

**JOSEFINA M. CRUZ AND ERNESTINA M. CONCEPCION, PETITIONERS,
VS. THE HON. COURT OF APPEALS, SECOND DIVISION, MARIANO
“BOY” BUNAG AND ROLANDO BUNAG, RESPONDENTS.***G.R. NO. 164797. February 13, 2006*

Ponente: CHICO-NAZARIO, J.

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Before Us is a Petition for Certiorari under Rule 65 of the Rules of Court which seeks to reverse and set aside the decision[1] of public respondent Court of Appeals dated 19 March 2004 which dismissed the petition for certiorari asking for the nullity of the 13 May 2003 Order of the Regional Trial Court of Gapan, Nueva Ecija, Branch 35, in Civil Case No. 2583-02, and its Resolution[2] dated 29 June 2004 denying petitioners' motion for reconsideration.

The antecedents are substantially stated by the Court of Appeals as follows:

There are four (4) cases involved in this controversy. The first case that was filed between the parties is Civil Case No. 4365 for Unlawful Detainer litigated before the Municipal Trial Court of Gapan, Nueva Ecija entitled “Josefina M. Cruz and Ernestina M. Concepcion, plaintiffs, vs. Mariano ‘Boy’ Bunag, Rolando Bunag, Remedios Bunag, et al., Defendants.” This case was decided on 6 November 1998 by the Municipal Trial Court in favor of herein petitioner Josefina M. Cruz and Ernestina M. Concepcion.

The second case is Civil Case No. 1600 for Quieting of Title, filed before the Regional Trial Court of Gapan, Nueva Ecija, Branch 36 with “Carlos L. Bunag, Elias Bunag Natividad, Mariano Bunag, Salud Bunag Clanaoc and Juliana Bunag Arevalo, as Plaintiffs and Josefina M. Cruz and Ernestina M. Concepcion as Heirs of Sps. Carlos Maniquis and Marina Bunag, as Defendants.” This case was dismissed for failure to prosecute as evidenced by the Regional Trial Court Order dated 10 March 2000.

The third case is Civil Case No. 2573-02 for Injunction, with “Mariano ‘Boy’ Bunag and Rolando Bunag as Petitioners against Carlos Bunag, Elias Bunag Natividad, Mariano Bunag, Salud Bunag Clanaoc and Juliana Bunag Arevalo as Defendants.” This case, which was filed before the Regional Trial Court of Gapan City, Branch 35, was dismissed on ground of res judicata. The 6 November 2002 Order, in effect, ruled that there is a substantial identity of parties in this case and in Civil Case No. 1600, a Petition for Quieting of Title.

The fourth case is the instant controversy for Annulment of Title With Damages. Docketed as Civil Case No. 2583-02, it was lodged by herein private respondents Mariano “Bo[y]” Bunag and Rolando Bunag against herein petitioners Josefina M. Cruz and Ernestina M. Concepcion before the sala of Branch 35, Regional Trial Court of Gapan City.

It appears that herein petitioners interposed a Motion for Outright Dismissal of Civil Case No. 2583 which was granted by the Court a quo as evidenced by an Order dated 18 February 2003, ratiocinating:

x x x x x x x x

After a careful study of the arguments of both parties, the Court has found that herein case (2583) involve the

same parties, subject matter and issue as that in Civil Case No. 1600 which has become final and executory and Civil Case No. 2573-02 which was already dismissed by this Court on the ground of res judicata. In all three cases, Mariano Bunag was included as party-plaintiff and Ernestina Concepcion as party-defendant. The subject matter involves a parcel of land located in San Nicolas, Gapan City with an area of 1,160 square meters, more or less, and the issue is who between the two parties has the lawful title over the same. Clearly, not only res judicata but also accion pendiente lite is present in herein case which the plaintiffs and their counsel should have revealed in the Certificate/Verification of their complaint. The allegation that it is only now that they have learned of the existence of Civil Case No. 1600 is without merit considering that in the Motion for the Outright Dismissal of Civil Case No. 2573, dated September 19, 2002, its existence was already disclosed and even became the ground for the dismissal of Civil Case No. 2573 on the ground of res judicata.

