

**&NBSP;**

**[ G.R. No. 107314, September 17, 1998 ]**

**PATRICIA S. VILLAREAL, FOR HERSELF AND AS GUARDIAN OF  
HER MINOR CHILDREN, CLAIRE HOPE AND TRICIA, BOTH  
SURNAMED VILLAREAL, PETITIONER, VS. THE COURT OF  
APPEALS, ELISEO SEVILLA, AND ERNA SEVILLA, RESPONDENTS.**

**D E C I S I O N**

**MENDOZA, J.:**

Petitioners seek a review of the decision,<sup>[1]</sup> dated December 23, 1991, of the Court of Appeals nullifying the decision and orders of the Regional Trial Court in Civil Case No. 16194 and remanding the said case to the court a quo for further proceedings as well as the resolution of the Court of Appeals denying reconsideration of its decision.

The complaint in this case was filed by petitioner Patricia Villareal to recover damages in the total amount of P1,944,000.00 from private respondents Eliseo and Erna Sevilla and certain John Does for the killing on June 6, 1986 of petitioner's husband Jose Villareal. The complaint, docketed as Civil Case No. 16194, was filed with the Regional Trial Court of Makati, Metro Manila. It was found that prior to the filing of the complaint on March 2, 1987, the Sevillas had abruptly left the country (at least two months after the murder) and had started disposing of their properties in the Philippines.<sup>[2]</sup>

On March 11, 1987, after a hearing, during which witness Deborah Alamares gave private respondents' address in the United States as allegedly divulged to her by private respondent Erna Sevilla herself,<sup>[3]</sup> the trial court ordered the Sevillas' properties in the Philippines attached,<sup>[4]</sup> upon the posting of a bond in the amount of P500,000.00. Pursuant to this, Deputy Sheriff Eulalio C. Juanson attached private respondents' personal and real properties on March 17, 18, and 19, 1987.<sup>[5]</sup>

On July 21, 1987, petitioners filed a Motion for Leave for Extraterritorial Service pursuant to Rule 14, §17 alleging that private respondents were non-residents. The judge granted the motion<sup>[6]</sup> and authorized the service of summons by registered mail at private respondents' address in California, U.S.A. This mail was received on August 17, 1987 by a certain "D. Pyle," whose signature appears on the registry return card.<sup>[7]</sup>

Petitioners then moved to declare private respondents in default for failure to answer notwithstanding service of summons. However, petitioners' motion was denied<sup>[8]</sup> on October 12, 1987 by the judge for the reason that "perhaps the address given by the plaintiff (petitioners herein) is not the correct address of the defendants (private respondents herein) or that they have already moved out."

On October 13, 1987, the trial court motu proprio set aside its order of March 11, 1987<sup>[9]</sup> on the ground that the attachment of property was improper because petitioners' claims were unliquidated. Accordingly, all properties garnished and attached pursuant to the writ of attachment were ordered released. Petitioners moved for reconsideration of the court's order. On December 21, 1987, the trial court modified its order<sup>[10]</sup> by allowing attachment in the amount of P30,000.00 to answer for actual damages for the death of Jose Villareal. The amount represents the value of human life as then fixed by this Court.

On August 29, 1988, petitioners filed a Motion for Leave to Serve Summons by Publication which was granted by the trial court in an order dated August 31, 1988.<sup>[11]</sup>

Accordingly, copies of the order, summons, complaint, and the affidavit of merit were published in the Manila Times on November 29, December 6, and 13, 1988.<sup>[12]</sup> In addition, copies of the aforesaid order, summons, complaint, and affidavit of merit were sent by registered mail to the last known address of private respondents in the United States.<sup>[13]</sup> On January 17, 1989, the mail matter were returned to the Branch Clerk of Court with a notation which said, "Moved, left no address."<sup>[14]</sup>

Meanwhile, at the instance of petitioner Patricia Villareal, an Information<sup>[15]</sup> charging private respondents with murder was filed on October 10, 1988 with the Regional Trial Court of Makati, where it was docketed as Criminal Case No. 555.

On March 7, 1989, petitioners filed a Motion to Declare Defendants in Default for failure to file their Answer within the 60-day period counted from the last day of publication. Private respondents were declared in default on April 11, 1989, and petitioners were then allowed to present evidence ex-parte.<sup>[16]</sup>

After presenting their evidence, petitioners amended their complaint to make it conform to the evidence.<sup>[17]</sup> On the supposition that they had proven damages in a much bigger amount than that prayed for in the original complaint, they increased the amount of damages prayed for to P13,082,888.00 plus 50% of this amount as attorney's fees. In addition, Patricia Villareal's children were included as plaintiffs.

