

SECOND DIVISION

[G.R. No. 108538, January 22, 1996]

**LOURDES A. VALMONTE AND ALFREDO D. VALMONTE,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, THIRD
DIVISION AND ROSITA DIMALANTA, RESPONDENTS.**

DECISION

MENDOZA, J.:

Petitioner Lourdes A. Valmonte is a foreign resident. The question is whether in an action for partition filed against her and her husband, who is also her attorney, summons intended for her may be served on her husband, who has a law office in the Philippines. The Regional Trial Court of Manila, Branch 48, said no and refused to declare Lourdes A. Valmonte in default, but the Court of Appeals said yes. Hence this petition for review on certiorari.

The facts of the case are as follows:

Petitioners Lourdes A. Valmonte and Alfredo D. Valmonte are husband and wife. They are both residents of 90222 Carkeek Drive South Seattle, Washington, U.S.A. Petitioner Alfredo D. Valmonte, who is a member of the Philippine bar, however, practices his profession in the Philippines, commuting for this purpose between his residence in the state of Washington and Manila, where he holds office at S-304 Gedisco Centre, 1564 A. Mabini, Ermita, Manila.

On March 9, 1992, private respondent Rosita Dimalanta, who is the sister of petitioner Lourdes A. Valmonte, filed a complaint for partition of real property and accounting of rentals against petitioners Lourdes A. Valmonte and Alfredo D. Valmonte before the Regional Trial Court of Manila, Branch 48. The subject of the action is a three-door apartment located in Paco, Manila.

In her Complaint, private respondent alleged:

The plaintiff is of legal age, a widow and is at present a resident of 14823 Conway Road, Chesterfield, Missouri, U.S.A., while the defendants are spouses, of legal age and at present residents of 90222 Carkeek Drive, South Seattle, Washington, U.S.A., but, for purposes of this complaint may be served with summons at Gedisco Center, Unit 304, 1564 A. Mabini St., Ermita, Manila where defendant Alfredo D. Valmonte as defendant Lourdes Arreola Valmonte's spouse holds office and where he can be found.

Apparently, the foregoing averments were made on the basis of a letter previously

sent by petitioner Lourdes A. Valmonte to private respondent's counsel in which, in regard to the partition of the property in question, she referred private respondent's counsel to her husband as the party to whom all communications intended for her should be sent. The letter reads:

July 4, 1991

Dear Atty. Balgos:

This is in response to your letter, dated 20 June 1991, which I received on 3 July 1991. Please address all communications to my lawyer, Atty. Alfredo D. Valmonte, whose address, telephone and fax numbers appear below.

c/o Prime Marine
Gedisco Center, Unit 304
1564 A. Mabini, Ermita
Metro Manila
Telephone: 521-1736
Fax: 21-2095

Service of summons was then made upon petitioner Alfredo D. Valmonte, who at the time, was at his office in Manila. Petitioner Alfredo D. Valmonte accepted the summons, insofar as he was concerned, but refused to accept the summons for his wife, Lourdes A. Valmonte, on the ground that he was not authorized to accept the process on her behalf. Accordingly the process server left without leaving a copy of the summons and complaint for petitioner Lourdes A. Valmonte.

Petitioner Alfredo D. Valmonte thereafter filed his Answer with Counterclaim. Petitioner Lourdes A. Valmonte, however, did not file her Answer. For this reason private respondent moved to declare her in default. Petitioner Alfredo D. Valmonte entered a special appearance in behalf of his wife and opposed the private respondent's motion.

In its Order dated July 3, 1992, the trial court, denied private respondent's motion to declare petitioner Lourdes A. Valmonte in default. A motion for reconsideration was similarly denied on September 23, 1992. Whereupon, private respondent filed a petition for certiorari, prohibition and mandamus with the Court of Appeals.

On December 29, 1992, the Court of Appeals rendered a decision granting the petition and declaring Lourdes A. Valmonte in default. A copy of the appellate court's decision was received by petitioner Alfredo D. Valmonte on January 15, 1993 at his Manila office and on January 21, 1993 in Seattle, Washington. Hence, this petition.

The issue at bar is whether in light of the facts set forth above, petitioner Lourdes A. Valmonte was validly served with summons. In holding that she had been, the Court of Appeals stated:[1]

[I]n her above-quoted reply, Mrs. Valmonte clearly and unequivocally directed the aforementioned counsel of Dimalanta to address all communications (evidently referring to her controversy with her sister Mrs. Dimalanta over the Paco property, now the subject of the instant case) to her lawyer who happens also to be her husband. Such directive was made without any qualification just as was her choice/designation of her husband Atty. Valmonte as her lawyer likewise made without any qualification or reservation. Any disclaimer therefore on the part of Atty. Valmonte as to his being his wife's attorney (at least with regard to the dispute vis-a-vis [sic] the Paco property) would appear to be feeble or trifling, if not incredible.

