

**ANASTACIO AREVALO AND PILAR SILVERIO, PETITIONERS, VS.
VALENTIN QUILATAN, LOPE DE LA CRUZ, JUDAN DE LA CRUZ,
SALUD DE LA CRUZ AND HER SPOUSE EMILIANO MEDINA,
EMILIANO DE LA CRUZ...**

G.R. No. 57892. September 21, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the split (3-2) decision on reconsideration of the Court of Appeals in CA G.R. No. 57728-R, Anastacio Arevalo, et al. vs. Valentin Quilatan, et al. which reversed a decision of September 3, 1974 rendered by the Court of First Instance of Rizal in its Civil Case No. 12229 in which the Arevalos were the plaintiffs and the Quilatans et al. the defendants, annulling and setting aside the judgment by default dated February 14, 1969 of the same Court of First Instance against the Arevalos in Case No. 11045.

According to the decision of the Court of Appeals presently under review:

"Dissatisfied, appellants raise the following assignments of error:

"I. THE TRIAL COURT ERRED IN ITS FINDING THAT THE PLAINTIFFS-APPELLEES HAVE TRANSFERRED THEIR RESIDENCE FROM HOUSE NO. 211 TO HOUSE NO. 196 PULANGLUPA, LAS PIÑAS, RIZAL SOMETIME IN THE YEAR 1967.

"II . THE LOWER COURT ERRED IN FAILING TO CONSIDER APPELLEE'S VOTER'S REGISTRATION RECORD (EXH. '6') AS EVIDENCE SHOWING SAID APPELLEE'S CONTINUED RESIDENCE AT HOUSE NO. 211 PULANGLUPA, LAS PIÑAS, RIZAL.

"III. THE DECIDING COURT ERRED IN HOLDING AND DECLARING THAT THERE WAS NO VALID SUBSTITUTED SERVICE OF SUMMONS AND COPIES OF THE COMPLAINT UPON THE HEREIN PLAINTIFFS-APPELLEES.' (pp. 7-8, Appellants' Brief)

"Appellants were plaintiffs while appellees were defendants in Civil Case No. 11045 before the CFI of Rizal. Suit commenced with the filing of a complaint dated July 10, 1968. Summons was duly issued on July 25, 1968. After serving the summons on August 2, 1968, the Deputy Sheriff of Rizal made the following Sheriff's Return:

"I CERTIFY that on this 2nd day of August 1968, I personally served copies of enclosed SUMMONS together with copies of the Complaints, issued by the court in connection with the above-entitled case, upon ANASTACIO AREVALO and PILAR SILVERIO, thru their daughter-in-law, LUZ ESGUERES, a person with sufficient age and discretion residing therein, who refused to acknowledge the receipt thereof, at Pulanglupa, Las Piñas, Rizal.' (Exh . C).

"For failure of appellees to file an answer within the reglementary period, appellants moved to declare the former in default and to be allowed to adduce evidence ex- parte. Thereafter judgment was rendered on

February 14, 1969. Appellee Pilar Silverio received a copy of this decision through the mails on June 20, 1969 while the copy intended for the other appellee Anastacio Arevalo, husband of Pilar, mailed on May 2, 1969 was returned unclaimed. He ultimately received a copy of the decision and the writ of execution on August 26, 1969.

" Appellees make it appear that they no longer resided at No. 211 Pulanglupa, Las Piñas, Rizal where summons were served on August 2, 1968, but at No. 196 Pulanglupa, Las Piñas, Rizal, However they admit that No. 211 belongs to them although only their son and daughter-in-law Luz dwelled therein. They aver that Luz Esgueres forgot all about the papers left by the sheriff. Moreover, appellee Pilar Silverio claimed that she was illiterate and ignorant to fully realize the significance of the decision which she received through the mails on June 20, 1969.

"On December 11, 1970, the judge issued this pre-trial order in the annulment case:

"Upon calling this case for pre-trial, the parties agreed that the only issue in this case is whether or not the defendant in Civil Case No. 11045 and who are the plaintiffs in the present case were duly served with summons.' (p. 54, Record on Appeal)

"We find no merit in the second of the assignment of errors. A review of Exhibit 6 reveals that the voter registration record of Anastacio Arevalo was filed on March 25, 1965 and approved on April 6, 1965. It could not accurately establish the residence of appellee Anastacio Arevalo on or about August 2, 1968, a period of more than 3 years hence.

"However, a thorough scrutiny of the records as well as the applicable jurisprudence on the matter warrants the conclusion that the first and third of the assignment of errors are meritorious. In *Associated Insurance & Surety Co., Inc. vs. Banzon*, G.R. No. L-23971, Nov. 29, 1968, 26 SCRA 268, the Supreme Court sustained the ruling of the trial judge therein, to wit:

"It is a fundamental rule that the regularity of all official actions and proceedings will be presumed until the contrary is proved. x x x It is therefore incumbent upon the oppositors to rebut this presumption with competent and proper evidence such as the return made by the sheriff who served the summons in question.'

