

PRECY A. BUNYI-LABAO, PLAINTIFF-APPELLANT, VS. MIRSA P. LABAO AND FRANCIS RODNICK B. CRUZ, DEFENDANTS-APPELLEES.

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is an appeal under Rule 41 of the Rules of Court, assailing the 6 September 2010 Order[1] of the Pasig City Regional Trial Court Branch 266 in Civil Case No. 72159. The challenged Order disposed thus:

“WHEREFORE, in the light of the foregoing, the Amended Complaint of plaintiff is DISMISSED with prejudice.”

The facts are as follows:

Spouses Ruben Labao and Gloria Factor were the registered owners of a parcel of land (subject property) located in Tipas, Taguig City. The subject property was covered by Original Certificate of Title No. 9445-0053 issued by the Register of Deeds of the Province of Rizal.

After the death of Gloria, Ruben contracted a subsequent marriage with herein plaintiff-appellant Precy A. Bunyi-Labao on 31 May 2002. On 10 November 2002 Ruben died. On 18 July 2003, defendant-appellee Mirsa P. Labao executed an Affidavit of Self-Adjudication declaring herself to be the sole heir of Ruben. Accordingly, OCT No. 9445-0053 was cancelled and, in lieu thereof, TCT No. 42351 was issued on 9 October 2003 in the name of defendant-appellee Mirsa Labao. She then sold the subject property to defendant-appellee Francis Rodnick Cruz in consideration of P700,000.00. Thus, TCT No. 42351 was cancelled and replaced by TCT No. 43 on 24 February 2004 under the name of defendant-appellee Cruz.

On 6 August 2009, plaintiff-appellant filed a Complaint for Nullification of Title against the defendants-appellees which was docketed as Civil Case No. 72159-TG. She maintained that she is the sole heir of her husband Ruben and not the defendant-appellee Mirsa Labao. Hence, she prayed that TCT No. 42351 be nullified and the sale of the subject property to defendant-appellee Cruz be declared null and void.

In his Answer filed on 9 December 2009, defendant-appellee Cruz refuted the allegations in the Complaint. He countered that the trial court has no jurisdiction to act on the Complaint for failure of plaintiff-appellant to pay the correct docket fees. He added that plaintiff-appellant was guilty of forum shopping because she failed to disclose in her certification against non-forum shopping that she previously filed a Motion for Intervention in Civil Case No. 69773 entitled “Reggie F. Labao vs. Mirsa Labao, et al.” involving herein subject property before the court a quo. Said motion was denied by the trial court on the ground that plaintiff-appellant has no interest over the subject property.

Defendant-appellee Cruz also filed a Cross-Claim against defendant-appellee Mirsa Labao arguing that he is a purchaser in good faith and for value and that he would have not parted with his money had he known that there was a controversy in the ownership of the subject property. Thus, he prayed that in the event that trial court uphold plaintiff-appellant's claim over the subject property, defendant-appellee Mirsa Labao should be made to

pay all the amounts he paid to the latter with legal interest, among others.

On her part, defendant-appellee Mirsa Labao filed a Motion to Dismiss on the grounds that (1) the Complaint failed to state a cause of action, and (2) plaintiff-appellant violated the rule against forum shopping. She averred that plaintiff-appellant has no interest over the subject property because the conjugal partnership property of Ruben and Gloria was not liquidated by the former upon the death of the latter. Hence, when Ruben contracted the subsequent marriage with plaintiff-appellant, the property regime that governed their marriage was one of complete separation of property. Defendant-appellee Mirsa Labao likewise pointed out plaintiff-appellant's alleged violation on prohibition against forum shopping when she attempted to conceal her Motion to Intervene in Civil Case No. 69773 which was denied by the trial court because she purportedly has no interest on the subject property.

In her Opposition to Defendant Mirsa P. Labao's Motion to Dismiss with Urgent Motions for Leave of Court to Amend Complaint and to Admit Attached Amended Complaint, plaintiff-appellant claimed that the allegations in the Complaint a quo sufficiently stated a cause of action and the issue of whether she has interest over the subject property can better be threshed out in a full-blown trial. She also countered that the prohibition against forum shopping is inapplicable on her because the denial of his Motion for Intervention was not on the merits but merely a preliminary finding by the trial court. Hence, she can still raise the said issue in an independent action such as the Complaint a quo.

Plaintiff-appellant subsequently moved for the amendment of the Complaint to add in his prayer the nullification of TCT No. 43 which was issued in the name of defendant-appellee Cruz in lieu of TCT No. 42351 in the name of defendant-appellee Mirsa Labao.

On 6 September 2010, the trial court issued the assailed Order granting plaintiff-appellant's motion to admit the amended complaint. The trial court also ruled that the Amended Complaint sufficiently stated a cause of action against the defendants-appellees. Still, the trial court dismissed the Amended Complaint on the ground of plaintiff-appellant's violation on the prohibition against forum shopping. In so ruling, the trial court ratiocinated that it already ruled in Civil Case No. 69773 that plaintiff-appellant has no interest over the subject property. The trial court thus concluded that her subsequent filing of the Complaint a quo raising the same issues again is a clear case of forum shopping.

