

FIRST DIVISION

[G.R. No. 196347, January 23, 2017]

**SUSAN A. YAP, PETITIONER, VS. ELIZABETH LAGTAPON,
RESPONDENT.**

D E C I S I O N

CAGUIOA, J:

The presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge. To this end, our body of jurisprudence has been consistent in requiring nothing short of clear and convincing evidence to the contrary to overthrow such presumption. This case is no different.

The Case

In this Appeal by Certiorari^[1] (Petition) filed under Rule 45 of the Rules of Court, petitioner Susan A. Yap (Yap) is assailing the Decision dated July 27, 2006^[2] (questioned Decision) and Resolution dated February 23, 2011^[3] issued by the Court of Appeals-Twentieth (20th) Division (CA) in CA-G.R. SP No. 61944, which denied the Petition for Annulment of Judgment (Petition for Annulment) dated November 8, 2000^[4] and the subsequent Motion for Reconsideration filed by petitioner Yap. The questioned Decision was rendered in connection with the Decision dated February 12, 1998^[5] (RTC Decision) of the Regional Trial Court of Bacolod City, Branch 46 (RTC) in the case filed by herein respondent Elizabeth Lagtapon (Lagtapon), entitled "*Elizabeth Lagtapon v. Susan Yap*" and docketed as Civil Case (CC) No. 97-9991.

The Facts

The factual antecedents, as summarized by the CA, are as follows:

On 9 October 1997, [respondent Lagtapon] instituted a civil suit against [petitioner Yap] for a sum of money with the Regional Trial Court of Negros Occidental docketed as Civil Case No. 97-9991 and the same was raffled off to the respondent court.

Summons was issued and as per return of service of summons dated 4 November 1997 prepared by the process server of the respondent court in the person of Ray R. Precioso, he served on November 4, 1997 the summons on [petitioner Yap] who, however, refused to acknowledge receipt thereof, thus, compelling him to tender the same and left (sic) a

copy thereof for her.

As no answer was filed, [respondent Lagtapon] filed a motion to declare [petitioner Yap] in default dated 16 December 1997. The said motion was granted by the respondent court in an order issued on 12 January 1998 declaring [petitioner Yap] in default and allowing [respondent Lagtapon] to present her evidence ex-parte on 9 February 1998.

Accordingly, [respondent Lagtapon] adduced evidence in her favor ex-parte. On 10 February 1998, the respondent court issued an order admitting the documentary exhibits offered by [respondent Lagtapon].

On 12 February 1998, the respondent court rendered the challenged Decision in favor of [respondent Lagtapon] and against [petitioner Yap]. Under date of 6 March 1998, [respondent Lagtapon] filed a motion for execution which was favorably acted upon by the respondent court through an order of 21 May 1998.

The Ex-Officio Provincial Sheriff for Negros Occidental issued a notice of sale on execution dated 25 September 2000 setting the auction sale of petitioner's property on 17 October 2000. The property of petitioner that was put up for execution sale consists of a parcel of land identified as Lot 11, Block 2 of the subdivision plan (LRC) Psd-91608 covered by Transfer Certificate of Title No. T-110467 situated at Herminia Street, Villa Valderrama (*sic*), Barangay Mandalagan, Bacolod City.

On or about 11 October 2000, Joey de la Paz, to whom [petitioner Yap] mortgaged the same property, informed her that when he asked his secretary to secure a copy of the title covering the property from the Registry of Deeds of Bacolod City, it was found out that annotated on the title is a notice of embargo relative to Civil Case No. 97-9991, that a notice of sale on execution had already been issued and that the said property was scheduled to be sold at auction on 17 October 2000.

Immediately upon receiving such information, [petitioner Yap] proceeded to the Hall of Justice to verify the truthfulness thereof. It was only then that she discovered that she was sued by [respondent Lagtapon] and a judgment by default against her had long been issued.^[6]

Proceeding from such developments, petitioner Yap filed the subject Petition for Annulment with the CA, assailing the RTC Decision on the ground that Summons was not validly served on her, which thus prevented the RTC from acquiring jurisdiction over her person.^[7] In particular, petitioner Yap alleged that at the time Summons was allegedly served on November 4, 1997 (as evidenced by the Return of Service),^[8] she was not residing in either of the addresses supplied by respondent Lagtapon in her Complaint,^[9] namely: (i) Herminia Street, Villa Valderama, Bacolod City, and (ii) Frankfurt Street, Jesusa Heights, Bacolod City.^[10]

With respect to the first address, petitioner Yap claimed that while she used to reside therein, she had already moved out from the said address sometime in June 1997 and started leasing out the same on July 1998.^[11] Hence, the Summons could

not have been served on her on November 4, 1997, as she had already vacated from the said address by then.

