

## FIRST DIVISION

[ G.R. No. 131482, July 03, 2002 ]

**REGALADO P. SAMARTINO, PETITIONER, VS. LEONOR B. RAON, AGUSTIN G. CRISOSTOMO, THE MUNICIPAL TRIAL COURT OF NOVELETA, CAVITE, HON. MANUEL A. MAYO, REGIONAL TRIAL COURT, BRANCH 16, CAVITE CITY, HON. ROLANDO D. DIAZ, REGIONAL TRIAL COURT, BRANCH 17, CAVITE CITY, SHERIFF DANILO G. LAPUZ, CAVITE CITY AND THE HON. COURT OF APPEALS, RESPONDENTS.**

### **DECISION**

**YNARES-SANTIAGO, J.:**

Respondents Leonor Bernardo-Raon and Agustin G. Crisostomo are the surviving sister and spouse, respectively, of the late Filomena Bernardo-Crisostomo, who passed away on May 17, 1994. Among the properties left by the deceased was her one-half share in a parcel of land in Noveleta, Cavite, registered under Transfer Certificate of Title No. T- 131898 in the name of co-owners Lido Beach Corporation and Filomena Bernardo.

On January 25, 1996, respondents instituted against petitioner Regalado P. Samartino a complaint for ejectment, docketed as Civil Case No. 744 of the Municipal Trial Court of Noveleta, Cavite.<sup>[1]</sup> They alleged that during the lifetime of Filomena Bernardo, she leased her share in the property to petitioner for a period of five years counted from 1986; that the said lease expired and was not extended thereafter; and that petitioner refused to vacate the property despite demands therefor.

Summons was served on Roberto Samartino, brother of petitioner.<sup>[2]</sup> At the time of service of summons at petitioner's house, he was not at home as he was then confined at the National Bureau of Investigation Treatment and Rehabilitation Center (NBI-TRC), Tagaytay City since January 19, 1996, where he was undergoing treatment and rehabilitation for drug dependency. Thus, on February 2, 1996, a liaison officer of the NBI-TRC appeared before the trial court with a certification that petitioner will be unable to comply with the directive to answer the complaint within the reglementary period, inasmuch as it will take six months for him to complete the rehabilitation program and before he can be recommended for discharge by the Rehabilitation Committee.<sup>[3]</sup>

The trial court, despite the written certification from NBI-TRC, granted respondents' motion to declare petitioner in default and ordered them to present evidence *ex-parte*. On March 21, 1996, the trial court rendered judgment in favor of respondents as follows:

FROM THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiffs and against the defendant ordering the latter and other person/s claiming rights under him:

1. To vacate immediately the land in question after the finality of the decision.
2. For the defendant to pay the plaintiffs the sum of P5,000.00 monthly from January, 1992 up to the time he surrenders the premises considered as damages for the use of the subject land.
3. For the defendant to pay the plaintiffs P 10,000.00 as and for attorney's fees with an additional P800.00 as appearance fees.
4. To pay the plaintiffs P 100.00 as filing fee.

SO ORDERED.<sup>[4]</sup>

After learning of the adverse decision against him, petitioner's counsel filed with the Regional Trial Court of Cavite City, Branch 16, a motion to set aside judgment. The motion was treated as an appeal and docketed as Civil Case No. N-6281. On July 18, 1996, the RTC affirmed the decision of the MTC.<sup>[5]</sup>

The aforesaid decision became final. Accordingly, the court of origin issued on September 17, 1996 a writ of execution.<sup>[6]</sup> Petitioner was given a grace period of one month within which to vacate the premises. His real property situated in Noveleta, Cavite, covered by Transfer Certificate of Title No. T-283572, was levied and sold at public auction to respondents in full satisfaction of the monetary award.<sup>[7]</sup>

On November 25, 1996, petitioner filed with the Regional Trial Court of Cavite City, a petition for relief from judgment, docketed as Civil Case No. N-6393.<sup>[8]</sup> In support thereof, petitioner submitted an affidavit of merit,<sup>[9]</sup> alleging in fine that the parcel of land from which he was being evicted had been sold to him by Filomena Bernardo-Crisostomo, as evidenced by the Deed of Absolute Sale dated December 13, 1988.<sup>[10]</sup>

