

DR. MELCHOR SANTOS, PLAINTIFF AND APPELLANT, VS. EMILIANO GABRIEL AND BENITO FRANCISCO, JR., DEFENDANTS AND APPELLEES.

G.R. No. L-22996. May 31, 1972

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Certified by the Court of Appeals that the issues raise purely questions of law, this case is now before this Court on appeal from the order of the Court of First Instance of Rizal, in its Civil Case No. 7121, dated October 20, 1962, dismissing the case upon the ground of *res judicata*, and from the order of January 9, 1963 denying the motion for reconsideration of the order of October 20, 1962.

The antecedent facts before the filing of the complaint in the present case in the court below are, as follows:

On May 19, 1958, Rodolfo Santos, the son of plaintiff-appellant Dr. Melchor Santos, was hit and run over by a passenger truck (bearing plate No. TPU-24605) owned and operated by defendant-appellee Benito Francisco, Jr., and driven by defendant-appellee Emiliano Gabriel, resulting in the instantaneous death of Rodolfo. Consequently, a criminal complaint, docketed as Criminal Case No. 7864, was filed in the Court of First Instance of Rizal charging Emiliano Gabriel with homicide through reckless imprudence.

The right to institute a separate civil action having been expressly reserved by the private prosecution in the above-mentioned Criminal Case No. 7864, on June 4, 1958, during the pendency of the criminal case, Melchor Santos filed before the same Court of First Instance of Rizal a complaint, docketed as Civil Case No. 5031, against Benito Francisco, Jr. alone, to recover from him, as owner and operator of the passenger truck and the employer of Emiliano Gabriel, damages for the death of his son.

In Criminal Case No. 7864 Emiliano Gabriel pleaded guilty to the charge against him, and on December 10, 1958, the Court of First Instance of Rizal sentenced him to suffer imprisonment for one year, as the minimum, to three years, as the maximum, and to pay the costs. On February 19, 1959, Melchor Santos, as plaintiff in Civil Case No. 5031, filed his second amended complaint, alleging therein the fact of Emiliano Gabriel's having been convicted in the criminal case, but without joining said Emiliano Gabriel as party defendant.

Defendant Benito Francisco, Jr., in Civil Case No. 5031, filed his answer to the amended complaint, setting up affirmative and special defenses, among which are: (1) that the complaint, as amended, states no cause of action; (2) that Emiliano Gabriel, alleged to be driving the passenger truck at the time of the incident in question, was not his employee, and so he could not be liable for Gabriel's negligence; and (3) that assuming that Emiliano Gabriel was his employee, he had exercised due care and diligence in selecting him and supervising over his work, and so he (Benito Francisco) could not be held liable for the result of his (Gabriel's) acts.

At the hearing of Civil Case No. 5031, held on March 23, 1959, counsel for defendant Benito Francisco Jr. asked the counsel for plaintiff Melchor Santos to state positively and categorically the nature of the cause of action of

the complaint whether it was one to enforce the subsidiary civil liability of an employer for the criminal act committed by his employee under the provision of Article 103 of the Revised Penal Code, or it was to enforce the primary liability of the employer for a quasi-delict committed by his employee under the provisions of Article 2180 of the Civil Code. Counsel for plaintiff Melchor Santos asserted that the cause of action could be gleaned from the allegations of the complaint, but he indicated that the cause of action was not based on culpa contractual. Plaintiff in the case then presented evidence in support of his complaint.

When the turn of defendant Benito Francisco, Jr. to present his evidence came up, his counsel announced that he would introduce evidence in support of the special defense of due diligence on the part of defendant in the selection and supervision of his employees. At this juncture, plaintiff's counsel objected to the presentation of such evidence and declared before the court that plaintiff's action was based solely on the provisions of Article 103 of the Revised Penal Code.[1]

Being thus apprised by plaintiff's counsel that plaintiff's complaint was based on the provisions of article 103 of the Revised Penal Code, counsel for the defendant did not insist on presenting evidence to establish diligence on the part of the defendant. Instead counsel for defendant asked the court for time to file a motion to dismiss, and the court granted him leave to do so. In due time defendant's counsel filed a motion to dismiss the complaint upon the ground that there was no cause of action against the defendant Benito Francisco, Jr. – contending that if the action was based on the provisions of Article 103 of the Revised Penal Code, the complaint should include the employee Emiliano Gabriel as party defendant, the liability of defendant Benito Francisco, Jr. being only subsidiary to that of his alleged employee who is primarily liable to answer for the civil responsibilities arising from his (employee's) criminal act, and the insolvency of the employee must first be shown before the employer can be held civilly liable.

