

BALTAZAR L. VILLANUEVA, PETITIONER, VS. HON. COURT OF APPEALS, GRACE OPPUS VILLANUEVA, FRANCISCO O. VILLANUEVA, AND MA. PAS O. VILLANUEVA, RESPONDENTS.

G.R. No. 110921. January 28, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Petitioner assails the Court of Appeals' Decision dated July 12, 1993 enjoining the Regional Trial Court from proceeding with Civil Case No. 91-10741 on grounds of *res judicata*.

On March 16, 1989, herein petitioner filed a complaint for reconveyance of a property with damages, docketed as Civil Case No. Q-89-2002 against Grace O. Villanueva and Francisco O. Villanueva.

The complaint alleged that:

- Plaintiff is of legal age, Filipino, single, and resident of Tagudin, Ilocos Sur. Defendants Grace O. Villanueva and Francisco O. Villanueva, are both of legal age, Filipinos, widow and single, respectively, and residents of 55 Jaime Laya Street, BF Homes, Paranaque, Metro Manila, where they may be served with summons and other court processes.

- Romeo L. Villanueva, brother of the plaintiff and Gaudencio L. Villanueva (late husband of defendant Grace O. Villanueva), died single and intestate on July 10, 1983 at Tagudin, Ilocos Sur, leaving behind a property consisting of a parcel of land situated at Project 6, Quezon City and described and registered in his name under Transfer Certificate of Title No. 132256 of the Registry of Quezon City together with a residential house erected thereon, which, for purposes of brevity is hereinafter referred to as the "Project 6 property." x x x

- At the time of his death, Romeo L. Villanueva was survived by his mother, the late Victoria L. Villanueva, as his sole compulsory heir, and his two brothers, the plaintiff and Gaudencio L. Villanueva.

- On October 6, 1983, Victoria L. Villanueva executed an extrajudicial settlement of the estate of Romeo L. Villanueva, wherein she waived her right over the "Project 6 property" in favor of Gaudencio L. Villanueva. x x x. This extrajudicial settlement (Annex "B"), however, was not registered with the Office of the Register of Deeds of Quezon City because the same was subsequently revoked, and set aside by Victoria L. Villanueva for failure to reflect certain conditions as well as her true intention. After the death of Gaudencio L. Villanueva, defendant Grace O. Villanueva took the initiative of requesting her counsel, Atty. Guirda Sajol-Tiempo of Quezon City to prepare a new document of extrajudicial settlement which was signed and acknowledged by her and her son, Gaudencio C. Villanueva, Jr. on March 30, 1984 before Notary Public Guirda Sajol-Tiempo at Quezon City. Thereafter, the same extrajudicial settlement of the estate of Romeo L. Villanueva was brought to Tagudin, Ilocos Sur for the approval and signature of Victoria L. Villanueva. On April 16, 1984, Victoria L. Villanueva signed the said document. Under the said extrajudicial settlement, Victoria L. Villanueva adjudicated the "Project 6 property" in favor of the plaintiff and Gaudencio O. Villanueva, Jr., son of Gaudencio L. Villanueva and defendant

Grace O. Villanueva, on a fifty-fifty basis. x x x.

x x x

- The owner's duplicate copy of TCT No. 132256 was not lost. The same was surrendered by Modesta Valdez, common-law spouse of the late Romeo L. Villanueva to the plaintiff few months after the death of Romeo L. Villanueva, a fact, very well-known to defendant Grace O. Villanueva.

- Defendant Grace O. Villanueva, being the one residing at Quezon City, was entrusted with the original and duplicate copies of Annex "C" and was requested by the heirs to attend to the registration thereof with the Registry of Deeds of Quezon City. Plaintiff came to know later that defendant did not take any action on it.

- Sometime in September 1989, Atty. Benigno Lapitan, hereinafter referred to as Lapitan, with whom plaintiff leased the premises of the "Project 6 property" received a notice of termination of lease and demand to vacate the "Project 6 property" from defendant Grace O. Villanueva and her counsel, David R. Advincula, Jr. In the same demand, defendant Grace O. Villanueva informed Lapitan that she and her "minor children in the persons of Gaudencio O. Villanueva, Jr., Francisco Villanueva and Maria Paz O. Villanueva-Sison are now the registered owners" of the "Project 6 property." x x x.

x x x x x x x x.

