

ROGELIO P. MENDIOLA, PETITIONER, VS. COURT OF APPEALS AND PHILIPPINE NATIONAL BANK, RESPONDENTS.*G.R. No. 122807. July 05, 1996*

Ponente: HERMOSISIMA, JR., J.

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Sometime in December 1987, a certain Ms. Norma S. Nora convinced petitioner Rogelio Mendiola to enter into a joint venture with her for the export of prawns. As proposed by Ms. Nora, they were to secure financing from private respondent Philippine National Bank. The credit line, it was agreed on, was to be secured by collaterals consisting of real estate properties of the petitioner, particularly two (2) parcels of land, situated in Marikina, and covered by Transfer Certificate of Title No. 27307 issued by the Registry of Deeds of Marikina, Rizal.

On January 27, 1988, the petitioner signed a Special Power of Attorney authorizing Ms. Norma S. Nora to mortgage his aforementioned properties to PNB in order to secure the obligations of the joint venture with the said bank of up to Five (5) Million (5,000,000.00) Pesos. The planned joint venture became a failure even before it could take off the ground. But, in the meantime, Ms. Norma S. Nora, on the strength of the special power of attorney issued in her favor, obtained loans from PNB in the amount of P8,101,440.62 for the account of petitioner and secured by the parcels of land hereinabove described.

On November 11, 1988, petitioner rather belatedly revoked the special power of attorney in favor of Ms. Nora and requested PNB to release his properties from the mortgage executed by Ms. Nora in its favor. The request notwithstanding, petitioner was notified under a Notice of Sheriff Sale, dated April 20, 1989, that PNB had initiated foreclosure proceedings against the properties of the petitioner.

On May 16, 1989, petitioner filed a case for injunction against the PNB, docketed as Civil Case No. 58173, with Branch 162, of the Regional Trial Court of Pasig City, seeking to enjoin the foreclosure of the properties in question. PNB filed a motion to dismiss the case on the ground that the complaint did not state a sufficient cause of action. After hearing, the trial court, in its Order, dated August 17, 1989, granted PNB's motion to dismiss in this wise:

"Since the Court finds that the complaint does not state a sufficient cause of action, it follows therefore that the prayer, for issuance of the writ of preliminary injunction has no leg to stand on.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the complaint is hereby ordered dismissed, without pronouncement as to costs. The temporary restraining order under the date of May 16, 1989 is hereby lifted and set aside."[1]

Petitioner filed a Notice of Appeal from said Order, which was noted by the lower court in an Order, dated November 16, 1989.

While Civil Case No. 58173 was pending appeal with the court a quo, aforementioned properties were sold in an auction sale on October 3, 1990. The PNB, as the highest bidder, acquired petitioner's properties.

On October 10, 1990, petitioner filed an action to annul the auction sale of October 3, 1990, which was docketed as Civil Case No. 60012. The case was raffled to Branch 154 of the Regional Trial Court of Pasig City.

PNB likewise filed a motion to dismiss Civil Case No. 60012 alleging that "another action is pending between the same parties for the same cause of action." Apparently, PNB was referring to Civil Case No. 58173 then pending with respondent Court of Appeals. Attached to the motion to dismiss was a copy of the complaint in Civil Case No. 58173 which had the same allegations as the complaint in Civil Case No. 60012, except that the relief sought in the first case was to enjoin the foreclosure of the mortgaged properties of the petitioner.

Petitioner opposed said motion to dismiss.

After due hearing, Branch 154, RTC of Pasig, issued an Order, dated February 28, 1991, granting PNB's motion to dismiss Civil Case No. 60012 on the ground of *litis pendentia*. The dispositive portion of the Order reads:

"WHEREFORE, the Motion to Dismiss is hereby GRANTED, the injunction DENIED and the instant complaint DISMISSED with prejudice, without costs." [2]

A motion for reconsideration was filed by the petitioner but the same was denied. Petitioner appealed before the court a quo, which rendered its Decision, dated November 15, 1995 in CA-GR. CV No. 37940, affirming the Orders issued by Branch 154 of the RTC-Pasig, to wit:

"WHEREFORE, the orders herein appealed from are hereby affirmed in toto, with costs against the plaintiff-appellant." [3]

Hence, the instant petition submitting the following grounds.

