

**ROSA N. EDRA, MERCY EDRA, WINMELYN EDRA AND JERICO EDRA,
THE LAST THREE BEING MINORS ARE REPRESENTED BY THEIR
MOTHER, PETITIONER, ROSA N. EDRA, PETITIONERS, VS. HON.
INTERMEDIAT...**

G.R. No. 75041. November 13, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to annul the decision of the Intermediate Appellate Court (now Court of Appeals)[1] in AC-G.R. SP No. 08330 entitled Marcelino T. Sadumiano alias Mario T. Sadremiano and Pepito Zambrana v. Hon. Eficio B. Acosta, etc. et. al. which set aside the decision of the Court of First Instance of Rizal (now Regional Trial Court), Branch x[2] in Civil Case No. 41513 entitled Rosa N. Edra, et al. v. Mario T. Sadremiano and Pepito M. Zambrana, which ordered the defendants to pay the plaintiffs, jointly and severally actual expenses and damages.

As culled from the records, the undisputed facts are as follows:

On June 3, 1981 the petitioners Rosa N. Edra and her minor children Mercy, Winnelyn and Jerico, all surnamed Edra filed a complaint for damages before the Court of First Instance of Rizal against the private respondents Mario T. Sadremiano (alias Marcelino T. Sadumiano) as operator of a passenger jeepney and the driver thereof Pepito Zambrana. (Rollo, p. 15)

On July 22, 1981 a copy of the summons and and a copy of the complaint were served upon the private respondents Mario T. Sadremiano at No. 187-D 1st Kamuning Road, Quezon City and Pepito M. Zambrana at No. 128 Kamuning, Quezon City thru the wife of one of them, Teofila Sadremiano, a person of age, living therein, with sufficient discretion to receive such kind of process (Sheriff's Return, p. 20, Ibid.).

For failure of the private respondents to file their answers within the reglementary period, counsel for the petitioners moved to declare them in default and allow presentation of their evidence ex-parte, (p. 19 Ibid.) which was granted by the trial court on February 4, 1982 (p. 21, Ibid.).

The following circumstances were duly established by the petitioners, viz:

"On April 15, 1981 at about 4:00 p.m., the plaintiffs, Rosa N. Edra, together with her husband, Nardito Edra, Rosalia Edra, Ernesto Edra, Clarita Edra, Elpidio Edra, Wilfredo Inay with their children, namely: Mercy, Winnelyn and Jerico all surnamed Edra, hired from defendants, Mario Sadremiano and Pepito Zambrana a 'Sarao Jeepney, with Plate No. PUJ-O Phil. 80' owned by the former for them to be transported to Dingras, Ilocos Norte at P100.00 per head excluding the children on a round trip basis; that they left Mandaluyong, Metro Manila the place where the agreement to transport plaintiffs and companions took place and travelled north; that while travelling along the National Highway going north and upon reaching Barrio Payocpoc, Bauang, La Union which was about 1:30 a.m., April 16, 1981, the driver, defendant Pepito N. Zambrana, disregarded the norms of conduct of a driver by not taking the precautionary measures while driving at night,

did not exert extraordinary diligence in the vigilance for the safety of his passengers, and as a consequence thereof, the jeepney he was driving rolled down the road and landed upside down thereby injuring seriously the plaintiffs, Rosa N. Edra, Mercy Edra, Vinmelyn Edra and Jerico Edra with first and second degree burns (Exh. E); that by reason of the injuries sustained by the plaintiffs, they were all hospitalized, deformed and in fact they are still under treatment and have suffered and will continue to suffer damages by way of medical expenses of not less than P30,000.00 (Exhs. A to D); that likewise by reason of the negligence of the defendants, who under the law shall exercise due and extraordinary diligence, plaintiffs shall suffer P40,000.00 as moral damages; exemplary or corrective damages as the plaintiffs were left and abandoned helpless and penniless in a far away place by the defendants, in the amount of P20,000.00; and by way of attorney's fees and costs of suit of P9,000.00." (pp. 22-23, Ibid.)

On February 17, 1982 the trial court rendered its decision the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering the latter to pay to the former, jointly and severally the sum for medical expenses and other actual expenses for transportation in the amount of P30,000.00; moral damages in the amount of P10,000.00; attorney's fees in the amount of P5,000.00 plus cost of suit."

"SO ORDERED." (p. 23, Ibid.)

