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SO ORDERED.

Fernando (Actg. C.J.), Barredo, Antonio, and *Santos, JJ.*, concur.

Concepcion, Jr., is on leave.

SECOND DIVISION

[G.R. No. L-45445. June 16, 1978]

THE HEIRS OF JOSE FUENTES, FELICIDAD GALGO VDA. DE FUENTES, ANTONIO FUENTES and VIOLETA TUPAS, *petitioners, vs.* **HON. ANTONIA C. MACANDOG, Presiding Judge, Court of First Instance of Negros Occidental, Branch X, San Carlos City, Provincial Sheriff of Negros Occidental; and FRANCISCO A. JAO RIVERA, and wife ELIZABETH BARROCA, LORNA A. JAO RIVERA and CANUTO DOTE, LOURDES A. JAO RIVERA and husband SANTIAGO SALVILLA, ANASTACIO A. JAO RIVERA and wife GERTRUDES SOLIDUM, MONSERRAT A. JAO RIVERA, JOSE A. JAO RIVERA and wife CAROLINA PESUEÑA, ROMEO A. JAO RIVERA and ELNORA CABENTA VDA. DE MONTOYA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; NOTICE THEREOF SHOULD BE SERVED NOT ONLY TO COUNSEL ON RECORD BUT TO ALL DEFENDANTS.— Since the case was set for pre-trial, *inter-alia* it was indispensable under the specific provisions of Section 1 of Rule 20 and the jurisprudence thereunder that not only the counsel of record of the defendants but also all the defendants should be separately served with notice.

2. ID.; ID.; ID.; IMPORTANCE OF SERVICE OF NOTICE OF PRE-TRIAL, DISCUSSED.— It must be clarified that common sense

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and fairness demand a notice of pre-trial or trial or for that matter, of any proceeding in which notice to the parties is mandatory, must be such as to give them and their counsel ample opportunity to appear, having in view not only the distance of the place of hearing but also the time that would be needed to reach the same from where the party notified may be at the time of notice and the circumstance, in which they are at the time of such service — that is, whether or not said circumstance would reasonably enable them to comply with the notice. It is certainly inconsistent with simple justice for Us to hold that it is the inescapable duty of a party to appear before any court pursuant to a notice regardless of circumstances not of his own making and fault which render it physically impossible to do so, just because he has actually received the notice.

3. ID.; ID.; DEFAULT JUDGMENT; NOT A MECHANICAL GADGET FOR THE ACCELARATION OF JUDICIAL LITIGATIONS; SIMILAR RULINGS, CITED.— Default is not a mechanical gadget for the acceleration of judicial litigations. The laudable intention of respondent judge to terminate the subject case promptly is no excuse for cutting corners that the rules have fixed to insure that the constitutional requirement of due process is observed and safeguarded. The expeditious dispatch of court matters does not have to be gained by causing unnecessary inconvenience to any of the parties. As We said in *Lim Tanhu et al. vs. Ramolete et al.,* 66 SCRA 425, "the plain injunction of Section 2 of Rule 1 is that 'the rules shall be liberally construed in order to promote their object and assist the parties' in obtaining not only 'speedy' but more imperatively, 'just — and inexpensive determination of every action and proceeding.'"

APPEARANCES OF COUNSEL

Reynaldo C. Depasucat and Ernesto D. Tobias for petitioners.

DECISION

BARREDO, *J.*:

Petition for *certiorari* and *mandamus* praying mainly for the annulment and setting aside of the decision by default rendered

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by respondent Court of First Instance of Negros Occidental, Branch X, sitting in San Carlos City, in its Civil Case No. X-303, entitled Francisco A. Jao Rivera et al. vs. Heirs of Jose Fuentes et al., on November 22, 1976 as well as all its actuations subsequent thereto, particularly, the issuance of a writ of execution of said decision, and for a mandate to respondent court to conduct the appropriate proceedings therein, petitioners claiming that in declaring them in default and proceeding subsequently on the basis of said declaration to hold an *ex-parte* hearing and rendering its decision, and subsequently declaring the same final and executory and issuing a writ of execution, respondent court denied their right to due process, since they were not given due notice of the setting of the pre-trial and trial in which their absence was considered as the cause of their being considered in default, and further, that in fact, the case was not even ready whether for pre-trial or trial, considering that their affirmative defense of prescription which was set for a preliminary hearing as if a motion to dismiss the complaint had been filed pursuant to Section 5 of Rule 16 had not yet been resolved by the court, and still further, that their motion for reconsideration of the default judgment which the court ignored as *pro forma* was filed in due time and was in accordance with the rules and not *pro forma*, hence respondent court acted with grave abuse of discretion in acting the way it did.

