

MARCOS B. COMILANG, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (FIFTH DIVISION), ABDON DELENELA, GUILLERMO PEREZ, DOMINGA COMILANG AND ESTEBAN COMILANG, RESPONDENTS.

G.R. No. L-37312. July 15, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petition for review by way of certiorari of the decision of the Court of Appeals, promulgated on June 20, 1973.

In the aforesaid decision, the Court of Appeals set aside the decision of the lower court in Civil Case No. 848 (Marcos Comilang vs. Abdon Delenela, et al.) for partition on the ground that "the decision of the Supreme Court in the case of Marcos Comilang vs. Generoso A. Buendia, et al., G.R. No. L-24757, promulgated on October 25, 1967, constitutes *res adjudicata* insofar as the present case is concerned" Respondent Court of Appeals made the observation that the lower court in its decision also totally ignored the decision of the Supreme Court in the case of Maxima Nieto de Comilang vs. Abdon Delenela, et al.[1] which was reiterated and reaffirmed in the later case. It said:

" . . . the Supreme Court has finally settled the issue in that the appellants Delenela and Perez are the absolute owners of the surface ground of the property in question.

"The Supreme Court is the final arbiter of all legal questions properly brought before it, and its decision in any given case constitutes the law of that particular case. (Kabigting vs. Acting Director of Prisons, L-15548, October 30, 1962, 6 SCRA 281; Macansantos vs. Guinoo, L-19973, April 30, 1965, 13 SCRA 685; People vs. Olarte, L-22455, Feb. 28, 1967, 19 SCRA 494). 'Once the judgment of the Supreme Court has become final, it is binding on all inferior courts, and hence, beyond their power and authority to alter or modify it.' (Macansantos vs. Fernan, L-13726, May 31, 1961, 2 SCRA 277; Kabigting vs. Acting Director of Prisons, Oct. 30, 1962, 7 SCRA 281; Jocson vs. Glorioso, L-22686, Jan. 30, 1968, 22 SCRA 316)."

The antecedent facts prior to this appeal are as follows:

"About the year 1908, Nicolas Comilang staked a mining claim known as the 'Bua Fraction Mineral Claim' over a parcel of land in Tuding, Benguet, Mountain Province, with an area of 76,809 square meters, more or less. His exploration works in the mining claim did not last for long, for he abandoned it, and stopped the exploration, but he continued to live in the house he built on a portion of the land with his wife, brothers and sisters.

"In the year 1918, Macario Comilang also settled on a portion of the land with an area of about one (1) hectare, for residential and agricultural purposes. After his death, his daughter, Fabiana Comilang Perez remained to live in the house built by her father on the land. Still later, other relatives of the old Nicolas Comilang settled and built their own houses over other portions of the land, one of which houses was acquired by Abdon Delenela who now resides on the land with the other Comilang heirs.

"Surface rights over the area embraced in the original Bua Fraction Mineral Claim of Nicolas Comilang soon became the subject of litigation in the Court of First Instance of Baguio City (Civil Case No. 250 — Action to Quiet Title), instituted by the heirs of Guillerma, Marcelina, Julian, Timoteo, Melecio and Macario, all surnamed Comilang, against appellant herein Marcos Comilang who claimed to have bought the rights and interest of Nicolas Comilang in the old mining claim. In a decision rendered in said case No. 250, dated November 26, 1952, the court dismissed both claims of ownership of the plaintiffs and the defendant and declared the area public land. The court, however, recognized the possession of the parties over certain specified portions of the area, among which was an area of about one and one-half (1-½) hectares in possession of Marcos Comilang, which has been declared for taxation purposes in his name. This decision was affirmed by the Court of Appeals in CA-G.R. No. 11157-R on October 29, 1955.

"In the same year, the 1-½ hectares of land occupied by Marcos Comilang, then declared under Tax Declaration No. 4771 in his name, was levied upon and sold at public auction by the sheriff of Mountain Province to satisfy a judgment for a sum of money obtained by the spouses Jose Coloma and Eugenia Rumbaoa against Marcos Comilang in the Court of First Instance of Baguio, in Civil Case No. 1433. The judgment creditors were the purchasers at the auction sale, and a certificate of sale was executed in their favor by the sheriff on June 1, 1957.

"In the meantime, an application for lode patent covering the Bua Fraction Mineral Claim was filed with the Bureau of Mines. Abdon Delenela and his co-heirs filed their opposition to the application. Pending the controversy before the Bureau of Mines, Delenela and his co-heirs instituted an action for determination of their rights on the land in the Court of First Instance of Baguio City, docketed as Civil Case No. 735. The parties submitted an amicable settlement recognizing, co-ownership among themselves of the Bua Mineral Claim. In a decision rendered in said Case No. 735, dated March 3, 1958, the court awarded one-half in undivided share in the mineral claim in favor of Marcos Comilang, and the other half also in undivided share in favor of Abdon Delenela and co-heirs.

