

VERONICA PADILLO, PETITIONER, VS. COURT OF APPEALS AND TOMAS AVERIA, JR., RESPONDENTS.

G.R. No. 119707. November 29, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals dated November 22, 1994 in CA-G.R. CV No. 40142 reversing the Decision[2] dated March 31, 1992 of the Regional Trial Court of Lucena City, Branch 54 in Civil Case No. 9114 on the ground of res judicata.

Civil Case No. 9114, which found its way to this Court via the instant petition, is a petition[3] for declaratory relief and damages initiated by petitioner Veronica Padillo[4] on December 14, 1983. In the petition filed against respondent Tomas Averia, Jr. and one Beato Casilang, petitioner Padillo alleged that she is the absolute owner of a Two Hundred Fifty-One (251) square meter parcel of land with improvements thereon located in Quezon Avenue, Lucena City, Quezon Province, covered and described in Transfer Certificate of Title (TCT) No. T-9863, which she purchased from Marina M. de Vera-Quicho and Margarita de Vera. Petitioner ascribed fault upon Averia and Casilang with unlawful refusal to turn over the property in her favor; and that respondent Averia even instituted Civil Case No. 1690-G,[5] a suit for rescission of two (2) deeds solely for harassment and dilatory purposes although the suit actually established petitioner's right of ownership over the subject property.

Petitioner Padillo prayed for the issuance of an injunctive writ to place her in the possession and use of her said property, and prohibiting respondents from disturbing the same; and ultimately, that judgment be rendered ordering respondent Averia and Casilang to pay jointly and severally to petitioner Padillo: (a) One Hundred Fifty Thousand Pesos (P150,000.00) annual unrealized income for the use of her said property from January 4, 1982, (b) moral and exemplary damages the amount of which she leaves to the court for proper evaluation and (c) attorney's fees of Eighty Thousand Pesos (P80,000.00) plus Six Hundred Pesos (P600.00) per appearance in court.

In his Answer,[6] Casilang specifically denied the material allegations of the petition. He alleged that as early as June 1, 1982, he vacated the subject property and, thus, the case against him should be dismissed.

On March 2, 1984, respondent Averia filed his Answer with Counterclaim and Motion to Dismiss[7] wherein he invoked the decision rendered in Civil Case No. 1620-G, a suit for specific performance against Marina M. de Vera-Quicho. He further raised the defenses of litis pendencia, laches, estoppel, res judicata and lack of cause of action, and prayed for the dismissal of the petition as well as the grant of his counterclaims for damages.

It appears that prior to the institution of Civil Case No. 9114, there were already three (3) actions which involved the said property, namely, Civil Case No. 1620-G, M.C. No. 374-82, and Civil Case No. 1690-G.

Civil Case No. 1620-G was instituted by respondent Averia against Marina M. de Vera-Quicho and the Register of Deeds of Lucena City for specific performance and/or damages which involved the lot subject of the sale. A subsequent decision dated June 2, 1983 rendered by the Regional Trial Court of Gumaca, Quezon, Branch 62 in

said Civil Case No. 1620-G ordered Marina M. de Vera-Quicho to execute the necessary documents over the property covered by said Transfer Certificate of Title (TCT) No. T-9863 and enjoined the Register of Deeds of Lucena City to desist from entering any encumbrance or transaction on said certificate of title and/or cancel the same except in favor of respondent Averia.[8] The said decision became final and executory as no motion for reconsideration or appeal was filed therefrom.[9]

M.C. No. 374-82,[10] was instituted by petitioner Padillo on July 6, 1982 to compel the Register of Deeds of Lucena City to register the deed of sale dated February 10, 1982 wherein Margarita de Vera[11] sold to petitioner Padillo her one-half (1/2) pro-indiviso share of the lot and the building erected thereon, covered by TCT No. T-9863, considering the refusal of the Register of Deeds to register said deed of sale in view of a restraining order issued in Civil Case No. 1620-G. The petition to register the deed was opposed by respondent Averia.

