

## SECOND DIVISION

[ G.R. No. 206653, February 25, 2015 ]

**YUK LING ONG, PETITIONER, VS. BENJAMIN T. CO,  
RESPONDENT.**

### **D E C I S I O N**

**MENDOZA, J.:**

In court proceedings, there is no right more cherished than the right of every litigant to be given an opportunity to be heard. This right begins at the very moment that summons is served on the defendant. The Rules of Court places utmost importance in ensuring that the defendant personally grasp the weight of responsibility that will befall him. Thus, it is only in exceptional circumstances that constructive notification, or substituted service of summons, is allowed. If the server falls short of the rigorous requirements for substituted service of summons, then the Court has no other option but to strike down a void judgment, regardless of the consequences.

This is a petition for review on *certiorari* seeking to reverse and set aside the June 27, 2012 Decision<sup>[1]</sup> and the March 26, 2013 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 106271, which denied the petition for annulment of judgment.

#### **The Facts**

Petitioner Yuk Ling Ong (*petitioner*), a British-Hong Kong national, and respondent Benjamin Co (*respondent*), a Filipino citizen, were married on October 3, 1982 at Ellinwood-Malate Church.<sup>[3]</sup>

Sometime in November 2008, petitioner received a subpoena from the Bureau of Immigration and Deportation (*BID*) directing her to appear before the said agency because her permanent residence visa was being subjected to cancellation proceedings. Reportedly, her marriage with respondent was nullified by the court.

When petitioner appeared before the BID, she was furnished with the copies of the following documents: (1) petition for declaration of nullity of marriage filed as Civil Case No. CV-01-0177; (2) petition for declaration of nullity of marriage docketed as Civil Case No. 02-0306; (3) Decision,<sup>[4]</sup> dated December 11, 2002, in Civil Case No. 02-0306 of the Regional Trial Court, Branch 260 (*RTC*), Parañaque City, declaring the marriage between petitioner and respondent as void *ab initio*; and (4) their marriage contract<sup>[5]</sup> with the subject decision annotated thereon. Petitioner was perplexed that her marriage with respondent had been declared void *ab initio*.

The above documents showed that on April 26, 2001, respondent filed a petition for

declaration of nullity<sup>[6]</sup> on the ground of psychological incapacity before the RTC, which was docketed as Civil Case No. CV-01-0177. Respondent stated that petitioner's address was 600 Elcano St., Binondo, Manila. There was no showing of its status, whether pending, withdrawn or terminated.

On July 19, 2002, respondent filed another petition for declaration of nullity<sup>[7]</sup> on the ground of psychological incapacity before the RTC, docketed as Civil Case No. 02-0306. Respondent indicated that petitioner's address was 23 Sta. Rosa Street, Unit B-2 Manresa Garden Homes, Quezon City. On July 29, 2002, the RTC issued summons.<sup>[8]</sup> In his Server's Return,<sup>[9]</sup> process server Rodolfo Torres, Jr. stated that, on August 1, 2002, substituted service of summons with the copy of the petition was effected after several futile attempts to serve the same personally on petitioner. The said documents were received by Mr. Roly Espinosa, a security officer.

On December 11, 2002, the RTC rendered a decision<sup>[10]</sup> in Civil Case No. 02-0306 finding respondent's marriage with petitioner as void *ab initio* on the ground of psychological incapacity under Article 36 of the Family Code. It stated that summons was served on petitioner on August 1, 2002, but she failed to file her responsive pleading within the reglementary period. The public prosecutor also stated that there were no indicative facts to manifest collusion. Thus, the RTC concluded that petitioner was psychologically incapacitated to perform her essential marital obligations.

Consequently, petitioner filed a petition for annulment of judgment<sup>[11]</sup> under Rule 47 of the Rules of Court before the CA on November 24, 2008, claiming that she was never notified of the cases filed against her. She prayed that the RTC decision, dated December 11, 2002, in Civil Case No. 02-0306, be nullified on the grounds of extrinsic fraud and lack of jurisdiction.