"Later, in the exercise of their right as co-owners, Abdon Delenela and Guillermo Perez, with the knowledge and conformity of Marcos Comilang, redeemed and bought from the Coloma spouses, the latter's rights, title, interest and claim to the 1 ½ hectares of land acquired under the certificate of sale thereof executed in the latter's favor by the sheriff on June 1, 1957. This redemption sale took place on June 11, 1958.

"On February 9, 1959, the Director of Mines recommended the issuance of a lode patent over the Bua Mineral Claim in favor of Marcos Comilang, Delenela, and the other claimants in the proportion of one-half (½) in undivided share in favor of Marcos Comilang, and the other one-half (½) also in undivided share in favor of Delenela and the other heirs pursuant to the decision of March 3, 1958, aforementioned, in Civil Case No. 735.

"On August 12, 1959, upon motion of Abdon Delenela and Perez, who have thus acquired and succeeded to the rights of the Coloma spouses on the 1-½ hectares, the Municipal Court of Baguio City issued a writ of possession in their favor directing the sheriff of Mountain Province to evict Marcos Comilang and his wife from the 1-½ hectares of land sold in the execution sale." [2]

As an aftermath of the foregoing events, three (3) cases were brought on appeal to this Court. The first case was the appeal of Maxima Nieto de Comilang, wife of Marcos Comilang, from the decision of the Court of First Instance of Baguio City in Civil Case No. 897, directing the Sheriff to place Guillermo Perez and Abdon Delenela in possession of the 1-½ hectares of land sold in the Sheriffs execution sale. The second is the appeal of Marcos Comilang from the Order of the Court of First Instance of Baguio City in Civil Case No. 1440, denying the petition of Marcos Comilang to annul the Order of the Municipal Court of Baguio City in Civil Case No. 1433, dated August 11, 1967, directing the Sheriff to place Abdon Delenela and Guillermo Perez in possession of the aforestated 1-½ hectares of land. The third is the case at bar.

In the first case, this Court had occasion to pass upon the question of whether or not the sale on execution of

residential land containing an area of 1-½ hectares to the spouses of Jose Coloma and Eugenia Rumbaoa and which was redeemed and bought from said spouses by Abdon Delenela and Guillermo Perez, with the conformity of the judgment debtor Marcos Comilang, included the mineral claim under it. Resolving this issue in the negative, this Court stated:

"We find the above ruling objectionable on two grounds: (1) that the certificate of sale on execution, as well as the order of the court for a writ of possession, expressly included a residential land alone and not the mineral claim known as the Bua Mineral Claim of nine hectares covered in part by the 1-½ hectares residential lot, and (2) there is no express or implied taking away of the said mineral rights or the mineral claim by virtue of the execution, nor is there any express act of Marcos Comilang supposedly consenting to the redemption by Delenela and Perez of the ownership of the mineral claim.

" . . . the only property actually sold at public auction . . . is the residential land containing an area of 1-1/2 hectares, together with the improvements existing thereon, without including the Bua Mineral Claim or the undivided one-half right thereto of Marcos Comilang

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"Aside from the fact that the mineral claim was not sold in execution, the provisions of the Mining Law expressly declare that the ownership of land for other purposes does not include the minerals, and that mineral rights are not included in agricultural land patents."[3]

This Court, however, affirmed the Order of the Baguio Court in so far as it sanctioned the ownership and possession of Guillermo Perez and Abdon Delenela over the 1-½ hectare residential lot.

In the subsequent case of Comilang vs. Buendia, et al.,[4] the same question in relation to the identical 1-½-hectare parcel of residential land subject matter of the earlier case was raised by Marcos Comilang. He claimed that the issuance of the mineral lode patent covering the mineral claim over the land which included the said 1-½hectares, conveyed full ownership, not only of the mineral rights, but also of title over the surface of the ground. He insisted that there could be no severance of the surface rights over a mineral claim located under the Philippine Bill of 1902, and, therefore, the Sheriff could not have validly sold the surface rights in the execution sale of June 1, 1957. He therefore challenged the final certificate of sale conveying the 1-½-hectare portion of Abdon Delenela and Guillermo Perez as an invalid disposition thereof. In its decision dated October 25, 1967, this Court, reiterating its earlier ruling, made the following observations:

". . . The validity of that sale was questioned when the Municipal Court ordered the eviction of appellant from the land sold on execution, and the Supreme Court declared in L-18897 that the sale was valid. The sale operated to divest appellant of his rights to the land which vested in the purchasers at the auction sale. The parties herein subsequently litigated their rights to the mineral claim in Civil Case No. 735 of the Court of First Instance of Baguio City, and on the basis of their amicable agreement (appellant was a party in the case), the court declared the Bua Mineral Claim co-ownership property of the parties thereto 'except the improvements existing thereon' (p. 9, appellant's petition). There is no room for doubt, therefore, that the right to possess or own the surface ground is separate and distinct from the mineral rights over the same land. And when the application for lode patent was prosecuted in the Bureau of Mines, the said application could not have legally included the surface ground sold to another in the execution sale. Consequently, We have to declare that the patent procured thereunder, at least with respect to the 1-½ hectares sold in execution, pertains only to the mineral right and does not include the surface ground of the land in question." (pp. 493-494.)

On December 15, 1968, the Court of First Instance of Baguio City and Benguet, presided over by Judge Pio R. Marcos, rendered a decision in Civil Case No. 848, an action for partition brought by Marcos Comilang against Abdon Delenela, Guillermo Perez, Dominga Comilang and Esteban Comilang, co-owners, of the mineral claims

known as the Bua Fraction Lode Mineral Claim, the identical mineral claim involved in the two Supreme Court decisions abovementioned. Contrary to the rulings enunciated by the Supreme Court in the two aforementioned cases, said court declared in part:

"The defendants claim that the partition of the Bua Fraction Mineral Claim should be limited only to the mineral rights and does not include the surface rights which belongs to them exclusively by virtue of the sale by the Colomas to them. Plaintiffs, however, maintain that the issuance of Lode Patent No. V-24 and the corresponding Original Certificate of Title No. P-404 of the Bua Fraction Mineral Claim in favor of plaintiff and defendants, include not only the minerals but also the surface.

"There is merit in the claim of plaintiffs in this case. Under the provisions of the Old Mining Law, (Act No. 624 of the Philippine Commission), under which the Bua Fraction was perfected, the locator is the owner, not only of the minerals but also all the surface ground. The Bua Fraction Lode Claim is covered by Original Certificate of Title No. P-404 and any claim adverse or otherwise not annotated in the said title is not recognized. The claim of defendants that they purchased the surface rights of Marcos Comilang is erroneous as said claim does not appear in the certificate of title. The alleged acquisition of the surface rights by defendants was on June 11, 1958, and the issuance of the patent of the Bua Lode Mineral was on November 7, 1966, yet defendants failed to file their claim with the Director of Mines or with the Mining Recorder of Baguio. They could not claim that they were not aware of the pendency of the application for the patent of said mineral claim as they even filed their opposition. Therefore, they are forever barred for their failure to file said claim by virtue of the provisions of the same mining laws and regulations."

The Court of First Instance, disregarding completely defendants Abdon Delenela, et al's claim for surface rights over the oft-mentioned 1-½ hectares, accordingly ordered the partition of the Bua Fraction Lode Mineral Claim among the plaintiff Marcos Comilang and defendants in the proportion agreed upon by them, namely, ½ to the plaintiff and 1/2 to the defendants. On January 17, 1969, defendants filed a motion for reconsideration alleging that the decision ordering partition was in contravention of the ruling laid down by the Supreme Court in the case of Comilang vs. Buendia, et al., supra, but said motion was denied on March 11, 1969. A petition for relief from judgment was likewise denied on September 8, 1969.

On October 6, 1969, defendants appealed to the Court of Appeals from the final decision dated December 15, 1968 and the Order dated September 8, 1969, denying their petition for relief from judgment. It is the decision of the Court of Appeals herein that is the subject of the present petition for review by certiorari.

The ultimate issue before this Court is whether or not the Court of First Instance of Baguio City and Benguet in Civil Case No. 848 had the authority to adjudicate to the petitioner one-half (½) of the ground surface of the Bua Mineral Claim, notwithstanding the final judgment in the previous cases recognizing the absolute ownership over the one and one-half (1-½) hectares of the surface rights of Abdon Delenela and his co-heirs.