On July 7, 1983, during the pendency of M.C. No. 374-82, Civil Case No. 1690-G was instituted by respondent Averia against spouses Edilberto de Mesa and petitioner Padillo.[12] The said case is a complaint for rescission of two (2) deeds of sale, namely: (a) the "Kasulatan ng Bilihan na may Pasubali" dated January 5, 1982 wherein Marina M. de Vera-Quicho sold to petitioner Padillo her one-half (1/2) pro-indiviso share over lot together with the house thereon, subject of TCT No. T-9863, which was registered and annotated at the back of said TCT on January 11, 1982 per Entry No. 54967, and (b) the deed of sale dated February 10, 1982 subject of M.C. No. 374-82. Respondent Averia claimed ownership of the same lot subject of TCT No. T-9863 by virtue of an unregistered contract to sell dated January 5, 1982 executed in his favor by Marina M. de Vera-Quicho.[13] Petitioner Padillo sought the dismissal of the amended complaint.[14] In an Order dated September 30, 1983, Civil Case No. 1690-G was dismissed by Branch 61 of the RTC of Gumaca, Quezon Province for improper venue.[15] Respondent Averia interposed an appeal with the Court of Appeals.[16]

In the meantime, a decision dated September 23, 1983 was rendered in M.C. No. 374-82 wherein Branch 57 of the RTC, Lucena City ordered the Register of Deeds to register the deed of sale dated February 10, 1982.[17] Respondent Averia assailed the decision in M.C. No. 374-82 via a petition for certiorari and prohibition in G.R. No. 65129[18] with the Supreme Court contending that the trial court has no jurisdiction to order the registration of a deed of sale which is opposed on the ground of an antecedent contract to sell. In a Decision dated December 29, 1986, the Supreme Court declared that the trial court has jurisdiction since Section 2 of Presidential Decree No. 1529 (Property Registration Decree) eliminated the distinction between the general jurisdiction and the limited jurisdiction of the Regional Trial Court acting as a cadastral court under Section 112 of Act 496 (Land Registration Act).[19] The Supreme Court set aside the September 23, 1983 decision of the trial court and ordered a new trial where all parties interested in the case may appear and be given opportunity to be heard.

Pursuant to the Supreme Court's decision, a new trial was conducted in M.C. No. 374-82. Following notice and hearing in the new trial, the trial court rendered a Decision dated May 5, 1988, which declared petitioner Padillo as sole and exclusive owner of the property in question and ordered the Register of Deeds of Lucena City to register the questioned deed of sale in favor of petitioner Padillo.

The decision of the RTC in M.C. No. 374-82 was appealed to the Court of Appeals[20] which rendered judgment on December 28, 1990 sustaining the decision of the trial court. Dissatisfied, respondent Averia appealed to the Supreme Court via a petition for review on certiorari which was denied in a Resolution dated June 17, 1991 for failure to show that the Court of Appeals had committed any reversible error in the questioned judgment.[21] Respondent Averia sought reconsideration but the same was denied in a Resolution dated August 26, 1991.[22] A subsequent motion for leave to file a second motion for reconsideration was likewise denied on October 21, 1991.[23]

While the foregoing proceedings ensued in M.C. No. 374-82, the trial court in Civil Case No. 9114, issued an Order dated March 20, 1984 wherein it deferred the resolution of respondent Averia's motion to dismiss and ordered the case temporarily archived in view of the pendency in the Court of Appeals of the appeal of respondent Averia in Civil Case No. 1690-G.[24]

When the Court of Appeals subsequently affirmed, in a decision dated September 16, 1987, the dismissal of Civil Case No. 1690-G for improper venue,[25] the hearing in Civil Case No. 9114 was resumed on November 19, 1987[26]but resolution of respondent Averia's November 18, 1987 Motion to Dismiss[27] was deferred in view of the pendency of M.C. No. 374-82.[28]

When M.C. No. 374-82 was finally resolved in the decision dated May 5, 1988, the trial court in an Order dated June 1, 1988 proceeded to deny respondent Averia's Motion to Dismiss and Motion to Suspend Further Proceeding in Civil Case No. 9114.[29]

Thereafter, respondent Averia assailed the denial of his motion to dismiss in a petition for certiorari and prohibition, docketed as CA-G.R. SP No. 15356, before the Court of Appeals, which on December 21, 1989 rendered a decision therein ordering the suspension of the proceedings in Civil Case No. 9114 to await the final termination of M.C. No. 374-82 then pending appeal with the Court of Appeals.[30] No appeal was filed therefrom, hence, the decision of the appellate court in CA-G.R. SP No. 15356 became final.[31]

With the Supreme Court denying the petition to challenge the Court of Appeal's affirmance of the decision in M.C. No. 374-82,[32] the trial court rendered the assailed March 31, 1992 Decision[33]in Civil Case No. 9114, which reads:

WHEREFORE, in view of the foregoing considerations, judgment is rendered ordering Tomas Averia, Jr. or any persons claiming any right from him, to vacate and surrender the possession of the lot covered by TCT No. T-9863 of the Registry of Deeds of Lucena City and the building erected thereon, to Veronica Padillo and to pay the latter the following amounts:

- 1) Unrealized income from the lot and building in the sum of P150,000.00 every year from January 5, 1982 until Tomas Averia vacates the same;
- 2) Attorneys fees in the sum of P107,000.00 plus P1,000.00 per appearance in the hearing of the case and litigation expenses of P10,000.00;
- 3) Moral damages of P50,000.00;
- 4) Exemplary damages of P20,000.00; and
- 5) Costs of suit.

