

ELORDE O. NEMENZO, ELNIDO O. NEMENZO, MANUEL O. NEMENZO, MILAGROS O. NEMENZO, FRANCISCO O. NEMENZO, AND NESTOR O. NEMENZO, PETITIONER, VS. ANGELO KYAMKO, FLORA K. DAYON, FE K. A...

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HERNANDO, J:

Before this Court is an appeal filed by Elorde O. Nemenzo, Elnido O. Nemenzo, Manuel O. Nemenzo, Milagros O. Nemenzo, Francisco O. Nemenzo, and Nestor O. Nemenzo assailing the June 25, 2008 Decision[1] of the Regional Trial Court (RTC), Branch 59, Toledo City in Civil Case No. T. 859, an action for declaration of nullity of ownership and/or claims involving several parcels of land.

The Antecedents

On July 31, 2000, petitioners filed before the trial court a Complaint for Declaration of Nullity of Ownership and/or Claims thereof by Defendants and Receivership. Subsequently, they filed an Amended Complaint on January 28, 2004. They alleged therein that they are the grandchildren and legal heirs of Gervacio Oreta as their mother, Maria Salud Oreta, was the only child of the former.

During the lifetime of Gervacio Oreta, he acquired fifteen (15) parcels of land, described below as follows:

Parcel No. One (Tax Declaration No. 2000)

"A parcel of land located at San Jose, Pinamungajan, Cebu, bounded on the North by Maxima Niñal, et. al., on the East by Andriano Enriquez on the south by Sotero Barra, et. al., on the West by Yalay, containing an area of 2 hectares and 56 centares, more or less, assessed at P200.00."

Parcel No. Two (Tax Declaration No. 1014)

"A parcel of land located at San Jose, Pinamungajan, Cebu, bounded on the North by Simeon Nemenzo, et. al., on the South by Rufino Labang, et. al., and on the West by Hugo Nemenzo, containing an area of 2 hectares, 67 area and 26 centares; assessed at P200.00."

Parcel No. Three (Tax Declaration No. 5599)

"A parcel of land located at San Jose, Pinamungajan, Cebu, bounded on the North and East by Ursula Cerna; on the south by Teodora Wuson, et. al., and on the West by Ursula Serna, et. al., containing an area of 1 hectare, 12 area and 70 centares, assessed at P200.00."

Parcel No. Four (Tax Declaration No. 10146)

"A parcel of land located at San Jose, Pinamungajan, Cebu, bounded on the North by Santiago Indino, et. al., on the East by Ursula Serna, et. al., on the South by Adriano Enriquez, and on the West by Basilia Diogenio, containing an area of 2 hectares and 35 area, assessed at P260.00."

Parcel No. Five (Tax Declaration No. 32-00629)

"A parcel of land located at San Jose, Poblacion, Pinamungajan, Cebu, bounded on the North by Mamerto Daroy, on the East by Adriano Enriquez, et. al., on the south by Fermin Ugbinada, on the West by Evaristo Gorres, containing an area of 2 hectares and 350 area; assessed at P500.00."

Parcel No. Six (Tax Declaration No. 5598)

"A parcel of land located at San Jose, Pinamungajan, Cebu, bounded on the North by Adriano Enriquez, et. al., on the East by Adriano Enriquez, et. al., on the South by Dalmatio Gepitulan, et. al., on the West by Provincial Road, containing 5 hectares, 73 area and 79 centares, assessed at P550.00."

Parcel No. Seven (Tax Declaration No. 10144)

"A parcel of land located at San Jose, Pinamungajan, Cebu, bounded on the North by Santiago Indino, et. al., East by Damaso Nemenzo, South by Marcelo Nemenzo and on the West by Aniceto Niñal, et. al., containing an area of 2 hectares, 35 centares, and 93 centares, assessed at P250.00."