On March 2, 1982 private respondent Pepito M. Zambrana received a copy of the said decision and on April 1, 1982, he filed a motion to lift order of default and set aside the proceedings/decision claiming lack of jurisdiction of the trial court as he was never served with summons; that the person of Teofila Sadremiano who appeared to have received the summons is non-existent and unknown in the given address nor known to the defendant and that assuming that said person is existing, the aforesaid summons was never given to him. (pp. 24-25, Ibid.)

On September 2, 1982 counsel for the petitioners filed a motion for execution on the ground that the decision has become final and executory and to set the motion of Zambrana for hearing (p. 26, Ibid.).

On September 27, 1982, Zambrana filed an opposition to plaintiff's motion for execution on the ground of pre-maturity pending resolution of the motion to lift order of default and set aside proceedings/decision and that said filing of motion inured to the benefit of all the defendants (private respondents herein) (p. 28, Ibid.).

A reply to the opposition was filed by the petitioners asking for a denial of the private respondent Zambrana's earlier motion and the grant of the motion for the execution inasmuch as six (6) months had already elapsed from the time the private respondents were notified of the decision. (p. 30, Ibid.)

Finding the motion to lift the order of default and set aside the decision to be without merit the same was denied in the Order of December 22, 1982. (p. 33, Ibid.)

A motion to reconsider the same was filed on January 18, 1983 (p. 34, Ibid.) which was likewise denied on January 28, 1983 as the decision sought to be annulled has become final and executory. A writ of execution was ordered to be issued. (p. 39, Ibid.)

On February 19, 1983, Deputy Sheriff Norberto B. Doblada, Jr. proceeded to the residence of private respondent Mario T. Sadremiano at No. 187-D 1st Kamuning, Quezon City and discovered that the person residing therein was one Mario T. Sadumiano and (later found to be as Marcelino T. Sadumiano) as per his Residence Certificate. He tried to enforce the writ of execution levying/attaching the motor vehicles found inside the supposed garage of the said private respondent at 120 Kamuning St., Quezon City but found out that the motor vehicles were registered in the name of Marcelino T. Sadumiano as shown in the Registration Certificate. The sheriff tried to locate the other private respondent Zambrana but to no avail as he was no longer a resident at the given address (Sheriff's Return, p. 52, Ibid). The sheriff did not know that private respondent Marcelino T. Sadumiano and

Mario T. Sadremiano refer to one and the same person.

On February 10, 1986, private respondent Marcelino T. Sadumiano alias Mario T. Sadremiano filed a petition for certiorari with urgent injunction/restraining order with the Intermediate Appellate Court praying for a nullification of the decision dated February 17, 1982 based on the same premise set forth in Zambrano's earlier motion but this time to enjoin the Deputy Sheriff of Rizal from levying/selling on private respondent's property at public auction on February 11, 1986 (p. 40 Ibid.).

Petitioner was ordered to file their comment in the Resolution of February 12, 1986 and this order was sent to 671 Nueve de Pebrero, Mandaluyong, Metro Manila instead of 671-H Nueve de Pebrero, Mandaluyong, M. M. as shown in the complaint dated June 3, 1981 (p. 22, CA Rollo). Consequently, petitioners failed to file the required comment and a decision was rendered on April 16, 1986 by respondent Court of Appeals, the dispositive part of which reads:

"WHEREFORE, in view of the foregoing, the decision dated February 17, 1982 as well as the subsequent notice of levy and sale on writ of execution dated February 5, 1986, is hereby set aside insofar as petitioner Mario Sadumiano is concerned. No special pronouncement is made as to costs.

"SO ORDERED." (p. 51, Rollo)

Petitioners likewise failed to receive a copy of respondent court's decision of April 16, 1986 but discovered its issuance only upon follow-up of the case status re: writ of execution before the sheriff's office, Pasig, Metro Manila. Immediately thereafter, private respondent Rosa Edra filed a manifestation to that effect and moved that she be given fifteen (15) days within which to file a motion for reconsideration or to appeal to the Supreme Court (p. 31, CA Rollo) which was granted in the Resolution of June 19, 1986. (p. 34 Ibid.)

Hence, the instant petition.

The petitioners advance the sole issue of whether or not the trial court acquired jurisdiction over the person of private respondent Marcelino T. Sadumiano alias Mario T. Sadremiano.

The petition is impressed with merit.

