

CARLOS LLORAÑA AND CLARITA CATALUÑA, PETITIONERS, VS. THE HON. TOMAS LEONIDAS AS JUDGE OF THE COURT OF FIRST INSTANCE OF CAPIZ, BRANCH III AND ROSARIO DIZON, MILAGROS GENER, ASS...

G.R. No. L-39810. March 28, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A special civil action for Certiorari to set aside the Order of respondent Judge of the then Court of First Instance of Capiz, Branch III, dismissing Civil Case No. M-271 of his Court on the ground of res judicata.

Civil Case No. M-271 is an offshoot of three other cases filed with the same Court.

- Civil Case No. M-87 Precila Gener, et al., vs. Milagros Gener, et al For Recovery of Possession, etc.

On December 19, 1966, Precila Gener, et al., filed Civil Case No. M-87 before the Court of First Instance of Capiz, Branch III, against her mother, Rosario Dizon, her sisters Milagros, Ana, Estelita and Elena, all surnamed Gener assisted by their respective husbands (collectively, the Geners), and against Carlos Lloraña and Margarita Cataluña (hereinafter the Llorana Spouses) for recovery of possession, annulment of partition, accounting and damages, involving two (2) hectares of riceland located in Tapaz, Capiz, on the ground that said property was adjudicated to Precila in the extra-judicial settlement executed by her, her mother and her sisters on July 10, 1961.

The Lloraña Spouses filed an Answer with Cross-claim against the Geners alleging, among other things, that said cross-defendants, on April 30, 1957, had sold to them with right of repurchase, for a term of three (3) years from the execution of the contract, six (6) hectares of land including the disputed portion of two (2) hectares; that the cross-defendants had not repurchased the property within the stipulated period; and that in case of eviction, the cross-defendants should be held liable to the Lloraña Spouses as cross-claimants on their vendors' warranty against eviction. The cross-defendants, on the other hand, maintain that the contract between them was one of equitable mortgage and that their family's extra-judicial settlement was executed in good faith.

On April 25, 1968, because of the failure of the defendants (the Geners as well as the Lloraña Spouses) to appear for pre-trial and trial, the Court proceeded with the reception of plaintiffs' evidence and, on the same date, rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, decision is hereby rendered in favor of the plaintiffs and against the defendants Carlos Lloraña and Margarita Cataluña, ordering said Carlos Lloraña and Margarita Cataluña to deliver to the plaintiffs the two hectares of riceland described in the deed of extra-judicial partition and said defendant Carlos Lloraña and Margarita Cataluña are hereby further jointly and severally ordered to pay plaintiff Precila Gener damages in the amount at the rate of P1,400.00 every year from July 10, 1961, with legal rate of interest from January 5, 1967 until paid and until the land shall have been delivered to the plaintiff Precila Gener, and said Carlos Lloraña and Margarita Cataluña are also ordered to jointly and severally pay Precila Gener an additional

sum of P550.00 for and as attorney's fees, with costs against Carlos Lloraña and Margarita Cataluña.

"The case against Milagros Gener, Luciano Aguirre, Estelita Gener, Federico Allan, Anita Gener, Romeo Frondoza, Elena Gener, Primitivo Villegas and Rosario Dizon is hereby dismissed without pronouncement as to costs."

A Motion for Reconsideration filed by the defendants-cross-claimants, the Lloraña spouses, was denied. No appeal having been interposed, the judgment became final and execution ensued.

- Civil Case No. M-159 Llorana Spouses vs. the Geners For Enforcement of the Warranty against Eviction

On April 10, 1969, the Lloraña Spouses filed Civil Case No. M-159 before the former Court of First Instance of Capiz, Branch III, against the Geners to enforce the latter's alleged warranty against eviction. This was the same cause of action in the Lloraña Spouses' Cross-claim in CC No. M-87.

The Geners filed a Motion to Dismiss on the ground that CC No. M-159 was barred by the prior judgment in CC No. M-87.

The Court, then presided by Judge Silvestre Bello, denied the Motion, stating:

"Consequently, we find and so hold, that the judgment of the court in the former case (Civil Case No. M-87), is no judgment on the cross-claim of the cross-claimant, who are the same plaintiffs in the present case, with the same subject-matter and cause of action and as such, is no bar to the present suit for the same warranty in case of eviction. IN VIEW OF THE FOREGOING CONSIDERATION, the 'motion to dismiss' should be, as it is hereby, denied. (Annex 'A' of the Petition)".

On March 20, 1973, the Court dismissed, without prejudice, Civil Case No. M-159 for failure of the Lloraña Spouses to prosecute. This dismissal Order was not reconsidered and thus became final.

- Civil Case No. M-260 The Llorana Spouses vs. Precila Gener, et al. For Annulment of Judgment in CC No. M-87

On November 19, 1972, the Lloraña Spouses filed Civil Case No. M-260 before the same Court of First Instance, Branch III, against Precila Gener, the plaintiff in CC No. M-87, for annulment of the judgment in said CC No. M-87.

Precila Gener moved to dismiss the case, which the Court granted on the ground that the decision in CC No. M-87 had already long become final and executory.