This view is bolstered by Atty. Valmonte's subsequent alleged special appearance made on behalf of his wife. Whereas Mrs. Valmonte had manifestly authorized her husband to serve as her lawyer relative to her dispute with her sister over the Paco property and to receive all communications regarding the same and subsequently to appear on her behalf by way of a so-called special appearance, she would nonetheless now insist that the same husband would nonetheless had absolutely no authority to receive summons on her behalf. In effect, she is asserting that representation by her lawyer (who is also her husband) as far as the Paco property controversy is concerned, should only be made by him when such representation would be favorable to her but not otherwise. It would obviously be inequitable for this Court to allow private respondent Lourdes A. Valmonte to hold that her husband has the authority to represent her when an advantage is to be obtained by her and to deny such authority when it would turn out to be her disadvantage. If this be allowed, Our Rules of Court, instead of being an instrument to promote justice would be made use of to thwart or frustrate the same.

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Turning to another point, it would not do for Us to overlook the fact that the disputed summons was served not upon just an ordinary lawyer of private respondent Lourdes A. Valmonte, but upon her lawyer husband. But that is not all, the same lawyer/husband happens to be also her co-defendant in the instant case which involves real property which, according to her lawyer/husband/ co-defendant, belongs to the conjugal partnership of the defendants (the spouses Valmonte). It is highly inconceivable and certainly it would be contrary to human nature for the lawyer/husband/co-defendant to keep to himself the fact that they (the spouses Valmonte) had been sued with regard to a property which he claims to be conjugal. Parenthetically, there is nothing in the records of the case before Us regarding any manifestation by private respondent Lourdes A. Valmonte about her lack of knowledge about the case instituted against her and her lawyer/husband/co-defendant by her sister Rosita.

PREMISES CONSIDERED, the instant petition for certiorari, prohibition and mandamus is given due course. This Court hereby Resolves to nullify the orders of the court a quo dated July 3, 1992 and September 23, 1992 and further declares private respondent Lourdes Arreola Valmonte as having been properly served with summons.

Petitioners assail the aforequoted decision, alleging that the Court of Appeals erred (1) in refusing to apply the provisions of Rule 14, § 17 of the Revised Rules of Court and applying instead Rule 14, § 8 when the fact is that petitioner Lourdes A. Valmonte is a nonresident defendant; and (2) because even if Rule 14, § 8 is the applicable provision, there was no valid substituted service as there was no strict compliance with the requirement by leaving a copy of the summons and complaint with petitioner Alfredo D. Valmonte. Private respondent, upon the other hand, asserts that petitioners are invoking a technicality and that strict adherence to the rules would only result in a useless ceremony.

We hold that there was no valid service of process on Lourdes A. Valmonte.

To provide perspective, it will be helpful to determine first the nature of the action filed against petitioners Lourdes A. Valmonte and Alfredo D. Valmonte by private respondent, whether it is an action in personam, in rem or quasi in rem. This is because the rules on service of summons embodied in Rule 14 apply according to whether an action is one or the other of these actions.

In an action in personam, personal service of summons or, if this is not possible and he cannot be personally served, substituted service, as provided in Rule 14, § 7-8^[2] is essential for the acquisition by the court of jurisdiction over the person of a defendant who does not voluntarily submit himself to the authority of the court.^[3] If defendant cannot be served with summons because he is temporarily abroad, but otherwise he is a Philippine resident, service of summons may, by leave of court, be made by publication.^[4] Otherwise stated, a resident defendant in an action in personam, who cannot be personally served with summons, may be summoned either by means of substituted service in accordance with Rule 14, § 8 or by publication as provided in § 17 and 18 of the same Rule.^[5]

In all of these cases, it should be noted, defendant must be a resident of the Philippines, otherwise an action in personam cannot be brought because jurisdiction over his person is essential to make a binding decision.

On the other hand, if the action is in rem or quasi in rem, jurisdiction over the person of the defendant is not essential for giving the court jurisdiction so long as the court acquires jurisdiction over the res. If the defendant is a nonresident and he is not found in the country, summons may be served extraterritorially in accordance with Rule 14, § 17, which provides:

§ 17. Extraterritorial service. - When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered