

**TELESFORA PAGSISIHAN, ISIDRO PAGSISIHAN, ELVIRA PAGSISIHAN,
AND TEOFISTO PAGSISIHAN, PETITIONERS, VS. THE COURT OF
APPEALS, SIMEON GARCIA AND FELISA GARCIA, RESPONDENTS.**

G.R. No. L-34885. January 28, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This is an appeal by certiorari from the decision of the Court of Appeals in CA-G. R. No. 45073-R, February 11, 1972, which affirmed the judgment dated March 17, 1969 of the Court of First Instance of Rizal, Branch X in Civil Case No. 11353, entitled "Telesfora Pagsisihan, et al., plaintiffs, vs. Simeon Garcia and Felisa Garcia, defendants, dismissing plaintiffs' complaint for the declaration of nullity of the Deed of Sale with Right to Repurchase and the Affidavit of Consolidation of Ownership.

For the material facts, We could very well quote from the decision of the respondent Court of Appeals, the following:

"It appears that the plaintiffs are the children of the late spouses Ambrosio Pagsisihan and Isabel Esguerra. During his lifetime Ambrosio Pagsisihan executed a deed of pacto de retro sale dated April 7, 1949 in favor of the spouses Simeon Garcia and Felisa Garcia, defendants in this case. The deed of pacto de retro covers a parcel of riceland located in Bagumbayan, Taguig, Rizal, containing an area of 11,427 square meters which is the subject matter of the present action. However, Ambrosio Pagsisihan failed to redeem the property within the redemption period of 5 years from and after the date of execution of the instrument.

"On April 18, 1955, for the reason that he was misled into signing the deed of pacto de retro, Ambrosio Pagsisihan filed an action in the Court of First Instance of Rizal which was docketed as Civil Case No. 3599, against the spouses Simeon Garcia and Felisa Garcia praying among other things that the deed of pacto de retro be declared an equitable mortgage and that he be allowed to redeem the property. The spouses Simeon Garcia and Felisa Garcia filed their answer and counterclaim. Said spouses denied the material averment in the complaint and alleged that Ambrosio Pagsisihan executed the deed of pacto de retro with full knowledge and understanding of its content before a notary public and that he failed to redeem the land within the stipulated period of redemption.

"On May 10, 1956, Ambrosio Pagsisihan filed a petition for Dismissal asking the Court to dismiss the case with prejudice and without pronouncements as to costs, "on the ground that he has already concluded an amicable settlement with the defendants and he is no longer interested in proceeding with the above-entitled case." The petition to dismiss was thumbmarked by Ambrosio Pagsisihan and verified by his son Isidro Pagsisihan, one of the plaintiffs in this case. At the bottom of said petition, appears the conformity of the defendants in said case and who are likewise the defendants in this case.

"Acting upon the motion on May 16, 1956, the lower court issued an order in the following tenor:

"Upon consideration of the petition for dismissal dated May 10, 1955, filed by the plaintiff, and it appearing that the parties herein have already come into an amicable settlement of their controversy herein, the Court

hereby orders the dismissal of the above-entitled case, with prejudice and without pronouncement as to costs.'

"On July 14, 1960, defendants-spouses Simeon Garcia and Felisa Garcia executed an affidavit of consolidation on ownership affirming that the vendor a retro failed to redeem the land within the stipulated period of redemption, and that as a consequence ownership over the property become consolidated in themselves and requesting the Provincial Assessor of Rizal to issue a new tax declaration in their names and the Register of Deeds to register or annotate the affidavit in the Registration Book under the provisions of Act 3344 as amended.

"On November 28, 1968, or more than twelve years after the dismissal of Civil Case No. 3599, the plaintiffs filed the present complaint dated July 17, 1968 in the Court of First Instance of Rizal, claiming among others that they are part owners of the property subject of the pacto de retro sale executed by their father, Ambrosio Pagsisihan, having inherited a portion of the land from their deceased mother Isabel Esguerra, who died intestate on February 23, 1946; that the deed of pacto de retro sale was null and void from the beginning having been executed by their father without their knowledge and consent; that plaintiffs' offer to redeem that land was unjustifiably refused by the defendants. Plaintiffs prayed for the annulment of the deed of pacto de retro sale or that it be declared a mere equitable mortgage, and the affidavit of consolidated ownership declared of no effect, and that they be allowed to redeem the land.

"On January 14, 1969, defendants filed a motion to dismiss on the following grounds:

'(1) that the cause of action is barred by a prior judgment or by the statute of limitations; and (2) that the claim or demand set forth in plaintiffs' pleading has been paid, waived, abandoned or otherwise extinguished, to which the plaintiffs filed their opposition. Thereafter, the defendants filed their reply to which the plaintiffs filed their rejoinder.'

