

CONSOLIDATED PLYWOOD INDUSTRIES, INC., PETITIONER, VS. HON. AUGUSTO B. BREVA AND MINDANAO HEMP EXPORT CORPORATION, RESPONDENTS.*G.R. No. 82811. October 18, 1988*

Ponente: NARVASA, J.

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Not infrequently, appeals are resolved on grounds not precisely assigned as error which upon review are however seen to be more decisive than those actually raise and argue. This appeal is one such instance. The dismissal of the petitioner's action, decreed in the appealed Decision of the Trial Court, must be upheld, not for the reason therein stated, but on quite a different ground.

The case involves the claim of one of two co-owners for reimbursement from the other of expenses incurred for the repair and preservation of the common property. Based on the petitioner's pleadings and the intendment of its proofs, as well as the findings of the appealed Decision, the factual background is hereunder set forth.

The property in question consists of a parcel of land measuring 5,263 square meters, with a warehouse and office building standing thereon, covered by Transfer Certificate of Title No. 11679 of the Registry of Deeds of Davao City. One of the registered co-owners is the petitioner, Consolidated Plywood Industries Inc. (hereafter simply referred to as CPII); it had purchased an undivided one-half (1/2) portion of the property from the Consolidated Bank & Trust Company which, in turn, had acquired that share at a foreclosure sale. The other registered co-owner is the Mindanao Hemp Export Corporation (hereafter MHEC).

After having acquired its undivided half share, CPII occupied the property, using the warehouse to store its products and the nearby building to quarter its personnel. It employed guards to secure the premises.[1] In July 1984, it made repairs and improvements on the property, as follows: replacement of the dilapidated G.I. sheet roofing; construction of a new perimeter fence; putting of earth filling on the driveway to keep out flood waters; and installation of a steel gate.

For the repairs, improvements and guard fees CPII allegedly spent P239,837.21, one-half of which, with interests, it sought to recover from MHEC. When extra-judicial demands produced no results, it filed suit for collection against MHEC in the Regional Trial Court of Davao City.[2]

Summons was issued to MHEC whose address was stated in the complaint to be at 413 Jaboneros St., Binondo, Manila. It went unserved for the reason, stated in the return of the Sheriff of Manila, that "**** Mindanao Hemp Export Corp. is no longer doing business at said address (and) (n)obody around the place knows the present whereabouts of said defendant." [3] The Trial Court sought to ascertain the defendant's whereabouts from the Securities and Exchange Commission, but that office simply furnished the same address: 413 Jaboneros St., Binondo, Manila as the latest address of that corporation in its records.[4] Service at that address having already been attempted and failed, CPII moved for, and the Trial Court ordered on April 28, 1987, service of summons by publication.[5] Publication was effected in the newspaper, Philippine Daily Inquirer, on May 18 and 15, 1987 and

June 1, 1987.[6] Copy of the alias summons was also sent by registered mail addressed to MHEC at 413 Jaboneros Street, Binondo, Manila.[7] No answer being filed within the sixty-day period after last publication prescribed in the alias summons, MHEC was declared in default[8] and CPII thereafter presented its evidence ex parte. The Trial Court also conducted an ocular inspection and found that CPII was using the entire warehouse as well as the office building standing on the property.[9]

On March 29, 1988, the Trial Court rendered judgment which, while finding that CPII had in fact incurred expenses in the amount of P161,951.70 (instead of the claimed P239,637.21), denied said plaintiff reimbursement of one-half of that amount and instead dismissed the complaint "for lack of merit," ruling that:

"*** It is very apparent that the plaintiff made the necessary repairs on the warehouse and fence and put the earth fills on the land so that it could use the property, and in fact it has been using the property after said repairs and earth filling in July 1984 *** without paying any rentals to the defendant for the use of its 50% undivided portion thereof. In the conservative estimate of the Court said property can easily fetch a monthly rental of P20,000.00 and, if sold, can realize several millions of pesos.

