

ANGELITA F. RIVERA, PLAINTIFF AND APPELLANT, VS. LORETO LUCIANO, DEFENDANT AND APPELLEE.

G.R. No. L-20844. August 14, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On May 16, 1962 Angelita F. Rivera instituted Civil Case No. 50408 against Loreto Luciano in the Court of First Instance of Manila for the collection of the sum of P5,862.60. However, on June 9, 1962, upon motion of defendant, the case was dismissed on the ground that her husband was not joined as defendant. Plaintiff did not appeal from the order of dismissal.

On August 14, 1962 Angelita F. Rivera filed another action against the same defendant, Loreto Luciano, in the Court of First Instance of Manila for the recovery of the sum of P5,897.60. The case was docketed as Civil Case No. 51262. It involved the same subject matter, the same cause of action and the same parties as in Civil Case No. 50408. Again, Loreto Luciano's husband was not joined as defendant, but the complaint alleged as reason for this that defendant was engaged in business. Before filing an answer defendant moved for the dismissal of the case on the ground that the same was barred by the dismissal of the previous Civil Case No. 50408. The trial court granted the motion and dismissed the case.

Plaintiff appealed to this Court

The only issue is whether or not the dismissal of Civil Case No. 50408 for non-joinder of a party was an adjudication on the merits which would bar the institution of Civil Case No. 51262.

Section 4 of Rule 30 of the old Rules of Court, applicable herein, states:

"SEC. 4. Effect of dismissal on other grounds.—Unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits."

Accordingly, the dismissal of an action in the Court of First Instance on grounds not provided for in Sections 1, 2 and 3 of Rule 30 is, unless otherwise ordered, an adjudication on the merits, except, of course, dismissal for lack of jurisdiction which is always without prejudice.[*]

In the instant case the dismissal of Civil Case No. 50408 was not in pursuance of Sections 1, 2 and 3 of Rule 30. Neither was it for lack of jurisdiction. And, inasmuch as the court did not order the dismissal, to be without prejudice, it follows that it was an adjudication on the merits. Having become final it bars the filing of another action on the same subject matter between the same parties and for the same cause of action.

Wherefore, the order appealed from is hereby affirmed. No costs. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

[*] Tuballa vs. De la Cruz, 111 Phil. 336; Licup vs. Manila Railroad Co., 112 Phil. 204; Canite vs. Madrigal & Co., 116 Phil. 93; Guanzon vs. Mapa, L-19249, Feb. 28, 1963.

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