

MANUEL A. Q. SORIANO, PLAINTIFF AND APPELLEE, VS. FIDEL SAHAGUN, DEFENDANT AND APPELLANT.

G.R. No. L-17847. March 31, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

On September 13, 1952, Manuel A. Q. Soriano presented with the Municipal Court of Manila, an ejectment case against Fidel Sahagun, docketed as Civil Case No. 22503. The said Court rendered judgment on September 26, 1952, the pertinent portion of which reads:

"The defendant having confessed judgment in the above entitled case, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering said defendant to vacate the premises described in the complaint and to pay the plaintiff the sum of P850.00 corresponding rentals in arrears up to September, 1952; plus the rents that will become due beginning October, 1952, at the rate of P150.00 a month, until the date said defendant finally vacates and surrenders possession to the plaintiff the premises in question, with legal interest thereon per annum from the filing of this suit; until fully paid; plus P50.00 as attorney's fees."

About four (4) years thereafter, or on May 2, 1956, Soriano filed a motion for execution of the above judgment, for which the municipal court of Manila, issued the following Order:

"AS PRAYED FOR, same is hereby granted only with respect to the balance of P50.00, rentals due as of September, 1952, plus the sum of F50.00 for attorney's fees. The alleged, rentals from October 1952 to March 31, 1953, when the defendant allegedly vacated the premises cannot be the object of execution in the present action. Plaintiff's action in delaying the issuance of a writ of execution is a clear indication of the renovation of the contract of lease and such delay converts the court into a mere collecting agency."

The above Order became final and executory, no appeal having been perfected.

Soriano presented with the Municipal Court of Manila, Civil Case No. 44043, for the collection of the amount in question (rentals pertaining to October, 1952 to March 31, 1953). On July 28, 1956, Municipal Judge Santa Maria, found for Soriano. This decision was appealed by Sahagun to the CFI, and Judge Solidum, reversed the same, holding —

"From the allegations contained in the amended complaint, it is very clear that this action is already barred by prior judgment rendered in said Civil Case No. 22503 of the Municipal Court of Manila., between the same parties and involving the same subject matter and the same cause of action. The fact that, as alleged in said complaint, the Municipal Court refused to grant "plaintiff's motion for the issuance of an alias writ of execution for the collection of the unpaid rentals from October, 1952 to March, 1953, in the amount of P900.00, on the ground that there was an implied renewal of the lease contract between the plaintiff and the defendant, is of no moment for the reason that the plaintiff could have appealed or taken any other appropriate proceeding against the order of the Municipal Court dated May 2, 1956, denying said motion. x x x."

The judgment also became final and executory. Again, Soriano did not appeal therefrom. Instead, he went back to

the Municipal Court in the original case No. 22503, and once more asked for an alias writ of execution. Judge Ycasiano, in an Order dated May 3, 1957, denying the issuance of the alias writ, said —

"The Court believes and so holds that the amount allegedly sought to be recovered represents rentals due and unpaid after the judgment has become final and executory, and, therefore, not covered by the judgment rendered by this Court on September 26, 1952. The delay of plaintiff in not executing the judgment after it has become final and executory and the stay of the defendant in the premises, clearly indicated the renovation of the contract of lease. The delay therefore in not dispossessing the defendant from the premises, shows that plaintiff has renounced the judgment to dispossess said tenant. The Court therefore has no alternative but to reiterate its order of May 2, 1952."

Failing to obtain the relief prayed for, Soriano filed with the CFI of Manila, a petition for Mandamus, seeking to compel the Municipal Court to issue the writ of execution, claiming that the Municipal Court in denying the petition, acted with grave abuse of discretion. Judge Magno Gatmaitan, in dismissing the case, made the following conclusions:

"x x. More than this, the order of May 2, 1956, was in fact as the Court understands, an appealable order and not an interlocutory one because when it denied the issuance of the writ of execution, 'nothing more remained to be done in the Municipal Court' respecting the execution "x x x, and as plaintiff did not appeal therefrom, his remedy against it lapsed thereafter, x x x and this must have been what the lower court had in mind when it refused execution because of what it believed to have happened, novation; and it is not very correct to say that there was no evidence on which it based its ruling; there is no showing it did, motions can be acted upon on the basis of the pleadings where the facts can be gleaned therefrom; and even if it could not have done this, the error in any case, could have been cured by appeal. As this is the conclusion of this Court, the argument that petitioner's case is full of equity with which the Court concur, would not help him."

