ENCARNACION, RUFINA, MATEA, LAUREANA, FRANCISCO,+ MARINA, AND RICARDO, ALL SURNAMED ESPIRITU, THE HEIRS OF FLORA ESPIRITU, NAMELY MERCEDES, RODOLFO, CHARITO, CERILO, EFREN AND A...

G.R. No. 135920. October 26, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Case

The case is an appeal from the decision of the Court Appeals[1] setting aside the orders of the trial court denying petitioners' motion to dismiss the complaint and ordering its dismissal on the grounds of prescription and res judicata.

The Facts

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

> "The late Daniel Espiritu was one of the co-owners pro-indiviso of lots 1, 2, 3, and 4 of Plan PSU-167606-B consisting of about 10,510 square meters (hereafter called subject property). By virtue of a document denominated deed of sale dated 07 April 1969 purportedly executed by private respondents, subject property was sold for value to Investment and Development, Inc. Investment and Development, Inc. in turn purportedly sold the subject property to petitioner by virtue of a deed of sale dated 07 March 1979. Thereafter, petitioner filed an application for land registration of the subject property in LRC No. Pq-561-P with the then Court of First Instance of Rizal, Branch 29, stationed at Pasay City. In due course and after proceedings held, the said court in its decision dated 18 September 1981 ordered the issuance of Decree No. N-187142 and OCT No. 116 covering subject property, in the name of petitioner. The Land Registration Commission on 04 January 1983 issued OCT No. 116.
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> "As earlier mentioned, private respondents commenced Civil Case No. 96-0111 by filing a complaint on 27 February 1996. Notices of lis pendens were annotated on 01 March 1996 on the various TCTs arising from OCT No 116.
>
> "On verbal motion of counsel of petitioner that a preliminary hearing be held on its affirmative/special defenses as grounds for motion to dismiss and over the objection of counsel of private respondents, respondent Judge scheduled a hearing for it. On the basis of petitioner's manifestation that its evidence are merely documentary, the trial court gave it 15 days to file said evidence and a like period for private respondents to file their evidence. Petitioner herein made its formal offer of documentary evidence in support of its motion to dismiss. On the other hand, private respondents presented four witnesses in the persons of 1.) Atty. Roque O. Santos; 2.) Encarnacion Espiritu; 3.) Alejandro G. Gallos; and, 4.) Ricardo Espiritu.
>
> "On 15 July 1997, respondent Judge issued the first questioned order denying petitioner's motion to dismiss, "for lack of factual and legal basis." Petitioner's motion for reconsideration subsequently filed suffered the

same fate in respondent judge's order dated 07 October 1997. Hence, this petition citing as grounds for nullifying the questioned orders, the following.

"a.) That the Hon. Respondent Judge acted with grave abuse of discretion tantamount to lack of jurisdiction or excess of jurisdiction in holding in his Order dated July 15, 1997, that the contention of defendant now petitioner Severina Realty Corporation that the Court has no jurisdiction to hear and decide the within action, is clearly without basis, further holding that it is not simply exercising to annul the judgment of co-equal and coordinate court;

"b) That the respondent Judge also acted with grave abuse of discretion, tantamount to excess of jurisdiction in holding in said order July 15, 1997 that on the issue of RES JUDICATA, it appears that the cause of action in LRC No. Pq-561-P and in the present controversy are not identical, the former being an action in REM since it was directed on the land in question and the latter is an action in personam since it is a suit against the defendant.

"c) That the respondent Judge also acted with grave abuse of discretion, tantamount to lack of jurisdiction or excess of jurisdiction, in holding in his said order dated July 15, 1997, that the issue of prescription, New Civil Code provides that an action prescribed by mere lapse of time fixed by the law, that same code states that if the contract is void ab initio, action or defense for declaration of inexistence of the contract does not prescribe;

"d) The respondent Judge acted with grave abuse of discretion, tantamount to excess of jurisdiction or lack of jurisdiction, in holding with respect to want of cause action, the Court disagree with the defendant corporation."[2]

On July 26, 1996, the trial court issued an order denying petitioners' motion for production of document since the same is neither in the possession nor control of Severina.[3]

On July 29, 1996, at the pre-trial Severina orally moved that a hearing on her affirmative defenses be conducted, as if a motion to dismiss had been filed, which petitioner opposed.

The trial court conducted hearings. Severina simply presented documents consisting of the decision in LRC Case No. Pq-561-P.

On July 15, 1997, the trial court issued an order denying Severinas' affirmative and special defenses, the dispositive portions of which reads:

"In the light of the foregoing, the Affirmative/Special defenses interposed by herein defendant Corporation is hereby DENIED for lack of factual and legal basis.

"SO ORDERED."[4]

On October 28, 1997, respondents filed with the Court of Appeals a petition for certiorari to nullify the orders of the trial court.[5]

After due proceedings, on June 19, 1998, the Court of Appeals promulgated a decision, the dispositive portion of which reads:

"WHEREFORE, the orders dated 15 July 1997 and 7 October 1997 are hereby SET ASIDE and the complaint in Civil Case No. 96-0111 entitled "ENCARNACION, MATEA, LAUREANA, FRANCISCO, RUFINA, MARINA and RICARDO, all surnamed ESPIRITU, the Heirs of FLORA ESPIRITU, namely: MERCEDES, RODOLFO, CHARITO, CERILLO, EFREN and ADELAIDA, all surnamed TRINIDAD, Plaintiffs, versus SEVERINA REALTY CORPORATION and the REGISTER OF DEEDS OF PARANAQUE, Defendants," is ordered DISMISSED.

