

MARIA SANTIAGO, ET AL., PLAINTIFFS AND APPELLANTS, VS. JOSE RAMIREZ, ET AL., DEFENDANTS. DR. NICOLAS JOAQUIN, DEFENDANT AND APPELLEE.

G.R. No. L-15237. May 31, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

Andres Herrera, who died sometime in February, 1937, was the owner of a piece of homestead land, with Original Certificate of Title No. H-151 in his name. The plaintiffs- appellants are his widow and legitimate children.

In February, 1949, the heirs decided to sell the property, for which reason they sought the help of Jose Ramirez, a relative, to look for a buyer. The OCT was also delivered to same Jose Ramirez for said purpose. Several months later, Jose Ramirez when asked whether he had already found a buyer, said that he had not, assuring the heirs, however, that he still had in his possession the title. It turned out that on April 22, 1949, Ramirez, in connivance with one Marcial del Rosario, forged a deed of sale, wherein it was made to appear that Andres Herrera, had sold the property to Marcos Agustin, a houseboy of tender age. The said sale was registered in the Registry of Property of Bulacan, on May 14, 1949, and T.C.T. No. T-3915 was issued in the name of Marcos Agustin. The property was sold by Agustin to herein defendant-appellee Dr. Nicolas Joaquin for P4,500.00, and on July 5, 1950, T.C.T. No. T-5699 was issued in the name of Dr. Nicolas Joaquin. Claiming that the transactions involving their property were fraudulent and that they had been deprived thereof, plaintiffs filed the instant case, before the CFI of Bulacan, praying that judgment be rendered:-

- (1) Declaring the sale purportedly executed by Andres Herrera in favor of Marcos Agustin, null and void;
- (2) Ordering the Register of Deeds of Bulacan to cancel Transfer Certificate of Title No. T-5699 issued in the name of Nicolas Joaquin;
- (3) To issue or re-issue another title in the name of Andres Herrera;
- (4) To order the payment to them (plaintiffs), the sum of P2,000.00 as attorney's fees, and such other remedies and reliefs just and equitable in the premises and costs.

Due to the impossibility of serving summons to the defendants, plaintiffs were allowed to serve the summons by publication, effected on November 7, 1957, thru the newspaper Nueva Era. Thereafter, or on January 6, 1958, defendant-appellee Dr. Nicolas Joaquin, presented a Motion to Dismiss the complaint on the grounds-

- 1) That Dr. Nicolas Joaquin was a purchaser in good faith and for value and without knowledge of the alleged flaw of the document of his grantor;
- 2) That he was not a party in the forged document, as allegedly executed by Jose Ramirez and Marcial del Rosario;
- 3) That the complaint did not constitute a cause of action against the defendant Dr. Nicolas Joaquin.

On January 13, 1958, the trial court handed the following Order-

"This is a motion to dismiss the complaint on the ground that the defendant Dr. Nicolas Joaquin acted in good faith in acquiring the property in question.

Considering that the complaint alleges otherwise, it becomes a matter of evidence to determine whether the said defendant really acted in good faith or not.

In view hereof, the Court reserves the resolution hereof until the trial of this case."

Under date of January 23, 1958, defendant-appellee Joaquin presented his Answer, interposing the following special defenses-

"9. That the defendant Nicolas Joaquin is a buyer in good faith and for value and has been in possession of the property in question for the last nine (9) years with the full knowledge of the plaintiffs. For this reason said plaintiffs are guilty of laches and furthermore their right of action is now barred by Section 38 of the Land Registration Act (496) which provides that an action for annulment with respect to registered land under said Act must be filed within six (6) years from its commission and this also in conjunction with Section 52 of the Act; * *".

and a counter-claim in the amount of P1,500.00 as attorney's fees and P10,000.00 for moral damages.

On May 15, 1958, the scheduled hearing of the case on the merits, defendant's counsel presented a Motion for Postponement, on the ground that the defendant was in Japan. The hearing was reset for July 10, 1958, on which date, the lower court handed down the following Order-

"When this case was called for hearing this morning, counsel for defendants manifested to the Court that he has just discovered that this case has already been previously dismissed by this Court without qualification whatsoever, and it is believed that said dismissal bars the present action. * *. He therefore, moves that he be granted sufficient time to formulate his motion to dismiss. * * *".

Under date of July 15, 1958, defendant Joaquin presented a Motion to file amended answer, attaching thereto said amended answer, which contained the additional special defense of:

"10. That the case is already barred by prior judgment of dismissal in Civil Case No. 471, Court of First Instance of Bulacan, involving the same parties, the same subject matter and the same cause of action, and even the relief in both cases are exactly the same."

