

ELISEO BOTICANO, PETITIONER, VS. MANUEL CHU, JR., RESPONDENT.

G.R. No. 58036. March 16, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to reverse and set aside the following: (a) the decision of the Court of Appeals[*] promulgated on March 31, 1981 in CA-G.R. No. 65287-R entitled: "Eliseo Boticano, plaintiff-appellee v. Jaime Sigua, defendant and Manuel Chu, Jr., defendant-appellant" which holds that the defendant-appellant was not properly served with summons and (b) the resolution denying petitioner's motion for reconsideration of said decision.

The findings of fact of the trial court are as follows:

Petitioner Eliseo Boticano is the registered owner of a Bedford truck with plate No. QC-870, T-Pilipinas '77 which he was using in hauling logs for a certain fee. At 11:00 o'clock in the evening of September 3, 1971, while loaded with logs, it was properly parked by its driver Maximo Dalangin at the shoulder of the national highway in Barrio Labi, Bongabon, Nueva Ecija when it was hit and bumped at the rear portion by a Bedford truck bearing plate No. QK-516, T-Pilipinas, '77 owned by private respondent Manuel Chu, Jr. and driven by Jaime Sigua, the former's co-defendant in this case. Manuel Chu, Jr. acknowledged ownership thereof and agreed with petitioner to shoulder the expenses of the repair of the damaged truck of the latter. (Decision, Civil Case No. 6754, Rollo, pp. 36-37).

When Manuel Chu, Jr. failed to comply with aforesaid agreement as well as to pay damages representing lost income despite petitioner's demands, the latter (plaintiff in the lower court), filed a complaint on November 24, 1977 at the Court of First Instance of Nueva Ecija, Branch VII at Cabanatuan City, against private respondent Manuel Chu, Jr. (truck owner) and Jaime Sigua (his driver) both as defendants in Civil Case No. 6754 "Eliseo Boticano v. Manuel Chu, Jr. and Jaime Sigua" for damages. (Record on Appeal, Rollo, pp. 45-47).

Summons was issued on December 12, 1977 but was returned unserved for defendant Jaime Sigua because he was no longer connected with San Pedro Saw Mill, Guagua, Pampanga, while another copy of the summons for Manuel Chu, Jr. was returned duly served on him thru his wife Veronica Chu at his dwelling house.

On February 15, 1978 petitioner moved to dismiss the case against Jaime Sigua and to declare Manuel Chu, Jr. in default for failure to file responsive pleadings within the reglementary period. The motion was granted by the lower court in an Order dated September 4, 1978, allowing petitioner to adduce his evidence ex parte on October 17, 1978. (Petition, Rollo, pp. 8-9).

From the evidence adduced by the plaintiff (petitioner herein) the trial court found that private respondent Manuel Chu, Jr. is responsible for the fault and negligence of his driver Sigua under Article 2180 of the Civil Code, whose negligence and lack of due care was the immediate and proximate cause of the damage to petitioner's truck and

ruled in favor of plaintiff-petitioner.

The dispositive portion of the judgment reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff, Eliseo Boticano, and against herein defendant, Manuel Chu, Jr. ordering the latter as follows:

- (a) To pay the plaintiff the sum of P6,970.00 representing actual damages;
- (b) To pay the plaintiff the sum of P73,700.00 representing unrealized income for the non-use of the plaintiff's damaged truck for the period of eleven (11) months;
- (c) To pay the plaintiff the sum of P2,000.00 for and as attorney's fees; and
- (d) To pay the costs of this suit.

SO ORDERED.

Cabanatuan City, November 28, 1978." (Ibid., pp. 13-14).

On March 19, 1979 private respondent Manuel Chu, Jr. filed with the trial court a "Notice of Appeal" and an Urgent Motion for Extension of Time to File Record on Appeal which was granted by the trial court on the same date.

On March 26, 1979, Atty. Hermenegildo D. Ocampo, counsel of record of private respondent, filed a "Motion to Withdraw as Counsel" while the new counsel Atty. Wilfredo G. Laxamana entered his appearance on April 18, 1979 and filed his record on appeal on the same date.

