

FIRST DIVISION

[G.R. No. 170943, September 23, 2008]

PEDRO T. SANTOS, JR., PETITIONER, VS. PNOG EXPLORATION CORPORATION, RESPONDENT.

D E C I S I O N

CORONA, J.:

This is a petition for review^[1] of the September 22, 2005 decision^[2] and December 29, 2005 resolution^[3] of the Court of Appeals in CA-G.R. SP No. 82482.

On December 23, 2002, respondent PNOG Exploration Corporation filed a complaint for a sum of money against petitioner Pedro T. Santos, Jr. in the Regional Trial Court of Pasig City, Branch 167. The complaint, docketed as Civil Case No. 69262, sought to collect the amount of P698,502.10 representing petitioner's unpaid balance of the car loan^[4] advanced to him by respondent when he was still a member of its board of directors.

Personal service of summons to petitioner failed because he could not be located in his last known address despite earnest efforts to do so. Subsequently, on respondent's motion, the trial court allowed service of summons by publication.

Respondent caused the publication of the summons in *Remate*, a newspaper of general circulation in the Philippines, on May 20, 2003. Thereafter, respondent submitted the affidavit of publication of the advertising manager of *Remate*^[5] and an affidavit of service of respondent's employee^[6] to the effect that he sent a copy of the summons by registered mail to petitioner's last known address.

When petitioner failed to file his answer within the prescribed period, respondent moved that the case be set for the reception of its evidence *ex parte*. The trial court granted the motion in an order dated September 11, 2003.

Respondent proceeded with the *ex parte* presentation and formal offer of its evidence. Thereafter, the case was deemed submitted for decision on October 15, 2003.

On October 28, 2003, petitioner filed an "Omnibus Motion for Reconsideration and to Admit Attached Answer." He sought reconsideration of the September 11, 2003 order, alleging that the affidavit of service submitted by respondent failed to comply with Section 19, Rule 14 of the Rules of Court as it was not executed by the clerk of court. He also claimed that he was denied due process as he was not notified of the September 11, 2003 order. He prayed that respondent's evidence *ex parte* be stricken off the records and that his answer be admitted.

Respondent naturally opposed the motion. It insisted that it complied with the rules on service by publication. Moreover, pursuant to the September 11, 2003 order, petitioner was already deemed in default for failure to file an answer within the prescribed period.

In an order dated February 6, 2004, the trial court denied petitioner's motion for reconsideration of the September 11, 2003 order. It held that the rules did not require the affidavit of complementary service by registered mail to be executed by the clerk of court. It also ruled that due process was observed as a copy of the September 11, 2003 order was actually mailed to petitioner at his last known address. It also denied the motion to admit petitioner's answer because the same was filed way beyond the reglementary period.

Aggrieved, petitioner assailed the September 11, 2003 and February 6, 2004 orders of the trial court in the Court of Appeals via a petition for certiorari. He contended that the orders were issued with grave abuse of discretion. He imputed the following errors to the trial court: taking cognizance of the case despite lack of jurisdiction due to improper service of summons; failing to furnish him with copies of its orders and processes, particularly the September 11, 2003 order, and upholding technicality over equity and justice.

During the pendency of the petition in the Court of Appeals, the trial court rendered its decision in Civil Case No. 69262. It ordered petitioner to pay P698,502.10 plus legal interest and costs of suit.^[7]

Meanwhile, on September 22, 2005, the Court of Appeals rendered its decision^[8] sustaining the September 11, 2003 and February 6, 2004 orders of the trial court and dismissing the petition. It denied reconsideration.^[9] Thus, this petition.

Petitioner essentially reiterates the grounds he raised in the Court of Appeals, namely, lack of jurisdiction over his person due to improper service of summons, failure of the trial court to furnish him with copies of its orders and processes including the September 11, 2003 order and preference for technicality rather than justice and equity. In particular, he claims that the rule on service by publication under Section 14, Rule 14 of the Rules of Court applies only to actions *in rem*, not actions *in personam* like a complaint for a sum of money. He also contends that the affidavit of service of a copy of the summons should have been prepared by the clerk of court, not respondent's messenger.

The petition lacks merit.

P r o p r i e t y O f S e r v i c e B y P u b l i c a t i o n

Section 14, Rule 14 (on Summons) of the Rules of Court provides:

SEC. 14. *Service upon defendant whose identity or whereabouts are unknown.* - **In any action** where the defendant is designated as an unknown owner, or the like, or **whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a**

newspaper of general circulation and in such places and for such times as the court may order. (emphasis supplied)

Since petitioner could not be personally served with summons despite diligent efforts to locate his whereabouts, respondent sought and was granted leave of court to effect service of summons upon him by publication in a newspaper of general circulation. Thus, petitioner was properly served with summons by publication.

Petitioner invokes the distinction between an action *in rem* and an action *in personam* and claims that substituted service may be availed of only in an action *in rem*. Petitioner is wrong. The *in rem/in personam* distinction was significant under the old rule because it was silent as to the kind of action to which the rule was applicable.^[10] Because of this silence, the Court limited the application of the old rule to *in rem* actions only.^[11]

This has been changed. The present rule expressly states that it applies "[i]n any action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry." Thus, it now applies to **any** action, whether *in personam*, *in rem* or *quasi in rem*.^[12]

Regarding the matter of the affidavit of service, the relevant portion of Section 19,^[13] Rule 14 of the Rules of Court simply speaks of the following:

... an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address.

Service of summons by publication is proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager of the newspaper which published the summons. The service of summons by *publication* is complemented by service of summons by *registered mail* to the defendant's last known address. This complementary service is evidenced by an affidavit "showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address."

The rules, however, do not require that the affidavit of complementary service be executed by the clerk of court. While the trial court ordinarily does the mailing of copies of its orders and processes, the duty to make the complementary service by registered mail is imposed on the party who resorts to service by publication.

Moreover, even assuming that the service of summons was defective, **the trial court acquired jurisdiction over the person of petitioner by his own voluntary appearance in the action** against him. In this connection, Section 20, Rule 14 of the Rules of Court states:

SEC. 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. (emphasis supplied)