SO ORDERED.

On appeal to the Court of Appeals, the appellate court in CA-G.R. CV No. 40142 rendered its subject decision on November 22, 1994 reversing the trial court based on the ground of res judicata. The appellate court ratiocinated:

The Court finds that res judicata bars the appellee's claims. MC No. 374-82 resolved the case on the merits. Civil Case No. 1620-G, dismissed on account of improper venue, may not - strictly speaking - be considered an adjudication of the case on the merits. xxx

xxx xxx xxx

Not having claimed the damages she supposedly suffered despite the new trial ordered for MC No. 374-82, and the clarification of the expanded jurisdiction of the court a quo, the appellee is correctly perceived by the

appellant to have already lost her right to recover the same in the instant suit. In finding the decision in the former case a bar to the latter, the Court is guided by the long-standing rule that a final judgment or order on the merits rendered by a court having jurisdiction over the subject matter and the parties is conclusive in a subsequent case between the same parties and their successors-in-interest litigating upon the same thing and issue (*Vencilao vs. Varo*, 182 SCRA 492, citing *Sy Kao vs. Court of Appeals*, 132 SCRA 302; *Carandang vs. Venturanza*, 133 SCRA 344; *Catholic Vicar Apostolic of the Mountain Province vs. Court*, 165 SCRA 515). It matters little that the instant case is supposedly one for declaratory relief and damages, while the former case is one originally for registration of the appellee's documents of title. 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 between the parties and their privies (*Filipinas Investment and Finance Corp. vs. Intermediate Appellate Court*, 179 SCRA 506; *Bugnay Construction and Development Corp. vs. Laron*, 176 SCRA 804). On the principle, moreover, that *res judicata* bars not only the relitigation in a subsequent action of the issues raised, passed upon and adjudicated, but also the ventilation in said subsequent suit of any other issue which could have been raised in the first but was not (*Africa vs. NLRC*, 170 SCRA 776), the court a quo clearly erred in not holding the instant action to be barred by prior judgment.[34]

Disagreeing with the foregoing disquisition, petitioner sought reconsideration of the same but it proved unavailing inasmuch as petitioner's motion for reconsideration[35] was denied in a Resolution[36] dated April 7, 1995. The Court of Appeals, in resolving petitioner's motion for reconsideration in the negative, rendered the following pronouncements:

Contrary, however, to [Padillo's] position, the Court's application of the principle of *res judicata* was neither based nor in any way dependent on the inaccuracies emphasized in the motion and incidents she filed. While it is readily conceded that the Court was obviously referring to Civil Case No. 1690-G as that which the Gumaca Court dismissed on account of improper venue, the passage which states that the self-same was filed ahead of MC No. 374-82 is one actually quoted from the trial court's March 31, 1992 decision which [Padillo] did not and still does not contest. Corrected though the Court may stand on these particulars, however, it bears emphasis that the instant case was determined to be barred by *res judicata* not so much on account of the decision rendered in Civil Case No. 1690-G but by that rendered in MC No. 374-82. It consequently matters little that the latter case was originally filed ahead of the former as [Padillo] had been wont to stress. The fact that its new trial was only ordered on December 29, 1986 together with a clarification of the land registration court's expanded jurisdiction under Section 2 of Presidential Decree No. 1592 effectively rendered the decision promulgated therein a bar to the claim for damages [Padillo] pursued in the instant case. It is, moreover, repugnant to the prohibition against multiplicity of suits to allow [Padillo] - or any party-litigant for that matter - to claim in a separate action the damages she supposedly suffered as a consequence to the filing of another.

