

HEIRS OF EDUARDO JORE, NAMELY: ANASTACIA VDA. DE JORE, MARGARITO JORE, MERLINDA JORE, ADRIANO JORE (DECEASED) REP. HEREIN BY HIS LEGAL HEIRS NAMELY: HIS WIFE FEDELIZA JORE, DION...

Ponente: INTING, J.

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INTING, J.:

Before Us on appeal is the Order[1] dated June 6, 2011 of the Regional Trial Court of San Miguel, Zamboanga del Sur, Branch 29, rendered in Civil Case No. 08-048, which is a Complaint for Recovery of Ownership, Possession, with Prayer for Preliminary Injunction/ Restraining Order and Damages.

The facts[2] of the case are as follows:

The controversy arose when Regino Jore, brother of the late Eduardo Jore, and the predecessor-in-interest of defendant-appellees, namely: Teodora Jore-Etang (deceased), represented by her surviving heirs, namely: her spouse Gaudencio Etang and son Dionesio Etang, Bonifacia Jore-Cunahap, and Agustin Jore, filed a Free Patent Application covering Lot No. 2969, Pls-251 situated at Maraya, Margosatubig, Zamboanga del Sur before the Department of Environment and Natural Resources (DENR) in Zamboanga City. However, it was opposed by the plaintiffs-appellants, Heirs of Eduardo Jore, namely: Anastacia vda. de Jore, Margarito Jore, Merlinda Jore, Adriano Jore (deceased) represented herein by his legal heirs, namely: his wife, Fedeliza Jore, Dionisio Jore, William Jore, Loreta and Maricel Jore, and Placido Jore, alleging among other things, that a portion of the aforementioned lot identified as Lot No. 27, under PSU-138757 containing an area of 31,253 square meters allocated to Eduardo Jore was included in the above-mentioned application of Regino Jore.

On January 22, 1982, the Regional Director of the DENR ruled in favor of plaintiffs-appellants. The dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, this Office believes and so holds that the F.P.A. No. (IX-3) 3417 of Regino Jore, Applicant-Respondent, covering Lot No. 2969, Pls-251, Case 5, situated at Maraya, Margosatubig, Zamboanga del Sur should be, as it is hereby amended, by excluding therefrom that area of 3 hectares more or less, as shown in the sketch drawn at the back of the last page of this decision, thereafter, the same shall be given due course for the remaining portion only subject to whatever rights of the tenants who may be found thereon.

Claiming Protestants Anastacia Vda. de Jore, Adriano Jore, Merlinda Jore, Placido Jore and Margarito Jore may file an appropriate public land application for that portion awarded to them after the subdivision survey of the land at the expense of both parties."[3]

Undeterred, Regino filed an appeal before the Office of the Secretary of the DENR, but it was dismissed for being filed out of time.

When the Decision became final and executory, the DENR issued an Order of Execution for its implementation.

However, the DENR held it in abeyance when Regino filed a complaint for Injunction with Preliminary Injunction docketed as Civil Case No. 3028.

On October 17, 1994, the DENR once again issued an Order of Execution for the enforcement of the aforementioned decision.

Thereafter, the Heirs of Regino Jore filed a complaint for Recovery of Possession and Damages with Writ of Preliminary Mandatory Injunction against the Heirs of Eduardo Jore before the Regional Trial Court of San Miguel, Zamboanga del Sur, Branch 29 (RTC-29). They allege, among other things, that before the death of Regino, he conveyed by way of donation mortis causa the lot to them. Consequently, they took over possession of the land in the concept of an owner and declared it for taxation purposes in their names. They claim that about two (2) years after the death of Regino, the Heirs of Eduardo through force, intimidation, stealth, and strategy entered into a portion of about three (3) hectares of the lot and since then have continuously appropriated all the produce.

On the other hand, the Heirs of Eduardo Jore contend that they were installed on the land in question by one Alfonso Sipin, Land Management Officer of the DENR by virtue of an Order of Execution in implementation of the Decision of the Regional Director of the DENR.