Considering that the plaintiff is the one using the entire property exclusively without any rentals, the Court believes that it has no right to compel the defendant to reimburse it for half of the cost of said necessary repairs on the warehouse and fence and earth filling on the land."[10]

Quite evidently, it was the Trial Court's view,[11] based on Article 500 of the Civil Code (to the effect that upon partition of common property the co-owners are bound to render mutual accounting for "benefits received and reimbursements for expenses made") that a co-owner cannot put the property to his sole use and benefit gratis without the express agreement of the other co-owners.

CPII has applied directly to this Court for a reversal of said judgment, arguing in the main that co-owner has the right to use the whole of the property owned in common without obligation for rentals and, hand-in-hand with such right of use, the right to reimbursement from the other co-owners of their proportionate share in necessary expenses incurred by him for the preservation of the property. Petitioner argues further that it is entitled to attorney's fees and expenses of litigation, having been compelled to sue because MHEC's failure to fulfill reportorial requirements of the Securities and Exchange Commission had rendered extrajudicial collection well-nigh impossible.

That MHEC may no longer be found at 413 Jaboneros St., Binondo, Manila, is made more apparent by the fact that the copy of this Court's resolution of May 2, 1988 requiring its comment on CPII's petition, which was sent by registered mail to said address, was returned unclaimed after three notices.[12]

While from the foregoing it may appear that resolution of the appeal is a simple and straightforward matter of applying law and precedent to the facts established by the evidence, such result is precluded by the circumstance that due to a failure to effect proper service of summons on MHEC, the Trial Court never acquired jurisdiction over the person of said defendant and therefore could not lawfully render valid judgment thereon.

Petitioner's suit is for the collection of a sum of money -- a personal action, as distinguished from a real action, i.e., one "**** affecting title to, or for recovery of possession of, or for partition or condemnation of, or foreclosure of mortgage on, real property." [13] It is, too, an action strictly in personam, as to which in a line of cases starting with *Pantaleon vs. Asuncion*, [14] this Court laid down and consistently hewed to the rule that "**** 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 defendant," and that "*** (t)he proper recourse for a creditor in the same situation as

petitioner is to locate properties, real or personal, of the resident defendant debtor with unknown address and cause them to be attached under Rule 57, section 1(f), in which case, the attachment converts the action into a proceeding in rem or quasi in rem and the summons by publication may then accordingly be deemed valid and effective." [15]

ACCORDINGLY, and service of summons by publication here not having been preceded by attachment property of MHEC, it did not confer on the Trial Court jurisdiction over the person of said defendant, and it is on this score that petitioner's action must be, as it is hereby, **DISMISSED**.

In view of the peculiar circumstances of this case, it is hereby directed that in the not unlikely event that the petitioner pursue its claim for reimbursement against its co-owner by filing a second action therefore, efforts be exerted, prior to effecting service of summons by publication, to cause personal service on respondent corporation on its president, manager, secretary, cashier, agent or any of its directors, at such of their individual addresses as may become known to the petitioner from an examination of the records of the Securities and Exchange Commission or such others as may be or become otherwise available, failure of this latter mode of service being hereby made a condition precedent to summons by publication.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Complaint, Original Record, pp. 1-4; Appealed Decision: Rollo, pp. 18-19

[2] Docketed as Civil Case No. 18279

[3] Original Record, p. 14

[4] Id., p. 16

[5] Order dated April 28, 1987; Original Record, p. 54

[6] Exhibit D; Original Record, p. 54

[7] Id., p. 55

[8] Order dated October 2, 1987; Original Record, p. 66

[9] Appealed Decision; Rollo, pp. 21-22

[10] Rollo, p. 23

[11] Later affirmed in said Court's Comment on the Petition for Review; Rollo, pp. 146, 147

[12] Rollo, pp. 157-158

[13] Rule 4, sec. 2(a), Rules of Court

[14] 105 Phil. 765

[15] *Citizens Surety and Ins. Co., Inc. vs. Melencio-Herrera*, 38 SCRA 369; see also *Magdalena Estate vs. Nieto*, 125 SCRA 758

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