

**GABRIEL TEJEDOR ET AL., PLAINTIFFS AND APPELLANTS, VS.
MONSERRAT PALET ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 41718. May 29, 1935*

Ponente: DIAZ, J.

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The question raised in the appeal taken by the plaintiffs from the decision of the lower court dismissing their complaint is one of law rather than of fact. In plaintiffs complaint they asked that the defendants be ordered to deliver to them a piece of the land known as lot No. 2, block 379, of the cadastral survey of Manila, lying along lot No. 1 of the same block and fronting Mabini Street, or to pay them the sum of P12,969.90, with legal interest until fully paid.

In their brief, plaintiffs and appellants contend that the lower court committed the following errors in the appealed decision: (1) In not resolving the question of whether or not the plaintiffs were entitled to the entire area which the parties agreed was contained in the land adjudicated to them by the defendants; (2) in not entering judgment in accordance with the prayer of the complaint; and (3) in denying their motion for a new trial.

The facts presented to the lower court for the resolution of the question are those found in the stipulation of the plaintiffs and the defendants, dated November 6, 1933, the most important of which are as follows:

"1. Agustin Palet y Roca, married to Francisca Palet de Yedra was the owner of the two urban properties:

" (a) One of them, that situated in the intersection of A. Mabini (before Nueva) and Herran Streets, measuring 738.16 square meters, was purchased from Francisco de Paula Osorio y Cembrano, and noted on the back of folio 4, volume 3, of the South District of the register of deeds of Manila, Section of Malate, as Property No. 23, Inscription 3, And this property bearing No. 694 in the urban' police is the same as that designated in the Cadastral Plan of the City of Manila as lot No. 1, block No. 379.

"(b) And the other property, situated on A. Mabini Street (before Nueva), was acquired from Roman Martinez y Andueza, and is the same property designated in the Cadastral Plan of the City of Manila as lot 2, block No. 379.

"2. From the first of these two properties, that is the one designated as lot No. 1, block No. 379, a portion measuring 164 square meters was segregated for the purpose of widening A. Mabini and Herran Streets.

"3. That through a series of successions, the ownership of the two properties above-mentioned passed from heirs to heirs, until it became the properties of Rosa de Yedra, Rosa Palet y Palet, Monserrat Palet y Palet, and Dominga Palet y Palet; and it was the four last named who claimed the said properties in cadastral case No. 63, G. L. R. 0. Cad. Record No. 318 of Manila.

"4. On the death of Rosa de Yedra and Rosa Palet y Palet, the plaintiffs, as heirs of the latter and as coheir³ with others of the former, entered into an agreement with all the other coowners of the aforesaid properties, whereby Don Jose Oliver Bauza was authorized to adjudicate to said plaintiffs the house at No. 694 A. Mabini, Manila, as complete payment of plaintiffs' share in the properties left by the deceased spouses Agustin Palet y

Roca and Francisca Palet y de Yedra. By virtue thereof, the plaintiff Gabriel Tejedor Carbo, for himself and in behalf of his children, the other plaintiffs, as party of the second part; and, the said Don Jose Oliver Bauza in behalf of the other coowners, as party of the first part, executed the deed of partition, adjudication, and payment, dated February 6, 1926, the last part of which, entitled execution, states:

" 'In full and complete payment of his rights in the properties left by Don Agustin Palet y Roca and Dona Francisca Palet de Yedra, the undersigned Don Jose Oliver y Bauza, in his present capacity, adjudicates to Don Gabriel Tejedor y Palet in undivided four parts and in naked ownership the following property:

" 'A house consisting of two plants of strong materials with galvanized iron roof, measuring 994.53 square meters, of which the house and its accessories occupy 256.37 square meters, situated in the City of Manila (Philippine Islands) A. Mabini Street, No. 694, constituting the first lot of block No. 379, cadastral record No. 318 of said City of Manila, bounded on the North by lots 2 and 3 of the same block, on the East by lot 3 thereof; on the South by Herran Street, and on the West by A. Mabini Street; and the second, of the same block, bounded on the North by lots 5 and 4 thereof, on the East by lot 3, and on the South by lot 1, and on the West by A. Mabini Street.

