

FIRST DIVISION

[G.R. No. 152496, July 30, 2009]

**SPOUSES GERMAN ANUNCIACION AND ANA FERMA
ANUNCIACION AND GAVINO G. CONEJOS, PETITIONERS, VS.
PERPETUA M. BOCANEGRA AND GEORGE M. BOCANEGRA,
RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a petition for review on certiorari, assailing the Decision,^[1] dated November 19, 2001, and the Resolution,^[2] dated March 31, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 65516. The CA decision affirmed the Orders dated February 19, 2001^[3] and May 16, 2001^[4] of the Regional Trial Court (RTC) of Manila, Branch 40 in Civil Case No. 00-98813 which dismissed the complaint^[5] for Quieting of Title and Cancellation of TCT No. 122452 of petitioner spouses German Anunciacion and Ana Ferma Anunciacion and their co-petitioner, Gavino G. Conejos.

The facts of the case are as follows:

On September 29, 2000, petitioners filed before the RTC, Manila, a complaint for Quieting of Title and Cancellation of TCT No. 122452, docketed as Civil Case No. 00-98813. The complaint averred that defendants (respondents) may be served with summons and legal processes through Atty. Rogelio G. Pizarro, Jr., with office address at 2830 Juan Luna St., Tondo, Manila.^[6] The summons, together with the copies of the complaint, were then served on Atty. Pizarro. The record shows that before the filing of the said complaint, Atty. Pizarro wrote a demand letter^[7] on behalf of respondents and addressed to petitioner German Anunciacion, among others, demanding that they vacate the land owned by his clients (respondents), who needed the same for their own use. The said demand letter reads:

2830 Juan Luna
St.
Tondo, Manila
August 19, 2000

Mr. German Anunciacion, Mesdames
Liwayway Nava, Evangeline Pineda,
and Ana Ferma
2982 Rizal Ave. Ext.
Sta. Cruz, Manila

Dear Sir and Mesdames:

I write in behalf of my clients, MS. PERPETUA M. BOCANEGRA and MR. GEORGE M. BOCANEGRA, the registered owners of the parcel of land known as Lot 1-B (LRC) PSD-230517 located at 2982 Rizal Ave. Ext., Sta. Cruz, Manila, and duly covered by Transfer Certificate of Title No. 122452, which you are presently occupying.

I would like to inform you that your occupation and possession of the said land is based on mere tolerance of the owners, and without any payment on your part of any rental. Now, the owners need the subject property for their own use.

In view thereof, I hereby demand that you vacate the said land within a period of fifteen (15) days from receipt of this letter. Otherwise, much to our regret, I shall be constrained to institute the proper criminal and/or civil action against you.

Trusting that you will give this matter your most serious and preferential attention.

Very truly yours,

ATTY. ROGELIO G. PIZARRO,
JR.

On October 27, 2000, respondents, through their counsel, Atty. Norby C. Caparas, Jr., filed a Motion to Dismiss^[8] on the ground that the complaint stated no cause of action. Petitioners filed their Comment on the Motion to Dismiss^[9] on November 6, 2000.

A Supplemental Motion to Dismiss and Reply to the Comment on the Motion to Dismiss^[10] dated November 13, 2000 was filed by respondents, alleging an additional ground that petitioners failed to pay the required filing fee. The petitioners filed, on November 27, 2000, their Opposition to the Supplemental Motion to Dismiss and Comment to the Reply to the Comment on the Motion to Dismiss.^[11]

Thereafter, respondents filed a Second Supplemental Motion to Dismiss and Manifestation dated November 27, 2000,^[12] citing the following grounds:

- 1.) That the court has no jurisdiction over the person of the defending party.
- 2.) That the court has no jurisdiction over the subject matter of the claim.
- 3.) That the pleading asserting the claim states no cause of action.

Petitioners then filed their Additional Comment on the Motion to Dismiss, Supplemental Motion to Dismiss and Comment on the Second Supplemental Motion

to Dismiss.^[13]

In its order of February 19, 2001, the trial court sustained the respondents and dismissed the complaint for lack of jurisdiction over the persons of respondents as defendants. The trial court ruled as follows:

However, the Court finds for the defendants on the Second Supplemental Motion.

In point is Section 3, Rule 3 of the same Rules, which reads -

"Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules.
x x x x"

In the case at bar Atty. Pizarro, Jr., has not been shown to be a trustee of an express trust, a guardian, or any of the above for the action to be allowed to be defended by a representative.

The fact that Atty. Pizarro, Jr., was the lawyer of the defendants in the demand letters do not per se make him their representative for purposes of the present action. To this effect, service on lawyer of defendant is an invalid service of summons. (*Cordova v. Provincial Sheriff of Iloilo*, 89 SCRA 59)

Going to the other raised issue, Section 20, Rule 14 of the 1997 Rules of Civil Procedure provides -

"The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance."

The presentation of all objections then available as was done by the movants subserves the omnibus motion rule and the concomitant policy against multiplicity of suits.

WHEREFORE, premises considered, on the ground that the Court has no jurisdiction over the persons of the defendants, the case is hereby DISMISSED.

The motion for reconsideration filed by the petitioners was denied for lack of merit.

Aggrieved, petitioners filed before the CA a Petition for Certiorari, seeking the nullification of the RTC Orders dated February 19, 2001 and May 16, 2001, on the ground that the said orders were issued with grave abuse of discretion.

On November 19, 2001, the CA dismissed the petition upon finding that there was no waiver of the ground of lack of jurisdiction on the part of respondents in the form of voluntary appearance. Applying Section 20, Rule 14 of the 1997 Rules of Civil Procedure, the CA held that although the grounds alleged in the two (2) earlier Motion to Dismiss and Supplemental Motion to Dismiss were lack of cause of action and failure to pay the required filing fee, the filing of the said motions did not constitute a waiver of the ground of lack of jurisdiction on their persons as defendants. The CA then concluded that there was no voluntary appearance on the part of respondents/defendants despite the filing of the aforesaid motions. The CA also rejected petitioners' contention that the service made to Atty. Rogelio Pizarro, Jr. was deemed service upon respondents/defendants, thus:

First of all, Atty. Rogelio Pizarro cannot be considered as counsel of record wherein We could apply the jurisprudential rule that notice to counsel is notice to client. Atty. Pizarro cannot be deemed counsel on record since Defendants were not the one's (*sic*) who instituted the action, like plaintiffs who did the same thru counsel and therefore, obviously the one who signed the pleadings is the counsel on record. Sadly, the Motion to Dismiss filed by Private Respondents were signed not by Atty. Pizarro but by someone else. How then could Petitioners claim that Atty. Pizarro represents Private Respondents?

Secondly, the fact that Atty. Pizarro was the one who wrote and signed the August 19, 2000 letter, on behalf of Private Respondents, demanding that Petitioners vacate the premises of the former's land does not fall under the substituted service rule. To be sure, Section 7 of Rule 14 of the 1997 Rules, provide thus:

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

In the case at bench, service upon Atty. Pizarro did not fall under the aforequoted rule and therefore cannot qualify as substituted service. Since the service made by Petitioners was defective, the Public Respondent court never did acquire jurisdiction over the persons of defendants and therefore correctly ordered the dismissal of the complaint.^[14]