- All along defendant Grace O. Villanueva knew that the owner's duplicate copy of TCT No. 132256 was not lost. She knew also that the same is in the possession and custody of the plaintiff. So that even while Spl. Proc. No. 0563-T was pending before the Regional Trial Court of Ilocos Sur, defendant Grace O. Villanueva obtained through fraud, deceit, and misrepresentation a judgment from the Regional Trial Court of Quezon City, Branch 98, ordering the issuance of a new owner's duplication copy of TCT No. 132256 of the Registry of Deeds of Quezon City. This enabled her to have actual possession of the owner's duplicate copy of TCT No. 132256 and made possible the transfer from TCT No. 132256 to TCT No. 373264 and from TCT No. 373264 to TCT No. 376583 wherein defendant Grace O. Villanueva was made a 5/8 owner of the entire "Project 6 property", thereby ousting the plaintiff from his lawful participation and reducing the participation of Gaudencio O. Villanueva, Jr. from 1/2 to 1/8 of the said property.

- Defendants are merely holding the property in trust and have a legal duty to reconvey the same to the plaintiff and to Gaudencio O. Villanueva, Jr.

- In view of the acts of the defendants in obtaining judgment through deceit, misrepresentation, and fraudulent means, as well as in causing the illegal transfer of the property from Romeo L. Villanueva to her as a 5/8 participant, and to Francisco Villanueva who is not a son of Gaudencio L. Villanueva, as 1/8 participant, and in order to protect his rights, plaintiff was constrained to institute this action and incur litigation expenses and attorney's fee, the reasonable sum of which should not be less than Fifty Thousand Pesos (P50,000.00). It is but reasonable and fair that plaintiff recovers this amount from the defendant.[1]

Unfortunately, the complaint for reconveyance was dismissed on October 29, 1990 for failure of the plaintiff and his counsel, Atty. Benjamin D. Turgano to appear during the pre-trial on August 19, 1990 and the trial on October 29, 1990 for lack of interest to pursue the case. A motion for reconsideration was filed to reinstate the complaint but was denied on January 30, 1991 for lack of merit. The order of denial states:

Plaintiff seeks reconsideration of the Order dated 29 October 1990 dismissing the Complaint for failure of the plaintiff and his Counsel, Atty. Benjamin D. Turgano to appear during the pre-trial on August 19, 1990 and the trial on 29 October 1990 for lack of interest to pursue the case.

Defendant interposed opposition to the reconsideration of the above order on grounds that plaintiff and his counsel have not justified their absence during the pre-trial of this case on 19 August 1990, and the plaintiff on 29 October 1990, inspite of due notice.

Finding the plaintiffs' motion for reconsideration of the Order above-stated not well-taken and not meritorious, the Court sustained the dismissal of the Complaint and the plaintiff and his counsel are non-suited. (Sec. 2, Rule 20, Rules of Court).

Therefore, the above motion for reconsideration dated 24 November 1990 is hereby Denied.

SO ORDERED.[2]

On November 26, 1991, petitioner filed another complaint docketed as Civil Case No. Q-91-10741. The complaint was for annulment of title and damages with prayer for a temporary restraining order and/or writ of preliminary injunction involving the same real property. Included as defendants were Ma. Pas O. Villanueva and the Register of Deeds of Quezon City. The complaint reads:

- Plaintiff is of legal age, Filipino, single and a resident of Tagudin, Ilocos Sur;
- Defendants Grace O. Villanueva, Francisco O. Villanueva and Ma. Pas O. Villanueva are all of legal age, Filipinos and are residents of No. 401 Kaimito Road, Valle Verde 3 Valle Verde Homes, Pasig, Metro Manila, where they may be served with the summons and other processes of this Honorable Court;
- Defendant Registrar of Deeds of Quezon City (hereinafter referred as, REGISTRAR) is herein impleaded in his capacity as such charged with the registration of dealings of registered lands in Quezon City as well as the concomitant issuance of new titles by reason of the foregoing, and he may be served with the summons and other processes of this Honorable Court at the Register of Deeds of Quezon City, Quezon City, Metro- Manila;
- The late Romeo Villanueva is the brother of the plaintiff and who is the registered owner in fee simple of that parcel of land with improvements thereon situated at No. 2-E Alley 15, Project 6, Quezon City, Metro Manila and covered by Transfer Certificate of Title No. 132256 of the Register of Deeds for Quezon City, Metro Manila, the owner's duplicate copy thereof is in the possession of the herein plaintiff, x x x;
- The late Romeo L. Villanueva died single and intestate on July 10, 1983 as evidenced by his Death Certificate issued by the Local Civil Registrar of Tagudin, Ilocos Sur, x x x;
- At the time of his death, Romeo L. Villanueva was survived by his mother, Victoria L. Villanueva (now deceased) as his sole compulsory heir, and his two brothers, the plaintiff herein and Gaudencio L. Villanueva, Sr. (now deceased) who was the husband of defendant Grace Oppus Villanueva and the father of defendants Gaudencio, Jr. and Ma. Pas O. Villanueva-Sison.
- In 1984, the late Victoria L. Villanueva, executed the Extrajudicial Settlement of Estate with Waiver over the property of the late Romeo L. Villanueva covered by TCT No. 132256 waving all her rights thereon in favor of the plaintiff and Gaudencio Villanueva, Jr., share and share alike, thereby constituting them as co-owners over the abovesaid property, which extrajudicial settlement was duly published as required by law, x x x;
- Defendant Grace Villanueva, the mother of Gaudencio, Jr., who represented his said son, was thereupon entrusted with the documents abovementioned and who was tasked to register the same and to obtain the new title in the names of plaintiff and Gaudencio, Jr. hence, the original copies of the said document and paper are in her possession but despite thereof, with the evident intent to defraud herein plaintiff and in gross and palpable violation of her undertaking and impelled by malic (sic) and bad faith, failed and did not register the said documents with the defendant Register of Deeds;

- Considering their filial and family relations, plaintiff did not have even the slightest inkling that defendant Grace Villanueva would deprive and defraud him of the said property;
 - On April 26, 1985, plaintiff's mother, Victoria L. Villanueva died x x x ;
 - Plaintiff had been the one paying the real property taxes of the subject property up to the present as evidenced by the receipts in his possession to the foregoing effect;
 - In the exercise of his proprietary right as the co-owner of the subject property under TCT No. 132256, herein plaintiff leased the abovesaid property to the present lessee and occupant of the subject property, Cristeta Lapitan, as evidenced by the Contract of Lease dated August 15, 1985, which had been renewed actually after the expiration thereof, x x x;
 - To further show that the plaintiff had always exercised his proprietary right as the co-owner of the abovesaid property, he filed an application for the administrative reconstitution of the title covering the abovesaid property, TCT No. 132256, whose owner's duplicate copy thereof always remained in his possession, considering that the original copy of TCT No. 132256 which was on file with the defendant Registrar of Deeds, was among the documents burned and destroyed by the fire that gutted the Quezon City Hall wherein the Office of the Register of Deeds of Quezon City was then housed, in 1988, x x x;
 - Subsequently, plaintiff learned that Grace O. Villanueva without, his consent and through fraud, deceit, ploy and machinations was able to secure a new title in the name of plaintiff's deceased brother, Gaudencio L. Villanueva, making it appear that it is a transfer from TCT No. 132256, on December 21, 1987, x x x;
 - Subsequently defendant Grace O. Villanueva continuing with her deceitful and fraudulent acts to deprive the plaintiff of the aforesaid property, was able to transfer anew the title in the names of her co-defendants, except for defendant Registrar, who are her children, which property is now titled under TCT No. 376583 issued on February 1, 1988, xxx;
- 15a. Having completed her fraudulent machinations, defendant Grace O. Villanueva thereupon instituted the ejectment suit against the lessee of the property, Cristeta Lapitan, xxx;
- Defendant Grace O. Villanueva, through fraud, deceit, ploy and machinations aimed at depriving the plaintiff of his co-ownership over the subject property, was able to secure the title in their names hence, under the circumstances, TCT No. 376583 is a total and absolute nullity and as such should be voided;
 - Further, the validity and effectivity still of TCT No. 132256 of the Registry of Deeds for Quezon City should be upheld and sustained and that the defendant Registrar of Deeds should be ordered to cancel the foregoing TCT No. 376583 and TCT No. 373264 and forthwith, to refrain from transferring anew the title of the said property except if it duly proceeds from TCT No. 132256 through the plaintiff and Gaudencio Villanueva, Jr. and/or other legal means;
 - Due to the foregoing malicious, immoral, illegal and unjust acts and conduct of defendant Grace O. Villanueva, which exposed him to public ridicule, social embarrassments and besmirched reputation considering that the lessee has been disturbed in her supposed peaceful occupation of the subject property, plaintiff likewise suffered anxiety, mental anguish, wounded feelings, fright and sleepless nights, thereby entitling herein plaintiff to an award for moral damages in the sum of not less than P200,000.00;
 - To serve as an example to deter others from following the unjust, immoral, illegal and unethical acts and conduct of defendant Grace O. Villanueva as above narrated, said defendants must likewise be held liable for exemplary damages in the amount of not less than P100,000.00;