On August 11, 1959, or after defendant's counsel had filed the motion to dismiss, plaintiff filed a motion to admit another amended complaint, which was then attached to the motion. In this new amended complaint Emiliano Gabriel was included as party defendant. In the motion to admit the new amended complaint, plaintiff's counsel stated that "the present action is based on the civil liability arising from the criminal imprudence of Emiliano Gabriel who was convicted in Criminal Case No. 7864 of this Court." [2] In its order, dated September 23, 1959, the trial court denied the admission of the amended complaint.

On January 30, 1960, the court aquo issued an order dismissing the complaint in Civil Case No. 5031. The pertinent portions of the order read as follows:

"Defendant in his argument in support of the motion to dismiss contends that if the action is based on the provision of Article 103 of the Revised Penal Code, plaintiff has no cause of action against the defendant because the latter's liability is merely subsidiary. In other words, plaintiff must have to establish first by sufficient and competent evidence that the employee is insolvent. In the instant case, the alleged employee whose alleged negligence was the immediate cause of the death of plaintiff's son has not been included as a co-defendant. This employee, Emiliano Gabriel y Susi, is alleged to have been charged with the crime of double homicide with less serious physical injuries by reason of the accident and has been found guilty and convicted by a final judgment of this Court where he was sentenced to suffer imprisonment. No allegation however has been made that said Gabriel was condemned in the decision aforementioned to pay damages resulting from the mishap and was found insolvent upon execution.

* * * * *

"As shown elsewhere in this order, there was no evidence introduced by the plaintiff that defendant's alleged employee Emiliano Gabriel y Susi has been condemned in a final judgment to pay damages to the plaintiff by reason of the death of the plaintiff's son as a result of the fact that the passenger vehicle driven by him had hit

and ran over plaintiff's son causing the latter's death. There was also no evidence that any judgment has been enforced against the said Gabriel but could not be satisfied because he was insolvent. It therefore appears that no sufficient cause of action has been established by the plaintiff against the defendant to establish the subsidiary liability of the latter.

"In his opposition to the motion to dismiss, plaintiff did not question the facts shown in the motion to dismiss as have been established by his evidence. He only maintained that the allegations of his amended complaint were sufficient to constitute a cause of action. With this contention, the Court does not take issue. The Court, however, as has already been stated, holds that his evidence failed to establish a cause of action.

"In his opposition, plaintiff seems to imply that he was adhering to the theory adopted in his amended complaint, that is, that his action is one to enforce the primary liability of the defendant as an employer under the provision of the Civil Code. But even assuming that this is his real theory and that he was adhering to it, in other words, changing front, still the Court is of the opinion that he has not by his evidence establish a sufficient cause of action. First, because he has not established the fact that Emiliano Gabriel y Susi was an employee of the defendant at the time of the mishap on May 19, 1958 and that he was then driving the vehicle which caused the mishap as an employee of the defendant. But even assuming that he has so established the relationship of employer and employee between defendant and Emiliano Gabriel y Susi, it is now too late for the plaintiff to change front after he has successfully blocked defendant from presenting evidence in support of his defense to the effect that he had exercised due diligence in the selection and supervision of his employees.

* * * * *

"WHEREFORE, the court hereby grants the motion to dismiss this action for failure of the plaintiff to establish a cause of action. Without costs."

Plaintiff Melchor Santos in that Civil Case No. 5031 of the Court of First Instance of Rizal did not appeal from the above-mentioned order dismissing his complaint, and so said order had become final.

