

SALOME M. CASTILLO, PETITIONER, VS. COURT OF FIRST INSTANCE OF BULACAN, BRANCH IV AND FELIBERTO V. CASTILLO, RESPONDENTS.

G.R. No. 55869, February 20, 1984

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for certiorari and prohibition to annul the proceedings in Civil Case No. 1065-B, entitled "Feliberto V. Castillo, plaintiff, versus Salome M. Castillo, et al, defendants," which is pending before the former Court of First Instance of Bulacan, Branch IV.

Private respondent and petitioner are husband and wife. Sometime in October, 1979 a complaint dated October 8, 1979 was filed by private respondent against petitioner for administration of conjugal properties, alleging that in August, 1971 petitioner took possession and administration of the assets of the conjugal partnership; that they were separated de facto in the latter part of 1973; and praying, among others, that the possession and administration of real properties belonging to the conjugal partnership located in the province of Bulacan and City of Manila be transferred to him and that the sale of a parcel of land and building registered in the name of the spouses made by petitioner be nullified.

Summons was issued by the respondent court. The address of petitioner as alleged in the complaint and indicated in the summons is 129 or 35 Lapu Lapu Street, Caloocan City, Metro Manila. On October 19, 1979, Deputy Sheriff Felixberto L. Samonte instead of serving the summons at the aforesaid address, served it at No. 8 Mango Road, Malabon, Metro Manila, but was informed by Atty. Jose M. Castillo, a son of the spouses, that petitioner is not residing in said address and is presently in the United States of America. When the Deputy Sheriff inquired the location of 129 Lapu Lapu Street, Caloocan City, Atty. Castillo accompanied him in said address where his brother, Feliberto M. Castillo, Jr. is residing. In said address, the Deputy Sheriff was likewise informed that petitioner is abroad. On October 24, 1979 the Castillo brothers filed a manifestation before the respondent court that petitioner is abroad.

In a letter dated December 12, 1979 private respondent requested the Deputy Sheriff to serve the summons at No. 8 Mango Road, Northern Hills, Malabon, Metro Manila. On December 14, 1979 the Deputy Sheriff served the summons on the said address delivering a copy thereof to a certain Chua Yok, an overseer of one Ngo Kieng, who was the lessee of the premises belonging to the conjugal partnership of petitioner and private respondent.

For failure of petitioner to file answer, on March 24, 1980, private respondent filed a motion to declare the former in default which was granted by the trial court on April 17, 1980. Private respondent was allowed to present his evidence ex-parte. As private respondent has already presented his evidence and the case is pending decision before the lower court, the present case was instituted raising the sole question as to whether valid service of summons was made upon petitioner. On January 11, 1981 a temporary restraining order was issued by this Court restraining the court a quo from further proceeding with the case.

The petition is meritorious. There was no valid service of summons upon petitioner. Courts acquire jurisdiction over the person of a party defendant and of the subject matter of the action by virtue of the service of summons in the manner required by law. In the present case, petitioner is a resident temporarily out of the Philippines. Such being the case, service of summons is governed by Section 18, Rule 14 of the Rules of Court which states:

"Section 18. - Resident temporarily out of the Philippines. - When an action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service may, by leave of court be effected out of the Philippines as under the preceding section."

Under Section 17, service of summons may, by leave of court, be effected out of the Philippines by personal service or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant. Failure to comply with the above provisions of law, as in this case, is a fatal defect in the service of summons as to annul the proceedings taken by the lower court. Chua Yok, a mere overseer of the lessee of the premises owned by the parties herein, and to whom the summons was served, is not in anyway authorized to receive any pleading in behalf of petitioner. Hence, service of summons to him is not proper and legal.

Non-service of summons upon petitioner constitutes a deprivation of procedural due process. It is fair and just that she be given her day in court. It is a jurisdictional defect proper for the present recourse.

WHEREFORE, the proceedings in Civil Case No. 1065-D is hereby declared null and void. The now Regional Trial Court, to which the case below has been assigned, is hereby directed to allow private respondent to apply for the issuance of an alias summons on petitioner, and after issues have been joined, to proceed to trial and judgment accordingly. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

Makasiar, J., (Chairman), joins Aquino, J., in his concurring opinion.

CONCURRING OPINION

AQUINO, J.:

Salome Castillo of 2385 Seabright, Long Beach, California, should be considered already served with summons through Jose M. Castillo, the lawyer of his mother in this case, the son of the parties, his father's opponent, and a resident of 8 Mango Road, Malabon. He should be given 15 days from notice of the finality of the judgment in this case to answer the complaint in Civil Case No. 1065-D. He should endeavor to settle the case amicably.

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