

**CLEMENTE FERNANDEZ, PLAINTIFF AND APPELLANT, VS.
ENGRACIA SEBIDO AND MANUEL FERNANDEZ GOMACHIAO, DE
FENDANTS AND APPELLEES.***G.R. No. 47049, June 25, 1940*

Ponente: LAUREL, J.

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On September 16, 1924, the spouses Manuel Fernandez Gomachiao and Engracia Sebido, the defendants and appellees, executed in favor of Clemente Fernandez, the plaintiff and appellant, a pacto de retro sale (Exhibit A-1) conveying a parcel of land situated in the municipality of Cuyo, Palawan, for the stipulated consideration of P2,600. The document evidencing the transaction was registered in the office of the register of deeds of Palawan. On July 20, 1926, the said spouses instituted in the Court of First Instance of Palawan civil case No. 131 against Clemente Fernandez and Jacinto Yamzon, the latter in his capacity as register of deeds of Palawan, wherein, after alleging, among other things, that the aforesaid pacto de retro sale was simulated, without consideration, and obtained by means of fraud on the part of Clemente Fernandez, it was prayed that the same be set aside and declared null and void and that the register of deeds of Palawan be ordered to cancel its inscription in his registry book. In said civil case No. 131 Clemente Fernandez put in an answer in which it was alleged, by way of special defense, that the sale in question was duly executed and the consideration therefor had been paid to and received by the complaining spouses, and, by way of counterclaim, that the refusal of the latter to deliver to Clemente Fernandez the property covered by the sale had caused him damages amounting to P2,000. Clemente Fernandez therefore prayed that he be declared the sole and exclusive owner of the land in question, that the aforesaid spouses be ordered to deliver the same to him and to pay P2,000 as damages, and that the complaint be dismissed with costs. After hearing, the Court of First Instance of Palawan rendered judgment absolving Clemente Fernandez and Jacinto Yamzon from the complaint, and expressly overruling the contention of the plaintiff spouses that the aforesaid pacto de retro sale was simulated, without consideration, and obtained by means of fraud.

No appeal was ever taken from the judgment in said civil case No. 131. Thereafter Clemente Fernandez filed the present complaint in the Court of First Instance of Palawan against the spouses Engracia Sebido and Manuel Fernandez Gomachiao praying that the defendants be ordered to turn over to the plaintiff the land conveyed under the pacto de retro sale (Exhibit A-1) and to pay the sum of 40 as monthly rental beginning September 16, 1926. In their amended answer the defendants denied the authenticity of the sale alleging that the same is simulated, without consideration, and obtained by means of fraud on the part of the plaintiff, and, as counterclaims, sought to recover from the plaintiff the separate sums of P5,000, P25,000 and P720. The defendants also prayed that the aforesaid pacto de retro sale be declared null and void and that they be absolved from the complaint. After trial the Court of First Instance of Palawan rendered judgment the dispositive part of which is as follows:

"Por tanto, el Juzgado declara que el documento de venta con pacto de retro Exhibit A es nulo, por haberse obtenido mediante engano, falta de consideracion y por ser simulado, ficticio y no expresa la verdadera

intention de las partes; que el 1.º y 2.º motivo de reconvenccion y contrademanda constituyen cosa juzgada; y que el 3.er motivo de reconvenccion no ha sido probado.

"Se sobresee la demanda y las reconvencciones de los demandados, sin especial pronunciamiento en cuanto a las costas

" From this judgment the plaintiff has brought the present appeal to the Court of Appeals which, however, certified the same to this Court on the ground that only questions of law are raised by the appellant's assignment of errors, to wit:

"I. The lower court erred in holding that the deed of 'venta con pacto de retro" (Exhibit A-1) executed by the defendants, the spouses Engracia Sebido and Manuel Fernandez Gomachiao, in favor of the plaintiff, Clemente Fernandez, on September 16, 1924, is simulated and fictitious and therefore null and void.

"II. The lower court erred in not holding that the defendants were in estoppel to contest the validity of said leed (Exhibit A-1) by virtue of the final judgment (Exhibit E) rendered in civil case No. 131 of the same court and between the same parties, declaring that the document aforesaid is legal, valid and binding between the parties.

"III. The lower court erred in holding that 'En el supuesto de que este Contrato Exhibit A es valido, debio el demandante haberlo alegado especificamente como reconversion o contrademanda en la causa civil No. 131 de este juzgado exhibits C, D y E sobre anulacion de este mismo Exhibit A, porque esta necesariamente relacionado con el objeto de dicho litigio, y el no haberlo asi hecho quedo impedido para reclamarle en esta causa.

"IV. The lower court erred in not finding that the plaintiff Clemente Fernandez is the absolute owner of the house and lot sold to him under contract of 'Pacto de Retro' (Exhibit A-1) by the defendants Manuel Fernandez Gomachiao and Engracia Sebido, and in not condemning the latter to pay to the former the sum of P15 as rents of said property from September 16, 1925, until they vacate the premises aforesaid.

"V. The lower court erred in denying plaintiffs motion for new trial.

The whole controversy litigated by the parties in the instant case revolves around the decisive question whether the pacto de retro sale (Exhibit A-1) is valid or not; and we are of the opinion and so hold that such question has been squarely ventilated in civil case No. 131 of the Court of First Instance of Palawan and decided in a sense favorable to the herein appellant, namely, that the sale in question is valid. The appellees are concluded by the final adjudication thus made, and no powerful reason is supplied by the record which will justify us in disregarding the principle of res judicata and in permitting a reexamination of a closed question. The doctrine of res judicata is an old axiom of the law, dictated by wisdom and sanctified by age, and is founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties and their privies over a subject once fully and fairly adjudicated. (Martin vs. Evans, 85 Md., 8; 36 A., 258; 36 L. R. A., 218; 60 Am. S. R., 292.) Indeed, the very object of instituting courts of justice is that litigation should be decided, and decided finally, for human life is not long enough to allow of matters once disposed of being brought under discussion again. (Great Northern R. Co. vs. Mossop, 17 C. B., 130, 140; 84 E. C. L., 130; 139 Reprint, 1018).

