

## MARCELA JULIAN, ET AL., PLAINTIFFS AND APPELLANTS, VS. MARTA GONZALES, ET AL., DEFENDANTS AND APPELLEES.

*G.R. No. L-14715. January 30, 1962*

Ponente: DIZON, J.

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### DIZON, J.:

Appeal taken by Marcela and Melitona, both surnamed Julian, from the order of the Court of First Instance of Bulacan dated March 28, 1956, dismissing their complaint on the ground that the cause of action alleged therein was already *res judicata*.

It appears that on May 1, 1932 when Maria Gregorio died intestate, she owned Lot No. 954 of the Cadastral Survey of Sta. Maria, Bulacan. The Torrens title covering said lot was issued after her death in the name of "The Legal Heirs of Maria Gregorio, Filipino, Deceased" as Transfer Certificate of Title No. 9926 of the Register of Deeds of said province.

The deceased was survived by her children named Marta, Lucas, Policarpio, Nemesio (now deceased leaving no descendants), all surnamed Gonzales, and granddaughters, Tecla del Rosario, (child of her deceased daughter, Maria) and Marcela and Melitona Julian (children of her deceased daughter, Gregoria).

In August, 1947, Marta, Nemesio, Lucas and Policarpio, all surnamed Gonzales, claiming to be the only heirs of their deceased mother, executed by and among themselves a deed of extra-judicial partition of the lot aforesaid, and by virtue thereof, Transfer Certificate of Title No. 9926 was cancelled and Transfer Certificate of Title No. 1663 was issued in their name, except that of Marta, who renounced her share in the property in favor of her brothers.

After the death of Nemesio Gonzales on November 15, 1948, Marta, Lucas and Policarpio executed on March 7, 1950, an extra-judicial partition adjudicating to themselves the share of Nemesio in Lot 954. The deed was duly registered and annotated at the back of Transfer Certificate of Title No. 1663. On the same date Lucas, Policarpio and Marta Gonzales sold their respective shares in Lot 954 to Rosalina Ramos, wife of Urbano de Jesus, for the sum of P900.00 and, as a consequence, Transfer Certificate of Title No. 1663 was cancelled and Transfer Certificate of Title No. 5189, covering said lot, was issued in the name of Rosalina Ramos. On October 26, 1950, the latter mortgaged one-half of the property to the spouses Ceferino Victorino and Elena Mendoza for the sum of P850.00, the deed of mortgage having been duly registered and annotated on Transfer Certificate of Title No. 5189.

On August 24, 1950, Marcela and Melitona Julian commenced Civil Case No. 482 in the Court of First Instance of Bulacan against their uncles and aunt, Lucas, Policarpio, Marta, and against Tecla del Rosario (daughter of the deceased Maria Gonzales), Rosalina Ramos, Urbano de Jesus, Elena Mendoza and Ceferino Victorino, for the partition of Lot 954 and recovery of their shares in the intestate estates of their deceased grandmother, Maria Gregorio, and uncle, Nemesio Gonzales, plus damages.

On July 25, 1951, the court issued the following order of dismissal:

"This case has been pending since August 24, 1950. After, the Court has resolved some incidents, an amended complaint was filed on November 20, 1960 but no further action was taken thereon up to this date by the parties, thereby showing that they have lost their interest in this case.

"WHEREFORE, this case is hereby ordered dismissed."

More than two years later, or more specifically on March 2, 1954, the same parties filed a new action for partition (Civil Case No. 845 of the same Court) against the same defendants. Lot 954 was one of the properties therein involved. The Court, on June 10, 1954, dismissed the case on the ground that the action was barred by the previous order of dismissal issued in Civil Case No. 482. Plaintiff's motion for reconsideration of the order of dismissal was denied on September 28, 1954.

Meanwhile, on November 6, 1954, Rosalina Ramos sold the lot in question to Teofila de la Cruz for "P1.00 and other valuable consideration".

Finally, on July 16, 1955, the present action (Civil Case No. 1121) was instituted by the same plaintiffs in the same Court against Marta Gonzales, Urbano de Jesus, Rosalina Ramos and Teofila de la Cruz for the purpose of voiding all the transactions involving Lot 954 mentioned heretofore and declaring them owners of 1/4 interest in the estate of the deceased Maria Gregorio and Nemesio Gonzales, plus damages. The Court, in its order of March 28, 1956, dismissed the case on the ground that the orders issued in the previous two cases operated as res judicata upon the claim of appellants. Hence this appeal.

It is dear, therefore, that the issue to be determined is whether or not the orders mentioned above dismissing Civil Cases Nos. 482 and 845 constitute res judicata, as far as the instant case is concerned. We believe that they do.

The order of July 25, 1951 dismissing Civil Case No. 482 because of the therein plaintiffs' failure to prosecute had the effect of an adjudication upon the merits, no provision to the contrary having been made therein (Rule 30, section 3, Rules of Court).

On the other hand, it is not denied that said order was issued by a competent court and had become executory, and that, as between Civil Case No. 482, on the one hand, and Civil Cases No. 845 and the present, on the other, there is complete identity of parties, subject matter and causes of action. The three actions involve the same issue, namely, whether or not appellants herein were co-owners of their uncles, aunt and cousins with respect to Lot No. 954 of the Cadastral Survey of Sta. Maria, Bulacan.

In view of the foregoing, the order of dismissal appealed from is hereby affirmed. Without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and De Leon, JJ., concur.

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