

SECOND DIVISION

[G.R. No. 194751, November 26, 2014]

**AURORA N. DE PEDRO, PETITIONER, VS. ROMASAN
DEVELOPMENT CORPORATION, RESPONDENT.**

DECISION

LEONEN, J.:

Regardless of the type of action — whether it is *in personam*, *in rem* or *quasi in rem* — the preferred mode of service of summons is personal service. To avail themselves of substituted service, courts must rely on a detailed enumeration of the sheriff's actions and a showing that the defendant cannot be served despite diligent and reasonable efforts. The sheriff's return, which contains these details, is entitled to a presumption of regularity, and on this basis, the court may allow substituted service. Should the sheriff's return be wanting of these details, substituted service will be irregular if no other evidence of the efforts to serve summons was presented.

Failure to serve summons will mean that the court failed to acquire jurisdiction over the person of the defendant. However, the filing of a motion for new trial or reconsideration is tantamount to voluntary appearance.

This Rule 45 petition seeks the review of the Court of Appeals July 7, 2010 decision in CA G.R. SP. No. 96471. The Court of Appeals denied petitioner's action for annulment of the Regional Trial Court decision, which, in turn, nullified her certificate of title.

This case originated from separate complaints for nullification of free patent and original certificates of title, filed against several defendants.^[1] One of the defendants is petitioner Aurora De Pedro (De Pedro).^[2] The complaints were filed by respondent Romasan Development Corporation before the Regional Trial Court of Antipolo City on July 7, 1998.^[3]

Respondent Romasan Development Corporation alleged in its complaints that it was the owner and possessor of a parcel of land in Antipolo City.^[4] The land was covered by Transfer Certificate of Title (TCT) No. 236044.^[5]

Based on respondent's narrative, its representative, Mr. Rodrigo Ko, discovered sometime in November 1996 that De Pedro put up fences on a portion of its Antipolo property.^[6] Mr. Ko confronted De Pedro regarding her acts, but she was able to show title and documents evidencing her ownership.^[7]

Mr. Ko informed respondent about the documents.^[8] Upon checking with the Community Environment and Natural Resources Office-Department of Environment and Natural Resources (CENRO-DENR), it was discovered that the DENR issued free

patents covering portions of respondent's property to the following:

- a. Defendant Nora Jocson, married to Carlito Jocson - OCT No. P-723, Free Patent No. 045802-91-616;
- b. Defendants Heirs of Marcelino Santos[,] represented by Cristino Santos - OCT No. P-727, Free Patent No. 045802-91-919;
- c. *Defendant Aurora de Pedro married to Elpidio de Pedro* - OCT No. 691, Free Patent No. 045802-91-914;
- d. Defendant Wilson Dadia - OCT No. P-722, Free Patent No. 045802-91-915; and
- e. Defendant Prudencio Marana - OCT No. P-721, Free Patent N[o]. 045802-91-923.^[9] (Emphasis supplied)

Based on these free patents, the Register of Deeds issued titles covering portions of respondent's property.^[10] Original Certificate of Title (OCT) No. 691, Free Patent No. 045802-91-914 was signed by the Provincial Environment and Natural Resources Office in favor of De Pedro on December 9, 1991.^[11]

Respondent further alleged in its separate complaints that the government could not legally issue the free patents because at the time of their issuance, the land was already released for disposition to private individuals.^[12] OCT No. 438, from which respondent's TCT No. 236044 originated, was already issued as early as August 30, 1937.^[13]

Respondent also prayed for the payment of attorney's fees and exemplary damages.^[14]

Attempts to personally serve summons on De Pedro failed.^[15] The officer's return, dated February 22, 1999 reads in part:

OFFICER'S RETURN

I HEREBY CERTIFY that on the 15th and 18th day of February, 1999, I have served a copy of the summons with complaint and annexes dated January 29, 1999 issued by Regional Trial Court, Fourth Judicial Region, Branch 74, Antipolo City upon defendants in the above-entitled case on the following, to wit;

1. AURORA N. DE PEDRO – Unserved for the reason that according to the messenger of Post Office of Pasig their [sic] is no person in the said given address.^[16]

Respondent filed a motion to serve summons and the complaint by publication.^[17]

On August 17, 1998, the Regional Trial Court granted the motion.^[18] The summons and the complaint were published in People's Balita on its April 24, May 1, and May 8, 1998 issues.^[19]

On July 15, 1999, respondent moved to declare all defendants in its complaints, including De Pedro, in default for failure to file their answers.^[20] Respondent also moved to be allowed to present evidence *ex parte*.^[21] The Regional Trial Court granted the motions on August 19, 1999.^[22]

On January 7, 2000, the Regional Trial Court issued an order declaring as nullity the titles and free patents issued to all defendants in respondent's complaint, including the free patent issued to De Pedro.^[23] Thus:

Accordingly the Court declares as a nullity the following titles and Free Patents issued to the Defendants.

- a. Defendant Nora Jocson married to Carlito Jocson OCT No. P-723; Free Patent N[o]. 045802-91-616;
- b. Defendant Heirs of Marcelino Santos represented by Cristino Santos – OCT N[o]. P-727; Free Patent N[o]. 045802-91-919;
- c. *Defendant Aurora N. de Pedro married to Elpidio de Pedro – OCT No. P-691; Free Patent No. 045802-91-914;*
- d. Defendant Wilson Dadia – OCT No. P-722; Free Patent No. 045802-91-915;
- e. Defendant Prudencio Marana – OCT No. P-721; Free Patent N[o]. 045802-91-923.

