

MANUEL CAIÑA, MIRIAM CAIÑA, AND LEVITA CAIÑA, PETITIONERS, VS. THE COURT OF APPEALS AND ELVIE NABONG MAPA, RESPONDENTS.

G.R. No. 114393. December 15, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Challenged in this petition for review under Rule 45 of the Rules of Court is the decision of the respondent Court of Appeals in CA-G.R. CV No. 34765[1] which reversed the decision of the Regional Trial Court (RTC), National Capital Judicial Region, Kalookan City, and dismissed Civil Case No. C-14453 on the ground of res judicata, prescription, and laches.

The pertinent facts are as follows:

Per Transfer Certificate of Title (TCT) No. (51585) 20922 in the Registry of Deeds of the Province of Rizal,[2] Lot No. 222-C located in Kalookan City was registered in the names of the petitioners and Gavina Cierte de Andal. Each of them was the owner pro-indiviso of a one-fourth (1/4) portion thereof.

On 31 August 1973, the petitioners, together with Gavina Cierte de Andal, filed with Branch 35 (Kalookan City) of the then Court of First Instance (now Regional Trial Court) of Rizal a complaint for "reivindicatoria, quieting of title, and recovery of possession" against "Ricardo Nabong and privies and Lorenzo Fuggan." [3] The complaint, docketed as Civil Case No. C-2947, alleged that sometime "in the early part of the liberation," defendant Ricardo Nabong (father of herein private respondent) leased from the petitioners' father a 300 square-meter area in the northern portion of Lot No. 222-C; later, Ricardo Nabong repudiated the lease and asserted an adverse claim to the property; such claim has no basis in fact and in law; defendant Fuggan caused an annotation on TCT No. (51585) 20922 of an attorney's lien despite the fact that his client, Elena Peralta vda. de Caiña, has no colorable title to the property; and since 1969, the petitioners have been demanding from Ricardo Nabong the surrender of the property but to no avail.[4]

The petitioners prayed for judgment ordering defendant Ricardo Nabong and his privies to vacate the premises; declaring that Ricardo Nabong and Lorenzo Fuggan have no right whatsoever over the land and that their claims and pretensions were baseless; ordering defendant Nabong to pay the sum of P50.00 per month from 1969 until he vacates the premises; and ordering the defendants to pay attorney's fees and legal expenses.

In his answer, Ricardo Nabong averred that he had stopped paying the monthly rental of P6.00 since the time the petitioners' mother asked him to be a witness in all her cases; that he did not claim ownership over the subject property; and that he continued his occupation of the property upon the advice of his co-defendant, Atty. Fuggan.[5] On the other hand, the latter claimed in his answer to be the owner of some portions of the property by virtue of his attorney's lien annotated at the back of TCT No. 51585. He denied that he had authorized Ricardo Nabong to stay in the premises.[6]

In its decision of 28 August 1975,[7] the trial court ruled for the petitioners subject to certain qualifications. It decreed as follows:

"WHEREFORE, in the light of the foregoing, the Court hereby renders judgment:

1. Declaring the plaintiff Gavina Cierte de Andal, the owner of 1/4 pro indiviso of the land covered by T.C.T. No. 51585, consisting of an area of 1,419 sq. m.;
2. declaring that the plaintiffs Manuel, Miriam and Levita, all surnamed Caiña are the owners of 3/4 pro indiviso, minus 300 sq. m. [belonging to a certain Raymunda Damaso] of the land covered by T.C.T. No. 51585, consisting of an area of 1,419 sq. m. or 764.25 sq. m. pro indiviso, minus the 50% portion belonging to Atty. Lorenzo Fuggan, as his attorney's fees;
3. declaring the defendant Lorenzo Fuggan the owner of 1/2 pro indiviso of an area of 764.25 sq. m. of the above-entitled property;
4. ordering the defendant Ricardo Nabong to vacate the premises in question and to pay the plaintiffs Manuel, Miriam and Levita, all surnamed Caina, the amount of P50.00 a month, as monthly rentals beginning August 31, 1973, until fully paid; without pronouncement as to costs."

