

**MARIETTA P. SANTOS AND FERMINA M. PANGANIBAN, PETITIONERS,
VS. COURT OF APPEALS, PILIPINAS BANK, TIRSO ANTIPORDA,
FELIPE GELLA, ED DAVID, PASTOR REYES, JR., ET. AL.,
RESPONDENTS.**

G.R. No. 101818. September 21, 1993

Ponente: MELO, J.

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MELO, J.:

Before us is a petition seeking the review and the consequent reversal of the decision of respondent Court of Appeals dated March 18, 1991 in CA-G.R. CV No. 23857 entitled "Marietta P. Santos and Fermina M. Panganiban vs. Pilipinas Bank, Tirso Antiporda, Felipe Gella, Ed David, Pastor Reyes, Jr., and the unknown buyer of subject Dasmariñas Village Property".

The facts of the case, as gleaned from the record, are as follows:

On August 23, 1979, the then Court of First Instance of Pasig, Rizal in its Civil Case No. 28779, entitled, "Pilipinas Bank vs. Titan Minerals, Inc., and/or Luis D. Santos and/or First Integrated Bonding and Insurance Company, Inc", rendered judgment against defendants therein, ordering them to pay plaintiff Pilipinas Bank, private respondent herein, jointly and severally the sum of P500,000.00.

Defendants Luis Santos and Titan Minerals did not appeal said decision in Civil Case No. 28779, while the appeal of defendant First Integrated Bonding and Insurance Co. was dismissed by the Court of Appeals on December 17, 1981 (p. 95, Rollo). On February 20, 1980 the trial court issued an order of execution. The sheriff levied upon, among other pieces of property, the residential property of the spouses defendant Luis D. Santos and Marietta P. Santos, one of the petitioners herein, said residential property being the subject-matter of the present case, located at Dasmariñas Village, Makati, Metro Manila and covered by Transfer Certificate of Title No. 53110 of the Register of Deeds of Makati. At the auction sale, private respondent Pilipinas Bank was the highest bidder and a certificate of sale was issued in its favor on April 24, 1980. Since in the meantime the subject property had been previously mortgaged to the International Corporate Bank, and thereafter sold to said bank in a public auction pursuant to an extra-judicial foreclosure proceedings, herein private respondent Pilipinas Bank, in order to protect its junior encumbrance in the subject property, redeemed the property from International Corporate Bank on October 23, 1980 for P1,421,131.31 (see p. 2, Decision of Court of Appeals in CA-G.R. CV No. 23857; p. 40, Rollo; p. 2, Decision of Court of Appeals in CA-G.R. SP No. 09210; p. 95 Rollo).

On April 24, 1981, Luis Santos, petitioner Marietta P. Santos and Titan Minerals filed a complaint, docketed as Civil Case No. 40946, against Pilipinas Bank for annulment of the sale on execution and foreclosure sale and for damages, with prayer to suspend the running of the redemption period and to enjoin Pilipinas Bank from consolidating its ownership over the subject property. On July 2, 1981, said complaint was dismissed without prejudice due to plaintiffs' and their counsel's failure to appear. On August 18, 1981, plaintiffs re-filed the complaint, thereafter docketed as Civil Case No. 42467. On December 7, 1981, said re-filed Civil Case No. 42467

was dismissed upon motion of Pilipinas Bank. The order of dismissal was elevated to this Court by petition for review in G.R. No. 59769, but on May 2, 1982, the Court issued a resolution denying the petition for lack of merit.

On October 23, 1984, respondent Pilipinas Bank filed in Civil Case No. 28779 an omnibus motion to cancel Transfer Certificate of Title No. 53110, to issue a new one in its name and to issue a writ of possession and/or a break open order. The trial court granted the omnibus motion on November 13, 1984.

Acceding to the request of petitioner Marietta Santos and her husband Luis Santos to be accorded a chance to repurchase the property, respondent Pilipinas Bank prepared and furnished petitioner Marietta Santos a draft Contract to Sell. Due to the failure of the Santos spouses to come up with the proposed purchase price, respondent Pilipinas Bank obtained an alias writ of execution on June 4, 1985. The Santos spouses, however, succeeded in securing an order for the suspension of the effectivity of the writ of possession for 30 days from June 21, 1985, citing alleged negotiations between the parties for the repurchase of the property. Since petitioner Marietta Santos and her husband, again failed to present any satisfactory offer, respondent Pilipinas Bank obtained a second alias writ of possession on May 21, 1986.