Soriano did not appeal the above judgment.

Under date of May 20, 1959, he instituted with the Municipal Court of Manila an action to enforce the judgment in case No. 22053, rendered on September 26, 1952, being Civil Case No. 30653. The Municipal Court, presided by Judge Gregorio Garcia, rendered judgment in favor of Soriano, the pertinent portion of which reads -

"It is the considered opinion of this Court that the res-judicata ruling of the Court of First Instance simply meant that all the matters decided in Civil Case No. 22503 of the Municipal Court of Manila, the decision therein having become final, could not be the subject of another action; the findings of the Court in that case, correct or otherwise, may not be inquired into again. It does not mean that the herein plaintiff, who was the same plaintiff in the Court of First Instance, is without remedy as to the enforcement of the decision of the Municipal Court in Civil Case No. 22503. The enforcement of the decision in Civil Case No. 22503 of this Court does not militate against the res-judicata doctrine of the Court of First Instance. On the contrary, it gives substance and meaning to that ruling because the facts are not re-looked into by this Court. The decision in Civil Case No. 22503, by the present action, is merely sought to be enforced pursuant to the provisions of Section 6, Rule 39, of the Rules of Court."

On appeal of the above judgment to the CFI of Manila, Judge E. Soriano affirmed the same, holding:

"x x. Even granting, for the sake of argument, that the action in said Civil Case No. 30653 is barred by the prior decision (Exh. A) in Civil Case No. 22503, does not this concession only mean that the said prior decision remains controlling and therefore still subject to revival and eventual execution? As the affirmative answer to this question appears unassailable, why again does defendant blame plaintiff for not appealing from the decision in Civil Case No. 30653, when the proper action in the instant one to revive Exhibit A so that it can once and for all be fully executed?"

Defendant Sahagun's motion for reconsideration of the above judgment having been denied, he interposed the

instant appeal, assigning five (5) errors allegedly committed by the lower court which converge on the dominant issue of whether or not plaintiff-appellee can still collect the amount of the rentals from October, 1952, to March 31, 1953.

We share the view as exposed by the appellant. Under the facts obtaining in the case, it becomes clear that res-judicata has already set in. For no less than three times was the question of the execution of the Order for the payment of rentals covering the period from October 1952 to March 31, 1953, presented, and for so many times the motion for execution thereof was denied, by different courts, which orders of denial had all become final and executory, because herein appellee had slept on his rights. These courts had made findings and conclusions that novation had taken place and res adjudicata was a valid defense. The appellee should have appealed from these orders and decisions, but he did not. Appellee cannot now change the nature of the action from a motion for execution of a judgment to an action for revival of the judgment, for both legal steps, in the final analysis and at the bottom, cover the same subject-matter, to wit: collection of the amount of rentals due from October 1952 to March 31, 1953, after the decision in the ejectment case had become final and executory and after an alleged novation had taken place. In other words, the fact or question as regards the right of the appellee to recover the alleged unpaid rentals now sought to be collected, had actually and directly been in issue in former suits (Civ. Case Nos. 22503, 60653 and 32655) ; had been judicially passed upon and determined by courts of competent jurisdiction; and had been conclusively settled by final orders and judgment therein, so far as concerns the parties to the present action who are the same litigants in said cases and persons in privity with them. The same question cannot be litigated again in the present action or in any future action, between herein parties, in any other court of competent jurisdiction, upon the same or different cause of action (*Tejedor v. Palet*, 61 Phil. 494). The appellee might have taken the wrong steps, and the orders and decisions of the different courts, might not have been also correct, but the bold fact remains that appellee is now subject of estoppel. If a party having a right to pursue one of several inconsistent remedies makes his election, institutes a suit, and prosecutes it to final judgment, such election constitutes an estoppel thereafter, to pursue another and inconsistent remedy. (*Three States Lumber Co. v. Blanks*, 133 Fed. 479; 69 LRA, 288). (*Joaquin Lopez v. Enrique P. Ochoa*, L-7955; May 30, 1958; 67 C.J. pp. 294-295).

CONFORMABLY WITH THE FOREGOING, the decision appealed from should be, as it is hereby REVERSED, and another entered, dismissing the complaint of appellee Manuel Soriano, without pronouncement as to costs.

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

Padilla, J., took no part.

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