On May 12, 1962, or more than two years after the above-mentioned order was issued, Melchor Santos, through a new counsel, filed a new complaint before the Court of First Instance of Rizal, docketed as Civil Case No. 7121, naming both Emiliano Gabriel and Benito Francisco, Jr. as parties defendants therein. This new complaint embodied practically the same allegations as those stated in the second amended complaint in prior Civil Case No. 5031 regarding the fact of the death of plaintiff's son due to the recklessness and imprudence of Emiliano Gabriel as employee of Benito Francisco, of the damages suffered by plaintiff by reason of the death of his son, and of the conviction of Emiliano Gabriel in Criminal Case No. 7864 of the Court of First Instance of Rizal. The new complaint prayed that Emiliano Gabriel be ordered to pay plaintiff the damages sought to be recovered therein, and in case of the insolvency of Emiliano Gabriel that Benito Francisco, Jr. be ordered to pay the damages.

On June 13, 1962, counsel for defendant Benito Francisco, Jr. filed a motion to dismiss the complaint with respect to said defendant, upon the ground that the cause of action therein alleged was already barred by a prior judgment rendered by the Court of First Instance of Rizal in Civil Case No. 5031, pursuant to Section 1(e), Rule 8 of the Rules of Court.[3] On June 28, 1962, counsel for the plaintiff filed an opposition to the motion to dismiss.

On October 20, 1962, Judge Eulogio Mencias – the same Judge who dismissed Civil Case No. 5031 – issued an order dismissing Civil Case No. 7121. On December 6, 1962, counsel for the plaintiff filed a motion for reconsideration of the order of October 20, 1962. On January 9, 1963, the lower court denied the motion for reconsideration. Hence this appeal by the plaintiff from those orders of the lower court, dated October 20, 1962 and January 9, 1963.

The principal question to be resolved in the present case is whether the action in Civil Case No. 7121 is barred by

the prior judgment rendered in Civil Case No. 5031 – both of the Court of First Instance of Rizal – under the doctrine of *res judicata*.

It is the settled rule that in order that the doctrine of *resjudicata* may apply the following requisites must be present: (a) the former judgment or order must be final; (b) the judgment or order had been rendered by a court having jurisdiction over the subject matter and over the parties; (c) there must be judgment or order on the merits; and (d) there must be between the first case and the second case identity of parties, identity of subject matter and identity of cause of action.[4]

It is not disputed that the order of the Court of First Instance of Rizal of January 30, 1960, dismissing the complaint in Civil Case No. 5031, was final and it constitutes a final judgment in the case; that the order was rendered by a court having jurisdiction over the subject matter and the parties in that case; and that the order was on the merits – it having been entered after the issue had been joined and the court heard the pertinent evidence.

Appellant Melchor Santos does not deny that the subject matter of the two cases (Civil Cases Nos. 5031 and 7121 of the Court of First Instance of Rizal) is the same the recovery of damages for the death of his son, Rodolfo Santos, due to the recklessness and imprudence of Emiliano Gabriel, the alleged employee of appellee Benito Francisco, Jr. The appellant, however, maintains that there is no identity of parties, nor is there identity of cause of action, between the two cases, it being the contention of appellant that the cause of action in Civil Case No. 5031 was based on Article 2180 of the Civil Code, while the cause of action in Civil Case No. 7121 is based on Article 103 of the Revised Penal Code.

The stand of the appellant can not be sustained.

Herein appellant Melchor Santos, who is the plaintiff in Civil Case No. 71 21 - the case at bar - was the plaintiff in Civil Case No. 5031. Herein appellee Benito Francisco, Jr., who is one of the two defendants in Civil Case No. 7121, was the only defendant in Civil Case No. 5031. Although Emiliano Gabriel was not a party defendant in Civil Case No. 5031, but is now included as defendant in Civil Case No. 7121, this circumstance does not prevent the application of the principle of *resjudicata*, because the rule does not require absolute, but only substantial, identity of parties.[5] In the case of *Aguilar vs. Gamboa*,[6] this Court held that "it makes no difference that Serafin Gamboa was defendant with others in the first case; because if he had been sued alone in the first case and he is now sued with others, the defense of *res judicata* would be decisive just the same." Reiterating that ruling, this Court, in the case of *Republic of the Philippines vs. Planas, et al.*[7] said:

"The inclusion of the surety as party defendant in Civil Case No. 51080, where it is not so named in Civil Case No. 49206, cannot be invoked to nullify the effect on the former case of the dismissal order issued in the latter proceedings. It has been ruled that where the one who is offering a judgment as an estoppel and the party against whom it is being offered were both parties to the action, in which such judgment was rendered, it is no objection that the action included some additional parties who are joined in the second case. Conversely, the operation of the final judgment or order in a previous case is not altered by the fact that somebody who was not a party in that first action has been impleaded in the second case. Otherwise, litigants can always renew any litigation by the mere expediency of including new parties."

