Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BOBIE ROSE D. V. FRIAS, as represented by MARIE REGINE F. FUJITA,
Petitioner,

- versus -

ROLANDO F. ALCAYDE,
Respondent.

G.R. No. 194262

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

FEB 28 2018

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DECISION

TIJAM, *J.*:

> "*Due process dictates that jurisdiction over the person of a defendant can only be acquired by the courts after a strict compliance with the rules on the proper service of summons.*"[1]

Challenged in this appeal[2] is the Decision[3] dated May 27, 2010 and Resolution[4] dated October 22, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 109824.

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[1] *Pascual v. Pascual*, 622 Phil. 307, 312 (2009).
[2] *Rollo*, pp. 8-31.
[3] Penned by CA Associate Justice Vicente S. E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Samuel H. Gaerlan, id. at 38-53.
[4] Id. at 54-57.

The facts are as follows:

On December 5, 2003, petitioner Bobie Rose D.V. Frias, as lessor and respondent Rolando Alcayde, as lessee, entered into a Contract of Lease involving a residential house and lot (subject property) located at No. 589 Batangas East, Ayala Alabang Village, Muntinlupa City, for a period of one year, starting on December 5, 2003 up until December 4, 2004, with a monthly rental of Thirty Thousand Pesos (₱30,000). Respondent refused to perform any of his contractual obligations, which had accumulated for 24 months in rental arrearages as of December 2005.[5]

This prompted petitioner to file a Complaint for Unlawful Detainer,[6] docketed as CV Case No. 6040, with the Metropolitan Trial Court (MeTC), Muntinlupa City, Branch 80, against the respondent.[7] As per the Process Server's Return[8] dated February 14, 2006, the process server, Tobias N. Abellano (Mr. Abellano) tried to personally serve the summons to respondent on January 14 and 22, 2006, but to no avail. Through substituted service, summons was served upon respondent's caretaker, May Ann Fortiles (Ms. Fortiles).

On July 26, 2006, the MeTC rendered a Decision,[9] in favor of the petitioner and ordered respondent to vacate the subject premises and to pay the petitioner the accrued rentals at 12% legal interest, plus ₱10,000 in attorney's fees. The dispositive portion reads, thus:

> WHEREFORE, judgment is hereby rendered in favor of the [petitioner] and against [respondent] ordering:
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> 1. The [respondent] and all persons claiming right over him to immediately vacate the subject premises located at No. 589 Batangas East, Ayala Alabang Village, Muntinlupa City and peacefully surrender possession thereof to the [petitioner];
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> 2. The [respondent] to pay the accrued rental arrearages from December 2003 up to the time he vacates the property in the amount of THIRTY THOUSAND PESOS (Php30,000.00) per month with twelve (12%) percent legal interest; and
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> 3. The [respondent] to pay the [petitioner] the amount of TEN THOUSAND PESOS (Php10,000.00) as reasonable attorney's fees and to pay the cost of the suit.
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> SO ORDERED.[10]

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[5] Id. at 74.
[6] Id. at 77-79.
[7] Id. at 39.
[8] Id. at 82.
[9] Penned by Presiding Judge Paulino Q. Gallegos, id. at 74-76.
[10] Id. at 76.

On July 4, 2007, the MeTC issued an Order,[11] granting petitioner's Motion to execute the Decision dated July 26, 2006, and denying respondent's Omnibus Motion thereto.

On July 25, 2007, respondent filed a Petition for Annulment of Judgment with Prayer for Issuance of TRO and/or Injunction,[12] with the Regional Trial Court (RTC), Muntinlupa City, Branch 203. Respondent averred that the MeTC's July 26, 2006 Decision does not bind him since the court did not acquire jurisdiction over his person. Respondent likewise averred that the MeTC lacked jurisdiction over the case for two reasons: (1) petitioners' complaint has no cause of action for failure to make a prior demand to pay and to vacate; and (2) petitioner's non-referral of the case before the *barangay*. [13]

A copy of the petition for annulment of judgment was allegedly served to the petitioner. Based on the Officer's Return[14] dated July 27, 2007, Sheriff IV Jocelyn S. Tolentino (Sheriff Tolentino) caused the "service of a Notice of Raffle and Summons together with a copy of the complaints and its annexes" to the petitioner, through Sally Gonzales (Ms. Gonzales), the secretary of petitioner's counsel, Atty. Daniel S. Frias (Atty. Frias).

On September 7, 2007, the RTC, through Judge Pedro M. Sabundayo, Jr. issued an Order,[15] containing therein the manifestation of respondent that he is withdrawing his application for a TRO and is now pursuing the main case for annulment of judgment.