On May 4, 1979 petitioner filed with the trial court a Motion to Dismiss Appeal and for execution which was set for hearing on May 14, 1979 wherein private respondent's counsel personally appeared and opposed petitioner's motion while on the latter date petitioner filed his reply to opposition, after which on May 16, 1979 the trial court issued an order denying aforesaid motion, while on May 22, 1979, the trial court issued another order approving private respondent's Record on Appeal. (Rollo, pp. 9-10).

After the case was brought to the Court of Appeals and the parties had filed their respective briefs, said Appellate Court issued its decision on March 31, 1981, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS the appealed judgment is hereby set aside, for being null and void. This case is directed to be remanded to the court of origin; that appellant be properly served with summons and a copy of the complaint; and that the necessary and appropriate proceedings or action be taken thereafter, as the circumstances and the case will warrant.

With costs against appellee.

SO ORDERED.

Judgment is set aside." (Rollo, p. 33)

On April 20, 1981, petitioner filed with the respondent Court of Appeals a Motion for Reconsideration and on June 3, 1981 a Supplemental Motion for Reconsideration. On August 28, 1981 respondent Court of Appeals issued an order denying petitioner's Motion for Reconsideration. (Rollo, pp. 9-11).

Hence, this petition, with the following assigned errors:

- THE RESPONDENT COURT OF APPEALS COMMITTED A MISTAKE IN HOLDING THAT PRIVATE RESPONDENT MANUEL CHU, JR. WAS NOT PROPERLY SERVED WITH SUMMONS DESPITE THE

FACT THAT THE SUMMONS WAS SERVED TO HIM THROUGH HIS WIFE;

- THE RESPONDENT COURT OF APPEALS COMMITTED A MISTAKE IN HOLDING THAT PRIVATE RESPONDENT DID NOT VOLUNTARILY SUBMIT HIMSELF TO THE JURISDICTION OF THE TRIAL COURT DESPITE HIS VOLUNTARY APPEARANCE, THRU COUNSEL ON A FIXED DATE OF HEARING AND BY FILING WITH THE LOWER COURT A NOTICE OF APPEAL, APPEAL BOND, MOTION FOR EXTENSION OF TIME TO FILE RECORD ON APPEAL, MOTION FOR WITHDRAWAL OF APPEARANCE, NOTICE OF APPEARANCE, AND OPPOSITION TO MOTION TO DISMISS APPEAL AND FOR ISSUANCE OF WRIT OF EXECUTION;

- THE RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THAT PRIVATE RESPONDENT HAS WAIVED ANY QUESTION ON THE TRIAL COURT'S JURISDICTION OVER HIS PERSON BY HIS DELIBERATE FAILURE AND REFUSAL TO SEEK RELIEF FROM THE TRIAL COURT.

- THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN SETTING ASIDE THE JUDGMENT IN CIVIL CASE NO. 6754, COURT OF FIRST INSTANCE OF CABANATUAN CITY, BRANCH VII AND IN DIRECTING THAT THE CASE BE REMANDED TO THE COURT OF ORIGIN SO THAT APPELLANT CAN BE PROPERLY SERVED WITH SUMMONS.

(Petition, Rollo, pp. 12-23)

In compliance with the resolution of the Second Division of this Court of October 12, 1981 (Rollo, p. 79-A) private respondent filed his comment on November 13, 1981 (Rollo, pp. 84-87). Petitioner then filed a reply thereto in compliance with the resolution of December 7, 1981 (Rollo, p. 39) after which the petition was given due course in the resolution of February 8, 1982 and the parties were required to file their respective memoranda (Rollo, p. 43). Petitioner filed his memorandum on March 19, 1982 (Rollo, pp. 45-59) while private respondent filed his memorandum on April 15, 1982 (Rollo, pp. 60-64). Thereafter, in the resolution of April 30, 1982, the case was submitted for decision. (Rollo, p. 65).

There is no dispute as to the facts of this case, as shown by the admission of private respondent to the extent of making an agreement with petitioner to shoulder the expenses of the repair of the damaged truck of the latter and the findings of the Court of Appeals that petitioner's evidence fully supports the findings of facts of the trial court as well as its judgment under appeal.