Notwithstanding the judgment and the petitioners' repeated demands, Ricardo Nabong stayed in the premises until he migrated to the United States of America in 1977. Thereafter his daughter, private respondent Elvie Nabong Mapa, took possession of the premises. Since the latter refused to heed the petitioners' demands for her to vacate the premises and to pay rentals,[8] the petitioners filed on 3 December 1987 a motion for execution of the judgment in Civil Case No. C-2947. The trial court denied the motion in the order of 26 January 1988 on the ground that the decision of 28 August 1975 could not be enforced anymore by mere motion pursuant to Section 6, Rule 39 of the Rules of Court.[9]

On 22 August 1990, the petitioners filed a complaint for recovery of possession against the private respondent.[10] This case was docketed as Civil Case No. C-14453 of the RTC of the National Capital Judicial Region and raffled to Branch 123 of the said court at Kalookan City. On 10 September 1990, the private respondent filed a motion to dismiss the case on the ground that the complaint was barred by res judicata in view of the final decision in Civil Case No. C-2947.[11] The trial court denied the motion.[12] Her motion for reconsideration having been denied,[13] the private respondent then filed her answer[14] wherein she raised the following defenses: (1) res judicata in view of the final decision in Civil Case No. C-2947; (2) the petitioners have no cause of action because the questioned portion of the lot does not belong to the petitioners but was adjudicated to Lorenzo Fuggan in Civil Case No. C-2947 and was the subject of a memorandum of agreement between her father and Fuggan; and (3) the petitioners were guilty of laches in asserting their rights.[15]

At the trial in Civil Case No. C-14453, the private respondent introduced in evidence a public document denominated as a "memorandum of agreement," dated 20 July 1977, wherein Lorenzo Fuggan bound himself to sell, transfer, and convey to Ricardo Nabong the portion of the parcel of land covered by TCT No. 51585 which was adjudicated to him in Civil Case No. C-2947. The agreement stated that the residential house of Ricardo Nabong stood on the said portion.[16] She also presented a document wherein Lorenzo Fuggan, through one Mrs. Lucrecia Fuggan, acknowledged receipt from Ricardo Nabong of the sum of P3,000.00 as additional part payment for the portion covered by the agreement.[17]

In its decision rendered in Civil Case No. C-14453 on 31 July 1991,[18] the trial court held that res judicata was not applicable because private respondent Elvie Nabong Mapa was not one of the defendants in Civil Case No. C-2947 and the second action was founded on acts committed by her after the judgment in the first action had

become final and executory. It further held that the memorandum of agreement she presented did not give her any real right over the property since it was not annotated in TCT No. 51585. The trial court then ordered the private respondent to (1) vacate the premises in question and to surrender the possession thereof to the petitioners; (2) pay the petitioners rentals at the rate of P50.00 a month from 31 August 1973 until the property is vacated, and attorney's fees of P5,000.00; and (3) pay the costs of the suit.[19]

The private respondent appealed the decision to the Court of Appeals which docketed the case as CA-G.R. CV No. 34765.

The Court of Appeals reversed the challenged decision in its decision of 6 January 1994.[20] It held that Civil Case No. C--14453 was barred by *res judicata*, because there was as between Civil Case No. C-2947 and Civil Case No. C-14453 identity of parties and of causes of action. The first action was instituted against "Ricardo Nabong and privies," and although it did not specifically mention the private respondent as a party, the latter was nevertheless bound by the judgment rendered therein in 1975 being the daughter and successor-in-interest of Ricardo Nabong, hence a privy. The second action was against the private respondent who "derived whatever right she [had] over the disputed premises from her father, Ricardo Nabong, and merely succeeded the latter in the possession of the said parcel of land." It further declared that the petitioners were guilty of laches, and that the second action they filed was really one for revival of judgment which could no longer be allowed since the ten-year period for filing the same had already elapsed. Thus:

"It must be stressed that a party may not evade the application of the rule of *res judicata* by simply including additional parties in the subsequent case or by not including as parties in the latter case persons who were parties in the previous suit. [Gutierrez vs. Court of Appeals, 193 SCRA 437 (1991)] Furthermore, it has been held that in applying the principle of *res judicata*, it is not necessary that there be absolute identity of parties, a shared identity of interest as shown by the identity of relief sought by one person in a prior case and the second person in a subsequent case, is sufficient [Valencia vs. Regional Trial Court of Quezon City, Br. 90, 184 SCRA 80 (1990)]. This situation is obtaining in the present suit filed by appellees inasmuch as the same relief is sought against appellant, that is for the premises to be vacated and its possession turned over to appellees.

Evidently, that the instant action is an attempt to revive the decision in Civil Case No. C-2947, which appellees failed to execute and is now barred by prescription, is even bolstered by appellees' own admission. According to them, more than fifteen (15) years had already lapsed since judgment in the said case became final and executory, and pursuant to Article 1144(3) of the Civil Code, an action upon a judgment must be brought within ten years from the time the right of action accrues, thus, they were left with no other remedial recourse but to file the instant suit for recovery of possession. [Brief, Rollo, p. 49]. Clearly, this is contrary to the prevailing rule that a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated [Adex Realty, Inc. vs. Court of Appeals, 212 SCRA 622 (1992), citing Ibabao vs. Intermediate Appellate Court, 150 SCRA 76, Valera vs. Bañez, 116 SCRA 648, Ramos vs. Pangasinan Transportation Co., Inc., 79 SCRA 170]. Having failed to enforce their rights as adjudged in Civil Case No. 2947 within the ten-year prescriptive period, appellees cannot now be allowed to revive the same under the guise of another action, they being guilty of laches."

Their motion for the reconsideration of the decision having been denied by the Court of Appeals in the resolution of 16 March 1994,[21] the petitioners filed the instant petition for review on certiorari. They claim that the Court of Appeals committed a serious error of law when it ruled that for "[h]aving failed to enforce their rights as adjudged in Civil Case No. 2947 within the ten-year prescriptive period, [the petitioners] cannot now be allowed to revive the same under the guise of another action, they being guilty of laches." They argue that this ruling failed to consider that the applicable law in this case is Article 428 of the Civil Code.[22] They also contend that

the Court of Appeals gravely erred in holding that the petitioners were barred by *res judicata* because they insist that the private respondent was not a defendant in Civil Case No. C-2947; hence, there was no identity of parties.

In a one-page comment[23] which she submitted pursuant to the resolution of 16 May 1994, the private respondent alleges that the issues raised in the petition are factual and evidentiary; that the claim of inapplicability of *res judicata* "has long been settled in the courts below"; that being the daughter of defendant Ricardo Nabong, she is his heir or privy; and that the Court of Appeals correctly ruled that all the requisites of *res judicata* were present.

After deliberating on the allegations, issues, and arguments adduced by the parties in their pleadings, we gave due course to the petition and required the parties to submit their memoranda, which they subsequently complied with.

The petition is impressed with merit.

Since the Court of Appeals ruled that Civil Case No. C-14453 was an action to revive the judgment in Civil Case No. C-2947, the application of the doctrine of *res judicata* was not in order. An action to revive a judgment is nothing more than an action whose exclusive purpose is to enforce a judgment which could no longer be enforced by mere motion. Section 6, Rule 39 provides:

"SEC. 6. Execution by motion or by independent action. -- A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

Thus, in the early case of *Compania General de Tabacos vs. Martinez*,[24] this Court ruled that after the lapse of five years from the date of its entry or from the date it became final and executory, a judgment is reduced to a mere right of action.

"After the lapse of five years, ... [t]he judgment is ... reduced to a mere right of action in favor of the person whom it favors which must be enforced, as are all ordinary actions, by the institution of a complaint in a regular form. Being a final judgment of a court, it is, of course, conclusive as to the controversy between the parties up to the time of its rendition. By the mere pleading of the judgment and its introduction in evidence, the plaintiff effectually blocks all investigation into the merits of the original controversy. But being a mere right of action, it is subject to defenses and counterclaims which may have arisen subsequent to the date it became effective, as for instance, prescription, which bars an action upon a judgment after ten years (sec. 43, par. 1, Code Civ. Proc.) or payment; or counterclaims arising out of transactions not connected with the former controversy."

