

[G. R. No. L-10137. March 25, 1958]

ELOISA C. AGUILAR, IN HER OWN BEHALF AND AS JUDICIAL ADMINISTRATRIX OF THE INTESTATE ESTATE OF THE LATE JOSE S. AGUILAR, PLAINTIFF AND APPELLANT, VS. SERAFIN R. GAMBOA, DEFENDANT AND APPELLEE.

D E C I S I O N

BENGZON, J.:

The Judge of the Occidental Negros Court of First Instance dismissed the complaint in this case on the ground of *res judicata*.

Said complaint (August 29, 1955) alleged in substance that: plaintiff is the judicial administratrix of the intestate of the deceased Jose S. Aguilar; in June 1952, defendant Serafin Gamboa started foreclosure proceedings in Civil Case No. 2335 of the same Court, against Luz C. Vda. de Aguilar et al., wherein judgment of foreclosure was rendered in December 1953 which has become final and executory; said. decision ordered the sale at public auction of the mortgaged properties (Lots Nos. 267, 184, 1696 and 1736 Pontevedra Cadastre) in spite of the fact that the contract of mortgage only encumbered the rights, interest, title and participation therein of Luz C. Vda. de Aguilar, who was not owner thereof; as the mortgaged properties belong to the estate of the late Jose S. Aguilar, which estate was not a party either to the contract of mortgage or to the foreclosure proceedings in Civil Case No. 2335, the decision in such Civil Case is entirely null and void; but the provincial sheriff is about to sell the lots at public auction, pursuant to writs of execution issued in said foreclosure proceedings.

Complainant prayed for annulment of said decision and for injunction to forbid the impending execution sale.

Setting up several grounds, the defendant on September 8, 1955, moved for dismissal of the action. A few days later, he submitted an additional motion based on *res judicata*, asserting that in a previous Civil Case No. 3064 of the same Court, the administrator of the estate of

Jose Aguilar had filed a complaint in June 1954, questioning the validity of the mortgage as affecting properties of the estate and challenging the efficacy of the decision in Civil Case No. 2335 and the execution issued thereunder; and that said Civil Case No. 3064 had been ordered definitely dismissed in September 1954.

After considering the arguments on both sides, the judge dismissed the action as stated, holding that it was barred by the previous order of dismissal in Civil Case No. 3064.

In his appeal to this Court, the plaintiff-appellant maintains it was error to dismiss on that ground.

According to our rulings on the matter, in order that a prior judgment may be conclusive upon a subsequent litigation, these requisites should be met:

- a. It must be a final judgment or order;
- b. The court rendering it must have jurisdiction of the subject matter and of the parties;
- c. It must be a judgment or order on the merits; and
- d. There must be between the two cases identity of parties, identity of subject matter, and identity of cause of action.^[1]

The plaintiff, in his printed brief, expressly admits the existence of the first three requisites. In connection with the third a few words may be apposite. The order of dismissal in Civil Case No. 3064 was issued upon the plaintiff's failure to appear at the hearing; and it expressly "orders the definite dismissal of this case, with costs against plaintiff." In the year 1934, this Court held that a dismissal upon plaintiff's failure to appear at the trial does not constitute *res judicata*,^[2] but that ruling was handed down before the adoption of the present Rules of Court, under which dismissal by reason of such failure *is adjudication upon the merits unless* expressly made without prejudice.^[3]

Concerning the fourth requisite, the plaintiff denies identity of parties "because while in Civil Case No. 3064, Jose Aguilar was the plaintiff and Serafin R. Gamboa (Luz C. Vda. de Aguilar) Jose Azcona and Cirilo Abrasia were the defendants, in the present case Eloisa C. Aguilar is the plaintiff and only Serafin E. Gamboa is the defendant." This point has no merit. In both cases, the plaintiff is the administrator or administratrix of the Estate of the deceased Jose Aguilar. And it makes no difference that Serafin Gamboa was defendant with others in the first case; because if he had been sued alone in the first case and he is now sued with others, the defense of *res judicata* would be decisive just the same.^[4]

“Where both the party offering a judgment as an estoppel and the party against whom it is so offered were parties to the action in which the judgment was rendered, it is no objection that the action included some additional parties who are not joined in the present action, * * *.” (50 Corpus Juris Secundum p. 301, citing many decisions.).

Contrary to appellant’s contention, we find that both cases refer to identical subject matter to wit: the parcels mortgaged by Luz Aguilar (Lots Nos. 267, 184, 1696 and 1736 Pontevedra Cadastre pages 7 and 64 Record on Appeal), the alleged nullity of the mortgage and of the decision and execution on foreclosure in Civil Case No. 2335.

In Civil Case No. 3064, it was asserted that Luz Vda. de Aguilar (widow of the deceased) had no right to mortgage the properties, not only because she was not the owner thereof but also because the properties were then under administration. It was prayed that the execution levied pursuant to the decision in Civil Case No. 2335 and the proposed sale of the above lots be stopped and that the mortgage be declared void.

These same allegations of want of authority are repeated in the complaint presently before this Court. The purpose is. to prevent the sale at public auction of the lots ordered foreclosed in Civil Case No. 2335, and although in Civil Case No. 3064, the prayer for annulment of the decision in No. 2335, was not expressed—as it is expressed now—it could have been decreed if plaintiff’s allegations therein had been substantiated. Such allegations in Civil Case No. 3064 although ostensibly aimed at the invalidity of the execution of the decision in No. 2335, were equally directed against the, enforceability of such decision under execution.

Of course, we observe that in this litigation there are allegations of lack of jurisdiction of the court that decided Civil Case No. 2335. However, these are presently immaterial because such issue could have been threshed out in Civil Case No. 3064 and is therefore barred. (Namarco vs. Hon. Judge Macadaeg, * 52 Off. Gaz., p. 182). And if appellant should argue that jurisdiction is essential when dealing with *res judicata*, the answer is that so far as we are concerned now, the matter of jurisdiction of the court that decided Civil Case No. 3064, (which jurisdiction appellant conceded at page 6 of his brief) is the decisive factor.

The situation, in short, is this: the wife mortgaged the above lots; in Civil Case No. 2335 foreclosure of the mortgage was decreed and sale of the lots, was ordered; in Civil Case No, 3064 the administrator of the husband (deceased) attempted to stop the execution alleging

that the lots belonged to the estate; the attempt failed, because the action was definitely dismissed. In the present action another administrator of the husband seeks to avoid the execution on the pretext among others that the lots belonged to his estate. What plaintiff wants is clearly to prevent the execution and nullify the foreclosure. Rather a belated effort or a dilatory move. The dismissal of Civil Case No. 3064 is conclusive. *Res adjudicata*.

Wherefore, the order dismissing the complaint is affirmed, with costs against appellant.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

^[1]Moran, Rules of Court (1957 Ed.) p. 609, 610 citing San Diego vs. Cardona, 70 Phil., 281, 283;

^[2]Lazaro vs. Mariano, 59 Phil., 627.

^[3]See Sec. 3, Rule 30; Moran Op. Cit. p. 432; Ouye vs. American President Lines, 77 Phil., 1 634; Gorospe vs. Millan, 87 Phil., 487, 48 Off. Gaz., 572.

^[4]Aquino vs. Sanvictores, 89 Phil., 532; Valdez vs. Pineda, 89 Phil., 547.