

LAURO IMMACULATA, REPRESENTED BY HIS WIFE AMPARO VELASCO AS GUARDIAN AD LITEM, PETITIONER, VS. HON. PEDRO C. NAVARRO, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST IN...

G.R. No. L-42230. November 26, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the: (1) July 21, 1975 Order of the Court of First Instance (now Regional Trial Court) of Rizal, Branch II, in Civil Case No. 20968, entitled "LAURO IMMACULATA, etc. vs. Heirs of JUANITO VICTORIA, et al," dismissing the complaint seeking the annulment of a judgment rendered by Hon. Gregorio Pineda of the Court of First Instance of Rizal, Branch XXI, as well as the deed of sale with reconveyance of real property allegedly executed by plaintiff Lauro Immaculata in favor of Juanito Victoria; and (2) the Order dated December 5, 1975 denying the motion for reconsideration of the decision of July 21, 1975.

The records disclose that on March 24, 1975, petitioner Lauro Immaculata, represented by his wife Amparo Velasco as guardian ad litem, filed in the Court of First Instance of Rizal, Branch II, a complaint for annulment of judgment and deed of sale with reconveyance of real property, against private respondents herein and respondent sheriff, docketed as Civil Case No. 20968, entitled "LAURO IMMACULATA, etc. vs. Heirs of JUANITO VICTORIA, et al."

The complaint alleged that on or about December, 1969 or sometime prior thereto, Juanito Victoria with the cooperation of defendant Juanita Naval, one of the private respondents herein, and others succeeded in causing plaintiff Lauro Immaculata, petitioner herein, to execute a Deed of Absolute Sale in favor of Juanito Victoria, by unduly taking advantage of the mental illness and/or weakness of petitioner and thru deceit and fraudulent means, purportedly disposed of by way of absolute sale, a 5,000 square meter parcel of land covered by Transfer Certificate of Title No. 76069, for the sum of P58,000.00, which petitioner supposedly received, but in truth and in fact did not; that although it was made to appear that petitioner voluntarily and freely appeared before the Notary Public on January 13, 1970, petitioner, then already suffering from chronic mental illness, could not possibly appear before the said Notary Public; and that said Deed of Sale was not freely and voluntarily executed by petitioner, and the same was absolutely fictitious and simulated, and, consequently, null and void; that based on said fictitious and simulated sale, an action for specific performance was filed by Juanito Victoria, during his lifetime, against petitioner herein before the respondent Court on August 6, 1970 docketed as Civil Case No. 13734, entitled "Juanito Victoria vs. Lauro Immaculata," for the purpose of compelling petitioner to execute a document registerable with the Register of Deeds of Rizal in order that Juanito Victoria may be able to obtain title over the property; that no proper and valid service of summons was ever made upon the petitioner, and thus, notwithstanding, the latter was declared in default and judgment by default was rendered against him; that said judgment by default was null and void, having been rendered against a person who is/was admittedly insane and over whose person, the respondent court did not validly acquire jurisdiction; that the judgment by default was not

properly served upon the petitioner and/or the supposed guardian ad litem; and this, notwithstanding, Juanito Victoria, thru counsel, succeeded in securing the issuance of a writ of execution to enforce the judgment by default rendered by the respondent Court against the petitioner; that Juanito Victoria, alleging that the herein petitioner failed to comply with the alleged writ of execution, prayed before the respondent Court that the respondent Sheriff be directed to execute the necessary deed of conveyance in favor of Juanito Victoria covering the property subject matter of the complaint (Civil Case No. 13734); and, accordingly, respondent Court directed the respondent Sheriff to execute the deed of conveyance prayed for by Juanito Victoria, by reason of which, without the knowledge and consent of petitioner a new Transfer Certificate of Title No. 453711 was issued in favor of Juanito Victoria; that the said TCT No. 453711 is null and void having been based on void proceedings; that, in the alternative, petitioner prays that he be allowed to repurchase the property within five (5) years from the time judgment is rendered by the respondent court upholding the validity of the proceedings and the sale since the land in question was originally covered by a Free Patent title; and finally, petitioner prays for actual and moral damages as well as exemplary damages, attorney's fees, expenses of litigation and costs of suit (Rollo, pp. 18-30).

On May 28, 1975, private respondents, thru counsel, filed a motion to dismiss the complaint based on three grounds: (a) that respondent Court had no jurisdiction over the case; (b) that plaintiff's cause of action, if any, was barred by res judicata; and (c) that the complaint stated no cause of action (Rollo, pp. 41-44).

On July 21, 1975, respondent Court dismissed the complaint on the ground of res judicata, as follows:

"Based on the grounds alleged in the motion to dismiss copy of which appears to have been served upon Atty. Pedro Belmi for the plaintiffs and who filed no opposition thereto, and it further appearing that the issues raised in the complaint have already been the subject-matter of the decision rendered by a court of competent jurisdiction in Civil Case No. 13734 before Branch XXI of this Court, as prayed by the defendants this case is hereby ordered dismissed for being res judicata.

"With costs against the plaintiffs.

"SO ORDERED." (Rollo, p. 47.)

On September 8, 1975, petitioner moved for the reconsideration of the aforesaid order on the ground that res judicata is not applicable when the main cause of action is to annul the very judgment (Rollo, pp. 48-51), to which motion, private respondents filed their opposition dated October 21, 1975 (Rollo, pp. 52-53).

On December 5, 1975, the respondent trial court issued an order denying the motion for reconsideration of the July 21, 1975 decision (Rollo, pp. 55-56).

Hence, this petition for review on certiorari, filed on January 2, 1976 (Rollo, pp. 1-17).

In a resolution dated January 15, 1976, the Supreme Court, First Division, denied the petition for having been filed late and for late payment of the legal fees on January 2, 1976 due date being December 18, 1975 (Rollo, p. 59), but on motion for reconsideration of petitioner on February 5, 1976, (Rollo, pp. 67-71) the Supreme Court reconsidered the resolution of January 15, 1976, in the resolution of February 11, 1976, and required the respondents to comment thereon (Rollo, p. 73). Private respondents filed their comment on the petition on May 28, 1976 (Rollo, pp. 91-96) and in a resolution dated June 9, 1976, the Supreme Court re-solved to give due course to the petition (Rollo, p. 116).

Briefs were filed on September 27, 1976, by petitioner (Rollo, p. 135) and on January 20, 1977 by the private respondents (Rollo, p. 164).

In a resolution dated March 14, 1977, the Supreme Court resolved to declare the case submitted for decision

without petitioner's reply brief (Rollo, p. 186).

The sole issue to be resolved in this case is whether respondent court acted with grave abuse of discretion in dismissing the complaint filed by petitioner herein and in denying the motion for reconsideration thereof.

Petitioner contends that the complaint in Civil Case No. 20968 for annulment of a judgment and deed of sale is not barred by the judgment in Civil Case No. 13734 on the ground of res judicata because the judgment by default in Civil Case No. 13734 is void for lack of jurisdiction over the person of the petitioner and for lack of due process, and that there is no identity between the two cases because the complaint in Civil Case No. 20968 seeks to nullify the judgment by default rendered in Civil Case No. 13734 and the deed of sale while the previous complaint in Civil Case No. 13734 sought to compel petitioner to deliver to Juanito Victoria the owner's copy of Transfer Certificate of Title No. 280711.

The contention is not tenable.

It is true that the complaint for specific performance filed on August 6, 1970 by Juanito Victoria was not initially served upon defendant Lauro Immaculata as he was confined at the National Mental Hospital. It appears, however, that Amparo V. Immaculata, wife of defendant Lauro Immaculata, was appointed guardian ad litem as per order of the lower court dated March 20, 1971. Admittedly, the guardian ad litem, Amparo Immaculata, received and accepted on March 6, 1972 the alias summons issued by the lower court on April 28, 1971. Despite the service of the alias summons, petitioner Lauro Immaculata, now represented by his wife, as guardian ad litem failed to file the answer to the complaint in Civil Case No. 13734. On March 23, 1972, private respondents moved that petitioner, as defendant therein, be declared in default on the ground that petitioner received the summons and copy of the complaint on March 6, 1972 and up to the time of the filing of said motion, he had not filed his answer.

The lower court, in its order dated May 31, 1972, held in abeyance the resolution of the aforesaid motion until after the return of the summons shall have been made by the provincial Sheriff of Rizal. On July 17, 1972, private respondents herein again moved to declare petitioner in default. Since petitioner, defendant therein, had not filed his answer, an order of default was issued on July 27, 1972, and on October 4, 1972, judgment was rendered ordering defendant Lauro Immaculata to deliver to plaintiff Juanito Victoria the Certificate of Title of the lot in question.

Clearly, when the alias summons and a copy of the complaint were duly served upon petitioner, through his guardian ad litem, the lower court acquired jurisdiction over his person. Upon receipt of said summons and complaint, defendant's wife knew that her husband was impleaded as a defendant in a case involving their property and she should have exerted every effort to answer the complaint for the protection of their rights.

