

**ASUNCION NUEVA-ESPAÑA, SPECIAL ADMINISTRATRIX OF THE
INTESTATE ESTATE OF THE DECEASED ATILANO MONTELIBANO,
PLAINTIFF AND APPELLANT, VS. VICENTE MONTELIBANO ET AL.,
DEFENDANTS AN...**

G.R. No. 37708. November 20, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

On April 25, 1918, the defendant herein Vicente Montelibano instituted civil case No. 1761 in the Court of First Instance of Occidental Negros, praying in the complaint therein that judgment be rendered against the plaintiff herein Atilano Montelibano in the sum of P14,000 together with interest thereon. Atilano Montelibano, the then defendant, interposed various counterclaims and cross-complaints, praying, among other things, that he be awarded the sum of P15,000 as indemnity for damages he had suffered from the unjust and unwarranted issuance to Vicente Montelibano of a writ of attachment against his properties. In the aforesaid case, the trial court rendered the following decision in connection with the counterclaim in question, to wit:

"With respect to the sum of P15,000 claimed by the defendant from the plaintiff as indemnity for damages suffered by him as a result of the preliminary attachment, this court is of the opinion, in the first place, that the evidence presented does not sufficiently justify the issuance of the writ of attachment in question. Neither does this court believe that there is sufficient evidence to support the defendant's claim that he suffered damages amounting to P15,000. According to Exhibit E, the properties attached were: a lot; an unfinished house of mixed materials, and two small houses built on said lot; a narra writing table; a two-wheeled carriage (quiles); an Australian horse; a native horse; two sets of harness; a four-circled chandelier, and a bull four years old. After considering the evidence presented and the circumstances of the case, the court estimates the damages suffered by the defendant from the aforesaid attachment, at P500.

"Wherefore, the court renders judgment:

"(a) Sentencing the defendant to indemnify the plaintiff in the sum of two thousand pesos (P2,000) together with legal interest thereon from May 1, 1918, until fully paid;

"(b) Holding that the writ of attachment issued in this case was without just nor sufficient legal ground and, therefore, the immediate cancellation thereof is hereby ordered; and sentencing the plaintiff, for this reason, to indemnify the defendant in the sum of five hundred pesos (P500); and

"(c) Holding that the defendant has a right, interest and participation in the sugar-cane which existed on the plaintiff's hacienda, 'Purísima Concepción', situated in Ymbang, within the municipality of Silay of this province, at the commencement of this suit.

"In all other respects, the plaintiff's complaint and the defendant's cross-complaints and counterclaims are hereby dismissed. (Exhibit A-11.)"

Both parties appealed from the judgment thus rendered. Atilano Montelibano's appeal was dismissed on the ground of abandonment. After reviewing Vicente Montelibano's appeal, this court affirmed the judgment rendered by the trial court therein.[1]

The case was remanded to the court a quo where a writ of execution was issued. There is a controversy as to whether or not the judgment in question was ever executed, but the trial court inferred from the evidence therein that it was finally executed. We are inclined to believe likewise, in view of the circumstances of the case. The deputy sheriff, in whose hands the writ of attachment in question was delivered for compliance therewith, is already dead and for this reason nobody could testify as to what had really transpired. Neither had the certificate of compliance therewith been introduced during the trial. At any rate, there are indications sufficiently strong to support the trial court's conclusion that the judgment rendered in that case was executed and satisfied, and such fact is corroborated further by the long time that has elapsed since then.

Sometime, later, Atilano Montelibano, who is already dead, filed a motion in the same case, praying that he be granted more indemnity for damages occasioned him by the erroneous issuance of the aforesaid writ of attachment. Inasmuch as five (5) years had already elapsed from the date of the final judgment, it was thought that such motion was untenable and that it was necessary to revive the said case by instituting a new action. It is for this reason that the present action under consideration was instituted, praying that a new judgment for P147,953.97, together with interest thereon from December 17, 1921, be rendered against Vicente Montelibano and his sureties in the writ of attachment, as indemnity for damages suffered by him from the unjust and unwarranted issuance of the aforesaid writ of attachment against his properties.

The special administratrix of the estate of Atilano Montelibano appealed from the trial court's decision absolving all of the defendants, with costs.

The trial court based its decision appealed from on the ground that the action instituted by the deceased Atilano Montelibano is untenable, in accordance with the provisions of section 439 of the Code of Civil Procedure, and that the question raised by the said party already constitutes *res judicata* inasmuch as it had been discussed and finally decided in civil case No. 1761.

We agree with these conclusions of law reached by the trial court. The action, or rather, the grounds for the complaint should have been incidentally raised in the aforesaid original case. This is the only exclusive remedy granted by the aforesaid section 439. Any alleged right of Atilano Montelibano to indemnity for damages resulting from the erroneous and unjustified issuance of the writ of attachment obtained by the then plaintiff in civil case No. 1761 had already been passed upon directly in the said case, and the judgment rendered therein constitutes a bar to the institution of a subsequent action based on the same grounds.

Wherefore, not finding any error¹ in the judgment appealed from, it is hereby affirmed in toto, with the costs against the appellant. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, and Hull, JJ., concur.

[1] G. R. No. 15543, *Montelibano vs. Montelibano*, promulgated December 2, 1921, not reported.

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