

FELISA A. TARNATE, PETITIONER, VS. IÑIGO S. DAZA, JUDGE OF FIRST INSTANCE OF BATANGAS, AND RAMON A. TARNANTE, RESPONDENTS.

G.R. No. L-452. July 30, 1946

Ponente: MORAN, C.J.

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MORAN, C.J.:

In 1937, civil case No. 3308 entitled "In re: Intestate Estate of Paula Agoncillo, deceased," was filed in the Court of First Instance of Batangas, wherein it is still pending to date.

On September 75 1942, Ramon Tarnate filed in the same Court of First Instance of Batangas civil case No. 2 against Felisa A. Tarnate. claiming sole ownership over a parcel of land designated as Lot No. 13 which forms part of the estate of Paula Agoncillo. The trial court rendered its judgment on July 19, 1944, holding against Ramon Tarnate who appealed the case to the Court of Appeals , where the records of the case were lost or destroyed during the period of reconquest of the Philippines from the Japanese forces by the armies of the United States.

On December 2, 194?, Felisa-A. Tarnate, as administratrix of the estate of deceased Paula Agoncillo in civil case No. 3308, filed a project of partition on the controverted lot No. 13. This project was opposed by Ramon Tarnate on the ground, basically, that there was still pending before the Court of Appeals a suit over the ownership of said lot No. 13, and that if the records of said case had been lost he would seek its reconstitution, hence the project of partition should not be entertained until the question, of ownership were finally adjudicated. This opposition was sustained by the trial court in an order issued on January 4, 1946, with the condition, however, that within thirty days thereof, Ramon Tarnate either inform the court of the whereabouts of the records of said case involving the question of ownership or else bring another action as a revival of said case, otherwise the project of partition "shall 'be ipso facto considered approved."

Accordingly, on February 6, 1946, Ramon Tarnate filed before the same Court of First Instance civil case No. 4010, wherein he reiterated his claim of ownership over said lot No. 13 and designated the suit as a revival of his previous case. To this new complaint, Felisa A. Tarnate filed a motion to dismiss which, in essence, challenged the jurisdiction of the trial court to take cognizance of the case on the ground that there was still a previous case on the same subject-matter and between the same parties pending before the Court of Appeals, referring to civil case No. 2 filed by Ramon Tarnate on September 7, 1942. The trial court denied this motion to dismiss, and also a subsequent motion to reconsider its order of denial.

Hence, this petition for certiorari by Felis.a A. Tarnate seeking the annulment of the proceeding had in civil case No. 4010.

In a petition for certiorari only questions of jurisdiction may be raised as a general rule. And, certainly, the pendency of another action is not a proper ground for attacking the jurisdiction of the trial court. The pendency of another action and lack of jurisdiction are matters entirely different from each other and are treated as different

grounds for dismissal by the Rules of Court. (Rule 8, sec. 1, paragraphs [a] and [d]). In the instant case, the trial court acquired jurisdiction over the persons of the parties by the filing of the complaint by plaintiff and service of summons upon defendant. (Banco Espanol Filipino vs. Palanca, 37 Phil. 921; Slade Perkins vs. Dizon et al., 69 Phil., 186; Ñg Si Chok vs. Vera, G. R. No. 45674) It has also jurisdiction over the subject-matter which is ownership of a parcel of land. (Act No. 136, section 56, as amended). Thus, the trial court has jurisdiction to try and decide validly the case, and the pendency of another action can in no wise affect that jurisdiction.

Petition for certiorari is dismissed, with costs against petitioner.

Feria, Pablo, Perfecto, Hilado, Bengzon, Padilla, and Tuason, JJ., concur.

BRIONES, M., con quien esta desestimacion PARAS, M., conforme:

Estoy confer me con la desestimacio'n del recurso por las razones siguientes

Los autos demuestran que el expediente destruido o desaparecido del primer asunto, elevado en alzada para ante el Tribunal de Apelacion, ya no se puede reconstituir porque las copias de los escritos que tenia el apelante, ahora recurrido, tambien se han perdido. La apelada, ahora recurrente, podia tener algun interes en la reconstitucion por haber sido la vencedora en el pleito, pero los autos tambien demuestran que no ha dado ningun paso para dicho efecto.

La alegacion, por tanto, sobre la pendency de otro pleito anterior entre las mismas partes y acerca de la misma materia, carece enteramente de fundamento. Asi que no hay aqui ni falta de jurisdiccion de parte del tribunal inferior sobre el segundo litigio, como se alega en el recurso, ni multiplicidad de pleitos que prohíbe la ley y la jurisprudencia. La segunda demanda este bien incoada, a tenor de la Ley No. 3110 sobre reconstitucion de expedientes destruidos o desaparecidos. Desestímese el recurso.

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