It must be pointed out also that the lower court did not act hastily or arbitrarily in declaring defendant Lauro Immaculata in default. Defendant, through his wife as guardian ad litem, had a reasonable opportunity to answer the complaint. As aforestated, the alias summons and a copy of the complaint were duly served upon defendant's wife on March 6, 1972. While, private respondents, as plaintiffs in Civil Case No. 13734, moved to declare defendant in default as early as March 23, 1972, the lower court did not act on it until July 23, 1972 when it acted on the manifestation and motion to declare defendant in default filed on July 17, 1972.

Assuming, arguendo, that there was no proper and valid service of summons upon petitioner herein, he should be deemed to have voluntarily submitted to the jurisdiction of the court when he filed on September 24, 1973 a petition to set aside the decision dated October 4, 1972 and the order dated July 12, 1973. It is generally said that "a party cannot invoke the jurisdiction of a court to serve affirmative relief against his opponent and, after

obtaining or failing to obtain such relief, repudiate or question that same jurisdiction." (Tijam vs. Sibonghanoy, 23 SCRA 20, 35 [1968]. Petitioner cannot now be allowed to belatedly adopt an inconsistent posture by attacking the jurisdiction of the court to which he submitted his cause voluntarily. Furthermore, it may be noted that on November 12, 1973, the lower court, after due hearing on petitioner's petition, denied the same on the ground that there is no new and compelling reason to warrant a reconsideration of the decision dated October 4, 1972 and the Order dated July 23, 1972 declaring defendant Lauro Immaculata, petitioner herein, in default.

It cannot be said therefore, that the judgment by default dated July 23, 1972 nor the decision dated October 4, 1972 rendered by the lower court was null and void because the court validly acquired jurisdiction over the person of the petitioner, and there was no denial of due process as petitioner was duly notified about the complaint in Civil Case No. 13734, and he received a copy of the decision dated October 4, 1972 and the order dated July 12, 1973 issuing a writ of execution and he actively participated in the case by filing a petition to set aside the aforesaid decision and order. It appears also that petitioner had knowledge of the order of default dated July 23, 1972.

Petitioner also claims that the dismissal of Civil Case No. 20968 on the ground of *res judicata* is unwarranted.

The claim is not meritorious.

It is true that Civil Case No. 13734 is an action for specific performance which seeks to enforce the right of the plaintiff therein, Juanito Victoria, to the title over the lot in question. However, when the lower court rendered its decision dated October 4, 1972, it in effect ruled on the validity of the contract of sale as it ordered the defendant therein, Lauro Immaculata, to deliver to the plaintiff therein, Juanito Victoria, the owner's copy of Transfer Certificate of Title No. 280711 and to execute the necessary documents in order that the sale in favor of the plaintiff may be registered. Hence, herein petitioner Lauro Immaculata can no longer question the validity of the sale in the present case, Civil Case No. 20968, because the said issue was already settled in Civil Case No. 13734, although it was an action for specific performance. It may also be noted that the issues raised in petitioner's complaint in Civil Case No. 20968 are substantially the same issues raised in his petition to set aside the decision dated October 4, 1972 and the order dated July 12, 1973 earlier filed on September 24, 1973 in Civil Case No. 13734, which, however, was denied by the lower court in its order dated November 12, 1973.

Finally, the respondent court did not act with grave abuse of discretion when it dismissed the complaint in Civil Case No. 20968 and denied the motion for reconsideration on the ground of *res judicata*.

It has been repeatedly held that in order for a judgment to be a bar to a subsequent case, the following requisites must be present: (1) it must be a final judgment; (2) the court which rendered it had jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be identity between the two cases, as to parties, subject matter and cause of action (Heirs of Juan Cuano Panotes and Rafael Obusan vs. Hon. Court of Appeals and Pedro Ibana, G.R. No. L-46073, August 13, 1986, and other cases cited).

In the case at bar, there appears to be no dispute that the judgment in Civil Case No. 13734 had already become final and executory. As a matter of fact, respondent court had already ordered on July 12, 1973 the issuance of the writ of execution in favor of the plaintiff, Juanito Victoria and against the defendant, Lauro Immaculata. It has been shown that the court which rendered the decision in Civil Case No. 13734 had jurisdiction over the subject matter and the parties in the case particularly Lauro Immaculata. There also appears to be no question that there was judgment on the merits in Civil Case No. 13734, and there was identity of parties, subject matter, and in effect in the causes of action in the two cases. Moreover, the issues raised in the complaint in Civil Case No. 20968 have already been the subject matter of the decision rendered by a court of competent jurisdiction in Civil Case No. 13734. Therefore, the judgment in Civil Case No. 13734 is a bar to Civil Case No. 20968 under the

principle of res judicata.

PREMISES CONSIDERED, this petition is hereby DENIED.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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