On July 16, 1958, same defendant filed a Motion to Dismiss the complaint on the ground of res judicata. In the opposition to the admission of the amended answer, plaintiffs claimed-

- 1) That the motion was irregular, the same not being in accordance with the Rules of Court;
- 2) That the amendment was already barred and consequently the defendant was estopped from filing such amended answer;
- 3) That the facts alleged in the amended answer, even granting arguendo to be true, were already existing at the time of the filing of the complaint;
- 4) That the facts alleged in the amended answer (paragraph 10), could not be dealt in the answer as special defenses."

The lower court admitted the Amended Answer. On July 22, 1958, plaintiffs opposed the motion to Dismiss. On July 29, 1958, the CFI entered an Order, pertinent portions of which read-

"The only question now raised in connection with the present motion to dismiss this action is whether the order

of the Court, dated August 18, 1952, dismissing Civil Case No. 471 is already final.

The plaintiffs in citing Section 2, Rule 30, of the Rules of Court, contend that the said order was without prejudice. This section reads as follows:

"By Order of the court.-Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon the order of the court upon such terms and conditions as the court may deem proper. *** Unless otherwise provided in the order, a dismissal under this paragraph shall be without prejudice."

It is clear that the law cited by the plaintiffs is inapplicable in this case, because the said law refers to dismissals by the plaintiffs, and not to the dismissal for failure to prosecute, under Section 3, Rule 30, which reads:

"When plaintiffs fail to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these 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."

The claim therefore, of the plaintiffs that the judgment rendered by the court on August 18, 1952, is not final, is erroneous, for the judgment was an adjudication on the merits and terminated the case right then and there. Any attempt to revive the same case by any other action, wittingly or unwittingly, constitutes res adjudication, which is a ground to dismiss this action. To contend otherwise, would be to prevent the finality of judgment terminating an action.

WHEREFORE, finding said motion to dismiss well founded, the Court hereby orders that the complaint filed in this case be, as it is hereby DISMISSED, without pronouncement as to costs."

Plaintiffs' Motion for Reconsideration of the above Order pointed to the fact that res adjudicata can not enter the picture, since (1) even if the doctrine should apply, it was waived when defendant-appellee in his motion to dismiss on January 6, 1958, and his answer to the complaint presented on January 23, 1958, failed to interpose the same, either as a defense or ground for the dismissal of the action; and (2) In the former civil case No. 471, the parties were Marcial del Rosario, Jose Ramirez and Marcos Agustin, and not the defendant-appellee; and the latter's predecessor-in-interest Marcos Agustin, was never placed within the jurisdiction of the Court, for failure to serve summons upon him. The motion for reconsideration, having been denied, plaintiffs appealed to this Court, and allege that the lower court, erred-

- (1) in admitting the second motion to dismiss pending the resolution of the first motion to dismiss;
- (2) in considering Civil Case No. 471 as the basis of res adjudicata in dismissing the case;
- (3) in dismissing the case in its entirety; and without trial on the merits.

which can be settled, with the resolution of the second assigned error.

Both in the motion to dismiss and the answer presented by defendant to resist the complaint, no mention of any prior case was ever made. It cannot be doubted that the prior case was already in existence, before the motion to dismiss and the answer were presented. All defenses not interposed in a motion to dismiss or in an answer, are deemed waived (Sec. 10, Rule 9). It would, therefore, result that defendant-appellee would be barred to make such ground, a basis of his second motion to dismiss, because he had lost the same.

There are circumstances of record which necessitate the trial court's delving into the merits of the case. Of course, the trial court maintained that the prior case was dismissed upon supposed failure of herein plaintiffs to prosecute and, therefore, the order of dismissal amounted to an adjudication on the merits. Even so, the application of the

doctrine of res judicata seems dubitable. Defendant-appellee herein was not a party in the former case and his supposed vendor (Marcos Agustin) was never within the jurisdiction of the court (in the first case), for failure to serve summons upon him. The requirement of identity of parties is, therefore, lacking.

The complaint in question alleges criminal fraud practiced upon the appellants herein, by the predecessors-in-interest of defendant-appellee and the latter's alleged bad faith in purchasing the property involved herein. If, as claimed, appellants had been fraudulently and criminally deprived of their property, a formal trial should be held to ventilate the issues. The dispensation of justice and the vindication of legitimate grievance, should not be barred by technicalities (*Ronquillo vs. Marasigan*, L-11621, May 21, 1962).

With this conclusion, We deem it unnecessary to discuss the other assigned errors.

CONFORMABLY with all the foregoing, We find that the Order dismissing the complaint on the ground of res judicata, is not well taken. The same should be, as it is hereby SET ASIDE, and another entered, REMANDING the case to the Court of origin, for further proceedings. No pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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