Considering that the December 21, 1989 decision rendered in CA-G.R. SP No. 15356 granted the petition then filed by [Averia] (p. 200, rec.), the Court, finally, fails to appreciate the sapience of [Padillo's] invocation thereof as a bar to the appeal herein perfected by [Averia]. xxx[37]

Hence, petitioner interposed the instant petition for review anchored on seven (7) assigned errors, to wit:

- THE RESPONDENT COURT OF APPEALS COMMITTED REVERSIBLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN ITS INCORRECT CITATIONS AND PERCEPTIONS OF FACTS UPON WHICH IT PREDICATED ITS DECISION.
- THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DISREGARDING THE EFFECT OF THE JUDGMENTS OF A CO-EQUAL COURT IN CA-G.R. CV NO. 18802 AND THAT OF THE SUPREME COURT IN G.R. NO. 96662 DECLARING PETITIONER THE ABSOLUTE OWNER OF THE COMMERCIAL PROPERTY UNDER TCT NO. T-9863.

- THE RESPONDENT COURT OF APPEALS ERRED IN REVERSING THE JUST AND EQUITABLE JUDGMENT OF THE TRIAL COURT IN CIVIL CASE NO. 9114.
- THE RESPONDENT COURT OF APPEALS ERRED IN NULLIFYING THE JUDGMENT OF THE APPELLATE COURT IN CA-G.R. NO. 15356 BETWEEN THE SAME PARTIES ON THE SAME CAUSE AND ISSUES.
- THE RESPONDENT COURT OF APPEALS ERRED AMOUNTING TO GRAVE ABUSE OF DISCRETION IN FAILING TO NOTE THE BAD FAITH OF PRIVATE RESPONDENT IN MOST OF HIS ACTS TO POSSESS A PROPERTY NOT HIS OWN.
- RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN FAILING TO NOTE AND OBSERVE THAT PRIVATE RESPONDENT INTENTIONALLY PROLONG THE UNDUE EXPLOITATION OF PETITIONER'S REALTY EVEN AFTER THE SUPREME COURT'S DECISION IN G.R. NO. 96662.
- THE MEMBERS OF THE FIRST DIVISION OF RESPONDENT COURT GRAVELY ABUSED THEIR DISCRETION IN VIOLATING THE CONSTITUTIONAL MANDATE ON "CONSULATION" AS PROVIDED IN SECTION 13, ARTICLE VIII OF THE FUNDAMENTAL LAW.[38]

Petitioner attacks the appellate court's posture that petitioner should have set up her claim for unrealized income, litigation expenses and/or attorney's fees, as well as moral and exemplary damages, as a distinct cause of action in M.C. No. 374-82 for she contends that it was not anticipated that respondent Averia would oppose M.C. No. 374-82. Neither could she invoke any counterclaim for damages in Civil Case No. 1690-G for the Regional Trial Court of Gumaca, Quezon, Branch 61 promptly dismissed it. Furthermore, *res judicata* as a ground for the dismissal of the instant case was already rejected by the Court of Appeals in the December 21, 1989 decision promulgated in CA-G.R. SP No. 15356. Lastly, petitioner cites anew the alleged inaccuracies in the finding that Civil Case No. 1690-G was filed ahead of M.C. No. 374-82 and that Civil Case No. 1620-G was dismissed by the Regional Trial Court of Gumaca, Quezon on the ground of improper venue.

The doctrine of *res judicata* is embodied in Section 47, Rule 39 of the Revised Rules of Court,[39] which states:

Sec. 47. Effect of judgments or final orders. - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

xxx xxx xxx

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Section 49 (b) refers to bar by prior judgment while Section 49 (c) enunciates conclusiveness of judgment.

Bar by prior judgment exists when, between the first case where the judgment was rendered, and the second case where such judgment is invoked, there is identity of parties, subject matter and cause of action. When the three (3) identities are present, the judgment on the merits rendered in the first constitutes an absolute bar to the subsequent action. It is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any

other admissible matter which might have been offered for that purpose. But where between the first case wherein judgment is rendered and the second case wherein such judgment is invoked, there is no identity of cause of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein. This is what is termed conclusiveness of judgment.[40]

Under ordinary circumstances, this Court would have subscribed to the appellate court's conclusion that M.C. No. 374-82 barred petitioner's claim for damages in Civil Case No. 9114 since all four (4) essential requisites in order for res judicata as a "bar by prior judgment" to attach are present in the instant case, to wit:

- The former judgment must be final;
- It must have been rendered by a court having jurisdiction over the subject matter and the parties;
- It must be a judgment or order on the merits; and
- There must be between the first and second action identity of parties, identity of subject matter, and identity of cause of action.[41]

