



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

YUK LING ONG,
Petitioner,

G.R. No. 206653

Present:

- versus -

CARPIO, J., *Chairperson*,
VELASCO, JR., * ,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

BENJAMIN T. CO,
Respondent.

Promulgated:

25 FEB 2015

X ----- X

DECISION

MENDOZA, J.:

In court proceedings, there is no right more cherished than the right of every litigant to be given an opportunity to be heard. This right begins at the very moment that summons is served on the defendant. The Rules of Court places utmost importance in ensuring that the defendant personally grasp the weight of responsibility that will befall him. Thus, it is only in exceptional circumstances that constructive notification, or substituted service of summons, is allowed. If the server falls short of the rigorous requirements for substituted service of summons, then the Court has no other option but to strike down a void judgment, regardless of the consequences.

This is a petition for review on *certiorari* seeking to reverse and set aside the June 27, 2012 Decision¹ and the March 26, 2013 Resolution² of the

* Designated Acting member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1910, dated January 12, 2015.

¹ *Rollo*, pp. 20-30.

² *Id.* at 31.

Court of Appeals (CA) in CA-G.R. SP No. 106271, which denied the petition for annulment of judgment.

The Facts

Petitioner Yuk Ling Ong (*petitioner*), a British-Hong Kong national, and respondent Benjamin Co (*respondent*), a Filipino citizen, were married on October 3, 1982 at Ellinwood-Malate Church.³

Sometime in November 2008, petitioner received a subpoena from the Bureau of Immigration and Deportation (*BID*) directing her to appear before the said agency because her permanent residence visa was being subjected to cancellation proceedings. Reportedly, her marriage with respondent was nullified by the court.

When petitioner appeared before the BID, she was furnished with the copies of the following documents: (1) petition for declaration of nullity of marriage filed as Civil Case No. CV-01-0177; (2) petition for declaration of nullity of marriage docketed as Civil Case No. 02-0306; (3) Decision,⁴ dated December 11, 2002, in Civil Case No. 02-0306 of the Regional Trial Court, Branch 260 (*RTC*), Parañaque City, declaring the marriage between petitioner and respondent as void *ab initio*; and (4) their marriage contract⁵ with the subject decision annotated thereon. Petitioner was perplexed that her marriage with respondent had been declared void *ab initio*.

The above documents showed that on April 26, 2001, respondent filed a petition for declaration of nullity⁶ on the ground of psychological incapacity before the RTC, which was docketed as Civil Case No. CV-01-0177. Respondent stated that petitioner's address was 600 Elcano St., Binondo, Manila. There was no showing of its status, whether pending, withdrawn or terminated.

On July 19, 2002, respondent filed another petition for declaration of nullity⁷ on the ground of psychological incapacity before the RTC, docketed as Civil Case No. 02-0306. Respondent indicated that petitioner's address was 23 Sta. Rosa Street, Unit B-2 Manresa Garden Homes, Quezon City. On July 29, 2002, the RTC issued summons.⁸ In his Server's Return,⁹ process server Rodolfo Torres, Jr. stated that, on August 1, 2002, substituted service

³ Id. at 67.

⁴ Id. at 32-34.

⁵ Id. at 35.

⁶ Id. at 61-66.

⁷ Id. at 73-79.

⁸ Id. at 85.

⁹ Id. at 86.

of summons with the copy of the petition was effected after several futile attempts to serve the same personally on petitioner. The said documents were received by Mr. Roly Espinosa, a security officer.

On December 11, 2002, the RTC rendered a decision¹⁰ in Civil Case No. 02-0306 finding respondent's marriage with petitioner as void *ab initio* on the ground of psychological incapacity under Article 36 of the Family Code. It stated that summons was served on petitioner on August 1, 2002, but she failed to file her responsive pleading within the reglementary period. The public prosecutor also stated that there were no indicative facts to manifest collusion. Thus, the RTC concluded that petitioner was psychologically incapacitated to perform her essential marital obligations.

