

BOARD OF LIQUIDATORS, TRUSTEE OF THE LAND SETTLEMENT AND DEVELOPMENT CORPORATION, PLAINTIFF-APPELLANT, VS. JOSE ZULUETA, DEFENDANT-APPELLEE.

G.R. No. L-30738. July 30, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

This is an appeal by petition for review from a decision of the Court of First Instance of Manila dismissing the complaint filed by plaintiff-appellant against defendant- appellee in Civil Case No. 65341.

On November 23, 1955, a decision was rendered by the Court of First Instance of Manila, Branch VII, in Civil Case No. 22237, entitled "Land Settlement and Development Corporation, Plaintiff, versus Jose Zulueta, Defendant", based on an amicable settlement between the parties, pursuant to which defendant- appellee was ordered to pay the Land Settlement and Development Corporation the sum of P10,391.62 with interest at four (4%) percent per annum from January 13, 1948 until the same is fully paid in the manner stated in the amicable settlement and sub-ject to the terms thereof, without pronouncement as to costs.

On March 5, 1965 , herein plaintiff-appellant, as trustee of the Land Settlement and Development Corporation, filed a complaint in the Court of First Instance of Manila against defendant- appellee , docketed as Civil Case No. 60112 to revive the judgment rendered in Civil Case No. 22237 which had not been enforced by that time. Difficulty was encountered in serving summons on defendant- appellee, thereby prompting the trial court to dismiss Civil Case No. 60112 in an order dated March 12, 1966, reading as follows:

"It appearing that this case has long been pending with this Court, the same having been filed way back on March 5, 1965, and since then defendant has not yet been served with summons, and notwithstanding such fact, no further action has been taken by plaintiff; for lack of interest to prosecute, the instant case is hereby DISMISSED without prejudice, and without pronouncement as to costs.

IT IS SO ORDERED." (Rollo , p. 27.)

Plaintiff-appellant's motion for reconsideration of the order of dismissal having been denied, plaintiff-appellant filed a new complaint, docketed as Civil Case No. 65341 which is the present action and which is also for revival and enforcement of the judgment rendered in Civil Case No. 22237.

Defendant- appellee filed a motion to dismiss the complaint in Civil Case No. 65341 on the ground that plaintiff-appellant's cause of action had already prescribed. On January 12, 1967, the trial court denied the motion to dismiss for the reason that the filing of Civil Case No. 60112 on March 5, 1965 interrupted the running of the period of prescription, and it started to run again only after its dismissal on March 12, 1966; and, therefore, when Civil Case No. 65341 was filed on May 10, 1966, only 9 years, 5 months and 11 days had expired from the time that the judgment in Civil Case No. 22237 had become final and executory. Defendant- appellee's repeated attempts to secure a reconsideration of the denial of his motion to dismiss failed to achieve a favorable result.

Defendant- appellee filed an answer to the complaint with a counterclaim.

On September 19, 1968, after plaintiff-appellant had presented its evidence, the trial court reset the continuation of the hearing on November 28, 1968 for the presentation of the evidence of defendant- appellee. On the last mentioned date, the defendant- appellee failed to appear and the trial court declared the case submitted for decision.

In a decision dated December 27, 1968, the trial court dismissed Civil Case No. 65341. The said dismissal was reasoned out as follows:

"The plaintiff contends that the filing on March 5, 1965 of the first action for revival of judgment interrupted the period of prescription. Upon the other hand, the defendant, arguing that the dismissal of the said action for lack of prosecution did not stop the period of prescription, which is ten years from November 23, 1955, has cited the decision in *Conspecto vs. Fruto, et al.*, 31 Phil. 144, wherein it was held that

'While the commencement of the action would of course, stop the running of the statute of limitations, its dismissal or voluntary abandonment by plaintiff would leave the parties in exactly the same position as if no action had been commenced at all. Said action by reason of its dismissal or abandonment took no time out of the period of prescription.'

and the decision in *Oriental Commercial Co., Inc. vs. Jureidini, Inc., et al.*, 71 Phil. 25, to the effect that

' Cuando se entabla una accion dentro del plazo de prescripcion y se desiste de ella despues, o se sobresee sin condiciones, por una razón u otra, no hace que la accion's que se entable mas tarde, pero ya fuera del período de prescripción, se pueda considerar como presentada dentro de dicho período porque quiere contare con la acción entablada con anterioridad. La falta de de gestión de la recurrente por cuya causa de desestimaron sus demandas segunda y tercera, no puede interpretarse sino como una renuncia de su parte; y, al ejercitar su ultima acción no se ha colocado en la misma situación en que antes se hallaba al ejercitar sus tres anteriores acciones. Este es el mismo criterio que expresamos cuando se nos presentó una cuestión analoga en la causa de *Conspecto contra Fruto* , 31 Jur . Fil., 155.'

