

JOSE P. SANDEJAS, PLAINTIFF, AND APPELLANT, VS. ZACARIAS C. ROBLES, ELENA C. VDA. DE ROBLES AND ROSARIO Y. SINGSON, DEFENDANTS AND APPELLEES.

G.R. No. L-803. August 27, 1948

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal from an order of the Court of First Instance of Iloilo dismissing the plaintiff's action upon motion of the defendant on the ground that it is barred by prior Judgment.

The pertinent facts alleged in the complaint to which a motion to dismiss on the ground that the cause of action is barred by a prior Judgment la filed are those relating to the cause of action and the parties, because if they are the same as the cause of action and the parties in the prior judgment, or though the parties are different they represent the same interest, and the court rendering the prior judgment had jurisdiction over the subject matter and the parties, the subsequent action, is barred by the prior Judgment and should be dismissed.

In the present appeal, there is no question that the parties in the present and prior action are the same or represent the same interest, and that the cause of action in both are the same, that is, the performance or non performance of the terms and conditions of a contract of sale for the enforcement or resolution thereof. The only question to be determined is whether the Court which has rendered the former judgment had jurisdiction over the subject matter and the parties.

The appellants contend that the lower court erred in upholding the validity of the judgment of the Court of First Instance of Iloilo during the Japanese occupation, because; (1) "The said court had no jurisdiction to try , Civil Case No. 21, much less to render the decision in question on October 2, 1944; and (2) That granting for the sake of argument that the Puppet Court of First Instance of Iloilo had jurisdiction, yet such decision was rendered after having deprived plaintiff of his day in court and is therefore in violation of the due process clause of the Constitution."

As to the first question, the appellants do not question the ruling of this Supreme Court on the validity of the judgments rendered by the courts established in these Islands during the Japanese occupation laid down in *Co Kim Cham vs. Valdez Tan Keh*[1], Off. Gaz., 779; but they contend that, as the three parcels of land, involved or sold in the contract, of sale resolved by the prior judgment were located in the Municipality of Passi, Province of Iloilo, and "the puppet Republic of the Philippines since tho middle of the month of September, 1944, could no longer assert its authority over the major portion of the territory of Iloilo including the Municipality of Passi," then under the possession and control of the Panay guerrilla forces, the Court of First Instance of Iloilo which rendered the prior judgment had no jurisdiction over the res or the property because the action was quasi In rem, and therefore the said judgment is null and void.

This contention is premised on the wrong assumption that the action for the resolution of a contract of sale of a real property is an action quasi in rem. The action instituted by the appellees to resolve the contract of sale of said

parcels of land, is in personam and not quasi in rem.

This Court quoted with approval in *Grey Alba vs. De la Cruz*, 17 Phil. 61-62, the following definition of an action in personam:

"If the technical object of the suit is establish a claim against some particular person, with a judgment which generally, in theory at least, binds his body, or to bar some individual claim or objection, so that only certain persons are entitled to be heard in defense, the action is in Personam, although it may concern the right to or possession of a tangible thin If, on the other hand, the object is to bar indifferently all who might be minded to make an objection of any sort against the right sought to be established, and if anyone in the world has a right to be heard on the strength of alleging facts which, if true, shew an inconsistent interest, the proceeding is in rem." (*Tyler vs. Judges*, supra)

According to *American Jurisprudence*, Vol. I, page 435, "An action in personam has for its object a judgment against the person, as distinguished from a judgment against property, to determine its status. Whether a proceeding is in rem or in personam is determined by its nature and purpose, and by these only. A proceeding in personam is a proceeding to enforce personal rights and obligations brought against the person and based on 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."

In the case of *Banco Español-Filipino vs. Palanca*, 37 Phil. 921, 928, we held that "The action quasi in rem differs from the true action rem in the circumstance that in the former and individual is named as defendant, and the purpose of the proceeding is to subject his interest therein to the obligation or lien burdening the property. All proceedings having for their sole object the sale or other disposition of the property of the defendant, whether by attachment, foreclosure, or other form of remedy, are in a general way thus designated. The judgment entered in these proceedings is. conclusive only between the parties."

With respect to the second question. From the prior judgment marked as Exhibit A of the motion to dismiss, it appears that the appellants had submitted themselves to the jurisdiction of the Court of First Instance of Iloilo by filing their answers to the complaint through their Attorney Benjamin H. Tirrol, the same attorney who represents them now; that they were notified of the date set for the hearing of the action, but when the case was called for trial on September 29, 1944, their attorney asked and obtained permission from the court to withdraw his appearance as attorney for the appellants stating as ground therefor that it was difficult to communicate with his clients, who went to Arevalo, a suburb of and distant of about six or seven kilometers from the Iloilo City, capital of the Province of Iloilo; that to give the appellants opportunity to be heard, the hearing was postponed and set on the afternoon of the same date; and that as they did not appear on the afternoon the case was heard and judgment was rendered on October 2, 1944, declaring the resolution of the contract between the parties and ordering the appellees to return to the appellants the sum of P5,723.60, received by the former from the latter as payment on account of the sum of P55,000.00 agreed upon as purchase price.

And, according to the allegations in appellants' complaint, on October 25, 1944, the appellants filed a motion for reconsideration which was denied by the court, and when they tried to appeal from the decision the court denied the appeal on November 23, 1944, and declared the judgment final and executory; and, on November 29, the appellant: filed a motion for reconsideration of the order denying the appeal, and up to the filing of the complaint in the present case no resolution of the motion has been received by the appellants.

In view of the foregoing facts set forth in the decision Exhibit A and not contradicted or denied by the appellants, which show that the absence from the trial of the appellants was due to their own fault, appellants contention that they were deprived of their day in court is untenable.

The appeal is therefore dismissed. So ordered.

Paras, Actg. C.J., Pablo, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

[1] 75 Phil., 113.

DISSENTING OPINION

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We dissent:

We are the opinion that the appealed decision should be reverse and the lower court ordered to proceed with the case and render decision on the merits.

This stand is based on the reasons stated in our opinion in Co Kim Chan vs. Valdez Tan Keh, [1] (41 Off. Gaz., 779).

[1] 75 Phil., 113.

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