

LEONORA OBANA, PETITIONER, VS. COURT OF APPEALS, RAFAEL G. SUNTAY, REGISTER OF DEEDS OF QUEZON CITY, AND THE EX-OFFICIO SHERIFF OF QUEZON CITY, RESPONDENTS.

G.R. No. 78635. April 27, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review on certiorari the decision of the Court of Appeals which set aside the trial court's decision, dismissed herein petitioner Leonora Obaña's complaint and ordered her to pay Rafael G. Suntay the amount of P5,000.00 as attorney's fees with costs against her.

The facts of the case as stated in the Court of Appeals' decision are as follows:

"Records show that defendant-appellant (Rafael G. Suntay) was the former counsel of Liberty H. Dizon and her minor children, Nicolas and Noel Patrick, both surnamed Torio, in an intestate proceeding docketed as No. 142 and in the petition for guardianship over said minors in Sp. Proc. No. C - 00565. On April 28, 1972, said defendant-appellant as such counsel in Sp. Proc. No. C-00565, filed an "Explanation and Motion" for the approval of attorney's fees. The defunct JDRC of Quezon City, acting on said motion, issued an order dated May 9, 1972, the pertinent portion of which reads:

"Considering the foregoing, the Court believe that P10,000.00 attorney's fees is too burdensome the wards to shoulder alone and that the guardian should be able to be responsible for half of it.

"WHEREFORE, further to order dated April 11, 1972, counsel is hereby authorized to collect P5,000.00, from the ward's guardianship estate." (p. 3, Appellant's Brief).

"On August 24, 1972, appellant filed in the same proceedings a 'Motion to Order the Guardian To Pay The Attorney's Fees,' with prayer that the guardian be ordered to pay immediately the amount of P5,000.00 out of the ward's guardianship estate (Exh. W). Acting upon said motion, the JDRC of Quezon City issued an order dated September 14, 1972, requiring Liberty B. Dizon to show proof of payment of attorney's fees in accordance with Order of May 9, 1972 and to submit a new guardian's bond releasing her former counsel as surety; failing which, she shall be declared in contempt of court (Exh. X).

"It would appear that the above order was not complied with by Liberty H. Dizon because on November 9, 1972, defendant-appellant Atty. Suntay, filed with the defunct CFI of Bulacan an action for a sum of money (Civil Case No. 4238-M) against said Liberty M. Dizon, Nicolas Torio, Jr. and Noel Patrick Torio (pp. 28, Record). In his complaint, defendant-appellant averred among others: that his attorney's fees in Sp. Proceedings Nos. C-412 and QC-00565 was (sic) not paid by his former clients, despite repeated demands. In connection with said complaint, appellant moved for the issuance of an order of attachment upon a certain parcel of land covered by TCT No. 173792 together with the improvements belonging to Liberty H. Dizon and her wards, located at 48 Damar Village, Balintawak, Quezon City. On December 1, 1972, by virtue of the Writ of Attachment issued in Civil Case No. 4238-M, a levy was made on said property, which levy was annotated at the back of TCT No. 173792 of the Register of Deeds of Quezon City, to wit:

""PE-5839/T173792 ---- NOTICE OF LEVY ---- Affecting the rights, interests and participation of the registered owners hereof, the same having been levied by the Sheriff of Q. City by virtue of an order of attachment issued by the CFI of Bulacan in Civil Case No. 4238-M, entitled 'Rafael G. Suntay, Pltf. v. Liberty H. Dizon, Nicolas Torio, Jr. and Joel Patrick Torio, defs.' to the amount of P10,000.00.

"Date of Instrument - Nov. 29, 1972.

"Date of Inscription - Dec. 1, 1972."

(Exh. 1-A)

"Due to the failure of the sheriff to serve the summonses issued in Civil Case 4238 for the reason that Mrs. Dizon and her wards no longer resided at their last known address at 34-H Kaingin Road, Cypress Village, Quezon City, and that their present address cannot be ascertained, appellant as plaintiff in said civil case filed a 'Motion for Service of Summons by Publication (Exh. H) which was granted by the court in its Order dated February 12, 1973 (Exh. 1). Accordingly, summons were served upon Mrs. Dizon and her wards through publication.

