

TEOFILA CONLU VIUDA DE HERNAEZ ET AL., PLAINTIFFS AND APPELLANTS, VS. DOMINADOR L. JISON ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 46899, May 21, 1941*

Ponente: LAUREL, J.

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This is an action brought by the plaintiffs in the Court of First Instance of Negros Occidental to declare null and void the adjudication of the Hacienda Panaogao in favor of Jose Hernaez and consequently the title which the herein defendants, as successors in interest of Jose Hernaez, claim to have thereon; as well as to have a new certificate of title over said property issued in their favor. The defendants, in their answer, pleaded the pendency of another suit (Civil Case No. 7000 of the Court of First Instance of Negros Occidental) between the same parties on the same cause, in abatement of the present action. When the case was called for trial, the plaintiffs presented in evidence Exhibits A to K which included certain pleadings filed by the defendants in Civil Case No. 7000, the project of partition and the order of the court approving it in Civil Case No. 2568 of the same court, and the various deeds of sale executed by Jose Hernaez and his successors in interest involving the same property, all of which documents except Exhibit C which is an amended answer filed by the defendants in Civil Case No. 7000 were among the numerous exhibits submitted, in evidence in Civil Case No. 7000; while the defendants presented Exhibit 1 which is a certified copy of Transfer Certificate of Title No. 20216 issued in their favor over the Hacienda Panaogao, and Exhibits 2 and 3 which are the complaint and the decision, respectively, in Civil Case No. 7000. The lower court rendered judgment sustaining the defendant's plea in abatement, and dismissed the plaintiffs' complaint as well as the defendants' counterclaim for damages. Hence, the present appeal by the plaintiffs.

It appears that the plaintiffs herein and Jose Hernaez are the heirs of the deceased Rosendo Hernaez whose estate was settled and distributed in Civil Case No. 2568 of the Court of First Instance of Negros Occidental. Among the mass of properties left by the deceased were lots Nos. 574 and 611 of the Silay Cadastre, otherwise known as the Hacienda Panaogao, covered by Original Certificate of Title No. 424. In the project of partition submitted by the heirs and approved by the probate court on January 5, 1929, the Hacienda Panaogao was adjudicated to Jose Hernaez subject to the usufructuary rights of the widow over a certain portion thereof, and subject to the further condition that Jose Hernaez will assume the obligations paying off the mortgage over said property in favor of the Talisay-Silay Milling Co., in the sum of P22,183.46 due on March 18, 1939, with interest at the rate of 8 per cent per annum. The original certificate of title in the name of the deceased was cancelled and Transfer Certificate of Title No. 8837 was issued to Eleuteria Ch. Veloso on May 29, 1928, by virtue of a deed of sale of all his hereditary rights executed by Jose Hernaez in her favor on August 12, 1925, the encumbrance in favor of the widow and the Talisay-Silay Milling Co. being annotated on the back thereof. As the stipulation of partition also provided that the share of each heir shall be encumbered in favor of all the other heirs with whatever sum such heir may be indebted to the estate, an accounting was made by the judicial administrator and the obligation of Jose

Hernaez to the estate was fixed at P12,683.85 which was declared to be a preferred lien over the Hacienda Panaogao in the case of *Alunan vs. Veloso*, 52 Phil., 545. This encumbrance which was reduced to P10,701.61 on February 21, 1930, was annotated on the back of Veloso's title. On February 21, 1930, the probate court also declared a further lien of P8,383.37 over the Hacienda Panaogao in favor of the herein plaintiffs, which was also annotated on the back of Veloso's title, said sum representing the share of the herein plaintiffs in the bonus due the estate which was retained by the Talisay-Silay Milling Co. in partial satisfaction of its mortgage credit. On September 25, 1931, Veloso executed Exhibit F agreeing to pay interest on the sums of P10,701.61 and P8,383.37 at the rates of 10 per cent and 8 per cent per annum, respectively, which document was registered on October 19, 1931.

