

CATALINA M. DE LEON, PLAINTIFF AND APPELLANT, VS. ROSARIO B. DE LEON, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-8965. February 29, 1956*

Ponente: BAUTISTA ANGELO, J.

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Catalina M. de Leon commenced this action in the Court of First Instance of Quezon City to make effective the purchase she made of one-half of a parcel of land from spouses Rosario B. de Leon and Francisco de Leon for the sum of P1,000. She avers that said spouses acquired the land from Perfecto Roque and Aurelio Bautista by virtue of a document executed on July 11, 1949 which was ratified before a notary public; that Perfecta Roque and Aurelio Bautista in turn acquired the land from the People Homesite Corporation on installment basis; that plaintiff demanded from the spouses Rosario B. de Leon and Francisco de Leon the formal execution of the transfer made in her favor as well as the registration of the transfer in the office of the People's Home Site Corporation but said spouses refused to agree to her demand; that Perfecta Roque and, Aurelio Bautista, instead of recording the transfer they made of the land to spouses' Rosario B. de Leon and Francisco de Leon with the "People's Homesite Corporation, fraudulently conveyed it to one Petronilo Castafieda; that the People's Homesite Corporation refused to recognize her right over one-half of the land notwithstanding her demand, and to make effective her right' she instituted the present action making as party defendants all the parties in interest as above mentioned. Plaintiff also alleges that the defendants conspired to defeat and render ineffective her right over the land and, as a consequence, she prays for damages in the amount of P18,000.

Defendants Perfecta Roque and Aurelio Bautista filed a motion to dismiss on the grounds that the action is already barred by a prior judgment and the complaint states no cause of action. Main basis of the motion is a decision rendered by the Court of First Instance of Quezon City on December 22, 1950, wherein the transfer of the land made by Perfecta Roque and Aurelio Bautista to spouses Rosario B. de Leon and Francisco de Leon was declared rescinded and without effect and, hence, said spouses could not have transferred any right to the plaintiff.

Judge Magno S. Gatmaitan, then presiding over the court, denied the motion stating that the grounds alleged do not appear to be indubitable it appearing that plaintiff was not a party to the case invoked and she alleged conspiracy on the part of the defendants. But, on a motion for reconsideration, Judge Hermogenes Caluag, who took over the court, reversed the former ruling and dismissed the case without pronouncement as to costs. This is the order which is now the subject of the present appeal.

In its order dismissing the case for lack of sufficient cause of action, the trial court took into account the decision rendered in Civil Case No. 9366 wherein the transfer of the land made by Perfecta Roque and Aurelio Bautista in favor of spouses Rosario B. de Leon and Francisco de Leon was rescinded and it concluded that as a result of such rescission, plaintiff could not have acquired any right from said spouses which may be the basis, of relief in the present action. The reasoning of the trial court is that, Catalina de Leon, plaintiff herein, being merely a successor in interest of spouses De Leon, the judgment rendered in said case against them is binding upon her.

The finding of the trial court that the decision rendered in Civil Case No. 9366 has the effect of *res judicata* which bars plaintiff from pressing her claim in the present action is based on a wrong premise for it ignores the fact that plaintiff had acquired her interest in the land prior to the institution of said case, and hence she could not be considered as successor in interest of spouses De Leon. This is the postulate of section 44 (6), Rule 39, which provide that "In other cases the judgment so ordered is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title, subsequent to commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity." Note that to be a successor in interest a purchaser must,,acquire subsequent to the commencement of the action, and not before as in the present case. If an action is filed against the vendor after he had parted with his title in favor of a third person, the latter is, not bound by any judgment which may be rendered against the former. In such a case the principle of *res judicata* does not apply (Moran, Comments on the Rules of Court, Vol. I, 1952 ed., 870). The trial court therefore erred in applying this principle to the present case.

Another factor that the trial court has overlooked is the fact that the complaint alleges collusion and conspiracy on the part of the defendants to defeat and render ineffective the right acquired by the plaintiff which claim necessarily puts in issue the alleged rescission of the transfer made by Perfecta Rogue and Aurelio Bautista to spouses Rosario B. de Leon and Francisco de Leon. With the presentation of the motion to dismiss defendants are deemed to have admitted the aforesaid claim of conspiracy and this creates a situation which negatives any favorable action on the motion to dismiss. The proper course the trial court would have taken is to defer consideration of the motion until trial pursuant to section S, Rule 8, considering that the ground alleged does not appear to be indubitable, as was done by Judge Gatmaitan who originally acted in the motion to dismiss.

Wherefore, the order appealed from is set aside. The case is remanded to the lower court for further proceedings, with costs against appellees.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

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