

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**GAN HOCK,  
*Petitioner,***

***-versus-***

**G.R. No. 60848  
May 20, 1991**

**HON. COURT OF APPEALS and MARIA  
ABAD, also known as BEN KING,  
*Respondents.***

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**DECISION**

**GRÑO-AQUINO, J.:**

The main issue in this petition is the legality of the judgment of the trial court in an ejectment suit and of the levy on the property of the private respondent, Maria Abad, who alleges that she is not the defendant, Benny King, named in the complaint and that the court did not acquire jurisdiction over her person for she was not properly summoned to appear in the action.

The decision dated December 24, 1981 of the Court of Appeals in CA-G.R. No. SP-12188 entitled, "Maria Abad, petitioner vs. Hon. Alfredo C. Florendo as Judge, CFI of Manila, Branch XXXVI, et al., respondents" sustained the petition for review and set aside the trial court's decision on the ground that, indeed, the petitioner Maria Abad

(now the respondent), had not been properly summoned. That decision is now sought to be reviewed by the original plaintiff in the ejectment case, Gan Hock.

As summarized in the decision of the appellate court, the facts of this Case are:

“On October 17, 1977, private respondent Gan Hock filed a complaint for ejectment against one ‘Benny King’ before the City Court of Manila, Branch I, presided by respondent Judge Simeon I. Garcia. The complaint docketed thereat as Civil Case No. 027866-CV alleges; among others, that (sic):

- ‘1. That plaintiff is of legal age, Chinese, Widow and presently residing at 506 Altura Street, Sta. Mesa, Manila; while defendant is likewise of legal age, Widow, Chinese and presently residing at 1353-55 Pedro Gil Street (formerly Herran), Paco, Manila, where she may be served with summons and a copy of this complaint;
- ‘2. That during the lifetime of plaintiff and her late husband, Que Pan, they acquired a building of strong materials located at No. 1253-55 Pedro Gil Street (formerly Herran), Paco, Manila;
- ‘3. That sometime in the year 1962, defendant occupied the aforementioned premises with the consent of the former lessee, Mr. Co Sue at the agreed rental of P350.00 a month for the ground floor only of the said building to the herein plaintiff (sic);
- ‘4. That when the original contract of lease with Co Sue was terminated, defendant continued occupying the premises and paid the same amount of rental to the herein plaintiff;
- ‘5. That sometime in the year 1967, defendant ceased paying the rental of the premises she is occupying to the herein plaintiff and without authority and consent

from the plaintiff, succeeded in occupying the second floor of plaintiffs building;

- '6. That for purposes of this action, the rental of the second floor is reasonably assessed to P250.00 a month (sic);
- '7. That verbal and written demands were made upon the defendant to vacate the premises in question and to pay their corresponding rental thereof, but defendant refused and still persisting to refuse, thus, depriving the herein plaintiff of the lawful possession thereof, copy of one of the letters of demand is hereto attached as Annex 'A' forming an integral part hereof.'

“The first summons requiring the defendant to answer the complaint was issued on October 19, 1977 addressed to ‘Benny King’ of 1353-55 Pedro Gil Street (formerly Herran), Paco, Manila (p. 87, Records, Municipal Court). Said summons could not be served to the named subject because according to the Sheriffs returns dated November 10, 1977, the addressee is no longer holding office or residing at the given address. Likewise, the first alias summons dated January 31, 1978 addressed to the same Benny King, with the same address was not served for as per sheriffs returns, the addressee is not known at the given address (p. 89, Id.). The second alias summons issued on June 6, 1978 upon motion of respondent Gan Hock, addressed to Benny King at 1253-1255 Pedro Gil Street, Paco, Manila was served to the addressee thru a person with an ‘R.S.’ initial, per sheriff’s returns dated July 14, 1981 (p. 81, id.).

“For alleged failure of defendant ‘Benny King’ to file any written answer, the City Court of Manila, Branch I, declared ‘Benny King’ in default upon motion of respondent’s counsel. Per sheriffs returns, the default order dated July 27, 1978 was not again served on defendant ‘Benny King’ (pp. 78-79, id.).

“On the basis of the ex-parte evidence presented by respondent Gan Hock, the City Court, on January 22, 1979, rendered a

decision ordering ‘Benny King’ and all persons claiming rights under her, to vacate the premises described in the complaint which is 1353-1355 Pedro Gil Street (formerly Herran), Paco, Manila,’ and to pay Gan Hock the amount of P350.00 a month for the ground floor and P250.00 a month for the second floor of the premises in question from the year 1967 until she finally vacates and surrenders possession of the premises unto Gan Hock, the private respondent herein (Annex C, Pet., pp. 55-56, Id.).

