

**IGNACIA ECHEVARRIA, VDA. DE ZUBELDIA, IN HER OWN BEHALF
AND AS GUARDIAN OF THE MINORS, LEONOR, MARIA AND RICARDO
ZUBELDIA, PLAINTIFF AND APPELLANT, VS. PARSONS HARDWARE
CO., INC...**

G. R. No. 26464. April 02, 1927

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The question involved in this appeal is whether or not the order of the Court of First Instance of Albay, sustaining the demurrer to the complaint and ordering the dismissal of the action is erroneous.

For a better understanding of the controversy, we are quoting herein the complaint that was dismissed, which had been presented on December 10, 1925 and which is as follows:

"Comes now the undersigned attorney in the name and in behalf of the plaintiff in her individual capacity and as guardian of the above-mentioned minors, and to the court respectfully shows:

"1. That the plaintiff is of age, a resident of the municipality of Tabaco, Province of Albay, P. I., and for some years a temporary resident of the municipality of San Sebastian, Province of Guipuzcoa, Spain, being the judicial guardian of the minors Leonor, Maria and Ricardo, surnamed Zubeldia y Echevarria, duly appointed by the local competent court in special proceeding No. 1611 of the Court of First Instance of Albay in the matter of the guardianship of the Zubeldia y Echevarria minors, and the defendant Parsons Hardware Co., Inc., is a corporation duly organized and registered under the laws of the Philippine Islands, with its main office in the City of Manila, and the defendants Ignacio Zubeldia and Simeon Loria, are both of age, the former being a resident of the municipality of Tabaco and the latter of the municipality of Albay, Province of Albay, P. I.

"2. That on May 20, 1925, the herein defendant Parsons Hardware Co., Inc., filed a complaint against the herein plaintiff in her capacity as guardian of the heirs of S. Zubeldia for the collection of the sum of P6,167.39, which complaint was registered under No. 28115 of the Court of First Instance of Manila, copy of which, marked Exhibit A, is attached hereto and made an integral part hereof.

"3. That the herein plaintiff was not summoned in said case, it being only the defendant Ignacio Zubeldia who was summoned according to the information and belief and that said defendant Ignacio Zubeldia was not then nor at any time thereafter authorized to appear and represent the herein plaintiff in any court of justice either in her individual capacity or as guardian of the above-mentioned minors, which office is strictly personal and intransferrable.

"4. That the trial of said case was held by default, without the presence of the herein plaintiff nor of any attorney to represent her and defend her rights and interests in her individual capacity and as guardian of the Zubeldia y Echevarria minors.

"5. That on July 29, 1923, the Court of First Instance of Manila rendered judgment in said case ordering the herein plaintiff to pay the Parsons Hardware Co., Inc., the sum of P6,167.39, plus interest at the rate of 10 per

cent per annum from April 1, 1925 until fully paid, and the costs of the action, copy of which judgment, marked Exhibit B is attached hereto and made an integral part hereof.

"6. That the plaintiff has been deprived of the opportunity to appear and defend herself in said case in accordance with law, either personally or through an attorney and to set up her defense or defenses against the action brought by Parsons Hardware Co., Inc., to wit: That the alleged debt, the subject matter of the complaint No. 28115 of the Court of First Instance of Manila, was not contracted by the herein plaintiff who did not even have any knowledge of its existence, (b) That supposing, without admitting, that the herein plaintiff had contracted said debt, which she has not, nevertheless, she was not authorized by the proper court to contract the same, as guardian of the minors, and, therefore, neither they, nor their property, can be held liable for contracts entered into by her as guardian which are not absolutely necessary for the welfare of her wards or the conservation of their property, without the authorization or approval of the competent court, (c) That the acts and contracts entered into by a third party, such as the defendant Ignacio Zubeldia, claiming to represent, or that he represented the minors, does not bind them nor affect their rights and interests and that only he and his property are liable.

"7. That pursuant to the writ of execution issued upon the judgment rendered in said case, the defendant Simeon Loria, in his capacity as provincial sheriff of Albay, on November 14, 1925 attached all of the stock of the business of the herein plaintiff in her own right, Ignacio Zubeldia, Salustiano Zubeldia, jr., and the minors Leonor, Maria and Ricardo Zubeldia y Echevarria, undivided up to this time, one-half belonging to the herein plaintiff in her own right and the other half, in equal parts, to the other heirs of the deceased Salustiano Zubeldia, located in the municipality of Tabaco, Province of Albay, P. I., and valued at P18,000, in order to sell it at public auction to satisfy the amount of said judgment; and on November 17, 1925, the said defendant Simeon Loria also attached the rent of a store belonging, pro indiviso, in the same proportion, to the same persons already mentioned, situated in the municipality of Tabaco, Province of Albay, P. L., at the rate of P200 a month, for the purpose of applying it also to the payment of the amount of said judgment.