Consequently, petitioner filed a petition for annulment of judgment¹¹ under Rule 47 of the Rules of Court before the CA on November 24, 2008, claiming that she was never notified of the cases filed against her. She prayed that the RTC decision, dated December 11, 2002, in Civil Case No. 02-0306, be nullified on the grounds of extrinsic fraud and lack of jurisdiction.

Petitioner alleged that *first*, respondent committed extrinsic fraud because, as seen in Civil Case No. CV-01-0177, he deliberately indicated a wrong address to prevent her from participating in the trial; *second*, jurisdiction over her person was not acquired in Civil Case No. 02-0306 because of an invalid substituted service of summons as no sufficient explanation, showing impossibility of personal service, was stated before resorting to substituted service of summons; *third*, the alleged substituted service was made on a security guard of their townhouse and not on a member of her household; and *fourth*, she was not psychologically incapacitated to perform her marital obligations.¹²

Ruling of the Court of Appeals

On June 27, 2012, the CA rendered the assailed decision finding the petition for annulment of judgment to be devoid of merit. It held that there was no sufficient proof to establish that respondent employed fraud to insure petitioner's non-participation in the trial of Civil Case No. CV-01-0177.

¹⁰ Id. at 32-34.

¹¹ Id. at 49-55.

¹² Id. at 49-54.

Relying on *Robinson v. Miralles*,¹³ the CA further ruled that the substituted service of summons in Civil Case No. 02-0306 was valid. It found that there was a customary practice in petitioner's townhouse that the security guard would first entertain any visitors and receive any communication in behalf of the homeowners. With this set-up, it was obviously impossible for the process server to personally serve the summons upon petitioner. It also declared that the process server's return carries with it the presumption of regularity in the discharge of a public officer's duties and functions.

Petitioner moved for reconsideration, but her motion was denied by the CA in its Resolution,¹⁴ dated March 26, 2013.

Hence, this petition, anchored on the following

ISSUES

- 1. Whether or not the Trial Court in Civil Case No. 02-0306 validly acquired jurisdiction over the person of the petitioner.**
- 2. Whether or not the facts proven by the petitioner constitute extrinsic fraud within the purview of Rule 47 of the Rules of Court.¹⁵**

Petitioner argues that there was an invalid substituted service of summons. The process server's return only contained a general statement that substituted service was resorted to "after several futile attempts to serve the same personally,"¹⁶ without stating the dates and reasons of the failed attempts. Petitioner also reiterates her argument that extrinsic fraud was employed.

In his Comment,¹⁷ filed on July 9, 2014, respondent contended that the server's return satisfactorily stated the reason for the resort to a substituted service of summons on August 1, 2002; and it was improbable that petitioner failed to receive the summons because it was sent to the same address which she declared in this present petition.

¹³ 540 Phil. 1 (2006).

¹⁴ *Rollo*, p. 31.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 86.

¹⁷ *Id.* at 124-133.

Petitioner filed her Reply ¹⁸ on October 8, 2014 reiterating her previous arguments.

The Court's Ruling

The Court finds merit in the petition.

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Rule 47 of the 1997 Rules of Civil Procedure, as amended, governs actions for annulment of judgments or final orders and resolutions, and Section 2 thereof explicitly provides only two grounds for annulment of judgment, that is, extrinsic fraud and lack of jurisdiction.¹⁹ Annulment of judgment is an equitable principle not because it allows a party-litigant another opportunity to reopen a judgment that has long lapsed into finality but because it enables him to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with.²⁰

Petitioner raises two grounds to support her claim for annulment of judgment: (1) extrinsic fraud and (2) lack of jurisdiction. Her contention on the existence of extrinsic fraud, however, is too unsubstantial to warrant consideration. The discussion shall then focus on the ground of lack of jurisdiction.