M.C. No. 374-82, as affirmed by the Court of Appeals and the Supreme Court, is a final judgment.[42] Branch 57 of the Regional Trial Court of Lucena City, in the new trial it conducted in M.C. No. 374-82, following clarification by the Supreme Court of its expanded jurisdiction,[43] had obtained jurisdiction over the subject matter as well as the parties thereto. The judgment of Branch 57 of Lucena City in M.C. No. 374-82, as affirmed by the Court of Appeals and the Supreme Court, is a judgment on the merits. A judgment is on the merits when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections.[44] Finally, there is identity of parties, subject matter and causes of action. M.C. No. 374-82 and Civil Case No. 9114 both involved the petitioner and respondent Averia. The subject matter of both actions is the parcel of land and building erected thereon covered by TCT No. T-9863. The causes of action are also identical since the same evidence would support and establish M.C. No. 374-82 and Civil Case No. 9114.[45]

However, a different conclusion is warranted under the principle of law of the case. Law of the case has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[46] As a general rule, a decision on a prior appeal of the same case is held to be the law of the case whether that question is right or wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing.[47]

The concept of Law of the Case was further elucidated in the 1919 case of *Zarate v. Director of Lands*,[48] thus:

A well-known legal principle is that when an appellate court has once declared the law in a case, such declaration continues to be the law of that case even on a subsequent appeal. The rule made by an appellate court, while it may be reversed in other cases, cannot be departed from in subsequent proceedings in the same case. The "Law of the Case," as applied to a former decision of an appellate court, merely expresses the practice of the courts in refusing to reopen what has been decided. Such a rule is 'necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal.' Again, the rule is necessary as a matter of policy to end litigation. 'There would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions, or speculate of chances from changes in its members.' xxx

The phrase "Law of the Case" is described in a decision coming from the Supreme Court of Missouri in the

following graphical language:

The general rule, nakedly and badly put, is that legal conclusions announced on a first appeal, whether on the general law or the law as applied to the concrete facts, not only prescribed the duty and limit the power of the trial court to strict obedience and conformity thereto, but they become and remain the law of the case in all after steps below or above on subsequent appeal. The rule is grounded on convenience, experience, and reason. Without the rule there would be no end to criticism, reargitation, reexamination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigant were allowed to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal, would result in the foolishness of the inquisitive youth who pulled up his corn to see how it grew. Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use. xxx[49]

The appellate court apparently overlooked the significance of this principle called the law of the case which is totally different from the concept of res judicata. Law of the case does not have the finality of the doctrine of res judicata, and applies only to that one case, whereas res judicata forecloses parties or privies in one case by what has been done in another case.[50] In the 1975 case of *Comilang v. Court of Appeals (Fifth Division.)*,[51] a further distinction was made in this manner:

The doctrine of law of the case is akin to that of former adjudication, but is more limited in its application. It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case. The doctrine of res judicata differs therefrom in that it is applicable to the conclusive determination of issues of fact, although it may include questions of law, and although it may apply to collateral proceedings in the same action or general proceeding, it is generally concerned with the effect of an adjudication in a wholly independent proceeding.

Significantly in the instant case, the law of the case on the matter of the pendency of M.C. No. 374-82 to bar Civil Case No. 9114 has been settled in CA-G.R. SP No. 15356.

It is worthwhile to consider that at the time this Court in G.R. No. 65129 ordered the new trial of M.C. No. 374-82, after clarifying the expanded jurisdiction of the trial court with authority to decide non-contentious and contentious issues, Civil Case No. 9114 was already existent. When the issue of the dismissal of Civil Case No. 9114 on the ground of pendency of M.C. No. 374-82 was raised before the trial court wherein the said Civil Case No. 9114 was docketed, the trial court chose to merely defer resolution thereof. And when the said issue of *litis pendentia* was raised before the Court of Appeals via a special civil action of *certiorari* in CA-G.R. SP No. 15356, the Court of Appeals, while agreeing with respondent Averia's arguments on the existence of *litis pendentia*, which would ultimately result in res judicata, incorrectly ordered the mere suspension of Civil Case No. 9114 to await the final termination of M.C. No. 374-82, instead of dismissing the case and/or ordering that the claim for damages be filed in M.C. No. 374-82.

The decision of the Court of Appeals was promulgated on December 21, 1989 and by then, M.C. No. 374-82 had long been resolved by the trial court and pending appeal with the Court of Appeals. Since no appeal was filed from the decision of the Court of Appeals in CA-G.R. SP No. 15356, the resolution therein of the appellate court which ordered the suspension instead of dismissal of Civil Case No. 9114, became final. Thus, even if erroneous, the ruling of the Court of Appeals in CA-G.R. SP No. 15356 has become the law of the case as between herein petitioner Padillo and respondent Averia, and may no longer be disturbed or modified.[52] It is not subject to review or reversal in any court.