Parcel No. Eight

"A parcel of land located at Pinamungajan, Cebu, bounded on the North by manglar area on 2 hectares, 35 centares, and 93 centares assessed at P100.00."

Parcel No. Nine (Tax Declaration No. 10145)

"A parcel of land located at Bonbon, Rizal, Pinamungajan, Cebu, bounded on the North by Rio Cabrangan, et. al., East and South by Gonzalo Labrado and on the West by Paula Ygay, containing an area of 42 areas and 85 centares, assessed at P50.00."

Parcel No. Ten (Tax Declaration No. 11403)

"A parcel of land located at Bonbon, Rizal, Pinamungajan, Cebu, bounded on the North by Bentura de Ongkoy, on the East by Candido Taonghal; on the South by Benturada de Ongkoy, on the West by Benturada de Ongkoys; assessed at P100.00."

Parcel No. Eleven

"A parcel of land located in Poblacion, Pinamungajan, Cebu, bounded on the North by Policarpio Rabadon, et. al., on the East by Adriano Enriquez, on the South by Felicisimo Rimo; and on the West by manglar, containing an area of 20 areas; assessed value P50.00."

Parcel No. Twelve 10137

"A parcel of land located at Mangoto, Pinamungajan, Cebu, bounded on the North by Placido Cimafranca, on the East by Matias K. Cerna, on the south by Aniceta Inae and Felicisimo Rico, containing an area of 1 hectare and 31 areas, more or less, assessed at P250.00."

Parcel No. Thirteen 03575

"A parcel of land located at Tutay, Pinamungajan, Cebu, bounded on the North by Gervacio Oreta and Crispulo Omandae, on the South by Remegio del Magtagad and Gervacio Oreta, on the West by Adriano Enriquez, containing an area of 12 hectares 65 areas 12 centares, an area of more or less, assessed at 1,500.00."

Parcel No. Fourteen;

"A parcel of land located at Tutay, Pinamungajan, Cebu, bounded on the North by Gervacio Oreta and Remegio del Magtagad, on the East by Remegio del Magtagad and Fulgencio Vega, on the South by Rovertto Maurin, et.

al., on the West by Adriano Enriquez, containing an area of 4 hectares, 73 areas and 16 centares, more or less, assessed at P610.00."

Parcel No. Fifteen;

"A parcel of land located at Binabag, Pinamungajan, Cebu, bounded on the North by Fausto Bartbate, on the East by Donato Alpar, on the South by Fausto Bartbate, on the West by Fausto Bartbate, containing an area of 2 hectares, more or less, assessed at P100.00."

On October 3, 1919, Gervacio Oreta died. Plaintiffs-appellants alleged that since their mother, Maria Salud Oreta, was the sole heir of Gervacio Oreta, all the above mentioned parcels of land went to her by operation of law. In the same vein, plaintiffs-appellants asserted that upon the death of their mother and father, Sergio Nemenzo, they became the owners of the subject lots.

Furthermore, plaintiffs-appellants claimed that they or their predecessors-in-interest have never sold, mortgaged, leased or alienated the said properties. However, defendants-appellees surreptitiously and illegally took possession of the subject properties by force, knowing fully well that they belong to the Heirs of Gervacio Oreta, and caused the issuance of tax declarations in their names.

Defendants-appellees maintained that the properties mentioned above are owned by them in the concept of owner and have been declared in their names. They acquired those lands through prescription since they have been in possession thereof for thirty (30) years already.

Moreover, defendants-appellees interposed the defense of res judicata. They alleged that the rights of the parties to the properties in question have been finally adjudicated in Civil Case No. 34-T and Special Proceeding No. 77-T (formerly A.E. 625-0).

Civil Case No. 34-T, involving the same properties litigated in this case, has attained finality per Resolution dated October 2, 1991 of the Supreme Court, while Special Proceeding No. 77-T was terminated in the month of August 1924 and attained finality after the lapse of the period within which to reopen the proceeding.