In the opinion of the Court, the stand of the defendant is well taken. It has not been intimated by the plaintiff that the authorities relied upon by the defendant had been overruled by any subsequent pronouncement of the Supreme Court. As the decision sought to be revived was rendered and became final and executory on November 23, 1955, and the present action was instituted on May 10, 1966, or more than the ten-year period provided for in Article 1144 of the Civil Code, the said action has already prescribed. As held in *Conspecto vs. Fruto, et al.*, cited, in *Commercial Co., Inc. vs. Jureidini, Inc., et al.*, the dismissal of the action filed on March 5, 1965 left the parties in exactly the same position as if no action had been commenced at all, and took no time out of the period of prescription.

WHEREFORE, the complaint is dismissed without pronouncement as to costs.

SO ORDERED."

A motion for the reconsideration of the said decision was denied by the trial court. On August 4, 1969, plaintiff-appellant filed the present petition for review. The petition was given due course in Our Resolution of August 6, 1969 and the petitioner filed its brief as plaintiff-appellant. No brief was filed in behalf of defendant-appellee.

The only issue raised in this appeal is whether or not plaintiff-appellant's cause of action in Civil Case No. 65341 had already prescribed.

Article 1144 of the New Civil Code provides that an action based upon a judgment "must be brought within ten (10) years from the time the right of action accrues." The prescriptive period starts from the time that the judgment becomes final and executory. In the case at bar, the decision sought to be enforced, to wit, that rendered in Civil Case No. 22237, being based on a compromise agreement, the same became final and executory on the date of its rendition on November 23, 1955.

There is no question that when the first revival action, docketed as Civil Case No. 60112, was filed on March 5, 1965, only 9 years, 3 months and 12 days had elapsed from November 23, 1955. It is also a fact that when the second action to revive judgment was filed on May 10, 1965, it was already more than 10 years from the finality of the decision rendered in Civil Case No. 22237 which is sought to be revived therein. These circumstances render it necessary to determine whether the filing of Civil Case No. 60112, the first action to revive judgment tolled the running of the 10-year prescriptive period to enforce the subject judgment. In the affirmative case, it would follow that the filing of Civil Case No. 65341 on May 10, 1966 was well within the period allowed by the statute of limitations.

Article 1155 of the New Civil Code expressly provides that the "prescription of action is interrupted when they are filed before the court x x x." (*Sotelo vs. Dizon* , 67 Phil. 537; *Cabrera vs. Tianco* 8 SCRA 582.) Such interruption lasts during the pendency of the action. (*Florendo vs. Organo*, 9 Phil. 483.)

These principles apply to the prescription of the action to revive or enforce a judgment. (*Marc Donnelly vs. Court of First Instance of Manila*, 44 SCRA 381.) The facts in the last cited case are almost similar to the present action. In *Marc Donnelly*, a judgment was rendered by the Court of First Instance of Manila which became final on August 5, 1957. On July 8, 1967, an action was filed to revive the judgment. Due to the fact that summons could not be served on the defendant despite the exercise of due diligence by the plaintiff, the revival action was dismissed "for failure to prosecute, but the dismissal shall be without prejudice." Copy of the order of dismissal was received by the plaintiff on March 19, 1969. Twelve (12) days later or on March 31, 1969, a second action for revival was filed. The second action was dismissed by the trial court on the ground that the said revival action was instituted after the lapse of 10 years from the time that the decision sought to be revived had become final and executory.

Resolving the issue of whether or not the first action for revival of judgment interrupted the period of prescription, We reversed the dismissal of the second action to revive judgment upon the following considerations:

"The sole issue to be resolved herein is whether or not prescription has set in to bar the filing by petitioner of his second action to revive the judgment in Civil Case No. 23466. An action for the revival of a judgment prescribes in ten (10) years (Art. 1144[3], Civil Code). The ten-year period is counted either from the date the judgment became final or from the date of its entry (*Vda. de Decena vs. De los Angeles, etc., et al.*, L-29317, May 29, 1971, 39 SCRA 95, 99). The prescription of an action is interrupted, among others, by its filing before the court (Art. 1155, Civil Code).

