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SECOND DIVISION

[G.R. No. L-47935. May 5, 1979]

SPOUSES ANDRES OLAR and SERAPIA GERMANO, SPOUSES DEMETRIO SALI and AGRIPINA OLAR, and POLICARPO OLAR, *petitioners, vs.* **HON. FORTUNATO B. CUNA, CFI Judge of Baybay, Leyte, SPOUSES MARCELINO LUMAPAS and POLICRONIA SALUDO, and SPOUSES FLORENCIO CUYNO, JR., and GENARA SALUDO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE OF SUMMONS GOVERNED BY RULE 14 OF THE RULES OF COURT.** — Rule 13 applies only to service of pleadings and other papers subsequent to the complaint and not to the service of summons which is governed by Rule 14 of the Rules of Court.

2. **ID.; ID.; ID.; ID.; MODES OF SERVICE OF SUMMONS.** — Under Rule 14 of the Rules of Court, the methods of service of summons in civil cases are: (1) personal service; (2) substituted service; and (3) service by publication. Strict compliance with these modes of service is required in order that the court may acquire jurisdiction over the person of the defendant.

3. **ID.; ID.; ID.; ID.; MAILING NOT ONE OF THE MODES OF SERVICE OF SUMMONS.** — Service by registered mail is not one of the modes of service of summons under Rule 14 of the Revised Rules of Court.

4. **ID.; ID.; ID.; ID.; WHO MAY SERVE SUMMONS.** — Under Section 5, Rule 14, Rules of Court, the sheriff or other proper officer of the province in which the service is to be made, or for special reasons, any person especially authorized by the judge of the court issuing the summons may serve summons. Thus, the postmaster not being a sheriff or court officer or a person authorized by the court to serve the summons cannot validly serve the summons.

5. **ID.; ID.; ID.; SUMMONS; DEFINED.** — Summons is a writ by which the defendant is notified of the action brought against him.

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Service of such writ in the means by which the court may acquire jurisdiction over his person. Trial and judgment without such service is null and void.

APPEARANCES OF COUNSEL

Ciriaco C. Barte for petitioners.
M.A. Veloso for private respondents.

D E C I S I O N

CONCEPCION JR., *J.*:

Petition for *certiorari* to annul and set aside the order of default and judgment by default in Civil Case No. B-674 of the Court of First Instance of Leyte.

On December 3, 1976, the private respondents filed with the Court of First Instance of Leyte, Branch III, presided over by respondent Judge, a complaint,[1] for recovery of possession and damages against the petitioners, docketed therein as Civil Case No. B-674.

For failure of the petitioners to file their answer within the reglementary period, private respondents filed an "*EX-PARTE* MOTION TO DECLARE DEFENDANTS IN DEFAULT,"[2] alleging among others:

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"2. That the summons, together with the copies of the complaint, were furnished the defendants, by registered mail, which were all received by the Postmaster of Bato, Leyte, on December 8, 1976;

"3. That one of the defendants, Demetrio Sale, who is known personally by the Postmaster, was informed by the latter that he had a registered mail containing the summons of this Honorable Court, but the said Demetrio Sale refused to receive the same;

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[1] *Rollo*, Annex "A", p. 8.

[2] *Ibid.*, Annex "C", p. 15.

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"4. That inspite of notices, and the knowledge of all the defendants herein, that they had registered mail containing the summons of this Court, they defiantly refused to receive them;

"5. That in order to comply with his duties, the Postmaster of Bato, Leyte, personally went to barrio Amagos, together with an employee of his office on December 22, 1976, to deliver the registered summons sent by the Clerk of Court of this Court to the defendants, but the latter adamantly and defiantly refused to received said summons;

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"7. That since December 22, 1976, the date when the summons were served upon all the defendants by the Postmaster of Bato, Leyte, up to the date of the filing of this motion today, February 17, 1977, a period of FIFTY SEVEN (57) DAYS have lapsed, and the record shows that not one of the defendants have filed their answer;

"8. That because of the failure of the defendants to file their answer to plaintiffs complaint, plaintiff moves that the former be declared in default in accordance with Section 1 of Rule 18 of the Rules of Court."

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On February 22, 1977, respondent Judge issued an order[3] granting the private respondents' motion and declared the petitioners in default.

Thereafter, on October 24, 1977, respondent Judge rendered a decision[4] in favor of private respondents, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered (1) ordering the defendants to recognize the plaintiffs Policronia Saludo Lumapas and Genara Saludo Cuyno as absolute owners thereof and to respect such ownership; (2) directing the plaintiffs to refer all issues affecting tenancy relationship to Secretary of Agrarian Reforms or his authorized representative."

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[3] *Ibid.*, Annex "D", p. 17.