"8. That by these unlawful acts committed by the defendants, the plaintiff has suffered damages in the sum of P18,000, the amount of the stock of the business, plus the additional sum of P5,000 for having closed said business, not being able to operate it until this case is finally determined or, for a year approximately, at the rate of P400 a month, plus P200 a month for the rent of the store until the termination of this case.

"In view of the foregoing, counsel respectfully prays this Honorable Court that judgment be rendered in favor of the herein plaintiff, declaring null and void the decision rendered by the Court of First Instance of Manila in favor of Parsons Hardware Co., Inc., on July 29, 1925 in case No. 28115 of said, court. It is likewise prayed that supposing, although it is not true, that the herein plaintiff was in default, it be declared that it is a well-settled American rule that the property of the ward cannot be affected by any default, consent, admission or confession of the guardian, and it be ordered, therefore, in case the judgment rendered by the Court of First Instance of Manila in case No. 28115 is not totally annulled, that the property of the minors Leonor, Maria and Ricardo Zubeldia y Echevarria be respected, against whom the judgment cannot and must not be binding, the plaintiff being the only one liable, in any event, in her individual capacity and not as guardian of said minors. It is, further prayed that the herein defendant, Parsons Hardware Co., Inc., be ordered to pay the herein plaintiff the sum of P23,000 by way of damages, plus P200 per month from November 17, 1925, until the final determination of this case, as rent of the store attached, with the costs of this instance. Counsel also prays for such other remedy as may be just and equitable."

The documents made a part of the complaint (paragraphs 2 and 5) are as follows:

"EXHIBIT A

"UNITED STATES OF AMERICA "PHILIPPINE ISLANDS

"IN THE COURT OF FIRST INSTANCE OF MANILA

"PARSONS HARDWARE CO., INC., plaintiff,

"VERSUS

"IGNACIA ECHEVARRIA, as guardian of the No. 28115
heirs of S. Zubeldia, doing business
under the name of HEIRS OF ZUBELDIA, defendants.

"COMPLAINT

"Comes now Parsons Hardware Co., Inc., through the undersigned attorneys and, as cause of action against the Heirs of S. Zubeldia, to the court shows:

"1. That the plaintiff is a corporation duly incorporated and registered in accordance with the laws of the Philippine Islands, with its main office in the City of Manila, and the defendant, of legal age, resident of Tabaco, Albay, and duly appointed guardian by the Court of First Instance of said province of the heirs of S. Zubeldia.

"2. That the defendant as guardian of the heirs of S. Zubeldia, and doing business under the name of Heirs of S. Zubeldia, from the month of January to March 31 of the present year, bought and received from the plaintiff, goods and merchandise to their entire satisfaction, amounting to the sum of P6,167.39, Philippine currency, to be paid for within thirty days after the receipt thereof, otherwise interest will be charged on said sum at the rate of 10 per cent per annum.

"3. That demand was made by the plaintiff, as well as by its attorneys upon the defendant at various times to pay the said sum of P6,167.39 but up to the date of the filing of this complaint said defendant has not paid the whole nor any part thereof.

"Wherefore, the plaintiff respectfully prays this Honorable Court that judgment be rendered in its favor and against the defendant for the sum of P6,167.39; interest on this amount at the rate of 10 per cent per annum from March 31st of the present year until fully paid, with the costs of this action. The plaintiff also prays for such other remedy as may be just and equitable.

"Manila, P. I., May 20, 1925.

"CROSSFIELD & O'BRIEN

"BY I. SANTIAGO "

Attorneys for Parsons Hardware Co.

"39 Escolta, Manila"

'EXHIBIT B

"UNITED STATES OF AMERICA

"PHILIPPINE ISLANDS

COURT OF FIRST INSTANCE OF MANILA

"PARSONS HARDWARE CO., INC.,
plaintiff,

JUDGMENT

"VERSUS

Civil Case No. 28115

"IGNACIA ECHEVARRIA, ETC.,
defendants,

"This court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the 29th day of July, A. D. 1925. By virtue of said decision and order, it is hereby decreed that:

"The defendant Ignacia Echevarria, as guardian of the heirs of S. Zubeldia and doing business under the name of Heirs of S. Zubeldia, is ordered to pay the plaintiff the sum of P6,167.39 the value of the goods received, plus interest from March 31, 1925; she is likewise ordered to pay the plaintiff interest at the rate of 10 per cent per annum on the sum of P6,120.59 from April 1st of this year until fully paid, with the costs of this action.