"Meanwhile, pursuant to a Deed of Absolute Sale dated May 16, 1973 executed by and between Liberty H. Dizon, et al., and appellee Leonora Obaña involving the attached property (Exh. S), the Register of Deeds of Quezon City cancelled TCT No. 173792 in the name of Liberty H. Dizon and her wards, and, in lieu thereof, executed in favor of Leonora Obaña a new TCT No. 191059 necessarily transferring in the process the encumbrance consisting of notice of levy in favor of appellant.

"On August 10, 1973, after summons by publication had been effected in Civil Case No. 4238-M, upon motion of appellant Atty. Suntay, the court declared the defendants therein, Liberty H. Dizon and her wards, in default and allowed plaintiff's evidence to be presented ex-parte. Consequently, a decision was rendered on September 28, 1973, awarding to appellant Atty. Suntay the amount of P10,000.00 representing his claim for attorney's fees relative to the prosecution of said case. (Exhibit K). Pursuant to said decision, a writ of execution was issued per order of the court, and then followed by a Notice of Levy on Execution dated August 7, 1974, issued by the sheriff of Quezon City. Thereafter, a certificate of sale (Exh. M) over the subject property (now covered by TCT 191059 in the name of Leonora Obaña) was issued in favor of the appellant, being the highest bidder. For failure of Mrs. Dizon and her wards or by appellee Leonora Obaña to redeem the property on or before October 15, 1975, a 'Sheriff's Final Deed of Sale' (Exh. N) was issued in favor of appellant. Both certificates of sale were registered in the Register of Deeds of Quezon City and was annotated at the back of TCT No. 191059 (Exh. A).

"Appellant then filed a petition in the then CFI of Rizal, Quezon City, for the cancellation of TCT No. 191059 which was opposed by appellee Leonora Obaña. On April 28, 1977, said CFI of Quezon City in LRC-750 issued an order cancelling TCT No. 191059 and directing the Register of Deeds of Quezon to issue a new title covering the subject land in the name of Rafael G. Suntay married to Victoria J. Suntay.

"To stop the registration of the subject land in the name of appellant, appellee filed an action on August 28, 1978 before the court a quo for annulment of judgment rendered in Civil Case No. 4238-M. In her complaint, appellee as plaintiff, contended that the decision rendered in Civil Case No. 4238-M by the then CFI of Bulacan is null and void for the reason that said court did not acquire jurisdiction over Liberty H. Dizon and her wards, since they were not properly served with summons. Appellee also claimed that the proceedings before the sheriff were defective in that the sheriff failed to comply with the jurisdictional requirements on the manner of service of notice in the New Rules of Court thus rendering the proceedings void ab initio.

"The defendant-appellant, on the other hand, countered in his answer that LRC-750 granting the petition for the cancellation of TCT No. 191059 in favor of said appellant is res judicata to the instant case; that plaintiff's recourse under Rule 38 has long prescribed; that insofar as the plaintiff is concerned, when she bought the

property in question and title was transferred to her on July 2, 1973, she is charged with knowledge of the pendency of Civil Case No. 4238-M thru the annotation at the back of TCT No. 173792 of the Registry of Deeds of Quezon City; and that there was no extrinsic fraud committed by defendant-appellant that may constitute a ground to nullify the judgment in Civil Case No. 4238-M.

"The court a quo in nullifying the judgment in Civil Case No. 4238 held that no jurisdiction was acquired over the persons of defendants therein, the action on being strictly in personam and summons by publication is insufficient; and that no valid attachment and levy were made by the sheriff as no personal service of the copy of the notice to the occupant of the property was made." (Rollo, pp. 37-40).

There are, therefore, three cases which eventually led to this petition. First was SP-C-00565, the guardianship case before the Juvenile and Domestic Relations Court of Quezon City where the attorney's fees for Suntay were initially awarded. Second was CC 4238-M before Branch VII of the Bulacan Court of First Instance where Atty. Suntay filed his action or sum of money to collect his fees and where a default judgment against Liberty Dizon and the Torio children was rendered. The third is the case now before us from the Court of Appeals - Civil Case No. 5418-M, the annulment of judgment case filed in Branch VIII of the Regional Trial Court of Bulacan to set aside as null and void the CFI decision in Civil Case No. 4238-M.

There is actually a fourth case, No. LRC 750, a petition for cancellation of the petitioner's TCT No. 191059 filed by respondent Suntay with the Court of First Instance of Quezon City.

On appeal in Civil Case No. 5418 - M, the Court of Appeals dismissed petitioner Obaña's complaint on the grounds of lack of cause of action and res judicata.

Hence, this present petition.