The aforementioned Civil Case No. X-303 is an action for reconveyance filed by herein private respondents, Francisco A. Jao Rivera, and his wife Elizabeth Barroca and his sister Lorna A. Jao Rivera and her husband Canuto Dote, of three (3) parcels of land known as Lots Nos. 75 and 1454-A and 1454-B of the Cadastral Survey of Sagay, Negros Occidental, the first measuring 579,534 square meters and the second and third together 223.609 square meters, alleging as main cause of action that said lands were owned by the spouses Nicolas A. Jao Rivera and Gregoria Padilla, the ascendants of said private respondents from whom they inherited the same, but over which, "through misrepresentation, fraud and falsification of official records," and "without any consideration whatsoever" the defendants were able to secure Transfer Certificates of

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Title Nos. 31057, 15779 and 15184, of the Register of Deeds of Negros Occidental, on August 1, 1940, October 7, 1932 and October 10, 1932, respectively, to be issued in the names of Jose Fuentes and his wife herein petitioner Felicidad Galgo, the other petitioner Antonio Fuentes being the son of said spouses while petitioner Violeta Tupas is the wife of Antonio. In due time, the said defendants filed their answer alleging that "Lot No. 76 of the Cadastral Survey of Sagay has always been owned by Jose Fuentes and Felicidad Galgo as they have been the decreed owner of said parcel of land pursuant to the Decree of Registration No. 723387, issued on July 17, 1940, under Cadastral Case No. 27, G.L.R.O. Record No. 284, for which an Original Certificate of Title No. RO-1319 (31057) was issued in the name of the said spouses as original owners thereof; while Lot No. 1454 of the Cadastral Survey of Sagay was owned and possessed by the spouses Jose Fuentes and Felicidad Galgo long before the Second World War after they (had) acquired the same legally in good faith and for value." They also alleged *inter alia* the following affirmative defenses:

"3. That the plaintiffs are guilty of laches;

"4. That the cause of action, if any, is already barred by the Statute of Limitations or that any cause of action has already prescribed;

"5. That the defendants and their predecessors-in-interest have acquired the property in good faith and for value;

"6. That the properties in question have been the subject of Special Proceedings No. 305-S, 'Intestate Estate of the Late Jose Fuentes,' and titles over said properties have been transferred to defendants with the approval of the Court and as such any claim now on the estate is already barred;

"7. That even on the basis of acquisitive prescription alone, the defendants are already the legal and absolute owners of the properties in question since they have been in actual possession of the properties for more than 30 years in the concept of owner, peaceful, adverse and uninterrupted;" (Pp. 26-27, Record.).

On August 5, 1976, respondent judge issued the following order which is self-explanatory:

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"This case was scheduled for hearing today, August 4, 1976, and both parties were represented by their counsels, Atty. Reynaldo Depasucat, as counsel for the defendants and Atty. Jose M. Dy as counsel for the plaintiffs.

"Counsel for the defendants submitted a motion for the preliminary hearing on the affirmative defense of prescription which he alleged as a ground for the dismissal of this case, and counsel for the plaintiffs vehemently objected to this motion inasmuch as this should have been presented long before the scheduled pre-trial of this case.

"On the basis of the argument in order to enlighten this Court in deciding the issues, orders both counsels to submit their memoranda simultaneously.

"Both counsels have agreed to submit their simultaneous memoranda 15 days from today and the deadline will be on August 19, 1976. (Page 33, Rec.)

Complying with this order, both parties filed their respective memoranda on time, Annexes E and F of the petition. What happened afterwards is stated by respondent judge in the assailed decision, Annex J of the petition, thus:

"x x x It must be noted that, per records of this case, Atty. Depasucat was duly notified of the Pre-Trial and Trial of this case, and he was even personally informed by the Officer-in-Charge by telephone in Bacolod City last November 14, 1976, the said Officer-in-Charge was in Bacolod at that time considering that the telegram was sent last November 8, 1976, yet, the confirmation copy attached in the record of this case, instructing the officer-in-charge of this court to set the Pre-Trial and Trial of this case on November 17, 1976, and said instruction was immediately complied with the officer-in-charge, as evidenced by the notice of hearing dated November 9, 1976, which was personally delivered to Atty. Jose Dy c/o Bacolod Second Hand Store, Gonzaga Street, Bacolod City, and sent to Atty. Depasucat by registered mail, having Registry Receipt No. 3503, and also defendant F. Galgo Fuentes by Registered Mail, as evidenced by Registry Receipt No. 6948. So, Atty. Depasucat, counsel for defendants was given enough time to know of the setting of this case. The defendants did not also appear, they, having been notified of the said hearing set on November 17, 1976.

