

**AGAPITO CRUZ CORREA, PLAINTIFF AND APPELLEE, VS.
HERMOGENES PASCUAL, DEFENDANT. JUAN LUCIANO AND ARSENIA
DE LEON, MOYANTS AND APPELLANTS.**

G.R. No. L-9317. July 31, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Juan Luciano and his wife, Arsenia de Leon, are appealing from the order of the Court of First Instance of Bulacan dated November 21, 1953, civil case No. 266, ordering the provincial sheriff to carry out the writ of execution previously issued, more specifically, to place plaintiff Agapito Cruz Correa in possession of a parcel of land included in the decision and awarded to him, covered by tax declaration No. 3246 of Angat, Bulacan, actually occupied by the appellants.

For a better comprehension of the issues involved in the present appeal, it is advisable to make a detailed statement of the facts, as well as the dates of the successive occurrences of events affecting the case. .

On October 3, 1943, plaintiff Cruz, filed an action, civil case No. 148 in the Court of First Instance of Bulacan, against defendant Hermogenes Pascual, to recover possession and title of several parcels of land including that covered by tax declaration No. 3246 already mentioned. At the same time, he caused a notice of lis pendens to be recorded in the office of the Register of Deeds of Bulacan. On September 25, 1947, the trial court issued an order dismissing the complaint, for failure to prosecute because neither plaintiff nor his counsel appeared at the hearing. On April 14, 1948, plaintiff Cruz filed a motion praying that the order of dismissal be set aside. Said motion was denied by order dated May 3, 1948.

On May 15, 1948, the same plaintiff Cruz, filed the present case, civil case No. 266, against the same defendant, Hermogenes Pascual, for the recovery of possession and title of the same parcels of land involved in civil case No. 148. Acting upon the motion to dismiss filed by Pascual on the ground that the action was barred by the dismissal of civil case No. 148, which dismissal had the effect of an adjudication upon the merits equivalent to a judgment. The trial court denied the motion to dismiss and ordered defendant to answer the complaint. The reason for the denial was that the trial court found that the reason why plaintiff and his counsel in civil case No. 148 failed to appear at the trial was their failure to receive the notice of the hearing because said notice was erroneously addressed by the Deputy Clerk of Court. Defendant Pascual filed his answer with affirmative defenses and counter-claim. However, on April 30, 1951, plaintiff Cruz and defendant Pascual filed with the trial court a written agreement with a petition that the agreement be approved by the court and that decision be rendered in accordance with the terms of the same. On the same date, the trial court rendered a decision approving the agreement and ordering the parties to comply strictly with the terms of the agreement.

On June 16, 1952, plaintiff Cruz filed a petition for a writ of execution to carry out the terms of the decision based on the agreement of the parties among which was the transfer to the plaintiff by the defendant of the ownership and possession of two parcels of land, including that covered by tax declaration No. 3246. The petition was

granted and a writ of execution was issued. On October 20, 1952, plaintiff filed an ex parte petition for an alias writ of execution on the ground that the original writ could not be served by the sheriff because defendant Pascual had died and because the judicial administrator of Pascual's estate had not yet qualified. This petition was also granted by the court. Acting upon the alias writ of execution, the sheriff sent a notice dated December 5, 1952 to Juan Luciano and his wife, Arsenia, whom he found occupying the parcel of land covered by tax declaration No. 3246, advising them that on December 18, 1952, he would place the plaintiff in possession of the land, at the same time asking them (Luciano and Arsenia) if they had any objection. Receiving no objection, on December 18, 1952, the sheriff went to the property in question in the company of the plaintiff and two witnesses conferred with Luciano in the house built on the land and informed him that the plaintiff will be placed in the possession of the land. Luciano verbally asked for time to talk to the plaintiff for an amicable settlement upon the arrival of his wife, Arsenia, whom he expected two days later, but the "Deputy Sheriff, Mr. Concepcion, orally placed the plaintiff in the supposed possession of the properties." Because Luciano and his wife continued occupying the land, plaintiff on July 3, 1953, filed a "Motion for a true delivery of Possession" and the court by order of July 15, 1953, ordered the sheriff to comply specifically with the writ of execution by "placing herein plaintiff in the actual possession of the property described in land tax declaration No. 3246 of Angat, Bulacan." The sheriff in his return of service, informed the court that on August 18, 1953, he received a copy of the motion of Luciano and Arsenia dated August 18, 1953, filed with the court praying that the sheriff be directed to abstain from executing the judgment, and he held the execution in abeyance pending the resolution of the Court on the motion.