On September 25, 2007, respondent filed an Ex-Parte Motion,[16] to declare petitioner in default, on the ground that despite her receipt of the summons, she has yet to file any pleading.[17]

On October 3, 2007, the petitioner filed a Special Appearance/Submission (Jurisdictional Infirmity Raised),[18] alleging among others, that respondent's Motion to Revive Relief re: Issuance of a TRO merits neither judicial cognizance nor consideration.[19]

On October 30, 2007 the MeTC issued a Writ of Execution,[20] for the purpose of implementing its July 26, 2006 Decision.

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[11] Id. at 80-81.
[12] Id. at 60-73.
[13] Id. at 40.
[14] Id. at 85.
[15] Id. at 86.
[16] Id. at 87-88.
[17] Id. at 40.
[18] Id. at 89-101.
[19] Id. at 40.
[20] Id. at 113-114.

On November 5, 2007, Sheriff III Armando S. Camacho, sent a Notice to Pay and to Vacate[21] to respondent. Attached to the notice was the October 30, 2007 Writ of Execution.

In the RTC's Order[22] dated November 15, 2007, the RTC issued a TRO enjoining the MeTC from implementing its July 26, 2006 Decision, and setting the hearing for respondent's prayer for writ of preliminary injunction.[23]

On November 29, 2007, petitioner, through her representative, Marie Regine F. Fujita (Ms. Fujita), filed a Preliminary Submission to Dismiss Petition – Special Appearance Raising Jurisdictional Issues (Preliminary Submission), on the ground of lack of jurisdiction over her person.[24] She pointed out that the defect in the service of summons is immediately apparent on the Officer's Return, since it did not indicate the impossibility of a personal service within a reasonable time; it did not specify the efforts exerted by Sheriff Tolentino to locate the petitioner; and it did not certify that the person in the office who received the summons in petitioner's behalf was one with whom the petitioner had a relation of confidence ensuring that the latter would receive or would be notified of the summons issued in her name.[25]

On December 3, 2007, the RTC issued an Order,[26] granting respondent's prayer for the issuance of a writ of preliminary injunction, to enjoin the MeTC's July 26, 2006 Decision. The RTC ruled that although Atty. Frias maintained his special appearance, he actively participated in the proceedings by attending the summary hearing in the prayer for the issuance of the TRO on November 9, 2007 and November 20, 2007. The dispositive portion reads, thus:

> WHEREFORE, premises considered, the Court grants [respondent]'s prayer for the issuance of a preliminary injunction. Accordingly, the Court enjoins respondent and the Court Sheriff of Metropolitan Trial Court, Branch 80, Muntinlupa City and or his deputy or duly authorized representative(s) from implementing or enforcing the decision dated July 26, 2006 in Civil Case No. 6040 during the pendency of this action.
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> SO ORDERED.[27]

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[21] Id. at 112.
[22] Id. at 122.
[23] Id. at 41.
[24] Id. at 123-151.
[25] Id. at 12, 125.
[26] Id. at 152-155.
[27] Id. at 155.

On July 25, 2008, the law office of Real Brotarlo & Real entered its appearance as collaborating counsel for the petitioner.[28]

On August 11, 2008, petitioner filed a Manifestation and Omnibus Motion to Dismiss Petition for Annulment of Judgment and to Set Aside and/or Reconsider[29] the RTC's December 3, 2007 Order, reiterating in substance the November 29, 2007 Preliminary Submission. Petitioner alleged, among others, that the RTC's December 3, 2007 Order violated the well-settled rule that a writ of injunction is not proper where its purpose is to take property out of the possession or control of one person and place the same in the hands of another where title has not been clearly established by law.[30]

On August 22, 2008, the RTC issued an Order,[31] granting petitioner's November 29, 2007 Preliminary Submission. The RTC ruled that the summons and copies of the petition and its attachments were not duly served upon petitioner, either personally or through substituted service of summons strictly in accordance with the Rules. The RTC continued that there is no proof that Ms. Gonzales or Atty. Frias was authorized by the petitioner to receive summons on her behalf. Since the face of the Officer's Return is patently defective, the RTC ruled that the presumption of regularity of performance of duty under the Rules does not apply. The RTC, thus, ordered the dismissal of the petition for annulment of judgment.[32] The dispositive portion of which reads, thus:

> WHEREFORE, premises considered, the preliminary submission to dismiss petition and Omnibus Motion filed by [petitioner] Bobbie Rose DV Frias are granted and the petition for annulment of judgment filed by Rolando Alcayde is DISMISSED. The Order of the court dated December 3, 2007 granting the issuance of a preliminary injunction is recalled and set aside considering that since the court has not acquired jurisdiction over the person of the [petitioner], all the proceedings in this case are without any force and effect.
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> SO ORDERED.[33]

On September 4, 2008, respondent filed a Manifestation and Motion,[34] praying for the recall of the August 22, 2008 Order and/or to maintain the status *quo*.

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[28] Id. at 156.
[29] Id. at 158-170.
[30] Id. at 168.
[31] Id. at 180-181.
[32] Id.
[33] Id. at 181.
[34] Id. at 182-185.

On September 15, 2008, respondent filed a Motion for Reconsideration[35] of the August 22, 2008 Order.

On October 6, 2008, petitioner filed a Consolidated Opposition,[36] alleging that the RTC held in abeyance the resolution of her November 29, 2007 Preliminary Submission, for eight (8) months until it issued its August 22, 2008 Order. She likewise alleged that there was nothing in the RTC's December 3, 2007 Order that categorically denied the November 29, 2007 Preliminary Submission.[37]

On November 3, 2008, the RTC, through Judge Juanita T. Guerrero, issued an Order,[38] granting respondent's Motion for Reconsideration, on the ground that he was not given an opportunity to file his Comment or Opposition to petitioner's August 11, 2008 Manifestation and Omnibus Motion. The dispositive portion of the order reads, thus:

> IN VIEW THEREOF, the Motion for Reconsideration is hereby GRANTED. The Order of the Court dated August 22, 2008 is recalled and set aside. The [respondent] is given fifteen (15) days from receipt of this order to file his Comment or Opposition or reiterates the one he filed, on the Manifestation and Omnibus Motion (i.) to Dismiss Petition for Annulment of Judgment (ii.) to Set Aside and/or Reconsider the Order dated December 3, 2007 and [petitioner] Bobbie Rose D.V. Frias through his counsel is given fifteen (15) days therefrom to file his Reply if necessary. Thereafter, said Manifestation and Omnibus Motion is considered submitted for resolution.
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> SO ORDERED.[39]

On November 17, 2008, respondent filed a Manifestation (in compliance with the Order dated November 3, 2008) and Supplement,[40] substantially reiterating his September 15, 2008 Motion for Reconsideration.

On November 28, 2008, petitioner filed a Manifestation and Reply (to Alcayde's Comment dated August 19, 2008 and Supplement dated November 12, 2008).[41]

On February 2, 2009, the RTC issued an Order[42] denying petitioner's August 11, 2008 Manifestation and Omnibus Motion, the dispositive portion of which reads, thus:

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[35] Id. at 186-194.
[36] Id. at 196.
[37] Id. at 196-202.
[38] Id. at 212-213.
[39] Id. at 213.
[40] Id. at 214-222.
[41] Id. at 223-231.
[42] Id. at 232-238.

> WHEREFORE, finding no reason to deviate from the Order of the Court dated December 3, 2007, the same is hereby maintained with modification that the Writ of Preliminary Injunction shall be issued upon filing of a bond in the amount of Php500,000.00 by the [respondent]. For emphasis, the Motion to Dismiss this petition for lack of jurisdiction is hereby DENIED.
>
> The petitioner BOBIE ROSE D. FRIAS is directed to file his ANSWER within a non-extendible period of ten (10) days from receipt of this Order.
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> SO ORDERED.[43]

On February 20, 2009, petitioner moved for the reconsideration[44] of the RTC's February 2, 2009 Order, but the same was denied in the RTC's Order[45] dated June 5, 2009.

On July 15, 2009, respondent filed an Ex-Parte Motion for Default,[46] to declare petitioner in default for the latter's failure to comply with the RTC's February 2, 2009 order requiring her to file an answer to the Petition for Annulment of Judgment.

Aggrieved, petitioner filed a Petition for *Certiorari*[47] with the CA, to which respondent answered by way of a Comment.[48] After the filing of petitioner's Reply,[49] the CA on May 27, 2010 rendered a Decision,[50] denying the petitioner's Petition for *Certiorari* for lack of merit.

The Motion for Reconsideration,[51] having been denied by the CA in its Resolution dated October 22, 2010,[52] petitioner filed this Petition for Review on *Certiorari*, raising the following issues:

> I. WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF AP[P]EALS ERRED IN NOT HOLDING THAT THE PAIRING JUDGE OF RTC 203 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT DISMISSING [RESPONDENT]'S PETITION FOR ANNULMENT OF JUDGMENT ON A GROUND THAT THE RTC 203 DID NOT ACQUIRE JURISDICTION OVER THE PETITIONER.

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[43] Id. at 238.
[44] Id. at 239-252.
[45] Id. at 256.
[46] Id. at 257-258.
[47] Id. at 259-287.
[48] Id. at 289-302.
[49] Id. at 303-322.
[50] Id. at 38-53.
[51] Id. at 323-328.
[52] Id. at 54-57.

II. WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE RTC 203 NEED NOT ACQUIRE JURISDICTION OVER THE PETITIONER AS LONG AS SAID RTC 203 HAS ACQUIRED JURISDICTION OVER THE *RES*.

III. WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT THE PAIRING JUDGE OF RTC 203 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT SETTING ASIDE THE ORDER DATED DECEMBER 3, 2007 OF THE RTC ENJOINING PETITIONER AND SHERIFF OF THE METROPOLITAN TRIAL COURT, BRANCH 80 OF MUNTINLUPA CITY FROM IMPLEMENTING ITS FINAL AND EXECUTORY DECISION DATED JULY 26, 2006.[53]

On the one hand, petitioner contends that the CA erred in not dismissing respondent's petition for annulment of judgment on the ground of lack of jurisdiction over her person. She maintains that since an annulment of judgment is a personal action, it is necessary for the RTC to acquire jurisdiction over her person. She likewise insists that the CA erred in not setting aside the RTC's Decision dated December 3, 2007.

On the other hand, the CA ruled that a petition for annulment of judgment is not an action *in personam*, thus, the court need not acquire jurisdiction over the person of the petitioner, as long as it has acquired jurisdiction over the *res*, which in this case was through the filing of the petition for annulment of judgment with the RTC. This pronouncement was adopted by the respondent in his comment to the instant petition.

The petition is meritorious.

It is elementary that courts acquire jurisdiction over the plaintiff or petitioner once the complaint or petition is filed. On the other hand, there are two ways through which jurisdiction over the defendant or respondent is acquired through coercive process – either through the service of summons upon them or through their voluntary appearance in court.

The function of summons in court actions

In the case of *Guiguinto Credit Cooperative, Inc. (GUCCI) v. Torres*,[54] We discussed the function of summons in court actions, in this wise —

[53] Id. at 17-18.
[54] 533 Phil. 476 (2006).

> Fundamentally, ***the service of summons is intended to give official notice to the defendant or respondent that an action has been commenced against it***. The defendant or respondent is thus put on guard as to the demands of the plaintiff as stated in the complaint. ***The service of summons upon the defendant becomes an important element in the operation of a court's jurisdiction upon a party to a suit, as service of summons upon the defendant is the means by which the court acquires jurisdiction over his person. Without service of summons, or when summons are improperly made, both the trial and the judgment, being in violation of due process, are null and void, unless the defendant waives the service of summons by voluntarily appearing and answering the suit.***
>
> When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. This is not, however, always the case. Admittedly, and without subjecting himself to the court's jurisdiction, ***the defendant in an action can, by special appearance object to the court's assumption on the ground of lack of jurisdiction***. If he so wishes to assert this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court, otherwise, he shall be deemed to have submitted himself to that jurisdiction.[55]

Elsewhere, We declared that jurisdiction of the court over the person of the defendant or respondent cannot be acquired notwithstanding his knowledge of the pendency of a case against him unless he was validly served with summons. Such is the important role a valid service of summons plays in court actions.[56]

Nature of a petition for annulment of judgment for purposes of service of summons

For a proper perspective, it is crucial to underscore the necessity of determining first whether the action subject of this appeal is *in personam*, *in rem*, or *quasi in rem* because the rules on service of summons under Rule 14 apply according to the nature of the action.[57]

An action *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. Its purpose is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on

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[55]Id. at 488-489 citing *Avon Insurance PLC v. CA*, 343 Phil. 849, 863 (1997).
[56]*Cezar v. Judge Ricafort-Bautista,* 536 Phil. 1037, 1046 (2006).
[57]*Gomez v. Court of Appeals*, 469 Phil. 38, 47-48 (2004).

him.[58] The following are some of the examples of actions *in personam*: action for collection of sum of money and damages; action for unlawful detainer or forcible entry; action for specific performance; action to enforce a foreign judgment in a complaint for a breach of contract.

Actions *in rem* are actions against the thing itself. They are binding upon the whole world.[59] The phrase, "against the thing," to describe *in rem* actions is a metaphor. It is not the "thing" that is the party to an *in rem* action; only legal or natural persons may be parties even in *in rem* actions.[60] The following are some of the examples of actions *in rem*: petitions directed against the "*thing*" itself or the *res* which concerns the status of a person, like a petition for adoption, correction of entries in the birth certificate; or annulment of marriage; nullity of marriage; petition to establish illegitimate filiation; registration of land under the Torrens system; and forfeiture proceedings.

A proceeding *quasi in rem* is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed.[61] In an action *quasi in rem*, an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property.[62] In an action *quasi in rem*, an individual is named as defendant. But, unlike suits in *rem*, a *quasi in rem* judgment is conclusive only between the parties.[63] The following are some of the examples of actions *quasi in rem*: suits to quiet title; actions for foreclosure; and attachment proceedings.

In actions *in personam*, the judgment is for or against a person directly. Jurisdiction over the parties is required in actions *in personam* because they seek to impose personal responsibility or liability upon a person.[64] "*In a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the latter has jurisdiction over the res. Jurisdiction over the res is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.*"[65]

Here, respondent filed a petition to annul the MeTC's July 26, 2006 Decision, which ordered him to vacate the premises of the subject property

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[58] *Muñoz, v. Atty. Yabut, Jr., et al.*, 665 Phil. 488, 515-516 (2011), citing *Pineda v. Judge Santiago*, 549 Phil. 560, 575 (2007).