Hence, the instant appeal. The sole issue to be resolved in this case is whether or not the trial court erred in dismissing the Amended Complaint on the ground of forum-shopping.

We rule in the affirmative.

There is forum shopping when the following elements are present: (a) identity of parties, or at least such parties represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration; said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.^[2]

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.^[3] The requisites of res judicata are:

(1)

The former judgment or order must be final;

(2)

It must be a judgment on the merits;

(3)

It must have been rendered by a court having jurisdiction over the subject matter and the parties; and

(4)

There must be between the first and second actions, identity of parties, subject matter, and cause of action.[4]

Plaintiff-appellant is not guilty of forum shopping. The denial by the lower court in Civil Case No. 69773 of plaintiff-appellant's Motion for Intervention is not a judgment on the merits which would amount to res judicata and would bar the filing by the plaintiff-appellant of a separate complaint against herein defendants-appellees. A judgment on the merits is one rendered after argument and investigation, and when there is determination which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point, or by default and without trial. Thus, a judgment on the merits is one wherein there is an unequivocal determination of the rights and obligations of the parties with respect to the causes of action and the subject matter of the case.[5] As ruled by the Supreme Court in Cruz vs. Court of Appeals[6]:

“xxx Res judicata applies only where judgment on the merits is finally rendered on the first complaint. It does not apply if no trial has been held yet on the first complaint. A judgment on the merits presupposes that trial has been conducted, evidence presented, and issues sufficiently heard and passed upon. It is a judgment rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal technical point.”

In this case, the denial of the Motion for Intervention is not a judgment on the merits. Rather, it is a preliminary action by the lower court based on Section 1, of Rule 19 of the Rules of Court which provides that a person must have a legal interest in the matter in litigation before he can be allowed by the court to intervene in an action. It is not a judgment wherein the parties, including herein plaintiff-appellant, were given full opportunity to present their respective evidence and arguments. Verily, the denial of the Motion for Intervention was not a full adjudication of the rights of the herein plaintiff-appellant and defendants-appellees, but was merely based on a preliminary finding of the lower court that plaintiff-appellant has no interest on the subject property. Hence, such order of denial cannot operate as res judicata that will bar the filing the Complaint a quo. In Asuncion vs. Pineda[7], the Supreme Court ruled:

“We note that in Civil Case No. 21048 which was an action for partition, the complainants were the Heirs of Spouses Maria Oliveros and Alejandro Soriano against the Heirs of Sotero Oliveros and Fausta Alarcon. Petitioner filed a motion to intervene therein which was denied by the court for reasons aforequoted. When petitioner's motion for intervention was denied, resultantly, he did not become a party to the case. Besides, the Order of the court denying his intervention is not a decision on the merits of Civil Case No. 21048. The said Order, therefore, does not constitute res judicata vis-a-vis the present case. Petitioner did not participate in the trial of Civil Case No. 21048 where he could have presented (but was not allowed) evidence to support his claim.” (Underscoring Ours.)

In sum, it cannot be said that plaintiff-appellant is guilty of forum shopping. With the denial of her Motion for Intervention in Civil Case No. 69773, it is her right to pursue her case in a separate action such as Civil Case No. 72159 to protect her rights on the subject property. There is no forum shopping in this case because plaintiff-appellant did not avail herself of several judicial remedies in different courts in the hope of increasing her

chances of obtaining a favorable judgment.

WHEREFORE, premises considered, the instant Petition is hereby GRANTED. The lower court is ordered to REINSTATE the Complaint a quo.

SO ORDERED.

Gaerlan,[*] and Sempio Diy,**] JJ., concur.

[*]Vice J. Marlene Gonzales Sison who is on leave per Office Order No. 450-14-ABR dated 10/29/14.

[**] Vice J. Edwin. D. Sorongon who is on leave per office Order No. 444-14-ABR dated 10/27/14.

[1] Rollo, at pp. 31-34.

[2] Mondragon Leisure and Resort Corporation v. United Coconut Planters Bank, G.R. No. 154187. April 14, 2004.

[3] Heirs of Panfilo F. Abalos v. Bucal, G.R. No. 156224, February 19, 2008, 546 SCRA 252, 271-272.

[4] Pentacapital Investment Corporation vs. Makilito B. Mahinay, G.R. Nos. 171736 and 181482, July 5, 2010.

[5] Melchor Custodio v. Rosendo F. Corrado, G.R. No. 146082. July 30, 2004.

[6] G.R. No. 134090, 309 SCRA 714, 724.

[7] G.R. No. 47924, 31 July 1989, 175 SCRA 719, 725-726.

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