

SEVENTH DIVISION

[CA-G.R. SP NO. 89988, September 13, 2006]

**LIBERTAD POBLETE, PETITIONER, VS. MANOTOK SERVICES,
INC., RESPONDENT.**

D E C I S I O N

BERSAMIN, L.P., J:

The defendant appeals by petition for review the decision issued on November 2, 2004 in Civil Case No. 108268 entitled *Manotok Services, Inc. v. Libertad Poblete et al.* by the Regional Trial Court (RTC), Branch 47, in Manila,¹ affirming with modification the decision promulgated on August 26, 2003 by the Metropolitan Trial Court (MeTC) of Manila, ordering her and all persons claiming under her to vacate the premises of the plaintiff and to pay the rentals in arrears, attorneys fees and the costs of suit.

The respondent instituted this ejectment suit on October 3, 2001, claiming that it had leased to the petitioner its parcel of land with an area of 105 square meters known as Lot 15, Blk 3, located at 742-A, Avellana St., Tondo, Manila for a 1-year period from January 1, 1999 to December 31, 1999; that during the lease, she had incurred arrears for 9 months starting from April 1, 1999 until December 31, 1999; that she had continued to occupy the premises without paying rentals even after the contract had expired; that as of February 28, 2001, her arrears amounted to P102,916.35, including interests and taxes; and that despite demands to pay the amount due and to vacate the premises, the last demand being the letter sent on March 17, 2001, she maliciously, illegally and with evident bad faith refused to heed the demand.

On September 26, 2002, the petitioner filed a *manifestation and dismissal of action for lack of subject matter jurisdiction and jurisdiction over the person.*²

The respondent also filed its *motion to render summary judgment.*

On March 17, 2003, the MeTC resolved the 2 motions, to wit:

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It was established that a copy of the summons was not left at the defendant's residence, but at the subject property which the latter was leasing to another person.

This Court maintains that summons was, indeed, improperly served as there was no strict compliance with the requirements of substituted service.

However, this Court believes and so hold (sic) that the complaint should

not be dismissed, but the summons should be served anew in accordance with the Rules of Court.

WHEREFORE, plaintiff's Motion to Render Judgment is hereby denied. Let a new summons be served upon the defendant as the Rules of Court provide.

SO ORDERED.³

Conformably with the order, the summons and copy of the complaint were served on May 8, 2003 at the residence of the petitioner at No. 21 Clover Street, Doña Manuela Subdivision, Las Piñas City. Branch sheriff Dennis S. Prado of Branch 20, MeTC, then filed his *sheriff's return*,⁴ stating that the summons and complaint had been served by substituted service pursuant to Sec. 7, Rule 14, *Rules of Court*, considering that his attempts to effect personal service had failed.

The respondent later presented its *motion to render summary judgment* dated May 27, 2003,⁵ alleging that the petitioner had not filed her answer despite the lapse of more than 10 days from receipt of the summons and copy of the complaint.

On June 25, 2003, the petitioner filed her *manifestation and opposition to motion for summary judgment*,⁶ stating thus:

1. On May 8, 2003, there was a **first attempt** to serve alleged Summons and Complaint to the Defendant.
2. A relative, Halili Poblete who was temporarily overseeing the house, told persons with alleged documents that the Defendant was out of town and she had told them to come back as she does not want to receive anything because she was just temporarily there and does not know anything or get involved.
3. Plaintiff never received any Summons or Complaint. Also, she was not informed of same by her relative.
4. The, she received this Motion for Summary Judgment from the mail.
5. Libertad Poblete did not receive the alleged Summons and Complaint. However, as soon as she receives same, she will file the necessary pleading.

On July 18, 2003, the MeTC issued an order,⁷ as follows:

Finding that the summons together with the copy of the complaint to defendant Libertad Poblete to have been served anew in accordance with the Rules of Court and the latter failed to file her answer within the reglementary period, the Motion to Render Judgment filed by the plaintiff is hereby GRANTED,

Accordingly, let this case be submitted for decision.

SO ORDERED.

