

**ILDEFONSO AGREDA, ET AL., PLAINTIFFS APPELLANTS, VS.
SANTIAGO AGREDA, DEFENDANT-APPELLEE.***G.R. No. L-22312. May 31, 1971*

Ponente: DIZON, J.

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On April 1, 1963, appellants filed an action with the Court of First Instance of Iloilo (Civil Case No. 6267) to compel appellee Santiago Agreda to reconvey to them their alleged respective share in Lot 3400 of the cadastral survey of Janiuay, Iloilo. Appellant Ildefonso Agreda claimed ownership of 4/12 thereof, while his co-appellants Socorro, Francisco, Rosario, Armando, Felipe, Antonio, David and Ernesto, all surnamed Habana, claimed ownership of 7/12 of said lot, the remaining 1/12 portion being the only one admitted to belong to appellee.

Within the time for pleading appellee, instead of an answer to the complaint, filed a motion to dismiss it upon the ground that the cause of action stated therein was barred by a prior judgment. After a hearing thereon, the trial court issued the appealed order dismissing the complaint, with costs. Hence, the present appeal based upon the claim that the trial court committed the following errors:

"I. THE COURT A QUO ERRED IN HOLDING THAT THE DEFENDANT'S MOTION TO DISMISS SHOULD BE CONSIDERED AS BASED ON THE GROUND THAT THERE IS ANOTHER ACTION PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE, OTHERWISE KNOWN AS LIS PENDENS.

II. THE COURT A QUO ERRED IN HOLDING THAT THE PRESENT ACTION IS NOT A PROPER ACTION AGAINST SANTIAGO AGREDA.

III. THE COURT A QUO ERRED IN HOLDING THAT WHATEVER REMEDIES THE PLAINTIFFS MAY HAVE AGAINST SANTIAGO AGREDA MUST BE EXHAUSTED AND PROSECUTED UNDER SECTION 38 OF ACT 496.

IV. THE COURT A QUO ERRED IN DISMISSING THE COMPLAINT."

The plea of res judicata relied upon in appellee's motion to dismiss was based on the decision of the Court of Appeals in CA-G.R. No. 14477R promulgated on October 31, 1962. The background facts in relation thereto are the following:

In cadastral case No. 85, GLRO Record No. 1563, appellee Santiago Agreda filed an answer claiming ownership of Lot 3400, one of the lots involved in said expediente, while appellants Ildefonso Agreda and Socorro Habana, the latter for herself and on behalf of several coheirs, filed separate answers making the same claim. After due hearing the cadastral court held that the claimants had failed to prove any registrable title in their favor over Lot 3400 and, as a result, declared it to be public land. On appeal from said decision, the Court of Appeals (CA-G. R. No. 14477R) rendered judgment reversing the decision of the Court of First Instance and declaring cadastral lot 3400 as the property of Santiago Agreda. The State, Ildefonso Agreda and other parties appealed from said

decision by filing with this Court the corresponding petition for review, but their petition was dismissed (G.R. No. L20690) "without prejudice to a separate action, if proper, against Santiago Agreda." This reservation was obviously in relation to any right that Ildefonso Agreda and others might have to institute an action against Santiago Agreda to recover from him what they claimed to be their share in Lot 3400.

Our resolution of dismissal became executory on March 23, 1963. So did the decision of the Court of Appeals. Upon the return of the record to the court of origin, the latter, on June 7, 1963 issued an order directing the Commissioner of the Land Registration Commission to issue the corresponding decree of registration for Lot 3400 in the name of Santiago Agreda.