On August 29, 1989, the trial court admitted the Amended Complaint and granted petitioners' Motion for Extra-territorial Service of Summons.<sup>[18]</sup> Accordingly, summons were published once a week<sup>[19]</sup> for three consecutive weeks in the newspaper Abante. Copies of the Amended Complaint, the summons, and the order were sent by registered mail to the last known addresses of private respondents at Parañaque, Metro Manila and the United States. However, the summons and the accompanying papers mailed were returned to the court with the notation "MOVED" for the letter addressed to the Parañaque residence, and "REFUSED TO RECEIVE" for the letter addressed to the United States residence.<sup>[20]</sup>

On December 27, 1989, Attorney Teresita Marbibí filed a formal request in court seeking photocopies of all the pleadings and orders pertinent to the case, including the summons and the Amended Complaint.<sup>[21]</sup> In her letter, she stated that she was

making the request "for the purpose of protecting the interest of the defendants whose sister contracted our services."<sup>[22]</sup>

On January 24, 1990, upon motion of the petitioners, the trial court declared the private respondents in default for the second time<sup>[23]</sup> for having failed to file their Answer to the Amended Complaint within 60 days after publication of the summons. It also declared the case submitted for decision, upon being informed by the petitioners that the very same evidence earlier presented would be reproduced and adopted in support of the Amended Complaint.<sup>[24]</sup>

On February 7, 1990, counsel for private respondents, Teresita Marbibi, filed a Notice of Appearance<sup>[25]</sup> on their behalf.

On February 14, 1990, again through counsel, private respondents filed a verified Motion to Lift Order of Default with Motion for Reconsideration<sup>[26]</sup> claiming that they were totally unaware of the existence of the case at bar; that their inability to come forth promptly with responsive pleading was due to accident, mistake, or excusable neglect; and, that the allegation of petitioners that they were the killers of Jose Villareal was not true. Petitioners filed an Opposition to the Motion, to which private respondents filed a Reply.

On March 27, 1990, the trial court issued an order<sup>[27]</sup> denying the Motion to Lift Order of Default with Motion for Reconsideration, on the ground that private respondents herein failed to comply with the requirements of Rule 18, §3.

On April 2, 1990, the trial court rendered a decision<sup>[28]</sup> finding private respondents liable for the killing of Jose Villareal and ordering them jointly and severally to pay petitioners more than P10 million in damages. The trial court found that private respondent Erna Sevilla and the victim Jose Villareal were lovers; that private respondent Eliseo Sevilla, Erna's husband, is a very jealous husband who inflicts physical injuries upon his wife; that apparently, private respondent Eliseo discovered his wife's infidelity; and, that in conspiracy with several other persons, including his wife Erna whom he seemed to have threatened, private respondent Eliseo hatched a plan whereby Erna was to lure Jose Villareal to a carpark near the latter's office where Eliseo and his companions were to attack and kill Jose. The trial court found that after the killing, private respondents lost no time in disposing of their properties in the Philippines, pulling out their children from school, and escaping to the United States.

Copies of the order dated March 27, 1990 denying the Motion to Lift Order of Default with Motion for Reconsideration and the decision dated April 2, 1990 were received by private respondents on the same day, April 7, 1990. Private respondents filed a Motion for Reconsideration with Motion to Set Aside Decision asking the court to reconsider and/or set aside the decision dated April 2, 1990 and the order of March 27, 1990.<sup>[29]</sup> On May 17, 1990, they filed a Supplemental Motion for Reconsideration with Reply of the order dated March 27, 1990 and the decision dated April 2, 1990, asserting for the first time that the court did not acquire jurisdiction over their persons. On July 16, 1990, they filed a Consolidated Memorandum<sup>[30]</sup> in support of their aforesaid Motion for Reconsideration with Reply.

On August 10, 1990, the trial court issued an order<sup>[31]</sup> denying private respondents' Motion for Reconsideration with Motion to Set Aside Decision and the Supplemental Motion for Reconsideration with Reply. The trial court simultaneously granted petitioners' Motion for Execution Pending Appeal. Consequently, on August 14, 1990, a Writ of Execution Pending Appeal was issued.<sup>[32]</sup>

On August 15, 1990, the Deputy Sheriff of the court served and registered with the Register of Deeds of Parañaque a Notice of Levy over the properties said to be owned by private respondents and covered by TCT Nos. 36350 (now 41338) and 36351 (now 41335) in their names.<sup>[33]</sup> On August 16, 1990, the Deputy Sheriff served upon private respondents' counsel the Notice of Levy with supporting papers, one of which was a photocopy of the denial order dated August 10, 1990.<sup>[34]</sup>

On August 21, 1990, private respondents' counsel received by mail a duplicate original copy of the denial order of August 10, 1990.<sup>[35]</sup> On the same date, counsel filed a Notice of Appeal of the denial order dated August 10, 1990 and the decision dated April 2, 1990.<sup>[36]</sup>

Petitioners filed a Motion to Dismiss Notice of Appeal, contending that the Notice was filed out of time, which private respondents opposed. Petitioners then filed a Supplemental Comment to Motion to Dismiss dated October 4, 1990.