Neither does private respondent deny receipt of the summons in question. The bone of contention appears to be in the manner of service of said summons on the wife of private respondent at their dwelling instead of on private respondent himself personally.

Petitioner contends in favor of validity of such service while private respondent maintains the opposite view which was sustained by respondent Court of Appeals to the effect that the Sheriff resorted to substituted service under Section 8, Rule 14 of the Rules of Court, without first complying with the mode of personal service required under Section 7 of the same Rule.

Thus, the principal issue which arises in this case which involves an inquiry into procedural due process, is whether or not the question of jurisdiction over the person of the defendant can be raised for the first time on appeal.

The question has been answered in the negative by the Supreme Court in a long line of decisions. In fact, one of the circumstances considered by the Court as indicative of waiver by the defendant-appellant of any alleged defect of jurisdiction over his person arising from defective or even want of process, is his failure to raise the question of

jurisdiction in the Court of First Instance and at the first opportunity. It has been held that upon general principles, defects in jurisdiction arising from irregularities in the commencement of the proceedings, defective process or even absence of process may be waived by a failure to make seasonable objections. (*Castro v. Cebu Portland Cement Co.*, 71 Phil. 481 [1941] citing *Machan v. De la Trinidad*, 3 Phil. 684; *Vergara v. Laciapag*, 28 Phil. 439; *U.S. v. Inductivo*, 40 Phil. 84; *Soriano v. Ramirez*, 44 Phil. 519). More recently, in reiteration of the same principle, the Court ruled in *Dalman v. City Court of Dipolog City, Branch II*, that as to the dismissal of the criminal case, the question of jurisdiction which was never raised in said case before the trial court cannot be done at this stage and level (134 SCRA 244 [1985]).

Coming to the case at bar, it has been pointed out that during the stages of the proceedings in the court below, defendant-appellant could have questioned the jurisdiction of the lower court but he did not.

It can of course be argued that the failure to question the lower court's jurisdiction cannot be accounted against Chu for his having been declared in default gave him no chance to participate in the court deliberations and therefore no chance to raise the jurisdictional issue, but then, he could have done so, in the subsequent pleadings he filed. Besides, even assuming that such failure cannot be taken against him, the fact is he had VOLUNTARILY submitted himself to the court's jurisdiction.

On the contrary, private respondent voluntarily appeared thru counsel in the trial court. He filed a Notice of Appeal, Appeal Bond, Motion for Extension of Time to File Record on Appeal, Record on Appeal, Motion for Withdrawal of Appearance, Notice of Appearance and Opposition to Plaintiff's Motion to Dismiss Appeal and for Issuance of a Writ of Execution. Not only did he submit pleadings and motions, but he likewise appeared in person, thru counsel in the hearing held on May 14, 1979 at 8:30 a.m. and orally argued in open court on the pending incident. (Rollo, pp. 53-54).

Under Section 23, Rule 14 of the Rules of Court, the defendant's voluntary appearance in the action shall be equivalent to service. Thus, under this principle, it has been consistently held by the Supreme Court that the defect of summons is cured by the voluntary appearance of the defendant. (*Infante v. Toledo and Lanting*; 44 Phil. 834 [1918]; *Aguilos v. Sepulveda*, 53 SCRA 274 [1973]; *J. M. Tuazon & Co. v. Estabillo*, 62 SCRA 1; *Castro v. Cebu Portland Cement Co.*, supra).

The Court of Appeals is however of the view that from all the actions and steps taken by the appellant no presumption can arise that he voluntarily submitted himself to the jurisdiction of the Court. In fact according to said Court, all of these actions taken by the appellant are geared and mustered towards contesting the court's jurisdiction over his person, or of attacking the validity of the judgment on jurisdictional grounds. (Decision, CA, G.R. No. 65287-R; Rollo, p. 31).

It will be noted however, that the Notice of Appeal (Rollo, p. 38) unmistakably indicates the reason for the appeal, which reads:

"2. That, the herein defendant is not contented with the aforesaid Decision for it is contrary to the evidence and the law and the award of damages is so excessively unsupported by any evidence to warrant the same; hence, he is appealing said Decision to the Hon. Court of Appeals, Manila, both on questions of facts and law."

