vacate the same;

4. Ordering defendants to pay plaintiff the amount of FIFTY THOUSAND PESOS (P50,000.00) as and for attorney's fees plus ONE THOUSAND FIVE HUNDRED PESOS (P1,500.00) appearance fee;

5. Ordering defendants to pay the costs of suit.

SO ORDERED.[10]

On 1 October 2004, the MTC issued a writ of execution.[11]

On 30 October 2004, petitioners filed a petition for relief from judgment with the MTC.[12] Respondent filed a motion to dismiss or strike out the petition for relief.[13] Subsequently, petitioners manifested their intention to withdraw the petition for relief after realizing that it was a prohibited pleading under the Revised Rule on Summary Procedure. On 10 November 2004, the MTC granted petitioners' request to withdraw the petition for relief.[14]

On 6 December 2004, petitioners filed the petition for relief before the RTC.[15] Petitioners alleged that they are the lawful owners of the property which they purchased from spouses Martha D.G. Ubaldo and Francisco D. Ubaldo. Petitioners denied that they sold the property to respondent. Petitioners added that on 15 December 2003, petitioner Abubakar filed with the Commission on Elections his certificate of candidacy as mayor in the municipality of Labangan, Zamboanga del Sur, for the 10 May 2004 elections. Petitioners said they only learned of the MTC's 23 August 2004 Decision on 27 October 2004. Petitioners also pointed out that they never received respondent's demand letter nor were they informed of, much less participated in, the proceedings before the Lupon. Moreover, petitioners said they were not served a copy of the summons and the complaint.

On 3 January 2005, the RTC issued the assailed Order dismissing the petition for relief. The RTC said it had no jurisdiction over the petition because the petition should have been filed before the MTC in accordance with Section 1 of Rule 38 of the Rules of Court which provides that a petition for relief should be filed "in such court and in the same case praying that the judgment, order or proceeding be set aside."

Petitioners filed a motion for reconsideration. In its 16 June 2006 Order, the RTC denied petitioners' motion.

Hence, this petition.

The Issue

Petitioners raise the sole issue of whether the RTC erred in dismissing their petition for relief from judgment.

The Ruling of the Court

Petitioners maintain that the RTC erred in dismissing their petition for relief. Petitioners argue that they have no other recourse but to file the petition for relief with the RTC. Petitioners allege the need to reconcile the apparent inconsistencies with respect to the filing of a petition for relief from judgment under Rule 38 of the Rules of Court and the prohibition under the Revised Rule on Summary Procedure. Petitioners suggest that petitions for relief from judgment in forcible entry and unlawful detainer cases can be filed with the RTC provided that petitioners have complied with all the legal requirements to entitle him to avail of such legal remedy.

Section 13(4) of Rule 70 of the Rules of Court provides:

SEC. 13. Prohibited pleadings and motions. - The following petitions, motions, or pleadings shall not be allowed: x x x

4. Petition for relief from judgment; x x x

Section 19(d) of the Revised Rule on Summary Procedure also provides:

SEC. 19. Prohibited pleadings and motions. - The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule: x x x

(d) Petition for relief from judgment; x x x

Clearly, a petition for relief from judgment in forcible entry and unlawful detainer cases, as in the present case, is a prohibited pleading. The reason for this is to achieve an expeditious and inexpensive determination of the cases subject of summary procedure.[16]

Moreover, Section 1, Rule 38 of the Rules of Court provides:

SEC. 1. Petition for relief from judgment, order or other proceedings. - When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside. (Emphasis supplied)

A petition for relief from judgment, if allowed by the Rules and not a prohibited pleading, should be filed with and resolved by the court in the same case from which the petition arose.[17]

In the present case, petitioners cannot file the petition for relief with the MTC because it is a prohibited pleading in an unlawful detainer case. Petitioners cannot also file the petition for relief with the RTC because the RTC has no jurisdiction to entertain petitions for relief from judgments of the MTC. Therefore, the RTC did not err in dismissing the petition for relief from judgment of the MTC.

The remedy of petitioners in such a situation is to file a petition for certiorari with the RTC under Rule 65[18] of the Rules of Court on the ground of lack of jurisdiction of the MTC over the person of petitioners in view of the absence of summons to petitioners. Here, we shall treat petitioners' petition for relief from judgment as a petition for certiorari before the RTC.

An action for unlawful detainer or forcible entry is a real action and in personam because the plaintiff seeks to enforce a personal obligation on the defendant 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.[19] In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case.[20] Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court.[21] If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of Court, which state:

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.

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.