" 'Said house was purchased by Don Agustin Palet y Roca from Don Francisco de Paula Ossorio y Cembrano as evidenced by a deed, dated May 1, 1896, acknowledged before the notary public of Manila, Don Calixto Reyes, substituted by his colleague A. Abraham Garcia; and the parties contractant mutually assess the same at 118,124 pesetas and 62 centavos.

" 'The property is noted in the register of deeds of Manila on the back of folio 4, volume 3, of the City Hall of Manila, south registry, Section of Malate, as property No. 23, inscription 3.

" 'By virtue of the foregoing, the grantor, in the capacity in which he acts, for himself and for those represented by him, renounces ownership of said property and conveys the same in full to the grantee whom he authorizes to take possession thereof, and binds himself and his agents to warrant the same in case of eviction in accordance with law.

" 'Don Gabriel Tejedor, in the capacity in which he acts, accepts the adjudication, and for himself, his children, and those he represents, acknowledges the complete payment and satisfaction of their participation in the properties left by D. Agustin Palet y Roca and Dona Francisca Palet y de Yedra, and transfers and conveys in favor of other coheirs ownership of the remainder of said properties, binding himself and his children not to make any claim to said properties in the future.

" '5. In cadastral case No. 63, G. L. R. O. Record No. 318, the plaintiffs asked the adjudication in their favor of the properties above-mentioned, designated in the Cadastral Plan of the City of Manila as lots 1 and 2, block No. 379, and the court granted the petition in its order of September 7, 1929, in compliance with which there was issued in the name of the plaintiffs Original Certificate of Title No. 7171 of Manila covering said lots 1 and 2, block No. 379.

"6. The defendants in due time applied for a revision as to lot No. 2, and on May 22, 1930, the court entered an order the last portion of which reads:

" 'The facts hereinbefore stated show that the said decree of October 8, 1929, was obtained fraudulently by the respondents, inasmuch as they asked for the registration in their favor of lot 2, block 379, knowing that the same did not belong to them, and that the property adjudicated to them by the deed of partition and adjudication, dated February 6, 1926, was only lot 1, of the said block No. 379.

" 'Wherefore, said lot 2, block 379, cadastral record No. 318, is decreed and adjudicated in favor of the petitioners Monserrat Palet, Dominga Palet and Alvaro Oliver y Palet, the latter being the successor in interest of Rosa Yedra,

" 'On this order becoming final in accordance with law, the Chief of the General Land Registration Office shall issue the corresponding decree.

" '7. The plaintiffs appealed from this order, and the Supreme Court in a decision which has become final, written by Justice Antonio Villa-Real, and concurred in by all the members of the court, affirmed the appealed order in all its parts, arriving at the following conclusions:

" 'If the house adjudicated to the respondents Gabriel Tejedor and others in the deed of partition and adjudication, Exhibit I, is the one purchased by Agustin Palet y Roca from Francisco de Paula Ossorio y Cembrano as evidenced by the deed executed on May 1 1896, and if, according to the agreed statement of facts, said house is the one numbered 694 which, in the cadastral survey was numbered 1 of block 379, the respondents are only entitled to this lot by virtue of said deed of partition and adjudication, excluding lot No. 2 of said cadastral survey, which comprises the property numbered 678 and derived from Roman Martinez y Andueza, not adjudicated to them by said deed.

" 'When, therefore, the respondents asked for the adjudication to them of lot No. 2, together with lot No. 1 of cadastral case No. 63, G. L. R. O. Record No. 318, knowing that they were only entitled to said lot No. 1, this being the only property adjudicated to them by the deed of partition and adjudication, Exhibit I, they acted in bad faith, and the year not having elapsed from the issuance of the decree of registration, which took place on October 8, 1929, until the filing of the motion for review on December 5, 1929, such review was proper on the ground of fraud, in accordance with the provisions of section 38 of Act No. 496.