On October 2, 1990, the trial court issued an order<sup>[37]</sup> denying due course to the Notice of Appeal on the ground that private respondents had only a day from August 16, 1990 (the day they received a photocopy of the order denying their Motion for Reconsideration with Motion to Set Aside Decision and their Supplemental Motion for Reconsideration with Reply), not from August 21, 1990 (the day on which they received the duplicate original of the said order) to perfect their appeal. As the Notice of Appeal was filed only on August 21, 1990, the trial court ruled that it was late. This order was received by private respondents' counsel on October 18, 1990.

On October 25, 1990, private respondents, through counsel, filed a Motion to Set Aside/Reconsider Order Dated October 2, 1990.<sup>[38]</sup>

This was denied by the trial court in its order dated December 17, 1990,<sup>[39]</sup> a copy of which was received by private respondents' counsel on January 16, 1991.<sup>[40]</sup>

On January 16, 1991, private respondents then filed a Notice of Appeal<sup>[41]</sup> from the orders dated December 17, 1990 and October 2, 1990 and again from the order dated August 10, 1990.

On January 29, 1991, the trial court issued an Entry of Judgment,<sup>[42]</sup> a copy of which was received by counsel for private respondents on February 13, 1991. On February 15, 1991, the private respondents filed a Motion for Reconsideration with Motion to Elevate Records to the Court of Appeals and Motion to Quash Entry of Judgment,<sup>[43]</sup> but the motions were denied by the trial court in its order of August 1, 1991.<sup>[44]</sup>

On September 11, 1991, private respondents filed in the Court of Appeals a petition

for certiorari, prohibition, and mandamus with preliminary injunction,<sup>[45]</sup> alleging that the trial court had acted without or in excess of jurisdiction and with grave abuse of discretion in issuing the aforesaid orders and decisions and that there was neither appeal nor any plain, speedy and adequate remedy open to them in the ordinary course of law. Private respondents contended (1) that the trial court never acquired jurisdiction over them since they are non-resident defendants and petitioners' action is purely *in personam* and (2) that they were denied due process of law.<sup>[46]</sup>

On December 23, 1991,<sup>[47]</sup> the Court of Appeals granted the petition, ruling that the trial court was guilty of grave abuse of discretion. The dispositive portion of its decision reads:

WHEREFORE, the writs prayed for in the petition are GRANTED. The orders of default, the hearing ex-parte, the default judgment, the execution pending appeal, the respective orders denying the motions for reconsideration, and all subsequent orders related thereto are hereby declared null and void and are set aside. The attachment on the properties of petitioners [private respondents here] shall remain in force. The trial court is ordered to require petitioners to file their answer within fifteen (15) days from notice, and thence to proceed in the disposition of the case in accordance with the ordinary civil procedure.

Petitioners moved for a reconsideration,<sup>[48]</sup> but their motion was denied<sup>[49]</sup> by the appellate court in a resolution dated September 30, 1992. Hence, this petition for review.

*First.* The Court of Appeals nullified the several orders and the decision rendered by the trial court against private respondents on the ground that the trial court did not acquire jurisdiction over them. It ruled that the extraterritorial service of summons did not confer on the trial court jurisdiction to render and enforce a money judgment against the private respondents who are non-residents. On the authority of *Banco Español-Filipino v. Palanca*,<sup>[50]</sup> it held that the only effect of the conversion of an action *in personam* filed against non-resident defendants into one *quasi-in rem* by virtue of the attachment of their properties in the country was to subject such properties to the payment of the demand which the court might find to be due petitioners, the plaintiffs below. Otherwise, the trial court could not render a personal judgment against the private respondents, as it did in this case, and enforce it against them. The Court of Appeals concluded that in doing so, the trial court committed grave abuse of discretion.<sup>[51]</sup>

It is true that where the defendant in an action in personam is a non-resident, as in this case, and refuses to appear and submit to the jurisdiction of the court, the jurisdiction of the latter is limited to the property within the country which the court may have ordered attached. In such a case, the property itself is "the sole thing which is impleaded and is the responsible object which is the subject of the judicial power."<sup>[52]</sup> Accordingly, "the relief must be confined to the res, and the court cannot lawfully render a personal judgment against him."<sup>[53]</sup>

But this Court also acknowledged in *Banco Español-Filipino* that if property is attached and later the defendant appears, "the cause becomes mainly a suit in