In the meantime, Luciano and his wife, Arsenia, on August 15, 1953, filed a motion asking the trial court to direct the sheriff to abstain from ejecting them from the land on the ground that they were not parties litigant in the case and consequently, they could not be bound by the judgment rendered by the court. Acting upon this motion and over the opposition of the plaintiff, the trial court by order of August 27, 1953, held that the decision of the case bound only defendant Pascual to deliver and transfer to plaintiff the lands included in the decision particularly the land in question, and that to order any other person such as Luciano and his wife to vacate and deliver the land in question to the plaintiff would amount to an amendment of the decision after it had become final and there was nothing in the record to show that the movants spouses were privies of defendant Pascual so as to be included in the decision. As a result, the trial court ordered the sheriff to abstain from ejecting the spouses from the land in question. Acting upon a motion for reconsideration of that order filed by plaintiff and over the opposition of the spouses, the trial court in an order dated November 21, 1953, subject matter of the present appeal reconsidered the previous order and directed the sheriff to effect the execution of the judgment against Juan Luciano and his wife, Arsenia, with reference to the land in question. In said order, the court found that the spouses were privies of defendant Pascual; that from the uncontradicted documentary evidence presented in support of the plaintiff's motion, for reconsideration, the court found that the land was acquired by the spouses from defendant Pascual in June 15, 1946, while the land was the subject of a litigation between herein plaintiff and herein defendant and after the notice of lis pendens of said action was inscribed in the office of the Register of Deeds of Bulacan province on October 11, 1943; * * * that "although the said civil case No. 148 was dismissed by the court for failure of the plaintiff to appear on the day of trial, yet, the action as between the same parties and for the same cause was revived with the presentation of the complaint in the present case on May 15, 1948 without previous notice of lis pendens having been cancelled. The spouses Juan Luciano and Arsenia de Leon are therefore considered transferees pendente lite and are bound by the judgment against their predecessor."

A motion for reconsideration filed by Luciano and his wife having been denied, they appealed, to the Court of Appeals. Said appellate court after a study of the appeal found that only questions of law were involved and so certified the case to us in its resolution dated March 12, 1955.

The assignment of errors made by appellants in their brief which we reproduce below will give an idea of the

legal points raised in the appeal.

I

The court a quo erred in amending, supplementing, or otherwise setting aside its judgment which has already become final, irrevocable and executory.

II

The court, likewise, erred in approving the agreement entered into by and between the plaintiff and the defendant, whereby the latter disposed of the land in question in favor of the plaintiff, despite a previous sale of the same land by the defendant to the herein appellants.

III

The court also erred in holding the appellants Juan Luciano and Arsenia de Leon, as privies" to the defendants.

IV

The court, likewise, erred in ordering the ejectment of herein appellants from the land in question, and in dispossessing them of the ownership and possession thereof without being given their "day in court."

After the trial court had dismissed the complaint in civil case No. 148 for failure of plaintiff to appear at the hearing, comes the question of the validity of the case being revived in civil case No. 266 which involves the same parties, the same issues, and the same cause of action. Ordinarily, the dismissal of a civil suit for failure of plaintiff to appear at the hearing is considered a judgment on the merits and will bar another action between the same parties and on the same cause of action. The trial court, however, found as a fact that the failure of the plaintiff to appear at the hearing was¹ not due to his fault but rather to the failure of his lawyer to receive the copy of the notice of hearing because it was misaddressed by the deputy clerk of court according to the latter's admission. In that case, the order of dismissal may properly be set aside and the case either reinstated or a similar action may be filed (Moran's Comments on the Rules of Court, Vol. I, page 634, commenting on Rule 30, section 3, and citing the cases of *Ong vs. Tan*, 83 Phil.j 834, 46 Off. Gaz., Sup. No. 11, p. 295 and *Guzman vs. Rilloraza*, G. R. No. L-4931, May 29, 1952).

The records show that the land in question was conveyed by Pascual to the spouses, Luciano and Arsenia, on June 15, 1946, while the notice of *Us pendens* remained uncanceled in the office of the register of deeds. The conveyance was in the form of a private instrument which was not recorded. Furthermore, according to the statement made by Pascual in the written agreement between him and plaintiff Cruz filed in the court of Bulacan and which formed the basis of the decision in civil case No. 266, the conveyance by him of the land in question to the spouses was simulated, to conceal said property in civil case No. 148. Moreover, according to the affidavit of plaintiff Cruz filed in court, during the pendency of civil case No. 148, he found the spouses on the land sometime in 1945 as evacuees by reason of the last Pacific war, and because there was talk of Pascual trying to convey the land to them, he advised and warned them (Luciano and his wife) that the land was in litigation and that it was not advisable or proper for them to acquire the same from Pascual. In view of all this, the trial court correctly held that the spouses were privies of defendant Pascual, and though not made parties in the case herein, nevertheless, they were bound by the decision rendered against Pascual particularly as to the land in litigation.

"* * * The appellee Francisco Sanz is a transferee pendente lite of the property involved in the case. As such he stands exactly in the shoes of his predecessor in interest, the original defendants, and is bound by the proceedings had in the case before the property was transferred to him. He is a proper, but not an indispensable, party as he would, in any event, have been bound by the judgment against his predecessor." (*Fetalino vs. Sanz*, 44 Phil., 694).

"Privity in estate denotes the privity between assignor and the assignee, donor and the donee, grantor and grantee, joint tenant for life and remain derman or reversioner and their respective assignees, vendor by deed of warranty and a remote vendee or assignee. * * * A privy in estate is one, it has been said, who derives his title to the property in question by purchase; one who takes by conveyance." (50 C. J., 407.)

"A privy to a judgment is one whose succession to the rights of property affected, occurs after the institution of the suit and from a party to it." (33 Words and Phrases, 800.)

In view of the foregoing, the order appealed from is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Reyes A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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