[59] *Muñoz, v. Atty. Yabut, Jr., et al., supra,* at 509.

[60] *De Pedro v. Romasan Development Corp.*, 748 Phil. 706, 725 (2014).

[61] *Sps. Yu v. Pacleb, et al.*, 599 Phil. 354, 367 (2009).

[62] *Macasaet, et al. v. Co, Jr.*, 710 Phil. 167, 178 (2013).

[63] *Portic v. Cristobal,* 496 Phil. 456, 464 (2005).

[64] *De Pedro v. Romasan Development Corp., supra,* at 725.

[65] *Alba v. Court of Appeals,* 503 Phil. 451, 459 (2005).

and to pay the petitioner the accrued rentals thereon, in violation of the parties' lease contract.

Annulment of judgment, as provided for in Rule 47, is based only on the grounds of extrinsic fraud and lack of jurisdiction. Jurisprudence, however, recognizes lack of due process as an additional ground to annul a judgment.[66] It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. Annulment is a remedy in law independent of the case where the judgment sought to be annulled is rendered.[67] It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory. Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.[68]

Annulment of judgment involves the exercise of original jurisdiction, as expressly conferred on the CA by *Batas Pambansa Bilang* (BP Blg.) 129, Section 9(2). It also implies power by a superior court over a subordinate one, as provided for in Rule 47, wherein the appellate court may annul a decision of the regional trial court, or the latter court may annul a decision of the municipal or metropolitan trial court.[69]

For purposes of summons, this Court holds that the nature of a petition for annulment of judgment is *in personam*, on the basis of the following reasons:

First, a petition for annulment of judgment is an original action, which is separate, distinct and independent of the case where the judgment sought to be annulled is rendered. It is not a continuation or progression of the same case. Thus, regardless of the nature of the original action in the decision sought to be annulled, be it *in personam*, *in rem* or *quasi in rem*, the respondent should be duly notified of the petition seeking to annul the court's decision over which the respondent has a direct or indirect interest.

To consider a petition for annulment of judgment as either *in rem* or *quasi-in-rem*, would create an absurdity wherein the petitioner would simply file the petition in court, without informing the respondent of the same, through a valid service of summons. This is exactly what the CA reasoned out in its decision. The CA held that the court need only acquire jurisdiction over the *res*, which was "*through the institution of the petition for annulment of judgment*" with the RTC, conveniently invoking that

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[66] *Diona v. Balangue, et al.*, 701 Phil.19, 30-31 (2013).
[67] *Macalalag v. Ombudsman*, 468 Phil. 918, 923 (2004).
[68] *Nudo v. Hon. Caguioa, et al.*, 612 Phil. 517, 522 (2009).
[69] *Commissioner of Internal Revenue v. Kepco Ilijan Corporation*, G.R. No. 199422, June 21, 2016, 794 SCRA 193, 203.

"*jurisdiction over the res x x x is x x x acquired x x x as a result of the institution of legal proceedings with the court.*"[70] If left unchecked, this disposition would set a dangerous precedent that will sanction a violation of due process. It will foil a respondent from taking steps to protect his interest, merely because he was not previously informed of the pendency of the petition for annulment of judgment filed in court.

Second, a petition for annulment of judgment and the court's subsequent decision thereon will affect the parties alone. It will not be enforceable against the whole world. Any judgment therein will eventually bind only the parties properly impleaded.

Pursuant to Section 7, Rule 47,[71] a judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void.

In this case, had the RTC granted the respondent's petition, the MeTC's July 26 2006 judgment would have been declared a nullity. This would have resulted to the following consequences: as to the respondent, he would no longer be required to pay the rentals and vacate the subject property; and, as to the petitioner, she would be deprived of her right to demand the rentals and to legally eject the respondent. Clearly, through the RTC's judgment on the petition, only the parties' interests, *i.e.*, *rights and obligation*, would have been affected. Thus, a petition for annulment of judgment is one *in personam*. It is neither an action *in rem* nor an action *quasi in rem*.

We disagree with the CA's disquisition that since jurisdiction over the *res* is sufficient to confer jurisdiction on the RTC, the jurisdiction over the person of herein petitioner may be dispensed with. Citing the case of *Villanueva v. Nite*,[72] the CA concluded that the petition is not an action *in personam* since it can be filed by one who was not a party to the case. Suffice it to say that in *Villanueva*, this Court did not give a categorical statement to the effect that a petition for annulment of judgment is not an action *in personam*. Neither did We make a remark that said petition is either an action *in rem* or a *quasi in rem*. The issue in *Villanueva* was simply whether or not the CA erred in annulling and setting aside the RTC's decision on the ground of extrinsic fraud. Unlike in this case, there were no issues pertaining to the proper service of summons, to the nature of a petition for annulment of judgment or to the denial of due process by reason of a defect in the service of summons.