[4] *Ibid*, Annex "E", p. 19.

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Hence, on March 14, 1978, the petitioner interposed the present petition, claiming that they were not duly served with summons and that respondent Judge acted with grave abuse of discretion in declaring them in default and in rendering the judgment by default.

The private respondents filed their comment[5] on the petition on June 10, 1978, while the petitioners filed their reply[6] thereto on November 16, 1978; thereafter, on December 15, 1978, respondents' comment was considered as answer, and the case was deemed submitted for decision.[7]

The only issue to be resolved in the instant case is whether the petitioners had been duly served with summons or, in other words, whether the trial court acquired jurisdiction over them.

In granting the private respondents' motion to declare petitioners in default and in granting the said motion, the respondent Judge reasoned out as follows:

"x x x It appears from the record that all registered mail containing the complaint and the summons in this case have been sent to these defendants but they have been sent back to this Court with the notation of the Postmaster as refused.

"The Postmaster of Bato, Leyte, Mr. Felomino Yap, was presented in Court and he testified that registry notices were sent by the post office of Bato, Leyte, to these defendants. The Postmaster testified that the first registry notices sent to these defendants were sent on December 8, 1976, and it was followed by a second registry notices which are now marked as Exhibits 'A', 'A-1' to 'A-5' in the records, In view of the failure of the said defendants to claim their registered mail from the post office, the Postmaster of Bato, Leyte went personally to the house of Demetrio Sale in Barrio Amagos, Bato, Leyte, and in the presence of the other defendants, Mr. Andres Olar, and Agripina Olar, Serapia Germano, Policarpo Olar and Demetrio Sale, the Postmaster explained to them that they have to get their

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[5] *Ibid.*, p. 37.

[6] *Ibid.*, p. 115.

[7] *Ibid.*, p. 109.

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registered mail from the Court, but in spite of the explanation of said Postmaster these defendants refused to receive the letters, in view of the fact that they have no advice from their lawyer.

"In view of the foregoing, this Court considers these defendants to have been served by the summons and the complaint in view of the provisions of Section 8, Rule 13 of the Rules of Court. Up to this date no answer has been filed in this complaint."

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We disagree. The respondent Judge's reliance on the provision of Section 8, Rule 13 of the Revised Rules of Court,[8] is erroneous. Rule 13 applies only to service of pleadings and other papers subsequent to the complaint and not to the service of summons which is governed by Rule 14 of the Rules of Court. Under the said Rule, the methods of service of summons in civil cases are: (1) personal service;[9] (2) substituted service;[10] and (3) service by publication.[11] Strict compliance with these modes of service is required in order that the court may acquire jurisdiction over the person of the defendant.[12]

In the case at bar, the summons were served by registered mail, which is not among the modes of service under Rule 14 of the Revised Rules of Court. Besides, under Section 5 of aforesaid rule, the summons "may be served by the sheriff or

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[8] The cited Section of Rule 13, reads as follows:

"Section 8. *Completeness of service.* — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time."

[9] Revised Rules of Court, Rule 14, Section 7.

[10] *Ibid., Section 8.*

[11] *Ibid.*, Sections 16, 17 and 18.

[12] Martin, *Rules of Court*, 1972 ed., Vol. I, p. 473, citing *Pantaleon vs. Asuncion*, 105 Phil. 761; *Sequito vs. Letrondo*, 105 Phil. 1139.

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other proper officer of the province in which the service is to be made, or for special reasons by any person especially authorized by the judge of the court issuing the summons." The postmaster of Bato, Leyte, not being a sheriff or court officer, or a person authorized by the court to serve the summons can not validly serve the summons. The petitioners, therefore, were not duly served with the summons in Civil Case No. B-674.

"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. Trial and judgment without such service are null and void."[13]

WHEREFORE, the trial court's order of default and the judgment by default are set aside. The court *a quo* is directed to require the petitioners to file their answer to the complaint within ten (10) days after notice of the entry of judgment in this case, and to conduct further proceedings for its adjudication. Without costs.

SO ORDERED.

Barredo (Actg. Chairman), Aquino, Santos, and *Abad Santos, JJ.*, concur.

Antonio, J., concur. The summons were not served and the return was not made by the proper officer pursuant to Sections 5, 6, and 7, Rule 14, of the Rules of Court.

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[13] *Sy Y Ang vs. Navarro, et al.*, L-44909 January 31, 1978, 2 PHILAJUR 446, 449-450, 81 SCRA 458, 461, citing 1 Moran's Comments on the Rules of Court, 1970 Ed., p. 438; *Dultra vs. Court of First Instance of Agusan,* L-27682, April 30, 1976, 70 SCRA 465, 469.