Petitioner, therefore, should not be faulted for yielding in good faith to the ruling of the Court of Appeals, Fourteenth Division, in CA-G.R. SP No. 15356 and continuing to pursue her claim for damages in Civil Case No.

9114. The decision of the Court of Appeals in CA-G.R. SP No. 15356 on the matter of the issue of existence of M.C. No. 374-82 as a bar to Civil Case No. 9114 should dictate all further proceedings.

Notwithstanding the foregoing conclusion, this Court is not inclined to sustain the monetary award for damages granted by the trial court.

Concerning the alleged forgone income of One Hundred Fifty Thousand Pesos (P150,000.00) per year since 1982 as testified on by petitioner as the income she could have realized had possession of the property not been withheld from her by respondent Averia,[53] we consider such amount of expected profit highly conjectural and speculative. With an allegation that respondent made millions for the improper use and exploitation of the property, petitioner's testimony regarding the matter of unrealized income is sadly lacking of the requisite details on how such huge amount of income could be made possible. Petitioner did not detail out how such huge amount of income could have been derived from the use of the disputed lot and building. Well-entrenched is the doctrine that actual, compensatory and consequential damages must be proved, and cannot be presumed. If the proof adduced thereon is flimsy and insufficient, as in this case, no damages will be allowed.[54] Verily, the testimonial evidence on alleged unrealized income earlier referred to is not enough to warrant the award of damages. It is too vague and unspecified to induce faith and reliance.

The only amount of unrealized income petitioner should be entitled to is the unrealized monthly rentals which respondent Averia admits to be in the amount of Eight Hundred Pesos (P800.00) a month or Nine Thousand Six Hundred Pesos (P9,600.00) a year during the sixth (6th) to tenth (10th) year of the Contract of Lease between Marina de Vera-Quicho, as Lessor, and respondent Averia, as Lessee, which fell on 1982 to 1986.[55] Inasmuch as respondent Averia had been in possession of the property from January 1982 to February 1992 when he vacated the property,[56] it is but just for him to pay petitioner the unrealized rentals of Ninety-Seven Thousand Six Hundred Pesos (P97,600.00) for that period of time. Furthermore, said amount of Ninety-Seven Thousand Six Hundred Pesos (P97,600.00) shall earn interest[57] at the legal rate[58] computed from the finality of this decision.[59]

On the award of moral and exemplary damages in the amounts of Fifty Thousand Pesos (P50,000.00) and Twenty Thousand Pesos (P20,000.00), respectively, we find that there is no sound basis for the award. It cannot be logically inferred that just because respondent Averia instituted Civil Case No. 1690-G while M.C. No. 374-82 was pending, malice or bad faith is immediately ascribable against the said respondent to warrant such an award.

The issue of whether the trial court in M.C. No. 374-82 could adjudicate contentious issues was only resolved by this Court in G.R. No. 65129 on December 29, 1986[60] long after the dismissal of Civil Case No. 1690-G which was instituted by respondent Averia.[61] That respondent Averia instituted a separate suit which was subsequently dismissed and all actions or appeals taken by respondent Averia relative to M.C. No. 374-82 does not per se make such actions or appeals wrongful and subject respondent Averia to payment of moral damages. The law could not have meant to impose a penalty on the right to litigate. Such right is so precious that moral damages may not be charged on those who may exercise it erroneously. One may have erred, but error alone is not a ground for moral damages.[62]

In the absence of malice and bad faith, the mental anguish suffered by a person for having been made a party in a civil case is not the kind of anxiety which would warrant the award of moral damages.[63] The emotional distress, worries and anxieties suffered by her and her husband[64] are only such as are usually caused to a party hauled into Court as a party in a litigation. Therefore, there is no sufficient justification for the award of moral damages, more so, exemplary damages, and must therefore be deleted.

With respect to attorney's fees, the award thereof is the exception rather than the general rule; counsel's fees are

not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate.[65] Attorney's fees as part of damages are not the same as attorney's fees in the concept of the amount paid to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter, while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party.[66]

Attorney's fees as part of damages is awarded only in the instances specified in Article 2208 of the Civil Code.[67] As such, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award, and in all cases it must be reasonable. Thereunder, the trial court may award attorney's fees where it deems just and equitable that it be so granted. While we respect the trial court's exercise of its discretion in this case, we find the award of the trial court of attorney's fees in the sum of One Hundred Seven Thousand Pesos (P107,000.00) plus One Thousand Pesos (P1,000.00) per appearance in the hearing of the case and litigation expenses of Ten Thousand Pesos (P10,000.00), to be unreasonable and excessive. Attorney's fees as part of damages is not meant to enrich the winning party at the expense of the losing litigant. Thus, it should be reasonably reduced to Twenty-Five Thousand Pesos (P25,000.00).