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[70] *Rollo*, pp. 51-52.

[71] *Section. 7. Effect of judgment.* - A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.

[72] 528 Phil. 867 (2006).

We cannot likewise lend credence to the respondent's claim that a petition for annulment of judgment is either an action *in rem* or *quasi in rem*. Suffice it to say that the petition cannot be converted either to an action *in rem* or *quasi in rem* since there was no showing that the respondent attached any of the properties of the petitioner located within the Philippines.[73]

Assuming *arguendo*, that a petition for annulment of judgment is either an action *in rem* or *quasi in rem*, still the observance of due process for purposes of service of summons cannot be deliberately ignored. For courts, as guardians of constitutional rights cannot be expected to deny persons their due process rights while at the same time be considered as acting within their jurisdiction.[74]

There was neither a valid service of summons in person nor a valid substituted service of summons over the person of the petitioner

At any rate, regardless of the type of action – whether it is *in personam*, *in rem* or *quasi in rem* – the proper service of summons is imperative.[75]

Where the action is in *personam* and the defendant is in the Philippines, as in this case, the service of summons may be done by personal or substituted service as laid out in Sections 6[76] and 7[77] of Rule 14. Indeed, the preferred mode of service of summons is personal service.[78] To warrant the substituted service of the summons and copy of the complaint, (or, as in this case, the petition for annulment of judgment), the serving officer must first attempt to effect the same upon the defendant in person. Only after the attempt at personal service has become impossible within a reasonable time may the officer resort to substituted service.[79]

This Court explained the nature and enumerated the requisites of substituted service in *Manotoc v. Court of Appeals, et al.*,[80] which We summarize and paraphrase below:

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[73] *Perkin Elmer Singapore PTE., Ltd. v. Dakila Trading Corp.*, 556 Phil. 822 (2007).

[74] *Yu v. Yu*, G.R. No. 200072, June 20, 2016, 794 SCRA 45, 64.

[75] *De Pedro v. Romasan Development Corp.*, *supra* note 60, 706, 727 (2014).

[76] *Section 6. Service in person on defendant.* - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

[77] *Section 7. Substituted service.* – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

[78] *De Pedro v. Romasan Development Corp.*, *supra* note 60, at 727.

[79] *Macasaet, et.al. v. Co, Jr.*, 710 Phil. 167, 170 (2013).

[80] 530 Phil. 454 (2006).

(1) Impossibility of Prompt Personal Service –

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service.

"Reasonable time" under Section 8, Rule 14, is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any, to the other party."

To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. Thus, one (1) month from the issuance of summons can be considered "*reasonable time*" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, ***the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant.***

For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period of one (1) month which eventually resulted in failure to prove impossibility of prompt service. ***"Several attempts" means at least three (3) tries, preferably on at least two (2) different dates. In addition, the sheriff must cite why such efforts were unsuccessful.*** It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return –

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the *Return* to justify substituted service.

(3) A Person of Suitable Age and Discretion –

If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein." A person of suitable age and discretion is one who has attained the ***age of full legal capacity (18 years old)*** and is considered to have enough discernment to understand the importance of a summons. ***"Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed.***" Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, ***the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.***

(4) A Competent Person in Charge –

If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, ***the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. Again, these details must be contained in the Return.*** [Emphasis and italics supplied].[81]

A copy of Sheriff Tolentino's *Return* dated July 27, 2007 reads, thus:

OFFICER'S RETURN

This is to certify the on the 27th day of July 2007, the undersigned caused the service of the *Notice of Raffle and Summons* together with a copy of the complaints and its annexes, to the following defendants, to wit:

BOBBIE ROSE DV FRIAS — served thru Ms. Sally Gonzales, a secretary of her counsel Atty. Daniel S. Frias, a person employed thereat of suitable age and discretion to receive such court processes. Inspite of diligent efforts exerted by the undersigned to effect personal service to the defendant, but still no one's around at her given address.

[81] Id. at 468-471.

HON. PAULINO GALLEGOS,
Presiding Judge – MTC Branch LXXX,
Muntinlupa City and Sheriff Armando
Camacho of MTC – Br. 80, Muntinlupa City –
served thru their authorized receiving clerk, Mr. Jay-R Honorica, a person employed thereat of suitable age and discretion to receive such court processes.

As evidenced by their signature's and stamp received appearing on the original copy of the Notice of Raffle and Summons.

WHEREFORE, in view of the foregoing, I am now returning herewith the original copy of the Notice of Raffle and Summons to the Honorable Court of origin, DULY SERVED, for its record's [sic] and information.