- To protect his interest, plaintiff was constrained to engage the services of the undersigned counsel with an agreed attorney's fee of P100,000.00 exclusive of appearance and other professional fees for the preparation of pleadings.[3]

A motion to dismiss was filed by private respondent on the ground that petitioner's cause of action is barred by prior judgment to which petitioner filed an opposition.

On March 11, 1992, the Regional Trial Court denied the motion to dismiss in this wise:

Despite the ground for dismissal, however, the court, in the exercise of its equity jurisdiction would not disregard the fundamental principle that the rules of procedure are not to be applied in a very rigid or technical sense since they are designed to help secure justice, not to override the same. In the case at bar, the party litigants have not been actually afforded the amplest opportunity to present their cases freed from the constraints of technicalities and stringent application of the rule which would not serve the demands of substantial justice. It would be more in keeping with justice therefore, to afford plaintiff and defendants the opportunity to lay their respective claims and defenses before the court in a full blown litigation.

Accordingly, the Supreme Court has declared that even if for purposes of argument, res judicata is applicable to a case, "it is always in the power of the court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it" (Vda. de Ordeveza vs. Raymundo, 63 Phil. 275 cited in Ronquillo v. Marasigan, 5 SCRA 304, pp. 312-313).

Hence, in the interest of justice and not in view of the arguments raised by the plaintiff, the court resolves to deny the present motion.

WHEREFORE, the motion to dismiss is hereby DENIED.[4]

Subsequently, on August 4, 1992, petitioner filed a Supplemental Complaint. The same was admitted by the trial court and gave private respondent time to file a consolidated answer. Instead, private respondents moved to dismiss raising once again the reasons of forum-shopping, res judicata and estoppel.

On December 3, 1992, the trial court denied said motion to dismiss.

Thus, on a petition for certiorari filed with the Court of Appeals, private respondents assailed the aforementioned orders of the lower court dated March 11, 1992 and December 3, 1992.

On July 12, 1993, the Court of Appeals rendered a decision upholding the ground for dismissal but made the following disquisition:

Nonetheless, considering the special circumstances of the case pointed out by respondent Judge, We strongly urge private respondents to elevate this decision to the Supreme Court who alone has the power to suspend the rules.

WHEREFORE, premises considered, the writ of certiorari, prohibition and mandamus prayed for is granted. The Orders of respondent Judge dated March 11, 1992 and December 3, 1992 are annulled and set aside. Respondent Judge is enjoined from further proceeding with Civil Case No. Q-91-10741 except to dismiss the same.[5]

Taking the cue from the Court of Appeals, petitioner filed the instant petition.

Petitioner insists that res judicata does not apply because the two complaints have different parties and causes of action. Nonetheless, assuming res judicata applies the rules of procedure can still be disregarded in favor of substantial justice.

Petitioner's contentions are untenable.

