

**LORETO AGUIRRE, ET AL., PLAINTIFFS AND APPELLANTS, VS.
MANUEL B. ATIENZA, ET AL., DEFENDANTS AND APPELLEES. JOSE
ATIENZA, INTERVENOR AND APPELLANT.**

G. R. No. L-10665. August 30, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

These two appeals, involving a small parcel of land, are here for consideration because they involve only questions of law arising from the order of the Capiz court of first instance, (December 12, 1955) dismissing the plaintiffs' complaint and the intervenor's claim, on the ground of *res judicata*. The complaint and/or the amended complaint alleged these facts:

The spouses Juan Aguirre and Pascuala Amayat owned Lot 412 of the Cadastral Survey of Capiz, Capiz. The former died, and was survived by his wife and their three children named Raymundo, Atanasia and Ricardo.

In July 1924, the land was registered under the Torrens System and Original Certificate of Title No. 3269 was issued pro-indiviso in the name of Raymundo Aguirre married to Abadesa Bernas, Atanasia Aguirre, wife of Tomas Atienza and Ricardo Aguirre married to Carmen Lim.

In 1922 Atanasia Aguirre died intestate, leaving no descendants of her own. She was survived by her mother, Pascuala Amayat who passed away, intestate also, in 1923.

In March 1931, Ricardo Aguirre conveyed all his interest in the lot to Tomas Atienza, his brother-in-law. In February 1942, Tomas Atienza, died intestate and in his intestate proceedings (Civil Case No. V-171) his acknowledged natural child, Manuel Atienza, was declared the sole surviving heir. The deed of sale of Ricardo Aguirre to Tomas Atienza together with the declaration of heirship were duly annotated on the back of the Original Certificate of Title No. 3269.

In 1935, all the rights of Raymundo Aguirre to the lot in question were sold at public auction to Bachrach Motor Co., Inc., which in turn conveyed its rights in 1936 to Abadesa Bernas (Raymundo's widow). Abadesa died subsequently, leaving as heirs her six children, Loreta, Consolacion, Juan, Vicente, Jose and Lourdes; but in 1949 Loreta (with her husband Filemon Lopez—present plaintiffs) purchased all the rights of Juan, Vicente, Jose and Lourdes (excluding that of Consolacion).

In October 1949, herein defendant Manuel B. Atienza, instituted Civil Case No. V-518 for partition of the same Lot 412, claiming one-half undivided share thereof, as the only successor of Tomas Atienza, who had purchased Ricardo Aguirre's share in 1931. Defendants in the action were the herein plaintiffs and also herein defendants Maria Pelayo Atienza and Emeliana Atienza, including Consolacion Aguirre herein plaintiff-at-first-later-defendant.[1] (Bachrach Motor Co., Inc. was also defendant; but it may be left out of the picture.)

Such Civil Case No. V—518 ended with a judgment entered in accordance with the parties' stipulation asking for

adjudication, partly as follows:

"(a) that the share of Ricardo Aguirre consisting of 1/3 of Lot No. 412 be adjudicated to plaintiff Manuel B. Atienza. It is agreed that this share of Manuel B. Atienza shall be in the middle portion of said lot.

(b) that the share of Atanacia Aguirre consisting of 1/3 of the same lot be adjudicated to defendants Maria Pelayo Atienza and Emeliana Atienza. It is agreed that this share shall be the southern portion of said lot.

(c) that the share of Raymundo Aguirre, now deceased consisting of 1/3 of said lot be adjudicated in the following manner: 1/6 is adjudicated to defendant Consolacion Aguirre and 5/6 to Loreta Aguirre. It is agreed that the share of Consolacion Aguirre shall immediately follow and adjacent to the portion awarded to Maria Pelayo Atienza and her daughter, while that of Loreta Aguirre shall be the northern portion of the lot."

Such judgment dated September 29, 1950 is now final and unappealable.

The plaintiffs in this case, filed in 1952, further alleged—and this is the core of the matter—that the share allotted to Maria Pelayo Atienza and Emeliana Atienza in said Civil Case No. V-518 had no legal foundation, because the latter were allowed to participate as wife and daughter of Pedro Atienza who had no right to any part of said Lot.

On the basis of the above allegations, plaintiffs assert that they, (together with Consolacion, who refused to side with them, and therefore, was subsequently made defendant) were entitled to one half instead of one third of Lot 412, upon cancellation of the Atienza's share, which they, the plaintiffs, request.

Defendant Manuel B. Atienza, was substituted by his successor-in-interest Jose A. Atienza.[2]

The latter filed a complaint in intervention, seconding the plaintiffs' request for cancellation of the share adjudicated to Maria Pelayo Atienza and her daughter Emeliana, explaining further that the latter got a portion of the Lot in Civil Case No. V-518 "under the erroneous impression that Pedro Atienza (their husband and father) was the adopted son and forced heir of Atanacia Aguirre, when in fact he was just her protegee."

Upon a motion submitted by defendants Maria Pelayo Atienza and Emeliana Atienza, which was duly opposed by the plaintiffs and the intervenor, the court issued its order of dismissal which is here on appeal. In the opinion of the Judge, the parties herein were bound by the adjudication in Civil Case No. V-518 in September 1950.