Meanwhile the Pacific Commercial Co., as judgment creditor in Civil Case No. 6321 of the same court, attached and purchased in a public sale all the rights and interest of Jose Hernaez over the Hacienda Panaogao, which proceedings were duly annotated on Veloso's title. At about the same time, Emilio Gaston filed Civil Case No. 4700 to annul the deed executed by Jose Hernaez transferring all his hereditary rights to Veloso, and the Court of First Instance of Negros Occidental in a decision affirmed by this Court on November 24, 1933 (*Gaston vs. Veloso*, 58 Phil., 827), declared the deed of sale null and void because done in fraud of creditors and for lack of consideration. Thereupon, the Pacific Commercial Co. which had already obtained a definitive deed to all the rights and interest of Jose Hernaez over the Hacienda Panaogao in view of the failure of the latter and Veloso to exercise their equity of redemption, procured the cancellation of Veloso's transfer certificate of title and the issuance in its favor of transfer certificate of title No. 17033 on February 17, 1934. Felix Jalandoni purchased the Hacienda Panaogao from the Pacific Commercial Co. and later sold it to Felisa Rosales from whom the defendant spouses bought it on October 25, 1935. However, all the annotations appearing on Veloso's title were transferred and copied in Transfer Certificate of Title No. 17033 as well as in all the respective certificates of title issued to the subsequent vendees of the Hacienda Panaogao, all the said vendees assuming to pay the existing liens and encumbrances thereon in the respective deeds by virtue of which they acquired said property.

The herein plaintiffs made demand upon the defendants for the satisfaction of their liens and upon refusal of the defendants to pay the interests mentioned in Exhibit F, instituted Civil Case No. 7000 in the Court of First Instance of Negros Occidental, to compel the defendants to pay not only the principal sums due them but also the interests which Veloso obligated herself to pay. The defendants in their answer first acknowledged the encumbrances of P10,701.61 and P8,383.37 but declined to pay interest, and then refused to recognize the second encumbrance of P8,383.37 in their amended answer. Later, the defendants filed another amended answer disowning altogether the two aforementioned encumbrances as well as the long-term mortgage in favor of the Talisay-Silay Milling Co., assumed by their predecessors in interest, as being fraudulent under the provisions of paragraphs 1 and 2, Article 1297, Civil Code. The lower court rendered judgment in favor of the plaintiffs requiring the defendants to pay the principal sums of P10,701.61 and P8,383.37, with interest at the rate of 10 per cent and 8 per cent per annum, respectively, from February 21, 1930. From the aforesaid judgment, the defendants took exception to the Court of Appeals where the case is now pending. At this juncture, the same plaintiffs filed the present action against the same defendants to recover ownership of the Hacienda Panaogao and to resolve its adjudication in favor of Jose Hernaez and the defendants as the latter's successors in interest, on the ground of alleged violation of the conditions of said adjudication.

The authorities are by no means harmonious as to what will be sufficient to constitute a plea of *lis pendens*, but, generally speaking, in order that one of two pending actions may be urged in abatement of the other, the actions must be identical or substantially so, that is, they must be between the same parties, based on the same cause of action, involve the same issues, and be capable of authorizing the same relief. (1 C. J. S., *Abatement and Revival*, Sec. 39, p. 62). In this jurisdiction, the elementary principles which govern the availability of the plea of "another

suit pending between the same parties for the same cause" were defined in the case of *Manuel vs. Wiggefc*, 14 Phil., 9, 13, as follows:

"But when the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or at least such as represent the same interest, there must be the same rights asserted, and the same relief prayed for. The relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same. The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties."

The usual test to determine the identity of actions seems to be whether judgment on the pending action would be conclusive upon the parties with respect to the matters involved in the second action and thus operate as a bar to the second action, or whether the same evidence will support both actions. (1 Am. Jur., *Abatement and Revival*, Sec. 28, pp. 35-36; 1 C. J. S., *Abatement and Revival*, Sec. 42, pp. 69-71). In the case of *Hongkong and Shanghai Bank vs. Aldecoa*, 30 Phil., 255, 275, it was held that the rule is ". . . applicable, between the same parties, only when the judgment to be rendered in the action first instituted will be such that, regardless of which party is successful, it will amount to *res adjudicata* against the second action." In determining what is *res adjudicata*, it is well to bear in mind the two main principles laid down in the case of *Pefialosa vs. Tuason*, 22 Phil., 303, 313, as follows:

"1. A judgment rendered by a court of competent jurisdiction on the merits is a bar to' any future suit between the same parties or their privies upon the same cause of action so long as it remains unreserved.

