

**JUAN SUMERARIZ AND LUISA SUMERARIZ,
PLAINTIFFS-APPELLANTS, VS. DEVELOPMENT BANK OF THE
PHILIPPINES AND PHIL-IPPINE SURETY AND INSURANCE CO., INC.,
DEFENDANTS-APPELLEES.**

G.R. No. 23764. December 26, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This appeal, from a decision of the Court of First Instance of Manila, is before us upon certification by the Court of Appeals, only ques-tions of law being involved therein.

The relevant facts are: On September 15, 1948, plain-tiffs herein, Juan Sumerariz, and his wife, Luisa Sumerariz, constituted, in favor of the Rehabilitation Finance Corporation - now Development Bank of the Philippines, and hereinafter referred to as the Bank - a real estate mortgage on two (2) parcels of land forming part of San Andres Subdivision, Manila, and covered by Transfer Certificate of Title No. 1442, in their names, including a house to be constructed thereon, to guarantee a P15,000.00 loan granted them by the Bank, payable within ten (10) years, at a given monthly amortiza-tion. In view of plaintiffs' failure to comply with the terms and conditions of their contract, the Bank asked the sheriff of Manila to take possession of the property and sell it at public auction. After several postponements made upon plaintiffs' request, the sale was set for March 29, 1955. Upon the behest of Juan Sumerariz, made the day before, the Bank agreed, however, to postpone the sale, if there was a token payment of at least P100.00, before 9:00 a.m., the next day. No such payment having been made, the Bank bought the property, on March 29, for P8, 000.00, as the highest bidder.

Subsequently, the Bank repeatedly notified the plain-tiffs that they could redeem the property within one (1) year, or not later than March 29, 1956, upon a down payment of P2,806.64, the balance payable in ten (10) years, at the rate of P166.50 per month. Instead of exercising the right of redemption, on March 26, 1956, plaintiffs instituted Civil Case No. 29306, of the Court of First Instance of Manila, against the Bank and the sheriff of Manila, to set aside the aforementioned foreclosure sale, upon the ground that the Bank had failed to comply with its agreement to postpone the auction sale scheduled to be held on March 29, 1956.

On July 19, 1956, while the case was pending in the trial Court, the Bank sold the property to the Philippine Surety and Insurance Co., Inc., hereinafter referred to as the Surety Co. Subsequently, or on January 13, 1958, said Court rendered a decision dismissing the complaint in Case No.29306, for the reason that plaintiffs had not redeemed the property within the period prescribed by law therefor and that the Bank had thereby become its absolute owner. Said decision was, on November 5, 1959, affirmed by the Court of Appeals, in CA-G.R. No. 25077-R. Plaintiffs petitioned the Supreme Court to review by certiorari the decision of the Court of Appeals; but, we denied the petition,[1] on February 5, 1960.

Soon later, or on March 16, 1960, plaintiffs com-menced the present action, in the Court of First Instance of Manila, against the Bank and the Surety Co., to annul the sale made to the latter by the Bank and to be allowed to

redeem the property in question. In their answer, de-fendants herein pleaded res judicata and prescription. They, moreover, set up a counter-claim for rentals, for the use of said property, until actual delivery thereof to the defendants, plus interest, attorney's fees and other expenses.

After appropriate proceedings, said Court render-ed a decision dismissing plaintiff's complaint and ordering them to vacate the property in question, as well as to pay P100.00 a month to the Bank, from March 30, 1960, until said property is vacated by the plaintiffs, with costs. Plaintiffs appealed to the Court of Appeals, which certified the case to us. They maintain that the lower court erred:

"1. In holding that the decision render-ed in Civil Case No. 29306, Court of First In-stance of Manila, entitled 'Juan Sumerariz and Luisa Sumerariz vs. Development Bank of the Philippines and Sheriff of Manila' is a bar to the present case.

"2. In holding that the filing of Civil Case No. 29306 in the Court of First Instance of Manila x x x did not suspend the period of redemption of the property in question.

"3. In not allowing the appellants to re-deem the properties in question in accordance with the manifestation and willingness of the ap-pellee development Bank of the Philippines to al-low the appellants to redeem their own properties.

"4. In requiring the appellants to pay rents for the properties in question to the appel-lee Development Bank of the Philippines from March 30, 1956 until appellants delivered the said properties to the appellee Bank."