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"This Court declared the defendants in default and thus hereby ordered the plaintiffs to present their evidence *ex-parte* on November 17, 1976." (Pp. 51-52, Record.)

and in Her Honor's Statement and/or Comment dated April 11, 1977 as follows:

"1. Neither defendants nor their counsel appeared during the scheduled hearing on Pre-Trial and Trial on November 17, 1976, despite the corresponding notices issued to them on November 9, 1976, thru registered mail, which was followed by other means enumerated below;

"2. That due to the non-appearance of any of the defendants and counsel, plaintiff's counsel who had registered his appearance, verbally moved to have defendants declared in default and that the proceedings be had *ex-parte* due to the non-appearance of defendants counsel, Atty. Reynaldo C. Depasucat, despite notice as borne out by the records. The transcript of the stenographic notes taken down by Amapola V. Briones, court stenographer II, pages 1 to 15 of the November 17, 1976 proceedings and copy of which was secured by defendants, justifies the trial court's action based upon the oral motion of plaintiff's counsel to declare defendants in default;

"3. That on the August 4, 1976 hearing; which was initial Pre-Trial attended by parties and their respective attorneys, nothing was achieved or arrived at due to the defendants having filed their Motion for Preliminary Hearing of their affirmative defenses, an equivalent of a Motion to Dismiss, and which incident was considered submitted by the filing parties' respective memoranda as called for in the Order of August 5, 1976;

"4. That consequently, as borne out by the Notice of Hearing appearing on page 63, Records, sent out to the parties and their respective counsels, xerox copy of which is attached hereto as Annex '1' hereof the proceedings on November 17, 1976, was the continuation of the Pre- Trial and Trial on the merits, including all other incidents;

"5. That due to the non-appearance of defendants counsel, Atty. Reynaldo C. Depasucat, who had been notified of the November 17, 1977, proceedings, was ordered to pay a fine of ₱50.00 in contempt of court, as borne out in the transcript of stenographic notes of Amapola V. Briones, page 14 thereof;

"6. That as also borne out in the transcript of stenographic notes, respondent judge had the Officer-in-Charge of the Court advised or

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notified Atty. Reynaldo C. Depasucat, by long distance telephone call of the continuation of the hearing the following day, November 18, 1976, so that he may cross-examine the witnesses presented on November 17, 1976, but said counsel failed to come to court the following day. Had he appeared the following day, the Order of default of November 17, 1976, would have been lifted (TSN — BRIONES, November 17, 1976, p. 14);

"7. That, in order to prevent clogging of cases in court, the Decision of November 22, 1976 was issued embodying therein the declaration of default of the defendants.

II

"That the parties, including the defendants and their counsel Atty. Reynaldo C. Depasucat, were notified of the Pre-Trial and Trial set for November 17, 1976, as borne out by the records of the case (pages 63, 67 & 68, Records). Page 63 is the Notice of Hearing, the xerox copy of which is attached as Annex '1' hereof, while page 67 is the envelope addressed to Felicidad Galgo Vda. de Fuentes, et al., sent by registered mail, inclosing therein the Notice of Hearing, and xerox copy of the envelope is attached hereto as Annex '2' hereof, which also portrays the back of said envelope wherein is the notation of the Postmaster that at *7:45 AM delivery of the letter was attempted but party was out*. That formal notices of the November 17, 1976 hearing were sent to the defendants and are borne out by the following facts, to wit:

"1. Copy of the Notice of Hearing for November 17, 1976 as sent out to the parties, in xerox form, is attached as Annex '1' hereof;

"2. That service of the summons in the original case before Branch X, CFI, Negros Occidental at San Carlos City, presided over by respondent judge, to all defendants therein with their common address at Hacienda Santa Julia, Sagay, Negros Occidental was acknowledged, for all of them, by Violeta T. Fuentes, who is the wife of another defendant, Antonio Fuentes, as appearing at the back of page 7 of the Records and these original defendants are: Heirs of Jose Fuentes, Felicidad Galgo Vda. de Fuentes, Antonio Fuentes and Violeta Tupas, who are the petitioners before this Honorable Supreme Court;

"3. An envelope enclosing the Notice of Hearing, was sent thru registered mail, to Mrs. Felicidad Galgo Vda. de Fuentes, et al., using their address in the record which is Hacienda Santa Julia, Sagay,

