

FIRST DIVISION

[G.R. No. 128061, September 03, 1998]

**JESUS G. SANTOS, PETITIONER, VS. COURT OF APPEALS,
REGIONAL, TRIAL COURT OF BULACAN, BRANCH 9 AND OMAR H.
YAPCHIONGCO, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

JESUS G. SANTOS, petitioner, together with four (4) other Santoses, was sued for damages on 23 May 1979 by Omar H. Yapchiongco before the then Court of First Instance of Malolos, Bulacan, alleging petitioner unlawfully took possession of five (5) parcels of land a piggery farm which were the subject of an agreement to buy and sell between respondent Yapchiongco on one hand and the Santoses on the other, namely, petitioner Jesus G. Santos, Ciriaco C. Santos, Belen G. Santos, Apolonio G. Santos and Alfredo G. Santos.

On 20 June 1991 the trial court dismissed the complaint for lack of merit.^[1]

On 6 June 1995 respondent Court of Appeals reversed the trial court and declared petitioner liable for actual damages of P192,260.00, moral damages of P40,000.00, and attorney's fees and litigation expenses of P25,000.00.^[2] On 15 June 1995 the decision of the appellate court was sent by registered mail to petitioner's counsel, Atty. Anacleto S. Magno. On the same day, the corresponding notice of registered mail was sent to him. Two (2) other notices were sent to the same addressee on 19 and 21 June 1995. But these circumstances notwithstanding, the mail remained unclaimed and consequently returned to the sender.^[3]

On 27 July 1995 respondent court again sent its decision to the same addressee by the same mode but after three (3) notices the decision was returned to the sender for the same reason.^[4]

On 27 September 1995 a notice of change of name and address of law firm was sent by petitioner's counsel to respondent court.^[5]

On 28 March 1996 the same decision of respondent court was sent anew by registered mail to petitioner's counsel at his present address^[6] which he finally received on 3 April 1996.^[7] On 17 April 1996 he withdrew his appearance as counsel for petitioners.^[8]

On 18 April 1996 petitioner's new counsel, Atty. Lemuel M. Santos, entered his appearance^[9] and moved for reconsideration of respondent court's decision of 6 June 1995. Respondent Yapchiongco opposed the motion on the ground that the period for its filing had already expired. He insisted that on the basis of the dates of

the notices and the notation "Unclaimed: Return to Sender" stamped on the envelope containing the decision of respondent court,^[10] service by registered mail was complete five (5) days from 15 June 1995, and thus commenced the running of the period for reconsideration, the last day being 5 July 1995. Respondent court sustained the opposition and denied the motion on 29 November 1996^[11] holding that -

x x x x Section 8, Rule 13 of the Rules of Court which provides that service by registered mail is deemed complete if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster x x x x appellees (were) considered to have received a copy of (its) decision on June 20, 1995 (and) had (only) until July 5, 1995 within which to file a motion for reconsideration x x x x^[12]

On 21 December 1996 petitioner moved for leave to admit his motion for reconsideration raising the argument that it was filed on the fifteenth (15th) day from actual receipt of the decision. On 30 January 1997 respondent court likewise denied reconsideration based on the finding that the motion was in reality a second motion for reconsideration which was prohibited under Sec. 6, Rule 9, of its Revised Internal Rules.^[13]

Did respondent court commit grave abuse of discretion in denying both motions?

Petitioner asseverates that there is no proof that his former counsel was ever notified of the registered mails. Since a copy of respondent court's decision was actually received by his former counsel only on 3 April 1996 the filing of the motion for reconsideration on 18 April 1996 was certainly within the fifteen (15)-day reglementary period. What is applicable, petitioner advances, is the general rule in Sec. 8, Rule 13, that "service by registered mail is complete upon actual receipt by the addressee." Furthermore, he points out that his first motion for reconsideration deals with the merits of the appeal while his second motion for reconsideration concerns the technical issue of timeliness of seeking reconsideration and therefore the latter is not strictly a prohibited pleading.

Aside from maintaining his opposition to the motion for reconsideration, respondent disputes petitioner's claim of lack of notice by relying on the certification issued by Postmaster Renato N. Endaya of the Manila Central Post Office declaring that notices of the registered letter were duly issued to petitioner's former counsel on 15, 19 and 21 June 1995.^[14]

Respondent Court-'of Appeals, indeed, committed grave abuse of discretion. Section 8, Rule 13, of the Rules of Court provides -

Sec. 8. *Completeness of service.* - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time (underscoring supplied).