

ROMAN GONZALES, ET AL., PLAINTIFFS AND APPELLANTS, VS. J.M. TUASON & CO., INC., ET AL., DEFENDANTS AND APPELLEES.

G .R. No. L-21692. December 29, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On April 28, 1960, Roman Gonzales, et al., filed a complaint before the Court of First Instance of Rizal against J. M. Tuason & Co., Inc., et al. to compel the latter to execute a deed of sale over a parcel of land situated in Quezon City which the former claimed to be entitled thereto, as well as to declare ineffective the writ of execution issued in Civil Case No. Q-4559 of the same court.

J. M. Tuason & Co., Inc., filed an answer setting up as special defense that all the issues concerning ownership and possession of the land sought to be recovered are now *res judicata* by reason of the judgment rendered by the court in Q-4559.

Gregorio Araneta, Inc. In turn filed a motion to dismiss on the ground that the complaint does not state sufficient cause of action insofar as said company is concerned.

On August 12, 1960, the court a quo sustained the claim of defendant Gregorio Araneta, Inc. and so it dismissed the complaint as regards said defendant for lack of sufficient cause of action. The case continued insofar as defendant J. M. Tuason & Co., Inc. is concerned, and after hearing the court a quo found substantiated the defenses set up by said defendant. Consequently, it also dismissed the complaint as regards said defendant in an order entered on January 31, 1962.

Plaintiffs interposed the present appeal.

This appeal only refers to the order of January 31, 1962 dismissing appellant's complaint insofar as defendant J. M. Tuason & Co., Inc. is concerned on the ground that appellants' cause of action is already barred by a prior judgment. The appeal of appellants as regards defendant Gregorio Araneta, Inc. was dismissed because the orders appealed from had already become final and executory. The appeal of the latter is, therefore, not included herein.

It appears that the court a quo dismissed the complaint of appellants against defendant J. M. Tuason & Co., Inc. because the cause of action set forth therein was already barred by the judgment rendered by the same court in Civil Case No. Q-4559 entitled J. M. Tuason & Co., Inc. Roman Gonzales, and so the only question to be determined is whether the court a quo erred in dismissing this case on that ground.

We find no merit in this appeal. It should be noted that appellants seek to enforce in the present case an alleged preferential right granted to them under the compromise agreement entered into on March 16, 1953 because they claim to be buyers in good faith and, consequently, J. M. Tuason & Co., Inc. must recognize it and execute a deed of sale in relation thereto after payment of a reasonable and fair value. And such alleged preferential right which appellants now seek to enforce is in the nature of a compulsory counterclaim which should have been raised by them in said Civil Case No. Q-4559. Having failed to set up said right as a counterclaim appellants are deemed to

have waived it and are now barred from asserting the same under the principle of res judicata.

Thus, in *J. M. Tuason & Co., Inc. vs. Sanvictores*, 114 Phil. 82, promulgated on January 30, 1962, which is on all fours with this case, this Court said:

"Assuming, without deciding, that the Tuasons had really bound themselves to recognize the alleged preferential rights of the vendees of Deudor, it is more than remarkable that appellee Sanviciores, one of the vendees, did not take steps to enforce his supposed preference until after the adverse decision of the Court of First Instance in the possessory action had become final and executory in 1959, six years after the Deudor-Tuason compromise was made. This inaction of Sanvictores is all the more strange when we consider that he could have set up such preferential rights as a defense against the suit filed by appellant Tuason & Company against him. If he really was entitled to purchase the contested lot, the claim was in the nature of compulsory counterclaim under Section 6 of Rule 10, since it was necessarily connected with the right possession asserted by the Tuason, and did not require the presence of third parties of its adjudication. Both under section 6 of Rule 10, as well as section 10 of Rule 9, the failure to set up such rights resulted in a waiver thereof, and they became barred after the judgment in the possessory action became final."

Wherefore, the order appealed from is affirmed. No costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

Order affirmed.

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