

## FIRST DIVISION

[ G.R. No. 138584, October 02, 2000 ]

**MARIA VICTORIA CANO-GUTIERREZ, PETITIONER, VS. HERMINIO A. GUTIERREZ, RESPONDENT.**

### R E S O L U T I O N

**KAPUNAN, J.:**

The pivotal issue in the instant petition for review is whether or not there was a valid service of summons upon the petitioner as to bring her within the jurisdiction of the trial court. She claims that she was denied the right to present her case before the Regional Trial Court of Pasig City, Branch 151, in a case for declaration of nullity of marriage entitled: "*Herminio A. Gutierrez vs. Maria Victoria Cano-Gutierrez*" because she did not receive the summons, as well as the other court processes.

It appears from the records that petitioner Maria Victoria Cano-Gutierrez and private respondent Herminio A. Gutierrez were united in holy matrimony on May 2, 1989 in Mandaluyong City. Prior to that, the couple had been living with each other without the benefit of marriage. Their union produced two children, namely, Jerico (born on October 1, 1984) and James Marlon (born on February 18, 1986).<sup>[1]</sup>

Petitioner claims that on January 16, 1994, she left their conjugal home at 276 A. Luna Street, Brgy. Poblacion, Mandaluyong City with her two children because of the maltreatment she received from respondent who was overcome by extreme jealousy. She and her children transferred to another house on Lot 1 D-1, Star Street, Brgy. Poblacion, Mandaluyong City, and then later on to 226 Sampaguita Street, Philippine Zoological Botanical Garden, Diliman, Quezon City.<sup>[2]</sup>

In the early part of January 1997, petitioner learned that respondent had already remarried. After further inquiry, she discovered that a petition for declaration of nullity of marriage had been filed by respondent on August 16, 1995. Petitioner alleges that she did not receive a copy of the summons, as well as the petition for annulment, because the summons was apparently delivered to 276 A. Luna Street, Brgy. Poblacion, Mandaluyong City.<sup>[3]</sup> She alleges that as of that date, she no longer resided in the aforesaid address but in Lot 1 D-1, Star Street, Brgy. Poblacion, Mandaluyong City; and, that respondent knew full well of this fact.<sup>[4]</sup>

Based on the Officer's Return issued by Process Server Bartolome Alunan, the summons and a copy of the petition for annulment were received by a certain Susan B. Gutierrez on August 31, 1995.<sup>[5]</sup> Petitioner contends that in the first place, said Susan B. Gutierrez was not a resident of the address in question; secondly, petitioner never gave Susan B. Gutierrez authority to receive the summons. Rather, petitioner alleges that it was respondent who designated Susan B. Gutierrez, who is the wife of respondent's cousin, to receive the summons.<sup>[6]</sup>

Petitioner asseverates that because of respondent's deception, she never received the summons, a copy of the complaint, nor any of the subsequent notices issued by the trial court in the course of the proceedings.

Private respondent Herminio A. Gutierrez, for his part, alleges that on January 16, 1994, at around 3 o'clock in the afternoon, he caught his wife, petitioner Maria Victoria Cano-Gutierrez and a certain Joselito Andales having sexual intercourse in the living room of their conjugal house. For the sake of their two children, respondent tried to forgive and forget the infidelity of his wife. However, due to the traumatic experience of seeing his wife having sexual intercourse with another man, respondent developed psychological impotency, driving him to file a petition for annulment of his marriage to herein petitioner.<sup>[7]</sup>

On May 3, 1996, Judge Deogracias O. Felizardo of the Regional Trial Court, Pasig City, Branch 151, rendered a decision granting respondent's petition for declaration of nullity of his marriage to petitioner.<sup>[8]</sup>

As petitioner allegedly did not receive a copy of said decision, she was not able to make a timely appeal therefrom; consequently, it became final and executory.<sup>[9]</sup>

As a last recourse, petitioner filed a petition for *certiorari* with the Court of Appeals on February 28, 1997, alleging therein that the trial court never acquired jurisdiction over her person because the service of summons was defective and improper.<sup>[10]</sup>

On May 21, 1998, the Court of Appeals rendered a decision dismissing the aforesaid petition for *certiorari* for lack of merit. The appellate court held:

The instant petition could be dismissed outright by this Court inasmuch as the petitioner has resorted to improper remedy in assailing the questioned decision. It must be noted that the assailed decision is a final judgment which is correctible only under the law by a timely appeal within fifteen (15) days upon receipt thereof. Instead of availing of such remedy, the herein petitioner failed to do so thereby rendering the aforesaid questioned decision final and executory. Under the circumstances, and bearing in mind the petitioner's neglect and/or error in pursuing the proper remedy required by law, We firmly believe that the petitioner cannot file the instant petition for certiorari before this Court as a substitute for the lapsed appeal. x x x

Even if We treat the instant petition as the proper remedy, We believe and so hold that the respondent court did not commit grave abuse of discretion in issuing the assailed decision.