I

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING IN TOTO THE ORDER DATED FEBRUARY 28, 1991 BASED ON THE ORDER DATED AUGUST 17, 1989 CONSIDERING THAT THE LATTER ORDER SIMPLY RESOLVED THAT THE MORTGAGE IN FAVOR OF THE PHILIPPINE NATIONAL BANK IS BINDING UPON PETITIONER, BUT HAS NOT RESOLVED IN THE DECRETAL PORTION OF SUCH LATTER ORDER WHETHER PHILIPPINE NATIONAL BANK HAS THE RIGHT TO FORECLOSE SUCH MORTGAGE BASED ON THE DEFAULTED OBLIGATIONS OF NORMA NORA, AND IT HAS NOT LIKEWISE RESOLVED IN THE DECRETAL PORTION THEREOF WHETHER SUCH DEFAULTED OBLIGATIONS OF NORMA NORA ARE SECURED BY THE MORTGAGE IN FAVOR OF PHILIPPINE NATIONAL BANK; AND

II

ASSUMING FOR THE SAKE OF ARGUMENT THAT RES JUDICATA HAS SET IN, ITS APPLICATION WOULD INVOLVE THE SACRIFICE OF JUSTICE TO TECHNICALITY. [4]

We deny the petition.

The instant petition has now become moot and academic, because the first case, docketed as Civil Case No. 58173, which is an application for injunction filed by herein petitioner before Branch 162 of the Regional Trial Court, Pasig City against private respondent PNB to prevent the latter from foreclosing his real properties, and which was then pending appeal before the court a quo at the time the second action (Civil Case No. 60012) was filed, has now been finally dismissed by the respondent Court of Appeals in CA-G.R. CV No. 29601, to wit:

"WHEREFORE, the appeal is hereby declared abandoned and is dismissed pursuant to Section 1(d), Rule 50 of the Rules of Court." [5]

Consequently, the instant petition which prays for the declaration of nullity of the auction sale by PNB of private respondent's properties[6] becomes dismissible under the principle of res judicata.

Section 49, Rule 39 of the Revised Rules of Court provides in part:

"SEC. 49. Effect of judgments. - The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

x x x x x x x x

(b) In other cases the judgment or 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 which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto

.

Section 49 (b) enunciates the first concept of res judicata known as "bar by prior judgment," whereas, Section 49 is referred to as "conclusiveness of judgment."

There is "bar by former judgment" 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 identities are present, the judgment on the merits rendered in the first constitutes an absolute bar to 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.[7]

It is res judicata in the first concept which finds relevant application in the case at bar.

There are four (4) essential requisites which must concur in order for res judicata as a "bar by former judgment" to attach, viz.:

- "1. The former judgment must be final;
2. It must have been rendered by a court having jurisdiction over the subject matter and the parties;
3. It must be a judgment or order 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." [8]

All the foregoing requisites obtain in the present case. The Order of Branch 162, RTC - Pasig, dated August 17, 1989, denying petitioner Mendiola's application for injunction of the foreclosure of his properties in Civil Case No. 58173, had long become final and executory in light of the Decision of the Court of Appeals in CA-G.R. CV No. 29601 affirming the trial court's order. Petitioner did not appeal the Decision of the court a quo in CA-G.R. CV No. 29601.

The parties do not dispute the fact that Branch 162, RTC, Pasig, had obtained jurisdiction over the subject matter of the first case as well as over the parties thereto.

The judgment of the trial court in Civil Case No. 58173, as affirmed by the Court of Appeals, 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. It is not necessary, however, that there should have been a trial. If the judgment is general, and not based on any technical defect or objection, and the parties had a full legal opportunity to be heard on their respective claims and contentions, it is on the merits although there was no actual hearing or arguments on the facts of the case.[9] In the case at bar, not only was petitioner provided an opportunity to be heard in support of his complaint for injunction; petitioner was given an actual hearing to argue his complaint on its merits.[10] Evidently, the Order of the trial court denying petitioner's application for injunction was rendered only after due consideration of the facts and evidence presented by both parties thereto. The said Order cannot be said to be one on sheer technicality, it actually goes into the very substance of the relief sought therein by petitioner, that is, for the issuance of a writ of injunction against the private respondent, and must thus be regarded as an adjudication on the merits.