Moreover, the Certification against forum shopping does not only refer to final and executory actions but also to pending controversies. Considering that plaintiffs have been represented by the same counsel in Civil Case No. 2573 and herein case (Civil Case No. 2583-02), it is very clear that plaintiffs counsel is apprised (sic) of the existence of Civil Case No. 1600 and Civil Case No. 2573.

WHEREFORE, premises considered, the Motion for Outright Dismissal is granted by reason of res judicata and accion pendiente lite and the plaintiffs and their counsel are declared guilty of indirect Contempt of Court by reason of non-disclosure of Civil Case No. 1600 and Civil Case No. 2573 as required by Section 5, Rule 7 of the Revised Rules of Court and ordered them to pay a fine of P1,000.00 each.

SO ORDERED. (Rollo, p. 36)

X X X X X X X X

However, when herein private respondents interposed their Motion for Reconsideration, the court a quo reversed itself and reinstated the present case, the fallo of the herein assailed Order reads:

X X X X X X X X

In the light of the foregoing, the Order dated February 18, 2003 of this Court, granting defendants' Motion for the Outright Dismissal of this case and citing plaintiffs and counsel for contempt of court is hereby reconsidered and set aside. Accordingly, the instant case is reinstated and the defendants are directed to file their answer/responsive pleading within fifteen (15) days from receipt of this order.

SO ORDERED. (Rollo, pp. 11-13)[3]

Via petition for review, petitioners went to the Court of Appeals. The latter dismissed the petition for lack of merit. It ruled that one of the elements of res judicata, i.e., that there must be, between the first and the second actions, identity of parties, of subject matter and of cause of action, is lacking. It explained:

First. The issue in the Injunction case is the propriety of the demolition order; while in the present action (Petition for Annulment of Title With Damages), the pivot of inquiry is the ownership of the controversial estate.

Second. Private respondent Mariano Bunag denied that he authorized Carlos Bunag to sign the Verified Complaint in his behalf. Because of this, Mariano Bunag cannot be considered as a party litigant in the Injunction case. Concomitantly, there is no identity of parties between the present case and in Civil Case No. 2573-02 (Injunction). As correctly ruled by the trial court, thus:

“X X X X X X X X

While it is true that this Court has earlier made a declaration in Civil Case No. 2573 that Carlos Bunag was authorized by his co-plaintiffs to file Civil Case No. 1600 including herein plaintiff Mariano Bunag, against herein defendants, such declaration was based on the verified complain[t] signed by Carlos Bunag. In the

absence of any evidence to the contrary, the Court has to assume that indeed Carlos Bunag was authorized by his co-plaintiff Mariano Bunag to file Civil Case No. 1600. However, with the submission of the affidavit of Mariano Bunag on April 14, 2003, wherein he claimed that Civil Case No. 1600 for quieting of title was filed without his knowledge by Carlos Bunag for and in behalf of the other plaintiffs including himself, the verified complaint of Carlos Bunag is now disputed.

The categorical denial of Mariano Bunag that he was not aware that Carlos included him as one of the plaintiffs in Civil Case No. 1600 for quieting of title has disputed the verified complaint of Carlos Bunag. What is more, Rolando Bunag, one of the herein plaintiffs was never made a party in the said Civil Case No. 1600 for quieting of title. Since Mariano Bunag did not authorize nor give his consent to Carlos Bunag to include him as one of the plaintiffs in Civil Case No. 1600 and that herein plaintiffs Rolando Bunag is not a party to the said case, the dismissal of Civil Case No. 1600 will not bind them. Hence, the dismissal of Civil Case No. 1600 will not bar the filing of the instant complaint as one of the requisites of res judicata is absent. There is no identity of parties between Civil Case No. 1600 and the instant case for the simple reason that herein plaintiffs were not parties in Civil Case No. 1600 as discussed above. Consequently, plaintiffs and their counsel can not be said to have violated the rule against forum shopping. Plaintiffs and their counsel did not file Civil Case No. 1600 and therefore they are not obligated to inform this Court that they have filed a similar action involving the same issue with other court.

x x x”