Applying the foregoing tenets to the case at bar, we find that petitioner's filing of the first action for revival of the judgment in Civil Case No. 23466 was well within the ten-year prescriptive period. Final judgment was entered by the Court of Appeals on August 5, 1957. Petitioners filed Civil Case No. 70028 (his first action to revive the judgment) on July 8, 1967. Therefore, as of the latter date, only nine (9) years, eleven (11) months and three (3) days had elapsed. The ten-year prescriptive period was effectively suspended by the filing of Civil Case No. 70028.

Let us now consider the second complaint (Civil Case No. 76166) for revival of the same judgment in Civil Case No. 23466, in which complaint petitioner also alleged that final entry of the judgment was made on August 5,

1957. The first such action (Civil Case No. 70028) was dismissed by the court without prejudice; and copy of the dismissal order was received by petitioner on March 19, 1969. On March 31, 1969, petitioner filed the second action or revival of the judgment. When a case is ordered dismissed without prejudice, the plaintiff may file his complaint against the same defendant in a separate action, even if the order has already become final and executory (*Rapadaz Vda. de Rapisura vs. Nicolas, etc., et al.*, L-22594, April 29, 1966, 16 SCRA 798, 801). As it is, the second case to revive the judgment was filed even before the order of dismissal in the first case could become final, for only twelve (12) days had expired between March 19, 1969, when petitioner received notice of the dismissal order, and March 31, 1969, when he filed the second motion. In any event, the dismissal of the first case being without prejudice, the filing of the second action was still within the original period of ten (10) years. At any rate, when the defendant's address cannot with due diligence be ascertained and no property of his can be found, the period of prescription is tolled under article 1108(2) of the new Civil Code. In the premises, our conclusion must necessarily be that the trial court committed a reversible error in dismissing Civil Case No. 76166 on the ground of prescription." (44 SCRA pp. 383-384.)

As may be noted from the decision dismissing Civil Case No. 65341, the trial court relied on the rulings in *Conspecto vs. Fruto, et al.*, 31 Phil. 148 and *Oriental Commercial Co., Inc. vs. Jureidini, Inc., et al.* 71 Phil. 25. Said reliance is misplaced, the facts in the said cases being different from those appearing in the one under consideration. In *Fruto*, it was held that the running of the period of limitation was not interrupted by an action filed within the said period because the said action was discontinued by "its dismissal or voluntary abandonment by the plaintiff." The decision went on to state that "the real reason for the said dismissal does not clearly appear of record."

In the case under consideration, the first action for revival, Civil Case No. 60112, was dismissed not by reason of abandonment. As in the case of *Marc Donnelley*, the dismissal of the first revival action was due to the inability to serve summons on the defendant- appellee. This was because, as stated in the petition for review, the defendant- appellee was so elusive that when summons was forwarded to his address at Iloilo City, the same was returned unserved because defendant- appellee was in Manila; and when it was attempted to be served in Manila, he was supposed to be in Iloilo City. (*Rollo* , p. 14.)

In *Fruto*, it is also recognized that the dismissal of an action filed within the prescriptive period does not necessarily result in the non-interruption of the period of limitation. Thus, it was declared:

"Where a suit, commenced within the period of limitation, is abandoned or dismissed by reason of the death of the plaintiff, the operation of the statute is prevented if the suit is recommenced, within a reasonable time, by the representatives of the deceased. (*Martin vs. Archer*, 3 Hill, [S.C.] 211.)" (Underscoring supplied.)

The plaintiff-appellant may not be accused of having abandoned Civil Case No. 60112. They asserted due diligence in trying to serve summons on defendant- appellee but unfortunately, their efforts were thwarted due to the ability of the defendant- appellee to evade service of such court process on him. Neither may plaintiff-appellant be charged with failure to recommence its suit within a reasonable time after its dismissal. The record reveals that plaintiff-appellant received notice of the dismissal of Civil Case No. 60112 on March 21, 1966. Four (4) days later, or on March 25, 1966, plaintiff-appellant filed a motion for reconsideration of said order of dismissal. Plaintiff-appellant received the order denying the motion for reconsideration on April 26, 1966. On May 10, 1966, plaintiff-appellant filed its second action for revival, docketed as Civil Case No. 65341.