"On March 17 1969, the lower court issued the order dismissing the present complaint. From this order, the plaintiffs appealed."[1]

On February 11, 1972, the Court of Appeals affirmed the order of the lower court dismissing the petitioners' complaint on the ground that the present action filed by them as the successors-in-interest of the plaintiff in Civil Case No. 3599 is barred by the prior order of dismissal with prejudice issued by the lower court in said Civil Case.

Unable to obtain a reconsideration, the petitioners filed the herein petition with this Court assigning the following errors:[2]

"THE COURT OF APPEALS ERRED IN AFFIRMING THE ORDER OF DISMISSAL OF THE CASE BY THE LOWER COURT.

"THE COURT OF APPEALS ERRED IN FINDING THAT THE PRESENT ACTION FILLED BY THE PETITIONERS 'WHO ARE SUCCESSORS-IN-INTEREST OF THE PLAINTIFF IN CIVIL CASE NO. 3599 IS BARRED BY THE PRIOR ORDER OF DISMISSAL WITH PREJUDICE ISSUED BY THE LOWER COURT.'

"THE COURT OF APPEALS ERRED IN PRACTICALLY AFFIRMING THE DEED OF PACTO DE RETRO INSTEAD OF DECLARING IT NULL AND VOID FROM THE BEGINNING BY ITS SUSTAINING THE ORDER OF DISMISSAL BY THE LOWER COURT.

"THE COURT OF APPEALS ERRED IN PRACTICALLY AFFIRMING THE AFFIDAVIT OF CONSOLIDATION OF OWNERSHIP INSTEAD OF DECLARING IT NULL AND VOID FROM THE BEGINNING BY ITS SUSTAINING THE ORDER OF DISMISSAL BY THE LOWER COURT."

The main issue under the facts set forth above is whether or not the order of dismissal with prejudice issued in

Civil Case No. 3599, entitled "Ambrosio Pagsisihan, plaintiff, versus Simeon Garcia and Felisa Garcia, defendants," bars, under the principle of res judicata, the present action docketed as Civil Case No. 11353, entitled "Telesfora Pagsisihan, plaintiffs, versus Simeon Garcia and Felisa Garcia, defendants."

The petitioners contend that the principle of res judicata does not apply in the instant case because firstly, what they are challenging in the present action is the validity of the petition for dismissal of Civil Case No. 3599 upon which the order of dismissal by the lower court is predicated; and secondly, there is no identity of cause of action nor identity of parties. We find their contentions to be meritorious.

In determining whether the final judgment in the first case, Civil Case No. 3599, for declaration of the Deed of Pacto de Retro as a mere equitable mortgage with right to repurchase, constitutes res judicata as would bar the petitioners' complaint in Civil Case No. 11353 for Declaration of Nullity of the Deed of Pacto de Retro and the Affidavit of Consolidation of Ownership, the following requisites must be present: 1) The former judgment must be final; 2) It must have been rendered by a court having jurisdiction over the subject matter and over the parties; 3) It must be a judgment on the merits; 4) There must be, between the first and second action, identity of parties, of subject matter and cause of action.[3]

Whether there is identity of cause of action between the two above-mentioned cases, the first case for declaration of the Deed of Pacto de Retro as a mere equitable mortgage with right to repurchase, and the second case, for declaration of nullity of the Deed of Pacto de Retro and the Affidavit of Consolidation of Ownership, could be determined by a careful and close scrutiny of the records of the two cases.

The first case was filed on April 18, 1955. The complaint alleges that plaintiff Ambrosio Pagsisihan, widower, executed a deed of pacto de retro sale on April 7, 1949 over a parcel of land which is the land in question located in Taguig, Rizal in favor of defendants Simeon Garcia and Felisa Garcia; that Ambrosio Pagsisihan affixed his thumbmark on the said document, the contents of which were not read nor explained to him, upon the representations made by herein defendants that he was executing a deed of real estate mortgage pursuant to their previous verbal agreement; that before the expiration of the period within which to redeem said property, he offered to redeem the land but defendants refused; that plaintiff, relying upon the misrepresentation of defendants and by reason of ignorance, failed to redeem the said property according to the terms of the contract; that he again offered to redeem the property but was refused without any justifiable reason; that he has been occupying the premises and has been paying its taxes since the execution of the contract up to the present time; that he prayed, among other things, that judgment be rendered in his favor declaring the aforementioned contract as an equitable mortgage instead of a deed of pacto de retro sale and ordering the defendants to accept the redemption price offered by the plaintiffs in the amount of P600.00.[4] The above-mentioned allegations are the basic and ultimate facts which constitute the plaintiffs' cause of action.

In the second case, the complaint was filed on November 28, 1968. It alleges that plaintiffs (the herein petitioners) are brothers and sisters of full blood and the children and heirs of the late spouses Ambrosio Pagsisihan and Isabel Esguerra; that their parents were the conjugal owners of the land in question; that their mother died intestate on February 23, 1946 and upon her death, the said property was transmitted to them and their father by operation of law; that their father also died intestate on August 20, 1956 and upon his death, the entire property was transmitted to them by operation of law; that the said land was allegedly sold to defendants (respondents herein) by their father during his lifetime without the knowledge and consent of the petitioners through the execution by their father of a deed of sale with right to repurchase; that they offered to redeem the property but the respondents refused; that their father had continuously possessed, occupied and cultivated the said land and paid the taxes during his entire lifetime, sharing with the respondents the produce of the riceland on 50-50 basis from the date of the execution of the contract until his death; that upon the death of their father, petitioner Isidro Pagsisihan took

over from his father the occupation, possession and cultivation of land sharing the respondents with the fruits of the riceland up to the present; that the aforestated deed of sale with right to repurchase was null and void from the beginning having been executed without their knowledge and consent, or at most, the said document could only be an equitable mortgage; that on July 14, 1960, the respondents executed an affidavit of consolidation of ownership over the aforesaid land for failure of the vendor to redeem the property for registration with the Provincial Assessor and Register of Deeds of Pasig, Rizal which document was registered with the Provincial Assessor's Office on August 15, 1960 in violation of the pertinent provision of the Civil Code that in case of real property, no consolidation of ownership in the vendee by virtue of the failure of the vendor to redeem the property shall be recorded in the Registry of Property without judicial order after the vendor has been duly heard; that they prayed, among others, that judgment be rendered in their favor declaring the deed of sale with right to repurchase executed by their father null and void from the beginning, or at most, only an equitable mortgage, and declaring the affidavit of consolidation of ownership over the property executed by the respondents null and void from the beginning in violation of the pertinent provision of the Civil Code.[5] The aforestated allegations also state the ultimate and basic facts which constitute the herein petitioners' cause of action.

From the above allegations as culled from the two cases, it is quite apparent that the cause of action in the first case is different from that of the second case. They are not one and the same cause of action that could give rise to the defense of *res judicata*. The first case seeks only to declare the deed of pacto de retro as a mere equitable mortgage. The action is premised on Article 1602 of the New Civil Code which provides:

"Art. 1602: The contract shall be presumed to be an equitable mortgage, in any of the following cases:

1. x x x
2. When the vendor remains in possession as lessee or otherwise:
3. x x x
4. x x x
5. When the vendor binds himself to pay the taxes on the thing sold:
6. x x x"

The two circumstances above-quoted were alleged as basis for the declaration, as prayed for, of the pacto de retro sale as an equitable mortgage. On the other hand, the second case seeks the nullification of the deed of pacto de retro sale with right to repurchase as void from the beginning, as well as the nullification of the consolidation of ownership, there having been no judicial order issued authorizing the same as provided in the New Civil Code (Art. 1607). It is to be noted that when the first case was filed on April 18, 1955, the said affidavit was not yet in existence for it was executed on July 14, 1960 and registered on August 15, 1960.

The second case also places in issue the validity of the petition for dismissal of Civil Case No. 3599 filed by Ambrosio Pagsisihan upon which the dismissal of said case is based alleging fraud in its execution. Accordingly, the validity of the order of dismissal is itself placed in issue. Obviously, it was not placed in issue in the first case. Whether or not the land in question is a conjugal property of the late spouses Ambrosio Pagsisihan and Isabel Esguerra is another issue raised in the present case. These issues are more basic and fundamental than the declaration of the deed of pacto de retro sale as an equitable mortgage, which was the main, if not sole, issue in the first case.

If the application of the doctrine of *res judicata*, is doubtful, the test generally applied to determine the identity or similarity of the causes of action, is to consider the identity of facts essential to their maintenance, or whether the

same evidence would sustain both causes of action. If the same facts or evidence would sustain both, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action. If, however, the two actions rest upon different states of facts, or if different proofs would be required to sustain the two actions, a judgment in one is no bar to the maintenance of the other. It has been said that this method is the best and most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties. It has even been described as infallible.[6]

Applying the test, We find that the evidence required to prove the allegations of the second cause of action must necessarily be more than what is needed in the first case, because of the allegations of facts supporting the issues as earlier indicated, which are not only more in number, but different in nature than those raised in the first case. Thus in the present case, the land is alleged to be a conjugal property of the parents of petitioners who accordingly became the owners, at least of the share of their mother who had already died when the pacto de retro sale was executed by their father, allegedly without their consent. The execution and registration of the affidavit of consolidation of ownership in favor of the respondents are alleged to be in contravention of the provision of the New Civil Code of the Philippines, and that the petition for dismissal of Civil Case No. 3599 filed by Ambrosio Pagsisihan upon which the order of dismissal by the lower court is predicated was made thru fraud, which would then taint the order of dismissal with invalidity. It is thus obvious that the parties in the present action who were not parties in the earlier case are maintaining a cause of action entirely different from and independent of the cause of action in the earlier case.