On March 3, 2008, RTC-29 rendered a Decision in favor of the Heirs of Regino Jore. It ruled in this wise:

"Obvious is the fact that the three (3) hectare portion which is the subject of the present action is not a titled land. It being not a titled land, the same is still a public land and open to application for titling. In this case, there is no showing that the defendants were really installed in possession to that three (3) hectare portion by the DENR. The Order of Execution mandates that in compliance of the writ, the whole proceedings shall be in writing, signed by the parties and witnesses, if possible. There is no evidence presented by the defendants of the proceedings of installation as mandated, hence the Court could not legitimize the possession of the defendants of that three (3) hectare portion.

As can be gleaned, it appears that there is unwarranted intrusion made by the defendants over that three (3) hectare portion. It should also be noted that the Decision of the DENR, if considered and followed, is not an adjudication of the three (3) hectare portion in favor of the defendants. What is clear is that the defendants may file an application subject to the rights of the tenants. In addition, this Court believes that the actual tillers of that three (3) hectare portion is entitled to apply under Presidential Decree No. 152. Thus the plaintiffs in this case who were the actual tiller of the lot are entitled to apply and should be protected from the unwarranted intrusion.

Needless to state, this Order of Execution and Decision of the DENR was not formally offered in evidence as required under Sec. 34, Rule 132, Revised Rules on Evidence, hence it could be disregarded. But, as already stated, even if considered and followed, it could not be the source of execution depriving the plaintiffs of possession. The decision does not state or direct the ouster of the plaintiffs from physical possession. So from the facts obtaining, the possession of the defendants in whatever manner they have acquired over the three (3) hectares (sic) portion of lot 2969 is illegal, hence their ouster over the three (3) hectare portion is in order.

WHEREFORE, the foregoing premises considered, judgment is hereby rendered ordering the defendants and all persons acting for them and in their behalf to vacate the three (3) hectare portion of lot 2969, Pls-251."[4]

On December 27, 2005, plaintiff-appellant Placido Jore, one of the heirs of Eduardo Jore, applied for a free patent for Lot No. 4411, Pls-251.

Thereafter, on March 15, 2006, the Bureau of Lands, DENR Region IX awarded Original Certificate of Title (OCT) P-48,658 to the Heirs of Adriano Jore, represented by William Jore, which covered Lot 4411-B, Csd-09-008601, equivalent to Lot 5067, Pls-251 containing an area of seven thousand eight hundred forty eight

(7,848) square meters. On the other hand, OCT P-49,659 was awarded to Placido Jore, which covered Lot 4411-C, Csd-09-008601, equivalent to Lot 5067, Pls-251 with an area of seven thousand eight hundred eleven (7,811) square meters. OCT P-49,660 was awarded to Merlinda J. Norleza, which covered Lot 4411-B, Csd-008601, equivalent to Lot 5065, Pls-251 containing an area of seven thousand eight hundred ten (7,810) square meters. Lastly, OCT P-49,661 was awarded to Margarito Jore, which covered Lot 4411-a, Csd-09-008601, equivalent to Lot 5064, Pls-251 with an area of seven thousand hundred eighty four (7,784) square meters. The heirs of Eduardo Jore also declared these properties for taxation purposes.

On August 12, 2008, the Heirs of Eduardo Jore filed a complaint for Recovery of Ownership, Possession with Prayer for Preliminary Injunction/ Restraining Order and Damages against the Heirs of Regino Jore RTC-29.

However, the court a quo dismissed it in its Order dated June 6, 2011 on the ground of res judicata. The court a quo ruled that it had already rendered a decision in Civil Case No. 98-020 in favor of the defendants-appellees where it declared that the possession of the plaintiffs-appellants over the three (3) hectare portion of Lot 2969 was illegal. It ruled that pursuant to the principle of bar by prior judgment, issues which have been litigated in a final and executory judgment preclude the re-litigation of the same issues in another action. The relevant portion of the aforementioned Order reads as follows:

"The plaintiffs herein already knew that the decision of this court with respect to the issue of who has actual, physical possession or occupation of the three (3) hectares portion of lot 2969 is already final and executory. In fact the defendants herein were already installed in possession on that lot in question by the court through its Sheriff. With regard to the several titles issued over these three (3) hectares portion of lot 2969, the court so holds that it has no basis in fact since said issuance of title was based by the Bureau of Lands on the possession of the plaintiffs herein which is declared by the court as illegal. In one case, the Supreme Court ruled that, 'the power to determine who has the actual, physical possession or occupation or the better right of possession over public land remains with the courts. The rationale is evident. The Bureau of Lands does not have the wherewithal to police public lands, neither does it have the means to prevent disorder or breaches of peace among the occupants. Its power is clearly limited to disposition and alienation, and while it may decide disputes over possession, this is but in aid of making the proper awards. The ultimate power to resolve conflict of possession is recognized to be within the legal competence of the civil courts and its purpose is to extend protection to the actual possession and occupants with a view to quell social unrest (City of Baguio, et al. vs. Francisco Niño, et al., G.R. No. 161811; April 12, 2006)'[5]

Thus, plaintiffs-appellants sought recourse before this Court via ordinary appeal with the following sole assignment of error:

I

THE COURT A QUO GRAVELY ERRED IN DISMISSING THE COMPLAINT BASED ON THE GROUND OF RES JUDICATA.

Our Ruling

The appeal is meritorious.

Defendants-appellees echo the ratiocination of the court a quo that the action filed by the plaintiffs-appellants is barred by res judicata and is therefore dismissible.

We disagree.

We reiterate the long-held rule laid down by the Supreme Court that jurisdiction over the subject matter is determined by the allegations in the complaint.[6] Thus, it is imperative that We examine the allegations of the complaint in Civil Case No. 98-020 (CC 98-020) filed by the defendants-appellees against the

plaintiffs-appellants and the complaint in Civil Case No. 08-048 (CC 08-048) filed by the plaintiffs-appellants against the defendants-appellees.

Upon perusal of the allegations in CC 98-020 and CC 08-048, We find that there is a hairline distinction between the two. The relevant portions of the allegations in CC 98-020 read as follows:

"10.

Sometime after the death of Regino Jore, or about more than two (2) years ago, however, without valid or just reason whatsoever, and through force, intimidation, stealth, and strategy, the defendants, unlawfully, feloniously, and against plaintiffs' will, the defendants entered into a portion of about three (3) hectares of Lot No. 2969, Pls-251, and since then and continuously up to now, have been appropriating the coconuts thereof for their own use and benefit to the damage and prejudice of plaintiffs, which must have already amounted to no less than P100,000.00.

11.

Series of valid and just demands were made by the plaintiffs for the defendants to peacefully vacate the portion forcibly entered into by them and politely turn over the possession and enjoyment thereof in favor of plaintiffs, but the former failed and refused and continuously fail and refuse to vacate the subject area without valid or just reason whatsoever.

x x x

13.

To avoid further irreparable damage and injury on the part of the plaintiffs, a writ of preliminary mandatory injunction is believably proper and in order. Plaintiffs are definitely entitled to the reliefs demanded for under the instant complaint, the whole or part of such reliefs consists of an issuance of a writ of preliminary injunction commanding or ordering the defendants as well as the persons acting under them, during the pendency thereof and after notice, to vacate the area forcibly entered by them and turn it over in favor of the plaintiffs, and which writ shall be rendered permanent upon the termination of the instant case. Plaintiffs are willing and able to put up a reasonable bond for this purpose."

On the other hand, CC 08-048 proffers the following allegations:

"12.

That the possession of the contested land by the defendants does not vest upon the defendants preferential right over the entire area considering that the herein plaintiffs have a prior claim over a portion of the area as successors-in-interest of the late Eduardo Jore;

13.

That an intention to acquire public lands must not only be coupled by actual occupation, possession and cultivation, but also be attended by good faith on the part of the applicant, the defendants predecessors-in-interest;

x x x

30.