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Negros Occidental and the xerox copy of the envelope which is page 67 of the Records is attached hereto as Annex '2' hereof As shown on the face of the envelope, the content was a Notice of Pre-Trial and Trial in Civil Case No. X-303, which is the *Rivera et al. vs. Fuentes et al.* case. At the back of the envelope can be read the notation: 'attempted "del" party out 11-16-76 7:45 AM." But at the face is the notation that RETURNED TO SENDER Reason: 'PARTY MOVED.' These show that the mailman attempted to deliver the letter to Mrs. Felicidad Galgo Vda. de Fuentes et al. at Hacienda Santa Julia, Sagay, Negros Occidental at 7:45 AM of November 16, 1976 but party was out. *Records show that defendants' addresses is 'Hacienda Santa Julia Sagay, Negros Occidental' (par. 1, Complaint p. 1, Records) which is admitted by defendants' Answer (par. 1, p. 11, Records).* That defendant Felicidad Galgo Vda. de Fuentes could not be delivered the Notice of Hearing is no fault of anybody else but hers/theirs as no forwarding address appears in the records. At the back of the return slip which accompanied the envelope, can be seen that the letter was initialed by somebody (illegible) who must have seen that it was a Notice of Hearing of the case and desisted to receive the letter or said Notice for Hearing;

"4. That to effectuate the service by registered mail, a radio message was sent on November 9, 1976 by the Deputy Clerk of Court to the Station Commander, San Carlos City, Negros Occidental to the Station Commander, Sagay, or Sagay Police Station, Sagay, Negros Occidental, to notify Felicidad Galgo Vda. de Fuentes and Antonio Fuentes, et al., to appear for Pre-Trial and Trial and on other incidents in Civil Case No. X-303, Branch X, CFI, San Carlos City, at 8:30 AM of November 17, 1976. Despite this, defendants did not appear.

"5. That defendants' counsel, Atty. Reynaldo C. Depasucat, was advised of this hearing on November 17, 1976, by means of the Notice of Hearing on Pre-Trial and Trial and on all incidents as can be seen in the xerox copy (Annex '1' hereof) sent thru registered mail. Aside from this written notice of hearing, he was contacted thru telephone by the Officer-in-Charge of the Court and this telephone advice has been admitted by him as, in fact, due to this telephone advice, on November 15, 1976, a telegraphic request for postponement of the hearing was sent by said Atty. Depasucat due to an alleged previous court commitment before Branch VI at Himamaylan, Negros Occidental. Xerox copy of the telegram appearing on page 70, Records, is attached hereto as Annex '3' hereof. But this telegram was known to the respondent judge only in the morning of November 17, 1976, during

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the hearing, as can be read from the transcripts of the proceedings had on that day. It is clear, therefore, that he accepted such notice as he, in fact, acted upon it by sending a telegram (Annex '3' hereof).

"6. That defendants' counsel having been notified by telephone of the hearing of November 17, 1976, on or before November 15, 1976, if he were not negligent, he should have advised his clients by any fast means of the notice of hearing made known to him by the Officer-in-Charge of the Court, Jerry C. Centeno. It would either be negligence or unbelievable to say that this counsel taking into account the importance and magnitude of this case, would not employ any possible means to advise his clients. If he did not, then it could be that it was the scheme of the party defendants to unduly delay the proceedings which, otherwise, they should have helped towards an early determination of the case.

"7. Or, that, is it not the behaviour of counsel to delay the proceedings of the court as shown in various instances by the records of this court (Branch X, CFI, Negros Occidental)? For was the same counsels' failure to answer the complaint against his clients in Civil Case No. X-249 not the basis of the Court's declaration of his clients in default as ordered by now Justice Rafael C. Climaco on August 28, 1975? And was it not due to the same counsel's non-appearance on July 28, 1976 in Criminal Case No. X-259, the reason why he was made to explain why he should not be punished for contempt of court for failure to appear despite notice sent to him as early as July 1, 1976? It seems that counsel has been taking this court for granted resulting to the unduly delay of the court proceedings which manner and behaviour are abhorred by this Honorable Supreme Court." (Pp. 198-206, Record.)

as well as in Her Honor's Supplemental Statement and/or Comment dated April 19, 1977 this wise:

"RESPONDENT JUDGE supplementing her Statement and/or Comment dated April 11, 1977, unto this Honorable Supreme Court, respectfully submits the following and states:

"1. That in connection with the radio message mentioned in Par. 4 on pages 6 and 7 of her Statement and/or Comment, examination of the records of the Office of the Station Commander at Sagay, Negros Occidental and with respect to the radio message which is found on page 68, Records, it has been found out that said radio message was delivered to petitioner Antonio Fuentes, one of the defendants

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in Civil Case No. X-303, Court of First Instance of Negros Occidental Branch X, San Carlos City on November 10, 1976, at 2:45 P.M.

