

**AMERICAN INSURANCE COMPANY, PLAINTIFF-APPELLANT, VS.
UNITED STATES LINES COMPANY, LUZON STEVEDORING
CORPORATION, AND PHILIPPINE STEAM NAVIGATION COMPANY,
DEFENDANTS-APPELLEES.**

G.R. No. L-40247. March 25, 1975

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside the appealed order dismissing petitioner's third complaint, since the dismissals for failure to prosecute of two previous complaints filed by petitioner could not operate as dismissals with prejudice as they had been made expressly without prejudice. Said two earlier dismissal orders granting petitioner the right to file its third complaint have long become final and the law of the case and are now beyond the jurisdiction or power of the lower court nor of this Court to modify or set aside.

This case is for recovery of a sum of money representing the value of losses sustained by a shipment from New York, U. S. A. to the Philippines on board an ocean carrier of respondent United States Lines Company and transhipped at Manila, through respondent Luzon Stevedoring Corporation aboard a vessel of respondent Philippine Steamship Navigation Company, to the consignee at Cebu City. Petitioner-plaintiff as insurer of the cargo, upon proper claim, paid the insured the value of the losses in the sum of P1,130.87 and was subrogated to the insured's rights of recovery and filed action against respondents as alternative defendants for recovery of the value of the loss with legal interests and costs.

The complication in this otherwise simple and routinary case arose from the lower court's appealed order of dismissal whereby it granted a motion to dismiss the action on the ground that two previous dismissals of two earlier identical cases between the same parties for failure to prosecute (the first on January 30, 1965 and the second on May 9, 1966) operated as a dismissal with prejudice contrary to the fact of record that both dismissals were made expressly without prejudice.

The fact that the dismissals of the two earlier cases were without prejudice is specifically made of record in the lower court's dismissal order of December 21, 1966, thus: x x x (I)t appears that Civil Case No. 55823 was filed on December 2, 1963, and was dismissed without prejudice on January 30, 1965. The same case was refiled — Civil Case No. 59855 — on February 11, 1965, which was also dismissed on May 9, 1966, upon motion by defendant Philippine Steam Navigation Company. Although the last order of dismissal appears to be a dismissal without qualification, it shows that there was added in handwriting with initial the words 'without prejudice'.^[1]

After the second dismissal order without prejudice of May 9, 1966, petitioner immediately refiled its third complaint on May 11, 1966. Respondent U. S. Lines Co. filed its answer thereto in due course, but respondent Philippine Steamship Navigation Co. opted to file a motion to dismiss which, as already stated, was granted in the lower court's dismissal order of December 21, 1966.

Hence, petitioner's appeal which was certified by the Court of Appeals to this Court only last February 24, 1975 per its resolution of January 31, 1975 as involving purely a question of law.

The appeal is meritorious and is hereby sustained.

The lower court in dismissing the action noted that "From the filing of the first case — December 26, 1963, up to the filing of the third case, now the present case before the court, on May 11, 1966, almost three years have elapsed, x x x". and held that "(I)t seems unfair to herein defendant-movant to be brought in three times into a litigation where plaintiff is negligent to prosecute its claim, leaving defendants to uncertainty as long as the courts entertain the refiling of the same action against the same defendants. As a matter of policy and sound practice, judgments or orders of any court of competent jurisdiction should have a sort of finality at some definite time, if the very purpose or object for which courts are established or constituted is to put an end to any controversy." [2]

While its sentiments for the prompt and definitive disposition of litigation are laudable, the lower court, however, failed to note that it lacked valid grounds in law and fact for its rash action of dismissing the case.

Firstly, as per its own dismissal order, the dismissals of the first two cases were expressly made without prejudice. Under Rule 17, section 3, [3] therefore, the dismissals were removed from the general rule that they should have the effect of an adjudication upon the merits, since the lower court had provided otherwise and declared the dismissals to be without prejudice.

Secondly, petitioner as plaintiff was merely exercising the right expressly reserved to it in immediately refiling its third complaint on May 11, 1966, within two and a half years from the filing of its first complaint on December 26, 1963. Its cause of action has a prescriptive period of ten years under Article 1144 of the Civil Code and such period cannot be arbitrarily shortened to 2 1/2 years, as was practically the effect of the lower court's dismissal order. Laches was not and could not be claimed against petitioner as its prompt refiling after dismissal of its complaint twice within the said 2 1/2 year Period was sufficient indication of its desire to pursue its claim.

Thirdly, the two previous dismissals which led to the filing of the third action were expressly without prejudice and have long become final. If such liberality and reservation of the right to file a third action were granted by the lower court with grave error and abuse of discretion — and the record so indicates, as no explanation is given for petitioner's failure to appear and prosecute the first two cases when called for trial — the respondents as the parties adversely affected should have appealed the same and pressed for a final dismissal with prejudice. They did not do so and said orders having long become final and the law of the case are now beyond the jurisdiction or power of the lower court nor of this Court to modify or set aside. Petitioner's right to file its third complaint well within the prescriptive period and to prosecute the same to judgment can no longer be taken away from it.

There is a lesson to be drawn here and it is the same old lesson that cases should not be rashly nor precipitously dismissed in the absence of clear and manifest grounds. This case should have been long disposed of had the lower court instead of erroneously dismissing the case but proceeded to trial on the simple factual issue and rendered judgment on the modest claim involved.

ACCORDINGLY, the appealed order of dismissal is set aside and the case is remanded to the court a quo for prompt trial and disposition on the merits. With costs against respondent Philippine Steamship Navigation Company.

Makalintal, C.J., Castro, Makasiar, and Esguerra, JJ., concur.

[1] Record on Appeal, p. 21.

[2] *Idem*, p. 22.

[3] SEC. 3. Failure to prosecute. — If 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 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. (Rule 17)

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