Lack of jurisdiction on the part of the trial court in rendering the judgment or final order is either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the petitioner. The former is a matter of substantive law because statutory law defines the jurisdiction of the courts over the subject matter or nature of the action. The latter is a matter of procedural law, for it involves the service of summons or other processes on the petitioner.²¹

In the present case, petitioner contends that there was lack of jurisdiction over her person because there was an invalid substituted service of summons. Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court.²² If the defendant does not voluntarily appear in court, jurisdiction can be

¹⁸ Id. at 144-145.

¹⁹ *Antonio v. Register of Deeds of Makati City*, G.R. No. 185663, June 20, 2012, 674 SCRA 227, 236, citing *Ramos v. Judge Combong, Jr.*, 510 Phil. 277, 281-282 (2005).

²⁰ *Barco v. CA*, 465 Phil. 39, 64 (2004).

²¹ *Pinausukan Seafood House v. Far East Bank & Trust Company*, G.R. No. 159926, January 20, 2014, 714 SCRA 226, 244.

²² *Ellice Agro-Industrial Corp. v. Young*, G.R. No. 174077, November 21, 2012, 686 SCRA 51, 61.

acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of Court, which state:

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.

The landmark case of *Manotoc v. CA (Manotoc)*²³ thoroughly discussed the rigorous requirements of a substituted service of summons, to wit: xxx

(1) Impossibility of Prompt Personal Service

xxx

For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period of one month which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service.

(3) A Person of Suitable Age and Discretion

xxx

The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said

²³ 530 Phil. 454, 469-470 (2006).

person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. **These matters must be clearly and specifically described in the Return of Summons.** (Emphases and underscoring supplied)

The pronouncements of the Court in *Manotoc* have been applied to several succeeding cases. In *Pascual v. Pascual*,²⁴ the return of summons did not show or indicate the actual exertion or positive steps taken by the officer or process server in serving the summons personally to the defendant. Similarly, in *Spouses Afdal v. Carlos*,²⁵ the process server's indorsements therein failed to state that the personal service on the defendants was rendered impossible and that efforts were made to find them personally. In both those cases, the Court ruled that the meticulous requirements for substituted service of summons were not met.

There are cases, however, in which *Manotoc* was applied, but, nevertheless, it was ruled that there was no lack of jurisdiction over the person of the defendant. In *Sagana v. Francisco*,²⁶ the diligent efforts exerted by the sheriff to locate the respondent were determined, not only based on the sheriff's return, but also on the process server's notation and case records. In the case of *Wong v. Factor-Koyama*,²⁷ on the other hand, even if the sheriff performed an invalid substituted service of summons, jurisdiction over the person of defendant was obtained because the latter had actively participated in trial, amounting to a voluntary appearance under Section 20 of Rule 14.²⁸

In the case at bench, the summons in Civil Case No. 02-0306²⁹ was issued on July 29, 2002. In his server's return,³⁰ the process server resorted to substituted service of summons on August 1, 2002. Surprisingly, the process server immediately opted for substituted service of summons after only two (2) days from the issuance of the summons. The server's return stated the following:

SERVER'S RETURN

THIS IS TO CERTIFY THAT on August 1, 2002, substituted service of summons with copy of petition, were effected to respondent, Yuk Ling H. Ong, at the Unit B-2, No. 23 Sta. Rosa St.,

²⁴ 606 Phil. 451 (2009).

²⁵ 651 Phil. 104 (2010).

²⁶ 617 Phil. 387 (2009).

²⁷ 616 Phil. 239 (2009).

²⁸ Section 20. Voluntary Appearance. - The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

²⁹ *Rollo*, p. 50.

³⁰ *Id.* at 86.

Manresa Garden Homes, Manresa Garden City, Quezon City, after several futile attempts to serve the same personally. The said documents were received by Mr. Roly Espinosa of sufficient age and discretion, the Security Officer thereat.

Therefore, respectfully returning to Court, original copy of summons, Duly Served, this 2nd day of August, 2002.

