

**ESTELA FRANCISCO DE LASALA AND VIVENCIO LASALA, ET AL.,
PLAINTIFFS AND APPELLEES VS. PEDRO SARNATE AND REMEGIO
PILLADO, DEFENDANTS AND APPELLANTS.***G.R. No. 15925. November 29, 1960*

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

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Appeal from an order of the Court of First Instance of Negros Occidental dated December 15, 1956, in its Civil Case No. 2458, dismissing the third-party complaint filed by, defendant Remegio Pillado against the Philippine National Bank and Cirilo Abrasia as Register of Deeds of that province. Originally brought to the Court of Appeals, the appeal¹ was certified to us by that Court because only questions, of law are involved therein.

The facts appear, to be as follows:

On March 26, 1940, the spouses Luis Pillado and Silveria Catino secured a loan from the appellee Philippine National Bank in the amount of P300 and as security therefor, mortgaged to the Bank Lot No. 283 of the La Carlota Cadastre. The loan fell due on March 26, 1941, and as no payment was made by the debtors, the bank foreclosed the mortgage in accordance with the provisions of Act No. 3135 and acquired the land as the highest bidder. On September 18, 1942, the one-year period of redemption of the debtors expired, and on December 17, 1943, the bank obtained Transfer Certificate of Title No. 189 in its name. Later, on March 26, 1952, the bank sold the lot in question to the spouses Estela Francisco and Vivencio Lasala and accordingly, Transfer Certificate of Title No. 9455 was issued to said spouses.

Less than two months thereafter, or on May 8, 1952, Remegio Pillado, et al., heirs of the spouses Luis Pillado and Silveria Catino, instituted Civil Case No. 2306 against the spouses Estela Francisco and Vivencio Lasala and the Philippine National Bank, to declare the nullity of the foreclosure sale of Lot 283 by the bank in 1941, and its subsequent conveyance to the spouses Francisco and Lasala. The bank answered the complaint, while the spouses Francisco and Lasala filed a motion to dismiss on the grounds that the complaint did not state a cause of action, that plaintiffs did not have legal capacity to sue, and that the action had prescribed. On August 2, 1952, the court dismissed the complaint, and when plaintiffs appealed to this Court from the order of dismissal (G. R. No. L-6222), we dismissed the appeal on May 4, 1953 for appellants' failure to file their brief on time.

The dismissal of Civil Case No. 2306 having become final, the spouses Estela Francisco and Vivencio Lasala filed the present action (Case No. 2458) for ejectment against Remegio Pillado, judicial administrator of the intestate estate of the deceased spouses Luis Pillado and Silveria Catino, and his tenant Pedro Sarnate, to recover possession of Lot No. 283 and damages. Defendants answered, asserting the invalidity of the title obtained by plaintiffs from the Philippine National Bank over said lot, and, with the permission of the court, filed a third-party complaint against said bank, again attacking the legality of the foreclosure sale made by it of the lot in question in 1941, and its subsequent sale to the plaintiff spouses. The bank moved to dismiss the third-party complaint on the grounds of bar by the prior judgment in Civil Case No. 2306 and by the statute of limitations; but the motion was

apparently denied, because on March 23, 1955, the bank filed its answer to the third-party complaint, reiterating the objections averred in its previous motion to dismiss.

It appears that all this time, Civil Case No. 2306, reclaimed pending in the trial court with respect to the defendant Philippine National Bank. On January 30, 1956, however, the bank filed a motion to dismiss that case (No. 2306) as to it, on the ground that the court had lost, or had been divested of, jurisdiction over the case, because of the sale of the action against the other defendants Estela Francisco and Vivencio Lasala, who were indispensable parties therein: The Court sustained the motion, and on February 28, 1958 dismissed the case as against the bank. From this order of dismissal, plaintiffs Pillado, et al. again appealed to this Court, which subsequently upheld the Court below (G.R. No. L-12006).

In view of the dismissal of Civil Case No. 2306 against it by the court a quo, the Philippine National Bank filed in this case (Civil Case No. 2458) on November 3, 1956, a second motion to dismiss the third-party complaint filed against it by defendant Pillado, on the grounds (1) that the court, had no jurisdiction over said complaint because the spouses Estela Francisco and Vivencio Lasala, who were indispensable parties therein—could no longer be impleaded on the ground that they had already been released by the final judgment of dismissal in their favor in the previous case Civil Case No. 2806; and (2) that another action was pending between the same parties, namely, Civil Case No. 2306. The court found the second motion to dismiss well-founded in so far as it asked dismissal on the ground of the pendency of Civil Case No. 2306 between the same parties, and on December 16, 1966 dismissed the third-party complaint on that ground. Not agreeable to this order of dismissal, third-party plaintiff Remegio Pillado interposed the present appeal, claiming (1) that it was anomalous and illegal for the lower court to dismiss the complaint on a second motion to dismiss of the appellee bank, after the bank's first motion to dismiss had already been denied and it had already filed an answer to the complaint; and (2) that the third-party complaint should not have been dismissed on the ground of the pendency of Civil Case No. 2306, because the parties, subject-matter, and cause of action, in the two cases are not identical.