That although the defendants were able to obtained (sic) a favorable judgment in the case they filed against the plaintiffs herein in Civil Case No. 98-020 for recovery of possession and damages with writ of preliminary injunction, due to the failure of the defendants, the plaintiffs herein, to controvert and prove by preponderance of evidence their de jure possession over the contested land, in view of their failure to present their

documentary evidences (sic), which were momentarily misplaced, however the said Decision of the Honorable Court does not foreclose the right of the plaintiffs herein to vindicate their right of ownership over the land, including the attributes thereof;"

From the foregoing, it is apparent that the two complaints prayed for the recovery of possession over the subject property. Nevertheless, the nature of the action of the two complaints is different from each other. CC 98-020 is an accion publiciana, which is a plenary action for the recovery of the right to possess. This action must be brought in the proper regional trial court when the dispossession has lasted for more than one year.[7] On the other hand, CC 08-048 is an accion reivindicatoria which seeks the recovery of ownership and includes the jus possidendi brought in the proper regional trial court. [8]

Accion reivindicatoria or accion de reivindicacion is thus an action whereby plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession. It is different from accion interdictal or accion publiciana where plaintiff merely alleges proof of a better right to possess without claim of title. [9]

In relation to the issue of res judicata, We refer to Section 47, Rule 39 of the Rules of Court, which states, to wit:

"Section 47. The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

(a)

In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be prima facie evidence of the death of the testator or intestate;

(b)

In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

(c)

In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. x x x"

In *Mallion v. Alcantara*, the Supreme Court explained the dual nature of res judicata, viz:

"Section 47 (b) pertains to it in its concept as 'bar by prior judgment' or 'estoppel by verdict,' which is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. On the other hand, Section 47 (c) pertains to res judicata in its concept as 'conclusiveness of judgment' or otherwise known as the rule of autre action pendant which ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. Res judicata in its concept as a bar by prior judgment obtains in the present case." [10]

For an action to be dismissible on the basis of res judicata, the following requisites must concur:

(1)

Finality of the former judgment;

(2)

The court which rendered it had jurisdiction over the subject matter and the parties;

(3)

It must be a judgment on the merits; and

(4)

There must be, between the first and second actions, identity of parties, subject matter and causes of action.[11]

At first blush, it may seem that both complaints are one and the same based on the four requisites. However, as can be gleaned from the complaints, the fourth requisite is wanting with regard to CC 08-048.

It is apparent that the Decision in CC 98-020 ruled on the issue of who has the better possessory right independent of title over the subject property. On the other hand, CC 08-048 tackles the issue of recovery of ownership and necessarily includes *jus possidendi*. Thus, the latter involves title over the subject matter.

Moreover, it is also important to reiterate the ruling of RTC-29 in CC 98-020, and quoted as follows:

"Obvious is the fact that the three (3) hectare portion which is the subject of the present action is not a titled land. It being not a titled land, the same is still a public land and open to application for titling. x x x

What is clear is that the defendants may file an application subject to the rights of the tenants. In addition, this Court believes that the actual tillers of that three (3) hectare portion is entitled to apply under Presidential Decree No. 152. Thus, the plaintiffs in this case who were the actual tiller of the lot are entitled to apply and should be protected from unwarranted intrusion. x x x"[12]

Based on the foregoing, We find that the present action is not barred by *res judicata*. Furthermore, We find that there is sufficient evidence to warrant the remand of this case to the court a quo for trial on the merits.

WHEREFORE, the appeal is GRANTED. The Order dated June 6, 2011 of the Regional Trial Court of San Miguel, Zamboanga del Sur, Branch 29, rendered in Civil Case No. 08-048 is REVERSED and SET ASIDE. This case is REMANDED to the court a quo for trial on the merits.

SO ORDERED.

[*] Borja, (Acting Chairperson), and Perez, JJ., concur.

[*] Designated Third Member vice J. Camello, per Raffle dated June 18, 2014

[1] Penned by Hon. Edilberto G. Absin; Rollo, pp. 41-42; Records, pp. 157-158.

[2] As culled from the records.

[3] Rollo, p. 14.

[4] Records, pp. 69-70.

[5] See footnote 1.

[6] Serdoncillo v. Benolirao; G.R. No. 118382; October 8, 1998.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] G.R. No. 141528; October 31, 2006.

[11] Selga v. Brar; G.R. No. 175151; September 21, 2011.

[12] Records, pp. 69-70.

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