

VICTORIO ESPERAS, PETITIONER, VS. THE COURT OF APPEALS AND HEIRS OF PONCIANO ALDAS, REPRESENTED BY ANASTACIO MAGTABOG AND JOSEFINA MAGTABOG, RESPONDENTS.*G.R. No. 121182. October 02, 2000*

Ponente: QUISUMBING, J.

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This petition for certiorari under Rule 65 of the Rules of Court seeks to annul the resolutions of the Court of Appeals, Second Division, promulgated May 13, 1994[1] and April 19, 1995[2] in CA-G.R. CV No. 29581, denying herein petitioner's prayer for dismissal of private respondents' appeal and the subsequent motion for reconsideration, respectively.

On August 30, 1989, the Regional Trial Court of Palo, Leyte, Branch 8, rendered a decision in Civil Case No. 7623, entitled Heirs of Ponciano Aldos, represented by Anastacio Magtabog and Josefina Magtabog, vs. Victorio L. Esperas, in favor of herein petitioner, Victorio Esperas, and dismissing herein private respondents' complaint for lack of merit. The motion for reconsideration was also denied.

Private respondents filed their notice of appeal. The appeal was perfected on September 28, 1989. Eight months later, on May 28, 1990, petitioner filed before the trial court, a motion to dismiss the appeal for failure to prosecute for an unreasonable length of time. On June 15, the trial court granted the motion to dismiss the appeal.

After the denial of their motion for reconsideration, private respondents went to the Court of Appeals and filed a Petition for Certiorari and Mandamus, docketed as CA G.R. SP No. 22695. It alleged that the trial court had no jurisdiction to dismiss their appeal.

On October 8, 1990, the Special Eighth Division of the Court of Appeals declared null and void the trial court's orders of June 15, 1990 and August 8, 1990, for having been issued without jurisdiction.[3] It said that the Motion to Dismiss Appeal should have been filed with the Court of Appeals.

Taking its cue from this resolution and to correct his erroneous filing before the trial court, petitioner filed anew his motion to dismiss appeal, this time with the Court of Appeals. The appeal was given the same docket number, CA G.R. SP No. 22695. On November 27, 1990, the appellate court granted the motion to dismiss appeal.[4] Private respondents' opposition was denied and likewise their motion for reconsideration.

Private respondents elevated to this Court, CA G.R. SP No. 22695 in a petition for review on certiorari, docketed as G.R. No. 101461. We dismissed it for being filed out of time.[5] The dismissal became final and executory and entry of judgment was made on January 28, 1992.[6]

Nine months later, on November 25, 1992, private respondents received a notice from the Court of Appeals, requiring them to submit copies of their briefs in CA-G.R. CV No. 29581. Petitioner manifested to the Court of Appeals that CA-G.R. CV No. 29581 was the same case CA-G.R. SP No. 22695 that originated from RTC as Civil Case No. 7623,[7] previously appealed in the Court of Appeals and elevated to this court as G.R. No.

101461. Petitioner thus, prayed for the dismissal of the appeal docketed as CA-G.R. CV No. 29581.

On May 13, 1994, the Second Division of the Court of Appeals promulgated the now assailed resolutions, and denied the prayer for dismissal of CA-G.R. CV No. 29581 and the subsequent motion for reconsideration.[8] The Second Division's dismissal, in effect reversed the dismissal of the appeal by the Special Eighth Division and paved the way for the re-litigation of Civil Case No. 7623.

Hence, this petition, invoking that:

- THE COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION WHEN IT TOOK COGNIZANCE OF A CASE WHICH HAD ALREADY BEEN FINALLY ADJUDICATED.
- THE COURT OF APPEALS DID NOT HAVE THE POWER NOR DOES IT HAVE THE POWER TO SET ASIDE/NULIFY A PREVIOUS DECISION RENDERED BY ANOTHER DIVISION ON THE SAME COURT OF APPEALS.
- THE PROCEEDINGS HAD BY THE PUBLIC RESPONDENT (SECOND DIVISION) WAS NOT VALID AND BARRED BY PRIOR JUDGMENT.
- THE PRINCIPLE OF RES JUDICATA HAS APPLICATION TO THE INSTANT CASE.

Notwithstanding the formulation of four issues by petitioner, we only have to resolve one issue, whether or not respondent Second Division of the Court of Appeals erred and abused its discretion when it took cognizance of an appeal allegedly already barred by prior judgment and in so doing, reversed a decision of another division of the same court.

When the Second Division of the Court of Appeals issued its resolution promulgated May 13, 1994, denying petitioner's prayer to dismiss the appeal,[9] it stated that petitioner had the mistaken impression that CA- G.R. CV No. 29581, before it, and CA-G.R. SP No. 22695, decided by the Special Eighth Division, elevated to the Supreme Court as G.R. No. 101461 are one and the same. The Second Division explains that the petition dismissed with finality by this Court was a special civil action distinct from the case before it which is an ordinary appeal. It explained that the appeal the trial court itself considered perfected, does not deserve outright dismissal since the dismissal of such perfected appeal would not conform to law nor jurisprudence. To support its contention, respondent court relied alone on *Aguirre vs. The Honorable Court of First Instance of Leyte, Branch III, et. al.*, 192 SCRA 454, 456-457 (1990).