Third. As the court of justice abhors the disposition of the case based on technicalities, this Court further concurs with the trial court’s disquisition, to quote:

x x x x x x x x

Moreover, substantial justice demands that technicalities should not be allowed to prevail over the substantive rights of a party-litigant. If the subject property is really owned by the plaintiffs, then it would be the height of injustice if they are not allowed to prove their cause of action because of mere technicality. It would amount to deprivation of their property without due process.[4]

Petitioners filed a motion for reconsideration[5] which was denied in a resolution dated 29 June 2004.[6]

Dissatisfied, petitioners are now before us charging that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed decision and resolution.[7]

Petitioners contend that all the elements of res judicata are present in the instant case. They argue that the shuffling of parties should not prevent the application of res judicata considering that three prior cases (Civil Case No. 4365 for Unlawful Detainer, Civil Case No. 1600 for Quieting of Title and Civil Case No. 2573 for Injunction) against substantially the same parties over the same subject matter and cause of action have all been decided in their favor. They point out that private respondent Mariano “Boy” Bunag was one of the parties in the Ejectment and Quieting of Title cases (and Injunction), and that his allegation in his affidavit that he neither authorized Carlos Bunag to include him in the Quieting of Title case nor was he (Mariano) informed thereof, leaves too much to be desired and that same was merely intended for delay. As regards the non-inclusion of private respondent Rolando Bunag in the case for Quieting of Title but who was a party in the Ejectment case (as well as in the Injunction case), they claim that same was in preparation for this stage of the proceedings. They added that insofar as identity of causes of action is concerned, it cannot be denied that the ownership and its concomitant right of possession are the issues in the cases for Quieting of Title, Injunction and Annulment of Title.

In their comment,[8] private respondents Rolando Bunag and Monina Luzong Vda. de Bunag[9] maintain that the public respondent did not err when it held that there was no res judicata in the instant case and that the disposition

of the case should not be based on technicalities.

The question to be resolved is: Does *res judicata* apply in the case at bar?

Under the rule of *res judicata*, also known as “bar by prior judgment,” a final judgment or order on the merits, rendered by a Court having jurisdiction of the subject matter and of the parties, is conclusive in a subsequent case between the same parties and their successor-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity. The requisites essential for the application of the principle are: (1) there must be a final judgment or order; (2) said judgment or order must be on the merits; (3) the Court rendering the same must have jurisdiction on the subject matter and the parties; and (4) there must be between the two cases identity of parties, identity of subject matter, and identity of causes of action.[10]

Petitioners claim *res judicata* applies in this case because all the elements thereof are present. On the other hand, private respondents argue the contrary alleging that the second and fourth elements are lacking.

There being no dispute as to the presence of the first and third elements, we now determine if the second and fourth elements are attendant in the case.

On the second element, private respondents argue that the dismissal of Civil Case No. 1600 (for Quieting of Title) was not a dismissal on the merits. The dismissal of this case, they claim, will not bar the filing of the instant case (Civil Case No. 2583-02 for Annulment of Title) because there was neither litigious consideration of the evidence nor any stipulations submitted by the parties at the trial. In fact, there was no pre-trial conference and that after four years of court inactivity, the case was dismissed for failure to prosecute.[11]

Their argument does not hold water. Section 3 of Rule 17 of the 1997 Rules of Civil Procedure provides:

Section 3. Dismissal due to fault of plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.[12]

The rule enumerates the instances where the complaint may be dismissed due to plaintiff's fault: (1) if he fails to appear on the date for the presentation of his evidence in chief; (2) if he fails to prosecute his action for an unreasonable length of time; or (3) if he fails to comply with the rules or any order of the court. Once a case is dismissed for failure to prosecute, this has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal. In other words, unless there be a qualification in the order of dismissal that it is without prejudice, the dismissal should be regarded as an adjudication on the merits and is with prejudice.[13] The order dismissing Civil Case No. 1600 reads:

For failure of the plaintiffs as well as counsel to appear on several settings despite due notices, precisely for the reception of plaintiffs' evidence, upon motion of the defendant through Atty. Mark Arcilla, this case is dismissed for failure to prosecute.[14]

It is clear from the afore-mentioned order that said case was dismissed, upon petitioners' motion, for failure of private respondents and their counsel to attend several scheduled hearings for the presentation of their evidence. Since the order did not contain a qualification whether same is with or without prejudice, following Section 3, it is deemed to be with prejudice and shall have the effect of an adjudication on the merits. A ruling based on a motion to dismiss, without any trial on the merits or formal presentation of evidence, can still be a judgment on the

merits.[15]

We now go to the fourth element – identity of parties, subject matter and cause of action.

