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**SUPREME COURT
SECOND DIVISION**

**ANTONIO NAVALE, FULGENCIO
ABUHAN, LEONARDO NOVO,
FILEMON VALDEHUEZA, RODOLFO
SANGA, ROGELIO SANGA, LYNITA
VALDEHUEZA QUIRANTE, TEODORA
LIAMSO, MONICA NACASABOG,
LEONILA NOBLE, PETRONILA ALLA,
GRACE SISON, REBECCA HARAON,
APOLONIA SANICO, ROMEO YAMSON,
EUFRACIA REGAHAL, NATIVIDAD
MANAGBANAG, JASMIN ANANETA,
REX MAXILUM, PERPITUA SALVO,
ARNULFO TINAMPAY, LENY
DUGADUGA, FLORITA DELA GANAR,
LAURITA HALAZARTE, LOURDES
IMAN, ESTER DUHAYA, MARY
CAMPANA, FROSERFIDA NULO,
DOLORES AGANA, NELSON
MAGMAONG, and CLARITA DONASCO,
*Petitioners,***

-versus-

**G.R. No. 109957
February 20, 1996**

**COURT OF APPEALS, HON.
GREGORIO PANTANOSAS, Municipal
Trial Court Judge, JOVEN YASAY, and
SAMSON YASAY,**

Respondents.

X-----X

DECISION

ROMERO, J.:

Petitioners question-the Decision of the Court of Appeals^[1] affirming the Decision of the Regional Trial Court (Branch XX) of Cagayan de Oro City dismissing the petition for certiorari in Special Civil Action No. 10804.

The facts are the following:

Private respondents filed an action for forcible entry and damages with the Municipal Trial Court in Cities in Cagayan de Oro City docketed as Civil Case No. 8942 with prayer for the issuance of preliminary mandatory injunction and for the return of the possession of a portion of the Bagting Estate in Carmen, Cagayan de Oro City over which they claimed absolute ownership but which had been allegedly occupied by petitioners with force and violence. Moreover, the latter had also constructed houses thereon against private respondents' will.

The Municipal Trial Court in Cities (MTCC) granted the petition and issued the writ prayed for. However, petitioners ignored the writ, prompting private respondents to file a motion to have petitioners declared in contempt. The MTCC subsequently issued an order directing petitioners to comply with the writ of injunction and for private respondents not to demolish the formers' houses pending a decision on the merits.

Petitioners were later declared in default for failure to appear and to present evidence on their behalf. The MTCC then rendered judgment based on private respondents' evidence declaring them the rightful possessors of the land; ordering petitioners to immediately vacate the premises and to pay actual damages for destroying the perimeter fence and guardhouse in the amount of P5,000.00; exemplary damages of P25,000.00 as a deterrent to future unlawful acts of the

same category; attorney's fees of P5,000.00; and litigation expenses of P1,000.00 plus costs.

The above judgment became final and writs of execution and demolition were issued.

Petitioners then filed a petition for certiorari with the Regional Trial Court questioning the order of default, the subsequent judgment and the writ of demolition issued by the MTCC arguing that they had never been summoned to answer the complaint.

The RTC dismissed the petition finding that, as shown by the Sheriff's return, as of March 29, 1983 summonses were served on petitioners and several John Does, but that they either refused to receive the same and/or refused to give their names. These actions prompted the Sheriff to leave copies of the summonses at the residences of petitioners and also with one Eligio Valdehueza who, petitioners alleged, had allowed them to enter the land in question and to build their houses thereon in his capacity as judicial administrator of the Bagting Estates.

The RTC further found that answers were filed in the said case by petitioners without any qualification; hence, jurisdiction was acquired by the MTCC over their persons.

Elevated to the Court of Appeals, the decision of the RTC was affirmed. Hence, this petition.

Petitioners argue that summonses were never validly served on them and that they did not appear voluntarily in the action as to be covered by Section 23 of Rule 14 of the Rules of Court in what is equivalent to service. They contend that it was only Eligio Valdehueza who received a copy of the summonses and answered the same and that they never authorized him to represent them. Thus, they conclude, the MTCC never acquired jurisdiction over them.

We find petitioners' contention to be devoid of merit. Under Section 7, Rule 14 of the Rules of Court, summons may be served personally by handing a copy thereof to the defendant in person or if he refuses to receive it, by tendering it to him.

Jurisdiction cannot be acquired over the defendant without service of summons. However, Section 23 of the Rules provides that the defendant's voluntary appearance in the action shall be equivalent to service. Instances of actions amounting to voluntary appearance have been held by this Court to be: when his counsel files the corresponding pleading thereon;^[2] when a defendant files a motion for reconsideration of the judgment by default;^[3] when he files a petition to set aside the judgment of default;^[4] when he and the plaintiff jointly submit a compromise agreement for approval of the trial court.^[5]

In the present case, the record shows that summonses were duly served on petitioners but that they, not only refused to receive the same, but that they also declined to give their names.

The Court is aware of the difficulties of serving judicial notices on defendants in unlawful detainer, recovery of possession, or ejectment cases. Process servers in these cases are often greeted with hostility and suspicion by- the occupants of the subject properties and, sometimes, even threatened with physical violence.

In the absence of contrary evidence, a presumption exists that a sheriff has regularly performed his official duty.^[6] To overcome the presumption arising from the sheriff's certificate, the evidence must be clear and convincing.^[7] However, no such proof of irregularity in the Sheriff's return was ever presented by petitioners.