Plaintiffs-appellants aver that although Civil Case No. 34-T was dismissed by the trial court, the issue in that case was not of ownership over the subject properties and the dismissal was on the ground that the action has already prescribed.

They also contended that SP No. 77-T is still pending and that the properties are still in custodia legis because the settlement of the properties has yet to be carried out and thus, the properties left by Gervacio Oreta is intestate and by operation of law, it should pass to the plaintiffs by way of intestacy.

After trial on the merits, the RTC dismissed the case in its assailed Decision dated June 25, 2008, the pertinent portion of which reads:

The evidence for the defendants show that Maria Oreta-Nemenzo, assisted by her husband filed an action for delivery of property with accounting and damages involving the same parcels of land which RTC, Br. IX of Cebu City dismissed in a decision (Exhibit 4) dated June 30, 1983 finding that the action had prescribed.

The appeal to the Court of Appeals was also dismissed in a Decision promulgated January 26, 1988 (Exhibit 6), the said Court finding as follows:

"She accepted and acted upon, the disposition of her father's Last Will and Testament and the consequent project of partition, by taking possession and ownership of the parcels of land so disposed, and by ultimately enjoying the fruits and valuable prices she received out of the sales she made thereof.

It appears that Maria (Salud) Oreta, possessed and sold more parcels of land than of Gervacio Oreta. These parcels of land must be the ones with which, according to the plaintiff's counsel, the rule on intestacy will apply. The defendants, especially Vicente Kyamko did not touch nor possess nor did they do anything to any of the parcels of land and properties that were not bequeathed or legally sold to them.

The Supreme Court did not reverse such decision, which has become final.

Such decision bars the realization of the same subject matter under the principle of res judicata.

Since plaintiffs herein are successors-in-interest of the plaintiff Maria Salud Oreta Nemenzo, they are bound by said final judgment.

Accordingly, this case is dismissed.

SO ORDERED.

Subsequently, plaintiffs-appellants moved for reconsideration but it was denied by the RTC in its Order[2] dated September 2, 2009.

Aggrieved, plaintiffs-appellants are now before Us via Rule 44 of the Rules of Court.

Assigned Errors

- The RTC erred in ruling that the instant case is barred by the principle of res judicata by virtue of the Decision of the previous Civil Case Nos. 34-T and SP No. 77-T;
- The RTC gravely erred in not awarding the subject properties to plaintiffs-appellants even when the defendants-appellants denied knowledge, possession and ownership thereof; and
- The RTC erred when it did not award parcels no. 12, 13, 14, and 15 in favor of the plaintiffs-appellants despite the fact that the said parcels of land are not litigated, raised and adjudged in previous civil case no. 34-T.

The Court's Ruling

The petition is bereft of merit.

The assigned errors in the instant appeal, being closely allied, will be discussed jointly.

Res judicata is defined as a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Under this doctrine, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.[3]

The principle of res judicata is applicable by way of: 1) "bar by prior judgment" and 2) "conclusiveness of judgment." The Supreme Court have had occasion to explain the difference between these two aspects of res judicata as follows:

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action

before the same or other tribunal.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[4]

Res judicata applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and of causes of action.[5]

In the case before Us, the existence of the first and third elements is undisputed. Likewise, there is no issue as to the identity of the parties. Hence, the only remaining bones of contention in need of Our final determination concerning the issue of *res judicata* are these elements: judgment on the merits and identity of subject matter and causes of action.

As to the element of judgment, plaintiffs-appellants contend that Civil Case 34-T, which went on appeal to the Supreme Court, through a Petition for Review on Certiorari docketed as Civil Case G.R. No. 100651 was dismissed by the High Court for failure to comply with the Rules of Court and Circular No. 1-88, was not an adjudication on the merits. Similarly, SP No. 77-T was terminated on purely technical grounds.