Meanwhile, regarding the second address, petitioner Yap averred that she never resided at any such place.^[12] Allegedly, at the time of the service of Summons, she was residing somewhere else, specifically in "Frankfurt Street, Sunshine Valley Subdivision, Barangay Estefania, Bacolod City" (as compared to "Frankfurt Street, Hesusa (sic) Heights, Bacolod City"), which she started leasing from June 1997 (upon vacating the first address) until September 1999.^[13]

Simply put, petitioner Yap wholly denied the fact of service of Summons, as reflected in the Return of Service dated November 4, 1997^[14] accomplished by the RTC's process server, Roy R. Precioso (Precioso).

Notably, it was stated in the said Return that the Summons, together with a copy of the Complaint and its annexes, was served **personally** on petitioner Yap on November 4, 1997, at about 4:35 p.m., and that the latter refused to sign the same, which prompted Precioso to tender and leave a copy of the Summons with petitioner Yap.^[15] While the place of service was not indicated in the Return, it should be noted that Precioso subsequently executed an Affidavit dated February 21, 2001, attesting to the fact that he served the Summons on petitioner Yap at "Frankfurt Street, Hesusa Village, Bacolod City".^[16]

Petitioner Yap likewise categorically denied receipt of the Motion to Declare in Default dated December 16, 1997.^[17] As indicated in the records, the said Motion was served on petitioner Yap via JRS Express mail, evidenced by JRS Express Cash Airbill No. 734216, and that a certain "Tommy Lim" received it.^[18] Petitioner Yap again claimed that she could not have received the same as she was never a resident in the address indicated in the said Airbill, which was also "Frankfurt Street, Hesusa (sic) Heights, Bacolod City".^[19]

On the other hand, respondent Lagtapon denied all the factual allegations in the Petition for Annulment to the effect that petitioner Yap was never served with Summons on the date indicated, and claimed that petitioner Yap was indeed aware of the proceedings, as borne out by the records of the RTC.^[20] In her Answer to Petition for Annulment of Judgment dated March 7, 2001,^[21] respondent Lagtapon also raised the following grounds for the dismissal of the said Petition: (i) assuming *arguendo* that petitioner Yap did not receive the RTC Decision, she was constructively notified thereof as well as the corresponding Writ of Execution dated May 22, 1998 issued by the RTC when the Provincial Sheriff of Negros Occidental caused the registration and annotation of the Notice of Embargo or Levy at the back of petitioner Yap's Transfer Certificate of Title No. T-110467.^[22] Hence, respondent Lagtapon argued that petitioner Yap's failure to file a petition for relief from judgment within sixty (60) days from the time of the said annotation on May 26, 1998 rendered her Petition for Annulment dismissible;^[23] (ii) petitioner Yap failed to file a petition for *certiorari* under Rule 65 to question the Order declaring her in default, the RTC Decision, or the Notice of Embargo or Levy;^[24] and (iii) there was no extrinsic fraud extant from the records of the case that would serve as basis for the Petition for Annulment under Rule 47 of the Rules of Court.^[25]

Ruling of the CA

In the questioned Decision, the CA denied the Petition for Annulment and upheld the validity of the service of Summons on petitioner Yap. The CA held that petitioner Yap's evidence failed to rebut the presumption of regularity, *i.e.*, that she failed to satisfactorily establish the fact that she was residing elsewhere during the time of the service of Summons, contrary to what was stated in the Return of Service.^[26]

In her Motion for Reconsideration dated April 15, 2008,^[27] petitioner Yap claimed that the CA "overlooked very important documents which, if taken into consideration, could materially affect the decision it first arrived at".^[28] In its Resolution dated February 23, 2011, the CA denied petitioner Yap's Motion for Reconsideration for lack of merit.^[29]

Hence, this Petition.