- Civil Case No. M-271 The Lloraña Spouses vs. The Geners For Enforcement of the Warranty against Eviction

On May 4, 1973, the Lloraña Spouses filed another case, Civil Case No. 271, before the Court of First Instance of Capiz, Branch III, against the Geners also for the enforcement of the vendors' warranty against eviction.

The Geners moved for the dismissal of said case on the ground that the cause of action, if any, was barred by prior judgment.

On July 10, 1974, respondent Judge issued the challenged Order dismissing Civil Case No. M-271 on the ground that the judgment in CC No. M-87 was an absolute bar thereto.

On October 7, 1974, Respondent Judge denied reconsideration, hence this Petition.

The issue addressed is whether or not Civil Case No. M-271 is barred by the prior judgment in Civil Case No. M-87.

We rule in the affirmative.

To determine whether or not the principle of *res judicata* applies, the following requisites must concur: (1) the presence of a final former judgment; (2) the former judgment must have been rendered by a Court having jurisdiction over the subject matter and the parties; (3) the former judgment is a judgment on the merits; and (4) there is, between the first and the second action identity of parties, subject matter, and cause of action (*Arguson vs. Miclat*, L-61049, April 15, 1985 135 SCRA 678).

The first requisite is present. There is a final former judgment which is in Civil Case No. M-87. The defendants and cross-claimants, none other than the Llorana Spouses themselves, who are the petitioners herein, filed in said case a Motion for Reconsideration and New Trial, which was, however, denied. They did not appeal the Decision, hence, it acquired finality. That was the reason why in Civil Case No. M-260, the Trial Court denied, correctly at that, the Llorana Spouses' petition for annulment of judgment.

The second requisite is likewise attendant. The Court, which rendered the judgment in Civil Case No. M-87, had jurisdiction over the subject matter and over the parties. A civil action for recovery of possession, annulment of partition, accounting and damages was properly within the jurisdiction of the then Court of First Instance of Capiz (Section 2[a], Rule 4, Rules of Court). Jurisdiction over the parties is not disputed.

The third requisite, too, has been met. The judgment in Civil Case No. M-87, dated April 25, 1968, is a judgment on the merits, that is, it was rendered after consideration of the evidence submitted by the parties during the trial of the case (*Martin*, Rules of Court, 1973 ed., p. 420). In the said case, the Trial Court received plaintiff's evidence. The defendants (the Geners), as well as defendants-cross-claimants (the Llorana Spouses), failed to appear at the pre-trial and trial so that judgment was rendered *ex-parte*.

Neither is the fourth requisite wanting. The Llorana Spouses, who are the plaintiffs in Civil Case No. M-271, are the same parties who filed a cross-claim against the Geners in the earlier Civil Case No. M-87. The Geners, who are the cross-defendants in Civil Case No. M-87 are also the defendants in Civil Case No. M-271. The subject matter in both cases is the sale with pacto de retro allegedly executed by the Geners in favor of the Llorana Spouses. The cause of action in both cases is also identical, which is the liability of the Geners to the Llorana Spouses for damages for alleged breach of their warranty, as vendors, against the eviction of the Llorana spouses, as vendees.

Petitioners' (the Llorana Spouses') contention that the issue of *res judicata* raised in the Motion to Dismiss in Civil Case No. M-271 was already settled by the same Court in the Order, dated October 31, 1969, in Civil Case No. M-159 holding that the judgment in Civil Case No. M-87 was not a judgment on the cross-claim, is not well taken. The dismissal of the principal claim in Civil Case No. M-87 carried with it also the dismissal of the cross-claim filed by the Llorana Spouses. As a general rule, the dismissal of the complaint carries with it the dismissal of the cross-claim where the latter is purely defensive in nature (*Torres vs. Court of Appeals, et al.*, L-25889, January 17, 1973, 49 SCRA 67). And even if considered as seeking affirmative relief, that Order of October 31, 1969 in Civil Case No. M-159, overruling the Motion to Dismiss, was merely interlocutory and, therefore, cannot be a basis of *res judicata*, one of the primary requisites of which is that there be a final judgment.

It should also be recalled that the Llorana Spouses, as defendants-cross-claimants in Civil Case No. M-87 filed a Motion for Reconsideration and New Trial in said case, but the same was denied thereby settling once and for all the issue raised in the cross-claim. With that adverse judgment there can be no question that their defense of sale with pacto de retro was rejected by the Trial Court, which gave effect, instead, to the extra-judicial partition among the Geners adjudicating the disputed property to Precila Gener.

All told, the Llorana Spouses, the petitioners herein, can no longer be permitted to litigate the same issue of damages for breach of warranty against eviction all over again, the same having been judicially tried and finally determined by a Court of competent jurisdiction in Civil Case No. M-87, which judgment is conclusive upon the parties (*Okol vs. Tayug Rural Bank, Inc.*, L-28115, October 30, 1970, 35 SCRA 619).

WHEREFORE, the Order appealed from is hereby **AFFIRMED**, and the Petition dismissed. This Decision is immediately executory.

SO ORDERED.

Yap, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

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