RODOLFO P. TORRES, JR.
Process Server

(Emphasis supplied)

The server's return utterly lacks sufficient detail of the attempts undertaken by the process server to personally serve the summons on petitioner. The server simply made a general statement that summons was effected after several futile attempts to serve the same personally. The server did not state the specific number of attempts made to perform the personal service of summons; the dates and the corresponding time the attempts were made; and the underlying reason for each unsuccessful service. He did not explain either if there were inquiries made to locate the petitioner, who was the defendant in the case. These important acts to serve the summons on petitioner, though futile, must be specified in the return to justify substituted service.

The server's return did not describe in detail the person who received the summons, on behalf of petitioner. It simply stated that the summons was received "by Mr. Roly Espinosa of sufficient age and discretion, the Security Officer thereat." It did not expound on the competence of the security officer to receive the summons.

Also, aside from the server's return, respondent failed to indicate any portion of the records which would describe the specific attempts to personally serve the summons. Respondent did not even claim that petitioner made any voluntary appearance and actively participated in Civil Case No. 02-0306.

The case of *Robinson v. Miralles*, cited by the CA, is not applicable. In that case, the return described in thorough detail how the security guard refused the sheriff's entry despite several attempts. The defendant in the said case specifically instructed the guard to prevent anybody to proceed to her residence. In the present case, the attempts made by the process server were stated in a broad and ambiguous statement.

The CA likewise erred in ruling that the presumption of regularity in the performance of official duty could be applied in the case at bench. This

presumption of regularity, however, was never intended to be applied even in cases where there are no showing of substantial compliance with the requirements of the rules of procedure. Such presumption does not apply where it is patent that the sheriff's or server's return is defective.³¹ As earlier explained, the server's return did not comply with the stringent requirements of substituted service of summons.


Given that the meticulous requirements in *Manotoc* were not met, the Court is not inclined to uphold the CA's denial of the petition for annulment of judgment for lack of jurisdiction over the person of petitioner because there was an invalid substituted service of summons. Accordingly, the decision in Civil Case No. 02-0306 must be declared null and void.

The stricter rule in substituted service of summons was meant to address "[t]he numerous claims of irregularities in substituted service which have spawned the filing of a great number of unnecessary special civil actions of certiorari and appeals to higher courts, resulting in prolonged litigation and wasteful legal expenses."³²

Although the decision in Civil Case No. 02-0306 was promulgated as early as December 11, 2002, the Court must strike it down for lack of jurisdiction over the person of petitioner. The favorable judgment enjoyed by respondent cannot be categorized as a genuine victory because it was fought against an adversary, who was ignorant of the existing dispute. Whatever prize bestowed upon the victor in such a void decision must also be undone. Respondent, if he wishes to pursue, must start from scratch and institute his action for declaration of nullity again; this time with petitioner fully aware and ready for litigation.

WHEREFORE, the petition is **GRANTED**. The June 27, 2012 Decision and the March 26, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 106271 are hereby **REVERSED** and **SET ASIDE**. The December 11, 2002 Decision of the Regional Trial Court, Branch 260, Parañaque City is hereby declared **VOID**.

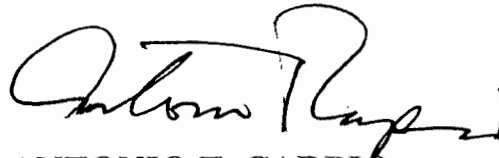
SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

³¹ *Bank of the Philippine Islands v. Spouses Evangelista*, 441 Phil. 445, 453 (2002).


³² *Manotoc v. CA*, supra note 23.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Associate Justice
Chairperson, Second Division

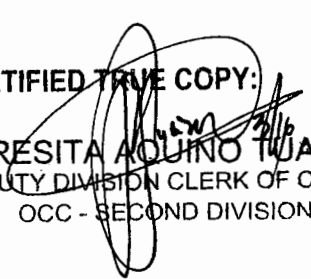
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY:


TERESITA AQUINO TAZON
DEPUTY DIVISION CLERK OF COURT
OCC - SECOND DIVISION

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