Petitioners, citing jurisprudence, argue that *res judicata* is not defeated by a minor difference of parties, as it does not require absolute but only substantial identity of parties[16] in light of the fact that three prior cases before the instant case have been decided in their favor against substantially the same parties over the same subject matter and cause of action.

Public respondent ruled there was no identity of parties for two reasons: (1) Private respondent Mariano Bunag was not a party litigant in the Quieting of Title[17] case because he denied in an affidavit that he authorized Carlos Bunag to sign the Verified Complaint and to make him a party thereof; (2) Private respondent Rolando Bunag was not made a party in the Quieting of Title case.

Private respondent Mariano “Boy” Bunag’s claim that the Quieting of Title case was filed without his knowledge does not inspire belief. In the decision of the trial court in Civil Case No. 4365 (for Unlawful Detainer), it is very clear that the defendants in said case that included both private respondents, have knowledge of the pendency of the Quieting of Title case. A portion of the decision[18] reads:

Defendants claim of ownership of the property involved in this case which is now pending with the Regional Trial Court of Gapan, Nueva Ecija (paragraph 3, Pre-Trial brief of defendants) where the issue of ownership is the subject of the proceedings x x x.

It was the defendants, through their trial brief, that informed the court hearing the ejectment case that a case (Civil Case No. 1600 for Quieting of Title) is pending where the issue of ownership is the subject of the proceedings. Thus, as early as the pendency of the Ejectment case, private respondents had known of the case for Quieting of Title. If he really did not authorize Carlos Bunag to include him as one of the plaintiffs in the Quieting of Title case, he could have easily questioned his inclusion therein at an earlier time. This, he did not do. He executed his affidavit only on 14 April 2003 or more that three years after the case for Quieting of Title has been dismissed, and after the Injunction case which he and private respondent Rolando Bunag filed, was dismissed. It is evident that his affidavit is a mere afterthought executed after his Motion for Reconsideration in the injunction case was denied because the court gave no weight on his counsel’s allegation that he (Mariano Bunag) was unaware of the complaint signed and filed by Carlos Bunag. It is too late in the day for him to claim lack of knowledge. It is very clear that the execution of the affidavit is to make it appear that there is no identity of parties in the instant case and in the case for Quieting of Title.

Private respondents add that since Rolando Bunag was not a party in the Quieting of Title case, the dismissal of said case will not bind him and thus not bar the filing of the instant case.

We do not agree. The principle of *res judicata* may not be evaded by the mere expedient of including an additional party to the first and second action. Only substantial identity is necessary to warrant the application of *res judicata*. The addition or elimination of some parties does not alter the situation. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case.[19]

In the case at bar, it is apparent that from the face of the complaint for Quieting of Title, private respondent Rolando Bunag was not a party therein as his name does not appear in the title. This, notwithstanding, his claim and that of the plaintiffs therein, which included private respondent Mariano Bunag, are the same – to be declared the true owners of the parcel of land covered by Original Certificate of Title (OCT) No. 22262 and Transfer Certificate of Title (TCT) No. 67161 of the Registry of Deeds of Nueva Ecija. Private respondent Rolando Bunag

and the plaintiffs are all heirs of the alleged owners of the parcel of land covered by OCT No. 22262. Private respondent Rolando Bunag, though not a party therein, shared an identity of interest from which flowed an identity of relief sought, namely, to declare them the true owners of the parcel of land covered by OCT No. 22262 and TCT No. 67161. Such identity of interest is sufficient to make them privy-in-law, thereby satisfying the requisite of substantial identity of parties.

As regards the identity of subject matter, we find that there is. In both Civil Case No. 1600 (for Quieting of Title) and Civil Case No. 2583 (for Annulment of Title), what is involved is one and the same parcel of land covered by TCT No. 67161.