It is unnecessary for us to discuss appellant's first argument, because during the pendency of this appeal before this Court, we in the meantime decided G. R. No. L-12006 on January 31, 1969, affirming the order of dismissal of Civil Case No. 2306 against the Philippine National Bank, not only because the preceding dismissal of the same case as regards the defendants Francisco and Lasala (the buyers of the lot in question from the bank) made it impossible for the court below to grant plaintiff's demands, principally the revocation of the deed of sale in favor of said buyers, but also because the dismissal of said case as against the defendants Francisco and Lasala also operated as a dismissal against the defendant bank. On this second point, we said:

"It should further be observed that the Court's order (August 2, 1952) upon the spouses' motion to dismiss directed the 'dismissal of the complaint with costs against plaintiffs.' It did not order, 'dismissal of the complaint in so far as said spouses were concerned.' And the grounds alleged in the motion to dismiss were reasons which the bank could itself invoke. Therefore, such order of August 2, 1952 upon becoming final, should have written 'finis' to this litigation because in effect, it held that plaintiffs had no cause of action against the defendants and that, their action for annulment, if any, had prescribed."

The appellee bank, it should be noted, pleaded *res judicata* (i.e., the final order of dismissal in Civil Case No. 2306) against appellant's third-party complaint twice: in its first motion to dismiss, and again in its answer. Our ruling in G. R. No. L-12006 above-quoted shows that the third-party complaint should 'have been dismissed' on that ground. Considering, however, that this ruling only came after the lower court had already dismissed the complaint on another ground—namely, the pendency between the same parties of the very action (Civil Case No. 2306) that we subsequently declared (in G.R. No. L-12006) to have been long dismissed as against the appellee bank, we believe we can now sustain and affirm the lower court's order of dismissal in its Case No. 2458 on the

ground of the dismissal of Case No. 2806.' It is of no moment that, as stressed by appellant, the lower-court had already denied the bank's first motion to dismiss (wherein *res judicata* was pleaded) when the latter order sustaining the bank's second motion to dismiss was issued; because, as already stated, the same plea of *res judicata* was included as a special defense in the bank's answer to the third-party complaint. The order of denial of the first motion to dismiss being, merely interlocutory, the lower court could, at any time thereafter, acting on the special defense of *res judicata* pleaded in the bank's answer, reconsider and reverse its first order and issue another dismissing the third-party complaint, under its inherent power "to amend and control its process and orders so as to make them conformable to law and justice" (sec. 5 [g], Rule 124, Rules of Court.)

But appellant contends that there is no identity of parties, subject-matter, and cause of action in Civil Case No. 2306 and his present third-party complaint in Case No. 2458, to make the dismissal of said Civil Case No. 2306 *res judicata* on the latter complaint. We think appellant errs in this respect. The parties in the two actions are the same: appellant Pillado, in his capacity as the judicial administrator of the intestate estate of the deceased spouses Luis Pillado and Silveria Catinoy[1], and the appellee bank. The inclusion of Cirilo Abrasia, Register of Deeds for the Province of Negros Occidental, as party-defendant in the third-party complaint, does not affect this identity of parties for the operation of the rule; for it is settled that although new parties are joined in the second action, there is still *res judicata* if the party against whom the judgment is offered in evidence was a party in the first action (*Peñalosa vs. Tuason*, 22 Phil., 303, 323), otherwise a case can always be renewed by the mere expedient of joining new parties in the second or new suit (*Alzua vs. Johnson*, 21 Phil., 308; *Alejandrino vs. Cardona* and Register of Deeds of Tarlac, 70 Phil., 281). As for the subject-matter and the cause of action in the two cases, they are also the same; Lot 283 of the La Carlata Cadastre, and the supposed nullity of the foreclosure sale of said lot made by the appellee bank in 1941, and of the subsequent sale thereof by the bank to the spouses Estela Francisco and Vivencio Lasala: All the essential elements for the operation of *res judicata* are, consequently, satisfied in the two cases.

Appellant finally argues that the present action is for ejectment, while the first action—Civil Case No. 2306—was for annulment of sale; and cites our ruling in G.R. No. L-6663 (*Pillado vs. Estela Francisco and Vivencio Lasala, and the Philippine National Bank*)[2] that a cause for the recovery of possession based on one's right as registered owner is different from a cause based on the alleged invalidity of the sale of the same land to said registered owner. This ruling, however, has no bearing on the present appeal, because what is sought to be dismissed here (on the ground of the finality of the former order of dismissal in Civil Case No. 2306) is not the main case for ejectment filed by the spouses Francisco and Lasala: against appellant, but the third-party complaint filed by appellant Pillado against the appellee Philippine National Bank, which is an entirely different action from the ejectment suit. As already stated; there is identity of causes of action in the former case (Civil Case No. 2306) and appellant's present third-party complaint, because both actions were brought by appellant upon the same cause (1) the supposed nullity of the foreclosure sale of the lot in question made by the appellee bank in 1941, and (2) the nullity of the subsequent sale of the same land by the bank to the spouses Francisco Lasala, plaintiffs in the action for ejectment against appellant. The final order of dismissal of Civil Case No. 2306 as to the appellee bank, therefore, bars the present third-party complaint; and as already pointed out, the order of dismissal appealed from in the present case can just as well be affirmed and sustained on this ground.

Wherefore, the order appealed from is affirmed, with costs against appellant Remegio Pillado.

Paras, C.J., Bengzon, Baustista Angelo, Labrador, Concepcion, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Order affirmed.

[1] While the original party plaintiffs in C.C. No. 2306 were the supposed heirs of these spouses, they were later substituted by Remigio Pillado, the judicially appointed administrator of the deceased spouses' intestate estate, by the court's order of August 6, 1952 (See Eec. on Appeal in G.R. No. L-6222, pp. 42-49.)

[2] This is another appeal taken by herein appellant Pillado to this Court against the order of the court below in C.C. No. 2458 denying his motion to dismiss the action for ejectment filed by spouses Francisco and Lasala against him, on the ground of the pendency of Civil Case No. 2306. The appealed order was affirmed by this Court on 30 July 1954 (95 Phil., 490)

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