There is no question that in the aforecited cases, We have held that the public auction sale of 1-½ hectares of the surface of the Bua Fraction Mineral Claim to the Coloma spouses and which was in turn acquired by Abdon Delenela and his co-heirs, operated to divest petitioner Marcos Comilang of his rights thereon. We likewise declared that such surface rights are severable from the mineral rights so that ownership over each of them may be lodged in two different persons. Consequently, the grant of the lode patent in favor of Marcos Comilang, Abdon Delenela and his co-heirs could not have legally included the one and one-half (1-½) hectares of the ground surface subject of the auction sale. Having thus resolved the question of ownership over the 1-½ hectares residential land (one of the issues raised in Civil Case No. 848 for partition of mineral rights in the two cases abovementioned), it cannot again be relitigated by the same parties in the subsequent action for partition.

"The fundamental principle upon which the doctrine of res judicata rests is that parties ought not to be

permitted to litigate the same issue more than once; that, when a right or fact has been juridically tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate. . . ."[5]

It is important to note that the parties in the two cases (De Comilang vs. Delenela, et al. and Comilang vs. Buendia, et al., supra) decided by this Court such as Marcos Comilang, Abdon Delenela and Guillermo Perez, are the same ones involved in the action for partition. It is true that the land involved in the action for partition covers a wider area because the Bua Fraction Lode Mineral Claim involves an area of 6.5765 hectares, whereas the area subject of previous litigation was only 1-½ hectares. However, this does not preclude the application of the principle of res judicata. Where it is shown that there is the same identity of the parties in both cases and that the land involved in the first case is included in the bigger land which is the subject matter of the second case, and the plaintiff's right to contest defendant's title or interest to the land involved in the first case had already been in issue and adversely decided in that case, the principle of res judicata applies.[6]

"A judgment upon the merits bars a subsequent suit upon the same cause, brought in a different form of action and a party, therefore, cannot by varying the form of action or adopting a different method of presenting his case escape the operation of the principle that one and the same cause of action shall not be twice litigated."[7]

This principle of res judicata is embodied in Rule 39, Sec. 49[b] and [c] of the Rules of Court, as follows:

"(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and for the same title and in the same capacity.

"(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

Sec. 49[b] enunciates that concept of res judicata known as "bar by prior judgment" while Sec. 49[c] refers to "conclusiveness of judgment". There is "bar by prior judgment" when, between the first case where the judgment was rendered and the second case which is sought to be barred, there is identity of parties, subject matter and cause of action. The judgment in the first case constitutes an absolute bar to the subsequent action. It is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. But where between the first and second cases, there is identity of parties but no identity of cause of action, the first judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.[8]

There is evidently identity of parties and subject matter between the two aforecited cases and the case at bar. Since, in the ultimate analysis, what was involved in the two previous cases was the right of ownership over the ground surface of the mining claim consisting of 1-½ hectares acquired by Abdon Delenela, et al. in the Sheriff's sale, there is identity of cause of action of those two cases with the case at bar, which involves specifically the right of ownership over the ground surface of the Bua Fraction Lode Mineral Claim. Even if there is no identity of cause of action, provided there is identity of parties and subject matter, the doctrine of res judicata in its second form, namely "conclusiveness of judgment" would be applicable.[9] Having definitely resolved in the two aforecited cases that the ownership over the 1-½ hectares of surface rights were vested in Delenela and Perez, such holding is conclusive upon the parties in this case, and, therefore, that question can no longer be relitigated

between them.[10]

Further distinction between the concepts of res judicata and "law of the case" may be made, thus:

" . . . 'The doctrine of law of the case' is akin to that of former adjudication, but is more limited in its application. It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case. The doctrine of res judicata differs therefrom in that it is applicable to the conclusive determination of issues of fact, although it may include questions of law, and although it may apply to collateral proceedings in the same action or general proceeding, it is generally concerned with the effect of an adjudication in a wholly independent proceeding." (30 Am. Jur. 913-914.)

The Court of First Instance, therefore, had neither power nor authority to adjudicate anew the rights of ownership of the parties over the ground surface to the extent of 1-½ hectares of the Bua Fraction Lode Mineral Claim.

It is claimed by petitioner, however, that private respondents "never filed any pleading alleging that the instant action is barred by reason of res judicata arising from the decision rendered in G.R. No. L-24757." But said party ignores the fact that private respondents have already interposed the defense of res judicata when they alleged as one of their affirmative defenses in their Supplemental Answer on September 7, 1964 that the cause of action is barred by prior judgments by reason of the decision of the Supreme Court in *Comilang vs. Delenela, et al.* in G.R. No. L-18897 promulgated on March 31, 1964, together with the decision of the Court of Appeals in Civil Case No. 250 in the City Court of Baguio, in Civil Case No. 1433. It must be noted that in the aforecited case of *Comilang vs. Delenela, et al.*, this Court had occasion to pass upon the validity of the sale on execution of the 1-½ hectares, by sustaining the rights of ownership of Delenela and Perez therein, which rights of ownership did not include that of the mineral claim. The case of *Comilang vs. Buendia, et al.*, which was promulgated on October 25, 1967 after the offer of evidence was made by private respondents on March 14, 1967 in Civil Case No. 848, reiterated the ruling in the earlier case of *Comilang vs. Delenela, et al.* that the auction sale operated to divest Marcos Comilang of his rights to the 1-½ hectares of land which vested in the purchasers. Considering, however, that petitioner has still a legal right over the mineral claim and to have his definite portion thereof segregated, the trial court, in the case at bar, may proceed with the partition of the mineral claim, excluding therefrom the one and one-half (1-½) hectares of the ground surface, the ownership of which belongs exclusively to Delenela and Perez.

