

**FELISA REJUSO AND AMERIGO REJUSO, PLAINTIFFS-APPELLANTS,
VS. IRENEO ESTIPONA AND ERIBERTO A. UNSON, PROVINCIAL
SHERIFF OF DAVAO, DEFENDANTS-APPELLEES.***G.R. No. L-27099. August 31, 1976*

Ponente: BARREDO, J.

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Appeal from the order of dismissal, dated July 16, 1966, issued by the Court of First Instance of Davao, Branch I, in its Civil Case No. 5102 – an action instituted in that court by appellant spouses Felisa Rejuso and Amerigo Rejuso, against appellees Ireneo Estipona and the Provincial Sheriff of Davao, for the annulment of the attachment, execution sale, and writ of possession, issued by the same branch of the same court of first instance in another case between said Ireneo Estipona and Amerigo Rejuso, then pending before it, which affect a residential house and lot claimed by appellants.

On September 19, 1964, Civil Case No. 4435 of the Court of First Instance of Davao was commenced by Ireneo Estipona against Amerigo Rejuso. Therein Estipona sought the annulment of a Deed of Mortgage executed by Rejuso on a lot and house where he (Amerigo Rejuso) and his family reside, situated near the Sta. Ana School Site, Davao City, along with the collection of a P2,400.00-obligation Amerigo Rejuso had previously contracted with Ireneo Estipona on June 19, 1964. A writ of preliminary attachment on the house and lot above-mentioned was issued by the court to secure any judgment Estipona might obtain in the action. On January 25, 1965, a default judgment was rendered by the trial court against defendant Rejuso annulling the Deed of Mortgage executed by him on the house and lot referred to and directing him to pay plaintiff the sum of P2,400.00 with interest thereon at the legal rate from September 19, 1964, the date of the filing of the complaint, plus attorney's fees and costs. The default judgment became final; the house and lot previously attached preliminarily were thereafter levied upon and sold on execution by the Sheriff of Davao to plaintiff Ireneo Estipona for the entire amount of the judgment in his favor; and, still later, upon motion of said plaintiff, the trial court issued a writ of possession on May 7, 1966, with which writ the Provincial Sheriff of Davao tried to eject defendant Amerigo Rejuso and his family from the house and lot involved in order to place Ireneo Estipona in possession thereof.

It was at that stage of the proceedings in Civil Case No. 4435 as above set forth that, under date of June 20, 1966, Rejuso, joined already by his wife, Felisa, instituted the present case, Civil Case No. 5102, in the same court of first instance of Davao for the purpose, as already stated earlier of annulling the attachment, execution sale, and writ of possession issued by the same court in Civil Case No. 4435 in respect of their residential house and lot which they claim is their conjugal partnership property, hence not subject to such proceedings, considering that Felisa was not a party to the previous case. The issuance of a writ of preliminary injunction was also prayed for.

In due time, Estipona filed a Motion to Dismiss, grounded principally on want of jurisdiction, the more pertinent parts of which read thus:

"It is clear from the face of the Complaint that this Honorable Court has no jurisdiction to entertain it as it is

elementary that a branch of this Honorable Court cannot vacate or annul and/or enjoin the enforcement of the processes issued by another branch in another case, for they are both of the same Court. This is too elementary to require the citation of authorities.

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In fact these issues were raised by Amerigo Rejuso in Civil Case No. 4435 when he filed a motion seeking to annul the same orders and processes as those sought to be annulled in the instant case. His motion was denied for lack of merit, and his subsequent motion for reconsideration was also denied for lack of merit. Certainly, he cannot get from another branch of this court what he failed to get in Civil Case No. 4435 before Branch I." (Record on Appeal, pp. 5-7)

Although said motion to dismiss was opposed by Estipona in the pleading captioned "Opposition to Motion To Dismiss and Answer To Opposition To Preliminary Injunction", the foregoing allegation of fact that the issue of validity of the attachment, execution sale and writ of possession in question was already raised and passed upon in Civil Case No. 4435 was not denied by the Rejusos. (See pp. 8-11, Record on Appeal.)

On July 16, 1966, the trial court issued the following order:

"O R D E R

On the ground that this Court has no jurisdiction over the subject matter of the action or the nature of the action and of the relief sought, the above-entitled case is hereby dismissed without pronouncement as to costs.

SO ORDERED.

Given at Davao City, this 16th day of July, 1966."

Hence, the instant appeal, appellants insisting that it is within the power of the court in Civil Case No. 5102 to grant the reliefs they pray for.

The appeal has no merit.

Upon the levy by attachment of the property in question by order of the court in Civil Case No. 4435, the said property fell into the custodia legis of that court for the purposes of that civil case only. Any relief against such attachment and the execution and issuance of a writ of possession that ensued subsequently could be disposed of only in that case. (National Power Corporation vs. De Veyra, 3 SCRA 646 [1961].) In fact, there is an undenied allegation of appellees that appellants had actually asked in Civil Case No. 4435 itself for the reconsideration of the questioned processes and that after said reconsideration was denied, appellants did not take any action against such denial in the appellate courts. If such be the case, and there is no showing here it is not so, then the issue being raised by appellants in the present appeal is already dead. The orders of denial in Civil Case No. 4435 have already become unquestionably final and binding, at least in so far as Amerigo Rejuso is concerned. It does not matter that a question of jurisdiction is involved; that issue was itself already resolved in said unappealed denial orders and are already res adjudicata. Even an issue of jurisdiction becomes res adjudicata once it is properly raised and resolved and the resolution becomes final. In any event, it becomes law of the case.

As regards Felisa Rejuso who is a new party in Civil Case No. 5102, suffice it to say that her remedy, if it has not yet been barred by the statute of limitations or become stale in some other way is within Civil Case No. 4435. Indeed, it is superfluous to start a new action on a matter which can be more simply and conveniently litigated within a former proceeding of which it is more logically and legally an integral part. (Ipekjdian Merchandising

Co. Inc. vs. CTA, 8 SCRA 59 [1963].) Actually, the court in which the former proceeding was pending has exclusive jurisdiction thereof, (De Leon vs. Salvador, 36 SCRA 567) the fact that the two cases are in the same Branch of the same Court of First Instance and presided over by the same Judge notwithstanding. After all, it is simpler and more convenient to observe such practice, which insures also consistency in the resolutions of related questions because they are to be determined in most if not all instances by the same judge.

WHEREFORE , the judgment of dismissal appealed from is affirmed; with costs against appellants.

Fernando, Acting C.J., (Chairman), Antonio, and Concepcion, Jr., JJ., concur.

Aquino, J., in the result.

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