As clearly shown in the foregoing, the above-stated conclusion of the Court of Appeals has evidently no basis.

Of equal importance is the question: if the defendant in the Regional Trial Court (RTC) has been declared in default, may he appeal the default judgment that may subsequently be rendered even if he has not asked the RTC to set aside the declaration of default? The answer is in the affirmative. However a distinction must be made as to the effects of such appeal:

(a) If an appeal is made without first asking the RTC to set aside the declaration of default, and the appellate court sets aside on said declaration, all he can get is a review of the RTC's default judgment without the opportunity of having the higher court consider defense evidence (for the simple reason that no evidence was even adduced by him in the RTC) (See Rule 41, sec. 2, par. 3, Rules of Court).

(b) If upon the other hand, the defendant first asks the RTC to set aside the declaration of default (See Rule 18, secs. 2 and 3, Rules of Court), and he is able to prevail, the declaration will be set aside, and he will now have the opportunity to present his evidence in the RTC. Thus, even if he finally loses in the RTC's subsequent decision, his defense can be considered, when appeal is made to the appellate tribunal. Of course, even if the default declaration is not set aside despite his motion for the setting aside, he will be entitled to all notices in the court proceedings, and can file any pleading he may wish to file, including the notice of appeal. (See Rule 13, sec. 9, Rules of Court).

Incidentally, the afore-mentioned rules apply to default declarations in the Metropolitan Trial Courts, the Municipal Trial Courts, and the Municipal Circuit Trial Courts, for under Batas Pambansa Bilang 129, the said inferior courts will follow the rules in the RTC. Note however that in summary proceedings, there can be no default declarations.

In the case at bar, there is no question that summons was timely issued and received by private respondent. In fact, he never denied actual receipt of such summons but confined himself to the argument that the Sheriff should prove that personal service was first made before resorting to substituted service.

This brings to the fore the question of procedural due process. In *Montalban v. Maximo* (22 SCRA 1077 [1968]) the Court ruled that "The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied; due process is served."

Indeed, such construction is but fair, and in accord with substantial justice. The burden on a plaintiff is not to be enlarged with a restrictive construction desired by the defendant. (*Ibid.*, p. 1078).

Finally in a last ditch effort, private respondent insists that there was no valid service of summons because private respondent is a partner and general manager in San Pedro Sawmill. Consequently the wife of private respondent to whom summons and complaint were allegedly served not being partnership, cannot receive the same under Section 13 of Rule 14 of the Rules of Court.

It has however been settled that actions must be brought by the real parties in interest and against the persons who are bound by the judgment obtained therein. (*Salmon and Pacific Commercial Company v. Tan Cuelco*, 36 Phil. 557-558 [1917]).

The title of the case both in the trial court, in the Court of Appeals and in this Court shows that the partnership is not a party. On the contrary, as previously stated private respondent himself assumed the responsibility of the accident and is now estopped to disclaim the liabilities pertaining thereto.

From what has been discussed the following conclusions are hereby made: jurisdiction was properly acquired by the trial court over the person of respondent thru both service of summons and voluntary appearance in court; he was therefore properly declared in default for not having filed any answer; despite respondent's failure to file a motion to set aside the declaration of default, he has the right to appeal the default judgment but in the appeal only the evidence of the petitioner may be considered, respondent not having adduced any defense evidence; We agree with the findings of fact by the trial court, the same being un rebutted.

WHEREFORE, the assailed decision and resolution of the Court of Appeals are REVERSED and SET ASIDE, and the decision of the then Court of First Instance (now Regional Trial Court) of Nueva Ecija, Cabanatuan City in Civil Case No. 6754 "Eliseo Boticano v. Manuel Chu, Jr. and Jaime Sigua" is hereby REINSTATED. No costs.

SO ORDERED.

Fernan, (Chairman), Alampay, Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

[*] Penned by Justice Elias B. Asuncion concurred in by Justices Porfirio V. Sison and Juan A. Sison.

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