"Messrs: Crossfield & O'Brien Ignacia Echevarria, Tabaco, Albay. (Copy of this judgment was sent to the defendant by registered mail this day of July, 1925.)

"RICARDO SUMMERS

"Clerk of the Court of First Instance of Manila

"By FELIPE N. CONCEPCION

"Deputy"

The ground of the demurrer filed by the defendant corporation to the complaint is the lack of jurisdiction of that court over the subject matter in litigation.

Did the Court of First Instance of Albay really have jurisdiction or did it not?

If, as alleged in paragraph 3 of the complaint above quoted, the herein plaintiff had not been summoned in said case which resulted in judgment being rendered against her, the court of Manila which tried the case had not acquired jurisdiction over her person and therefore said judgment, so far as it affects her, is null and void.

"(S 835) b. Want of Jurisdiction of Person.—Where the court undertaking to try an action and render judgment never acquired jurisdiction of the person of defendant, the judgment is entirely void, and may be so held in a collateral proceeding, unless defendant, by appearance in the action, has waived the original want of jurisdiction.

"(S 836) c. Want of Process or Service.—In a personal action the issuance of process and the service thereof upon defendant is necessary to confer jurisdiction upon the court, and if no process is issued, or if service is not made on defendant, the judgment will be void and subject to collateral attack, unless service is waived by voluntary appearance or otherwise." (34 C. J., 532, 533.)

In this jurisdiction, however, it is a well-settled rule that all petitions for the reinstatement of cases after final judgment has been entered must be presented under the provisions of section 113 or 513 of the Code of Civil Procedure, as the case may be, except those cases where judgment was rendered without jurisdiction and when such a fact appears in the "Book of Final Records" provided in section 387 of the Code of Civil Procedure. (Anuran vs. Aquino and Ortiz., 38 Phil., 29.)

Now, the action brought by the herein plaintiff is an ordinary civil action wherein she prays that judgment be rendered in her favor for the sum of P23,000 as damages, and P200 monthly as rent, with the costs. This is not a mere equity proceeding under section 113 or 513 of the Code of Civil Procedure, the purpose of which in the case of section 113 aforecited is only to free one-self of the compliance with an order or judgment, and in the case of section 513, the holding of a new trial. Besides, under the first section referred to the remedy must be applied for in the same court that rendered the judgment, and under the second, the petition must be presented to the Supreme Court.

According, then, to the rule laid down in the said case of Anuran vs. Aquino and Ortiz, supra, if the plaintiff preferred to commence an ordinary civil action instead of taking advantage of the benefits of section 113 of the

Code of Civil Procedure, she ought to allege in her complaint, if the facts justify it, that the lack of jurisdiction of the court which rendered the judgment challenged by her appears in the "Book of Final Records" mentioned in section 387 of the Code of Civil Procedure.

Not having done so the demurrer filed must be sustained; but as it might happen that the aforesaid lack of jurisdiction may appear in the proper "Book of Final Records," or in the record of the case, or in the records or dockets of the court concerned, there exists, therefore, the possibility of the complaint being amended, and it is but just that the plaintiff be given an opportunity to make said amendment if the same is justified by the actual facts.

In regard to the motion filed by the plaintiff's attorney which is found on folio 20 in the file of this cause, we are of the opinion that the circumstances of the case require no action by this court.

For the foregoing, the order appealed from is modified by setting aside the dismissal ordered and sustaining the demurrer filed by the defendant corporation, with permission to the plaintiff to amend her complaint in harmony with the above resolution within thirty days from the date of the notification of this decision. Without any special pronouncement as to costs. So ordered.

Johnson, Villamor, Ostrand, and Villa-Real, JJ., concur.

Malcolm, J., dissenting in part:

It is perfectly clear to me that the Albay court was without jurisdiction to consider this case and properly dismissed the complaint. (Anuran vs. Aquino and Ortiz [1918], 38 Phil., 29.) Judgment should be affirmed.

Order modified and demurrer sustained.

ROMUALDEZ, J.:

In the decision rendered by this court in the case bearing G. R. No. 26464, which is the same as the present case, among other things, we said the following:

"If, as alleged in paragraph 3 of the complaint above quoted, the herein plaintiff had not been summoned in said case which resulted in judgment being rendered against her, the court of Manila which tried the case had not acquired jurisdiction over her person and therefore said judgment, so far as it affects her, is null and void.

" '(S 835) b. Want of Jurisdiction of Person.—Where the court undertaking to try an action and render judgment never acquired jurisdiction of the person of defendant, the judgment is entirely void, and may be so held in a collateral proceeding, unless defendant, by appearance in the action, has waived the original want of jurisdiction.

