

PABLO L. CAPATI, PLAINTIFF-APPELLANT, AVELINA BALLESTEROS, DEFENDANT-APPELLEE.*G.R. No. L-2218. July 31, 1950*

Ponente: OZAETA, J.

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This is an appeal from an order dismissing plaintiff's complaint upon motion of defendant based on the pendency of another action between the same parties for the same cause.

Pablo L. Capati commenced this action against Avelina Ballesteros on November 13, 1947, alleging in substance that he is the owner of cadastral lots Nos. 1147 and 9775 of the Tuguegarao cadastre, described in original certificates of title Nos. 303 and 1052; that said lots originally belonged to Maria Macapinlac and Eufrosina Macapinlac Lorenzo, who sold them on February 15, 1944, to Potenciano Ramirez and Consuelo Castro; that the latter in turn sold said lots on April 3, 1946, to Isa Ahmad, who in turn sold them to the plaintiff for P6,000; and that the plaintiff and his predecessors in interest are and have been in the actual possession of said property. Plaintiff, however, cannot register the deed of sale in his favor and obtain a clean certificate of title in his name because of the annotation on the original certificates of title of a writ of attachment procured by the defendant Avelina Ballesteros in prewar civil case No. 2382, which has been terminated, and of a *lis pendens* referring to civil case No. 27, entitled "Avelina Ballesteros, plaintiff, vs. Maria Macapinlac and Eufrosina M. Lorenzo," which was commenced on October 28, 1946. The purpose of the present action is to obtain judgment declaring that the plaintiff is the owner of the lots in question, to have the annotations of attachment and *lis pendens* canceled, and to order the register of deeds to issue a clean transfer certificate of title in the name of the plaintiff.

It appears from the complaint that, after failing to reconstitute the record of prewar civil case No. 2382, the defendant Avelina Ballesteros commenced said civil case No. 27 against Maria Macapinlac and Eufrosina Macapinlac Lorenzo to compel the latter to execute in her favor a deed of sale over the two lots in question in specific performance of a contract of mortgage with option to sell executed on November 29, 1937. At the time the present action was commenced, said civil case No. 27 was pending appeal in the Court of Appeals. It has since been decided by that court in favor of Avelina Ballesteros, and the decision of the Court of Appeals was affirmed by this court on May 18, 1950, in G.R. No. L-2400.

We are of the opinion and so hold that the trial court erred in dismissing the complaint on account of the pendency of said civil case No. 27. The two cases were not "between the same parties for the same cause." The present case is between Pablo L. Capati and Avelina Ballesteros, while civil case No. 27 was between Avelina Ballesteros and Maria Macapinlac and Eufrosina M. Lorenzo. The purpose of the present action is to obtain a judicial declaration of ownership in favor of the plaintiff Capati and the cancelation of the annotation of certain incumbrances, while the purpose of civil case No. 27 was to compel the Macapinlac sisters to execute a deed of sale in favor of Avelina Ballesteros. As a result of these differences as to parties and as to the cause of action, the judgment rendered in civil case No. 27 does not constitute *res judicata* in the present case.

Commenting on paragraph (d), section 1 of Rule 8, Chief Justice Moran summarizes the previous rulings of this court on this point as follows:

"In order that this ground may be invoked, there must be, between the action under consideration and the other action, (1) identity of parties, or at least such as representing the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity on the two preceding particulars should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to res adjudicata in the action under consideration. For instance, if A filed an action against B for the annulment of a contract of mortgage, and while this action is pending, B, in turn, files an action against A for the foreclosure of the mortgage, may the pendency of the first action be pleaded as a ground for dismissal of the second? It cannot, for, although there is identity of parties in the two actions and there may be identity of rights asserted, yet the judgment which may be rendered in the first action does not necessarily bar the second action. If the judgment in the first action be that the mortgage is valid, it would not then dispose of the action for the foreclosure of mortgage. And the rule is that the identity between the two actions must be such that any judgment rendered on the other action will, regardless of which party is successful, amount to an adjudication of the action under consideration." (Moran's Comments on the Rules of Court, vol. 1, pp. 137-138, citing *Manuel v. Wigett*, 14 Phil. 9; *Hongkong & Shanghai Banking Corp. v. Ibanez de Aldecoa & Palet Co.*, 30 Phil. 255; see also *Viuda de Hernaez-v. Jison*, 40 Off. Gaz. 3646; *J. Northcott & Co. v. Villa-Abrille*, 41 Phil. 462.)

Even with the judgment of this court in civil case No. 27 in favor of the herein defendant Avelina Ballesteros, the latter cannot recover the possession of the lots in question from the herein plaintiff without instituting an action for that purpose against the latter. Such an action she might as well avail of by way of cross-complaint against the plaintiff in the present case. So when this case is tried on the merits, the question as to who has a better title to the land in dispute can be litigated and decided once and for all.

The order appealed from is reversed and the case is remanded to the court of origin for further proceedings, with the costs of this instance against the appellee.

Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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