In our view, public respondent misapplied *Aguirre*. It is true that like the instant case, *Aguirre* involved a timely notice of appeal to the Court of Appeals from the decision of the trial court; an approval by the trial court of the record on appeal and appeal bond; the perfection of the appeal; a motion to dismiss the appeal for failure to prosecute the appeal; dismissal by a trial court of an appeal for failure to prosecute; an opposition to the motion to dismiss on the ground that the trial court had lost jurisdiction in view of the perfection of the appeal; a resolution granting the motion to dismiss the appeal for failure to prosecute the appeal; and a petition for certiorari before the Supreme Court. Thus ends the kinship between *Aguirre* and the present case. For unlike *Aguirre*, this case involves another appeal of the same case resulting to a reversal of a previous final adjudication by a division of another of equal rank.

In *Aguirre*, we made three pronouncements. One, that an appeal from the decision of the Court of First Instance, (now Regional Trial Court) to the Court of Appeals may be dismissed for failure to prosecute. Two, that once an appeal has been perfected, the trial court loses jurisdiction over the case and the proper court which must dismiss an appeal for failure to prosecute upon motion of the appellant himself or upon the court's own motion is the

Court of Appeals and not the Court of First Instance. Three, that the order granting private respondents' motion to dismiss appeal for failure of petitioners to prosecute their appeal is not merely an order for the protection of the rights of the parties but is an order which disposes the case.[10] This is the extent of our pronouncements in *Aguirre* and only under these instances is *Aguirre* pertinent to this case.

In his petition before us now, petitioner asserts that respondent Second Division erred in not denying the appeal in CA-G.R. CV No. 29581 on the ground that said appeal is barred by *res judicata*. He avers that CA-G.R. SP No. 22695 and CA-G.R. CV No. 29581 have the same parties, the same facts and the same issues in the controversy. He submits that CA-G.R. SP No. 22695 was already decided with finality when the Special Eighth Division ruled that private respondent's appeal from the decision of the trial court was dismissed for failure to prosecute the appeal for an unreasonable length of time. He claims that the Court of Appeals' oversight in requiring the parties in Civil Case No. 7623 to submit appeal briefs was an error which private respondents took advantage of with full knowledge that the grant of the Special Eighth Division of the motion to dismiss the appeal put an end to the Civil Case No. 7623 after the petition for *certiorari* was dismissed by the Supreme Court for being filed out of time.

We agree with petitioner. When we dismissed the petition for review on *certiorari* of the resolution of the Special Eighth Division granting the motion to dismiss the appeal, the decision of the Regional Trial Court became the law of the case and constituted a bar to any re-litigation of the same issues in any other proceeding under the principle of *res judicata*.

There are four essential conditions which must concur for *res judicata* to effectively apply: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be between the first and second action, identity of parties, identity of subject matter, and identity of causes of action.[11] From the aforementioned particulars, it is unquestionable that the first three requisites are present. The adjudication by the Special Eighth Division was a final adjudication by a competent court with jurisdiction.

On the fourth requisite, between CA-G.R. SP. No. 22695 and CA-G.R. CV No. 29581, there is identity of parties, subject matter, and causes of action. There is no question with respect to the presence of identical parties and subject matter. Regarding identity of the causes of action, the ultimate test to ascertain such identity is said to be whether or not the same evidence fully supports and establishes both the present cause of action and the former cause of action.[12] Clearly, in the present case, the same evidence in the special civil action will have to be re-examined to support the cause of action in the ordinary appeal. Thus, there is identity also of the causes of action.

That one case is a special civil action and the other an ordinary appeal is of no moment here. The application of doctrine of *res judicata* cannot be eluded merely by such nomenclature. Varying the form of the actions or engaging a different method of presenting the issue will not escape application of the doctrine.[13] The fact remains that the Resolution of the Court of Appeals, Second Division, effectively reversed the final orders of the Special Eighth Division. That reversal, if countenanced, would result in the re-litigation of the same case involving the same issues, parties, and subject matter.

All these would show that the Second Division acted with grave abuse of discretion when it denied petitioner's prayer to dismiss the ordinary appeal, for it meant effectively reversing final orders of another division of co-equal rank. Considering the circumstances of the case, CA-G.R. CV No. 29581 had become moot and academic. Well-settled is the rule that courts will not determine a moot question.[14] For insofar as the parties to this present controversy are concerned, the resolution of the Court of Appeals, Special Eighth Division, dated

November 27, 1990, granting the motion to dismiss, has already terminated the controversy between said parties in the light of our ruling in G.R. No. 101461.

WHEREFORE, the petition is GRANTED. The resolution of public respondent dated May 13, 1994, denying petitioner's prayer for the dismissal of the ordinary appeal, and its resolution dated April 19, 1995, denying petitioner's motion for reconsideration are REVERSED and SET ASIDE. Public respondent is hereby ordered to dismiss the appeal of private respondents in CA-G.R. CV No. 29581. Costs against private respondents.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 31-34.

[2] Id. at 36-37.

[3] Id. at 20.

[4] Id. at 23-26.

[5] Id. at 28.

[6] Ibid.

[7] Id. at 29.

[8] Id. at 31-37.

[9] Id. at 33.

[10] Aguirre, supra, pp. 456-457.

[11] Bachrach Corporation vs. Court of Appeals, 296 SCRA 487, 493 (1998).

[12] Id. at 494.

[13] Linzag vs. Court of Appeals, 291 SCRA 304, 315 (1998) citing Filinvest Credit Corporation vs. IAC, 207 SCRA 59, 63-64 (1992); Sangalang vs. Caparas, 151 SCRA 53, 59 (1987); Ibabao vs. IAC, 150 SCRA 76, 85 (1987).

[14] City Sheriff, Iligan City vs. Fortunado, 288 SCRA 190, 195 (1998).

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