Petitioner alleged that *first*, respondent committed extrinsic fraud because, as seen in Civil Case No. CV-01-0177, he deliberately indicated a wrong address to prevent her from participating in the trial; *second*, jurisdiction over her person was not acquired in Civil Case No. 02-0306 because of an invalid substituted service of summons as no sufficient explanation, showing impossibility of personal service, was stated before resorting to substituted service of summons; *third*, the alleged substituted service was made on a security guard of their townhouse and not on a member of her household; and *fourth*, she was not psychologically incapacitated to perform her marital obligations.<sup>[12]</sup>

### **Ruling of the Court of Appeals**

On June 27, 2012, the CA rendered the assailed decision finding the petition for annulment of judgment to be devoid of merit. It held that there was no sufficient proof to establish that respondent employed fraud to insure petitioner's non-participation in the trial of Civil Case No. CV-01-0177.

Relying on *Robinson v. Miralles*,<sup>[13]</sup> the CA further ruled that the substituted service of summons in Civil Case No. 02-0306 was valid. It found that there was a customary practice in petitioner's townhouse that the security guard would first entertain any visitors and receive any communication in behalf of the homeowners.

With this set-up, it was obviously impossible for the process server to personally serve the summons upon petitioner. It also declared that the process server's return carries with it the presumption of regularity in the discharge of a public officer's duties and functions.

Petitioner moved for reconsideration, but her motion was denied by the CA in its Resolution,<sup>[14]</sup> dated March 26, 2013.

Hence, this petition, anchored on the following

### **ISSUES**

1. Whether or not the Trial Court in Civil Case No. 02-0306 validly acquired jurisdiction over the person of the petitioner.
2. Whether or not the facts proven by the petitioner constitute extrinsic fraud within the purview of Rule 47 of the Rules of Court.<sup>[15]</sup>

Petitioner argues that there was an invalid substituted service of summons. The process server's return only contained a general statement that substituted service was resorted to "after several futile attempts to serve the same personally,"<sup>[16]</sup> without stating the dates and reasons of the failed attempts. Petitioner also reiterates her argument that extrinsic fraud was employed.

In his Comment,<sup>[17]</sup> filed on July 9, 2014, respondent contended that the server's return satisfactorily stated the reason for the resort to a substituted service of summons on August 1, 2002; and it was improbable that petitioner failed to receive the summons because it was sent to the same address which she declared in this present petition.

Petitioner filed her Reply<sup>[18]</sup> on October 8, 2014 reiterating her previous arguments.

### **The Court's Ruling**

The Court finds merit in the petition.

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Rule 47 of the 1997 Rules of Civil Procedure, as amended, governs actions for annulment of judgments or final orders and resolutions, and Section 2 thereof explicitly provides only two grounds for annulment of judgment, that is, extrinsic fraud and lack of jurisdiction.<sup>[19]</sup> Annulment of judgment is an equitable principle not because it allows a party-litigant another opportunity to reopen a judgment that has long lapsed into finality but because it enables him to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with.<sup>[20]</sup>

Petitioner raises two grounds to support her claim for annulment of judgment: (1) extrinsic fraud and (2) lack of jurisdiction. Her contention on the existence of

extrinsic fraud, however, is too unsubstantial to warrant consideration. The discussion shall then focus on the ground of lack of jurisdiction.

Lack of jurisdiction on the part of the trial court in rendering the judgment or final order is either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the petitioner. The former is a matter of substantive law because statutory law defines the jurisdiction of the courts over the subject matter or nature of the action. The latter is a matter of procedural law, for it involves the service of summons or other processes on the petitioner.<sup>[21]</sup>

In the present case, petitioner contends that there was lack of jurisdiction over her person because there was an invalid substituted service of summons. Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court.<sup>[22]</sup> If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of Court, which state:

Sec. 6. Service in person on defendant. - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Sec. 7. Substituted Service. - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

The landmark case of *Manotoc v. CA (Manotoc)*<sup>[23]</sup> thoroughly discussed the rigorous requirements of a substituted service of summons, to wit: xxx

#### (1) Impossibility of Prompt Personal Service

xxx

For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period of one month which eventually resulted in failure to prove impossibility of prompt service. **"Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful.** It is only then that impossibility of service can be confirmed or accepted.

#### (2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and