

**LEONARDO SANTOS, PETITIONER, VS. HON. ANGEL H. MOJICA,
JUDGE, COURT OF FIRST INSTANCE OF RIZAL, PASAY CITY BRANCH,
THE PROVINCIAL SHERIFF OF RIZAL, PASAY CITY BRANCH,
TEODORICO,...**

G.R. No. L-25450. January 31, 1969

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

On March 19, 1959, in the Court of First Instance of Rizal, eleven brothers and sisters, all surnamed Allanigue, brought an action (Civil Case No. 217-R) against their sister, Lorenza Allanigue, her husband, Simeon Santos, Maria San Agustin and Felicidad San Agustin, for partition of a 360-square-meter lot situated at San Dionisio, Parañaque, Rizal, and for the annulment of certain conveyances involving the same. Defendants having been declared in default, the trial court, after hearing the plaintiffs' evidence, rendered judgment ordering the partition of the lot among the eleven plaintiffs and the defendant Lorenza Allanigue. In a subsequent order the court set off Lorenza Allanigue's share against the amount that she had failed to pay as rents to the plaintiffs as directed in the decision.

A writ of execution was issued on the judgment ordering the defendants to vacate the lot and deliver its possession to the plaintiffs. Leonardo Santos, not a party defendant but a son of defendants Simeon Santos and Lorenza Allanigue, owned a house standing on the lot. He filed with the sheriff a third-party claim, and with the court, a motion to recall the writ of execution insofar as his house was concerned. The motion was denied. On March 15, 1962, the defendants and movant Leonardo Santos having failed to remove their houses from the lot within the period given them, the court ordered the sheriff to demolish said houses.

On April 2, 1962, Leonardo Santos and the defendants in the case as petitioners, filed in the Supreme Court a petition for certiorari and prohibition, G.R. No. L-19618, against Judge Angel H. Mojica, the Provincial Sheriff of Rizal and the plaintiffs in the case, as respondents. Among the issues raised therein was whether or not the lower court had jurisdiction to order the demolition of petitioners' houses in that special civil action. In its decision of February 28, 1964, the Supreme Court denied the petition after finding that Leonardo Santos, who claimed to be the owner of a house and the portion of land on which it stood by purchase from his parents, did not follow the procedure sanctioned by law in vindicating his alleged ownership, i.e., he should have filed an ordinary civil action to vindicate his alleged ownership of the house and the portion of land on which it was built.

After the said decision of the Supreme Court had become final, the respondent Judge, Angel H. Mojica, on motion of the plaintiffs in the same Civil Case No. 217-R, ordered the demolition of the defendants' houses. The defendants having voluntarily removed their houses, the only house that remained standing on the lot was that belonging to Leonardo Santos. Subsequently, the respondent Judge, on motion of the plaintiffs, issued an order dated December 9, 1965, directing the sheriff to demolish the house of Leonardo Santos. Hence, the present petition for certiorari and prohibition in this Court where Leonardo Santos, petitioner, questions the jurisdiction of

the respondent Judge in issuing the order of demolition of his house.

The instant petition for certiorari and prohibition should be denied in view of the following considerations:

1. Petitioner Leonardo Santos is bound by the judgment in Civil Case No. 217-R because he is a successor-in-interest of his parents, Simeon Santos and Lorenza Allanigue, defendants in Civil Case No. 217-R, and his right, if any, is claimed under them. Hence, the judgment in said civil case binds not only Simeon Santos and Lorenza Allanigue but also their son, Leonardo Santos, who is their successor-in-interest and who claims under them. The fact that the sale to Leonardo Santos from his parents was registered, is of no moment because, as pointed out, he is bound by the judgment against them.

Leonardo Santos' house having been built and re-constructed (after March, 1962) into a bigger one after his predecessors-in-interest, his parents, had been summoned in 1959 in Civil Case No. 217-R, he must be deemed a builder in bad faith. As builder in bad faith he lost the improvement made by him consisting of the reconstructed house to the owners of the land without right to indemnity, pursuant to Article 449 of the Civil Code, which provides:

"ART. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

The Allanigue brothers and sisters therefore became owners of the improvement consisting of the house built in bad faith by Leonardo Santos if they chose to appropriate the accession. (Articles 445 and 449, Civil Code.) However, said owners could choose instead the demolition of the improvement or building at the expense of the builder, pursuant to Article 450 of the Civil Code, which, in part, provides:

"ART. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed * * *."

It is of record in Civil Case No. 217-R that the owners of the land chose to have the house or improvement demolished pursuant to their motion for demolition which was granted by respondent Judge Mojica on December 9, 1965.

2. The present petition is barred by the prior judgment of this Court in G.R. No. L-19618. Herein petitioner, Leonardo Santos, was one of the petitioners in that case against the same official and private respondents in the instant petition. In the two cases there is identity of subject-matter, namely, the portion of the lot and the house standing on said portion alleged by petitioner to belong to him. There is also identity of cause of action, to wit: the order of the respondent Judge for the removal or demolition of the houses standing on the lot. In the previous case this Court had jurisdiction, and its decision, which was on the merits, had become final. It is evident that the judgment of this Court in G.R. No.L-19618 is res adjudicata in the instant case on the question of the validity of the order of demolition of December 9, 1965.

PREMISES CONSIDERED, the petition is denied, with treble costs against the petitioner. The writ of preliminary injunction issued by this Court is hereby dissolved.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

Zaldivar, J., no part.

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