The following day, November 26, 1996, the RTC issued an Order dismissing the petition for relief from judgment.<sup>[11]</sup> Petitioner's Motion for Reconsideration was denied on December 12, 1996. A second Motion for Reconsideration was likewise denied on January 14, 1997.<sup>[12]</sup> On the same day, a writ of demolition was issued commanding the sheriff to remove the building and improvements made by petitioner on the subject premises and to deliver the possession thereof to respondents.<sup>[13]</sup>

Petitioner thus filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 43202.<sup>[14]</sup> On August 29, 1997, the Court of Appeals dismissed the petition.<sup>[15]</sup> Petitioner's Motion for Reconsideration was denied on November 14,

1997.<sup>[16]</sup> Hence this petition for review.

The petition is impressed with merit.

In actions *in personam*, summons on the defendant must be served by handing a copy thereof to the defendant in person, or, if he refuses to receive it, by tendering it to him. If efforts to serve the summons personally to defendant is impossible, service may be effected by leaving copies of the summons at the defendant's dwelling house or residence with some person of suitable age and discretion residing therein, or by leaving the copies at the defendant's office or regular place of business with some competent person in charge thereof. Otherwise stated, service of summons upon the defendant shall be by personal service first and only when the defendant cannot be promptly served in person will substituted service be availed of.<sup>[17]</sup>

Rule 14 of the 1997 Rules of Civil Procedure clearly provides:

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.

We have long held that the impossibility of personal service justifying availment of substituted service should be explained in the proof of service; why efforts exerted towards personal service failed. The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, the substituted service cannot be upheld. It is only under exceptional terms that the circumstances warranting substituted service of summons may be proved by evidence *aliunde*. It bears stressing that since service of summons, especially for actions *in personam*, is essential for the acquisition of jurisdiction over the person of the defendant, the resort to a substituted service must be duly justified. Failure to do so would invalidate all subsequent proceedings on jurisdictional grounds.<sup>[18]</sup>

In this connection, Supreme Court Administrative Circular No. 59 was issued on November 19, 1989 to stress the importance of strict compliance with the requisites for a valid substituted service, to wit:

Delays in court proceedings have been caused by faulty and erroneous implementation of Section 8, Rule 14, Rules of Court on Substituted Service of Summons.

The Trial Judges of all lower courts, as well as the Clerks of Court in their capacity as Ex-Officio Sheriffs together with the Deputy Sheriffs are reminded of the provision of Section 8, Rule 14, Rules of Court on

substituted service as follows:

xxx

xxx

xxx

The manner of effecting substituted service as prescribed in *Venturanza vs. Court of Appeals*, 156 SCRA 305, must be strictly complied with, thus:

“The substituted service should be availed only when the defendant cannot be served promptly in person. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts. The statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service.

Substituted service is a method extraordinary in character, and hence may be used only as prescribed in the circumstances authorized by statute. Thus, the statutory requirements of substituted service must be followed strictly, faithfully and any substituted service other than authorized by the statute is considered ineffective.”

For immediate compliance.

In the case at bar, the sheriff’s Return of Summons simply states:

This is to certify that on this date: 26<sup>th</sup> day of January I have caused the service of summons, together with the attached complaint and its annexes issued in the above entitled case upon defendant REGALADO SAMARTINO thru ROBERTO SAMARTINO, Brother of the defendant acknowledge receipt of said court processes by affixing his signature at the lower left portion of the original summons hereto attached.

WHEREFORE, the attached original summons is hereby respectfully returned to the court of origin duly served for information and record purposes.

Noveleta, Cavite, February 9, 1996.<sup>[19]</sup>

Clearly, the above return failed to show the reason why personal service could not be made. It failed to state that prompt and personal service on the defendant was rendered impossible. It was not shown that efforts were made to find the defendant personally and that said efforts failed; hence the resort to substituted service. As stated above, these requirements are indispensable because substituted service is in derogation of the usual method of service. It is an extraordinary method since it seeks to bind the defendant to the consequences of a suit even though notice of such action is served not upon him but upon another whom law could only presume would notify him of the pending proceedings. For this reason, failure to faithfully, strictly, and fully comply with the requirements of substituted service renders said service ineffective.<sup>[20]</sup>