

**TRINIDAD RASAY-LAHOZ, REMEDIOS RASAY-NEPOMUCENO,
ILUMINADA RASAY-JOCSON, JOSEFINA RASAY – MAUCK,
EDELWINA RASAY AND CENON RASAY, PLAINTIFFS-APPELLANTS,
VS. DOMINGO LEONOR, JULIA...**

G.R. No. L-27388. March 23, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Plaintiffs, Trinidad Rasay-Lahoz, Remedios Rasay-Nepomuceno, Iluminada Rasay-Jocson, Josefina Rasay-Mauck, Edelwina Rasay and Cenon Rasay, seek the reversal of an order of the Court of First Instance of Davao dismissing their complaint in this case.

The facts are not in dispute. On July 2, 1965, said plaintiffs instituted Civil Case No. 4731 of the Court of First Instance of Davao against herein defendants, Domingo Leonor, Juliana R. de Leonor and Francisco Leonor. In said complaint, plaintiffs prayed that two (2) deeds of sale - one executed by Juliana R. de Leonor, on May 10, 1956, in favor of Elena R. Ledesma, and the other executed by the latter, on May 18, 1956, in favor of Francisco Leonor - be declared "null and void and without any effect whatsoever," upon the ground that they are "fraudulent and fictitious"; that Francisco Leonor be ordered to reconvey and deliver to the plaintiffs the parcels of land described in said deeds of sale, as well as to render an accounting of the fruits of said land and to pay damages, attorney's fees and the costs. Invoking the statute of limitations of action and laches, the defendants moved to dismiss the complaint in said Case No. 4731. The motion was granted in an order dated October 23, 1965, upon the ground of prescription of action.

Soon after, or on November 5, 1965, plaintiffs filed the pre-sent action - Civil Case No. 4856 of the same Court - against the same defendants in Case No. 4731. The complaint in the case at bar is, in effect, identical to that filed in Case No. 4731, although a few words have been changed in the body of the complaint, and the prayer is that the aforementioned deeds of sale be declared "fictitious and simulated and void ab initio," instead of "null and void and without any effect whatsoever," as prayed in Case No. 4731. Accordingly, the defendants moved to dismiss the complaint herein, upon the ground that it is barred by the order of dismissal in Case No. 4731. The motion having been granted, plaintiffs interposed the present appeal.

The only issue in this appeal is whether or not the present action is barred by the order of dismissal of Case No. 4731, dated October 23, 1965. The answer must obviously be in the affirmative. To begin with, inasmuch as said order of dismissal was neither without prejudice nor based upon lack of jurisdiction, it had the effect and consequences of a dismissal on the merits.[1] Then, too, the parties in both cases are the same. There is, likewise, identity of the subject matter of litigation, namely, the deed of conveyance executed by Juliana R. de Leonor in favor of Elena R. Ledesma, dated May 10, 1956, and that executed by the latter, eight days later, in favor of Francisco Leonor. The cause of action in both cases - that is, the wrong or delict allegedly committed by the defendants by which, it is claimed, they violated the rights of the plaintiffs[2] - is, also, the same - the alleged

fraudulent or fictitious conveyances of the parcels of land described in said deeds of sale to the detriment of the plaintiffs.

Indeed, in both complaints, it is alleged that "through manipulations and machinations" of Juliana R. de Leonor, as judicial administratrix of the testate estate of Bienvenido Rasay, in Special Proceeding No. 15755 of the Court of First Instance of Manila, "she was able to secure an order from the probate court for the sale" of the aforesaid parcels of land; that through the "machinations" of the defendants, and "taking advantage of the fact that the heirs of the late Bienvenido Rasay" - namely, plaintiffs herein - "were then all minors except one who have just turned 21 years of age x x x , the title to the above-described parcels of land was transferred to the defendant, Francisco Leonor, who is the son of the administratrix and the defendant Domingo Leonor"; that - apart from the misrepresentations made to the probate court in order to secure its authority for the sale of said land - the afore-mentioned "machinations" consisted of: a) the execution of a "fictitious Deed of Sale dated May 10, 1956, x x x in favor of Elena R. Ledesma"; and b) "the execution of a x x x fictitious Deed of Sale dated May 18, 1956, in favor of the defendant Francisco Leonor, x x x without any consideration" therefor; that "the defendants have unlawfully taken possession" of said parcels of land since the execution of the above-mentioned fictitious deeds of sale, "thus depriving the plaintiffs as heirs from the enjoyment and benefits" thereof; and that, in consequence thereof, the plaintiffs "have suffered actual damages consisting of the natural, industrial and civil fruits of the said properties," which they are entitled to recover, in addition to "moral and exemplary damages," as well as "attorney's fees."

The same evidence would have supported and established, therefore, both the present complaint and that filed in Case No. 4731. What is more, under the allegations of the complaint in Case No. 4731, if proven, plaintiffs could have obtained a declaration of inexistence of the deeds of sale above referred to, in much the same way that, under the allegations of the complaint in the case at bar, plaintiffs could secure a declaration of nullity of said deeds, if the same, although not fictitious or simulated, are proven to have been made fraudulently. In other words, plaintiffs could have secured identical reliefs under both complaints.

Although postulated in a slightly different form, the present action is barred by the final order of dismissal in Case No. 4731, "since a party can not, by varying his form of action or adopting a different method of presenting his case, escape the effects of res judicata (Cayco v. Cruz, L-12663, August 21, 1959; Aguirre v. Atienza, L-10665, Aug. 30, 1958; Labarro v. Labitoria, 54 Phil. 845; Peñalosa v. Tuason, 22 Phil. 303, 321)."¹

Plaintiffs maintain that the lower court had erred in dismissing the complaint in the present case, because they (plaintiffs) are entitled to amend their complaint in Case No. 4731. This pretense is manifestly devoid of merit. Indeed, if they wanted to amend the complaint in Case No. 4731, they should have done so in that case. Having failed to do so, as well as to appeal from the order of dismissal therein issued, said order became final and executory, thus barring the present action.

WHEREFORE, the order appealed from is hereby affirmed, with costs against plaintiffs-appellants.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Tuballa v. De la Cruz, L-13461, March 20, 1961; Licup v. Manila Railroad Co., L-16196, May 30, 1961; Canite v. Madri-gal & Co., L-17836, Aug. 30, 1962; Guanzon v. Mapa, L-19249, Feb. 28, 1963; Rivera v. Luciano, L-20844, Aug. 14, 1965; General Offset Press, Inc. v. Anatalio, L-20467-68, July 26, 1966.

[2] Peñalosa v. Tuason, 22 Phil. 303; Juan v. Go Cotay, 26 Phil. 328; Chua Tan v. Del Rosario, 57 Phil. 411; Aguila v. J.M. Tuason & Co., L-24223, Feb. 22, 1968; Gonzales v. Gonzales, L-22717, Nov. 27, 1968.

1 Sarabia v. Secretary of Agriculture, L-16002, May 23, 1961.

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