

ROSITA S. VDA. DE VOCAL, PLAINTIFF-APPELLANT, VS. MATILDE VDA. DE SURIA, SPOUSES ENRIQUE SURIA AND TERESITA VOCAL, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-26281. May 31, 1979

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from the order dated December 13, 1965, of the Court of First Instance of Negros Occidental dismissing Civil Case No. 7628 which was filed by herein appellant Rosita S. Vda. de Vocal, on grounds of res judicata, prescription of action and lack of cause of action.

Civil Case No. 7628 was filed on July 9, 1965, for recovery of a sum of money. It appears from the complaint that the plaintiff (now appellant) and the defendants (now appellees), with the exception of defendant Matilde Vda. de Suria who is the surviving spouse of Marcelino Suria, brother of plaintiff, are the direct descendants and heirs of the late Vicenta Morales whose estate had been the subject of the already concluded intestate estate proceedings before the same court known as Special Proceedings No. 3531 where the only property of the said deceased Vicenta Morales was a parcel of land situated in Manapla, Negros Occidental, known as Hacienda Buen Recuerdo, and covered by TCT No. T-29618, was adjudicated to the aforementioned heirs in the proportion of 1/2 pro indiviso to the plaintiff, who is the daughter of Vicenta Morales, and the other 1/2 to all the defendants who are the children of her predeceased son, Marcelino Suria.

Plaintiff further alleged in her complaint that since 1918 she and her late husband Edilberto Vocal and later she alone after the death of her husband, had worked, cultivated or made improvements on Hacienda Buen Recuerdo and that the defendants who are the wife and children of her deceased brother Marcelino Suria showed no interest and contributed nothing toward the improvement of said hacienda; that on account of the improvements undertaken by the plaintiff and her late husband, they incurred indebtedness from government banking institutions and other private persons; that after Edilberto Vocal died, Vicenta Morales who was then living, recognized and made public all the pending obligations incurred by the spouses, specifically executing a Deed of Assumption with Mortgage of all obligations in favor of the Philippine National Bank amounting to a total sum of P24,799.85 exclusive of interest, and that this Deed of Assumption is annotated as Entry No. 36679 on the TCT No. T-29618 covering Hacienda Buen Recuerdo; that said obligation was partly paid by the plaintiff out of her personal funds; that, since the said amount was in fact actually incurred by the deceased Vicenta Morales, plaintiff presented a claim in the intestate estate proceedings above-mentioned of the late Vicenta Morales for the reimbursement to her said amount but that the probate court had ruled that the parties should litigate the same in a separate civil action; and, that thereafter plaintiff made repeated demands upon the defendants for them to pay or assume 1/2 of the said amount of P24,799.85 plus interest but that notwithstanding such demand the defendant had refused and continue to refuse to assume payment thereof.

The defendants filed a Motion to Dismiss on November 10, 1965, alleging that plaintiff's cause of action was

already barred by a prior judgment in Civil Case No. 6673 entitled "Rosita S. Vocal vs. Guillermo Suria, et al." for Reconveyance with Damages; that plaintiff's cause of action had accrued on January 28, 1955, the date of Deed of Assumption with Mortgage, and therefore the action which was filed on July 9, 1965 had already prescribed; and that the complaint stated no cause of action.

On December 10, 1965, the plaintiff filed her Opposition to the Motion to Dismiss alleging that Civil Case No. 6673 was actually an action for reimbursement of the sum of P40,000.00 alleged to have been spent by the plaintiff in converting the Hacienda Buen Recuerdo into a productive agricultural land; that, with respect to the prescriptive period, the claim was originally filed as a money claim in the intestate estate proceedings where the court ruled that the question should be brought in an ordinary civil action, and that this ruling of the Court took the claim out of the purview of the extinctive provisions of the statute of limitations; and, that the complaint stated a valid cause of action considering that the sum claimed was in truth and in fact the personal obligation of the said deceased Vicenta Morales and that in fairness to her the defendants who inherited 1/2 of the estate should share in the payment of said obligation.

On December 13, 1965, the Court a quo issued the questioned Order dismissing the complaint. Hence, this appeal.

The order dismissing Civil Case No. 7628, dated December 13, 1965, states inter alia: "There is no question that the plaintiff's object in Civil Case No. 6673 was for the recovery of all expenses incurred by plaintiff Rosita Vocal and her late husband in the improvement of Hacienda Buen Recuerdo in the amount of P40,000.00. While the amount stated in Civil Case No. 6673 was P40,000.00, in this present case, however, the plaintiff now demands only the payment of 1/2 of the amount of P24,799.85 as stated in the deed of assumption. If the plaintiff in Civil Case No. 6673 had proceeded to the presentation of complete evidence, she should have filed the deed of assumption with mortgage, (Exhibit "3"), which amount is within the scope and sphere of the total amount of P40,000.00 claimed in said Civil Case No. 6673. In Civil Case No. 6673, the Court has already rendered its decision on November 24, 1964 dismissing the complaint and counterclaim (Exhibit "1"). It is clear therefore that the cause of action in this present case is now barred by the prior judgment (par. f, Sec. 1, Rule 16, Rules of Court)".[1]

Appellant excepts to the aforesaid ruling as erroneous on the ground that the claim for one-half of P24,799.85 is not the subject of nor is it included in Civil Case No. 6673, said amount of P24,799.85 being the consideration of the obligation of their predecessor-in-interest Vicenta Morales under the Deed of Assumption with Mortgage and, therefore, is separate and distinct from the P40,000.00 claimed in Civil Case No. 6673 representing equitable compensation to the plaintiff for the improvement and preservation of the Hacienda.