We likewise rule that there is identity of causes of action. Hornbook is the rule that identity of causes of action does not mean absolute identity. Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.[20] In *Stilianopulos v. The City of Legaspi*,[21] this Court had this to say:

The underlying objectives or reliefs sought in both the quieting-of-title and the annulment-of-title cases are essentially the same -- adjudication of the ownership of the disputed lot and nullification of one of the two certificates of title. Thus, it becomes readily apparent that the same evidence or set of facts as those considered in the quieting-of-title case would also be used in this Petition.

The difference in form and nature of the two actions is immaterial and is not a reason to exempt petitioner from the effects of *res judicata*. The philosophy behind this rule prohibits the parties from litigating the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. Verily, there should be an end to litigation by the same parties and their privies over a subject, once it is fully and fairly adjudicated.

Civil Case No. 1600 was for Quieting of Title, while Civil Case No. 2583 is for Annulment of Title with Damages. The two cases are different only in the form of action but an examination of the allegations in the second case would reveal that the issue raised – ownership of the land -- and the relief sought – be declared as owner and TCTs be issued in their names -- are substantially the same. The evidence required to substantiate their claims are likewise the same. The proceedings in the instant case, if permitted to continue, would entail the presentation of evidence which should have been adduced in the case for Quieting of Title. The case for Annulment of Title is simply a second cycle of review involving a subject matter that has already been decided with finality in the Quieting of Title case.

Finally, private respondents ask that the instant case be not decided based on technicalities, for substantial justice demands that technicalities should not be allowed to prevail over the substantive right of a party litigant.

We find no reason not to adhere to the doctrine of *res judicata*. A case for Quieting of Title had been filed for the purpose of determining the ownership of the subject land, but same was dismissed because the plaintiffs therein failed to attend the scheduled hearings for the presentation of their evidence. As above discussed, the dismissal was an adjudication on the merits. They had all the opportunity to present all the evidence for their cause but they failed to do so. It is undeniable that there was no denial of due process in this case.

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 - republicae ut sit 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. A contrary doctrine would subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.[22]

WHEREFORE, premises considered, the petition is GRANTED. The decision of the Court of Appeals dated 19 March 2004 and its resolution dated 29 June 2004 are REVERSED and SET ASIDE. Civil Case No. 2583-02 for Annulment of Title with Damages, pending before Branch 35 of the Regional Trial Court of Gapan City, Nueva Ecija, is hereby ordered DISMISSED. With costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Callejo, Sr., JJ., concur.

[1] CA rollo, pp. 71-78; Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring.

[2] Rollo, p. 22.

[3] Id., pp. 14-17.

[4] Id., pp. 18-20.

[5] CA rollo, pp. 79-82.

[6] Rollo, p. 22.

[7] Id., p. 5.

[8] Id., pp. 50-52.

[9] Substituting her husband private respondent Mariano "Boy" Bunag per Resolution dated 22 June 2005.

[10] Firestone Ceramics v. Court of Appeals, 372 Phil. 401, 404 (1999).

[11] Rollo, p. 93.

[12] Prior to the 1997 Rules of Civil Procedure, Sec. 3 of Rule 17 of the Revised Rules of Court reads:

Section 3. Failure to Prosecute - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.

[13] De Knecht v. Court of Appeals, 352 Phil. 833, 850 (1998).

[14] Rollo, p. 38.

[15] Luzon Development Bank v. Conquilla, G.R. No. 163338, 21 September 2005.

[16] Manila Electric Company v. Philippine Consumers Foundation, Inc., 425 Phil. 65, 80 (2002).

[17] Not in the Injunction Case as erroneously stated by the public respondent in page 6 of its decision. Rollo, p. 18.

[18] MTC decision, p. 5; Rollo, p. 27.

[19] Heirs of the Late Faustina Adalid v. Court of Appeals, G.R. No. 122202, 26 May 2005, 459 SCRA 27, 39.

[20]Luzon Development Bank v. Conquilla, supra note 15.

[21] 374 Phil. 879, 897 (1999).

[22] Heirs of the Late Faustina Adalid v. Court of Appeals, supra note 19.

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