"SO ORDERED."[6]

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Hence, this petition.[7]

The Issues

Petitioners raise the following issues:[8]

- Whether or not the Court of Appeals erred in dismissing Civil Case No. 96-0111, on the ground of prescription of action; and

- Whether or not the Court of Appeals erred in ruling that the complaint is barred by res judicata

.
According to petitioners, the Court of Appeals overlooked that lapse of time is not the only determining factor in computing prescription of actions. Aside from time, the nature of the action is to be taken into consideration because there are actions that the law declares to be imprescriptible.[9]

Petitioners argue that an action for declaration of the nullity of a fictitious and simulated deed of sale is imprescriptible. Under Article 1410, Civil Code, the action or defense for the declaration of the inexistence of a contract does not prescribe.[10]

The fact that the contract of sale is fictitious is evident in the testimony of Encarnacion Espiritu, an heir of the late Daniel Espiritu. She testified that the property, consisting of almost one (1) hectare, was taken by Severina through the use of a fake document. Severina did not even have a xerox copy of the deed of sale supposedly signed by Flora Espiritu conveying the property to Investment and Development, Inc., which then sold the property to Severina.

We agree that an action for declaration of the inexistence of a contract does not prescribe.[11]

As to the second issue, petitioners posit the view that before res judicata may be invoked as a bar to subsequent action, it is essential that the person must be bound by prior proceedings. He must be a party thereto and must have been notified of the proceedings. In Vencilao v. Vano,[12] "we held that when a person is a party to a registration proceeding or when notified he does not want to participate and only after the property has been adjudicated to another and the corresponding title issued, he files an action for reconveyance, the doctrine of res judicata will bar him." Clearly then before res judicata may set in, petitioners must have been notified of LRC Case No. Pq-561-P.

There is no evidence to show that petitioners were notified of the LRC proceedings. In the absence of such determination, the Court of Appeals erred in applying res judicata for if it turns out that there was no such notice and due process, the LRC decision was void, and in legal effect, was no judgment at all.[13]

Under the principle of res judicata, a former judgment would bar a subsequent action when the following requisites concur: (1) It must be a final judgment or order; (2) the court rendering the same must have jurisdiction over the subject matter and over the parties; (3) it must be a judgment or order on the merits; (4) there must be between the two cases, identity of parties, identity of subject matter and identity of action.[14] A judgment which is void ab initio is non-existent and cannot acquire finality.[15]

In this case, there is no identity of subject matter and causes of action. An action for declaration of the inexistence of contract is not identical to a land registration proceedings.

The Fallo

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals in CA-G. R. SP No. 45754, is REVERSED and SET ASIDE. Let the case be remanded to the trial court for further proceedings.

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No costs.

SO ORDERED.

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

[+] Deceased.

[1] In CA-G. R. SP No. 45754, promulgated on June 19, 1998. Guerrero, J., ponente, Buena (now Supreme Court Associate Justice) and Hormachuelos, JJ., concurring.

[2] Petition, Annex "A", Rollo pp. 26-31, at pp. 27-29.

[3] Petition for Review, Rollo, p. 9.

[4] Petition, Annex "D", Rollo, 48-50.

[5] Petition, CA Rollo, pp. 1-20.

[6] Petition, Annex "A", Rollo, pp. 26-31, at pp. 30-31.

[7] Petition for Review, Rollo, pp. 3-24. On August 2, 1999, we gave due course to the petition (Rollo, pp. 131-132).

[8] Ibid., pp. 11, 17.

[9] Ibid., p. 12.

[10] Ibid.

[11] Article 1410, Civil Code.

[12] 182 SCRA 491, 499 [1990].

[13] Republic v. Court of Appeals, 368 Phil. 412, 424-425 [1999], citing MWSS v. Sison, 124 SCRA 394, 404 [1983]; Arcelona v. Court of Appeals, 345 Phil. 250, 286-287 [1997], citing Leonor v. Court of Appeals, 326 Phil. 74, 88 [1996]; AFP Mutual Benefit Asso., Inc. v. NLRC, 334 Phil. 712, 725 [1997]; People v. Velasco, G. R. No. 127444, September 13, 2000.

[14] Dr. Santos v. Gabriel, 150-A Phil. 641, 646-647 [1972]; Viray v. Marinas, 151 Phil. 148, 153 [1973]; Benin v. Tuason, 156 Phil. 525, 586 [1974]; Firestone Ceramics, Inc. v. Court of Appeals, 313 SCRA 522, 536 [1999].

[15] Barde v. Posiquit, 164 SCRA 304, 311 [1988]; Leonor v. Court of Appeals, supra, Note 13, citing Banco Español-Filipino v. Palanca, 37 Phil. 921, 949 [1918].

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