

**FLORDESVINDA C. MADARIETA, ANGEL JOSE C. MADARIETA, AND
PHIL BRISCO C. MADARIETA, PETITIONERS, VS. REGIONAL TRIAL
COURT, BRANCH 28, MAMBAJAO, CAMIGUIN, DOMINGO IGNILAN,
FELICIAN...**

G.R. No. 126443. February 28, 2000

Ponente: PARDO, J.

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PARDO, J.:

Appeal via certiorari seeking to set aside the order of the trial court[1] dismissing the complaint[2] for revival of action in Civil Case No. 245.

The antecedent facts are as follows:

On October 11, 1977, petitioners' predecessor-in-interest, the late Jose L. Madarieta II filed with the Court of First Instance, Branch IV, Camiguin (now Regional Trial Court, Branch 28, Mambajao, Camiguin) a complaint for quieting of title, injunction and damages against respondents.[3]

After answer to the complaint, the trial court conducted trial on the merits until termination of the case, but was unable to decide the case due to the retirement of the presiding judge.[4]

On March 19, 1988, Judge Sinforoso V. Tabamo, Jr. was appointed presiding judge of Regional Trial Court, Branch 28, Mambajao, Camiguin.

Considering that he did not preside over the trial of the case, Judge Tabamo, Jr. issued an order[5] requiring both plaintiffs and defendants to file their respective memoranda within thirty (30) days from receipt of the stenographic notes. *Lexjuris*

The parties did not comply with the above-mentioned order. Hence, on January 5, 1989, the trial court dismissed the case.

Upon motion for reconsideration, on January 24, 1989 the trial court set aside the dismissal and gave the parties a non-extendible period of forty five (45) days from notice within which to submit their respective memoranda.

Despite the second opportunity given to the parties to submit their respective memoranda, they still did not comply. On November 29, 1991, the trial court again dismissed the case. The trial court treated the parties' failure to submit their respective memoranda as total abandonment and loss of interest in the outcome of the case.[6]

After a lapse of more than four (4) years, or on May 9, 1996, the heirs of Jose L. Madarieta II filed with the Regional Trial Court, Branch 28, Mambajao, Camiguin a complaint for revival of the action,[7] Civil Case No. 245.

On July 26, 1996 the trial court dismissed the action for revival, Civil Case No. 526, ruling that the earlier action, Civil Case No. 245, cannot be revived because it is barred by the finality of the latter case's dismissal, which is

tantamount to an adjudication on the merits. Under the principle of res judicata, any other action involving the same subject matter and involving the same parties will no longer prosper. Moreover, laches had set in due to the parties' unreasonable and unexplained inaction for about five (5) years from the final order of dismissal.[8]

Their motion for reconsideration having been denied,[9] on October 8, 1996 the heirs of Madarieta filed with this Court the present petition.[10]

On November 11, 1996, we required respondents to file comment on the petition within ten (10) days from notice.[11]

At issue is whether the second case for revival of the dismissed civil case is barred by res judicata. justice

We agree with the petitioners that res judicata is not applicable in the instant case. For res judicata to apply the following elements must concur: "(a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and, (d) there must be as between the first and second actions identity of parties, subject matter and causes of action." [12]

"The doctrine of res judicata is a rule which pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity which makes it to the interest of the State that there should be an end to litigation, interest reipublicae ut sit finis litium, and (2) the hardship on the individual that he should be vexed twice for the same cause, nemo debet bis vexari et eadem causa.[13]

The order dismissing the case[14] based on the parties' failure to submit their respective memoranda will not amount to res judicata. The case was dismissed not on the merits, but on a technicality, the parties' failure to comply with an order of the court. However, the trial court's dismissal of the case was improper and precipitate. It was the court that failed with its duty to decide the same sans memorandum. The filing of a memorandum is not required or necessary in deciding the case.[15]

When the trial court dismissed the case, trial on the merits was had and the case was submitted for decision. The parties were not remiss. Hence, the trial court's dismissal of the case can not be tantamount to adjudication on the merits.

Unfortunately for petitioners, despite the non-applicability of res judicata the case can not be revived because the action is barred by the finality of the order of dismissal. More than four (4) years passed before the petitioners questioned the trial court's order of dismissal. Jurismis

Upon finality of the order of dismissal, the case could no longer be revived. The trial court has lost authority over the case.[16] Squarely applicable is the decision where this Court emphatically said that "after the dismissal has become final through the lapse of the fifteen-day reglementary period, the only way by which the action may be resuscitated or 'revived,' is by the institution of a subsequent action through the filing of another complaint and the payment of the fees prescribed by law. This is so because upon attainment of finality of a dismissal through the lapse of said reglementary period, the Court loses jurisdiction and control over it and can no longer make any disposition in respect thereof inconsistent with such dismissal.[17]

WHEREFORE, the Court DENIES the petition, for lack of merit.

No costs.

SO ORDERED.

Davide, Jr., C. J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Civil Case No. 526, Regional Trial Court Branch 28, Mambajao, Camiguin, dated September 9, 1996, Judge Sinforoso V. Tabamo, Jr., presiding.

[2] Docketed as Civil Case No. 526.

[3] Docketed as Civil Case No. 245.

[4] Judge Luis D. Manta.

[5] Dated June 22, 1988.

[6] Rollo, pp. 33-34.

[7] Docketed as Civil Case No. 526.

[8] Rollo, pp. 27-31.

[9] Rollo, p. 32.

[10] Rollo, pp. 8-26.

[11] Rollo, p. 59.

[12] *Aldovino vs. National Labor Relations Commission*, 298 SCRA 526, 532 (1998)

[13] *Linzag vs. Court of Appeals*, 291 SCRA 304 (1998)

[14] Civil Case No. 245.

[15] Administrative Circular No. 28, dated July 3, 1989; *Bendesula vs. Laya*, 58 SCRA 16 (1974); *People vs. Terrobias*, 103 SCRA 321 (1981); *Salvador vs. Salamanca*, 144 SCRA 276 (1986)

[16] Cf. *Isasi vs. Republic*, 101 Phil. 405 (1957); *Olympia International, Inc. vs. Court of Appeals*, 180 SCRA 354 (1989)

[17] *Ortigas & Company Limited Partnership vs. Judge Tirso Velasco*; *Dolores V. Molina vs. Hon. Presiding Judge, RTC, Quezon City, Branch 105*, 234 SCRA 455 (1994)

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