Because of the conclusions we have thus reached, there is no need to delve any further on the other assigned errors.

WHEREFORE, the instant petition is GRANTED. The Decision of the Court of Appeals dated November 22, 1994 in CA-G.R. CV No. 40142 is REVERSED and SET ASIDE and another in its stead is hereby rendered ORDERING respondent Tomas Averia, Jr., to pay petitioner Veronica Padillo the amounts of (a) Ninety-Seven Thousand Six Hundred Pesos (P97,600.00) as unrealized rentals which shall earn interest at the legal rate from the finality of the this decision until fully paid, and (b) Twenty-Five Thousand Pesos (P25,000.00) as attorney's fees.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Quisumbing, JJ., concur.

Buena, J., on official leave.

[1] Penned by Presiding Justice Nathanael P. De Pano, Jr. and concurred in by Associate Justices Artemon D. Luna and Ramon U. Mabutas, Jr., First Division, Rollo, pp. 56-67.

[2] Penned by Judge Jaime D. Discaya, Rollo, pp. 45-54.

[3] Original Records, Vol. I, pp. 1-5.

[4] Assisted by her husband, Edilberto De Mesa.

[5] Entitled "Tomas T. Averia, Jr., plaintiff, v. Spouses Edilberto De Mesa and Veronica Padillo, defendants" for Rescission of Contracts with Damages, Original Records, Vol. II, pp. 378-382.

[6] Original Records, Vol. I, pp. 21-25.

[7] Original Records, Vol. I, pp. 70-78.

[8] Original Records, Vol. 1, pp. 79-99.

[9] Original Records, Vol. 1, p. 100.

[10] Cadastral Case No. I, GLRO Cad. Record No. 202, Lot No. 2810-B, Lucena Cadastre, M.C. No. 374-82, Branch 8, later Branch 57, Original Records, Vol. II, pp. 398-402.

- [11] Through Marina M. de Vera-Quicho, as the attorney-in-fact of Margarita de Vera in a Special Power of Attorney executed abroad on January 13, 1982.
- [12] Original Records, Vol. I, pp. 110-114.
- [13] The complaint was subsequently amended, Original Records, Vol. II, pp. 378-382.
- [14] Original Records, Vol. II, pp. 383-386.
- [15] Penned by Judge Andres C. Regalado, Original Records, Vol. II, pp. 389-393.
- [16] Original Records, Vol. I, p. 119-A.
- [17] Penned by Judge Milagros V. Caguioa.
- [18] Entitled 'Tomas Averia, Jr., petitioner, v. The Honorable Milagros V. Caguioa, in her capacity as Judge of the Regional Trial Court, Fourth Judicial Regional, Branch LVII, Lucena City, and Veronica Padillo, respondents'.
- [19] Penned by Associate Justice Isagani A. Cruz and concurred in by Associate Justices Pedro L. Yap, Andres R. Narvasa, Ameurfina Melencio-Herrera and Florentino P. Feliciano, First Division, Original Records, Vol. II, pp. 410-414, 146 SCRA 459 [1986].
- [20] Penned by Associate Justice Filemon H. Mendoza and concurred in by Associate Justices Lorna S. Lombos-De La Fuente and Celso Magsino, Eighth Division, in CA-G.T. CV No. 18802 entitled 'Veronica Padillo, petitioner-appellee, v. Tomas Averia, Jr., oppositor-appellant', Original Records, Vol. I, pp. 322-330.
- [21] Docketed as G.R. No. 96662, entitled 'Tomas Averia, Jr., petitioner v. Court of Appeals, et al.', Original Records, Vol. I, p. 318.
- [22] Original Records, Vol. I, p. 341.
- [23] Original Records, Vol. I, p. 353.
- [24] Penned by Judge Benigno M. Puno, Original Records, Vol. I, pp. 133-134.
- [25] CA-G.R. CV No. 01931.
- [26] Original Records, Vol. I, p. 190.
- [27] Original Records, Vol. I, pp. 199-207.
- [28] Original Records, Vol. I, pp. 236-237.
- [29] Issued by Judge Rodolfo G. Palattao Original Records, Vol. I, pp. 255-256.
- [30] Penned by Associate Justice Arturo B. Buena (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Conrado T. Limcaoco and Jainal D. Rasul, Fourteenth Division, in CA-G.R. SP No. 15356, Original Records, Vol. I, pp. 291-300.
- [31] Original Records, Vol. I, pp. 303.
- [32] See Note Nos. 21-23, *supra*.
- [33] See Note No. 2, *supra*.
- [34] Rollo, pp. 64-66.