"The certificate of service by the sheriff is prima facie evidence of the facts set out therein (1 MARTIN 453, Second Edition). Without any clear and convincing evidence that the summons was served irregularly, the validity of the service must be upheld. The testimonies presented by appellees do not convince Us of any fatal defect in the substituted service of summons. Luz Esgueres Arevalo the daughter-in-law of appellees who received the summons, herself admitted that no instrument was ever executed to transfer ownership of No. 211 from the appellees to her husband. Moreover, this same witness testified that important documents of appellees are still kept in a steel safe at No. 211, and that appellees have still some furnitures in this house. Even their complaint (p. 6, R.A.) gives their address as merely Pulanglupa without specifying 196 or 211. Residence is a broad term that must not be given a restricted interpretation. It is possible that a person may have more than one residence at any given time. Thus in *Aznar vs. Garcia*, G.R. No. L-16525, January 31, 1963, 7 SCRA 89, the Supreme Court adopted this interpretation of residence:

"Sec. 16. Residence is a term used with many shades of meaning from mere temporary presence to the most permanent above. Generally, however, it is used to denote something more than mere physical presence. (Goodrich on Conflict of Laws, p. 29).'" (Pp. 29-31, Record.)

Petitioners' motion for reconsideration was denied because:

"Firstly, appellees admitted receipt of summons by their daughter-in-law at 211 Pulanglupa, Las Piñas, Rizal. She answered the sheriff that this place was the house of Anastacio Arevalo. She received the summons but she allegedly 'forgot all about the papers left with her by Sheriff Bernardo, the same never came to the knowledge of the plaintiffs- appellees.' (pp. 3-5, Appellees ' Brief).

"Secondly, appellee Pilar Silverio received a copy of the decision in Civil Case No. 11045 via re-registered mail on June 20, 1969, but 'because of her illiteracy and ignorance, she did not know what she actually received, nor was she aware of its importance and effects or consequences.' (Complaint, p. 102, Record on Appeal).

"Thirdly, 'the letter containing the decision addressed to plaintiff Anastacio Arevalo was mailed on May 2, 1969, but was returned unclaimed.' (Complaint, p. 12, Record on Appeal).

"It was only upon receipt of the writ of execution on August 26, 1969 did the Arevalos jerk out of the world of fantasy and face the harsh facts of reality. It is highly unnatural that Luz forgot to give the summons, which she properly acknowledged, to her in-laws. Moreover, it is also unnatural for Mrs. Arevalo not to have inquired from more literate individuals the contents of what she received from the mails. It is only natural for the Arevalos that, upon knowing the contents of the mail to Mrs. Arevalo, Anastacio would dispense with claiming his mail, thinking he could forego with the effects of a court decision by so doing. Only with the imminence of execution did they decide to act." (Pp. 34-35, Record.)

There were two dissenters to the said denial, Justices Onofre Villaluz and Carolina Griño-Aquino, who maintained that:

"After a careful and thorough scrutiny of the argument raised by the said motion, and the record of the case at bar, We are constrained to sustain appellees' contention.

"It is not borne by the record that the Sheriff exerted his utmost effort to locate the exact address of the plaintiffs- appellees (defendants in Civil Case No. 11045). Instead, the record reveals that the summons was served to the daughter-in-law of appellees whose residence is different from that of the appellees themselves. Although it was stated there that they are both residing in Pulanglupa, Las Piñas, Metro Manila, the Sheriff should have been accurate in locating said house of movants (appellees) in order to avoid mishandling of summons.

"It is a settled rule that strict compliance with the different modes of service is required in order that the court may acquire jurisdiction over the person of the defendants (Sequito vs. Letrondo, 105 Phil. 1139; Pantaleon vs. Asuncion, 56 O.G. No. 37, p. 5745). And, service of summons under the principle of substituted service cannot be declared valid where it was served through a person not authorized to receive any pleading in behalf of said defendant at a house which though owned by the defendant is not the defendant's dwelling house or residence (J.M. Tuason & Co. vs. Fernandez, 12 SCRA 335).

"Likewise, the rule is that when a copy of the summons and of the complaint were served upon a person not authorized by the defendant to receive for him, the defendant may raise the legality of service which was erroneous for him, and if he is declared in default for failure to comply therewith he can appeal from the order declaring him in default (Fernandez vs. Caluag, 3 SCRA 857)." (Pp. 40-41, Record.)

We are more inclined to uphold the view that the presumption of regularity in the performance of official functions heavily relied upon by the majority in the Court of Appeals can hardly hold in this case, for the simple reason that on its face, the return of the sheriff quoted above does not fulfill all the requirements of Section 8 of Rule 14 which provides:

"SEC. 8. Substituted Service. – If 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 dwelling house or 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."