" '(S 836) c. Want of Process or Service.—In a personal action the issuance of process and the service thereof upon defendant is necessary to confer jurisdiction upon the court, and if no process is issued, or if service is not made on defendant, the judgment will be void and subject to collateral attack, unless service is waived by voluntary appearance or otherwise. (34 C. J., 532, 533.)

"In this jurisdiction, however, it is a well-settled rule that all petitions for the reinstatement of cases after final judgment has been entered must be presented under the provisions of section 113 or 513 of the Code of Civil Procedure, as the case may be, except those cases where judgment was rendered without jurisdiction and when such a fact appears in the 'Book of Final Records' provided in section 387 of the Code of Civil Procedure. (Anuran vs. Aquino and Ortiz, 38 Phil., 29.)

"Now, the action brought by the herein plaintiff is an ordinary civil action wherein she prays that judgment be

rendered in her favor for the sum of P23,000 as damages, and P200 monthly as rent, with the costs. This is not a mere equity proceeding under section 113 or 513 of the Code of Civil Procedure, the purpose of which in the case of section 113 aforesaid is only to free one-self of the compliance with an order or judgment, and in the case of section 513, the holding of a new trial. Besides, under the first section referred to the remedy must be applied for in the same court that rendered the judgment, and under the second, the petition must be presented to the Supreme Court.

"According, then, to the rule laid down in the said case of Anuran vs. Aquino and Ortiz, supra, if the plaintiff preferred to commence an ordinary civil action instead of taking advantage of the benefits of section 113 of the Code of Civil Procedure, she ought to allege in her complaint, if the facts justify it, that the lack of jurisdiction of the court which rendered the judgment challenged by her appears in the 'Book of Final Records' mentioned in section 387 of the Code of Civil Procedure.

"Not having done so the demurrer filed must be sustained; but as it might happen that the aforesaid lack of jurisdiction may appear in the proper 'Book of Final Records,' or in the record of the case, or in the records or dockets of the court concerned, there exists, therefore, the possibility of the complaint being amended, and it is but just that the plaintiff be given an opportunity to make said amendment if the same is justified by the actual facts.

"In regard to the motion filed by the plaintiff's attorney which is found on folio 20 in the file of this cause, we are of the opinion that the circumstances of the case require no action by this court.

"For the foregoing, the order appealed from is modified by setting aside the dismissal ordered and sustaining the demurrer filed by the defendant corporation, with permission to the plaintiff to amend her complaint in harmony with the above resolution within thirty days from the date of the notification of this decision."

The case was returned to the court of origin and in view of our findings in the decision, part of which is quoted above, the plaintiff amended her complaint alleging, in the fourth paragraph thereof, the following:

"That it appears from the record of civil case No. 28115 of the Court of First Instance of Manila that only Ignacio Zubeldia was summoned, neither the herein plaintiff nor her minor children Leonor, Maria and Ricardo Zubeldia y Echevarria, who, for some time previous to, and at the time of the filing of the complaint and the summons in said civil case, as already stated in the first paragraph of the complaint, resided outside of the Philippine Islands, in the town of San Sebastian, Province of Guipuzcoa, Spain, having been summoned. Copy of said summons with the return of the sheriff in said case is hereto attached marked Exhibit B, and is made an integral part hereof."

According to these allegations, it appears from the record of said case that the defendant therein and plaintiff herein, Ignacia Echevarria, was at that time in San Sebastian, Province of Guipuzcoa, Spain, and therefore the Court of First Instance of Manila had no jurisdiction over her person.

It is true that in the new complaint it is not alleged that such lack of jurisdiction appears in the "Book of Final Records," referred to in section 387 of the Code of Civil Procedure; but we stated in the decision above quoted, that:

"* * * as it might happen that the aforesaid lack of jurisdiction may appear in the proper 'Book of Final Records,' or in the record of the case, or in the records or dockets of the court concerned, there exists, therefore, the possibility of the complaint being amended, and it is but just that the plaintiff be given an opportunity to make said amendment if the same is justified by the actual facts." (Italics ours.)

And the plaintiff now alleges in her amended complaint that the said lack of jurisdiction appears in the record of the case.

The demurrer filed to the complaint thus amended is groundless for the reason that said complaint alleges facts sufficient to constitute a cause of action and is not ambiguous nor unintelligible.

The Court of First Instance of Albay having sustained said demurrer in its order of July 19, 1927, the same is hereby revoked and said demurrer overruled, and the defendant is ordered to answer the amended complaint within the period prescribed by the rules, without any express finding as to costs. So ordered.

Johnson, Street, Ostrand, Johns, and Villa-Real, JJ., concur.

Malcolm, J., dissents.

Order reversed and demurrer overruled.

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