The lower court dismissed the first case filed by appellant, because appellant, as plaintiff therein, "has not established the fact that Emiliano Gabriel y Susi was an employee of the defendant at the time of the mishap on May 19, 1958 and that he was then driving the vehicle which caused the mishap as an employee of the defendant,"[8] and this conclusion of the court *aquo* was arrived at after it had weighed the evidence presented by the appellant. Appellant having failed to appeal from that order of dismissal, this finding of the trial court cannot again be litigated in a new suit, and that finding should be considered conclusive on that same point in the present case. The cardinal rule of *resjudicata* is that parties should not be permitted to litigate the same issue more than

once; that when a right, or a fact, has been judicially determined by a court of competent jurisdiction, or an opportunity for hearing on the matter had been given, the judgment of the court, when final, should be conclusive and no longer debatable between the parties in subsequent proceedings.[9]

The causes of action in the two cases are the same. As shown above, the first case, Civil Case No. 5031, was expressly based on the provisions of Article 103 of the Revised Penal Code as per plaintiff's counsel's expressed manifestation, and not on Article 2180 of the Civil Code, as now pretended.[10] Since the present case, Civil Case No. 7121, is admittedly based also on Article 103 of the Revised Penal Code, the dismissal of the first case on the ground of failure to establish the employer-employee relationship between defednant Benito Francisco and the driver Emiliano Gabriel now bars the present case by virtue of res judicata.[11]

"Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice. This is a situation which should not be permitted to obtain here or elsewhere where there is an orderly form of government. Public policy demands that judicial proceedings be upheld. The maxim nonquietamovere cannot be meaningless. (Banco-Espanol-Filipino vs. Palanca, 37 Phil. 921, 942)."[12]

WHEREFORE, the orders of the lower court, appealed from, – one dated October 20, 1962 dismissing the case, and the other dated January 9, 1963 denying the motion for the reconsideration of said order of dismissal, should be, as they are hereby, affirmed. No pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., Acting C.J., Makalintal, Teehankee, Barredo, Makasiar, and Antonio, JJ., concur.

Castro and Fernando, JJ., took no part.

Concepcion, C.J., on official leave.

[1] The lower court, in the order of dismissal that it later issued, viewed that stand of plaintiff's counsel as "was done apparently to block the presentation of evidence by the defendant to prove diligence on his part in the selection and supervision of his employees." Page 30, Record on Appeal.

[2] Page 37, Record on Appeal.

[3] Of the Old Rules of Court; now Section 1(f) of Rule 16 of the New Rules of Court.

[4] Suarez vs. Municipality of Naujan etc., G.R. No. L-22282, November 21, 1966; 18 SCRA 682.

[5] Suarez vs. The Municipality of Naujan, et al., supra; See also Frimm, et al. vs. Atok-Big Wedge Mining Co., et al., G.R. No. L-11887, December 29, 1959; Lim Toco vs. Go Fay, 81 Phil., 258. [6] 103. Phil., 183, 185-186.

[7] G.R. No. L-21224, September 27, 1966; 18 SCRA 132, 139, Note the numerous cases cited therein.

[8] As stated in the order of dismissal, dated January 30, 1960, in Civil Case No. 5031.

[9] Romero, et al. vs. De los Reyes, G.R. No. L-13816, May 31, 1965, 14 SCRA 115, 127; Kidpalos vs. Baguio Gold Mining Company, et al., 14 SCRA 913.

[10] See foot note 1, ante.

[11] Peñalosa vs. Tuason, 22 Phil. 303, 313.

[12] Ferinon vs. Sta. Romana, et al., G.R. No. L-25521, February 28, 1966; 16 SCRA 370, 374. See also Peñalosa vs. Tuason, 22 Phil. 303, 313.

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