Finally, the fourth element is likewise extant in this case. Required in order to satisfy this element are: (1) identity of the parties and subject matter; and (2) identity of the causes of action. In Civil Case No. 58173, the complaint was filed by herein petitioner Mendiola against private respondent PNB, Norma S. Nora, Eliezer L. Castillo, Norman C. Nora, Grace S. Belvis, and Victor S. Sta. Ana, as Deputy Sheriff-In-Charge. In Civil Case No. 60012, the complaint was filed by petitioner Mendiola against private respondent PNB and Nilda P. Bongat in substitution of Grace S. Belvis. It is to be noted that there is no absolute identity of parties on the two cases. This is of no consequence. We have established jurisprudence to the effect that, in order for res judicata to apply, absolute identity of parties is not required because substantial identity is sufficient.[11] In any case, PNB is a defendant in both cases. The subject matter involved in both cases, the real properties of petitioner covered by TCT No. 27307, are also identical.

The similarity between the two causes of action is only too glaring. The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment.[12] In Civil Case No. 58173, the action is to enjoin PNB from foreclosing petitioner's properties, while in Civil Case No. 60012, the action is one to annul the auction sale over the foreclosed properties of petitioner based on the same grounds. Notwithstanding a difference in the forms of the two actions, the doctrine of res judicata still applies considering that the parties were litigating for the same thing, i.e. lands covered by TCT No. 27307, and more importantly, the same contentions and evidence as advanced by herein petitioner in this case were in fact used to support the former cause of action.

Petitioner, now argues on equitable grounds. He maintains that, assuming for the sake of argument that res judicata has set in, its application would involve the sacrifice of justice for technicality.

We are not persuaded.

Equity, which has been aptly described "a justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. The pertinent positive rules being present here, they should pre-empt and prevail over all abstract arguments based only on equity.[13]

WHEREFORE, in view of the foregoing, the petition should be, as it is, hereby DENIED.

SO ORDERED.

Padilla, Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, p. 68.

[2] Rollo, pp. 98-99.

[3] Decision, p. 5; Rollo, p. 101.

[4] Petition, p. 12; Rollo, p. 71.

[5] Promulgated June 17, 1991.

[6] Petition, p. 20; Rollo, p. 79.

[7] *Nabus v. Court of Appeals*, 193 SCRA 732, 739-740 [1991].

[8] *Allied Banking Corporation v. Court of Appeals*, 229 SCRA 252, 258 [1994]; *Development Bank of the Philippines v. Pundogar*, 218 SCRA 118, 130 [1993]; *Baquioro v. Basa*, 214 SCRA 437 [1992]; *Dela Rosa v. Mercado*, 211 SCRA 236 [1992]; *Vda. de Kilayko v. Tengco*, 207 SCRA 600 [1992]; *Mendoza v. Court of Appeals*, 201 SCRA 343 [1991]; *White Plains Association, Inc. v. Legaspi*, 193 SCRA 765 [1991]; *Nabus v. Court of Appeals*, 193 SCRA 732 [1991]; *Gutierrez v. Court of Appeals*, 193 SCRA 437 [1991]; *Stasa, Inc. v. Court of Appeals*, 182 SCRA 879 [1990]; *Filipinas Investment and Finance Corp. v. IAC*, 179 SCRA 728 [1989]; *Wolverine Worldwide, Inc. v. Court of Appeals*, 169 SCRA 627 [1989].

[9] *Supra*, note 7 at 740.

[10] Decision, p. 2; Rollo, p. 98.

[11] *Development Bank of the Philippines v. Pundogar*, 218 SCRA 118, 131 [1993] citing *Geralde v. Sabido*, 115 SCRA 839 [1982]; *Anticamara v. Ong*, 82 SCRA 337 [1978].

[12] *Gutierrez v. Court of Appeals*, 193 SCRA 437, 446 [1991] citing *Sangalang v. Caparas*, 151 SCRA 53 [1987].

[13] *Causapin v. Court of Appeals*, 233 SCRA 615, 625 [1994].

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