

DALMACIO CABAÑERO AND MARIA LIMJUCO, PLAINTIFFS AND APPELLANTS, VS. MARCELO TESORO, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 12802, February 11, 1960*

Ponente: REYES, J.B.L., J.

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In Civil Case No. 19883 of the Court of First Instance of Manila, plaintiffs Marcelo Tesoro, Antonia Tesoro, and David Tesoro sought to recover from the spouses Dalmacio Cabañero and Maria Limjuko the possession of a house and lot situated in Barrio Obrero, City of Manila, registered in the name of plaintiffs' deceased father, Cirilo Tesoro, under Transfer Certificate of Title No. 38022 of the Register of Deeds of Manila. In defense, defendants claimed to have purchased the property in question from the late Cirilo Tesoro, the registered owner. After trial, the court found that plaintiffs, as the heirs of the registered owner, were entitled to the possession of the property in question, without prejudice to defendants' right to prove their alleged purchase in a proper action; and rendered judgment for the plaintiffs. On appeal to the Court of Appeals by defendants, the appellate Court held the sale of the property by Cirilo Tesoro to defendants-appellants to have been duly established and that appellants were the ones entitled to the possession thereof by virtue of said purchase; and reversed the judgment of the court below and dismissed the complaint. Plaintiffs-appellees tried to appeal the judgment to this Court, but we dismissed the petition for review (G. R. No. L-10138) for lack of merit.

Subsequently, the spouses Dalmacio Cabañero and Maria Limjuko filed against the Tesoros Civil Case No. 32502 in the Manila Court, to compel the latter to execute in their favor the formal deed of sale of the same property involved in the first case between the same parties and sold to the plaintiff spouses by the registered owner Cirilo Tesoro under a private deed of sale, to quiet their title over the property and to enable them to obtain a transfer certificate of title in their name. Defendants Tesoros moved to dismiss the complaint on the ground of res judicata, alleging that the question raised by the complaint had already been adjudicated by the Court of Appeals and this Court in the previous Civil Case No. 19883 between the same parties. The trial court found favorably for the motion and dismissed the complaint. Plaintiffs moved to reconsider the order of dismissal but failed. Whereupon, they appealed to this Court.

We agree with appellants that the lower court erred in holding that their present action for quieting of title and execution of a formal deed of sale is barred by res judicata or prior judgment in Civil Case No. 19883 between the same parties.

The previous case between the parties herein was merely a plenary action for recovery of possession or accion publiciana. In such an action, the only question involved is who, as between the parties, has the better right to possess the premises in question (Bishop of Cebu vs. Mangaron, 6 Phil., 286; Ledesma vs. Marcos, 9 Phil., 618; Roman Catholic Bishop of Lipa vs. Municipality of San Jose, Batangas, 27 Phil., 571). Thus, the Court of Appeals though it found in the first case (C. C. No. 19883) that defendants (now plaintiffs-appellants) had

purchased the premises in question from the registered owner Cirilo Tesoro, limited its judgment to holding that "the appellants are entitled to the possession of the property in question and that this action for recovery of possession is devoid of cause and should be dismissed" (Record on Appeal, pp. 23-24), and accordingly ordered the dismissal of the complaint for recovery of possession. Since the right to the possession of the property in question was the only issue before the court, it could not have disposed of any other issue than possession.

The lower court held, and appellees herein urge, that this Court had resolved the question of ownership in said Civil Case No. 19883 when, refusing to give due course to plaintiffs Tesoros' petition for the review of the decision of the Court of Appeals dismissing their complaint for recovery of possession, we said that "the question of title or ownership may not be invoked" in said case. We are at a loss how this statement can possibly be interpreted as a passing upon the question of title in that particular case when, precisely, we refused to entertain the question of title urged in the petition for review, with the effect that the conclusions and findings of the Court of Appeals as to herein appellant's superior right to possess became conclusive and binding on the parties.

The present case, upon the other hand, involves a matter and cause of action distinct and apart from the previous issue of possession raised and adjudged by the Court of Appeals in Civil Case No. 19883 between the same parties. In this case, appellants seek to compel the appellees, as heirs of the registered owner Cirilo Tesoro who, during his lifetime, sold the property in question to them under a private writing, to execute a formal deed of sale over said property, to enable them (appellants) to obtain a transfer certificate of title in their name and quiet their title over the premises. This action is authorized by Article 1357, in relation to Article 476, of the New Civil Code, and is not barred by the final judgment in Civil Case No. 19883 that is *res judicata* only in so far as herein appellants were held to have the better right to possess the property in question.

The order dismissing appellants' complaint is, therefore, reversed and set aside, and the case shall be remanded to the court of origin for further proceedings on the merits. Costs against appellees Tesoro.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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