

**MATEO CANITE, ET AL., PLAINTIFFS AND APPELLANTS, VS.
MADRIGAL & CO., INC., ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-17836. August 30, 1962*

Ponente: BAUTISTA ANGELO, J.

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Plaintiffs impleaded defendants before the Court of First Instance of Manila to recover certain sums of money representing the salaries and allowances due them from March 17, 1948 to September 30, 1948 as members of the crew employed by defendants to fetch the ship S.S. BRIDGE from Sasebu, Japan to Manila by virtue of a certain shipping contract entered into between them.

Within the reglementary period, defendants filed a motion to dismiss on the grounds (a) that plaintiffs' cause of action is already barred by prior judgment rendered by the Court of First Instance of Manila in Civil Case No. 29663 and (b) that plaintiffs' cause of action is also barred by prescription.

Counsel for plaintiffs filed his opposition to this motion, and after both the motion and the opposition were set for hearing, the court issued an order dismissing the complaint on the grounds set forth in the motion to dismiss.

Plaintiffs interposed the present appeal before this Court on purely questions of law.

It appears that prior to the filing of the instant case, a complaint was filed before the Court of First Instance of Manila by the same plaintiffs herein and other co-members of the same crew to which they belonged seeking to recover from the same defendants the total amount of P14,254.12 representing their unpaid salaries as crew members of the vessel S.S. BRIDGE corresponding to the period from March 17, 1948 to September 30, 1948, which amount includes the same sums now sought to be recovered in the instant case. Plaintiffs' cause of action is predicated upon alleged violation of the same shipping contract entered into between herein plaintiffs and defendants. After trial on the merits, the court rendered decision ordering defendants to pay to one Miguel Olimpo the amounts of P1,016.13 as wages and P300.00 as attorney's fees and costs, but dismissing the complaint with regard to the other plaintiffs among them the claims of Mateo Canite, Abdon Jamaquin and Filomeno Sampinit, who are the plaintiffs in the instant case. The dispositive part of the decision states that "the case of the other plaintiffs is dismissed as well as defendants' counterclaim for insufficiency of evidence." (Italics supplied) The plaintiffs, whose complaint was dismissed, gave notice of their intention to appeal, but the same was denied because it was filed out of time. They filed a petition for mandamus with the Court of Appeals in an attempt to have the lower court approve and give course to their appeal, but their petition was dismissed, and so the decision became final and executory. It is because of these facts which appear to be undisputed that the court a quo found no other alternative than to dismiss the present action on the ground of res judicata. In this we find no error for evidently all the essential requisites for the existence of the principle of res judicata are here present. These requisites are:

"In order that a judgment rendered in a case may be conclusive and bar a subsequent action, the following requisites must be present: (a) it must be a final judgment; (b) the court rendering it must have jurisdiction of

the subject matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be between the two cases identity of parties, identity of subject matter, and identity of cause of action." (Lapid vs. Lawan, et al., G. R. No L-10686, May 31, 1957)

It is, however, contended that the court a quo erred in dismissing the complaint on the ground of res judicata there being no allegation in the complaint that the present action has been the subject of a decision in a previous case. This contention is clearly unmeritorious, for under Rule 8 of our Rules of Court, a motion to dismiss is not like a demurrer provided for in the old Code of Civil Procedure that must be based only on facts alleged in the complaint. "Except where the ground is that the complaint does state no cause of action which must be based only on the allegations of the complaint, a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint * * *"[1] The court a quo, therefore, acted properly in sustaining the motion to dismiss.

The contention that only the claim of Miguel Olimpo was adjudicated on the merits while the claims of the other plaintiffs, including the plaintiffs in the instant case, were dismissed merely for failure of the parties to testify in the hearing of the case and so not on the merits, cannot also be sustained in view of what is provided for in Section 4, Rule 30, of our Rules of Court. Thus, under said Section 4, "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", and in the aforesaid case there is nothing in the decision that would take the case out of the operation of the general rule. The complaint having been dismissed without reservation, the dismissal operated as an adjudication upon the merits.

It appearing that all the essential requisites for the existence of res judicata are here present, namely, final judgment, jurisdiction of the court, judgment on the merits, and identity of parties, cause of action and subject matter, as laid down in the case above-mentioned, the court a quo had no other alternative than to dismiss the present action on the ground of res judicata.

Aside from the foregoing, the facts also disclose that more than ten years had already elapsed since the cause of action herein accrued on September 30, 1948, which justifies the contention that the action of plaintiffs is also barred by the statute of limitations.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Bengzon C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Ruperto vs. Fernando, 83 Phil., 943.

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