

**TEOFILA MARCELO AND LOPE DEL CARMEN,
PLAINTIFFS-APPELLANTS, VS. MERCHANTS BANKING
CORPORATION OF THE PHILIPPINES, EMILIA K. GUARIN FERRERAS,
EUFEMIO FERRERAS AND THE PROVINCIAL ...**

G.R. No. L-43677. April 30, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this appeal certified by the Court of Appeals to this Court as involving essentially a question of law, the Court affirms the lower court's dismissal of the case by virtue of the pendency of another action between the same parties for the same cause, wherein judgment has already been rendered by the lower court in favor of herein plaintiffs-appellants and is pending decision on appeal with the Court of Appeals and the final outcome thereof regardless of which party eventually prevails would constitute *res judicata* in the case at bar.

Plaintiffs-appellants as registered owners of a parcel of land situated at Valenzuela, Bulacan filed on July 15, 1969 in the Court of First Instance of Bulacan their complaint for annulment of contract with damages and prayer for preliminary injunction against the above-named defendants-appellees. Their action sought principally to annul the mortgage of their property for P40,000.00 in favor of defendant bank executed by the defendant Emilia K. Guarin Ferreras (wife of defendant Eufemio Ferreras) under a special power of attorney given her by plaintiffs-appellants and to enjoin the bank's impending foreclosure of the mortgage for non-payment of the mortgage obligation.

The case was submitted by the parties on several stipulations of facts from which the following relevant facts have been established:

"That on September 8, 1970 plaintiffs paid the entire obligation to the defendant Merchants Banking Corporation of the Philippines as follows: P41,032.29 as principal; P17,512.58 as interests; P257.00 as accounts receivable and P2,000.00 as attorney's fees; and upon receipt of said payment said defendant executed the corresponding 'Cancellation of Real Estate Mortgage';[1]

"That prior to the filing of the instant action, plaintiffs filed a complaint before the Court of First Instance of Bulacan, Branch III, against Emilia K. Guarin and Eufemio Ferreras, spouses, who are the same spouses named as Emilia K. Guarin Ferreras and Eufemio Ferreras, in the instant action, which complaint is docketed as Civil Case No. 421-V, dated January 17, 1968, the original duplicate with annexes of the same being hereto attached as an integral part hereof;[2] and

"That the Court of First Instance of Valenzuela, Bulacan rendered a decision in (said) Civil Case No. 421-V entitled 'Teofila Marcelo, et al. vs. Emilia Guarin and Eufemio Ferreras' dated January 21, 1970 which decision is now the subject of appeal before the Court of Appeals, xxx xxx xxx."[3]

The judgment in said case in favor of herein plaintiffs (as plaintiffs also therein) against herein defendants Ferreras spouses (as the defendants therein) and pending decision on appeal in the Court of Appeals, read as

follows:

"WHEREFORE, judgment is hereby rendered sentencing defendants to pay plaintiffs the amount of P44,054.16, which is the indebtedness of defendants to Merchants Banking Corporation as of June 25, 1968 and such further amounts by which the debt may have increased at the time of payment; the additional amount of P10,000.00 as liquidated damages; P2,000.00 as attorney's fees; and the costs of suit." [4]

The lower court found an identity of parties, subject matter, cause of action and relief sought in both actions and therefore dismissed the present action on the ground of the pendency of another action, as follows:

"In Civil Case No. 421-V in the Court of First Instance of Valenzuela, Bulacan, and the instant Case No. 73565 of this Court, the plaintiffs in both cases are the same, the defendants are the same, except the defendant Bank and the Provincial Sheriff in this case who are not a party in case No. 421-V; that the subject matter of the action and the cause of action are the same, as well as the prayers in both cases; that there is already a judgment on appeal against the defendant Guarin and her husband; and that should the Court also render judgment in favor of the plaintiffs against defendant spouses, the former may either recover twice against the defendants based on a single cause of action, or the decision of this Court may be contrary to the decision of the Court of Appeals. For this reason, the instant case should be dismissed, because of the pendency of another action between the same parties for the same cause in the Court of Appeals (Sec. [e], Rule 16 of the Rules of Court)." [5]

Plaintiffs-appellants appealed the dismissal to the Court of Appeals which per its "decision" of March 17, 1976 received by this Court on April 13, 1976 certified the appeal to this Court as involving essentially a question of law.

There is no merit in the appeal. The lower court correctly dismissed the action below by virtue of the pendency of another action between the same parties for the same cause and relief wherein judgment in favor of herein plaintiffs-appellants for the defendants Ferreras spouses to pay them the full amount of the mortgage indebtedness and interests obtained by said defendants from the bank (with plaintiffs' property as collateral) with P10,000.-liquidated damages and P2,000.-attorney's fees and costs of suit has been already rendered and is pending decision on appeal with the appellate court.

There being a substantial identity of parties, cause of action and relief sought, the judgment rendered in the first action now pending decision on appeal regardless of which party is successful (whether upholding the mortgage executed by defendants under the power of attorney given by plaintiffs but holding them liable to pay plaintiffs the full amount thereof so as to clear plaintiffs' property from the mortgage as was the lower court's judgment or otherwise) would amount to res judicata in the case on hand rendering the same unnecessary and merely vexatious. [6]

Initially, the present action seeking to enjoin the bank and sheriff from carrying out the impending foreclosure of the mortgage might have proceeded independently and regardless of the pendency of the first action between plaintiffs and the defendants Ferreras spouses (since the bank was not impleaded as a defendant in the first case and was an indispensable party insofar as the validity of the mortgage held by it was concerned). Still the action against the bank was rendered moot and academic when plaintiffs-appellants ultimately recognized the validity of the mortgage and paid off the entire mortgage indebtedness and interests to the bank which in turn executed the corresponding cancellation of the mortgage.

ACCORDINGLY, judgment is hereby rendered affirming the lower court's decision dismissing the action before it, with costs in all instances against plaintiffs-appellants.

SO ORDERED.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

[1] Rec. on Appeal, pp. 210-211.

[2] Idem, p. 211.

[3] Idem, p. 212.

[4] Idem, pp. 212-213.

[5] Idem, pp. 213-214.

[6] See *Hongkong & Shanghai Bank vs. Aldecoa & Co.*, 30 Phil. 256; *Francisco vs. Blas*, 93 Phil. 1 (1953); *J.M. Tuason & Co., Inc. vs. Rafor*, 5 SCRA 478 (1962); and *Alarcon vs. Guerrero*, 19 SCRA 706 (1967).

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