

BELEN CRUZ, PLAINTIFF–APPELLANT, VS. LUIS M. SIMON DOMINGO MOSSESGELD, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-20495. August 31, 1968*

Ponente: ZALDIVAR, J.

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An appeal from the order of the Court of First Instance of Nueva Ecija, dated January 12, 1962, dismissing plaintiff's complaint in Civil Case No. 3738, and from the order dated February 12, 1962, denying the motion for reconsideration of the order of dismissal.

On September 25, 1961, plaintiff-appellant Belen Cruz filed a complaint against defendants-appellees Luis M. Simon Mossesgeld, Raquel Salamanca and her husband Carlos Salamanca, the Philippine National Bank, and Angela Concepcion and her husband Honorato Perez, before the Court of First Instance of Nueva Ecija, alleging, among others: that plaintiff had acquired ownership and possession of four lots, known as Lots Nos. 1, 2, 3, and 4 of Block No. 27, being portions of Lot No. 317-A, PSD-23407, situated at Cabanatuan City, Philippines, containing an area of 862 square meters, and covered by Transfer Certificate of Title No. 10715 issued by the Register of Deeds of Cabanatuan City, in virtue of a contract of sale executed in her favor on September 3, 1949 by Pedro M. Maximino Mossesgeld in his own behalf and in behalf of Jose Maria Gaspar Mossesgeld, Luis M. Domingo Mossesgeld and Aquiles M. Pablo Mossesgeld, copy of which contract was annexed to the complaint; that under said contract of sale, the price of the lots was P1,443.70, which plaintiff undertook to pay by installments, and the plaintiff was ready to pay the last installment of P428.20 but payment could not be effected due to the fraudulent acts of the defendants; that plaintiff was placed in actual possession of the aforementioned lots by the vendor, and the plaintiff took material possession of the lots as owner thereof; that it came to the knowledge of plaintiff that on March 22, 1955, defendant Luis M. Simon Domingo Mossesgeld, without any right or authority and with intent to pre-judice plaintiff, fraudulently sold the same lots to his co-defendant Raquel Salamanca who knew that plaintiff had already bought those lots and that plaintiff had only a small amount remaining unpaid as the last installment on the price of the lots; that in connivance with her co-defendant Luis M. Simon Domingo Mossesgeld, defendant Raquel C. Salamanca secured the issuance of Transfer Certificate of Title No. 3034 in her favor, thereby canceling Transfer Certificate of Title No. 10715, and then, on March 26, 1955, she mortgaged the said lots to the Philippine National Bank, Cabanatuan City Branch, to guarantee a loan of P900.00; that on August 16, 1961 defendant Raquel C. Salamanca conveyed Lots Nos. 1 and 2 to her co-defendant Angela Concepcion, who is her niece and who also knew that plaintiff had already bought those lots and was in possession thereof, and as a result Transfer Certificate of Title No. 6908 was issued in favor of Angela Concepcion; that prior to the filing of this action, plaintiff demanded of the defendants the cancellation of the deed of absolute sale in favor of defendant Raquel Salamanca and the deed of sale in favor of Angela Concepcion, and likewise the cancellation of Transfer Certificates of Title Nos. 3034 and 6908; that the price of the lots at the time the plaintiff bought them was at P1.50 per square meter, but at the time the complaint was filed the square meter was valued at P4.00, and as a direct result of the malicious and fraudulent acts of defendants, plaintiff had suffered actual and moral damages and had to pay the services of an attorney in connection with this suit.

The complaint prayed the court: (1) to declare null and void the deed of sale in favor of defendant Raquel C. Salamanca, the deed of mortgage in favor of defendant Philippine National Bank, and the deed of sale in favor of defendant Angela Concepcion; (2) to declare Transfer Certificates of Title Nos. 3034 and 6908 null and void; (3) to declare the plaintiff the owner and entitled to possession of the four lots in question; (4) to condemn the defendants jointly and severally to pay the plaintiff the sum of P3,848.00 as actual damages, the sum of P3,000.00 as moral damages, the sum of P1,000.00 as attorney's fees, and the costs of the suit.