It is urged that the present case is not barred by the decision in Case No. 29306 because there is, allegedly, no identity, either of parties, or of subject-matter, or of cause of action, between the two cases. This contention is mani-festly untenable.

Although not a party in the first case, the inclusion of the Surety Co. as defendant in the case at bar does not detract from the legal identity of both cases, because, by buying the property from the Bank, the Surety Co. became merely the Bank's successor in interest.¹ Neither does the absence, as party herein, of the sheriff, who was one of the defendants in the first case, negate said identity, in-asmuch as the sheriff was but a formal party in said pre-vious case, and is virtually a party in the present proceedings, although not explicitly mentioned as such therein.²

As stated in *Republic v. Planas*:¹

"The inclusion of the surety as party defendant in Civil Case No. 51080, where it is not so named in Civil Case No. 49206, can -not be invoked to nullify the effect on the for-mer case of the dismissal-order issued in the latter proceeding. It has been ruled that where the one who is offering a judgment as an estoppel and the party against whom it is being offered were both parties to the action, in which such judgment was rendered, it is no objection that the action included some additional parties who are joined in the second case.² Conversely, the operation of the final judgment or order in a previous case is not altered by the fact that somebody who was not a party in that first action has been impleaded in the second case. Otherwise, litigants can always re-new any litigation by the mere expedient of inclu-ding new parties."³

The subject-matter of both cases is, obviously, the same - the property in question. There is, likewise, identity of the cause of action. In the first case, the issue was the validity of the auction sale in favor of the Bank, which sale, plaintiffs contended, had been made in viola-tion of their agreement with the Bank. In the case at bar, plaintiffs maintain that the conveyance by the Bank to the Surety Co. is invalid, and this pretense is anchored upon the predicate that, when it took place, the property did not belong to the Bank, the sale in its favor by the sheriff having been made in violation of the alleged agreement aforementioned, which predicate had been rejected by the Court in the previous case. Similarly, the cause of action in the first case was based upon the alleged right of the

plaintiffs to the property in question, upon the ground that its sale to the Bank was illegal. This premise is, also, the corner-stone of plaintiffs' cause of action in the case at bar.¹

Moreover, the same evidence would have sufficed to support and establish the cause of action in both cases. In *Abes, et al. vs. Rodil, et al.*,² it was held:

"The test to determine the existence of res judicata is simply this: 'Would the same evidence support and establish both the present and the former cause of action?'"³ Here, the answer is in the affirmative. The evidence both in the cadastral proceedings and in the present reconveyance case, is directed at the question of ownership. It was held that where the first case is one for reivindicacion and the other for partition, the title of the case is unimportant. For the same evidence would support the one and the other.⁴ A similar rule obtains where the former cases were reivindicatory in character and the second are land registration proceedings.¹ Another example: The first case was for consolidation of title of the assignee in the land registration proceedings. This was objected to upon the ground that the deed of assignment was invalid as pactum commissorium. The court gave due effect to said document and ordered that assignor's titles be cancelled and new ones issued to the assignee. The second was an action for reformation upon the averment that the deed of assignment mentioned in the first case was an equitable mortgage. This Court declared that the issue in both suits is 'whether the deed of assignment vested in Monte de Piedad the ownership of the lots,' and held that the second action was barred by previous adjudication in the land registration case.² And where, as here, fraud was alleged in the first case and the same fraud was relied upon in the second, the judgment in former case operated as res judicata.³

Again, the issue of ownership of the property in question was settled in the first case. Accordingly, it may no longer be litigated in the case at bar.

Under the second assignment of error, plaintiffs maintain that the period of one (1) year to redeem the property in question was suspended by the institution of Case No. 29306, on March 26, 1956, or three (3) days before the expiration of said period. We have not found, however, any statute or decision in support of this pretense. Moreover, up to now plaintiffs have not exercised the right of redemption. In-deed, although they have intimated their wish to redeem the property in question, they have not deposited the amount necessary therefor. It may not be amiss to note that, unlike Section 30 of Rule 39 of the Rules of Court, which permits the extension of the period of redemption of mortgaged properties,¹ Section 3 of Commonwealth Act No. 459, in relation to Section 9 of Republic Act No. 85, which governs the redemption of property mortgaged to the Bank, does not contain a similar provision.² Again this question has been definitely settled by the decision in the previous case declaring that plaintiffs' right of redemption has already been extinguished in view of their failure to exercise it within the statutory period.