It is axiomatic that where the conclusions of the appellate court on factual matters differ from those of the trial court, a minute scrutiny thereof and resort to duly proven evidence becomes necessary (*Pacmac Inc. v. Intermediate Appellate Court*, 150 SCRA 555 [1987]).

Private respondents were duly served with summons at 187-D 1st Kamuning Road, Quezon City thru Teofila Sadremiano, as appearing in the Sheriff's Return dated July 22, 1981. By service of summons upon them, the trial court had acquired jurisdiction over their persons (*Paramount Insurance Corporation v. Luna*, 148 SCRA 564 [1987]).

The deputy sheriff is a public officer and one of his official duties is to effect prompt and effective service of summons issued by the court. Hence, in the absence of contrary evidence the presumption is that he has regularly performed his official duty (*Tolentino v. Galano*, G.R. No. L-49008, April 15, 1988).

A copy of the decision dated February 17, 1982 was likewise sent by registered mail at the aforesaid address of private respondent Sadremiano but he failed to claim the same despite three (3) notices given him (p. 17, CA Rollo). Against his claim that he never received any registry notice of the decision are the notations: first notice 3/1/82; second notice 3/3/82 and last notice 3/12/82 on the envelope containing the decision of the trial court, but returned unclaimed.

Said decision was sent to the correct address of private respondent Sadremiano (alias Marcelino Sadumiano) as the deputy sheriff was able to locate him thereat in an effort to enforce the decision on February 19, 1983 (p. 52, Rollo).

Section 8, Rule 13 of the Rules of Court provides that if the addressee of a registered mail fails to claim it from the Post Office within five days from the date of the first notice of the postmaster, service becomes effective upon the expiration of that five-day period (*Aportadera Sr. v. Court of Appeals*, G.R. No. 41358, March 16, 1988).

In the case at bar, service of the decision is deemed completed five (5) days after March 1, 1982 the date when the first notice was given by the postmaster. Within thirty (30) days reckoned from March 6, 1982, private respondent Sadumiano had a chance to appeal the trial court's decision of February 17, 1982 but he chose not to do so.

On April 5, 1982, the judgment of the court a quo had become final and executory by operation of law.

A judgment becomes final after the period of appeal has lapsed without one having been perfected (*Munez v. CA*, 152 SCRA 197 [1987]). Judgments which had long become final and executory can no longer be annulled or modified by the courts (*United CMC Textile Workers Union v. Labor Arbiter*, 149 SCRA 424 [1987]) and the appellate court is deprived of jurisdiction to alter the trial court's final judgments (*Carbonell v. CA*, 147 SCRA 565 [1987]; *Republic v. Reyes*, 155 SCRA 313 [1987]).

The doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error the judgments of the courts must become final at some definite date fixed by law. Reopening of a case which has become final and executory is disallowed (*Philippine Rabbit Bus Lines Inc. v. Arciaga*, 148 SCRA 433 [1987]).

Evidently, when private respondent Sadumiano filed his petition before the respondent Intermediate Appellate Court on February 10, 1986, the decision sought to be annulled for alleged lack of jurisdiction had already attained finality and could not have been reopened by petitioners' non-compliance with its resolution which admittedly they did not receive at all. Certiorari is no substitute for appeal which had been lost (*Landicho v. Tensuan*, 151 SCRA 410 [1987], *Sarmiento v. Intermediate Appellate Court*, 153 SCRA 104 [1987]; *Acaín v. Intermediate Appellate Court*, 155 SCRA 100 [1987]; and *Auria Limpot v. Court of Appeals*, G.R. No. L-44642 February 20, 1989).

Obviously, the pleadings filed by counsel for private respondent Sadumiano were merely intended to frustrate and defeat the execution of the judgment.

The judgment rendered is founded upon the evidence adduced by the petitioners. The fact that the trial court in said case proceeded to hear evidence ex-parte can only be attributed to private respondents' fault and no other.

While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. Justice eschews anarchy. (*Auria Limpot v. Court of Appeals*, supra).

PREMISES CONSIDERED, the (a) petition is GRANTED; (b) appealed decision of respondent Court of Appeals is REVERSED and SET ASIDE; and (c) judgment of the the trial court dated February 17, 1982 is hereby REINSTATED.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

[1] Penned by Justice Jose A. R. Melo and concurred in by Justices Nathanael P. de Pano, Jr. and Rizalina S. Bonifacio Vera.

[2] Penned by Judge Eficio B. Acosta.

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