On November 2, 1961, defendants-spouses Raquel Salamanca and Carlos Salamanca, and defendants-spouses Angela Concepcion and Honorato Perez, filed a motion to dismiss the complaint upon the grounds: (a) that the cause of action is barred by prior judgment or order, and (b) that there is no cause of action against said defendants. These defendants allege in their motion to dismiss that there was previously filed with the Court of First Instance of Nueva Ecija Civil Case No.2773 entitled "Belen Cruz vs. Luis M. Simon Domingo Mossesgeld and the Spouses Raquel Salamanca and Carlos Salamanca" which had been dismissed on February 10, 1961 for failure of the parties to prosecute, and the order of dismissal was without any reservation that the dismissal was without prejudice. Said defendants allege that the present case was entirely a refilling of that Civil Case No. 2773 which was already dismissed, the original parties being reproduced, with the only exception that defendants Angela Concepcion and Honorato Perez had been added, but the subject matter of the two cases is the same. It is urged by these defendants that the dismissal of Civil Case No. 2773 had the effect of an adjudication upon the merits because the dismissal was with prejudice. These defendants further point out that the addition of the spouses Angela Concepcion and Honorato Perez as co-defendants in the instant case is of no moment because these new defendants merely stepped into the shoes of the spouses Raquel Salamanca and Carlos Salamanca as regards Lots 1 and 2 in question. It is also contended by these defendants that there is no cause of action against defendants Raquel Salamanca and Carlos Salamanca and Angela Concepcion and Honorato Perez because while paragraph 3 of the complaint alleges that the plaintiff had bought the land in question by virtue of a contract executed in her favor by defendant Simon Domingo Mossesgeld on September 3, 1949, said sale was not registered with the office of the Register of Deeds of Cabanatuan City, whereas the sale made by Luis M. Simon Domingo Mossesgeld in favor of Raquel Salamanca and Carlos Salamanca was registered with the office of the Register of Deeds of Cabanatuan City.

On November 16, 1961 the plaintiff filed an answer to the motion to dismiss.

In an order dated January 12, 1962, the lower court dismissed the complaint as far defendants-movants were concerned, which order is quoted as follows:

"After due consideration of the motion to dismiss, together with supporting annexes, filed on November 2, 1961, by the defendants spouses Raquel Salamanca and Carlos Salamanca, Angela Concepcion and Honorato C. Perez, and the Motion to Dismiss of defendant Philippine National Bank, filed on November 2, 1961[1] which were set for hearing on November 7, 1961 by the movants, the plaintiff's answers thereto and the bank's reply filed on November 27, 1961, the court is of the opinion and so holds that the said motions are well taken. Hence, the complaint with respect to the said movants is hereby dismissed without costs."

On January 29, 1962, plaintiff filed a motion for reconsideration of the order of dismissal, dated January 12, 1962, insofar as the spouses Raquel C. Salamanca and Carlos Salamanca and Angela Concepcion and Honorato Perez are concerned.

On February 12, 1962, after defendants' opposition to the motion for reconsideration was filed, the lower court issued an order denying the motion for re-consideration.

Not satisfied with the two above-mentioned orders of the lower court, dated January 12, 1962 and February 12,

1962, plaintiff interposed the present appeal before this Court.

The only question for this Court to decide in the present appeal is whether, or not, the lower court had correctly dismissed the complaint with respect to the defendants-appellees, Raquel Salamanca, Carlos Salamanca, Angela Concepcion, and Honorato C. Perez.

We find that the lower court committed no error when it issued the orders appealed from.