"2. That said radio message is quoted below:

PLEASE NOTIFY FELICIDAD GALGO VDA. DE FUENTES AND ANTONIO FUENTES TO APPEAR PRETRIAL AND TRIAL HEARING OF PENDING INCIDENTS IN CIVIL CASE NO. X-303 *RIVERA ET AL VS. FUENTES, ET AL* WILL BE ON NOV. 12, '76 at 08:30 A.M. BEFORE CFI BRANCH X SAN CARLOS CITY

(Sgd.) CENTENO
Deputy Clerk of Court

"3. The records at the Sagay Station Commander, Sagay, Negros Occidental bears the following, to wit:

RADIO MESSAGE

FRM: SAN CARLOS CITY P10 1030 H NOV '76
TO: STN COMDR POL STN GROUP

42 CITE NEGATIVE

TEXT

PLEASE NOTIFY FELICIDAD GALGO VDA DE FUENTES AND ANTONIO FUENTES TO APPEAR PRETRIAL AND TRIAL HEARING OF PENDING INCIDENT IN CIVIL CASE NO. X-303 *RIVERA ET AL VS. FUENTES ET AL* WILL BE ON 17 NOV. '76 AT 08:30 A.M. BEFORE CFI BRANCH X SAN CARLOS CITY.

(Sgd.) CENTENO — DEPUTY CLERK OF COURT

"XHTTD BY:

PAT. APURADO SAN CARLOS

TOR 10 1130 H NOV '76/

RCVD BY:

A FUENTES DATE 11/10/76
TIME: 245 PM.

CERTIFIED XEROX COPY

(Sgd.) SIMON JIMENEZ
Police Sgt.

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"4. That the radio message having been received by Antonio Fuentes who affixed his signature at the bottom of the message at 2:45 PM of November 10, 1976 as appearing in the xerox copy attached hereto as Annex '1' hereof, defendant Antonio Fuentes who is the husband of defendant Violeta Fuentes, had admitted to have received such service of the notice of hearing on Pre-Trial and Trial for November 17, 1977, hence under Sec. 10, Rule 13, Revised Rules of Court, such written admission consists of proof of service." (Pp. 334-336, Record.)

And to complete Her Honor's version of the material circumstances of this case, it must be mentioned that to her letter to Atty. Juanito Ranjo, Clerk of Court of the Second Division of this Court, dated October 6, 1977, (Annex III of said letter) which although addressed to said Atty. Ranjo must have been intended for action by the Court, since the letter itself says "for further justification that there was proof of service to the defendants in Civil Case No. X-303 etc.," there is attached the affidavit of Rodolfo D. Sumanting reading:

"I, RODOLFO DIOKSON SUMANTING, of legal age, married Filipino, with residence and postal address at Sagay, Negros Occidental after being duly sworn to, hereby depose and say:

"That I am one of the letter-carrier employed in the Post Office of Sagay, Negros Occidental;

"That I was the one who delivered a registered letter addressed to Felicidad Galgo Vda. de Fuentes, et al., Hda. Santa Julia, Sagay, Negros Occidental, on November 16, 1976, at around 7:45 A.M., at the Hardware & Auto Supply Store owned by the Fuenteses also located at Sagay, Negros Occidental said registered letter coming from the CFI, Branch X, San Carlos City;

"That there were three (3) employees present at the above-named Hardware & Auto Supply Store owned by the Fuenteses, namely: Halili Talisic, Flora Sinogbuhan ang Joni Sinogbuhan, when I delivered the registered letter on November 16, 1976;

"That the registered letter was received and the return card was signed by one of the employees at the Hardware and Auto Supply Store, owned by Antonio Fuentes, but after the return card was signed by the said employee, after she have read that the envelope of the registered letter and the return card came from CFI, Branch X, San

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Carlos City, she returned the envelope of the registered letter together with the return card to me, informing me that the owner of the store, Antonio Fuentes was out and that Felicidad Galgo Vda. de Fuentes is no longer living at Hda. Sta. Julia, Sagay, Neg. Occ., that is why the Special Delivery Registered Book was not signed, altho' there already appears a signature on the return card which we sent back to CFI, Branch X. San Carlos City, together with the registered letter unopened;

"That this affidavit is executed to show that the registered letter above-mentioned was actually delivered by the undersigned at the Hardware & Auto Supply Store owned by the Fuenteses,' but after the return card was signed, the registered letter including the return card was returned to me, so I noted down on the envelope of the said registered letter — 'attempted delivery — party out - 11/16/76, 7:45 A.M.,' and have the same initialed.