[35] Rollo, pp. 68-78.

[36] Rollo, pp. 88-90.

[37] Rollo, pp. 89-90.

[38] Rollo, pp. 11-12.

[39] Now 1997 Rules of Civil Procedure.

[40] Islamic Directorate of the Philippines v. Court of Appeals, 272 SCRA 454, 466 [1997]; Mendiola v. Court of Appeals, 258 SCRA 492, 499 [1996].

[41] Vda. de Salanga v. Alagar, 335 SCRA 728, 736 [2000]; Gardose v. Tarroza, 290 SCRA 186, 193 [1998]; Carlet v. Court of Appeals, 275 SCRA 97, 106 [1997]; Allied Banking Corporation v. Court of Appeals, 229 SCRA 252, 258 [1994].

[42] See Note Nos. 21-23, *supra*.

[43] See Note No. 19, *supra*.

[44] Nabus v. Court of Appeals, 193 SCRA 732, 740 [1991].

[45] Ramon D. Ocho v. Bernardino Delfin, et al., G.R. No. 137908, November 22, 2000, pp. 10-11; Gutierrez v. Court of Appeals, 193 SCRA 437, 446 [1991]; Sangalang v. Caparas, 151 SCRA 53, 59 [1987].

[46] Ducat v. Court of Appeals, 322 SCRA 695, 706-707 [2000]; Zebra Security Agency and Allied Services v. NLRC, 270 SCRA 476, 485 [1997]; People v. Pinuila, et al., 103 Phil 992, 999 [1958]; 21 C.J.S. 330.

[47] Ducat v. Court of Appeals, *supra*; 5 C.J.S. 1276-1277.

[48] 39 Phil. 747, 749-750 [1919], penned by Justice George A. Malcolm.

[49] Italics supplied; see note no. 48.

[50] 21 C.J.S. 331; 31 Words and Phrases, pp. 741-742.

[51] 65 SCRA 69, 80 [1975] citing 30 Am. Jur. 913-914.

[52] People v. Olarte, 19 SCRA 494, 498 [1967], penned by Justice Jose B.L. Reyes.

[53] TSN, November 7, 1991, p. 3.

[54] Eduardo P. Lucas v. Spouses Maximo C. Royo and Corazon B. Royo, G.R. No. 136185, October 30, 2000, p. 9; Integrated Packaging Corporation v. Court of Appeals, 333 SCRA 170, 179 [2000]; Lucena v. Court of Appeals, 313 SCRA 47, 61-62 [1999].

[55] Original Records, Vol. II, pp. 395-397.

[56] Original Records, Vol. II, pp. 482-484, 510, 517-518.

[57] J.M. Tuason & Co., Inc. v. Santiago, et al., 99 Phil. 615, 632 [1956].

[58] Article 2209 of the Civil Code of the Philippines, which reads:

If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum.

[59] Crismina Garments, Inc. v. Court of Appeals, 304 SCRA 356, 362-363 [1999]; Eastern Shipping Lines, Inc. v. Court of Appeals 234 SCRA 78, 95-97 [1994].

[60] See Note No. 19, *supra*.

[61] See Note Nos. 15, 16 and 25, *supra*.; Rollo, p. 182.

[62] Filinvest Credit Corporation v. Mendez, 152 SCRA 593, 601 [1987].

[63] Philippine National Bank v. Court of Appeals, 159 SCRA 433, 442 [1988].

[64] TSN, April 14, 1988, pp. 12-16.

[65] Ibaan Rural Bank, Inc. v. Court of Appeals, 321 SCRA 88, 95 [1999].

[66] Compania Maritima, Inc. v. Court of Appeals, 318 SCRA 169, 175-176 [1999].

[67] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

- 1) When exemplary damages are awarded;
- 2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- 3) In criminal cases of malicious prosecution against the plaintiff;
- 4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- 5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- 6) In actions for legal support;
- 7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- 8) In actions for indemnity under workmen's compensation and employer's liability laws;
- 9) In a separate civil action to recover civil liability arising from a crime;
- 10) When at least double judicial costs are awarded;
- 11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

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