

GABRIEL P. PRIETO, PLAINTIFF AND APPELLANT, VS. MEDEN ARROYO, JACK ARROYO, NONITO ARROYO AND ZEFERINO ARROYO, JR., DEFENDANTS AND APPELLEES.

G.R. No. L-17885. June 30, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Gabriel P. Prieto appealed to the Court of Appeals from the order of the Court of First Instance of Camarines Sur dismissing his complaint in Civil Case No. 4280. Since only questions of law are involved the appeal has been certified to this Court.

In 1948, Zeferino Arroyo, Sr. filed in the Court of First Instance of Camarines Sur a petition for registration of several parcels of land, including- Lot No. 2, Plan Psu-106780 (L.R.C. No. 144; G.L.R.O. No. 1025). After the proper proceedings Original Certificate of Title No. 39 covering said lot was issued in his name. The same year and in the same Court Gabriel P. Prieto filed a petition for registration of an adjoining parcel of land, described as Lot No. 3, Plan Psu-117522 (L.R.C. No. 173; G.L.R.O. No. 1474). As a result Original Certificate of Title No. 11 was issued in his name.

After the death of Zeferino Arroyo, Sr., Original Certificate of Title No. 39 was cancelled and in lieu thereof Transfer Certificate of Title No. 227 was issued in the names of his heirs, the defendants in this case, namely Meden, Jack, Joker, Nonito and Zeferino, Jr., all surnamed Arroyo.

On March 6, 1956 said heirs filed in the Court of First Instance of Camarines Sur a petition (L.R.C. No. 144; G.L.R.O. No. 1025; Special Proceeding No. 900) in which they claimed that the technical description set forth in their transfer certificate of title and in the original certificate of their predecessor did not conform with that embodied in the decision of the land registration court, and was less in area by some 157 square meters. They therefore prayed that said description be corrected pursuant to Section 112 of the Land Registration Act; that their certificate of title be cancelled and another one issued to them containing the correct technical description. The petition was filed in the registration record but was docketed as Special Proceedings No. 900.

On May 23, 1956 the court issued an order directing the Register of Deeds of Camarines Sur to "change, upon payment of his fees, the description in Transfer Certificate of Title No. 227 of Lot 2 in Plan Psu-106730 so as to make it conform to that embodied in the decision of the Court on March 8, 1950, and to correct therein the spelling of the name of one of the petitioners from 'Miden Arroyo' to 'Meden Arroyo.'

On November 29, 1956 Prieto filed against the defendants in the Court of First Instance of Camarines Sur (in the original registration records of the two lots a petition to annul the order of May 23 in Special Proceedings No. 900). At the hearing of the petition on July 12, 1957 neither he nor his counsel appeared. Consequently, the trial court on the same day issued an order dismissing the petition for failure to prosecute. A motion for reconsideration of that order was denied on September 5, 1957.

On September 2, 1958 Prieto filed against the same defendants the present action for annulment of Special Proceedings No. 900 and the order therein entered on May 23, 1956. Nonito also prayed that the 157 square meters allegedly taken from his lot by virtue of said order be reconveyed to him.

Defendants moved to dismiss the complaint on the ground of *res judicata*. Plaintiff opposed, and on January 15, 1959 the court granted the motion. It is from the order of dismissal, plaintiff having failed to secure its reconsideration, that the appeal has been taken.

Appellant maintains that the institution of Special Proceedings No. 900 was irregular and illegal mainly because he was not notified thereof and the same was instituted almost six years after the issuance of the decree and title sought to be corrected, and hence the order of the court dated May 23, 1956 for the correction of the technical description in appellees' title is void *ab initio*.

The issue here, however, is not the validity of said Special Proceedings No. 900 but the propriety of the dismissal of appellant's complaint on the ground of *res adjudicata*. The validity of the said proceedings was the issue in the first case he filed. But because of his failure and that of his counsel to attend the hearing the court dismissed the case for failure to prosecute. Since no appeal was taken from the order of dismissal it had the effect of an adjudication upon the merits, the court not having provided otherwise (Rule 30, Section 3).

Appellant contends that said order could not have the effect of a judgment because the court did not acquire jurisdiction over the persons of the respondents therein, defendants appellees here, as they did not file any opposition or responsive pleading in that case. Appellees, on the other hand, allege that they had voluntarily submitted to the court's jurisdiction after they were served copies of the petition. This allegation finds support in the record, particularly in the following statement of appellant in his brief:

"This petition was originally set for hearing on December 8, 1956, but was postponed to January 14, 1957, due to lack of notice to the respondents. Upon motion for postponements 'of respondents, now defendants-appellees, the hearing of January 14, 1957 was postponed to May 16, 1957. The hearing set for May 16, 1957 was again postponed upon motion of the respondents to July 12, 1957."

Appellant next points out that the lower court should not have dismissed his first petition for annulment because no "parole" evidence need be taken to support it, the matters therein alleged being parts of the records of L.R.C. No. 144, G.L.R.O. No. 1025, and L.R.C. 173, G.L.R.O. No. 1474, which were well within the judicial notice and cognizance of the said court.

In the first place, as a general rule courts are not authorized to take judicial notice, in the adjudication of cases pending before them, of the contents of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge (Municipal Council of San Pedro, Laguna, et al., vs. Colegio de San Jose, et al., 65 Phil., 318). Secondly, if appellant had really wanted the court to take judicial notice of such records he should have presented the proper request or manifestation to that effect instead of sending, by counsel, a telegraphic motion for postponement of hearing, which the court correctly denied. Finally, the point raised by counsel is now academic, as no appeal was taken from the order dismissing his first petition, and said order had long become final when the complaint in the present action was filed.

The contention that the causes of action in the two suits are different is untenable.

Roth are based on the alleged nullity of Special Proceedings No. 900; in both appellant seeks that the order of correction of the title of appellees be set aside. Of no material significance is the fact that in the complaint in the instant case there is an express prayer for reconveyance of some 157 square meters of land, taken from appellant

as a result of such correction of title. For that area would necessarily have reverted to appellant had his first petition prospered, the relief asked for by him being that "the Register of Deeds of Camarines Sur be ordered to amend Certificate of Title No. 332 by incorporating therein only and solely the description of Lot No. 2, Plan Psu-106730 as appearing in the Decree No. 5165 and maintaining consequently the description limits and area of the adjoining land of the herein petitioner, Lot No. 3, Plan Psu-117522, in accordance with Decree No. 2301 of Land Registration No. 173." The claim for damages as well as for other additional and alternative reliefs in the present case are not materially different from his prayer for "such other remedies, just and equitable in the premises" contained in the former one.

There being identity of parties, subject matter and cause of action between the two cases, the order of dismissal issued in the first constitutes a bar to the institution of the second.

The appealed order is affirmed, with costs against appellant.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala, Bengzon, J.P., and Zaldivar, JJ., concur.

Order affirmed.

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