

MAGDALENA ESTATE, INC., PLAINTIFF-APPELLEE, VS. RENE NIETO AND HELEN GARCIA, DEFENDANTS-APPELLANTS.

G.R. No. 54242. November 25, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the judgment of the then Court of First Instance of Rizal in Quezon City, ordering defendants-appellants Rene Nieto and Helen Garcia to pay plaintiff-appellee:

"1) the sum of P11,999.00, with interest thereon at the rate of 7% per annum, beginning April 21, 1970, the date of the letter of demand, until the same shall have been fully paid;

"2) the sum of P2,000.00 as and for attorney's fees; and

"3) the costs of the suit." (p. 41, Record on Appeal)

The facts which led to the above judgment are summarized by the trial court as follows:

"The evidence shows that the defendants herein bought from the plaintiff a parcel of land located at New Manila Subdivision, Quezon City. Even if defendants had not fully paid the consideration for the said lot, by special arrangement with the plaintiff, the former were able to have the title to said lot transferred in their names. They had made partial payments only and the balance of their account in the amount of P12,000.00 was secured by a promissory note which they executed on November 3, 1960, under the following terms and conditions to wit: (a) the defendants shall pay plaintiff the sum of P12,000.00, with interest thereon at the rate of 7% per annum, said amount to be payable without demand in consecutive monthly installments of not less than P500.00 per month, beginning December 3, 1960, and on the third day of each month thereafter, until fully paid; (b) in case of failure to pay any monthly installment due, the total obligation, or the balance thereof, shall automatically become due and immediately payable; (c) that the plaintiff shall have the right to enforce payment of the obligation, together with the corresponding interest, including attorney's fees and the costs of suit in case of litigation to enforce collection of the said obligation (Exhibit 'C'). Out of the aforesaid amount of P12,000.00, defendants paid only P100.00 in two installments of P50.00 each. The first payment was made on January 29, 1963 and the second payment was made on March 14, 1963, leaving a balance of P11,999.90, exclusive of interests. Plaintiff wrote defendants a letter of demand calling the attention of the latter about the installments in arrears under the terms and conditions of the promissory notes; but in spite of the said letter, de-fendants did not comply with their obli-gation. Plaintiff referred the matter to its legal counsel, who, in turn, sent defendants a letter of demand dated April 21, 1970 which letter was received by the defendants (Exhibits 'D', 'D-1' & 'D-2'). Despite receipt of said letter, defendants did not comply and even failed to make a reply. Plaintiff presented further a statement of account stating therein that the amount still owing to it, inclusive of interest up to September 19, 1972 is P21,876.44; P11,999.00, the amount of the principal and P9,976.44 the amount of interest from November 3, 1960 up to September 19, 1972 (Exhibit 'E')." (pp. 33-34, Rollo)

There was an ex-parte reception of evidence because the defendants-appellants had been declared in default,

plaintiff having complied with the court's order allowing service of summons and copy of the complaint upon the defendants-appellants through publication of the same in a newspaper of general circulation (Daily Mirror), pursuant to Section 16, Rule 14 of the Rules of Court.

Plaintiff claims that summons could not be served personally upon the defendants because they concealed themselves to avoid service upon them; and, that when the sheriff went to the Jai-Alai Corporation of the Philippines at Cebu City where defendant-appellant Rene Nieto holds office, as manager, he could not be found thereat but, when the decision was served at the same address, the defendants-appellants were able to receive it.

In this appeal, defendants-appellants contend that the lower court erred: (1) in allowing service of summons by publication, and consequently, the trial court did not acquire jurisdiction over the defendants-appellants, and the decision is therefore void; (2) in granting relief to plaintiff-appellee when its cause of action is barred by laches; (3) in lifting its orders dismissing the complaint for failure to prosecute; and (4) in granting interests from November 3, 1960.

There is merit in this appeal. It is true that in *Fontanilla vs. Dominguez*, 73 Phil. 579, it was held that service of summons by publication is proper in all actions without distinction, provided the defendant is residing in the Philippines but his identity is unknown or his address cannot be ascertained. However, in a later case, *Pantaleon vs. Asuncion*, 105 Phil. 765, the Court, speaking through then Justice Roberto Concepcion, ruled that "it is a well-settled principle of Constitutional Law that, in an action strictly in personam, like the one at bar, personal service of summons, within the forum, is essential to the acquisition of jurisdiction over the person of the defendant, who does not voluntarily submit himself to the authority of the court. In other words, summons by publication cannot - consistently with the due process clause in the Bill of Rights - confer upon the court jurisdiction over said defendant." And, quoting 16A C.J.S., pp. 786, 789, as follows: "Due process of law requires personal service to support a personal judgment, and, when the proceeding is strictly in personam brought to determine the personal rights and obligations of the parties, personal service within the state or a voluntary appearance in the case is essential to the acquisition of jurisdiction so as to constitute compliance with the constitutional requirement of due process. * * * Although a state legislature has more control over the form of service on its own residents than nonresidents, it has been held that in actions in personam * * * service by publication on resident defendants, who are personally within the state and can be found therein is not 'due process of law', and a statute allowing it is unconstitutional."

The action of herein plaintiff-appellee, being in personam, the doctrine laid down in *Pantaleon vs. Asuncion* (supra) finds application. And, the latest expression of such a doctrine comes from Justice J. B. L. Reyes in the case of *Citizens' Surety and Insurance Company, Inc. vs. Melencio-Herrera*, 38 SCRA 369, in these words: "x x x the Court could not validly acquire jurisdiction on a non-appearing defendant, absent a personal service of summons within the forum. x x x The proper recourse for a creditor in the same situation as petitioner is to locate properties, real or personal, of the resident defendant debtor with unknown address and cause them to be attached under Rule 57, Section 1(f), in which case, the attachment converts the action into a proceeding in rem or quasi in rem and the summons by publication may then accordingly be deemed valid and effective."

Inasmuch as in the case at bar the lower court did not acquire jurisdiction over the person of the defendants--appellants, We find it unnecessary to discuss the other assigned errors raised by them.

WHEREFORE, the decision, dated October 5, 1972 of the court a quo, is hereby SET ASIDE and the case is remanded to the trial court for proper service of summons and trial.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

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