On August 26, 2003, the MeTC rendered its decision,⁸ disposing thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant and all persons claiming rights under her, ordering the latter the following:

1. to vacate the subject property and restore plaintiff in its possession thereof;
2. to pay the plaintiff the amount of P76,277.70 as rental in arrears from 01 April 1991 until 28 February 2001 plus P4,179.60 per month beginning 01 March 2001 until the premises is finally vacated;
3. to pay plaintiff attorney's fee in the amount of P20,000.00;
4. to pay the costs of suit.

SO ORDERED.⁹

Aggrieved, the petitioner appealed the MeTC decision to the RTC, praying that the decision of the MeTC be set aside and that the case be remanded for trial on the merits because there had been no valid service of summons and copy of the complaint on her. She explained that Halili Poblete, the person who had allegedly been around at the time of the alleged substituted service, was only temporarily overseeing the house but had "told persons with alleged documents that Defendant was out of town and she had told them to come back as she does not want to receive anything because she was just temporarily staying there and does not know anything or get involved (sic);" and that the "persons with the documents were told to come back at a certain day and time."¹⁰

On November 2, 2004, the RTC affirmed the MeTC,¹¹ as follows:

The appeal is not meritorious. An issue cannot be raised for the first time on appeal – it must be raised seasonably in the proceedings before the lower court and the question raised on appeal must be within the issues framed by the parties and consequently issues not raised in the trial court cannot be raised for the first time on appeal (Lim v. Queensland Tokyo Commodities Incorporated 373 SCRA 31).

Considering the summary nature of the proceedings before the Court, the award of P20,000.00 as attorney's fees appears exorbitant and is therefore reduced to P10,000.00.

Finding no reversible error in the assailed Decision of the lower Court, the same is hereby AFFIRMED except only as to the award of attorney's fees which is hereby reduced to P10,000.00.

SO ORDERED.¹²

The defendant sought reconsideration,¹³ insisting that the issue of lack of jurisdiction over her person had been raised in the MeTC and that there had been

improper service of summons due to lack of strict compliance with the requirement for substituted service.

Nonetheless, on May 13, 2005, the RTC denied the *motion for reconsideration*.¹⁴

Hence, this appeal, wherein the petitioner submits:

THERE WAS NO VALID SERVICE OF SUMMONS AND COMPLAINT BY SUBSTITUTED SERVICE FOR THE COURT TO HAVE ACQUIRED JURISDICTION OVER THE PERSON OF DEFENDANT.

THE PREVIOUS AND INITIAL NON-SERVICE OF SUMMONS AT A PLACE DEFENDANT DOES NOT RESIDE ALSO SHOWS NO JURISDICTIONAL DEMAND THAT RESULTS IN LACK OF SUBJECT MATTER JURISDICTION.¹⁵

The petition has merit.

In civil cases, a trial court acquires jurisdiction over the person of the defendant either through a valid service of summons or through the person's voluntary appearance in court and his submission to its authority.¹⁶

As a rule, summons is served personally on the defendant "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."¹⁷ Where the summons cannot be served personally within a reasonable period of time, substituted service may be resorted to.¹⁸

Under the *Rules of Court*,¹⁹ the following modes of substituted service are allowed, *viz*:

a) By leaving the summons and copy of the complaint at the defendant's residence with some person of suitable age and discretion then residing therein; or

b) By leaving the summons and copy of the complaint at defendant's office or regular place of business with some competent person in charge thereof.

It is clear that under the *Rules of Court*, the serving officer can resort to substituted service only when personal service cannot be made promptly.

Herein, the MeTC ordered that the summons and copy of the complaint (with its annexes) be served anew on the petitioner. Yet, the sheriff effected substituted service because he did not find the petitioner home. He then submitted the corresponding return, reading as follows:

SHERIFF'S RETURN

This is to certify that on May 8, 2003 the undersigned Sheriff went to No. 21 Clover Street, Dona Manuela Subdivision, Las Pinas City to serve anew the summons together with the copy of the complaint to the defendant Libertad Poblete.