The third assignment of error's predicated upon an alleged willingness of the Bank to allow the plaintiffs to make such redemption. The Bank denies, however, having agreed thereto. Besides, this question of fact was not raised by plaintiffs in the lower court. Hence, it cannot be entertained in this appeal.³

The fourth assignment of error is premised on plaintiffs' alleged right of redemption, which was held, in the first case, to have expired already. It is thus clearly de-void of merit.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, with costs against plaintiffs-appellants.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] G. R. No. L-16423.

1 Baguinguito vs. Rivera, 56 Phil., 423; Barretto vs. Cabangis, 37 Phil., 98, Fetalino vs. Sanz, 44 Phil., 691; Clemente vs. Heacock Co., L-12786, October 29, 1959. See, also, Republic vs. Planas, L-21224, September 27, 1966; Philippine Farming Corporation vs. Llanos, L-21-14, August 14, 1965.

In Aguilar vs. Gamboa, L-10137, March 25, 1958, it was held:

"Where both the party offering a judgment as an estoppel and the party against whom it is offered were parties to the action in which the judgment is rendered, it is no objection that the action included some additional parties who are not joined in the present action x x x."

2 Bacaling vs. GSIS, L-20124, August 14, 1965.

1 L-21224, September 27, 1966.

2 Citing Aquino vs. Sanvictores, L-3397, July 27, 1951.

3 Citing Alzua vs. Johnson, 21 Phil., 308; Aquino vs. Sanvictores, supra; Samahang Magsasaka vs. Chua Guan, L-7252, February 25, 1955; Suarez vs. Giok Hong Que, L-7927, November 18, 1955.

1 Chua Tan vs. Del Rosario, 57 Phil., 411; Ma-ao Sugar Central Co. vs. Barrios, 79 Phil., 666; City of Ottumwa v. Nicholson, 143 N. W. 439, cited in 1 Moran 1963 ed., p. 91; Juan vs. Go Cotay, 26 Phil., 328; Baquioro vs. Barrios, et al., 77 Phil., 120; Suarez vs. Municipality of Naujan, et al., L-22282, Nov. 21, 1966; Angcao vs. Punzalan, L-20521, Dec. 28, 1964; Republic vs. Planas, supra; PHHC, et al. vs. Mencias, etc., et al., L-24114, August 16, 1967; Abes, et al. vs. Rodil, et al., L-20996, July 30, 1966.

2 L-20996, July 30, 1966.

3 Citing Peñalosa vs. Tuason, 22 Phil., 303, 322; Garcia vs. Court of Appeals, et al., L-19783, July 30, 1965; Philippine Farming Corporation, Ltd., etc. vs. Llanos, et al., L-21014, August 14, 1965.

4 Citing De Leon Vda. de Lontok vs. Padua, 75 Phil. , 548, 552, 553.

1 Citing Kidpalos, et al. vs. Baguio Gold Mining Co., L-19940 to 19944, August 14, 1965.

2 Franco, et al. vs. Monte de Piedad and Savings Bank, L-17610, April 22, 1963.

3 San Diego, etc. vs. Cardona, et al., 70 Phil., 281, 284.

1 Enage vs. Vda. e Hijas de F. Escaño, 38 Phil. , 657.

2 Nepomuceno vs. Rehabilitation Finance Corporation, L-14897, November 23, 1960.

3 Rule 46, Sec. 18; Toribio vs. Decasa, 55 Phil., 461; Sanagustin vs. Barrios, 68 Phil., 475; Talento vs. Makiki, 93 Phil., 855; Traders Insurance & Surety Co. vs. Golangco, et al., L-64422. Sept. 24, 1954; Subido, et al., vs. Lacson, et al., 55 Off. Gaz. 8281. See, also, Remonte vs. Bonto, L-19900, Feb. 28, 1966; Valdehueza vs. Republic, L-21032, May 19, 1966; Republic vs. Venturanza, L-20417, May 30, 1966; Pi-pero vs. Hechanova, L-22562, Oct. 22, 1966; City of Manila vs. Garcia, L-26053, Feb. 21, 1967; Yu Kimteng Const. vs. MRR, Co., et al., L-17027, March 3, 1967.

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