

**MARIANO S. FLORENDO, PLAINTIFF AND APPELLANT, VS.
BERNARDINA E. VDA. DE GONZALES ET AL., DEFENDANTS AND
APPELLANTS.***G.R. No. L-2566. November 28, 1950*

Ponente: PARAS, J.

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In civil case No« 180 of the Court of First Instance the plaintiffs are Mariano S. Florendo and R. Subido and the defendants are Bernardina Vda. de Gonzales (for herself and as administratrix of the estate of the deceased Pedro Gonzales), Paula Bernardo, Loreto E. Gonzales, Demetrio Pozon, and Oscar L. Uy. The complaint in substance alleges that the first four defendants had sold to Mariano S. Florendo about 325 hectares of agricultural land, through the agency of R. O. Subido, but that, in breach thereof, said defendants not only failed to execute the necessary deed of sale and deliver the corresponding certificates of title to Mariano S. Florendo, but also sold the same property to their confendant Oscar L. Uy, with the result that R. O. Subido, the agent, was deprived of his commission of not less than P6,000, and Mariano S. Florendo was damaged in the sum of about P48,000 which he would have realized from a resale of the property, plus P1,000 as attorney's fees. The complaint accordingly prays that the defendants be ordered to execute the necessary conveyance in favor of Mariano S. Florendo and deliver the corresponding certificates of title, and to pay the sum of P55,000 as damages and attorney's fees.

The defendants filed separate motions to dismiss the complaint on the ground that it does not allege facts sufficient to constitute a cause of action, which motions were denied by the Court of First Instance of Rizal, with the exception of the motion to dismiss filed by the defendant Oscar L. Uy which was sustained in the order of May 7, 1947. The remaining defendants in due time filed their answers with counterclaim. On October 17, 1947, the plaintiffs filed a motion for the reconsideration of the order of May 7, 1947, and for the admission of an amended complaint, and this was granted in the order of October 20, 1947. However, upon motion for reconsideration filed by defendant Oscar L. Uy, the Court, in its order of November 26, 1947, set aside the order of October 20, 1947. This order of November 26, 1947, was the subject of a petition for certiorari filed by R. O. Subido and Mariano S. Florendo in this Court, (G. r; No. L-2023) but said petition was dismissed by resolution of March 2, 1948, on the ground that the proper remedy was appeal.

On May 18, 1948, Mariano S. Florendo, one of the plaintiffs in civil case No. 180, instituted another action in the Court of First Instance of Rizal (civil case No. 525) against if the five defendants in civil case No. 180 together with the children of Bernardina Vda. de Gonzales and Gregorio S. Velasquez, the latter in his capacity as register of deeds of Rizal. The complaint prays that the defendants be ordered to execute the necessary documents of transfer in favor of the plaintiff covering the same land which is the subject matter of civil case No. 180, that deed of sale in favor of the defendant Oscar L. Uy be annulled and the transfer certificates of title in his name cancelled, that new transfer certificates of title be issued in favor of the plaintiff, and that the defendants be ordered to pay jointly and severally to the plaintiff the sum of P48,750 as damages.

On May 20, 1948, the plaintiffs in civil case No. 180 filed a motion to dismiss said case in view of the institution of civil case No. 525, intended to consolidate allied causes of action in one complaint against common defendants and to join all necessary and indispensable parties. This motion was denied by the Court of First Instance of Rizal on June 5, 1948, and the order of denial became the subject of a petition for certiorari instituted in this Court on August 27, 1948, (G. R. No. L-2454), but this was dismissed By resolution of September 17, 1948.

On June 4, 1948, an amended complaint was filed by the plaintiff in civil case No. 525, and its admission is still pending. The defendants in this case filed separate motions to dismiss the complaint all based on the ground that there is another pending action (civil case No. 180) with the same parties and the same cause, with the exception of the motion to dismiss of defendant Oscar L. Uy which was based on the ground that civil case No. 525 is barred by a prior judgment. These motions to dismiss were all sustained by the Court in separate orders, from which the present appeal was taken by the plaintiff.