Muntinlupa City, July 27, 2007.[82]

A perusal, however, of the Officer's Return discloses that the following circumstances, as required in *Manotoc*, were not clearly established: (a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or place of business.[83]

The Officer's Return likewise revealed that no diligent effort was exerted and no positive step was taken to locate and serve the summons personally on the petitioner. Upon having been satisfied that the petitioner was not present at her given address, Sheriff Tolentino immediately resorted to substituted service of summons by proceeding to the office of Atty. Frias, petitioner's counsel. Evidently, Sheriff Tolentino failed to show that she made several attempts to effect personal service for at least three times on at least two different dates. It is likewise evident that Sheriff Tolentino simply left the "Notice of Raffle and Summons" with Ms. Gonzales, the alleged secretary of Atty. Frias. She did not even bother to ask her where the petitioner might be. There were no details in the Officer's Return that would suggest that Sheriff Tolentino inquired as to the identity of Ms. Gonzales. There was no showing that Ms. Gonzales was the one managing the office or business of the petitioner, such as the president or manager; and that she has sufficient knowledge to understand the obligation of the petitioner in the summons, its importance, and the prejudicial effects arising from inaction on the summons.

Indeed, without specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, a general statement that such efforts were made will not suffice for purposes of complying with the rules

[82] *Rollo*, p. 85.
[83] *Robinson v. Miralles*, 540 Phil. 1, 6 (2006).

of substituted service of summons.[84] This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute.[85] Sheriff Tolentino, however, fell short of these standards. For her failure to faithfully, strictly, and fully comply with the requirements of substituted service, the same is rendered ineffective. As such, the presumption of regularity in the performance of official functions, which is generally accorded to a sheriff's return,[86] does not obtain in this case.

Special appearance to question a court's jurisdiction is not voluntary appearance

In *Prudential Bank v. Magdamit, Jr.*,[87] We had the occasion to elucidate the concept of voluntary or conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority, thus:

> Preliminarily, jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court. As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of *motions to admit answer*, *for additional time to file answer*, *for reconsideration of a default judgment*, and *to lift order of default with motion for reconsideration*, is considered voluntary submission to the court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.
>
> Prescinding from the foregoing, it is thus clear that:
>
> (1) Special appearance operates as an exception to the general rule on voluntary appearance;
> (2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, *i.e.*, set forth in an unequivocal manner; and
> (3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.[88]

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[84] *Guiguinto Credit Cooperative, Inc. (GUCCI) v. Torres, supra* note 54, at 486.
[85] *Cezar v. Judge Ricafort-Bautista, supra* note 56, at 1047.
[86] *Nation Petroleum Gas Inc., v. RCBC*, 766 Phil. 696 (2015).
[87] 746 Phil. 649 (2014).
[88] Id. at 666, citing *Philippine Commercial International Bank v. Spouses Dy*, 606 Phil. 615, 633-634 (2009). Italics supplied.

Measured against these standards, it is readily apparent that the petitioner did not acquiesce to the jurisdiction of the trial court.

The records show that the petitioner never received any copy of the the respondent's petition to annul the final and executory judgment of the MeTC in the unlawful detainer case. As explained earlier, the copy of the said petition which was served to Ms. Gonzales was defective under the Rules of Court. Consequently, in order to question the trial court's jurisdiction, the petitioner filed the following pleadings and motions: *Special Appearance/Submission (Jurisdictional Infirmity Raised)*; *Preliminary Submission to Dismiss Petition (Special Appearance Raising Jurisdictional Issues)*; *Manifestation and Omnibus Motion to Dismiss Petition for Annulment of Judgment and to Set Aside and/or Reconsider*[89] the RTC's December 3, 2007 *Order*; *Consolidated Opposition, Manifestation and Reply (to Alcayde's Comment dated August 19, 2008 and Supplement dated November 12, 2008)*; and *Motion for Reconsideration against the RTC's February 2, 2009 Order*.

In all these pleadings and motions, the petitioner never faltered in declaring that the trial court did not acquire jurisdiction over her person, due to invalid and improper service of summons. It is noteworthy that when the petitioner filed those pleadings and motions, it was only in a "special" character, conveying the fact that her appearance before the trial court was with a qualification, *i.e.*, to defy the RTC's lack of jurisdiction over her person.

This Court is of the view that the petitioner never abandoned her objections to the trial court's jurisdiction even when she elevated the matter to the CA through her petition for *certiorari*. The filing of her pleadings and motions, including that of her subsequent posturings, were all in protest of the respondent's insistence on holding her to answer the petition for annulment of judgment in the RTC, which she believed she was not subject to. Indeed, to continue the proceeding in such case would not only be useless and a waste of time, but would violate her right to due process.