In the decision appealed from, the Court of Appeals approached the issue simplistically when it observed as follows:

"The main issue in this appeal is: What is the effect of the order of dismissal with prejudice issued by the trial court in Civil Case No. 3599 on the present action filed by the plaintiffs-appellants? The answer is found in the following:

'Effect of dismissal with prejudice: Plaintiff's dismissal of a suit with prejudice is as conclusive of the rights of the parties as an adverse judgment after trial, being res judicata of all question which might have been litigated in the suit.' (Francisco, Revised Rules of Court, Vol. 1, page 716, citing the following cases: Bryant vs. Byburn, 174 S.W. 2d. 938, 206 Art. 305; Bank of America vs. Jorjarian, 24 N.E. 2d. 896; Philip vs. Israel, 10 Serg. & R. 391).

'Effect of dismissal upon agreement of the parties. - The rule is well settled that a judgment dismissing an action, based upon stipulation of the parties settling and adjusting the subject matter of the action and agreeing to its dismissal is a bar to a subsequent action for the same cause.' (Francisco, Revised Rules of Court, Vol. 1, page 727, citing 17 Am. Jur. 91).

"In view of the foregoing, we find the present action filed by the plaintiffs-appellants who are the successors-in-interest of the plaintiffs in Civil Case No. 3599 barred by the prior order of dismissal with prejudice issued by the lower court in said Civil Case." (Petitioners' Brief, pp. 38-39; p. 40, Rollo).

In citing the rule on the effect of dismissal with prejudice, the respondent court glossed over the question of the validity of the order of dismissal with prejudice which is one of the issues raised in the present action. The same is true when it cited also the rule as to the effect of dismissal upon agreement of the parties, without considering that the agreement is precisely alleged to be void for having been obtained thru fraud.

If the order of dismissal without prejudice, which is sought in the present action to be set aside, is shown to be void because it is based on a petition for dismissal by the plaintiff on the ground that plaintiff and defendants have come to an amicable settlement and agreed to the dismissal of the case without prejudice, facts which are alleged to be untrue, the rule cited by respondent court would be clearly inapplicable. The rule rests on the assumption

that the order of dismissal without prejudice based on the agreement of the parties is a perfectly valid one. It does not apply when that very order is challenged, for if it is a nullity in itself, said order or judgment may not bar a subsequent action under the principle of *res judicata*, which requires, without any doubt, that a judgment to bar another action for the same cause and between identical parties, need be a valid judgment, not a void one. Hence, the fundamental requisite of the principle of *res judicata* that the judgment must be rendered by a court of competent jurisdiction.

"*Res judicata* means that an existing final judgment rendered upon the merits, and without fraud or collusion, by a Court of competent jurisdiction, upon a matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions, or suits in the same or any other judicial tribunal of concurrent jurisdiction, on the points and matters in issue in the first suit." (*Philippine National Bank vs. Barreto*, 52 Phil. 818).

The inevitable and logical conclusion is that the order of dismissal with prejudice issued in the first case does not, under the principle of *res judicata*, bar the instant case, for the validity of said order is the very issue, or at least the main one, raised in Civil Case No. 11353, from which the present petition stemmed.

WHEREFORE, the decision appealed from, is hereby reversed and the records remanded to the Court of First Instance of Rizal, Branch X for further proceedings, reserving the petitioner the right to raise anew the question of prescription as the other ground of their motion to dismiss which was not ruled upon by the said court. No costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.
Teehankee, (Chairman), J., in the result.

[1] Annex "A", Decision of the Court of Appeals, pp. 14 to 17, Rollo.

[2] Pages 1-2, Brief for the Petitioners, p. 40, Rollo.

[3] *San Diego v. Cardona*, 70 Phil. 281; *Valdez v. Pineda*, 89 Phil. 547; *Lapid v. Lawan, et al.*, 101 Phil. 1243; *Aguilar v. Gamboa*, 103 Phil. 183; *Nator v. CIA*, G. R. No. L-16671, March 30, 1962; *Malvar, et al. v. Pallingayan, et al.*, G. R. No. L-24736, September 27, 1966; *Suarez v. Municipality of Naujan*, G. R. No. L-22282, November 21, 1966; *Aroc v. People's Homesite and Housing Corporation*, G. R. No. L-39674, January 31, 1978; *Martin*, Rules of Court, Vol. 2, p. 418.

[4] Pages 22-24, Record on Appeal; p. 21, Rollo.

[5] Pages 2-7, Record on Appeal; p. 21, Rollo.

[6] 30 Am. Jr. 918-919; *Francisco*, the Revised Rules of Court, Vol. II, p. 871; *Aroc vs. People's Homesite and Housing Corporation*, 81 SCRA 350.

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