"The substituted service should be availed of only when the defendant cannot be served promptly in person. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts. The statement should be made in the proof of service. This is necessary because

substituted service is in derogation of the usual method of service. It has been held that it is a method extraordinary in character, and hence may be used only as prescribed in the circumstances authorized by statute. Thus, the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by the statute is considered ineffective. Among the two modes of substituted service, the sheriff may choose that which will more likely insure the effectiveness of the service. The two modes are: (a) by leaving copies of the summons at the defendant's dwelling house or usual residence, with some person of suitable age and discretion then residing therein; and (b) by leaving copies at defendant's office or regular place of business with some competent person in charge thereof, and in this connection it has been held that service of summons upon the manager of a factory is service upon the owner." (Moran, Vol. I, 1979 Ed., p. 441.)

Contrary to the clear import of the foregoing authoritative commentary, citing *Keister vs. Navarro*, 77 SCRA 215 and *Lezama vs. Lezama, et al.*, 50 O.G. 4788, the return here does not in any remote sense indicate the impossibility of prompt service and the efforts made to find the defendants personally, which efforts, according to Moran, "should be (stated) in the proof of service." Nor does such return show on its face that the service was made in the "defendant's dwelling house or residence" as required by Section 8 above. While it does state that Luz Esgueres, to whom the summons were left was "a person of sufficient age and discretion residing therein and that she is the daughter-in-law of the defendants (herein petitioners), "the fact remains that it is only by evidence aliunde that attempts have been made to prove that the petitioners did reside therein also. The general reference to the place of service as "at Pulanglupa, Las Piñas, Rizal" fails to specify the very house where such service was made.

True it is that Luz Esgueres, admittedly the daughter-in-law of petitioners, told the sheriff that petitioners were living at 211 Pulanglupa, Las Piñas, where she was, but such declaration cannot legally bind petitioners who presented proof, believed by the trial court, that they actually lived at 196 Pulanglupa. More, while according to majority opinion under review, it was admitted that no document of transfer was exhibited to prove conveyance by the petitioners to their son and his wife of the house at 211 Pulanglupa in 1967, the decision of the trial court, Annex C of the petition, contains the finding that "in 1967, the store located at 211 Pulanglupa, Las Piñas, Rizal was registered in the name of Luz Esgueres as shown by Exhibits '1', '1-1', '1-2' and '1-3'".

Again, it may be conceded that the house at 211 Pulanglupa was still owned by petitioners when the service in question was made in 1968, but Section 8 of Rule 14 does not refer to ownership but to living or dwelling therein. As the dissent of Justice Villaluz well points out, this Court has held in *J. M. Tuazon & Co. vs. Fernandez*, 12 SCRA 335, it is not valid to serve summons "at a house which though owned by the defendant is not defendant's dwelling house or residence."

The majority opinion of the Court of Appeals invokes the liberality injunction of Section 2, Rule 1 in the construction of the rules. But, in the instant case, the special division of five of the Court of Appeals was split three to two on the pivotal factor of where petitioners were residing in 1968 when the service at issue was served. As against positive testimony of petitioners as to their dwelling place separate and distinct from that of their son and daughter-in-law, the majority gave decisive importance, erroneously in Our opinion, to the fact that some belongings of petitioners were still found at 211 Pulanglupa. But residence is "the place where he (defendant) is habitually present, and from which when he departs, he intends to return." It also has been held to be equivalent to the term "permanent abode" and to the word "home" in the sense of a house to which one, whenever absent, intends to return. (Vol. I, pp. 791-800, *Francisco on the Rules of Court*, 2nd ed.) Otherwise stated, it is the house where the defendants eat and sleep, to use plain layman's language.

Incidentally, the construction adopted by the Court of Appeals in *Korean Airlines vs. Valencia*, CA-G.R. No. 08515-SP, May 30, 1980, to which review was denied by this Court, may be differentiated from the instant case,

if only because the lawyer of Korean Airlines to whom the service must have been relayed after being served at the office of the company was also the very agent designated to receive summons for the foreign corporation. Just as, in the instant case, the petitioners cannot legally be held to have had two "dwelling houses or residences" at the same time vis-a-vis service of summons, that lawyer in Korean Airlines could not split himself into two personalities for the purpose of avoiding the effectivity of such service.

After all, since the result of the judgment herein is not yet finally decisive of the rights of the parties to the property in question, as there will still be another trial where petitioners are only asking the opportunity to be heard, We feel it would be more equitable to give petitioners that chance.

WHEREFORE, the decision of the Court of Appeals is hereby reversed and the case (Civil Case No. 12229 of the Court of First Instance of Rizal) is ordered remanded in the said trial court for further proceedings. No costs.

Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

Aquino and Escolin, JJ., no part.

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