WHEREFORE, finding no merit in the petition, the same is hereby denied, without prejudice to the court a quo rendering its judgment in Civil Case No. 848 in accordance with this opinion. Costs against petitioner.

Fernando, (Chairman), Barredo, Aquino, and Concepcion Jr., JJ., concur.

[1] 10 SCRA 598.

[2] *Comilang vs. Buendia, et al.*, 21 SCRA 486, 487-489.

[3] *De Comilang vs. Delenela, et al.*, supra, pp. 602-603.

[4] 21 SCRA 486.

[5] *Sarabia vs. Secretary of Agriculture and Natural Resources*, 2 SCRA 34, citing *PNB vs. Barretto*, 52 Phil. 818 and *Escudero vs. Flores*, June 25, 1955.

[6] *Lopez vs. Magallanes*, 7 SCRA 685.

[7] *Evangelista vs. Court of Agrarian Relations, et al.*, 109 Phil. 957, 963.

[8] *Heirs of Roxas vs. Galindo, et al.*, 108 Phil 582.

[9] *Tiongson vs. Court of Appeals, et al.*, 49 SCRA 429; *Viray vs. Marinas*, 49 SCRA 44.

[10] The doctrine of *res judicata* in its two forms must be distinguished from the related concept of "law of the case." These two concepts are different even though they are often classified together. The Court of Appeals seems to have combined the doctrines of *res judicata* and "law of the case" when it said: "The decision of the Supreme Court in the case of *Marcos Comilang vs. Generoso A. Buendia, et al.*, G.R. L-24757, promulgated on October 25, 1967, constitutes *res adjudicata* in so far as the present case is concerned and is now the law of the present case."

The Court of Appeals cites the case of *People vs. Olarte* (19 SCRA 494) which embodies and extensively discusses the principle of "law of the case". This case contains the following definition of the concept: "'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. (21 C.J.S. 330) . . . 'As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that question is right or wrong, the remedy of the party being to seek a rehearing. (5 C.J.S. 1277)' . . . (p. 498).

While "law of the case" and *res judicata* are closely akin to each other, it appears that there is a marked distinction between them. "(T)he law of the case does not have the finality of the doctrine of *res judicata*, and applies only to the one case, whereas *res judicata* forecloses parties or privies in one case by what has been done in another case" (21 C.J.S. 331, italics supplied. See also: *U.S. vs. Davis*, D.C.N.Y., 3 F. Supp. 97-98; *Words and Phrases*, Vol. 31, pp. 741-742.) This same concept was discussed in the case of *Zarate vs. Director of Lands* (39 Phil, 747, 749--750), thus: "A well-known legal principle is that when an appellate court has once declared the law in a case, such declaration continues to be the law of that case even on a subsequent appeal. The rule made by an appellate court, while it may be reversed in other cases, cannot be departed from in subsequent proceedings in the same case. The 'Law of the Case', as applied to a former decision of an appellate court, merely expresses the practice of the courts in refusing to reopen what has been decided. Such a rule is 'necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal.' Again, the rule is necessary as a matter of policy to end litigation. 'There would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms or their opinions, or speculate of chances from changes in its members. . . .' 'The phrase 'Law of the Case' is described in a decision coming from the Supreme Court of Missouri in the following graphical language: 'The general rule, nakedly and baldly put, is that legal conclusions announced on a first appeal, whether on the general law or the law as applied to the concrete facts, not only prescribed the duty and limit the power of the trial court to strict obedience and conformity thereto, but they become and remain the law of the case in all after steps below or above on subsequent appeal. The rule is grounded on convenience, experience, and reason. Without the rule there would be no end to criticism, reargitation, reexamination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigant were allowed to speculate on charges in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal would result in the foolishness of the inquisitive youth who pulled up his corn to see how it grew. Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use.' (*Mangold vs. Bacon* [1911], 237 Mo., 496, 512)."

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