Petitioner raises the following assignment of errors, namely:

"(T)hat the public respondent Court of Appeals committed a grave abuse of discretion amounting to a lack of or in excess of jurisdiction, in REVERSING and SETTING ASIDE, the appealed decision of the Trial Court a quo, despite the clear merits thereof, and these errors of public respondent are manifest in the following :

"1. THAT PETITIONER HAS NO CAUSE OF ACTION, SINCE SHE WAS NOT A DEFENDANT NOR A PARTY IN INTEREST IN CC NO. 4238-M (BRANCH VII, CFI, BULACAN);

"2. THAT THE COMPLAINT FOR ANNULMENT OF DECISION IS BARRED FOR REASON OF RES JUDICATA, SINCE BETWEEN LRC-750 AND CC 5418-M, THERE IS AN IDENTITY OF PARTIES AND SUBJECT MATTER, AND CAUSES OF ACTIONS." (Rollo, pp. 10-11)

There are certain facts overlooked by the Court of Appeals which call for the setting aside of its decision.

Civil Case No. 4238 - M was an action for sum of money filed by Atty. Suntay against Liberty Dizon and her minor children in an effort to collect attorney's fees in the guardianship case he handled for them. The guardianship court authorized the payment of P5,000.00. According to the Court of Appeals, the collection case was between Suntay on one hand and Dizon and her children on the other. It ruled that petitioner Obana, the buyer of the lot, is not a party in interest and had neither personality nor cause of action to ask for the annulment of the judgment in that case.

This may be so, if the facts end there. However, the judgment in Civil Case No. 4238-M, while against Dizon and her children was executed against property belonging to petitioner Obana.

The house and lot in Quezon City which Dizon sold to Obana for P150,000.00 was executed upon by the Sheriff to satisfy the P10,000.00 attorney's fees in the Dizon guardianship case and another P5,000.00 awarded to Suntay

for his fees in prosecuting his own collection case. The house and lot were sold for P17,402.90 to respondent Suntay. According to the petitioner, the property she purchased for P150,000.00 on May 16, 1973 is now worth over P1,000,000.00.

The sheriff's sale was effected without any personal notice to Liberty H. Dizon on the ground that she had moved out of her old address and her "present address" was unknown. No notice was served on Obana because she was not a party in the collection case. All notices and summonses in the collection case filed on November 9, 1972 including the copy of the complaint, the original summons, the alias summons, the notice of levy on attachment of the disputed property, the notice of levy on execution and the notice of sheriff's sale were served through mail to defendant Dizon at 34-H Caingin Road, Cypress Village, Quezon City. As earlier stated, because the Sheriff could not serve the complaint and the summons on Dizon who had moved out of the above address, service by publication upon Dizon was authorized by the court in the collection case.

In the annulment of judgment case which led to this petition, the trial court ruled:

"On the question as to whether the Bulacan Court of First Instance had acquired jurisdiction over the defendants in the civil case in question thru summons by publication, the latest case law on the matter is to the effect that in an action strictly in personam personal service of summons within the forum is essential to the acquisition of jurisdiction over the person of the defendant who does not voluntarily submit himself to the authority of the court. In other words, summons by publication cannot -- consistently with the due process clause in the Bill of Rights -- confer upon the court jurisdiction over said defendants (*Magdalena Estate, Inc. v. Nieto, et al.* G.R. No. 54242, November 25, 1983, citing *Citizens Surety & Insurance, Inc. v. Judge Melencio Herrera, et al.* 38 SCRA 369 [1971]; see also *Pantaleon v. Asuncion*, 105 Phil. 761 [1959]; contra *Fontanillal v. Dominguez*, 73 Phil. 579 [1942]). There is no question that Civil Case No. 4238-M filed before the Court of First Instance of Bulacan was a personal action being one for the recovery of a sum of money as it prayed for judgment 'ordering the defendants jointly and severally to pay plaintiff the sum of P10,000.00 with legal interest thereon from the date of the filing of this complaint; the sum of P5,000.00 as attorney's fees plus actual, moral and exemplary damages in such amounts as this Honorable Court may deem just and equitable and the costs of suit.' The creditor, however, in an action in personam can take the recourse to locate properties, real or personal of the resident defendant-debtor with unknown address and causing said properties to be attached under Rule 57 of Section 1(f) in which case the attachment converts the action into a professional proceeding in rem or quasi-in-rem and the summons by publication may then be deemed valid and effective. (*Ibid*) In the case at bar, it appears on record that the plaintiff who is supposed to be the creditor availed of this remedy of attachment. This would have converted the action into a proceeding in rem and this rendered as proper the summons by publication. But validity of the attachment is now contested by the herein plaintiff on the ground that the proceedings before the sheriff in connection with Civil Case No. 4238-M especially the notice of levy of attachment of the property subject matter of the action were defective and invalid not having been in accordance with the provisions of Rule 57 of the Rules of Court on attachment." (pp. 27-29, Rollo)