Any judgment of the court which has no jurisdiction over the person of the defendant is null and void.[22]

The 23 August 2004 Decision of the MTC states:

Record shows that there were three attempts to serve the summons to the defendants. The first was on January 14, 2004 where the same was unserved. The second was on February 3, 2004 where the same was served to one Gary Akob and the last was on February 18, 2004 where the return was duly served but refused to sign.[23]

A closer look at the records of the case also reveals that the first indorsement dated 14 January 2004 carried the annotation that it was "unsatisfied/given address cannot be located." [24] The second indorsement dated 3 February 2004 stated that the summons was "duly served as evidenced by his signature of one Gary Acob [25] (relative)." [26] While the last indorsement dated 18 February 2004 carried the annotation that it was "duly served but refused to sign" without specifying to whom it was served. [27]

Service of summons upon the defendant shall be by personal service first and only when the defendant cannot be promptly served in person will substituted service be availed of. [28] In *Samartino v. Raon*, [29] we said:

We have long held that the impossibility of personal service justifying availment of substituted service should be explained in the proof of service; why efforts exerted towards personal service failed. The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, the substituted service cannot be upheld. [30]

In this case, the indorsements failed to state that prompt and personal service on petitioners was rendered impossible. It failed to show the reason why personal service could not be made. It was also not shown that efforts were made to find petitioners personally and that said efforts failed. These requirements are indispensable because substituted service is in derogation of the usual method of service. It is an extraordinary method since it seeks to bind the defendant to the consequences of a suit even though notice of such action is served not upon him but upon another whom the law could only presume would notify him of the pending proceedings. Failure to faithfully, strictly, and fully comply with the statutory requirements of substituted service renders such service ineffective. [31]

Likewise, nowhere in the return of summons or in the records of the case was it shown that Gary Acob, the person on whom substituted service of summons was effected, was a person of suitable age and discretion residing in petitioners' residence. In *Manotoc v. Court of Appeals*, [32] we said:

If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein." A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed." Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons. [33] (Emphasis supplied)

In this case, the process server failed to specify Gary Acob's age, his relationship to petitioners and to ascertain

whether he comprehends the significance of the receipt of the summons and his duty to deliver it to petitioners or at least notify them of said receipt of summons.

In sum, petitioners were not validly served with summons and the complaint in Civil Case No. 3719 by substituted service. Hence, the MTC failed to acquire jurisdiction over the person of the petitioners and, thus, the MTC's 23 August 2004 Decision is void.[34] Since the MTC's 23 August 2004 Decision is void, it also never became final.[35]

WHEREFORE, we GRANT the petition. We SET ASIDE the 3 January 2005 and 16 June 2006 Orders of the Regional Trial Court, Branch 25, Biñan, Laguna. The 23 August 2004 Decision and the 1 October 2004 Writ of Execution, as well as all acts and deeds incidental to the judgment in Civil Case No. 3719, are declared VOID. We REMAND the case to the Municipal Trial Court, Biñan, Laguna, for consolidation with the unlawful detainer case in Civil Case No. 3719 and for the said Municipal Trial Court to continue proceedings thereon by affording petitioners Abubakar A. Afdal and Fatima A. Afdal a chance to file their answer and present evidence in their defense, and thereafter to hear and decide the case.

SO ORDERED.

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, p. 63. Penned by Judge Hilario F. Corcuera.

[3] Id. at 65-66. Penned by Acting Presiding Judge Romeo C. De Leon.

[4] MTC records, p. 6.

[5] Id. at 7-8.

[6] Id. at 9.

[7] Id. at 41, 44 and 46.

[8] Id. at 53-59.

[9] Rollo, pp. 55-57. Penned by Judge Josefina E. Siscar.

[10] Id. at 56-57.

[11] Id. at 58-59.

[12] Id. at 72-80.

[13] Id. at 81-83.

[14] Id. at 85.

[15] Id. at 23-34.

[16] Batas Pambansa Blg. 129, Section 36.

[17] Florenz D. Regalado, Remedial Law Compendium 391 (1999).

[18] In relation to Section 22, Batas Pambansa Blg. 129, as amended.

[19] Domagas v. Jensen, 489 Phil. 631 (2005).

[20] Asiavest Limited v. Court of Appeals, 357 Phil. 536 (1998).

[21] Id.

[22] Pascual v. Pascual, G.R. No. 171916, 4 December 2009, 607 SCRA 288; Manotoc v. Court of Appeals, G.R. No. 130974, 16 August 2006, 499 SCRA 22; Domagas v. Jensen, supra note 19.

[23] Rollo, p. 55.

[24] MTC records, p. 41.

[25] Sometimes appears in the records as "Gary Akob."

[26] MTC records, p. 44.

[27] Id. at 46.

[28] Samartino v. Raon, 433 Phil. 173 (2002); Talsan Enterprises, Inc. v. Baliwag Transit, Inc., 369 Phil. 409 (1999).

[29] 433 Phil. 173 (2002).

[30] Id. at 184.

[31] Samartino v. Raon, supra; citing Hamilton v. Levy, 398 Phil. 781 (2000); Umandap v. Sabio, Jr., 393 Phil. 657 (2000); Spouses Miranda v. Court of Appeals, 383 Phil. 163 (2000); Venturanza v. Court of Appeals, 240 Phil. 306 (1987).

[32] G.R. No. 130974, 16 August 2006, 499 SCRA 21.

[33] Id. at 36. Citations omitted.

[34] Pascual v. Pascual, supra note 22.

[35] Pascual v. Pascual, supra note 22; Metropolitan Bank & Trust Company v. Alejo, 417 Phil. 303 (2001); Leonor v. Court of Appeals, 326 Phil. 74 (1996); Arcelona v. Court of Appeals, 345 Phil. 250 (1997).

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