"IN TESTIMONY WHEREOF, I have hereunto affix my signature this 28th day of Sept., 1977, at San Carlos, City, Neg Occ., Phils." (Page 375, Rec.)

In other words, from the foregoing affidavit, it appears clearly that the only attempt to serve notice of the setting of the "pre-trial, trial, *etc.* " in question upon private respondent Felicidad Galgo Vda. de Fuentes was made on November 16, 1976 at 7:45 o'clock in the morning in Sagay, Occidental Negros, that is, one day before the date set for said "pre-trial, trial, *etc.*," not to mention the fact that there is no showing that the Hardware & Auto Supply referred to, aside from being "owned by the Fuenteses," was also the residence or office of said Felicidad Galgo Vda. de Fuentes and that the one upon whom delivery of the registered mail concerned was attempted to be made was duly authorized by her to receive the same as contemplated by the pertinent postal rules. (See *Hernandez vs. Navarro*, 48 SCRA 44, 62-64.)[1]

We need not pass upon all the issues raised by the parties, in the lengthy and detailed discussion of which they included

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[1] It is to be observed that in Her Honor's Statement and/or Comment of April 11, 1977 (supra, Par. 11, 3), she assumed that the service was made in Hda. Santa Julia, a point not clearly indicated in Sumanting's affidavit.

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matters which if interesting and rather related to the subject case are not really indispensable in the determination or resolution of the pivotal issue in the instant petition. Anyway, if the petitioners were indeed improperly or illegally declared in default, as We can see is really the case here, then all the subsequent actuations of respondent court would necessarily fall like a house of cards.

We do not hesitate to hold, as We do hold, that petitioners were improperly declared in default, for the following considerations:

To start with, We are not convinced petitioners were given due and sufficient notice of the setting of the case on November 17, 1976 "for pre-trial, trial and hearing of all pending incidents."

Since the case was set for pre-trial, *inter-alia* it was indispensable under the specific provisions of Section 1 of Rule 20 and the jurisprudence thereunder that not only the counsel of record of the defendants but also all the defendants should be separately served with notice. (*Pineda vs. Court of Appeals*, 67 SCRA 228, 234.) So, the immediate subject of inquiry should be whether or not this imperative requirement has been complied with in the instant case.

In this connection, however, it must be clarified that common sense and fairness demand a notice of pre-trial or trial or for that matter, of any proceeding in which notice to the parties is mandatory, must be such as to give them and their counsel ample opportunity to appear, having in view not only the distance of the place of hearing but also the time that would be needed to reach the same from where the party notified may be at the time of notice and the circumstance, in which they are at the time of such service — that is, whether or not said circumstance would reasonably enable them to comply with the notice. It is certainly inconsistent with simple justice for Us to hold that it is the inescapable duty of a party to appear before any court pursuant to a notice regardless of circumstances not of his own making and fault which render it physically impossible to do so, just because he has actually received the notice.

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In the instant case, it is not disputed that the notice setting the pre-trial in question for November 17, 1976 was received by Atty. Reynaldo C. Depasucat, counsel of record for petitioners in the court below by registered mail only in the afternoon of November 17, 1976, that is, after the trial had started in the morning or after the declaration of default had already been made. It is, however, admitted by said counsel that he was advised by the Officer-in-Charge (or Acting Deputy Clerk of Court) of respondent court by long distance telephone on November 14, 1976 of such setting, albeit, as noted in the very decision of Her Honor, counsel then and there already informed the said Officer-in-Charge that he had a conflicting previous engagement in another court. Anyway, on November 16, 1976, counsel formally advised the court by telegram of said conflict, and this telegram, the record reveals, was brought to the attention of Her Honor when proceedings were to start on November 17, 1976.

In the light of these circumstances, respondent court held that Atty. Depasucat should not have assumed that his telegraphic motion would be granted and that if really, he would in fact be busy in another court by previous engagement, he should have sent another lawyer from his office to take his place.

In other words, Her Honor adopted a strict and technical attitude. To be sure, she was not entirely without reason for doing so, but on the main and giving due consideration to the attendant circumstances, We believe that her inflexible attitude did not conform with the requirements of fairness and justice.