In civil case No. 180 the allegation pertinent to Oscar L. Uy is as follows:

"That, lately, under date of March 31, 1947, defendant Bernardina Vda. de Gonzales addressed a letter to plaintiff Rosendo O. Subido, informing that the property had been sold to defendant Oscar L. Uy, with the pretension that the option of the plaintiffs to buy the property had expired on March 16, 1947, when in truth and in fact the sale was consummated earlier with the plaintiff Mariano S. Florendo, and if the balance of the purchase price, has not yet been paid it is for the precise reason that the defendants have not yet delivered the necessary deed of sale and certificates of title to the property and through no fault of the plaintiffs."

Upon the other hand, the principal allegation against Oscar L. Uy in civil case No. 525 is as follows:

"That subsequent to the acceptance by the defendants of the original offer to purchase the real properties, made by the plaintiff, as more specifically alleged in paragraphs 9, 10 and 11 hereof, and of the said plaintiff's subsequent offer to purchase the shares of Paula Bernardo and Loreto E. Gonzales for P300 per hectare as pore. specifically alleged in paragraphs Nos. 12, 13, 14, 15 and Id hereof, ore more specifically on or about March 24, 1947, the defendant Oscar L. Uy, an agent and broker entrusted by the co-owners of the said properties to sell said properties, fraudulently and maliciously induced the said co-owners to execute in his favor a simulated deed of sale, not only in gross breach of his trust as an agent of said co-owners. but also with full knowledge of the fact, which had been transmitted to him verbally and in writing by the real-estate broker R.O. Subido and by the defendant Bernardina Vda. of Gonzales, in a letter dated March 15, 1947, that said Bernardina Vda. de Gonzales, as administratrix and as the person duly authorized to sell all the said 325 hectares pertaining to her and her co-owners, had already 'accepted an offer accompanied with a check-as part payment * * * before the expiration' of the authority granted to the broker: which said accepted offer was that of the herein plaintiff."

In explaining the differences, as regards parties and causes of action, between the two suits, appellant points out:

"In Civil Case No. 180, the plaintiffs are R. O. Subido and Mariano Florendo, whereas only the latter is plaintiff in Civil Case No. 525. "While in the former, there are only four defendants—Bernardina Vda. de Gonzales, Paula Bernardo, Loreto E. Gonzales de Monosco and Demetrio Pozon—in the latter, there are, aside from these four original defendants, Lorenzo, Severino, Cesar, Vilma, Dalisay and Rustico, all surnamed Gonzales, as well as Oscar L. Uy and Gregorio Velasquez." (Appellant's-brief, p. 54.)

"In Civil Case No. 180, plaintiffs Subido and Florendo Seek to recover (a) the former's commission as broker; (b) the properties themselves under the prefeeted sale in the latter's favors and (c) the damages suffered by both plaintiffs due to the breach of contract committed by the defendants." (Appellant's brief, p. 55.)

"In Civil Case No. 525, on the other hand, the sole plaintiff Mariano S. Florendo. seeks the recovery only of (a) the properties subject of the sale in his favor, and (b) the damages he suffered by reason of the bad faith, and

the breach of contract committed by the defendants therein named." (Appellant's brief, p. 55.)

Under section 4, Rule 30 of the Rules of Court, "unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits." In view of this reglementary provision, the contention of appellant that a dismissal upon motion to dismiss grounded on the failure of the complaint to state a cause of action is not *res judicata*, is without merit.

We are of the opinion that the lower court correctly dismissed the action in the case at bar (No. 525) on the ground, with respect to the defendant Oscar L. Uy, that said action is barred by a prior judgment and, as regards the other defendants, that said action is barred by the pendency of another action.

The appellant admits that the order of the trial court in civil case No. 180 dismissing the complaint as against Oscar L. Uy is final and that said court had jurisdiction of the subject matter and of the parties therein. As already stated, the order of dismissal was an adjudication upon the merits under section h of Rule 30. The only important point that remains to be disposed of is whether there is identity of parties and of causes of action.