Proceedings before the SC

On June 9, 2011, respondent Lagtapon filed a Motion to Dismiss,^[30] which was noted without action by the Court in its Resolution dated October 19, 2011.^[31] Thus, in her Comment dated January 12, 2012,^[32] respondent Lagtapon raised the sole issue of whether the remedy of Annulment of Judgment could still be availed of by petitioner Yap on the ground that "[e]xtrinsic [:f]raud cannot be a valid ground if it was not availed of in a Motion for [New] Trial or Petition [:f]or Relief of Judgment".^[33]

Accordingly, Yap filed her Reply dated September 17, 2012,^[34] which was duly noted by the Court in a Resolution dated October 22, 2012.^[35]

Issue

At issue in this case is whether the CA committed reversible error in dismissing the Petition for Annulment and ruling that the RTC had validly acquired jurisdiction over petitioner Yap's person through service of summons.

The Court's Ruling

The Petition is denied.

In resolving the principal issue of this case, the Court shall separately discuss the matters raised by the opposing sides according to their nature.

I. Procedural Matters

Questions of fact are not cognizable in a Rule 45 petition.

At its core, the instant controversy hinges on whether Summons was validly served upon petitioner Yap or not. As discussed above, the parties' claims are diametrically opposing: on the one hand, petitioner Yap denies any service of Summons on her

person, while on the other, the RTC's process server, Precioso, attests to having served Summons on petitioner Yap herself. Resolving this issue would thus necessitate a re-examination and re-weighing of the evidence on record.

In this regard, it has been repeatedly held by the Court that an appeal by *certiorari* under Rule 45 of the Rules is limited in its scope - the Court may only entertain questions of law^[36] as jurisdiction over factual questions has been devolved to the trial courts as a matter of efficiency and practicality in the administration of justice. As an arbiter of laws, the Court is not expected to recalibrate the evidence already considered by inferior courts.^[37] More importantly, to the extent that the evidence on record amply support the factual findings of the trial court, such findings are deemed conclusive and will not be disturbed on appeal.^[38] On this score alone, the Petition, for raising factual issues, may already be denied pursuant to the Court's discretionary appellate jurisdiction.

The remedy of annulment of judgment under Rule 47 of the Rules is based either on extrinsic fraud or lack of jurisdiction.

In her Comment dated January 12, 2012, respondent Lagtapon insists that the instant Petition should be dismissed on the ground that the same is based on extrinsic fraud and that petitioner Yap's failure to avail of the remedies of new trial or petition for relief from judgment on such ground bars a resort to the remedy of annulment of judgment.^[39]

Respondent Lagtapon's argument is misplaced.

The remedy of annulment of judgment, embodied in Rule 47 of the Rules, is extraordinary in character, and does not so easily and readily lend itself to abuse by parties aggrieved by final judgments. The grounds for a Rule 47 petition are: (i) extrinsic fraud and (ii) lack of jurisdiction.^[40] Extrinsic fraud cannot be a valid ground if it had been availed of, or could have been availed of, in a motion for new trial or petition for relief.^[41] On the other hand, lack of jurisdiction means either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the defendant.^[42]

In the Petition filed by petitioner Yap, she did not specify her exclusive reliance on extrinsic fraud as basis of her Petition under Rule 47. To be precise, petitioner Yap's claim of defective service of Summons brings to fore the lack of jurisdiction of the RTC over her person.^[43]

Moreover, the Court agrees with the position of petitioner Yap that she could no longer avail of the remedies of new trial or petition for relief from judgment because, as borne out by the records, she alleged to have become aware of the RTC Decision on October 11, 2000 at the latest, at the time when a writ of execution had already been issued.^[44] Clearly, the remedies of appeal or new trial were no longer available to petitioner Yap. Under the Rules, execution shall issue upon the expiration of the period to appeal therefrom, if no appeal has been duly perfected.^[45] In the same manner, a motion for new trial can only be filed within the period for taking an appeal.^[46] Under the present circumstances, by the time petitioner Yap acquired knowledge of the proceedings, the period for perfecting an appeal had