Otherwise stated, the new action is an action the purpose of which is not to re-examine and re-try issues already decided but to revive the judgment;[25] its cause of action is the judgment to be revived.[26] For this reason alone, no identity of causes of action, which is among the essential elements of *res judicata*, can be said to exist between the first and the second actions.

The essential requisites of *res judicata* are: (1) the former judgment must have become final; (2) it must have been rendered by a court of competent jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, as between the first and the second actions, identity of parties, of subject matter, and of causes of action.[27] Under the respondent court's theory that Civil Case No. C-14453 is a revival suit, we may concede that as between Civil Case No. C-2947 and Civil Case No. C-14453, the first three requisites and the first two identities under the fourth requisite are present. However, the third identity is absent since the cause of action in the revival suit (Civil Case No. C--14453) is the prior judgment which had been reduced to a mere right of action, and not the cause of action in the prior case or Civil Case No. C-2947.

Then, too, it was established by the evidence of the private respondent that her father, Ricardo Nabong, left the premises when he migrated to the United States of America in 1977 and that she took possession of the premises thereafter. Clearly then, the private respondent entered the premises and took possession of it after her father had abandoned his possession thereof in 1977 when he migrated to the United States. Such abandonment, done within two years after the rendition of the judgment in Civil Case No. C-2947, amounted to a voluntary satisfaction of that portion of the decision ordering him to vacate the premises. In short, he is deemed to have voluntarily vacated the premises in compliance with the decretal portion of the decision in Civil Case No. C-2947. Thus, insofar as he was concerned, what was left for execution was the payment of the rentals from 31 August 1973 up to the time of his abandonment.

The private respondent's entry gave rise to an entirely new and distinct cause of action that, as asserted by her and proved by her evidence, was no longer founded on the prior possession of her father, which was litigated in Civil Case No. C-2947, but on her father's ownership of the property pursuant to the memorandum of agreement executed by him and Atty. Fuggan on 26 July 1977. This subsequent fact was the basis of her affirmative defense that petitioners have no cause of action. This entirely new and distinct cause of action against the private respondent further highlights the absence of identity of causes of action between the two cases, i.e., Civil Case No. C-2947 and Civil Case No. C-14453.

It has been said that *res judicata* extends only to the facts and conditions as they existed at the time the judgment was rendered and to the legal rights and relations of the parties fixed by the facts so determined. When new facts or conditions intervene before the second suit, furnishing a new basis for the claims and defenses of the parties, the issues are no longer the same; hence, the former judgment cannot be pleaded as a bar to the subsequent action.[28] Nor is the rule applicable to rights, claims, or demands, although growing out of the same subject matter, but which constitute separate or distinct causes of action, and which were not put in issue in the former action.[29]

It follows then that the Court of Appeals erred in applying the doctrine of *res judicata*, and since Civil Case No. C-14453 involved a new and distinct cause of action which arose after the rendition of the judgment in Civil Case No. C-2947, it likewise erred in declaring that Civil Case No. C-14453 was an action to revive the judgment in Civil Case No. C-2947. If it were an action for revival of judgment, then it should have been filed within ten years from the date the judgment in Civil Case No. C-2947 became final or from the date of its entry, pursuant to Article 1144(3) of the Civil Code.[30]

It appears to us that the Court of Appeals misapprehended the full import of the dispositive portion of the decision in Civil Case No. C-2947. It was of the impression that the dispositive portion only ordered Ricardo Nabong to vacate the premises and to pay rentals at the rate of P50.00 a month from 31 August 1973. Civil Case No. C-2947 was, as earlier shown, for "reivindicatoria, quieting of title and recovery of possession," and, conformably with the facts, it resolved the aspect of quieting of title by declaring in the dispositive portion of the decision that the petitioners were the owners pro-indiviso of the 3/4 portion of the lot in question, less the 300-square meter portion adjudged in favor of Raymunda Damaso and half of the remainder which was awarded to Atty. Lorenzo Fuggan as attorney's fees.