Nor may the ruling in *Jureidini* defeat herein plaintiff-appellant's cause of action. In *Jureidini*, the plaintiff filed three (3) cases within the period of prescription, all of which were dismissed, the first on motion of the plaintiff, and the other two (2) for failure to prosecute. When the fourth action was filed beyond the prescriptive period, it was held that the act of the plaintiff in failing to prosecute his first three (3) cases may not be interpreted except as

a waiver on its part and did not place the plaintiff on the same situation where it was before the filing of the first of the three actions; and, following the view expressed in the analogous case of *Conspecto vs. Fruto*, 31 Phil. 150, the fourth action should be dismissed on the ground of prescription. It is to be noted that as in *Fruto*, the filing of the actions within the prescriptive period was considered as not interrupting the running of the period of limitation due to the circumstance that the plaintiff is deemed to have abandoned or waived its claim.

As already stated above, herein plaintiff-appellant may not be faulted with having abandoned its claim against the defendant- appellee which the former had asserted in filing Civil Case No. 60112. The said case was dismissed primarily due to the failure to serve summons on defendant- appellee who had somehow managed to evade being placed under the jurisdiction of the Court. Subsequent acts of plaintiff-appellant after the dismissal of Civil Case No. 60112 adequately negated any supposed intention to waive or abandon its claim against defendant- appellee.

It will be noted that the two cases relied upon by the trial court were both decided when the statute of limitations was contained in the old Code of Civil Procedure, Act No. 190. In said law, there was no specific provision, as that now contained in Article 1155 of the Civil Code, that "the prescription of actions is interrupted when they are filed in court." (*Florendo vs. Organo*, 90 Phil. 483.) It is accordingly extremely doubted if the rulings in *Fruto* and *Jureidini* may still be availed of to uphold the view that the period of prescription is not interrupted by an action which the plaintiff shall abandon or otherwise fail to prosecute. The language of Article 1155 is unqualified and does not give room for making a distinction as to the effect of the filing of an action in court on the running of the period of prescription.

The record further reveals that plaintiff-appellant made written extra-judicial demands upon defendant- appellee by means of letters marked as Exhibits "E-2" and "F", respectively. Such written extra-judicial demand also produced the result of interrupting the period of prescription. (Art. 1155, Civil Code; *Marella vs. Agoncillo*, 44 Phil. 844.)

We are accordingly of the considered view that the trial court erred in dismissing Civil Case No. 65341. We do not find it necessary, however, to remand the case to the court of origin for further proceedings. In the decision rendered by the trial court, it made a finding of the material facts upon which the plaintiff's cause of action is based. It stated the following:

"It appears from the evidence presented by the plaintiff (the defendant did not present any evidence) that under date of November 23, 1965, a decision was rendered in Civil Case No. 22237 of the Court of First Instance of Manila, Land Settlement and Development Corporation versus Jose Zulueta, based on an amicable settlement, ordering the defendant to pay to the plaintiff the sum of P10,391.62, with interest at 4% per annum from January 13, 1948 (Exhibit 'A'); that the said judgment has not as yet been satisfied; that as of February 15, 1965, the outstanding obligation of the defendant is P18,501.97 (Exhibit 'E'); that demands for payment were made on the defendant on January 6, 1956 (Exhibit 'E-2') and on January 18, 1965 (Exhibit 'F').

There can be no serious dispute that the plaintiff Board of Liquidators can prosecute this action as trustee of the abolished Land Settlement and Development Corporation, known for short as LASEDECO. The principal issue is whether or not the action has prescribed." (Decision, Rollo, pp. 79-80.)

The defendant- appellee presented no contradictory evidence, he having failed to appear for the trial of the case scheduled on November 28, 1968 despite notice, thereby prompting the trial court to consider the case submitted for decision on the basis of the evidence presented by the plaintiff. The facts found by the trial court suffice to justify the rendition of a decision on the merits which the trial court failed to do in view of its ruling that the action is barred by the statute of limitations.

WHEREFORE, the judgment appealed from is hereby REVERSED AND SET ASIDE. In lieu thereof, another one is rendered ordering defendant- appellee to pay plaintiff-appellant the sum of P10 ,391.62 with interest at four (4%) per cent per annum from January 13, 1948 until full payment, with costs against defendant- appellee.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, and Relova, JJ.,concur.
Gutierrez, Jr., J., on leave.

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