These appeals call for application of the principles of res judicata. According to the Rules (Sec. 44 Rule 39) the judgment in Civil Case No. V-518 is "in the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity."

In order that a judgment rendered in a case may be conclusive in a subsequent litigation, the following circumstances must be shown; (a) Such judgment must be final; (b) The court rendering it had jurisdiction of the parties and the subject matter; (c) The judgment was issued on the merits; and (d) Identity between the two cases, as to parties, subject-matter, and cause of action.[3]

None of the parties doubt the presence of the first three circumstances. As to the fourth, it is obvious that the two litigations involve the same subject matter (Lot 412) and same cause of action (ownership of parts of the lot through corresponding predecessors in interest). The parties are the same, although partly in reversed or modified roles; plaintiff in the first is now defendant (later intervenor); some defendants in the first are now plaintiffs. However, this is not material. The contention of all parties in both cases, have the same basis; ownership. We once held, it is true, that the principle of res judicata does not operate between persons who, having been co-parties (defendants or plaintiffs) in the first case, are opposing parties in the second case.[4] (Plaintiffs herein together with Maria Pelayo Atienza and Emeliana Atienza were co-defendants in Civil Case No. V-518, and now

they are contending parties). But such holding applied the general rule, which admits of some exceptions. Where the individual claims of such co-parties in the first case were brot in issue, litigated and determined[5]—as in case V-518 where the share of each claimant was actually decided—res judicata applies to such co-parties.

"The rule, however, is not without exception, as where all the questions that can be litigated in the subsequent action must have been established in the prior action. * * *."

"Judgment or decree in partition suit.—While a dismissal of a suit for partition is not binding on defendants as an adjudication of their rights between or among themselves, where partition is granted, the decree is binding on all parties whether complainants or defendants, as each is an adversary party in the sense that he is bound to make known his rights and have his interests determined by the decree. * * *." (50 Corpus Juris Secundum p. 375.)

If it be argued that whereas in the previous case, partition was prayed for, in the present case, rescission is the remedy, the answer is:

"Notwithstanding a difference in the form to two actions, the doctrine of res judicata will he applied where it appears that the parties in the two suits were in effect "litigating for the same thing.

A party cannot, by varying the form of action, or adopting a different method of presenting his ease, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies." (Peñalosa vs. Tuason, 22 Phil. 303; Paz vs. Inandan, 75 Phil. 608.)

Nonetheless, appellants submit that theirs is an action to rescind the partition, filed within four years after September 1950 (Art 1100 New Civil Code); action which is specially authorized by Art. 1098 of the same Code:

"ART. 1098. A partition, judicial or extra-judicial, may also be rescinded on account of lesion, when any one of the co-heirs received things whose value is less, by at least one-fourth, than the share to which he is entitled, considering the value of the things at the time they were adjudicated."

The point has no merit. The judicial partition mentioned in the above article is a partition effected among "co-heirs." Yet the partition in Civil Case No. V-518 was not among co-heirs. Plaintiffs-appellants took part therein as heirs of Abadesa Bernas who had purchased Raymundo Aguirre's share from Bachrach Motor Co., who had in turn acquired it at an auction sale. Herein defendants were not co-heirs of said plaintiffs, neither of the estate of Abadesa nor of the estate of Raymundo Aguirre, nor of the estate of Juan Aguirre.

The same consideration applies to defendant-appellee Manuel Atienza, whose father and predecessor-in-interest Tomas Atienza had bought the share of Ricardo Aguirre.

Tomas was not heir of Juan Aguirre and was not co-heir of the others.

The lot was registered in the name of three Aguirre co-owners; Raymundo, Anastasia, Ricardo. The partition in V-518 was in reality among co-owners or their successors-in-interest.

We must, therefore, hold that, as between the herein plaintiffs and defendants, the adjudication in Civil Case No. V-518 is conclusive and final.

However, as to the intervenor Jose Atienza[6] we note that he purchased the interests of Manuel Atienza on August 9, 1948, i. e., a full year before the institution by the latter of Civil Case No. V-518. Hence, by the very terms of Rule 39, sec. 44, he (Jose Atienza) is not bound by the judgment in such Civil Case, since he was not a party, nor took part in it, and he is not "successor in interest by title subsequent to commencement of the action."

Wherefore, the appealed judgment is affirmed in so far as it dismissed the plaintiffs' complaint. It is reversed as to the intervenor Jose Atienza; and the record will be remanded to the court below for further proceedings in

connection with his claim in intervention, Cots against plaintiffs-appellants.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Endencia and Felix, JJ., concur.

[1] She was included at first as plaintiff. But as she refused to join the other plaintiffs, she was named defendant.

[2] By reason of a sale made to him August 9, 1948. Complaint in this case filed September 27, 1952.

[3] See Moran, Rules of Court, Comment under above section.

[4] Valdez et al. vs. Mendoza et al. 89 Phil., 83.

[5] See 50 Corpus Juris Secundum p. 372; American Jurisprudence p. 968.

[6] Substituted by Cristeta Atienza. Resolution: March 18, 1958

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