We have held that the refusal of a defendant (the petitioners in this case) to receive the summons is a technicality resorted to in an apparent attempt to frustrate the ends of justice.^[8]

Granting that there was an invalid service of summons, which is not the case here, still the MTCC acquired jurisdiction over the petitioners through their voluntary appearance thereat.

As the RTC noted:

“On April 11, 1983, defendants, thru counsel and without qualification filed their answer to the contempt charge filed by private respondents.

On April 12, 1983 all the defendants filed their Answer to the complaint in Civil Case No. 8942-(p. 167, Record in C.C. No. 8942) thru counsel, claiming that the land is part of the Bagting Estate and they were duly authorized by one, Eligio Valdehueza, administrator of the Bagting Estate pending in the Court of First Instance of Misamis Oriental and duly appointed as administrator.

During the execution of the writ of injunction and the contempt proceedings all the defendants pleaded that they be allowed to vacate the premises within an extended time of three (3) months provided the contempt petition be withdrawn but later the defendants never left the premises, hence, the MTCC issued a writ of demolition.

The defendants, thru counsel even answered not only the contempt charge but also the writ of demolition motion pleading that the case must be tried and decided on the merits before they will be ejected from the premises.

on April 29, 1983 counsel for defendants manifested and volunteered to have an ocular inspection of the premises in connection with the claim of the plaintiffs in Civil Case No. 8942 that the defendants defied the order of injunction.

On May 3, 1983 the defendants in the civil case below and also accused in the same court for violating P.D. 772 agreed with plaintiff below to comply with the order by vacating the premises as plaintiffs and complainants agreed to their petition for contempt and by virtue of said agreement no demolition was effected.

On June 6, 1983 the pre-trial was terminated and some of the defendants were declared in default; on July 20, 1983 Atty. Fermente P. Dable, counsel for the defendants appeared to explain his non-appearance on the hearing on July 14, 1983.

On December 3, 1983 defendants presented Pricilla Valdehueza as a witness and on January 6, 1984 (p. 294, Record) Elegio Valdehueza testified and the decision was rendered n June 13, 1983 by the respondent judge.”^[9]

Petitioners’ actions, such as filing an answer to the contempt charge (among others), are a clear manifestation that they voluntarily submitted themselves to the jurisdiction of the MTCC.^[10] Even their filing of the petition for certiorari is evidence of such voluntary submission.^[11]

There is no showing that petitioners ever questioned the jurisdiction of the NTCC over them, except when a judgment in default was declared against them. To properly avail of the defense of invalid service of summons, petitioners should have questioned it and the MTCC’s exercise of jurisdiction over them, from the very start:

“Defects of summons are cured by voluntary appearance and by the filing of an answer to the complaint. A defendant can not be permitted to speculate upon the judgment of the court by objecting to the court’s jurisdiction over its person if the judgment is adverse to it, and acceding to jurisdiction over its person if and when the judgment sustains its defense.”^[12]

Any form of appearance in court by the defendant, his authorized agent or attorney, is equivalent to service except where such appearance is precisely to object to the jurisdiction of the court over his person.^[13]

In *La Naval Drug Corporation vs. Court of Appeals*,^[14] we held:

“Jurisdiction over the person must be seasonably raised, i.e., that it is pleaded in a motion to dismiss or by way of an affirmative defense in an answer. Voluntary appearance shall be deemed a waiver of this defense.”

However, we also said therein that where the court itself clearly has no jurisdiction over the subject matter or nature of the action (which is not the case here) the invocation of the defense of lack of

jurisdiction may be raised at any time. An example of this is when the case falls within the jurisdiction of another government agency or quasi-judicial body; in which case, voluntary appearance will not be deemed as a waiver.

In the instant case, there is no question that the MTCC had jurisdiction over the subject matter of the action. The question was whether it had jurisdiction over the person of petitioners.

We hold that it did.

Petitioners, having failed to object to the MTCC's jurisdiction from the very beginning, may no longer raise it now as a ground to set aside the judgment by default. Nor can they claim that they are not bound by the consequences of their own acts before the Court.

As the RTC aptly stated:

“Otherwise there will be no end to litigation. There will be anarchy if the petitioners will be allowed to use their own culpa or violation as a reason or excuse from the impact and sanctions imposed by law.”

WHEREFORE, the Decision of the Court of Appeals is hereby **AFFIRMED** in toto.

SO ORDERED.

Regalado, Puno and Mendoza, JJ., concur.

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- [1] CA-G.R. SP No. 17978, penned by Emeterio C. Cui, J., ponente and concurred in by Jainal D. Rasul and Eduardo G. Montenegro, JJ. Rollo, p. 21.
- [2] Habana vs. Vamenta, L-27091, June 30, 1970.
- [3] Soriano vs. Palacio, 12 SCRA 447 (1964).
- [4] Immaculata vs. Navarro, 146 SCRA 5 (1986).
- [5] Algrabe vs. CA, L-24458-64, July 31, 1967.
- [6] Claridad vs. Santos, 120 SCRA 148 (1983); Edea vs. IAC., 179 SCRA 344 (1989).
- [7] Vargas and Company vs. Chan Hang Chiu, 29 Phil. 446.

- [8] Far East Corp. vs. Francisco, 146 SCRA 197 (1986).
[9] Rollo, pp. 13-14.
[10] Tantoco vs. Court of Appeals, 77 SCRA 225 (1977).
[11] Immaculata vs. Navarro, Ibid.
[12] Republic vs. Ker & Company, Ltd., No. L-21609, September 29, 1966, 18 SCRA 208.
[13] Carballo vs. Encarnacion, 49 O.G. 1383.
[14] 236 SCRA 78 (1994).

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