

**EDUARDO CALUSIN, THELMA CALUSIN, ERLINDA CALUSIN,
LEONORA CALUSIN, NELSON CALUSIN, RODOLFO CALUSIN,
PERLITA CALUSIN, LILIA CALUSIN, REPRESENTED BY THEIR
ATTORNEY-IN-FACT, ISABEL...**

G.R. No. 128405. June 21, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal via certiorari seeking to set aside the decision of the Court of Appeals affirming the trial court's order dismissing petitioners' complaint for recovery of possession and ownership of a parcel of land on the ground of res judicata.[1]

The facts, as found by the Court of Appeals, are as follows:

"Plaintiffs sought to recover the one-half portion of Lot 753 covered by TCT No. T-201999 (Annex C, Record, p. 8) in the name of defendants Dante Alzaga and Elsa Tampoc. Originally, the land was owned and titled in the names of spouses Diego Calucin and Aniana Banton, both deceased, under OCT No. 0-1819.

"Spouses Diego and Aniana Calucin were survived by their children Carmencita, Lydia, Rosalita, Purificacion, Crisostomo and plaintiff Jose. In February 1978, Carmencita, Lydia and Rosalita filed against Purificacion, Crisostomo and Jose a complaint for partition of the aforesaid property and four other parcels of land, all registered in the names of their deceased parents, docketed as Civil Case No. 0254-M. Purificacion filed her Answer, Crisostomo and Jose, despite notice, however, failed to file their answer and were declared in default on May 8, 1978.

"Commissioners were appointed to assist the court in making a fair and just apportionment and partition of the properties. In the Conference held by the commissioners, Carmencita proposed that Lot 753 under OCT No. 0-1819 be given to her but Jose objected to the proposal claiming ownership instead of the one-half (1/2) undivided portion thereof, it having been sold to him by their late mother Aniana on March 10, 1966 (Annex B, Record, p. 7). The Commissioners then submitted a Partial Report dated October 25, 1978 and a Commissioners' Report dated November 24, 1978. The case was finally heard on February 28, 1979 but not one of the defendants (Purificacion, Crisostomo and Jose) appeared, whereupon, on motion of plaintiffs' counsel, they were allowed to present their evidence ex-parte.

"On August 8, 1979, the court rendered its decision granting the partition and directing the parties to submit a project of partition. The plaintiffs therein submitted a project of partition adjudicating Lot 753 to Carmencita which was adopted by the Commissioners in their report and recommendation to the court.

"On October 25, 1979, the court approved the project of partition. Jose Calucin filed a motion for reconsideration of the Order of Approval of the project of partition which was denied on March 3, 1980. Thereafter, a writ of execution was issued on April 18, 1980.

"Jose Calucin then filed an Omnibus Motion to lift the Order of Default dated May 8, 1978 and to set aside the

decision dated August 3, 1979 and the Order dated April 18, 1980. The Omnibus Motion was however denied on June 4, 1980.

"On September 28, 1984, Jose Calucin, with his wife Milagros Parado instituted Civil Case No. 0335-M (Annulment of Judgment) against Carmencita Calucin and Deputy Provincial Sheriffs of Quezon Delfin Pinion and Bayani Ramilo to annul the judgment in Civil Case No. 0254-M, to quash the writ of execution and to order Carmencita Calucin to reconvey to them the one-half portion of Lot 753.

"The defendants in Civil Case No. 0335-M filed their Motion to Dismiss on the ground of *res judicata*, claiming that the ownership of Lot 753 was already settled in Civil Case No. 0254-M.

"On July 3, 1985, the court dismissed Civil Case No. 0335-M on the ground of *res judicata*. Jose Calucin appealed the dismissal to the then Intermediate Appellate Court raising the issue of whether or not *res judicata* is applicable to the case.

"The Court of Appeals, in its decision dated June 25, 1987, affirmed the dismissal of the case on the ground of *res judicata* (Record, pp. 182-188).

"Not satisfied, Jose Calucin filed the instant case on appeal, to recover the one-half portion of Lot 753. On January 17, 1992, Jose Calucin filed his amended complaint (Record, pp. 45-49) which was admitted (RTC, Branch 64, Mauban, Quezon) on March 3, 1992 (Ibid., p. 57).

""The amended complaint alleged that plaintiff is the absolute owner of the one-half undivided portion of Lot 753 under OCT No. 0-1819 which is now registered in the names of defendants spouses Dante Alzaga and Elsa Tampoc under TCT No. T-201999 identified as Lot 753-B; that plaintiff acquired ownership thereof by virtue of the Deed of Sale Executed by his mother Aniana Banton on March 10, 1966; that plaintiff caused the subdivision of Lot 753 into two (2) lots (Lots 753-A and 753-B), both having equal frontage adjacent to the street, which was approved by the Director of Lands on May 22, 1978 (Annex C, Rollo); that sometime in May 1985 while plaintiff was verifying the certificate of title, he discovered that a portion of it was already transferred to the defendants; that defendants caused the subdivision of the lot but this time making Lot 7532-A in the name of Jose Calucin with no frontage and the entire Lot 753-B in their names (defendants) with the street as the entire frontage while the portion known as Lot 753-A in the name of Jose Calucin has no frontage at all; that defendants deprived the plaintiff of any frontage towards the street, contrary to the original plan agreed upon by the plaintiff and the original owner of Lot 753-B; and that defendants despite demands refused to convey its ownership and possession to plaintiff (Ibid, p. 45).

"In their Amended Answer, defendants Dante and Elsa Alzaga while admitting that they are indeed the registered owner of Lot 753-B denied the rest of the allegations and instead set up the affirmative defense of *res judicata*.