"2. 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 again be drawn between the same parties or their privies, even when the causes of action in the two suits are wholly different."

Applying the foregoing test to the question at issue, we find that the parties plaintiffs and defendants in this case are the same as the parties plaintiffs and defendants in Civil Case No. 7000. In the second place, while Civil Case No. 7000 is aimed at the enforcement of the encumbrances subsisting over the Hacienda Panaogao, such right is necessarily dependent on the title which the defendants claim to have over said property, which title is the very question at issue in the instant case. In other words, if the relief sought in Civil Case No. 7000 is granted, it has to be premised on a recognition of the title which the defendants must have over the property involved, otherwise if the defendants have no title thereto they can not be held liable for the encumbrances which are attached to and are inseparable from the property. In the language of the trial judge, while the plaintiffs in Civil Case No. 7000 contend that the defendants own the Hacienda Panaogao subject only to the payment of the Hens in favor of said plaintiffs, they now claim in the present case that the defendants do not own said hacienda, a theory diametrically opposed to that maintained by them in the former case, which should not be permitted. On the other hand, if the relief sought in Civil Case No. 7000 is denied, neither would the present action prosper, because, as aptly pointed out by the appellees, the plaintiffs can not demand the resolution of the adjudication of the Hacienda Panaogao to the herein defendants as successors in interest of Jose Hernaez, by reason of the supposed violation of certain conditions which have been finally declared invalid and unenforceable as against said defendants.

It is observed that the plaintiffs regard the project of partition between the heirs of the deceased Rosendo Hernaez in Civil Case No. 2568 as an ordinary contract and they contend that the refusal of the defendants in Civil Case No. 7000 to recognize the encumbrances assumed by their predecessor in interest, Jose Hernaez, over the latter's share of the estate "nullifies the adjudication (of Hacienda Panaogao to Jose Hernaez), either because its condition has not been complied with, or because the right to resolve a reciprocal obligation is implied when a party thereto has failed to comply with what is incumbent upon him." Needless to say, plaintiff's view overlooks the

fundamental concept of partition as an absolute transfer of ownership of the shares distributed among the respective heirs (Art. 1068, Civil Code; Vide, Manresa, 3rd. ed., Vol. 7, pp. 585-596, 699-700). Moreover, the stipulation in the project of partition that the share of each heir shall be encumbered in favor of all the other heirs with whatever sum such heir may be indebted to the estate, does not provide that the non-payment of the encumbrance pertaining to the share of a particular heir shall void the partition as to such defaulting heir. As a matter of fact the encumbrances on the share of Jose Hernaez have already been determined and declared by the probate court to be preferred liens on the Hacienda Panaogao and annotated on the certificates of title issued to the successors in interest of Jose Hernaez. The condition, if it may be called such, of the project of partition, has thus been fulfilled and no subsequent disavowal of the efficacy of such condition will avoid the partition. Such a contingency is not covered by any of the grounds enumerated in Articles 1073 and 1074 of the Civil Code for the rescission of partitions. The remedy available to the plaintiffs is specific performance, which remedy they sought to enforce in Civil Case No. 7000 wherein they demanded that the herein defendants be compelled to pay the encumbrances in question, with interest, or in default thereof, that all the rights, interest and participation of the defendants in the Hacienda Panaogao be sold at public auction in order to satisfy said encumbrances. It follows, therefore, that irrespective of the final judgment to be rendered in Civil Case No. 7000, it would constitute a bar as a former adjudication to the instant proceedings.

The judgment of the lower court is hereby affirmed, with costs against the plaintiffs-appellants. So ordered.

Avancena, C.J., Imperial, Diaz, and Horrilleno, JJ., concur.

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