The record shows that on February 20, 1958 here-in plaintiff-appellant filed a complaint in Civil Case No. 2773 in the Court of First Instance of Nueva Ecija, entitled "Belen Cruz, plaintiff, vs. Luis M. Simon Domingo Mossesgeld, the spouses Raquel Salamanca and Carlos Salamanca, and the Philippine National Bank, de-fendants." Answer was duly filed by the defendants, the spouses Salamanca, in that case. On February 10, 1961 the Court of First Instance of Nueva Ecija dismissed the case "for failure of the parties to prosecute the case." [2] The order of dismissal did not make any statement as to whether the dismissal was with or without prejudice. Subsequently, on September 14, 1961, in denying the motion to reconsider the order of dismissal the court stated "that for over three years since the case was filed on February 20, 1958 the plaintiff never caused the service of the summons and the copy of the complaint on the other defendants, the said petition is hereby denied." [3] The order of dismissal became final.

We find that the complaint in the case at bar (Civil Case No. 3738) is substantially the same as the complaint filed in the prior case (Civil Case No. 2772). The subject matter is the same - Lots Nos. 1, 2, 3 and 4, in question; the cause of action is the same; the party plaintiff is the same; and the parties defendants named in the prior case are included in the case at bar, with the addition of defendants Angela Concepcion and Honorato Perez who are alleged to have acquired rights over Lots Nos. 1 and 2 in question from the defendant Raquel Salamanca on August 16, 1961 or after the dismissal of the first case on February 10, 1961.

The dismissal of Civil Case No. 27773 – the prior case - without any reservation by the court of plaintiff's right to file the complaint anew was a dismissal "with prejudice", or a dismissal that had the effect of adjudication upon the merits, in accordance with Section 3, Rule 30 of the old Rules of Court (now Section 3, Rule 17 of the Revised Rules of Court), which provides as follows:

"When plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with the rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court." (Underscoring supplied)

We believe that the lower court correctly dismissed the complaint, insofar as herein defendants-appellees, Raquel Salamanca, Carlos Salamanca, Angela Concepcion and Honorato Perez are concerned, based upon the ground that the cause of action is barred by a prior judgment, as urged below by said defendants-appellees.

The elements of res adjudicata are here present to bolster the case for the defendants-appellees:

(a) There is a final judgment or order in the prior case - Civil Case No. 2773;

(b) The court that rendered the judgment or order in the prior case had jurisdiction over the subject matter, and over the parties concerned in the present appeal. The contention of plaintiff-appellant that in the prior case the defendants Luis M. Simon Domingo Mossesgeld and the Philippine National Bank had not been served with summons and so the court did not acquire jurisdiction over them - and this was precisely the reason why the case was dismissed for failure to prosecute - is of no moment, because, at any rate, the order of dismissal of the complaint in Civil Case No. 3738, subject of the present appeal, is "with respect to the said movants", and herein defendants-appellees Raquel Salamanca, Carlos Salamanca, Angela Concepcion and Honorato Perez are the very

movants in the court below;

(c) There was judgment or order on the merits in the prior case;

(d) There is, as between the prior case and the case now at bar, identity of parties, identity of subject matter, and identity of cause of action. The fact that Angela Concepcion and Honorato Perez were added as parties defendants in the case at bar is of no moment because they have simply stepped into the shoes, so to say, of defendant Raquel Salamanca, as regards Lots Nos. 1 and 2 in question, after the judgment in the first case. In other words, those two additional de-fendants simply derived rights which had already accrued in favor of defendant Raquel Salamanca after the judgment in the first case had become final, and whatever was the defense of Raquel Salamanca in the first case is also the defense of Raquel Salamanca and these two additional defendants in the present case.

WHEREFORE, the orders of the lower court appealed from - namely, the order dated January 12, 1962 dismissing the complaint, and the order dated February 12, 1962 denying the motion for reconsideration of the order of dismissal - are affirmed. Costs against the plaintiff-appellant.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Sanchez, Castro, and Fernando JJ., concur.
Angeles, J., did not take part.

[1] The motion to dismiss filed by the PNB does not appear in the Record on Appeal.

[2] Page 49, Record on Appeal.

[3] Pages 49-50, Record on Appeal.

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