"Defendant Carmencita Calucin-Camaligan, on the other hand, filed her motion to dismiss Civil Case No. 0433-M principally on the ground of *res judicata* alleging that the issue of ownership of Lot 753 was already resolved in Civil Case No. 0254-M entitled "Carmencita Calucin, et al. Vs. Purificacion, Crisostomo and Jose, all surnamed Calucin" on August 3, 1979 by the then Court of First Instance (Branch 9, Mauban, Quezon) adjudicating Lot 753 to her, which decision was affirmed by the Intermediate Appellate Court in IAC-G. R. CV No. 25379 on September 22, 1983. Likewise, Civil Case No. 0335-M which was also filed by Jose Calucin was dismissed by the Regional Trial Court (Branch LXIV, Mauban, Quezon) on July 3, 1985 on the ground of *res judicata* and pursuant to the judgment in Civil Case No. 0254-M, which decision was also affirmed by the Court of Appeals on June 25, 1987 (Ibid., pp. 116-169).

"Meanwhile, plaintiff Jose Calucin died in March 1993 and was substituted by his heirs. They then filed their opposition and supplemental opposition to the motion to dismiss arguing that *res judicata* could not be invoked in the absence of identity of parties, subject matter and cause of action; and that it should be set aside in favor

of substantial justice (Ibid., p. 198 and pp. 211-213).

"Finally, the court a quo dismissed Civil Case No. 0433-M because of res judicata in the Order dated August 15, 1994 (Ibid., pp. 214-221)."[2]

On July 28, 1996, petitioners filed with the Court of Appeals a motion for reconsideration of the decision.[3]

On February 18, 1997, the Court of Appeals denied the motion for reconsideration.[4]

Hence, this appeal.[5]

The issue raised is whether or not the Court of Appeals erred in affirming the trial court's order dismissing the complaint on the ground of bar by res judicata.

The question presented is factual. Such factual question is not reviewable by the Supreme Court in an appeal via certiorari under Rule 45 of the 1997 Rules of Civil Procedure or even under the same rule of the 1964 Revised Rules of Court.[6]

Petitioners, however, insist that the sale of 1/2 portion of Lot 753 to Jose Calusin (by his mother) was not raised or touched upon in the previous cases, and hence, could not be considered as barred by res judicata. Viewing this factual question, we see the following facts: (a) On March 10, 1966, Aniana Banton sold the 1/2 portion of Lot 753 then covered by OCT No. 1819 to her son Jose Calusin. We examined the deed of sale, and noted that the sale was executed before the settlement of the estate of the deceased Diego Calusin.[7] Thus, its validity is doubtful. In fact, the title was still undivided among the heirs of the deceased including Jose Calusin. Which is why the heirs of the deceased spouses including Jose Calusin were parties to an action filed for partition of the estate of Diego Calusin and Aniana Banton.[8] In the project of partition approved by the court, Lot 753 was awarded to Carmencita Calusin. Jose moved for reconsideration and "waged a continuous battle to regain his property." [9] He filed an action to annul the project of partition and to reconvey to him the ownership of Lot 753; the court dismissed the case on the ground of res judicata.[10] Jose filed still another civil action to recover the 1/2 portion of Lot 753; again, the court decided against his claim.[11] Consequently, petitioner's claim of ownership of 1/2 portion of Lot 753 was clearly barred by prior judgment.

"To once again re-open that issue through a different avenue would defeat the existence of our courts as final arbiters of legal controversies. Having attained finality, the decision is beyond review or modification even by this Court.[12]

"Under the principle of res judicata, the Court and the parties, are bound by such final decision, otherwise, there will be no end to litigation. It is to the interest of the public that there should be an end to litigation by the parties over a subject fully and fairly adjudicated, and an individual should not be vexed twice for the same cause." [13]

WHEREFORE, the Court hereby DENIES the petition for review on certiorari and AFFIRMS the decision of the Court of Appeals.[14]

No costs.

SO ORDERED.

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

[1] In CA-G. R. CV No. 47489, promulgated on May 20, 1996, Salas, J., ponente, Paras and Austria-Martinez, JJ., concurring, Rollo, pp. 61-69.

[2] Petition, Annex "A", pp. 61-69.

[3] CA Rollo, pp. 74-78.

[4] Petition, Annex "B", Rollo, p. 71.

[5] Filed on April 17, 1997, Rollo, pp. 48-59; On July 14, 1997, we required respondents to comment on the petition within ten (10) days from notice (Rollo, p. 104).

[6] Maglaque vs. Planters Development Bank, 307 SCRA 156, 161 [1999], citing Guerrero vs. Court of Appeals, 285 SCRA 670 [1998]; Rongavilla vs. Court of Appeals, 294 SCRA 289 [1998]; Cristobal vs. Court of Appeals, 291 SCRA 122 [1998]; Sarmiento vs. Court of Appeals, 291 SCRA 656 [1998].

[7] CA Rollo, p. 50.

[8] Complaint for partition, accounting and damages, filed on February 16, 1978 in the Court of First Instance of Quezon, Mauban, Branch 5, Rollo, pp. 88-91.

[9] Petition, p. 8, Rollo, p. 55.

[10] Ibid. Civil Case No. 355-M Court of First Instance of Quezon.

[11] Civil Case No. 0433-M, Regional Trial Court, Branch 84, Mauban, Quezon, CA Rollo, pp. 38-45.

[12] Toledo-Banaga vs. Court of Appeals, 302 SCRA, 331, 341 [1999], citing Carlet vs. Court of Appeals, 275 SCRA 97 [1997].

[13] Toledo-Banaga vs. Court of Appeals, *supra*.

[14] In CA-G. R. CV No. 47489.

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