There being clear bad faith on the part of the Private defendants in obtaining said Free Patents and titles in their names covering the portions of the property of the plaintiff, said defendants are each ordered to pay to the plaintiff the amount of P20,000.00 as attorney's fees, P3,000.00 as appearance fee and also P50,000.00 as moral damages with costs against said private defendants.

Once the Decision becomes final and in order to give full force and effect to the Decision of the Court nullifying the titles and patents issued to the defendants, the latter are directed to surrender the same within a period of ten (10) days from the finality of said Decision to the Registry of Deeds of Marikina City and failure on the part of the defendants to surrender the owner's duplicate of the titles in their possession, defendant Register of Deeds of Marikina City is authorized to cancel the same without the presentation of said owner's duplicate of titles in the possession of the defendants.^[24] (Emphasis supplied)

In so ruling, the Regional Trial Court noted that none of the defendants, including De Pedro, filed an answer to respondent's complaints.^[25] The Regional Trial Court also noted the committee report admitting CENRO's irregularity in the issuance of the free patents to the defendants in the case.^[26]

The Regional Trial Court also found that the title and free patent issued to De Pedro were void.^[27] As early as August 30, 1937, or before the free patents were issued to the defendants in the case, OCT No. 438 was already issued to the property's original owner.^[28] Hence, the property was already "segregated from the mass of public domain" that can be disposed by the government.^[29]

On March 30, 2000, De Pedro, through counsel, filed before the Regional Trial Court a motion for new trial, alleging that the counsel received notice of the January 7, 2000 decision on March 16, 2000.^[30]

De Pedro argued that the Regional Trial Court did not acquire jurisdiction over her person because of improper and defective service of summons. Citing the officer's return dated February 22, 1999, De Pedro pointed out that summons was not personally served upon her "for the reason that according to the messenger of Post Office of Pasig their (sic) is no person in the said given address."^[31]

De Pedro also argued that the case should have been dismissed on the ground of *litis pendentia*. She alleged that there was a pending civil case filed by her, involving the same property, when respondent filed the complaints against her and several others.^[32]

On September 30, 2002, the Regional Trial Court issued an order denying De Pedro's motion for new trial.^[33]

The Regional Trial Court ruled that summons was validly served upon De Pedro through publication, in accordance with the Rules of Court.^[34] Moreover, counting from the date of the summons' publication beginning on March 2, 2000, the motion for new trial was filed beyond the 15-day period within which the motion may be filed.^[35] Therefore, the Regional Trial Court decision had become final and executory.^[36]

The Regional Trial Court also ruled that the reckoning period for filing the motion for new trial cannot be De Pedro's counsel's receipt of the decision. This is because at the time of the issuance of the court's decision, which had already become final and executory, De Pedro's counsel was yet to enter his appearance for De Pedro.^[37]

De Pedro filed a petition for certiorari before the Court of Appeals, alleging that the Regional Trial Court committed grave abuse of discretion when it denied her motion for new trial.^[38]

On March 30, 2006, the Court of Appeals dismissed the petition for certiorari for lack of merit, and affirmed the denial of De Pedro's motion for new trial.^[39]

The Court of Appeals noted De Pedro's belated filing of her motion for new trial. The Court of Appeals also noted De Pedro's failure to allege any ground that would justify the grant of a motion for new trial under Rule 37, Section 1 of the Revised Rules of Civil Procedure.^[40]

De Pedro's motion for reconsideration was denied in the Court of Appeals resolution dated August 24, 2006.^[41]

De Pedro elevated the case to this court, but this was likewise denied in the resolution dated October 4, 2006 for failure to pay the Special Allowance for the Judiciary and sheriff's fees.^[42]

On October 11, 2006, De Pedro filed before the Court of Appeals a petition for annulment of the January 7, 2000 judgment of the Regional Trial Court^[43] on grounds of lack of jurisdiction, *litis pendentia*, and for having been dispossessed of her property without due process.

Citing *Pantaleon v. Asuncion*,^[44] De Pedro pointed out that "[d]ue process of law requires personal service to support a *personal* judgment, and, when the proceeding is *strictly in personam* brought to determine the personal rights and obligations of the parties, *personal* service within the state or a voluntary appearance in the case is *essential to the acquisition of jurisdiction [so] as to constitute compliance with the constitutional requirement of due process.*"^[45]

De Pedro also claimed to be the real owner of the property by virtue of OCT No. P-691.^[46] She pointed out that the same Regional Trial Court branch ordered the reconstitution of her title to the property in 1997.^[47] The Regional Trial Court also issued a certificate of finality stating that "an Entry of Judgment had already been issued by the Court of Appeals dated January 16, 2006."^[48]

On July 7, 2010, the Court of Appeals promulgated its decision denying De Pedro's petition for annulment of judgment.^[49] The dispositive portion of the Court of Appeals decision reads:

WHEREFORE, this petition is hereby **DENIED**.^[50]

The Court of Appeals ruled that since petitioner already availed herself of the remedy of new trial, and raised the case before the Court of Appeals via petition for certiorari, she can no longer file a petition for annulment of judgment.^[51]

De Pedro's motion for reconsideration was denied on December 3, 2010:^[52]

WHEREFORE, premises considered, the motion for reconsideration is **DENIED** for lack of merit.^[53]

On January 13, 2011, De Pedro filed before this court a Rule 45 petition, seeking the