" 'Even if there had not been fraud in obtaining the decree with respect to lot No. 2, or the year had elapsed after the issuance of said decree, the petitioners would be entitled to recover of the respondents the ownership of said lot No. 2 by virtue of the said deed of partition and adjudication, Exhibit I, so long as the property remained registered in their name and no third person had acquired it in good faith for a valuable consideration. (Philippine Land Improvement Co. vs. Bias, 55 Phil., 540, and citations.)

" 'In view of the foregoing considerations, we are of opinion and so hold: (1) That a coowner of land who applies for and obtains the adjudication and registration in his name of a lot which he knows has not been allotted to him in the partition, acts in bad faith, and the decree issued may be reviewed within the year following such issuance, in accordance with section 38 of Act No. 496; and (2) that even in the absence of fraud in obtaining said decree, or after the lapse of one year after the issuance thereof to said coowner, he may be compelled to convey said lot to whoever received it in the apportionment, so long as it remains registered in his name, and a third party has not acquired it in good faith for a valuable consideration.

" 'Wherefore, finding no error in the order appealed from, the same is hereby affirmed in its entirety, with costs against the appellants.

" 8. This decision was executed and lot 2, block No. 379, was cancelled from Original Certificate of Title No. 7171 of Manila in the name of the plaintiffs; and Transfer Certificate of Title No. 7261 of Manila, covering lot 2, block No. 379, was issued in the name of the defendants,

"9. That the facts and descriptions appearing in paragraphs 1, 2, 3, and 6 of the complaint are true and correct.

"10. That the real market value of the lands described in the complaint, subject-matter of the litigation, for the year 1926, was thirty pesos (P30) a square meter, without prejudice to defendants right to show that this fact is immaterial."

Are the plaintiffs and appellants really entitled to what they asked for in their complaint? This is the question presented for resolution.

From the defendants-appellees' answer to the plaintiffs complaint, and from their own brief, it appears that their defense is, that the question has once been resolved definitely in their favor, and that the plaintiffs are not entitled

either to any portion of lot 2 or to any indemnity.

It is true and undeniable, as shown by Exhibit 2, that Don Jose Oliver y Bauza, as attorney-in-fact of the defendants, had no other power than to convey to the plaintiffs' house No. 694, Mabini Street, Manila/ in full and complete payment of their rights in the properties left by the deceased spouses Don Agustin Palet y Roca and Dona Francisca Palet y de Yedra. The fact is, however, that apparently there was given to the plaintiffs lot No. 2 in addition to lot No. 1 of the said block 379 of the cadastral survey of Manila. But when the question of plaintiffs' right to said lot, on the strength of the alleged transfer in their favor by Don Jose Oliver y Bauza, as attorney-in-fact of the defendants, was squarely presented by defendants in their petition for review filed in cadastral case No. 63 of the City of Manila, wherein plaintiffs obtained a decree and certificate of title No. 7171, that question was resolved by the Court of First Instance and later by this court on appeal by the plaintiffs (G. R. No. 34048, Palet vs. Tejedor, 65 Phil., 790), adversely to the plaintiffs, and there the latter were declared without any right to claim said lot because it was not adjudicated to them. This resulted in the annulment of the decree and the certificate of title obtained by the plaintiffs, and the adjudication of the lot to the defendants and appellees. The decisions resolving said question found in Exhibits 3 and 4, have become final since 1931. Its irrevocability is, therefore, beyond doubt.

In truth, the purpose of plaintiffs' complaint, notwithstanding the subtle distinction made by them between claiming for themselves lot No. 2 in the cadastral case and demanding an indemnity in this case, whether by way of a transfer in their favor of a portion of said lot, or by way of indemnifying them in the amount of P12,969.90 at the rate of P30 per square meter of the portion which they claim, is simply to obtain another revision in order to annul the former one, or at least to amend it indirectly; in which case, no decree would become final, and no certificate of title would clothe the owner with positive and incontrovertible ownership, because the same may easily be defeated, in spite of the years, by simply alleging, as the plaintiffs did in this case, that a portion, at least of the land in question is theirs, with a view to making it appear, as is their purpose, that lot No. 1, as transferred to them, had an area of 994.53. It should be borne in mind that the basis of plaintiffs' action is, that not only lot No. 1 but also lot No. 2, were transferred to them, which is untenable because the former, according to the stipulation of facts (paragraph 1, letter a), had an area of 738.16 square meters, and the latter 1,171.24 square meters (Exhibit 3), undoubtedly much more than 994.53 square meters.