This declaration is nothing more than a confirmation of such ownership as evidenced by TCT No. (51585) 20922 in the Office of the Registry of Deeds of Rizal.[31] It must be remembered that Ricardo Nabong in his answer in Civil Case No. C-2947 did not claim ownership over any portion of the lot.[32] This confirmation of ownership required no specific and positive act of execution which a sheriff may perform for its enforcement. The other aspects of the decision, viz., the vacation of the premises by Ricardo Nabong and his payment of the rentals and the award of certain portions to Atty. Lorenzo Fuggan required execution, which could be done by ordinary

motion within five years from the finality of the judgment or from its entry. But, as earlier adverted to, Ricardo Nabong voluntarily abandoned the premises when he migrated to the United States of America in 1977, thereby leaving only the payment of rentals as the portion of the fallo that may be enforced against him.

The Court of Appeals also erred in barring the action of the petitioners on the ground of laches. As earlier noted, the private respondent's motion to dismiss Civil Case No. C-14453 was based solely on *res judicata*. The defense of laches was raised for the first time in the answer filed after the denial of the motion to dismiss. In the light of Section 2 of Rule 9, Section 5 of Rule 16, and Section 8 of Rule 15 of the Rules of Court,[33] if a motion to dismiss is filed, it must allege all the grounds for dismissal. Any ground not so alleged, except lack of cause of action and lack of jurisdiction, is deemed waived and cannot be pleaded in the answer if one is filed after a denial of the motion to dismiss.[34] It has also been said that prescription is not deemed waived even if it is not raised in a motion to dismiss if the plaintiff's allegation in the complaint or the evidence he presents shows clearly that the action has prescribed.[35] Since the private respondent did not allege laches in her motion to dismiss, she is deemed to have waived it and the Court of Appeals should not have considered it in her favor.

There is another reason why we cannot agree with the disposition of the Court of Appeals. Viewed *ad ultimam vim terminorum*, such disposition would simply mean that since the judgment in Civil Case No. C-2947 was not revived within the prescriptive period of ten years, the petitioners lost forever their ownership over the 3/4 portion of the lot in question, less what had been awarded to Raymunda Damaso and Atty. Fuggan. This would be contrary to Section 47 of P.D. No. 1529[36] which provides that "[n]o title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession." Since the petitioners are the registered owners of 3/4 of the lot in question, the adverse possession of the private respondent cannot result to the forfeiture of their ownership. The memorandum of agreement between her father and Atty. Lorenzo Fuggan did not provide any legal basis for her possession because Atty. Fuggan had not caused the execution of the judgment in Civil Case No. C-2947 in his favor and the memorandum of agreement was not a deed of sale.

Notwithstanding the foregoing, we cannot sustain that portion of the judgment of the trial court in Civil Case No. C14453 ordering the private respondent to pay rentals at the rate of P50.00 a month from 31 August 1973 until she vacates the property. The records do not indicate the specific dates when she entered the premises and the demands to vacate made upon her. In view thereof, she should be made to pay rentals only from the date the complaint in Civil Case No. C-14453 was filed, i.e., on 22 August 1990, until she shall have effectively vacated the premises and turned over its possession to the petitioners, with legal interest on the rentals due.

WHEREFORE, the instant petition is GRANTED. The challenged decision of the Court of Appeals in CA-G.R. CV No. 34765 is SET ASIDE and the judgment of the Regional Trial Court of Kalookan City in Civil Case No. C-14453 is REINSTATED, subject to the above modification regarding the rentals.

No pronouncement as to costs.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Entitled "Manuel Caiña, et al., plaintiffs-appellees, vs. Elvie Nabong Mapa, defendant-appellant."