It is obvious that the case before her is substantially controversial. Indeed, the negative and affirmative defenses alleged in the answer of the defendants are not insubstantial, much less flimsy. For one thing, the defendants have no less than usually formidable Torrens Titles to show as basis for their defense. The subject-matter involved is not a mere trifle — about 80 hectares of sugar land in Negros Occidental where such properties are highly priced. The complaint was filed only on March 1, 1976. Defendants' request for deferment was the first postponement requested in the case. True it is, it was

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found later that, in fact, Atty. Depasucat appeared on the same day in a trial at Silay City, which was not Himamaylan, the place mentioned in his telegram to the court; still, it was a fact that he had a conflicting court engagement, which rendered it physically impossible for him to be in San Carlos City on the same day. He could not be entirely blamed, if he attended to a trial set earlier by another court.

Withal, the court had not yet resolved the motion to dismiss of the defendants which had been submitted for resolution on August 19, 1976. Consequently, because of such inaction of the court, the case cannot be clearly said to be ready even only for pre-trial. By having their special defense of prescription set for preliminary hearing, the defendants became entitled to previous notice of the court's resolution thereon before the case could be set for pre-trial or trial, for the same reasons that under Section 4 of the same rule, (Rule 16) where a motion to dismiss has been filed and the same is overruled, the defendant is inalienably entitled to the corresponding period to file his responsive pleading or answer, so that he may have the opportunity to adjust matters to the situation that might ensue in consequence of such denial.

So much with petitioners' counsel. As far as petitioner Violeta Tupas Fuentes, the wife of petitioner Antonio Fuentes, is concerned, there is not even any pretense that she was notified at all. Surely, the fact that she is the wife of the other respondent Antonio Fuentes, who is alleged to have been notified by radio thru the facilities of the Napolcom as early as November 10, 1976, assuming the explanation of respondent judge to such effect can stand against the denial by said petitioner, does not justify the omission to notify her separately. She is charged in the complaint of having committed fraud, together with her co-defendants, in securing the Torrens titles to the lands in question in their names. She is not sued merely as wife of Antonio Fuentes. Definitely, she is not a mere formal party in the case.

Accordingly to the very explanation of respondents, there was a failure to notify the other petitioner herein, Felicidad Galgo Vda. de Fuentes, who is also defendant in the case below

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because when the registered mail addressed to her and containing the notice in question was being delivered at the Hardware and Auto Supply Store "owned by Fuenteses also located at Sagay," to one of the employees thereat, the latter refused to accept the same after he had initially signed the return card, per affidavit of Rodolfo Diokson Sumanting, the letter carrier in charge of said delivery. Respondents would lay the blame for such failure upon petitioners.

The Court cannot consider such attempted delivery to be a valid service of the notice in dispute. The address of said petitioner in the record is Hda. Santa Julia, Sagay, Negros Occidental. There is not even any indication before Us that the store referred to by Sumanting in his affidavit is within said Hda. Santa Julia. There is no proof that said store was either her office or residence, much less than the employee who is alleged to have signed the return card was authorized by her to receive her mail. (*Hernandez vs. Navarro, supra.*)

Moreover, it was already at 7:45 a.m., November 16, 1976 that the attempt to serve her the notice was made. We hold, therefore, that there was failure to properly notify her due to no fault of her own. If by any stretch of the meaning of the rules or of the imagination, the above-related attempt to deliver the registered mail addressed to her can at all be deemed as complete under Section 8 of Rule 13, still, such resulting one day notice is not reasonable enough to place her under obligation to attend the proceeding scheduled for November 17, 1976 in San Carlos City, a place considerably distant from her residence.

Default is not a mechanical gadget for the acceleration of Judicial litigations. The laudable intention of respondent judge to terminate the subject case promptly is no excuse for cutting corners that the rules have fixed to insure that the constitutional requirement of due process is observed and safeguarded. The expeditious dispatch of court matters does not have to be gained by causing unnecessary inconvenience to any of the parties. As We said in *Lim Tanhu et al. vs. Ramolete et al.*, 66 SCRA 425, "the plain injunction of Section 2 of Rule 1 is that 'the rules shall be liberally construed in order to promote their object

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and assist the parties' in obtaining not only 'speedy' but more imperatively, 'just — and inexpensive determination of every action and proceeding.'" (pp. 441-442) Whether or not to declare a defendant in default requires mature consideration of all attendant circumstances, a sound discretion and a great deal of circumspection. A court is not supposed to grab the first opportunity, no matter how insubstantially grounded, to knock the defendant out of court. "A judgment by default may amount to a positive and considerable injustice to the defendant; and the possibility of serious consequences necessitates a careful and liberal examination of the grounds upon which the defendant may seek to set it aside." (*Coombs vs. Santos*, 24 Phil. 446, 449-450.) We reiterated this view in *Pineda vs. Court of Appeals*, 67 SCRA 228, thus: . . . We maintain fealty to the principle that courts should be liberal in setting aside orders of default, for default judgment is frowned upon, and unless it clearly appears that the reopening of the case is intended for delay, it is best that trial courts give both parties every chance to fight their case fairly and in the open, without resort to technicality." (at pp. 234-235) We have given full consideration to all the points raised by Her Honor and her co-respondents, and We are not persuaded petitioners have been proven to be engaged in any dilatory tactics.

