

THIRD DIVISION

[G.R. No. 147369, October 23, 2003]

**SPOUSES PATRICK JOSE AND RAFAELA JOSE, PETITIONERS, VS.
SPOUSES HELEN BOYON AND ROMEO BOYON, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

In general, substituted service can be availed of only after a clear showing that personal service of summons was not legally possible. Also, service by publication is applicable in actions *in rem* and *quasi in rem*, but not in personal suits such as the present one which is for specific performance.

The Case

Before the Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, assailing the February 26, 2001 Decision^[2] of the Court of Appeals (CA) in CA-GR SP No. 60888. The dispositive portion of the CA Decision is worded as follows:

"WHEREFORE, on the basis of what prescinds, the assailed resolution and orders issued by the public respondent are perforce ANNULLED and SET ASIDE. This pronouncement is nonetheless rendered without prejudice to the refile of the same case by the private respondents with the court *a quo*."^[3]

The Facts

The factual antecedents of the case are narrated by the CA in this wise:

"On July 2, 1998, [petitioners] Patrick and Rafaela Jose lodged a complaint for specific performance against [respondents] Helen and Romeo Boyon to compel them to facilitate the transfer of ownership of a parcel of land subject of a controverted sale. The action was lodged before the Regional Trial Court of Muntinlupa which is presided by herein public respondent Judge N.C. Perello. On July 21, 1998, respondent judge, through the acting Branch Clerk of Court of Branch 276 of the RTC of Muntinlupa City, issued summons to the [respondents]. As per return of the summons, substituted service was resorted to by the process server allegedly because efforts to serve the summons personally to the [respondents] failed. On December 9, 1998, [petitioners] filed before the trial court an Ex-parte Motion for Leave of Court to Effect Summons by Publication. On December 28, 1998, public respondent issued an Order granting the Ex-parte Motion for Leave of Court to Effect Summons by Publication. On July 30, 1999, the respondent judge, sans a written motion, issued an Order declaring herein [respondents] in default for

failure to file their respective answers. As a consequence of the declaration of default, [petitioners] were allowed to submit their evidence ex-parte. Ultimately, on December 7, 1999, respondent judge issued the assailed resolution, the dispositive portion of which reads as follows:

`x x x Therefore, Spouses Helen and Romeo Boyon are directed to execute the necessary document with the effect of withdrawing the Affidavit of Loss they filed and annotated with the Register of Deeds of Makati City so that title `to the parcel of land subject of the Deed of Absolute Sale in favor of the Plaintiffs be transferred in their names. Thereafter the Register of Deeds of Makati City or Muntinlupa City may cancel Transfer of Certificate of Title No. 149635 of the Defendants and issue another to Plaintiff under the deed of sale, clean and free of any reported encumbrance.

` Defendants are also directed to pay Plaintiffs actual expenses in the amount of P20,000 and attorney's fees of P20,000 including costs of this suit.'

x x x x x x x x

"On January 5, 2000, [respondent] Helen Boyon, who was then residing in the United States of America, was surprised to learn from her sister Elizabeth Boyon, of the resolution issued by the respondent court. On January 18, 2000, [respondents] filed an *Ad Cautelam* motion questioning, among others, the validity of the service of summons effected by the court *a quo*. On March 17, 2000, the public respondent issued an Order denying the said motion on the basis of the defaulted [respondents'] supposed loss of standing in court. On March 29, 2000, the [respondents] once again raised the issue of jurisdiction of the trial court via a motion for reconsideration. On June 22, 2000, however, an Order was issued by the public respondent denying the said motion. The [petitioners] moved for the execution of the controverted judgment which the respondent judge ultimately granted."^[4]

Thereafter, respondents filed before the CA a Petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure, questioning the jurisdiction of the regional trial court (RTC).

Ruling of the Court of Appeals

The CA held that the trial court had no authority to issue the questioned Resolution and Orders. According to the appellate court, the RTC never acquired jurisdiction over respondents because of the invalid service of summons upon them. *First*, the sheriff failed to comply with the requirements of substituted service of summons, because he did not specify in the Return of Summons the prior efforts he had made to locate them and the impossibility of promptly serving the summons upon them by personal service. *Second*, the subsequent summons by publication was equally infirm, because the Complaint was a suit for specific performance and therefore an action in *personam*. Consequently, the Resolution and the Orders were null and void, since the RTC had never acquired jurisdiction over respondents.

Hence, this Petition.^[5]

Issues

In their Memorandum, petitioners raise the following issues for our consideration:

"A. The Honorable Court of Appeals erred in not holding that the assailed Resolution dated December 7, 1999 was already final and executory

"B. The Honorable Court of Appeals erred in giving due course to the Petition for Certiorari of private respondents despite the pendency of an appeal earlier filed

"C. The Honorable Court erred in not holding that the Petition for Certiorari was time barred

"D. The Honorable Court of Appeals erred in holding that the proceedings in the lower court are null and void due to invalid and defective service of summons and the court did not acquire jurisdiction over the person of the respondents."^[6]

In sum, the main issue revolves around the validity of the service of summons on respondents.

The Court's Ruling

The Petition has no merit.

Main Issue:

Validity of the Service of Summons

Petitioners aver that the CA erred in ruling that the service of summons on respondents was invalid. They submit that although the case filed before the trial court was denominated as an action for specific performance, it was actually an action *quasi in rem*, because it involved a piece of real property located in the Philippines. They further argue that in actions *quasi in rem* involving ownership of a parcel of land, it is sufficient that the trial court acquire jurisdiction over the *res*. Thus, the summons by publication, which they effected subsequent to the substituted service of summons, was allegedly sufficient.

On the other hand, respondents maintain that the proceedings in the trial court were null and void because of the invalid and defective service of summons. According to them, the Return of Summons issued by the process server of the RTC failed to state that he had exerted earnest efforts to effect the service of summons. He allegedly tried to serve it personally on them on July 22, 1998 at No. 32 Ariza Drive, Camella Homes, Alabang. He, however, resorted to substituted service on that same day, supposedly because he could not find respondents in the above address. They further allege that the person to whom he gave the summons was not even a resident of that address.

Respondents contend that when summons is served by substituted service, the