In its Order dated December 3, 2007, the RTC harped on the fact that petitioner's counsel, Atty. Frias, attended the summary hearing on November 9, 2007 of the respondent's prayer for the issuance of a TRO. This, however, can hardly be construed as voluntary appearance. There was no clear intention on the part of Atty. Frias to be bound by the proceedings. Precisely, his "special" appearance in the hearing was to challenge the RTC's lack of jurisdiction over her client. This Court held in *Ejercito, et al. v. M.R. Vargas Construction, et al.*[90] that the presence or attendance at the hearing on the application of a TRO should not be equated with voluntary

[89] *Rollo*, pp. 158-170.
[90] 574 Phil. 255 (2008).

appearance, thus:

> Despite Agarao's not being a party-respondent, petitioners nevertheless confuse his presence or attendance at the hearing on the application for TRO with the notion of voluntary appearance, which interpretation has a legal nuance as far as jurisdiction is concerned. ***While it is true that an appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person, the appearance must constitute a positive act on the part of the litigant manifesting an intention to submit to the court's jurisdiction***. Thus, in the instances where the Court upheld the jurisdiction of the trial court over the person of the defendant, the parties showed the intention to participate or be bound by the proceedings through the filing of a motion, a plea or an answer.
>
> Neither is the service of the notice of hearing on the application for a TRO on a certain Rona Adol binding on respondent enterprise. The records show that Rona Adol received the notice of hearing on behalf of an entity named JCB. More importantly, ***for purposes of acquiring jurisdiction over the person of the defendant, the Rules require the service of summons and not of any other court processes***. [Emphasis and italics supplied].[91]

As we have consistently pronounced, if the appearance of a party in a suit is precisely to question the jurisdiction of the said tribunal over the person of the defendant, then this appearance is not equivalent to service of summons, nor does it constitute an acquiescence to the court's jurisdiction.[92]

To recapitulate, the jurisdiction over the person of the petitioner was never vested with the RTC despite the mere filing of the petition for annulment of judgment. The manner of substituted service by the process server was apparently invalid and ineffective. As such, there was a violation of due process. In its classic formulation, due process means that any person with interest to the thing in litigation, or the outcome of the judgment, as in this case, must be notified and given an opportunity to defend that interest.[93] Thus, as the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of her defense, the petitioner must be properly served the summons of the court. In other words, the service of summons is a vital and indispensable ingredient of due process[94] and compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction.[95] Regrettably, as had been discussed, the Constitutional right of the petitioner to be properly served the summons and be notified has been utterly overlooked by the officers of the trial court.

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[91] Id. at 267-268.
[92] *Avon Insurance PLC v. CA.*, 343 Phil. 849 (1997).
[93] *Borlongan v. Banco De Oro*, G.R. No. 217617, April 5, 2017.
[94] *Express Padala v. Ocampo*, G.R. No. 202505, September 6, 2017.
[95] *Borlongan v. Banco De Oro, supra.*

Petition for annulment of judgment is an improper remedy

In any event, respondent's petition to annul the MeTC's July 26, 2006 judgment cannot prosper for being the wrong remedy.

A principle almost repeated to satiety is that an action for annulment of judgment cannot and is not a substitute for the lost remedy of appeal.[96] Its obvious rationale is to prevent the party from benefiting from his inaction or negligence.[97]

In this case, it is evident that respondent failed to interpose an appeal, let alone a motion for new trial or a petition for relief from the MeTC July 26, 2006 Decision rendering the same final and executory. Hence, the October 30, 2007 Order granting its execution was properly issued.

It is doctrinal that when a decision has acquired finality, the same becomes immutable and unalterable. By this principle of immutability of judgments, the RTC is now precluded from further examining the MeTC Decision and to further dwell on petitioner's perceived errors therein, *i.e.*, *that petitioners' complaint has no cause of action for failure to make a prior demand to pay and to vacate; and, that petitioner failed to refer the case before the barangay.*

Resultantly, the implementation and execution of judgments that had attained finality are already ministerial on the courts. Public policy also dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.[98] Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.[99]

Verily, once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution, the issuance of which is the trial court's ministerial duty. So is it in this case.

WHEREFORE, the Petition is **GRANTED.** The Decision dated May 27, 2010 and Resolution dated October 22, 2010 of the Court of Appeals in *CA-G.R. SP No. 109824,* are hereby **REVERSED** and **SET ASIDE**, and a new judgment is rendered ordering the **DISMISSAL** of the respondent Rolando F. Alcayde's petition for annulment of judgment.

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[96] *V.L. Enterprises and/or Faustino J. Visitacion v. CA*, 547 Phil. 87, 92 (2007), citing *Mercado v. Security Bank Corporation,* 517 Phil. 690, 696 (2006).

[97] *V.L. Enterprises and/or Faustino J. Visitacion v. CA*, *supra*, at 92.

[98] *Mejia-Espinoza, et al. v. Cariño*, G.R. No. 193397, January 25, 2017.

[99] Id.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Associate Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice