

**RUFINO GERALDE, IGLICERIO GERALDE, AMBROSIO GERALDE,
SILVINO GERALDE, CLAUDIO GERALDE, BASILISO GERALDE,
SUSANO GERALDE, MATEA G. GICA, EUFRECINA G. MATA, DULCE G.
NUÑEZ, FELICI...**

G.R. No. L-35440. August 19, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about *res judicata*. According to the fourteen petitioners, they are the legal heirs of Dominga Salinas who died intestate in Danao, Cebu in 1937, leaving an 852-square-meter "nipa-land" which adjoined a lot with an area of 139 square meters belonging to Ambrosio Geralde and which is located in Barrio Taboc--Looc, Danao City.

In 1949, Felix Capungan allegedly leased from petitioner Ambrosio Geralde the latter's 139-square-meter lot. In 1968 Capungan secured a tax declaration for the said 139 square meters of land and for a portion of Dominga's adjoining lot with an area of 221 square meters, or a total of 360 square meters.

On March 18, 1970, the petitioners (except two of them, namely, Claudio Geralde and Basiliso Geralde) sued Capungan and his wife for the recovery of Ambrosio's land and the portion of Dominga Salinas' land covered by the tax declaration in Capungan's name and for damages (Civil Case No. 136). After Capungan had answered the complaint, the trial court (Judge Jose R. Ramolete) in an order dated October 26, 1970 nonsuited the said petitioners or plaintiffs because of their repeated motions for the postponement of the pre-trial and it dismissed their complaint (pp. 92-95, Rollo).

The twelve plaintiffs (now petitioners) did not appeal from that dismissal order. Instead, about nine months later, or on August 4, 1971, the same plaintiffs and two additional parties (two sons of Dominga Salinas named Basiliso and Claudio) filed against Capungan and his wife another complaint for the recovery of the said 360 square meters of land and the annulment of the tax declaration in Capungan's name and damages (Civil Case No. 167).

To that complaint, Capungan in his answer pleaded the defense of *res judicata* and filed a motion to dismiss on that ground. Respondent judge in his order of May 4, 1972 dismissed the new complaint as to the twelve plaintiffs on the ground that it was barred by the order of dismissal in Civil Case No. 136 and held that the two new plaintiffs, Claudio Geralde and Basiliso Geralde, could proceed with the case because they were not parties in Civil Case No. 136.

That order of dismissal was appealed by the fourteen plaintiffs, now the petitioners, to this Court under Republic Act No. 5440. Their contention is that the trial court erred in applying the rule on *res judicata*.

The appeal is devoid of merit. For nonappearance at the pre-trial, a plaintiff may be nonsuited and a dismissal of the complaint for failure to prosecute has the effect of an adjudication upon the merits unless otherwise provided by the trial court. No such provision was made in this case (See sec. 3, Rule 17 and sec. 2, Rule 20, Rules of

Court; *Ouye vs. American President Lines, Ltd.*, 77 Phil. 635; *Tuballa vs. De la Cruz*, 111 Phil. 335, 337; *American Insurance Co. vs. Republic*, L-25478, October 23, 1967, 21 SCRA 464; *Home Insurance Co. vs. United States Lines Co.*, L-25593, November 15, 1967, 21 SCRA 863).

Between the two cases there is identity of parties, subject-matter and causes of action. The order of dismissal was rendered by a court of competent jurisdiction and the dismissal order, which is deemed to be an adjudication on the merits, had long become final and executory.

The fact that in the first case there were twelve plaintiffs and in the second case there were fourteen plaintiffs is of no moment. A party may not evade the application of the rule of *res judicata* by simply including additional parties in the subsequent case or by not including as parties in the later case persons who were parties in the previous suit (*Anticamara vs. Ong*, L-29689, April 14, 1978, 82 SCRA 337).

The joining of new parties does not remove the case from the operation of the rule on *res judicata* if the party against whom the judgment is offered in evidence was a party in the first action; otherwise, the parties might renew the litigation by simply joining new parties (*Anticamara vs. Ong*, *supra*).

In other words, the bar by former judgment (*res judicata*) is effective against the twelve plaintiffs even if in the second case two new plaintiffs were included. But the two new plaintiffs can continue the second case, which is not barred as to them, because their supposed interest in the disputed land was not adjudicated in the first case or had not yet become *cosa juzgada*.

Consequently, the trial court did not err in dismissing the complaint on the ground of *res judicata* as to twelve of the herein fourteen petitioners.

WHEREFORE, the order of dismissal is affirmed. Costs against the petitioners.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

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