“On July 13, 1979, a deputy sheriff of the City Court of Manila tried to serve a copy of the aforesaid decision on the petitioner, Maria Abad, but a certain ‘Benny King’ refused to sign for the receipt thereof, alleging that she is not ‘Benny King’ (p. 55, Id.). Petitioner referred the matter to her lawyer, who filed a third-party claim (p. 46, id.) with respondent City Court and the City Sheriff of Manila, in behalf of Pride Construction Supply, which alleged among others, that its business not being owned by the defendant ‘Benny King’ in the complaint nor an agent or representative thereof and that its place of business not being located in the questioned premises at 1353-1355 Pedro Gil Street (formerly Herran) Paco, Manila, but rather at 1253-1255 Pedro Gil Street (formerly Herran), Paco, Manila, the decision and writ of execution issued by the City Court do not affect nor bind the third-party claimant for lack of jurisdiction.

“Meanwhile, on August 31, 1979, the City Court issued an execution order against judgment debtor, ‘Benny King’ with address at 1353-1355 Pedro Gil Street (formerly Herran), Paco, Manila (Annex C, Pet.). On September 20, 1979, third-party claimant moved for the stay of execution pending resolution of the third-party claim which was granted by the City Court on the same day. On October 19, 1979, respondent Gan Hock moved to reconsider the preceding order and to quash the third-party claim. Acting on this motion, the City Court issued an order on December 26, 1979 requiring the third-party claimant to file its comment on the aforesaid motions for reconsideration and to quash third-party claim. On June 4, 1980, the City Court, upon motion of the respondent, granted the motion for reconsideration and ordered the reinstatement

of the writ of execution dated August 31, 1979 (p. 22, id.). On July 9, 1980, the Office of the City Sheriff of Manila made a levy on the personal property of the third-party claimant and subject the same to auction sale scheduled on July 18, 1980 (p. 33, id.). On July 14, 1980, the third-party claimant filed a motion to order the sheriff to desist from enforcing the writ of execution on the grounds that the decision cannot be enforced against it because the City Court has never acquired jurisdiction over the person and properties of third-party claimant considering that the name of the defendant in the complaint is one 'Benny King,' whereas the third-party claimant is PRIDE CONSTRUCTION SUPPLY owned by Maria Abad although managed by Tony King (par. 1, Third-Party Claim), and that no summons was ever served upon third-party claimant for as shown by the records of the case, the alleged address of defendant 'Benny King' is 1353-1355 Pedro Gil Street (formerly Herran), Paco, Manila and not the address of third-party claimant, which is 1253-55 Pedro Gil Street. Neither was third-party claimant impleaded as a party defendant.

"On July 16, 1980, the City Court upon motion of the respondent, granted the issuance of an amended writ of execution so as to correct the address as 1253-1255 Pedro Gil Street, Paco, Manila, the subject and object of said writ (p. 23, id.). On March 11, 1981, a deputy sheriff tried to enforce the writ of execution but, he found the premises closed (p. 3, id.). Immediately, the respondent filed an urgent motion praying that an order be issued allowing respondent and the sheriff to break open the premises and enforce the writ (p. 2, id.). It was granted by the City Court (p. 1, id.). Thereafter, Maria Abad (petitioner) in behalf of third-party claimant, Pride Construction Supply, filed a petition for prohibition with injunction and damages before respondent Court of First Instance of Manila, Branch XXXVI, which was docketed thereat as Civil Case No. 133258 (Annex F, Pet.). The petition alleged, among others.

(1) That petitioner is not Benny King, the defendant in Civil Case No. 027866-CV and that she has never

been known as Benny King, neither has she ever used the name 'Benny King.'

'(2) That Benny King in the complaint (Civil Case No. 027866-CV), is a chinese and a widow, whereas petitioner is a Filipino, widow engaged in business and she has always used the name Maria Abad for personal, official and business purposes.

'(3) That petitioner is and has never been a lessee of Gan Hock nor has she paid any rentals to Gan Hock.'

Answering the foregoing petition, respondent Gan Hock averred among others, that petitioner's name is Benny King, that petitioner only changed her name to 'Maria Abad' when Gan Hock filed the ejectment case (Civil Case No. 027866-CV) to avoid liability; and that the aforesaid petition under the name of Maria Abad is just a scheme adopted by her to deceive the respondent court (Annex G, Pet.).

"To maintain status quo, respondent Court of First Instance issued a restraining order on July 15, 1980 which was reiterated on January 6, 1981, ordering the respondents to refrain and desist from enforcing the writ of execution of the City Court, Branch I, dated August 31, 1979 (Annex I, id.).

"Trial on the merits was held and after the parties had presented their respective evidence, oral as well as documentary, the court a quo issued an order dated March 6, 1981, dismissing the petition and ordered the restraining order previously issued to be dissolved. Petitioner moved for a reconsideration thereof but, because of the urgency of the situation facing immediate levy on execution and ejectment being enforced upon her, she filed the present petition even without awaiting the resolution on the said motion.