Thus, the principal and pivotal question to be resolved is: whether there is identity of causes of action between the two cases such as to make the final decision in the first case a bar to the present action. An affirmative answer will obviate discussion of the other grounds invoked to sustain the dismissal of the case.

A careful evaluation of the averments of the two complaints reveal that their causes of action are indeed identical. The difference in the nomenclature of the two actions, the prayers for relief, the amounts sought to be recovered, and object of the claims, can not alter the similarity in the causes of action.

Civil Case No. 6673[2], a complaint for reconveyance with damages dated June 23, 1962, was instituted by appellant, as plaintiff, against the herein appellees. Said complaint alleged five causes of action, namely: for recovery of the 1/2 portion of the Hacienda adjudicated to the appellees on the basis of an alleged oral agreement to sell made by the appellees-defendants, which oral agreement was purportedly partially executed; for equitable compensation in the amount of P40, 000.00 on the allegation that the Hacienda had been developed and preserved by the plaintiff and her deceased husband, and redeemed from various indebtedness purportedly incurred by the

late Vicenta Morales from the Rehabilitation Finance Corporation and the Philippine National Bank; for expenses of administration of the estate of the late Vicenta Morales; and for damages on the alleged wrongful refusal by appellees to sell said 1/2 portion of the Hacienda.[3]

It is clear that the wrong alleged in the present case is also included in Civil Case 6673, namely: the failure of the defendants-appellees to reimburse the plaintiff-appellant for what the latter had incurred for and in the interest of their predecessor. This alleged failure would spring from the appellant's theory, commonly pursued in the two cases, that there exists a duty on the part of appellees to share in the expenses incurred by her founded upon their being co-heirs and that what is to be shared among them is an obligation of their progenitor which was dis-charged by appellant.

It is evident from the third and fifth causes of action in Civil Case No. 6673 that the expenses for the preservation of the Hacienda, for which equitable compensation is claimed, refer to the plaintiff's and her deceased husband's efforts to redeem the Hacienda from the Rehabilitation Finance Corporation and the PNB on account of the indebtedness incurred allegedly by the late Vicenta Morales. Thus, one of the causes of action included in Civil Case No. 6673 is recovery of the amounts spent by the plaintiff for redemption of the Hacienda from the PNB.

The single cause of action in the present case is for the recovery of money spent to pay for the obligation of Vicenta Morales under the Deed of Assumption in favor of the PNB. Although the amount sought to be recovered is smaller than the former claim, it is indubitable that had plaintiff's claim been allowed in the first case, there would be no cause for her to bring the present case.

The court a quo did not commit any error in the aforesaid order. It correctly applied the test for determining identity of causes of action, to wit: whether the same evidence would support and establish both the present and former causes of action (See *Viray vs. Mariñas*, L-33168, January 11, 1973; 49 SCRA 44).

It cannot be said that the court a quo dwelt on pure speculation when it said that had the plaintiff presented evidence in Civil Case No. 6673, she would have presented the deed of assumption. This is a logical conclusion considering that the P24,799.85 sought in this case represents payment of the obligation of Vicenta Morales under the Deed of Assumption and one of the causes for instituting Civil Case No. 6673 was to seek reimbursement for the payments she had made to the RFC and PNB.

The rule on bar by a former judgment in the Rules of Court, Rule 39, Sec. 49 on Effects of Judgment says:

"x x x (b) In other cases the judgment or 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."

The reimbursement claimed for the amount spent to pay the obligations of Vicenta Morales under the Deed of Assumption has been directly adjudged in the former case. It is a matter that could have been raised in the former case, which was a claim for equitable compensation. The court a quo dismissed the former case and its order of dismissal was arrived at after giving the plaintiff opportunity to present her evidence. Where, as in this case, the plaintiff had already presented the claim for reimbursement of Vicenta Morales' obligation in an action for reconveyance with damages, she "can not by varying her form of action or adopting a different method of presenting her case, escape the effect of *res judicata*." (See *Romero, et al. vs. de Los Reyes*, L-13816, May 31, 1965; 14 SCRA 115; *Rasay-Lahoz vs. Leonor*, L-27388, March 23, 1971; 38 SCRA 47).

The order of dismissal in Civil Case No. 6673 having become final, and as the dismissal was not based on lack of jurisdiction nor made without prejudice, the same has the effect and consequence of a dismissal upon the merits.

(See *Rasay-Lahoz vs. Leonor*, *supra*). Truly, the same parties acting in like capacity cannot be allowed to litigate twice on the same cause of action and subject matter.

WHEREFORE the order of dismissal is hereby affirmed. Without costs.

SO ORDERED.

Antonio, (Acting Chairman)*, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] Amended Record on Appeal, pp. 90-91

[2] Erroneously denominated in the Amended Record of Appeal as No. 73 (6674), see p. 14 of Brief for the Defendants-Appellees.

[3] Amended Record on Appeal, pp. 47-54.

* Justice Antonio P. Barredo is on leave.

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