There can be no doubt that there is identity of parties plaintiff. The omission of R.O. Subido in civil case No. 525 is of no moment, because in civil case No. 180 he seeks to recover his commission as broker for the alleged sale of the properties in question in favor of appellant, while the latter seeks to compel performance of said sale and to recover damages. In other words, the cause of action of Subido is separable, and distinct from appellant's claim or demand. In so far as appellant is affected, there is therefore identity of parties plaintiff in both cases.

There can be no doubt also that there is identity of parties defendant, because the inclusion in the present case of the children of Bernardina Vda. de Gonzales has not resulted in a substantial change, Bernardina Vda. de Gonzales being sued in civil case No. 180 "for herself and as Administratrix of the estate of the deceased Pedro Gonzales," with the result that the interest of her children are already affected. Neither is the inclusion of Gregorio S. Velasquez a substantial difference, because he is sued merely in his capacity as register of deeds of Rizal.

That there is identity of causes of action is obvious. In both cases appellant's claim or demand is for specific performance of a contract of sale allegedly executed in favor of Mariano S. Florendo by the defendants, other than Oscar L. Uy and Gregorio S. Velasquez, plus damages for breach of contract, the only difference brought about by civil case No. 525 being the inclusion of an additional ground of recovery, namely, defendants' alleged bad faith in the premises.

In *Peñalosa vs. Tuason*, (22 Phil. 303, 311-313), this Court, quoting *Cromwell vs. Sac County*, (94 U.S. 351), pointed out the two main rules governing the subject of *res judicata* in the following manner:

"In considering the operation of this judgment, it should be borne in mind, as stated by counsel, that there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. It is a finality as to the claim or demand in controversy, concluding 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. Thus for example; judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defenses actually existed, of which no proof was offered, such as forgery, want of consideration, or payments. If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed. The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented, is strictly accurate, when applied to the demand or claim in

controversy. Such demand or claim, having passed into judgment, cannot again be brought into litigation between the parties in proceedings at law upon any ground whatever.

"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 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. Only upon such matters is the judgment conclusive in another, action."

In our opinion the case at bar is covered by the rule the effect of a judgment as bar or estoppel against the prosecution of a second action upon the same claim or demand.. Accordingly, the order of dismissal in civil case No. 180 is a finality, as regards the defendant Oscar L. Uy, "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."

There can be no question that the additional ground of recovery, namely, defendants' bad faith, existed and was known to the appellant at the time of the filing of civil case No. 180 on April 10, 1947, because in paragraph 20 of the complaint in civil case No. 525 it is admitted that Oscar L. Dy, prior to the sale of the properties in question to him on March 24, 1947, was informed verbally and in writing by R.O. Subido and the defendant Bernadina Vda. Gonzales that the latter had already accepted the,previous offer of appellant.

The rule of res judicata herein applied is very sound. To permit a litigant to renew a suit on the same claim or demand, invoking a ground of recovery which, though different from that relied upon in the first suit, existed on the date of the filing thereof, would be harassing. As aptly remarked in the case of Little vs. Smith, (47 Cal. A. 8, 189 Pac.1059), "If a party is allowed to urge one ground at a time, or even all grounds except one or two, it would result in piecemeal and endless litigation, which the law seeks to avoid." That is why the rule is well settled that "a party cannot,, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies." (Peñalosa vs. Tuason, supra, p. 321.)

The appellant invokes the resolution of this Court in G.R. No. L-2454, wherein it was stated that "the denial of the motion to dismiss does not constitute a grave abuse of discretion, since the decision on the merits of the case, in which the action was dismissed in so far as the defendant Oscar L. Uy was concerned, will not be a bar to an action by the petitioner against said Oscar L. Uy." This statement was certainly not meant to nullify the proper effects of res judicata.

Wherefore, the appealed orders are affirmed with costs against the appellant. So ordered.

Moran, C.J., Feria, Pablo, Padilla, Tuason, Reyes, Jugo, and Bautista, JJ., concur.

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