On May 27, 1986, petitioner Marietta Santos and her husband filed another motion for stay of execution which, not surprisingly, was opposed by private respondent Pilipinas Bank. On May 30, 1986, the trial court issued an order denying the motion for stay of execution.

Petitioner Marietta Santos then filed with the Court of Appeals a petition for certiorari which was later docketed as CA-G.R. SP No. 09210, contending that the trial court judge committed grave abuse of discretion in refusing to stay the execution of the writ of possession on equitable grounds and that her failure to repurchase the property was caused by the "February Revolution", the "snap" election and the "economic conditions of the country, where the restructuring of the obligation is the order of the day" (see pp. 3-4, decision of the Court of Appeals in CA-G.R. SP No. 09210, pp. 96-97, Rollo).

On April 30, 1987, the Court of Appeals rendered a decision dismissing the petition in CA-G.R. SP No. 09210 (Kapunan [P], Puno, Marigomen, JJ.) Following the denial of a motion for reconsideration, petitioner Marietta Santos filed before this Court a petition for review docketed as G.R. No. 78640. On June 16, 1987, we issued a resolution (Annex G of Petition, p. 99, Rollo) denying the petition in G.R. No. 78640 but granting petitioner Marietta Santos seven (7) days from notice to enter and freely remove her things from the premises subject of the petition.

On July 3, 1987, petitioners filed a complaint docketed as Civil Case No. 17197 against private respondents Pilipinas Bank, Tirso Antiporda, Fely Geda, Ed David, Pastor Reyes, Jr., and the unknown buyers of the subject Dasmariñas Village property (who have now been identified as the Spouses Virgilio C. de Silva and Estrella de Silva in the present petition). As concisely summarized by the Court of Appeals, petitioners alleged that - -

. . . Their first cause of action is founded on equity including promissory estoppel wherein they prayed that they be allowed to redeem the property or to allow plaintiff Fermina M. Panganiban to purchase the property. The second or alternative cause of action is for alleged tortious acts committed by defendant and its corporate officers in maliciously causing the execution of the judgment without waiting for the finality of the Court of Appeals resolution denying due course to plaintiff's petition for certiorari to annul the order denying plaintiff's motion for stay of execution and the oppressive or abusive manner by which the execution was carried out by the Sheriff in gross violation of the Supreme Court resolution allowing them seven (7) days from receipt thereof to enter and freely remove her things from the premises subject of the petition which allegedly resulted in actual, moral and exemplary damages and attorney's fees for which they a prayed for indemnification in still unascertained amounts.

(p. 3, decision of Court of Appeals in CA-G.R. CV No. 23857, p. 106, Rollo)

The defendants in said Civil Case No. 17197, private respondents herein, filed a Motion to Dismiss and For Order to Cancel Lis Pendens, based on res judicata.

On June 24, 1958, the trial court issued an order dismissing the complaint and cancelling the lis pendens. Petitioner thereupon interposed an appeal with the Court of Appeals where the appeal was docketed as CA-G.R. CV No. 23857.

On March 18, 1991, the Court of Appeals in CA-G.R. CV No. 23857 rendered its decision (Mendoza V., Herrera O., [P] and Sempio-Dy, JJ.) the dispositive portion of which reads as follows:

WHEREFORE, the Order appealed from is AFFIRMED with respect to the dismissal of the first cause of action including the order for the cancellation of the lis pendens, but REVERSED with respect to the dismissal of the alternative cause of action for damages. In the latter case, subject to the rules on amendment of pleadings, plaintiffs are granted a period of fifteen (15) days from date of finality hereof to amend their complaint by deleting therefrom the first cause of action and to specify in the body and prayer of the amended complaint the amount of damages prayed for and to pay the prescribed fees. No pronouncement as to costs.

SO ORDERED.

(p. 115, Rollo.)

Hence, the instant recourse, on the following grounds:

1. Respondent Court of Appeals erred, on a matter of law, in holding that the first cause of action of petitioners' complaint is barred under the doctrine of res judicata.
2. Respondent Court of Appeals erred, on a matter of law, in holding that the first cause of action of petitioners' complaint is barred under the doctrine of conclusiveness of judgment.
3. Respondent Court of Appeals erred, on a matter of law, in holding that the first cause of action is barred under the ruling in Socorro L. Vda. de Sta. Romana vs. Philippine Commercial and industrial Bank, 118 SCRA 330 [1982].

(pp. 16-17, Rollo)

The sole issue involved in this case is whether or not res judicata exists.