Inasmuch as the action for reconveyance (Civil Case No. 6267) was filed with the Court of First Instance of Iloilo on April 1, 1963 more than two months before the order directing the issuance of the decree of registration said court held that, at that time, the one year period provided for in Section 38 of Act 496, as amended within which a petition for review of the decree of registration could be filed had not yet expired; that as the adjudication of land in an ordinary registration or cadastral proceeding does not become final and incontrovertible until the expiration of the aforesaid one year period, appellants herein, instead of filing the action for reconveyance, should have exhausted their remedies in the cadastral proceeding by filing the corresponding petition to set aside the decision therein rendered in favor of Santiago Agreda, and of the decree of registration, if any had been issued, and pray for the adjudication of the land to them, pursuant to the ruling in *Afable vs. Rosario*, 60 Phil. 622; *Capio vs. Capio*, 50 O.G., p. 137, January 1954. The trial court further held that the decision rendered in the cadastral proceeding mentioned heretofore, while not having the authority of *res judicata* because, as between the case where it was rendered, on the one hand, and the reconveyance case, on the other, there was no complete identity of parties, subject matter and causes of action, still such decision could be invoked as basis for the plea of *lis pendens* that there was another action pending between the same parties upon the same subject matter and cause of action. Upon these grounds, the trial court, as already stated, sustained appellee's motion and dismissed the case.

We are unable to accept the trial court's view.

While We agree with the theory that even after the issuance of the decree of registration the same together with the decision rendered in the case may still be reviewed and set aside upon an application for that purpose filed within one year from the issuance of said decree, pursuant to the provisions of Section 38 of Act 496, We are of the opinion that such remedy is not exclusive of, and does not bar any other to which the aggrieved party may be entitled. Moreover, if even after the rendition of a decision for the registration of a parcel of land in favor of one party, and the issuance of the decree of registration, both may still be reviewed, We can perceive no valid reason to bar an action for reconveyance, such as the one filed below, before the actual issuance of the decree. Whether recourse to an action for reconveyance will amount to a waiver of the remedy provided for in Section 38 of Act 496 is a question that We do not need to decide here.

The action for reconveyance filed by appellants in the instant case is based upon the facts alleged in their complaint. They purport to show that appellee Santiago Agreda is a mere trustee of his coheirs in respect to their share in Lot 3400. As alleged, it would seem that they are sufficient to constitute a cause of action against appellee. Of course, whether appellants will be able to establish them with competent evidence during the trial is, a different matter. Our view, however, is that appellants' action should be allowed to continue and take its course until final judgment instead of it being dismissed on the ground that (a) there is another action pending between the same parties upon the same cause of action, and that (b) appellants should first attempt to enforce their right in the cadastral proceeding through a petition for review of the decree of registration pursuant to Section 38 of Act 496.

PREMISES CONSIDERED, the order of dismissal appealed from is set aside, and the present case is remanded to the court of origin for further proceedings. With costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Villamor, and Makasiar, JJ., concur.

Barredo, J., concurs in a separation opinion.

Fernando, J., concurs in the opinion of Justice Barredo.

Ruiz Castro, J., took no part.

CONCURRING

BARREDO, J.,

Upon the facts stated in the main opinion, I am not ready to subscribe to the view that the plea of *litis pendentia* of appellee is without legal basis. Should it be absolutely necessary to pass on this point, I would be more inclined to sustain that the principle of *litis pendentia* should apply in respect to cadastral and ordinary land registration cases up to the expiration of the one year period for reopening, specially when the second action or proceeding is predicated on a ground which can be a ground for reopening. Neither am I prepared to hold, as the main opinion does, that an action for reconveyance may be filed even before the said period for reopening has expired, particularly, also when the prayer for reconveyance is based on a ground which can be a ground for reopening. It seems to me incongruous that a party should sue for reconveyance of a title which, after all, he may still secure for himself in a more appropriate proceeding within the land registration case itself. Accordingly, I would rather reserve my opinion on these two questions. Nevertheless, I concur in the judgment in this case because to my mind, the two points of doubt I have just mentioned have been made academic by the resolution of this Court in G. R. No. L20690 which, although it denied the petition of appellants to review the decision of the Court of Appeals upholding appellee's claim of title and allowed the registration thereof, it made said denial subject to the express reservation of being "without prejudice to a separate action, if proper, against Santiago Agreda." With that reservation which, whether properly or improperly made, is now final and irrevocable, any discussion of *res adjudicata* or *lis pendens*, is out of the question. So also the timeliness of an action of reconveyance filed before the period of reopening has expired has become insignificant in this case. I take it that such reservation constitutes nothing less than a permission to have the conflict of title between appellants and appellee settled in a separate action independently of what might have been held in respect thereto in the cadastral proceedings, and since it does not appear that appellee look any steps to have such reservation removed, it is now too late for him to complain.

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