Both the respondent court and the trial court found that res judicata applies in the instant case. Quoting from the Order of March 11, 1992 as contained in the Court of Appeals decision, the trial court explained:

After a careful and judicious deliberation on the arguments of the plaintiff and the defendants, the Court finds that indeed, the principle of res judicata applies in the instant case.

The requisites of res judicata are the following:

- a) The former judgment or order must be final;
- b) It must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case;
- c) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and
- d) There must be, between the first and second actions, identity of parties, of subject matter and of cause of action. This requisite is satisfied if the two (2) actions are substantially between the same parties (*Benin v. Tuason*, 57 SCRA 531).

The court now elucidates on each requisite as applied in the case at bar.

Re: FIRST REQUISITE

With respect to the first requisite, it is beyond cavil that the Order of Dismissal of the former case dated October 29, 1990 and the Order of Denial of the motion for reconsideration thereof dated January 30, 1991 have become final, no appeal therefrom having been taken by the plaintiff. Hence, the presence of the first requisite.

Re: SECOND REQUISITE

Anent the second requisite, while it is true that the judgment or order must be adjudicated on the merits, i.e., it is rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case, this rule, however, is not without exception (see *Feria*, Civil Procedure, p. 627). Be it noted that one of the exceptions of the rule that the former judgment or order was on the merits is the dismissal under Section 3, Rule 17 which provides that:

‘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 adjudication upon the merits, unless otherwise provided by the court.’ (underscoring supplied)

The instant case falls under the aforestated exception considering that herein plaintiff’s former case was dismissed for failure to appear during the pre-trial or otherwise stated, in the words of the court, ‘for lack of interest to pursue the case.’ Thus, the second requisite.

Re: THIRD REQUISITE

The court sees no necessity in expounding on the third requisite since the jurisdiction of the court before which herein plaintiff’s first case was lodged appears indubitable.

RE: FOURTH REQUISITE

Regarding the fourth requisite, where there must be between the first and second action, identity of parties, of subject matter and of cause of action, suffice it to say that with respect to identity of parties, this requisite is satisfied if the two (2) actions are substantially between the same parties or are between those in privity with them, or as between their successors in interest by title subsequent to the commencement of the action, litigating

for the same thing and under the same title and in the same capacity, or where there is substantial identity even if there are additional parties, especially so where the additional party was not a proper party in the first or the second action, or is a mere nominal party (*supra*, citing *Catillano v. Heirs of Frank Scott*, 99 SCRA 500, *Mallari, et al. v. CA, et al.*, 105 SCRA 430). The subject matters of the first and second actions are likewise identical since both concern the same real property and title thereto. With respect to identity of causes of action, this requisite is satisfied when the judgment sought will be inconsistent with the prior judgment, or if the same evidence will sustain the second action, even if the form or nature of the two (2) actions be different (*Tan v. Arador, et al.*, 66 SCRA 61, *Vda de Vocal v. Vda de Subia, et al.*, 90 SCRA 336). In the instant case, the first action involved is one for reconveyance of property while the second action is for annulment of title. Although different in form or nature, the same evidence will be presented to sustain either action. Hence, the final requisite.’ (Rollo, pp. 28-30).[6]

There is no need to elucidate any further the trial court’s finding that *res judicata* indeed applies in the case at bar. The requisites thereof to bar the second action are present. The order of dismissal of the first case became final. The dismissal of the first case had the effect of adjudication on the merits. The court that issued the order in the first case had jurisdiction over the subject matter and the parties. Finally, the identity of parties and causes of actions are extant.

A party, by varying the form or action or by bringing forward in a second case additional parties or arguments, cannot escape the effects of the principle of *res judicata* when the facts remain the same at least where such new parties or matter could have been impleaded or pleaded in the prior action.[7] In the instant case, petitioner’s cause of action stems from his claim of co-ownership over the subject property with the ultimate relief consisting of recovering the subject property from the private respondents which is the same as reconveyance. The same evidence would have been presented to sustain both actions. Unfortunately, petitioner has lost his cause under the principle of *res judicata*. The dismissal of the first action on the ground of failure to prosecute which was unqualified amounted to an adjudication on the merits already.[8]

Thus, Sec. 3, Rule 17 of the Rules of Court (modified by the 1997 Rules of Court Procedure) states:

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 court.

