

**MANUELA ADVINCULA, REPRESENTED BY HER
GUARDIAN-ADLITEM, PURA BORBON, PLAINTIFF AND APPELLANT,
VS. MANUEL, ADVINCULA, DEFENDANT AND APPELLEE.**

G.R. No. L-19065. January 31, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

Sometime in 1956, Manuela Advincula filed Civil Case No. 8553, CFI of Iloilo, against Manuel Advincula, for acknowledgment and support. On motion of both parties, said case was dismissed. On January 16, 1961, Manuela Advincula filed the complaint under consideration against the same Manuel Advincula, also for acknowledgment and support, Civil Case No. 5659, same court. Instead of filing his answer, the defendant filed a motion to dismiss, alleging that the dismissal of Civil Case No. 3553 barred the filing of the second complaint. The trial Court dismissed the complaint on the ground that as the dismissal of Civil Case No. 3553, was without reservation, the same was with prejudice. The case was brought to this Court on appeal, the lone question of law raised, is whether or not the dismissal of the former was with prejudice.

The order of dismissal dated June 1, 1956, in Civil Case No. 3553, recites:

"A peticion de la demandante y su abogado, el Sr. Gellada, por las razones alegadas en su mocion de fecha de hoy, que el Juzgado cneuentra atondibles, y no habiendo objecion del abogado Sr. Moreno en representaeion del demandado, se ordena el sobre seimionto tanto de la demanda como de la reconvencion, sin costas."

The order of dismissal dated August 29, 1961, in Civil Case No. 5659, states:

"Acting upon said motion, the Hon. Judge F. Imperial Reyes dismissed the case on June 1, 1956 without any reservation of 'without prejudice'. Hence, the dismissal entered in this case was with prejudice. Pursuant to the provisions of the Rules of Court, the dismissal entered by Judge Imperial Reyes is definite and with prejudice and, consequently, said case could not be revived presently."

There is no statement in the order of dismissal of the first case (Civil No. 3553) that the dismissal was without prejudice. In accordance, therefore, with Section 2, Rule 30, such dismissal is without prejudice. Said rule provides :

"Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a prior counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order a dismissal under this paragraph shall be without prejudice. A class action shall not be dismissed or compromised without the approval of the court. (italics supplied)

Notwithstanding the above provision, defendant-appellee and the lower court, are of the impression that the rule which governs the dismissal of case No, 3553 is Section 4 of Rule 30, to wit:

"Effect of dismissal on other grounds.—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." (Italics supplied)

The above quoted section, however, applies only when the dismissal is based on grounds "not provided for in this rule". Civil Case No. 3553, having been dismissed precisely on the ground provided for in Section 2, Rule 30, said Section 4 of Rule 30, finds no application to the present case.

Moreover, in both Civil Cases Nos. 3553 and 5659, the action of the plaintiff was for acknowledgment and support. Judgment for support does not become final. The right to support is of such nature that its allowance is essentially provisional; for during the entire period that a needy party is entitled to support, his or her alimony may be modified or altered, in accordance with his increased or decreased needs, and with the means of the giver. It cannot be regarded as subject to final determination.

* * * a judgment rendered in a suit by a wife for separate maintenance is not regarded as final, tout may be modified at anytime for sufficient reasons upon tho application to the court * * *." (Gorayeb vs. Hashim, 47 Phil., 87).

"The amount of support depends upon the needs of the party entitled as well as on the capacity of the person bound to give support * * * and any sum previously fixed shall be reduced or increased proportionally in accordance with the increased or decreased needs of the party entitled to support and of the means of the giver * * *." (Gonzales vs. Gonzales, 43 Off. Gaz., 4691).

The new Civil Code provides that the allowance for support is provisional because the amount may be increased or decreased depending upon the means of the giver and the needs of the recipient (Art. 297); and that the right to receive support cannot be renounced nor can it be transmitted to a third person; neither can it be compensated with what the recipient owes the obligor (Art. 301). Furthermore, the. right to support can not be waived or transferred to third parties and future support cannot be the subject of compromise (Art. 2035; Coral vs. Gallego, 38 Off. Gaz., 3135, cited in IV Civil Code by Padilla, p.648, 1956 Ed.). This being true, it is indisputable that the present action for support can be brought, notwithstanding the fact that the previous case filed against the same defendant was dismissed; and it also appearing that the dismissal of Civil Case No. 3553, was not an adjudication upon the merits, as heretofore shown, the right of herein plaintiff-appellant to reiterate her suit for support and acknowledgment is available, as her needs arise. Once the needs of plaintiff arise, she has the right to bring the action for support, for it is only then that her cause of action accrues. The right to ask support is demandable from the date in which plaintiff was in need of the same (Marcelo vs. Estacio, 70 Phil., 215).

It is likewise contended that because the parties had asked for the dismissal of the former case, on the ground that "plaintiff has lost interest and is no longer interested in continuing the case against the defendant, besides the plaintiff has no further evidence to introduce in support of the complaint, with prejudice", and because the order of the lower court had stated that, "por las razones alegadas en su motion de fecha de hoy, que el Juzgado encuentra atendibles, y no habiendo objecion del abogado Sr. Moreno en representacion del demandado, se ordena el sobreseimiento tanto de la demanda como de la reconvencion, sin costas", the dismissal was with prejudice. In other words, it is argued that because in the motion the expression "with prejudice" appear, the corresponding order granting the dismissal necessarily constituted a dismissal with prejudice. While it is conceded that the parties had placed the expression "with prejudice" in the motion, which may be interpreted as expressive of a desire to have the dismissal with prejudice, still it is a fact that the lower court in its order reproduced above, did not state at all that the dismissal was "with prejudice", and in omitting that expression, said lower court might not have wanted to dismiss the case with prejudice. The most that could be said of such omission in the order, is that the lower court wanted to keep silent about it. Moreover, the lower court ordered the dismissal of the case on

the grounds alleged in the said motion and the ground are the "plaintiff has lost interest and is no longer interested in continuing the case against the defendant", and "the plaintiff has no further evidence to introduce in support of the complaint". The expression "with prejudice" is not a ground; but it is an effect which movants had intended and/or wanted to produce, if the court had granted it.

It also appears that the former dismissal was predicated upon a compromise. Acknowledgment, affecting as it does the civil status of persons and future support, can not be the subject of compromise (pars. 1 & 4, Art. 2035, Civil Code). Hence, the first dismissal cannot have force and effect and can not bar the filing of another action, asking for the same relief against the same defendant.

In view hereof, and of the further reason that the grounds for the order of dismissal appealed from are not indubitably the said order is set aside and the case is remanded to the court of origin, for further proceedings, with costs against the defendant-appellee Manuel Advincula.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Barrera and Regala, JJ., concur.
Dizon and Makalintal, JJ., concur in the result.

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