"This Court required the respondents to answer the petition, which they did in due time, and meanwhile, ordered the respondents to desist from enforcing the orders dated August 31, 1979 and March 6, 1981 issued in Civil Case No. 027866-CV

of the City Court and in Civil Case No. 133258 of the Court of First Instance, respectively.

“Petitioner assailed the decision of the City Court on the grounds of lack of jurisdiction and lack of due process. She also assailed the order dated March 6, 1981 of respondent Court of First Instance on the ground that the same was issued with grave abuse of discretion amounting to lack or excess of jurisdiction especially in holding that petitioner Maria Abad is one and the same person as ‘Benny King,’ the defendant in Civil Case No. 027866-CV of the City Court. The issue is whether the proceedings in the respondent courts should be set aside.

“Petitioner claims that she was not impleaded as party defendant in Civil Case No. 027866-CV, for ejectment; that she was not served of any summons for said case; and therefore, respondent City Court never acquired jurisdiction over her person so that the judgment rendered therein does not bind her. Neither does the writ of execution issued in pursuance thereto.” (pp. 48-53, Rollo.)

In a decision dated December 24, 1981, the Court of Appeals granted Abad’s petition for certiorari and prohibition on the ground of lack of jurisdiction for there was no valid service of summons upon her. The dispositive portion of the decision reads:

“WHEREFORE, finding the instant petition to be meritorious, we hereby SET ASIDE the decision of the City Court in Civil Case No. 027866-CV including the writ of execution issued pursuant thereto and the order of respondent Court of First Instance in Civil Case No. 133258 dated March 6, 1981 insofar as it affects the petitioner. The private respondent (Gan Hock) is hereby required to amend her complaint impleading the real party defendant. The trial court (City Court) is directed to admit said amendment including the answer which should be filed within ten (10) days from receipt of notice and to conduct further proceedings for its adjudication. The writ earlier issued by this Court is hereby made permanent. No costs.” (p. 56, Rollo.)

Hence, this petition for review.

Section 2, Rule 3 of the Revised Rules of Court provides:

“SEC. 2. Parties in interest. — Every action must be prosecuted and defended in the name of the real party in interest. All persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs.”

The real party in interest has been defined in a number of decisions of this Court as follows:

“The real party in interest is the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit. ‘Interest’ within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.” (Francisco, the Revised Rules of Court in the Phil., Volume I, p. 126 cited in House International Building Tenants Association, Inc. vs. Intermediate Appellate Court, 151 SCRA 705; Samahan ng mga Nangnugupahan sa Azcarraga Textile Market, Inc., et al. vs. Court of Appeals, 165 SCRA 598, 599.)

Furthermore, the Court in *Walter Ascona Lee, et al. vs. Hon. Manuel Romillo, Jr., et al.* (161 SCRA 589) said:

“A real party in interest-plaintiff is one who has a legal right while a real party in interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal rights of the former.”

As the alleged sub-lessee of the original lessee, Co Sue, respondent Maria Abad is an indispensable party in the ejectment action filed by Gan Hock. However, the failure of the plaintiff to identify her by her correct name and to give the correct address of the leased premises (1253-1255 Pedro Gil Street), not only in the complaint but also in the summons, resulted in a failure to implead her as defendant and

failure to serve summons to her. As the Court of Appeals aptly observed:

“In the complaint for ejectment filed by respondent Gan Hock in the City Court, docketed as Civil Case No. 027866-CV, it was a certain ‘Benny King,’ a Chinese citizen, widow and with address at 1353-1355 Pedro Gil Street (formerly Herran), Paco, Manila, who was named as the sole defendant. Petitioner, whose name is Maria Abad, a Filipino citizen and widow with address at 1253-1255 Pedro Gil Street (formerly Herran), Paco, Manila was never named or listed as a defendant. Apparently, the name and address of defendant ‘Benny King’ listed in the complaint is completely different from that of petitioner Maria Abad. At no time during the pendency of the ejectment case, despite the fact that summons could not be served on said ‘Benny King of 1353-1355 Pedro Gil Street (formerly Herran), Paco, Manila’ because said defendant is not known or residing in the given address, was there any attempt on the part of the plaintiff therein, now private respondent, to amend the complaint so as to identify the defendant by her true and correct name and address.

“Petitioner has by documentary evidence clearly proved that her name is Maria Abad, a Filipino as duly proven by her Philippine passport (Annexes J-7, J-8 and Exhs. N, N-1) and not a Chinese as alleged in the complaint for ejectment. While it is admitted that prior to 1957 when her husband Jose King, was still alive, she carried the surname King. However, after the death of her husband in 1957 she reverted back to the use of her maiden name, Maria Abad. Since then, up to the present, she consistently carries the name Maria Abad for personal, legal and business purposes as evidenced by Annexes, ‘J “J-1’ to ‘J-8.’ Annexes ‘A’ and ‘A-1’ and corroborated by the testimony of Vivencio B. Ronquillo and the petitioner herself.

