

DOLORES DELOS SANTOS, NICOLAS DELOS SANTOS AND RICARDO DELOS SANTOS, PETITIONERS, VS. HON. JUDGE CAMILO MONTESA, JR. AND JUANA DELOS SANTOS, RESPONDENTS.*G.R. No. 73531. April 06, 1993*

Ponente: MELO, J.

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In the suit for desahucio initiated below by herein private respondent against petitioners, the court of origin ordered petitioners to vacate the lot in question, to pay P5,000.00 per year as reasonable rental from 1985 until possession is surrendered, and to pay P1,000.00 as attorney's fees and the costs of the suit (pp. 37-38, Rollo). Upon appeal, Branch XIX of the Regional Trial Court of the Third Judicial Region stationed in Malolos and presided over by herein respondent judge, granted private respondent's motion for execution pending appeal on account of petitioners' failure to post a supersedeas bond (p. Rollo). To set aside the proceedings below, the petition at hand was instituted anchored on the supposition that petitioners were deprived of their day in court.

Petitioners' mental distress started when private respondent, who supposedly owns Lot 39 of the Cadastral survey of Bustos with an area of 5,358 square meters covered by Original Certificate of Title No. 0-7924 a portion of which petitioners entered and occupied, lodged the complaint geared towards petitioners' eviction. Summons was served through the mother of petitioners when the process server was unable to locate Dolores, Nicolas, and Ricardo delos Santos in Talampas, Bustos, Bulacan. For failure of petitioners to submit the corresponding answer, judgment was rendered pursuant to the rules on summary procedure (pp. 2-3, Decision; pp. 37-38, Rollo).

Upon learning of said decision, petitioners sought to reconsider on the principal thesis that they were never served notice of the conciliation meeting at the barangay level, as well as the summons. They insist that private respondent was referring to a different piece of realty because petitioners actually occupied Lot No. 3568 owned by Nicolas delos Santos under Original Certificate of Title No. F-10418. Moreover, petitioners advanced the proposition that Dolores' husband should have been impleaded. All of these arguments were to no avail. As indicated earlier, execution pending appeal was ordered due to petitioners' failure to post a supersedeas bond.

To stave off the impending eviction of petitioners, this Court issued a restraining order on April 28, 1986 directed against the reviewing authority and private respondent until further orders (p. 52, Rollo).

At first blush, it would appear that the recourse pursued by petitioners could elicit a favorable response from us in as much as the proof of service of the summons upon petitioners does not indicate impossibility of personal service, a condition precedent for resorting to substituted service. Even then, and assuming in *gratia argumenti* that the statutory norms on service of summons have not been strictly complied with, still, any defect in form and in the manner of effecting service thereof were nonetheless erased when petitioners' counsel moved to re-examine the impugned decision and posed a subsequent bid on appeal to impede immediate execution (*Boticano vs. Chu, Jr.*, 148 SCRA 541 [1987]); 1 Regalado, Remedial Law Compendium, 1988 Fifth Rev. Ed., p. 136). Indeed, such demeanor is tantamount to voluntary submission to the competencia of the court within the purview of Section 23,

Rule 14 of the Revised Rules of Court since any mode of appearance in court by a defendant or his lawyer is equivalent to service of summons, absent any indication that the appearance of counsel for petitioner was precisely to protest the jurisdiction of the court over the person of defendant (*Carballo vs. Encarnacion*, 49 O.G. 1383; 1 *Regalado*, supra, p. 144; *Flores vs. Zurbito*, 37 Phil. 746 [1918]; 1 *Martin*, *Rules of Court in the Philippines*, 1989 Rev. Ed., p. 473; *Sison, et al. vs. Gonzales*, 50 O.G. 4756; 1 *Moran*, *Comments on the Rules of Court*, 1970 Ed., p. 467).

Neither can We treat the motion for reconsideration directed against the unfavorable disposition as a special appearance founded on the sole challenge on invalid service of summons since the application therefor raised another ground on failure to state a cause of action when conciliation proceedings at the barangay level were allegedly bypassed, nay, disregarded (*Republic vs. Ker and Co., Ltd.*, 64 O.G. 3761; *Regalado*, supra, p. 152).

The fact that petitioners are supposedly occupying a parcel of land other than the realty claimed by private respondent deserves scant consideration since a clarification on a factual query of this nature is proscribed by the second paragraph, Section 2 of Rule 45 of the Revised Rules of Court. Verily, counsel for petitioners' assertion in the notice of appeal filed with respondent judge that the grievance to be elevated to this Court will focus "fully on a question of law" (p. 32, Rollo) is a self-defeating posture and operates as a legal bar for us to dwell into the truth or falsehood of such factual premise (Article 1431, New Civil Code; Section 4, Rule 129; Section 2(a), Rule 131, Revised Rules on Evidence).

Petitioners argue next that execution pending appeal was ordered without any prior notice to them (p. 3, Petition; p. 7, Rollo). This notion is also devoid of substance since it erroneously suggests that the court is duty-bound to notify petitioners of the immediate enforcement of the appealed decision. A contrario, it is the prevailing party moving for execution pending appeal under Section 2, Rule 39 of the Revised Rules of Court who is obliged to serve a copy of such motion on the adverse party's counsel, which, on the face of the subject motion, was effected personal delivery (p. 23, Rollo; *Lao vs. Mencias*, 21 SCRA 1021 [1967]; 2 *Martin*, *Rules of Court in the Philippines*, 1973 Ed., p. 288).

In fine, petitioners may not press the idea that they were deprived of their day in court amidst the implicit forms of waiver performed by their lawyer in submitting every conceivable defense for petitioners via the two motions for reconsideration below.

WHEREFORE, the petition is hereby DISMISSED for lack of merit and the restraining order issued on April 28, 1986 LIFTED.

SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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