In *Venturanza v. Court of Appeals* (156 SCRA 305, 312 [1987]), this Court ruled:

"There is no question that the case at bar which is an action for collection of a sum of money is an action in personam thereby requiring personal service of summons on the defendants."

It should be noted that Section 7 of Rule 57 requires that in attaching real property a copy of the order, description, and notice must be served on the occupant, in this case the occupant at 48 Damortiz Street, Damar Village, Quezon City. The trial court in the annulment case ruled that the attachment was void from the beginning. The action in personam which required personal service was never converted into an action in rem where service by publication would have been valid.

In *Baltazar v. Court of Appeals* (G. R No. 78728, December 8, 1988) we stated that the property of service of summons by publications is not dependent upon the technical characterization of the action as one in rem or quasi in rem but upon compliance with the requirements for the situations found in Sections 16, 17, and 18 of Rule 14 of the Rules of Court. We declared the service of summons by publication as "legally and constitutionally vitiated." In the present date, however, the action was one in personam. The service was equally void and of no effect.

The Court of Appeals reversed the trial court principally on the ground that Leonora Obana was neither a defendant nor a party-in-interest in the collection case. It ignored the fact that property already sold to her was attached and then bidden out to Atty. Suntay without any notice to her. And because the notice of lis pendens in the collection case was secured ex-parte without the defendant Dizon and petitioner Obana, who were never brought to court, having any inkling about it, the notice was not annotated on the owner's duplicate copy of Transfer Certificate of Title No. 173792.

Respondent Suntay cannot claim ignorance of the sale to petitioner Obana as a ground for not bringing her into the picture. As stressed by the petitioner, Liberty Dizon filed her motion for the approval of the sale of the disputed house and lot in the guardianship case SP-C-00565 through her counsel, herein private respondent Suntay (Exh. Q, original records). He could not have been unaware that the house and lot he was attaching had been sold to Obana because the sale of the Dalmar property was authorized by the guardianship court in the case where he was counsel for the guardian.

Considering all the foregoing circumstances, the order in LRC 750 which is based on irregular proceedings in the prior case and which directed the cancellation of Obana's transfer certificate of title cannot assume finality. The respondent court committed reversible error in using it as a basis for res judicata. There is the added factor that a land registration court in a cancellation of title case could not possibly inquire into the controversial matters raised in the annulment of judgment case. (See *Register of Deeds of Iloilo v. Hodges*, 7 SCRA 149 [1963]; *Sunpongco v. Heirs of Nicolas Ronquillo*, 36 SCRA 395 [1970] and *Development Bank of the Philippines v. Jimenez*, 36 SCRA 426 [1976]).

The respondent court ruled that Liberty H. Dizon and her wards should have been joined as plaintiffs by petitioner Obana in the action to annul the judgment in the collection case. This ruling ignores the fact that Dizon could not even be summoned in the collection case; her whereabouts are unknown; the judgment against her was a default judgment; she has apparently no more interest whatsoever in the house and lot she sold to Obana; and she still owes Atty. Suntay P10,000.00.

And finally, in our capacity as a court of equity in addition to being a court of law, we cannot close our eyes to the rank injustice whereby the owner of a million peso house and lot is compelled to give up her property to answer for a P10,000.00 attorney's fee incurred by its former owner and which the lawyer cannot apparently collect from his own client.

WHEREFORE, the petition is hereby GRANTED. The questioned decision of the Court of Appeals is REVERSED and SET ASIDE. The decision of the trial court in Civil Case No. 5418-M which reads:

"Premises considered, the judgment issued in Civil Case No. 4238-OM as well as the proceedings, orders and notices issued therein including the writ of attachment, levy and execution sale are hereby declared null and void. Register of Deeds is therefore permanently restrained from effecting the cancellation of title in the name of herein plaintiff. For moral damages, the said plaintiff is hereby awarded the amount of P10,000.00, and for attorney's fees, the amount of P15,000.00. Costs against the defendant." (p. 35, Rollo) is REINSTATED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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