

GABRIEL BAGUIO, PLAINTIFF-APPELLANT, VS. TEOFILA L. VDA. DE JALAGAT, FOR HERSELF AND IN REPRESENTATION OF HER MINOR CHILDREN, DOMINADOR, LEA, AND TEONIFE, ALL SURNAMED JALAGAT; ...*G.R. No. L-28100. November 29, 1971*

Ponente: FERNANDO, J.

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The specific legal question raised in this appeal from an order of dismissal by the Court of First Instance of Misamis Oriental, presided by the Hon. Benjamin K. Gorospe, one which has not as yet been the subject of a definitive ruling, is whether or not on a motion to dismiss on the ground of *res judicata* that the cause of action is barred by a prior judgment, a lower court may take judicial notice of such previous case decided by him resulting in the prior judgment relied upon. Judge Gorospe answered in the affirmative. So do we. An affirmance is thus called for.

The case started with the complaint for the quieting of title to real property filed by plaintiff, now appellant, Gabriel Baguio, on February 14, 1966. There was on March 7, 1966 a motion to dismiss filed by defendants, now appellees, on the ground that the cause of action is barred by a prior judgment. This was the argument advanced: "The instant complaint or case, besides being clearly unfounded and malicious, is identical to or the same as that Civil Case No. 1574 filed by the same plaintiff and against Melecio alias Mening Jalagat, now deceased and whose legal heirs and successors in interest are the very defendants in the instant complaint or Civil Case No. 2639. Said Civil Case No. 1574 was filed on October 7, 1958 for 'Recovery of Possession and Ownership of Real Estate' and entitled Gabriel Baguio, plaintiff, versus Melecio alias Mening Jalagat, defendant, involving practically the same property and practically the same parties as defendants are the widow and the children, respectively, thus the legal or forced heirs of the deceased Melecio Jalagat. That the said Case No. 1574, which is identical to or is the same case as the instant one, has already been duly and finally terminated as could be clear from [an] order of this Honorable Court [dated December 6, 1965]."[1] There was an opposition on the part of plaintiff made on March 26, 1966 on the ground that for prior judgment or *res judicata* to suffice as a basis for dismissal it must be apparent on the face of the complaint. It was then alleged that there was nothing in the complaint from which such a conclusion may be inferred. Then, on September 26, 1966, came the order complained of worded thus: "Acting on the motion to dismiss filed by counsel for the defendants under date of March 4, 1966, anchored on the ground that plaintiff's cause of action is barred by a prior judgment, which this Court finds to be well-founded as it has already dismissed plaintiff's complaint in Civil Case No. 1574 against Melecio Jalagat alias Mening Jalagat, defendants' predecessor in interest from whom they have derived their rights, in an order dated December 6, 1965, pursuant to Section 3 of Rule 17 of the new Rules of Court, which case involved the same parcel of land as the one in the instant case, as prayed for, Civil Case No. 2639 should be as it is hereby [dismissed]. The Court's previous dismissal of Civil Case No. 1574 has the effect of an adjudication upon the merits and consequently is a bar to and may be pleaded in abatement of any subsequent action against

the same parties over the same issues and the same subject-matter by the same plaintiff. [So ordered]."[2] Hence this appeal.

The order of dismissal, as noted at the outset, must be sustained. It is in accordance with law.

1. The sole error assigned is that a bar by prior judgment cannot be raised in a motion to dismiss when such ground does not appear on the face of the complaint. What immediately calls attention in the rather sketchy and inconclusive discussion in the six-page brief of appellant is that there was no denial as to the truth of the statement made by Judge Gorospe that there was a previous dismissal of the same plaintiff's complaint against the predecessor-in-interest of defendants, who as expressly admitted by appellant was the deceased husband of one of them and father of the rest. There was no denial either of the property involved being the same and of the finality of the decision in the previous case which would show that appellant's claim was devoid of any support in law. It would be therefore futile for the court to continue with the case as there had been such a prior judgment certainly binding on appellant. What then was there for the lower court to do? Was there any sense in its being engaged in what was essentially a fruitless endeavor as the outcome was predictable?

Certainly, the law would lend itself to a well-deserved reproach if the Rules of Court would sanction such a proceeding distinguished by nothing but its futility. It ought to be clear even to appellant that under the circumstances, the lower court certainly could take judicial notice of the finality of a judgment in a case that was previously pending and thereafter decided by it. That was all that was done by the lower court in decreeing the dismissal. Certainly such an order is not contrary to law. A citation from the comments of former Chief Justice Moran is relevant. Thus: "Courts have also taken judicial notice of previous cases to determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable in the case under consideration." [3]

2. There is another equally compelling consideration. Appellant undoubtedly had recourse to a remedy which under the law then in force could be availed of. It would have served the cause of justice better, not to mention the avoidance of needless expense on his part and the vexation to which appellees were subjected if he did reflect a little more on the matter. Then the valuable time of this Tribunal would not have been frittered away on a useless and hopeless appeal. It has ever been the guiding principle from *Alonso v. Villamor*, [4] a 1910 decision, that a litigant should not be allowed to worship at the altar of technicality. That is not to dispense justice according to law. Parties, and much more so their counsel, should ever keep such an imperative of our legal system in mind. [5]

WHEREFORE, the order of dismissal of September 26, 1966 is hereby affirmed. With costs against plaintiff.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Barredo, Villamor, and Makasiar, JJ., concur.

Reyes, J.B.L., J., concurs with J. Teehankee in his separate opinion.

Teehankee, J., concurs in a separate opinion.

[1] Record on Appeal, pp. 6-7.

[2] Ibid, p. 13.

[3] 5 Moran, Comments on the Rules of Court, 1970 ed., p. 50.

[4] 16 Phil. 315.

[5] Cf. *Aguinaldo v. Aguinaldo*, L-30362, November 26, 1970, 36 SCRA 137, 141.

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CONCURRING OPINION

TEEHANKEE, J.:

I concur in the main opinion of Mr. Justice Fernando affirming the lower court's order of dismissal of the case below, on motion of defendants-appellees, on the ground of its being barred by a prior judgment.

The lower court properly took judicial notice of the prior case resolved by it, wherein admittedly the same lower court dis-missed an identical complaint filed over the same property by the same plaintiff against the same defendants (who are the legal or forced heirs of the now deceased Melecio Jalagat, defendant in the prior case).

Such judicial notice taken by the lower court is sanctioned under Rule 129, section 1. It in effect supplants the evidence on motion that Rule 133, section 7 authorizes a trial court to receive "when a motion is based on facts not appearing on record."

The appeal's sole assignment of error, viz, that a bar by prior judgment cannot be raised in a motion to dismiss when such ground does not appear on the face of the complaint, is clearly bereft of basis or merit. Such limitation of the dismissal motion to what appears on the face of the complaint applies only when it is based on the ground that the complaint fails to state a valid cause of action.[1] Rule 16, section 3 precisely provides for a hearing of the motion to dismiss, wherein its ground (other than lack of cause of action) may be proved or disproved in accordance with the rules of evidence and specifically Rule 133, section 7, which provides that "(W)hen a motion is based on facts not appearing of record the court may hear the matter on affidavits depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony depositions."

When the ground of the dismissal motion is a prior judgment rendered by the same court - a fact known to the court and to the parties as well, as in the case at bar - the taking of judicial notice of said prior judgment by the same court constitutes the very evidence needed to dispose of the dismissal motion.

[1] See I Martin's Rules of Court, 2d Ed., p. 499.

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