“Private respondent Gan Hock’s testimony that ‘Benny King’ whom she alleged to be the same as petitioner has been operating a hardware under the name Pride Construction Supply at the leased premises at No. 1255 Herran Street, since the year 1962 is negated by the Certificate of Registration issued

by the Bureau of Commerce on February 20, 1968 and the license issued thereto on February 19, 1968 (Exhs. 'H' and 'I') which proved that petitioner only started and organized her business 'Pride Construction Supply' between the middle of 1967 and early 1968. Moreover said testimony is also belied by Exhibit 1 presented by Gan Hock herself as her own evidence which is a picture of the leased premises in 1967 wherein the name of the hardware occupying the same was 'Co Sui Hardware' and not 'Pride Construction Supply.' (pp. 53-54, Rollo.)

Summons is the writ by which a defendant is notified of the action brought against him. Under Rule 14 of the Revised Rules of Court, there are three (3) modes of service of summons in civil actions, namely: 1) personal service (Section 7); 2) substituted service (Section 8); and 3) service by publication (Rules of Court in the Phil. by Ruperto G. Martin, 1986 Edition, p. 485). These modes of service should be strictly followed in order that the court may acquire jurisdiction over the person of the defendant (Olar vs. Cuna, 90 SCRA 114). The purpose of the process is to afford the defendant an opportunity to be heard on the claim against him (Venturanza vs. Court of Appeals, 156 SCRA 307). Unless service of summons is waived, trial and judgment with out such service are null and void (Keister vs. Navarro, 77 SCRA 209).

The Court of Appeals correctly ruled that service upon Maria Abad of the summons intended for Benny King was invalid:

“In the first place, petitioner is not named or impleaded as a party defendant in the case. All the summons issued and served by the deputy sheriff of Manila were addressed to 'Benny King — 1353-55 Pedro Gil Street (formerly Herran), Paco, Manila, and not to petitioner Maria Abad at her address at 1253-1255 Pedro Gil Street (formerly Herran), Paco, Manila.' Thus, petitioner received no summons except a copy of the decision which she refused receipt thereof because she is not Benny King, the defendant named therein. Secondly, the first and second summons dated October 19, 1977 and January 31, 1978 were not served because per sheriff returns, 'Benny King at 1353-55 Pedro Gil Street (formerly Herran), Paco, Manila,' is

not known at the given address. Thirdly, although there was a second alias summons issued on June 6, 1978 upon motion of respondent Gan Hock, and that same was served on the addressee, 'Benny King at 1253-1255 Pedro Gil Street (formerly Herran), Paco, Manila,' thru a person with an 'R.S.' initial as per sheriff returns dated July 14, 1981, this does not show that a substituted service has been complied with for the fact remains that Benny King is not the same as Maria Abad nor the 'R.S.' initial is that of hers or any of the members of her household, not to mention also the fact that she denies having received one on that date indicated in the sheriff's returns." (pp. 54-55, Rollo.)

As there was no valid service of summons upon respondent Maria Abad, the trial court did not acquire jurisdiction over her and could not render a valid judgment against her. "A judgment or decree is not binding upon anyone unless the court rendering the same had jurisdiction of the parties and the subject matter of the cause [of action]" (Herrera vs. Barretto, et al., 25 Phil. 246, 256, citing the case of Miller vs. Rowan, 251, Ill. 344).

If it were true, as alleged by the petitioner, Gan Hock that Abad craftily refused to acknowledge her identity and receive the summons served upon her to avoid eviction from the leased premises and escape the payment of her just and valid obligations to the petitioner, the latter should have amended her complaint by impleading as co-defendants in the action Maria Abad and Pride Construction Supply and all others who may be actually occupying her property. The carelessness of her counsel in preparing the ejectment complaint, and his unwillingness to correct the errors in his pleading when confronted by uncertainty and confusion as to the correct identity of the occupants of the leased premises, lie at the bottom of this unsuccessful suit and the enormous waste of time it has entailed.

**WHEREFORE**, the petition for review is denied for lack of merit. The decision of the respondent appellate court in CA-G.R. No. SP-12188 is affirmed in toto. In addition to the dispositions made by the appellate court, the Metropolitan Trial Court of Manila to which the ejectment case, Civil Case No. 027866-CV, was assigned, is hereby directed to issue alias summons to the proper defendant/defendants

named in the amended complaint, and after issue shall have been joined upon said amended complaint, the court should proceed to trial and judgment with reasonable dispatch. This decision is immediately executory. No costs.

**SO ORDERED.**

**Cruz, Gancayco and Medialdea, *JJ.*, concur.  
Narvasa, *J.*, took no part.**

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