x x x

This Court holds that the summons was validly served upon the herein petitioner because for one thing, no less than the Process Server Bartolome A. Alunan himself explicitly confirmed in his Officer's Return and Affidavit dated August 31, 1995

and June 19, 1997, respectively, that the aforesaid summons was actually received by the petitioner thru her relative-in-law Ms. Susan B. Gutierrez who has sufficient age and discretion and was actually a resident at that time in the aforesaid conjugal dwelling residence of the petitioner and the private respondent. x x x

Petitioner filed a motion for reconsideration of the above decision. However, the Court of Appeals denied the same. Hence, the instant petition, alleging that the appellate court made the following assignment of errors, to wit:

I

THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT RULED THAT PETITIONER'S PROPER REMEDY SHOULD BE A TIMELY APPEAL, AND NOT CERTIORARI;

II

THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT RULED THAT SUMMONS AND COPY OF THE PETITION WERE PROPERLY SERVED TO PETITIONER;

III

THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT RULED THAT THE COURT A QUO ACQUIRED JURISDICTION OVER THE PERSON OF THE PETITIONER (RESPONDENT IN THE COURT A QUO);

IV

THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT DISMISSED THE PETITION FOR CERTIORARI AND UPHELD THE DECISION OF THE COURT A QUO.<sup>[11]</sup>

In addition to the arguments of petitioner discussed above, she contends that on January 21, 1994, an "Amicable Settlement"<sup>[12]</sup> was executed by and between her and the respondent, which document was signed by Brgy. Capt. Luisito Espinosa. Said document allegedly reflected the correct address of petitioner as Lot 1 D-1, Star Street, Brgy. Poblacion, Mandaluyong City. According to petitioner, the allegation that she returned to their conjugal house after the execution of the aforesaid "Amicable Settlement," only to leave again after the case for declaration of nullity of marriage was filed is not only untenable but unbelievable, especially considering the humiliation that she had suffered at the hands of respondent. Petitioner could never have contemplated returning to respondent. Furthermore, petitioner claims that it is likewise not true that their children Jerico and James Marlon remained in the custody of the respondent, because as early as schoolyear 1994-1995, both children were already enrolled at TSCES in Albay, as petitioner was forced to place them in the custody of her parents to enable her to work in Metro Manila.

Petitioner's contentions are bereft of merit.

Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court may acquire jurisdiction over his person.<sup>[13]</sup> Under Rule 14, Section 6 of the 1997 Rules of Civil Procedure, 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. Under this rule, service is made only on the defendant himself.

However, Section 7 of the same rule provides that, if, for justifiable reasons, the defendant cannot be served in person, within a reasonable time, 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.

In the case at bar, the Officer's Return issued by Process Server Bartolome A. Alunan shows that the summons was served "thru Ms. Susan B. Gutierrez (sister-in-law), who claimed to be authorized to receive the same and acknowledge the receipt hereof appearing on the original copy of summons in behalf of said respondent."

Contrary to petitioner's allegation that Ms. Susan B. Gutierrez was not a resident of 276 A. Luna St., Brgy. Poblacion, the records show that said Ms. Gutierrez resided in the above address on August 31, 1995, or the day the summons was served therein, and prior thereto until November 3, 1995.<sup>[14]</sup> This was attested to by Ms. Gutierrez in her Affidavit, dated June 11, 1997, wherein she stated "(T)hat on August 31, 1995, and prior thereto until November 3, 1995, I was living with the family of Herminio and Ma. Victoria Cano; that on August 31, 1995, I received a copy of the Summons and Petition for and in behalf of Maria Victoria Cano issued by the Regional Trial Court, Branch 151, Pasig City, through the Process Server xxx." This was corroborated by Process Server Bartolome A. Alunan in his Affidavit, dated June 19, 1997.

Obviously, both the trial court and the Court of Appeals gave more credence to the statements of Ms. Susan B. Gutierrez and Process Server Bartolome A. Alunan over the bare allegations of petitioner that on the date in question, she was no longer residing in their conjugal home. After a perusal of the records, we are inclined to agree with said courts. Worthy of note is the fact that petitioner herself disowned her signature in the aforementioned "Amicable Settlement" which she claims to contain her "true" address. In a letter<sup>[15]</sup> addressed to Justice Bennie A. Adefuin-dela Cruz of the Court of Appeals, petitioner Maria Victoria Gutierrez wrote that her signature in the "Amicable Settlement" (Exhibit "H" in the trial court) was forged, and that she intended to file a case against the alleged forger. In so writing, petitioner effectively demolished her own evidence and destroyed the credibility of her own allegation that on the date the summons was served, she no longer resided in 276 A. Luna St., Brgy. Poblacion, but in Lot 34, D-1, Star St., Poblacion, Mandaluyong City.

Furthermore, Brgy. Capt. Luisito Espinosa, a witness and signatory to the "Amicable Settlement" himself issued an Affidavit, dated 21 September 1997,<sup>[16]</sup> attesting therein that:

x x x

Na hindi pa naman natatagalan sa pangyayaring iyon, sa aking paglalakad ng mga lugar ng aking Barangay Poblacion, ay aking nalaman na ang mag-asawang Herminio at Ma. Victoria Gutierrez, gayundin ang kanilang anak ay patuloy na