We disagree. It must be emphasized that what is essential to a judgment on the merits is that it be a reasoned decision, which clearly states the facts and the law on which it is based. In Civil Case No. 34-T, the RTC, Branch 9 of Cebu City clearly looked into the facts as presented by the parties' pleadings and pieces of evidence presented. It likewise applied the law accordingly, as can be gleaned from the 25-page Decision[6], declaring that Maria-Oreta Nemenzo failed to prove any express or implied trust and that even granting that an implied trust existed, the same was however barred by prescription. On appeal, this Court affirmed the decision of the trial court in a Decision dated January 26, 1988[7]. The case then went all the way up to the Supreme Court which was likewise denied with finality for utter lack of merit in a Resolution[8] dated October 2, 1991. Indeed, Civil Case No. 34-T was adjudicated on the merits.

Anent the identity as to the subject matter, We rule in the affirmative. The subject matter of an action is the matter or thing with respect to which the controversy has arisen, concerning which the wrong has been done, and this ordinarily is the property, or the contract and its subject matter, or the thing in dispute.[9] A scrutiny of the records reveals that all the parcels of land in question under Civil Case 34-T are the same properties which are the subject matter of the present case.

On the issue of identity of causes of action, plaintiffs-appellants insist that Civil Case No. 34-T does not constitute *res judicata* to the present case considering that the cause of action in Civil Case No. 34-T was for Delivery of Property with Accounting and damages, while the instant case is for Declaration of Nullity of Ownership and/or claims thereof by defendants and Receivership.

The Supreme Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions. In one

case, the High Tribunal found that affirmative relief in a subsequent action for specific performance and recovery of ownership and possession with damages against the petitioner would be inconsistent with a prior judgment holding the same petitioner the owner of the lot under litigation.[10]

Indeed, the identity of causes of action does not mean absolute identity; otherwise, a party may easily escape the operation of res judicata by changing the form of the action or the relief sought.[11] In the case at bar, it is apparent that although the actions filed were differently captioned, both are however anchored on same issue which is ownership over the properties in dispute. Since it has been settled with finality that plaintiffs-appellants have failed to prove their ownership over the subject properties, this subsequent action for Declaration of Nullity of Ownership against the same parties would be inconsistent.

Moreover, applying the more common approach in ascertaining identity of causes of action, which is the "same evidence test," would readily reveal that the evidence necessary to obtain affirmative relief in the present action is the same as that in the previous action filed. In fact, plaintiffs-appellants presented the same tax declarations to advance their claim of ownership. In sum, We find no reversible error in the judgment subject of this appeal.

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The assailed June 25, 2008 Decision[12] of the Regional Trial Court (RTC), Branch 59, Toledo City in Civil Case No. T. 859 is AFFIRMED in toto. No pronouncement as to costs.

SO ORDERED.

Quijano-Padilla, and Jacob, JJ., concur.

[1] Rollo, pp. 28-37; Petition, Annex "A".

[2] Rollo, pp. 86-87; Petition, Annex "B".

[3] Norkis Trading Corporation v. Joaquin Buenavista, et. al., G.R. No. 182018, October 10, 2012.

[4] Spouses Antonio v. Julita Sayman Vda. De Monje, Substituted By Her Heirs, Namely: Angelina Monje-Villamor, et. al., G.R. No. 149624, September 29, 2010.

[5] Ferdinand S. Agustin v. Sps. Delos Santos, G.R. No. 168139, January 20, 2009.

[6] Original Records, pp. 561-585.

[7] Original Records, pp. 586-595.

[8] Original Records, p. 597.

[9] Ferdinand S. Agustin v. Sps. Delos Santos, supra at Note No. 5.

[10] Ferdinand S. Agustin v. Sps. Delos Santos, supra at Note No. 5.

[11] Spouses Mendiola v. Court of Appeals, et. al., G.R. No. 159746, July 18, 2012.

[12] Rollo, pp. 28-37; Petition, Annex "A".

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