

**ENRIQUETA T. VIRAY, ASSISTED BY HER HUSBAND, PABLO R VIRAY,
PETITIONER-APPELLANT, VS. HELEN MARINAS, ASSISTED BY HER
HUSBAND LUCIANO PINEDA ONG, AND HON. JUDGE ROMAN
CANCINO, JR...**

G.R. No. L-33168. January 11, 1973

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ANTONIO, J.:

This case is certified to Us by the Court of Appeals (CA-G.R. No. 44406-R) in its resolution of January 5, 1971, on the ground that the appeal involves a purely question of law * * * whether or not the action for ejectment instituted by Respondents Helen Marinas et al., against petitioners Enriqueta T. Viray et al., in the City Court of Manila (Civil Case No. 170347) is already barred by prior judgment (res judicata).

This issue involves a consideration of the three actions instituted by respondent Helen Marinas against petitioner Enriqueta T. Viray and the respective decisions or orders therein rendered which are summarized in brief as follows:

"1. On May 16, 1964, respondent Helen Marinas filed a complaint for ejectment against petitioner Enriqueta T. Viray in the City Court of Manila (Civil Case No. 121978) alleging that she is the purchaser of Lots Nos. 4-B and 4-C, Block No. 2823, located in the city and duly titled in her name; that petitioner is in possession of a portion of the aforementioned property by virtue of an agreement with the former owner paying a monthly rental of P22.50; that on April 14, 1964, respondent notified petitioner of her 'plan of commercial development in (said) parcels' and accordingly asked petitioner to vacate but the latter refused; and that the unpaid rentals amount to P45.00 as of May, 1964.

"2. In her answer, petitioner claimed that she, with her predecessor-in-interest, has occupied the portion in question for about thirty (30) years already and that the former owner and the respondent agreed to let her stay as long as she paid the agreed rental.

"3. On December 26, 1964, the City Court rendered a decision granting petitioner an extension up to December 31, 1965 on or before which she should vacate the premises and ordering her to pay the current rentals of P22.50 a month within the first 10 days of each month until the end of the extension and the back rentals within thirty (30) days from notice of the decision.

"4. Petitioner appealed to the Court of First Instance of Manila (Civil Case No. 61994) which rendered a decision holding 'that since the defendant has been regularly paying the rental according to the stipulation of facts, there is no reason to recover the possession from the said defendant, without prejudice to the plaintiff taking such other action as may be necessary and proper.' No appeal was taken therefrom and it became final.

"5. On January 25, 1968, respondent, assisted by her husband, filed another complaint before the Court of First Instance of Manila (Civil Case No. 71861) also praying for the eviction of petitioner and all those claiming under her and for damages. After a narration of the proceedings had in connection with her first complaint for ejectment, respondent also alleged that on October 13, 1967, she wrote petitioner about the increase of her rental to P3 50.00 a month beginning October, 1967; that petitioner having failed to pay the new rate of

P350.00 a month, respondent on December 6, 1967, made a demand therefor but petitioner refused to pay or to vacate.

"6. Petitioner countered with a motion to dismiss, dated January 31, 1968, predicated on three grounds, viz., 1) the complaint was barred by a prior judgment; 2) it stated no cause of action; and 3) improper venue.

"7. On March 4, 1968, an order was issued dismissing the complaint for lack of jurisdiction. The relevant portion of the order states:

'If the intention of the plaintiff is to recover possession after the aforesaid decision was rendered because the defendant illegally detained and continues to illegally detain the property after the month to month lease was terminated for refusal of the defendant to pay the increased rental beginning October, 1957, then this Court is without jurisdiction to try this case, for it is the City Court that has jurisdiction over illegal detainer cases within one year from the illegal detainer. As the demand to vacate was made only on December 6, 1967 (Annex "F" to complaint) it is obvious that the detainer at the time of the filing of plaintiffs complaint has lasted very much less than one year. Although the quantum of damages sought is much within the jurisdiction of this Court, said damages are incidental and accessory to the action for possession of the premises detained for less than one year and are, consequently, immaterial to the determination of which Court has jurisdiction over plaintiffs action (Lao Seng Hian, et al. v. Almeda Lopez & Ocampo, 46 O.G. No. 11, Supp. 70; De la Cruz v. Yulo, 50 O.G. No. 4, p. 1658), It is, therefore, the City Court of Manila that has jurisdiction over the subject matter of plaintiffs action.

WHEREFORE, defendant's motion to dismiss, dated January 31, 1968, is hereby granted, and the instant case is hereby dismissed for lack of jurisdiction of this Court over its subject matter.'

"8. On April 26, 1968, respondent in view of the aforesaid order of the Court of First Instance, filed the complaint for ejectment in the City Court of Manila, (Civil Case No. 170347) which substantially reproduced the allegations of the second complaint.

"On June 25, 1968, petitioner filed a petition for certiorari and prohibition with the Court of First Instance to annul the order of the City Court in Civil Case No. 170347, denying the motion to dismiss of petitioners. This was given due course and a preliminary injunction was issued enjoining respondent City Judge Roman Cancino, Jr. from proceeding with the trial of Case No. 170347. After respondent Helen Marinas filed her answer to the petition, the case was submitted for decision on the pleadings. This petition was dismissed and the writ of preliminary injunction dissolved, the trial court stating:

'The complaint filed in Civil Case No. 17037 of the City Court ' of Manila is precisely based upon the demand to vacate made on December 6, 1967 over which subject-matter the Court of First Instance in Civil Case No. 71861 refused to take jurisdiction.

'This new demand as a new and distinct cause of action would squarely fall within the jurisdiction of the City Court if filed within one year from December 6, 1967. Civil Case No. 170347 appears to have been filed in the City Court within that period.

'The filing of that case is pursuant to a new juridical situation which has arisen and, indeed, arises whenever a new demand to vacate is made for purposes of ejectment. Jurisprudence provides that a prior demand may later be disregarded and a subsequent breach may be made the subject of a new demand. '"[1]

On December 16, 1969, the present petition "for injunction and/ or prohibition" was filed by Petitioners with the Court of Appeals, which as aforesaid certified the same to Us on January 5, 1971.

Petitioners' two assignment of errors were predicated upon one fundamental issue * * * whether or not the principle of res judicata could be applied to bar the prosecution of Civil Case No. 170347 of the City Court of

Manila

I

The principle or rule of res judicata is primarily one of public policy, and, secondarily, of private benefit to individual litigants. While economy of the time of the courts is one of the obviously beneficial results of the doctrine, the broader and even more important aspect of the public policy of res judicata is its promotion of peace and quiet in the community through the creation of certainty in the relations of members of the social order.

In its broad concept, the rule means that "when a court of competent jurisdiction has determined, on its merits, a litigated cause, the judgment entered, until reversed, is, forever and under all circumstances, final and conclusive as between the parties to the suit and their privies, in respect to every fact which might properly be considered in reaching a judicial determination of the controversy, and in respect to all points of law there adjudged, as those points relate directly to the cause of action in litigation and affect the fund or other subject-matter then before the court." [2]

The classic requisites which must exist to warrant the operation of the principle of res judicata, have been stated thus:

"In order that a judgment rendered in a case may be conclusive and bar a subsequent action, the following requisites must be present: (a) it must be a final judgment or order; (b) the court rendering it must have jurisdiction over the subject matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be between the parties, identity of subject matter, and identity of cause of action." [3]

In accordance with the aforementioned requirements a judgment is res judicata, if it is on the merits of the case, because otherwise it cannot be a conclusive adjudication of the controversy. [4] Thus a judgment dismissing an action for want of jurisdiction cannot operate as res judicata on the merits on a subsequent action. [5] Furthermore it is essential that as between the two cases, there must be identity of causes of action or issues. In ascertaining whether the causes of action or issues are identical in the two cases the test is as follows: 'Would the same evidence support and establish both the present and the former cause of action?' If so, the former judgment is a bar; if otherwise, it does not serve as a bar to the second action. [6] Where it is sought however to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. This has been explained by Chief Justice Moran [7] thus:

"In this regard, distinction should be made between 'bar by the former judgment' and 'conclusiveness of the judgment.' There is 'bar by former judgment' when, between the first case where the judgment was rendered, and the second case where such judgment is invoked, there is identity of parties, subject-matter and cause of action. When the three identities are present, the judgment on the merits rendered in the first case constitutes an absolute bar to the subsequent action. It is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. * *

*

"But where, between the first case wherein the judgment is rendered, and the second case wherein such judgment is invoked, there is identity of parties, but there is no identity of cause of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein. This is what is termed conclusiveness of the judgment' * * *

II

It is evident from the averments contained in the first complaint for ejectment filed with the City Court of Manila on May 16, 1964 as Civil Case No. 121978 that the basis of plaintiffs cause of action was the refusal of the tenant Enriqueta T. Viray, to vacate the property of the plaintiff, Helen Marinas, after demand was made on her in May, 1954 due to her failure to pay the monthly rentals of P22.50 which then amounted to P45.00 as of May 1964. While judgment was rendered by the City Court on December 26, 1964, in favor of the plaintiff, on appeal the Court of First Instance of Manila (Civil Case No. 61994) rendered judgment on June 17, 1967, denying plaintiff's right to recover possession of the premises, because "the Court believes and so holds that since the defendant has been regularly paying the rentals according to the stipulation of facts, there is no reason to recover the possession from the said defendant * * *."

On the other hand, the second complaint for ejectment filed with the City Court of Manila (Civil Case No. 17034) was predicated on an entirely different cause of action, as it was "precisely based upon the demand to vacate made on December 6, 1967" in view of the refusal or failure of defendant Viray, to pay the increased rentals corresponding to the months of October and November 1967, which then amounted to P700.00. This new action was therefore predicated on a new factual and juridical situation. It must be noted that in detainer cases, what makes the tenant's possession of the premises unlawful, is not his mere failure to pay the rents, but it is the owner's demand for the tenant to vacate, when the latter has failed to pay the rents on time, and tenant's refusal or failure to vacate, which makes unlawful the withholding of possession.[8] The circumstance that respondent Marifias did not appeal from the decision of the Court of First Instance in Civil Case No. 61994, dismissing the first case of ejectment is of no moment. In the first place, the ejectment case was dismissed because according to said court the tenant was "regularly paying the rentals * * *," and in the second place even assuming that such finding was not true, there is nothing in the law that prevents the landlord from waiving his privilege to have the tenant ejected from the premises.[9] This does not preclude the owner however from making a new demand upon the tenant to vacate should the latter again fail to pay the rents on time. This second demand for the payment of the rents and for the surrender of the possession of the leased premises and the refusal of the tenant to vacate, would then constitute a new cause of action.[10] Certainly the matters in issue or points controverted, upon the determination of which the finding or judgment in the first ejectment case was rendered (Civil Case No. 61994) is entirely different from the matters in issue in the second case of ejectment (Civil Case No. 17034) pending with the City Court. The judgment in the first case, could not therefore serve as a bar to the second action for ejectment.

It is equally pointless for petitioner to rely on the order of the Court of First Instance of Manila in Civil Case No. 71861, dismissing respondent Marinas' action for recovery of possession. The aforesaid case was dismissed without hearing on the ground that the court had no jurisdiction over the subject matter of the suit, as the complaint was filed within one year from the date of the accrual of respondent's cause of action and therefore the case was within the original jurisdiction of the City Court. A dismissal of an action solely on the ground that the court has no jurisdiction of the subject matter or of the parties is not an adjudication of the merits and will not bar another action for the same cause.[11]

WHEREFORE, the present petition should be, as it is hereby, dismissed for lack of merit, with costs against the petitioner-appellant.

Concepcion, CJ., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur

[1] Resolution of the Court of Appeals, CA-G.R. No. 4406-R.

[2] Res Judicata, by Robert Von Moschzisker 38 Yale L.J., 299,300. See also National Bank v. Banetio, 52 Phil. 818, 824; Escudero v. Flores, 97 Phil. 240, 243; Wenzel v. Surigao Consolidated Mining Co., 108 Phil. 530; Navarro v. Director of Lands, 5 SCRA 834.

[3] San Diego v. Carmona, 70 Phil. 281; Malvar v. Pallingayan, 18 SCRA 121; Suarez v. Municipality of Naujan, 18 SCRA 682, 687; Abes v. Rodil, 17 SCRA 822; Romero v. De los Reyes, 14 SCRA 115; Ipekdjian Merchandising Co. v. Court of Tax Appeals, 9 SCRA 72.

[4] Manial Elec. Co. v. Artiaga, 50 Phil. 144; S. Diego v. Carmona, 70 Phil. 281.

[5] Bayot v. Zurbito, 39 Phil. 650.

[6] Cromwell v. Country of Sac, 94 U.S. 352-353.

[7] Cited in Heirs of Roxas v. Galindo, 108 Phil. 582, 587; See also Cromwell v. County of Sac, 94 U.S. 351, 352-353 which states: " * * * But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or [7] Con't.

verdict was rendered. In all cases, therefore, where-it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action; not what might have been thus litigated and determined."

[8] Casilan v. Tomassi, 10 SCRA 261; Canaynay v. Sarmiento, 79 Phil. 36; Desbarats v. Laureano, 18 SCRA 116; Racazav. Susana Realty Inc., 18 SCRA 1172.

[9] Co Tiamco v. Diaz, 75 Phil. 672.

[10] Cruz v. Atenacio, G.R. No. L-1 1276, Feb. 28, 1959, citing Zobel v. Abreu et al, 98 Phil. 343; Lucido v. Vita, 25 Phil. 414.

[11] Bayot v. Zurbito, 39 Phil. 650; Vda. de Nator v. Court of Industrial Relations, 4 SCRA 7; 50 C. J. S. 72.

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