The records are even bereft of any reason for petitioner’s failure to prosecute. The motion for reconsideration was likewise denied for not being well-taken and not meritorious. If petitioner felt aggrieved by the order of denial, he should have filed an appeal therefrom, instead of allowing said order to become final and executory. The fact that petitioner did not further pursue the matter signifies that either he acknowledged the correctness of the order or he realized that it was not worth continuing with the case. Moreover, it took him almost ten (10) months to file the second case after the dismissal of the first, exhibiting a lackadaisical attitude unworthy of judicial sympathy. For his fault and complacency, petitioner can not now take refuge under the rule that justice should not be sacrificed to technicality. *Res judicata* is not an idle or inconsequential technicality but a fundamental principle embedded in the Rules to promote just, fair and speedy justice.

The doctrine of *res judicata* is a judicially created doctrine, which may be said to exist as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquility. Public policy, judicial orderliness, economy of judicial time, and the interest of litigants, as well as the peace and order of society, all require that stability should be accorded judgments, that controversies once decided on their merits shall remain in repose, that inconsistent judicial decisions shall not be made on the same set of facts, and that there be an end to litigation

which, without the doctrine of res judicata, would be endless.[9]

The principle underlying res judicata can not be overemphasized. Our dockets are so clogged with numerous cases that there is certainly a need to put an end to controversies. Relitigation of the same issues should be avoided especially when the fault lies on the party for his lack of interest to pursue his case.

The case of *Salud v. Court of Appeals* is very instructive:

‘x x x. Two maxims of the English common law best summarize the general policies underlying this doctrine. They are: first, that no person should be twice vexed by the same claim; and second, that it is in the interest of the state that there be an end to litigation. Thus, principles of res judicata serve both private and public interests.

The interest of the judicial system in preventing relitigation of the same dispute recognizes that judicial resources are finite and the number of cases that can be heard by the court is limited. Every dispute that is reheard means that another will be delayed. In modern times when court dockets are filled to overflowing, this concern is of critical importance. Res judicata thus conserves scarce judicial resources and promotes efficiency in the interest of the public at large.

Once a final judgment has been rendered, the prevailing party also has an interest in the stability of that judgment. Parties come to the courts in order to resolve controversies; a judgment would be of little use in resolving disputes if the parties were free to ignore it and to litigate the same claims again and again. Although judicial determinations are not infallible, judicial error should be corrected through appeals procedures, not through repeated suits on the same claim. Further, to allow relitigation creates the risk of inconsistent results and presents the embarrassing problem of determining which of two conflicting decisions is to be preferred. Since there is no reason to suppose that the second or third determination of a claim necessarily is more accurate than the first, the first should be left undisturbed.

In some cases, the public at large also has an interest in seeing that rights and liabilities once established remain fixed. If a court quiets title to land, for example, everyone should be able to rely on the finality of that determination. Otherwise, many business transactions would be clouded by uncertainty. Thus, the most important purpose of res judicata is to provide repose for both the party litigants and the public. As the Supreme Court has observed, ‘res judicata thus encourages reliance on judicial decision, bars vexatious litigations, and frees the courts to resolve other disputes.’[10]

It is a matter of public policy that matters settled by a court’s final judgment should not thereafter be again invoked. Judgment of courts should become final at some definite time fixed by law. The very object of which the courts were constituted was to put an end to controversies.[11]

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, and Vitug, JJ., concur.

[*] Revised to correct inadvertent typing error

[1] Complaint, CA Rollo, pp. 34-42.

[2] CA Rollo, p. 44.

[3] Rollo, pp. 41-46.

[4] Id at 64.

[5] Id, at 39-40.

[6] Id, at 36-38.

[7] *Ilasco v. Court of Appeals*, 228 SCRA 413 (1993); *Villa Esperanza Development Corp. v. Court of Appeals*, 218 SCRA 401 (1993).

[8] *Am Jur. 2d*, Vol 46, 1969 Ed., pp. 559-561.

[9] *Am Jur. 2d*, Vol 46, 1969 Ed., pp. 559-561.

[10] 233 SCRA 384 (1994).

[11] *Ilasco v. Court of Appeals*, *supra*.

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