[2] Original Records (OR), Civil Case No. C-14453, 89; Exhibit "A" in the said case.

[3] OR, Civil Case No. C-14453, 13. Annex "A" of the Complaint therein.

[4] *Id.*, 14-15.

- [5] Decision, Civil Case No. C-2947, 2-3; OR, Civil Case No. C-14453, 18-19.
- [6] Id., 4-6; Id., 20-22.
- [7] OR, Civil Case No. C-14453, 17-31. Per Judge Manuel A. Argel. Annex "B" of the complaint therein.
- [8] OR, Civil Case No. C-14453, 2.
- [9] Id., 112. Exhibit "3."
- [10] Id., 1-4.
- [11] Id., 7.
- [12] Id., 36. Per Judge Mauro T. Allarde.
- [13] Id., 45.
- [14] Id., 46.
- [15] OR, Civil Case No. C-14453, 46.
- [16] Id., 65.
- [17] Id., 111; Id., CA-G.R. CV No. 34765, 39. Exhibit "2-b."
- [18] Id., Civil Case No. C-14453, 132 et seq. Per Judge Mauro T. Allarde.
- [19] OR, Civil Case No. C-14453, 135-136.
- [20] Id., CA-G.R. CV No. 34765, 56-60; Rollo, 15-19. Per Associate Justice Ricardo J. Francisco, concurred in by Associate Justices Serafin V.C. Guingona and Eubulo G. Verzola.
- [21] OR, CA-G.R. CV No. 34765, 101; Rollo, 27.
- [22] Its second paragraph provides: "The owner has also the right of action against the holder and possessor of the thing in order to recover it."
- [23] Rollo, 30.
- [24] 29 Phil. 515, 520-21 [1915]. See also *Estonina vs. Southern Marketing Corp.*, 167 SCRA 605 [1988].
- [25] *Azotes vs. Blanco*, 85 Phil. 90 [1949]; *Vda. de Decena vs. De los Angeles*, 39 SCRA 94 [1971].
- [26] *Estonina vs. Southern Marketing Corp.*, supra at note 24.
- [27] *Baguioro vs. Basa, Jr.*, 214 SCRA 437 [1992]; *DBP vs. Pundogar*, 218 SCRA 118 [1993]; *Allied Banking Corp. vs. Court of Appeals*, 229 SCRA 252 [1994].
- [28] *Lord vs. Garland*, 168 P.2d 5 [1946]; *Rhodes vs. Van Steenberg*, 225 F. Supp. 113 [1963]; *Cowan vs. Gulf City Fisheries, Inc.* 381 So.2d 158 [1980].
- [29] *Lord vs. Garland*, supra at note 28.
- [30] *Gutierrez Hermanos vs. de la Riva*, 46 Phil. 827 [1923]; *Vda. de Decena vs. De los Angeles*, supra at note 25; *Estonina vs. Southern Marketing Corp.*, supra at note 24.
- [31] OR, Civil Case No. C-14453, 89. Exhibit "A."

[32] Id., 19.

[33] Section 2, Rule 9.

"Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the failure to state a cause of action Whenever it appears that the court has no jurisdiction over the subject matter, it shall dismiss the action."

Section 5, Rule 16.

"Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed."

Section 8, Rule 15.

"A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived."

[34] Insurance Company of North America vs. C.F. Sharp & Co., Inc., 18 SCRA 462 [1966]; Arcilla vs. Court of Appeals, 215 SCRA 120 [1992].

[35] Philippine National Bank vs. Pacific Commission House, 27 SCRA 766 [1969], citing PNB vs. Perez, G.R. No. L-20412, 28 February 1966, and Chua Lamko vs. Dioso, 97 Phil. 821; Garcia vs. Mathis, 100 SCRA 250 [1980]; Aznar III vs. Bernad, 161 SCRA 276 [1988].

[36] Entitled "Amending and Codifying the Laws Relative to Registration of Property and for other Purposes." It is otherwise known as the Property Registration Decree. This section is similar to Section 46 of the Land Registration Act (Act No. 496).

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