Plaintiffs and appellants may not now raise the question, already decided, of whether they legally acquired the lot referred to, because of the principle of *res judicata*, applicable not only to the principal question squarely put in issue by the parties, but also to all matters necessarily involved therein.

"A fact or question which was actually and directly in issue in a former suit, and was there judicially passed upon and determined by a domestic court of competent jurisdiction, is conclusively settled by the judgment therein, so far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or privies, in the same court or in any other court of concurrent jurisdiction, upon either the same or a different cause of action." (34 C. J., pp. 868, 869.)

"A former judgment between the same parties is a bar to the maintenance of the second action when the causes of action in the two suits are identical. If the subsequent suit is upon a different cause of action, but is between the parties or privies to a former action, the former judgment is not, as such, a bar to the maintenance of the second action, but it will be conclusive and final as to any matter actually in issue and determined in the former action, either on behalf of plaintiff to prove an essential fact or to disprove a defense, or on behalf of defendant to disprove essential elements of plaintiff's case, or to establish matters relied on in defense," (34 C. J., p. 874.)

"The rule is often stated in general terms that a judgment is conclusive not only upon the questions actually contested and determined, but upon all matters which might have been litigated and decided in that suit; and this is undoubtedly true of all matters properly belonging to the subject of the controversy and within the scope

of the issues, so that each party must make the most of his case or defense, bringing forward all his facts, grounds, reasons, or evidence in support of it, on pain of being barred from showing such omitted matters in a subsequent suit; and it is also true that where the second suit is upon the same cause of action, all matters which might have been litigated are conclusively settled by the judgment; and that generally the estoppel applies where defenses which were available in the first action but not then set up are sought to be used in a second action either by way of defense or as the foundation of a claim for relief" (34 C. J., pp. 909-911.)

"A point which was actually and directly in issue in a former suit, and was there judicially passed upon and determined by a domestic court of competent jurisdiction, cannot be again drawn in question in any future action between the same parties or their privies, even when the causes of action in the two suits are wholly different.

*****"A party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies." (Penalosa vs. Tuason, 22 Phil., 303.)

Another question definitely settled is, that lot No. 1, adjudicated to the plaintiffs in cadastral case No. 63 of the City of Manila, measures no more than 562.20 square meters, because the City of Manila expropriated 164 square meters, thereof to widen Herran and Mabini Streets (letter a paragraph 1 of stipulation, and page 8 of appellants' brief), and that it never had an area of 994.53 square meters. Neither may the question, of whether the latter has a greater area, be raised, because the time to do so has passed, the decision and decree resolving this question having been promulgated in September, 1929 (paragraph 5 of stipulation). Moreover, in the deed of transfer (Exhibit 2, page 11), mentioned and copied in paragraph 3 of the stipulation, it appears clearly that the one who executed the same committed a mathematical error by adding the area of the lot and that of the house constructed thereon, thus giving 994.53 square meters as the area of the lot conveyed to the plaintiffs. This is exactly the sum total of 738.16 square meters, the true area of the lot, and 256.37 square meters, the area of the building. This is so because the sum of the areas of lots Nos. 1 and 2 is 1,909.40 square meters (Exhibit 3, page 2), and not 994.53.

For the foregoing reasons, we find no merit in plaintiffs' appeal and no error committed in the decision of the trial court. The decision is affirmed in all its parts, with the costs to the appellants. So ordered.

Malcolm, Hull, Vickers, and Goddard, JJ., concur.

Judgment affirmed.

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