Carefully and conscientiously scrutinizing all the relevant circumstances extant in the record, We hold that petitioners are entitled to the relief prayed or in their petition. We have purposely avoided discussing the other issues discussed by the parties in order to leave the parties at liberty to pursue in the proper forum and at the opportune time whatever action they deem wise to take in regard to their mutual accusations against each other, and that includes the respondent judge. There are, to be sure, some interesting and important point of procedure touched in the pleadings of the parties as may be gleaned from the very nature of the assailed actuations of respondent judge indicated at the outset of this opinion. However, it is obvious that this case can be decided without resolving them. Accordingly, We prefer to rule on them in more appropriate cases. Nonetheless, with respect to the setting of the subject case on the same

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date for pre-trial and trial and hearing of all pending incidents, the Court is of the considered opinion that it is preferable to hold only the pre-trial first and to schedule the trial and hearing of other incidents on later dates. For reasons obvious to all experienced practitioners, it is not always feasible, much less easy, to prepare for all of them at the same time. Preparation for trial, to be what it should be, is best done only after the pre-trial. Moreover, Section 5 of Rule 20 which provides that "the court shall cause to be prepared a pre-trial calendar of cases for consideration as above provided," more than suggests the preference of the rules that particular dates be set only for pre-trials separately from the ones for the holding of trials proper.

It is to be noted that respondent court did not issue any separate order of default. Neither did it act on the petitioners' motion to dismiss as a distinct matter in a separate order. Such procedure is to say the least unusual. To discuss all three matters, namely, default, prescription and the merits of the other phases of the case in the decision itself could lead to confusion or failure on the part of the court to accord full and proper attention to all the points involved in each of them. Thus, while the decision in question states Her Honor's considerations regarding the issue of prescription, and, on the other hand, the petition now before Us assails those considerations and contends that the court's conclusion is predicated on an erroneous view of the matter, We prefer not to deal on that issue at this juncture. We believe it would be better for the trial court to reexamine the points raised in petitioners' affirmative defense/motion to dismiss. To that end, petitioners should file a new motion for reconsideration devoted exclusively to the issue of prescription, the trial court's attention being invited to the apparent necessity of distinguishing the facts of the subject case, should Her Honor be still minded to maintain her default order, from those involved in the cases of *Jaramil vs. Court of Appeals*, L-31858, Aug. 31, 1977, 78 SCRA 420, *De la Cerna vs. De la Cerna*, L-28838, Aug. 31, 1976, 72 SCRA 514, and cases therein cited, wherein this Court made pronouncements relative to the opposing contentions on the question of prescription of the parties in this case.

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IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered annulling and setting aside the decision by default rendered by respondent court on November 25, 1976 in its Civil Case No. X-303, including, for the reasons stated in the above opinion, the denial therein of petitioners' motion to dismiss. All proceedings subsequent to said decision, including the issuance of the writ of execution by said respondent are correspondingly set aside. Respondent court is ordered to conduct appropriate continuation proceedings consistently with the foregoing opinion. In regard to the accusations of the parties against each other, their respective rights to take them up in the proper forum and occasion is hereby reserved. Costs against private respondents.

Fernando (Chairman), Antonio, Aquino, and *Santos, JJ.*, concur.

Concepcion Jr., J., is on leave.

SECOND DIVISION

[G.R. No. L-47033. June 16, 1978]

GENEROSO CASTRODES and LAMBERTO CASTRODES, *petitioners, vs.* **HON. ALFREDO V. CUBELO, as Municipal Judge of Anda, Bohol; PEOPLE OF THE PHILIPPINES; DIRECTOR OF PRISONS, and JULIAN, BENEDICTO, VENANCIO and JOSEPATRO, all surnamed AMPONG,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; USURPATION OF REAL PROPERTY; ELEMENTS THEREOF.**— The elements of the offense are (1) occupation of another's real property or usurpation of a real right belonging to another person;