

THIRD DIVISION

[G.R. No. 129955, November 26, 1999]

**SPOUSES MARIANO MADRIGAL AND JULIETA MADRIGAL,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, THE
HONORABLE PRESIDING JUDGE, BR. 139, RTC, CITY OF MAKATI
& SPOUSES JOSEPH AND JOSEFINA AQUINO, RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

At bar is a Petition for Review on Certiorari, under Rule 45 of the Rules of Court, assailing the decision^[1] of the Court of Appeals, which dismissed the special civil action for certiorari seeking to annul the trial court's Order of Default, dated July 6, 1995, Order dated May 20, 1996, denying the Motion to Lift Order of Default, and Resolution, dated July 16, 1997, denying petitioners' Motion for Reconsideration.^[2]

The facts that matter are undisputed.

On December 12, 1991, Joseph Aquino and Josefina Aquino (SPOUSES AQUINO) brought a Complaint for recovery of possession with damages against Mariano F. Madrigal (MARIANO) and Intercity Properties, Inc., (INTERCITY), docketed as Civil Case No. 91-3427 before the Regional Trial Court of Makati City, Branch 139, which issued on June 25, 1993 the corresponding summons.

On July 1, 1993, the summons and complaint were duly served on INTERCITY but not on MARIANO, as reported in the Return of the Process Server.^[3]

Thus, on September 6, 1993, alias summons issued upon motion of the SPOUSES AQUINO. On December 20, 1993, since MARIANO was not in his residence despite several attempts to look for him, substituted service of summons was resorted to by "leaving a copy of the summons together with the complaint and its annexes to his wife, Julieta S. Madrigal, a person of suitable age and discretion and who acknowledged receipt thereof xxx." The return of service bore her signature.^[4]

When the case was called for pre-trial, the co-defendant, INTERCITY and its counsel failed to appear, despite due notice. So, upon motion of the private respondents (plaintiffs below), INTERCITY was declared in default in the Order^[5] issued on July 6, 1995.

For failure to file an answer or any responsive pleading, MARIANO was declared in default and the SPOUSES AQUINO adduced their evidence *ex-parte*, on the basis of which a Judgment by Default^[6] was rendered on October 9, 1995. Copy of such decision was duly received by MARIANO on October 19, 1995.

On October 29, 1995, a Motion to Lift Order of Default was presented by MARIANO, contending that the trial court never acquired jurisdiction over his person as he was not personally served with summons together with the complaint, and that the complaint was defective because his wife who, according to movant, is an indispensable party, was not impleaded as a party. On December 29, 1995, the same motion was amended to pray for the setting aside of the said decision. But in the Orders, dated May 20 and June 14, 1996, respectively, both motions were denied. Mariano's Motion for Reconsideration met the same fate. It was also denied.

On June 25, 1996, MARIANO, with his wife, JULIETA F. Madrigal, (JULIETA, for brevity), as co-petitioner, brought an original action for Certiorari before the Court of Appeals, to annul the aforesaid orders allegedly issued with grave abuse of discretion. But on July 30, 1996, the Court of Appeals dismissed^[7] the petition.

Undaunted, they (petitioners) found their way to this Court *via* the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court, posing as issues: (1) whether or not there was invalid service of summons on petitioner MARIANO; (2) whether or not the Order denying the motion to lift order of default, after rendition of the decision by the trial court, was proper; and (3) whether or not JULIETA is an indispensable party in the action for recovery of possession of property with damages against MARIANO.

Anent the first issue, petitioners theorize that there was no valid service of summons because the substituted service of summons effected by Deputized Process Server Jose Manabat on JULIETA was improper, absent any proof of impossibility of personal service as required under Section 6, Rule 14 of the Rules of Court.

In upholding the questioned substituted service of summons, the Court of Appeals opined that "the averments in the Officer's Return dated December 20, 1993, coupled with the finding by the lower Court that as early as July 1, 1993, there had been earlier attempts to serve summons upon the petitioner, are sufficient compliance with the requirements for substituted service."

Section 6, Rule 14 of the Rules of Court, reads:

Sec. 6. "Service in person or in 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."

The aforesaid rule in point requires that summons must be served personally on the defendant. However, should personal service be unattainable, substituted service may be availed of under Section 7, Rule 14, which provides:

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 residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof."

In a long line of cases,^[8] this Court 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 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,^[9] the resort to a substituted service must be duly justified. Failure to do so would invalidate all subsequent proceedings on jurisdictional grounds.

Administrative Circular No. 59^[10] was precisely issued by this Court to stress the importance of strict compliance with the requisites for a valid substituted service.

To determine whether there was such an observance and substituted service was warranted under the premises, it is necessary for the Court to carefully peruse and evaluate the Sheriff's Return^[11] which reported: (1) That on several occasions, at reasonable hours of the day, the Deputized Process Server, Jose T. Manabat, tried to serve upon MARIANO the summons together with the complaint; (2) That diligent efforts were exerted by the said Deputized Process Server; (3) That service of summons was then made on MARIANO's wife, JULIETA, a person of suitable age and discretion who acknowledged receipt thereof.^[12]

The Sheriff's certificate of service of summons is *prima facie* evidence of the facts therein set out. To overcome the presumption of regularity of performance of official functions in favor of such Sheriff's Return, the evidence against it must be clear and convincing. Petitioner having been unable to come forward with the requisite quantum of proof to the contrary, the presumption^[13] of regularity of performance on the part of the Sheriff in the case stands.

MARIANO theorized that he was completely unaware of subject action brought against him and he only learned about it when his sister-in-law handed to him a brown envelope containing a copy of the Decision rendered on October 9, 1995 by Branch 139 of the Regional Trial Court of Makati City. According to him, he was separated from his wife, JULIETA, at the time of service of summons, and was then a stay-in employee of Via Marine Corporation. To buttress his submission, he attached a Certification issued by his said employer.^[14]

To support his Motion to Set Aside Order of Default, MARIANO should have produced enough evidence to negate the presumption of regularity featuring the Process Server's Return. The aforesaid certification issued by Via Marine Corporation is purely self-serving and did not suffice to establish that he was truly a stay-in employee.

As between the Sheriff's Return on the substituted service, which carries with it a presumption of regularity, and MARIANO's self-serving assertion that he only came to know of the case against him, when his sister-in-law delivered to him the decision of the lower court, the Sheriff's Return is undoubtedly more deserving of faith and credit.

To save his cause, MARIANO invited attention that the subject Sheriff's or Process