The elements of res judicata are [1] the presence of a final former judgment; [2] the former judgment is by a court having jurisdiction over the subject matter and the parties; [3] the former judgment is a judgment on the merits; and [4] there is, between the first and the second action, identity of parties, of subject matter, and of cause of action (Philippine Commercial and Industrial Bank vs. Pfleider, 65 SCRA 13 [1975]).

There is no question as to the presence of elements [1], [2] and [3]. The decision in Civil Case No. 28779 is a final judgment on the merits rendered by the Regional Trial Court of Pasig which undoubtedly has jurisdiction over said case. Likewise, the order dated May 30, 1986 (Annex E of petition, p. 89, Rollo) in Civil Case No. 28779, denying the motion for stay of execution filed by petitioner and her husband is a final order as its object is the execution of the aforementioned decision. Likewise, the order of June 24, 1988, issued by the trial court in Civil Case No. 17197, dismissing the complaint therein is a final order by a court of competent jurisdiction. There is identity of parties. Respondent Pilipinas Bank is the plaintiff in Civil Case No. 28779 and one of the defendants in Civil Case No. 17197; Luis D. Santos is one of the defendants in Civil Case No. 28779, while Marietta P. Santos is one of the plaintiffs in Civil Case No. 17197; they both represent the same interest as they are husband and wife and the property levied upon covered by Transfer Certificate of Title No. 53110 is owned by them. The addition

of petitioner Fermina M. Panganiban as one of the plaintiffs in Civil Case No. 17197 does not militate against the element of identity of parties because the joining of new parties does not remove the case from the operation of res judicata (Anticamara vs. Ong, 82 SCRA 337 [1978]). Furthermore, Fermina M. Panganiban represents the same interests of petitioners Marietta Santos and Luis Santos as she proposes to repurchase the subject property in lieu, of the Santos spouses. Moreover, the principle of res judicata does not require absolute identity but only substantial identity of parties (Anticamara vs. Ong, supra). Undoubtedly, there is identity of subject matter, i.e., the residential property of the Santos spouses.

Is there identity of cause of action between Civil Case No. 28779 and Civil Case No. 17197?

The motion for stay of execution dated May 26, 1986, filed by petitioner Marietta P. Santos and her husband, Luis D. Santos, in Civil Case No. 28779 is based on equitable grounds - to the end that petitioner Fermina M. Panganiban, mother of petitioner Marietta P. Santos may consummate the contract to repurchase the subject property.

On the other hand, the cause of action relied upon by petitioner Marietta and her husband in the complaint in Civil Case No. 17197 is founded on equity including promissory estoppel, by reason of which they prayed that they be allowed to redeem the subject property or that petitioner Fermina M. Panganiban be allowed to purchase said property.

As thus compactly delineated in seriatim, we cannot discern any distinction between the causes of action in Civil Cases No. 28779 and No. 17197. There is thus, a perfect conflux of the elements of res judicata.

Aside from the foregoing procedural considerations, there is another equally insuperable obstacle, based on substantive law, to the grant of the demands or prayer of petitioners.

Petitioners seek to repurchase the subject property pursuant to the contract to sell submitted by respondent Pilipinas Bank to them for their consideration. Petitioners cannot invoke said contract to sell for the simple reason that it is not a perfected contract and, therefore, is not binding. Respondent Pilipinas Bank sent a copy of the contract to sell to petitioners for their acceptance. However, petitioner never communicated their acceptance to respondent Pilipinas Bank. Article 1319 of the Civil Code of the Philippines provides that the acceptance must be absolute and that an "[a]cceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge". Due to petitioners' failure to make an absolute acceptance of the proposed contract to sell as well as their failure to communicate their acceptance to respondent Pilipinas Bank, said contract to sell was not perfected and is thus not binding upon Pilipinas Bank. That there was no acceptance was virtually admitted by petitioners when they averred in their Reply to Comment that had their motion for stay of execution been granted it "would have given the Santos spouses and Fermina M. Panganiban the time to finalize negotiations and to consummate the Contract to Sell with Pilipinas Bank" (p.179, Rollo). Clearly then, the contract to sell was still in the period of negotiation and was never perfected as to bind the herein parties.

WHEREFORE, the petition is hereby DENIED and the decision of the Court of Appeals in CA-G.R. CV No. 23857 is hereby AFFIRMED.

SO ORDERED.

Bidin, (Acting Chairman), Romero, and Vitug, JJ., concur.

Feliciano, J., (Chairman), on leave.

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