Even a cursory perusal of the complaint, the answer and the decision in civil case No. 131 of the Court of First Instance of Palawan will disclose that the main issue presented therein was whether or not the pacto de retro sale (Exhibit A-1) was simulated, without consideration, and obtained by means of fraud on the part of the plaintiff-appellant. Thus paragraphs 5 and 6 of the complaint filed by the appellee in civil case No. 131 read as follows:

"5. Que el dia siguiente de haberse firmado el referido documento Exhibito 6, el demandante Manuel Fernandez Gomachiao fue llamado por el demandado Clemente Fernandez y le dijo que para cubrir apariencias

y con el fin de que no se sepa que los 150 cavanos de arroz y 200 cavanos de palay consignados en dicho documento estaban destinados para las elecciones generales de 1925, era preciso que se otorgara otro documento por los demandantes en el que se hara constar simuladamente que ellos habfan vendido con pacto de retro una parcela de terreno con todas sus mejoras, ubicada en el centro de la poblacion de Cuyo, Palawan, por valor de P2,600 que representa exactamente el importe de 150 cavanos de arroz a razon de P10 por cada cavan y 200 cavanos de palay a razon de P5.50 por cada cavan, segun el mismo Clemente Fernandez, y, en efecto, mediante induccion de este y la promesa de que dicho documento se otorgaria solamente para cubrir formalidades, los demandantes firmaron la escritura de venta con pacto de retro de fecha 16 de septiembre de 1924, copia de cuyo documento se acompaña a la presente, como Exhibito C y se hace parte integrante de esta demanda.

"6. Que los demandantes en ningun tiempo han recibido del demandado Clemente Fernandez la cantidad de P2,600 consignada en la escritura, ni parte de la misma, y que si la han firmado era por las seguridades dadas por el demandado de que la escritura no tendria ningun efecto por ser simulada y que se le daria la cantidad de P2,000 en el caso de que la operacion del vapor Palawan resultare beneficioso y obtuviese ganancias netas, pero fue un fracaso."

In turn the answer of the appellant in said case alleged:

"5. That the document of Pacto de Retro sale, marked Exhibit C of this complaint, was duly executed by the plaintiffs in favor of the defendant, Clemente Fernandez, and is entirely distinct and separate from the indebtedness evidenced in the document marked Exhibit B of this complaint ;

"6. That the sum of P2,600 stated in the document marked Exhibit C has been really received by the plaintiffs from the defendant, Clemente Fernandez, and that said document marked Exhibit C has been duly registered and inscribed in the Register of Deeds of the Province of Palawan on April 5, 1926."

In sustaining the validity of the sale in question, the Court of First Instance of Palawan held as follows:

"Por otro lado las pruebas aportadas por la parte demandante sobre este extremo no son suficientes para que sobre ellas se base un pronunciamiento de acuerdo con lo solicitado en la demanda; y ademas dichas pruebas aparecen abiertamente contradichas por las declaraciones de los testigos de la parte demandada. Asimismo lo estan por la conducta posterior de los demandantes al otorgar de una manera espontanea el documento Exhibit C y ratificarlo ante Santiago Tablazon, Escribano Delegado del Juzgado de Primera Instancia de Palawan con residencia en Cuyo, cuya actuacion en este caso tiene que ser reconocida como propia y legal a falta de prueba fehaciente en contrario.

"El demandado Clemente Fernandez explico el porque los demandantes habian tornado de el la cantidad de P2,600 el 16 de septiembre de 1924, cantidad que representa el importe de venta de las fincas mencionadas en el Exhibit C, diciendo que dicha cantidad la habia recibido de el el demandante Gomachiao para enviarla a Iloilo con el fin de pagar los gastos de reparacion del vapor Palawan que entonces se hallaba en el varadero, detalle, este que no ha podido ser desvirtuado por la parte demandante y por el contrario la declaration del festigo J. Ponce de Leon ha venido a confirmarlo cuando testified que los demandantes le habian manifestado haber recibido la suma de P2,600 mencionada en dicho documento. Tal explication del demandado Clemente Fernandez es mas verosimil que la que los demandantes han dado acerca del otorgamiento del documento Exhibit C. Es defícil de concebir que al dia siguiente de haberse otorgado el documento Exhibit B, si es verdad que en virtud del mismo los demandantes no habian recibido cantidad alguna del demandado Clemente Fernandez, hayan dichos demandantes sido tan candidos en otorgar y firmar la escritura pública Exhibit C si, como han tratado de probar, la misma representa una cantidad ficticia y no tiene mas objeto que el evitar que se sepa que los 150 cavanos de arroz y 200 cavanos de palay consignados en el documento Exhibit B estaban destinados para las elecciones generales de 1925. Teniendo en cuenta el modo de ser de los comerciantes chinos en provincias no es concebible que el demandante Manuel Fernandez Gomachiao otorgara la escritura Exhibit C que afecta a sus propiedades si es que no ha recibido la debida consideracion."

But it is insisted by the appellees that the plea of *res judicata* cannot be entertained on the grounds (1) that the decision in civil case No. 131 merely absolved the appellant from the complaint without specifically holding that the sale in question was valid and (2) that there is no identity in the cause of action because while the action in civil case No. 131 was for the annulment of the *pacto de retro* sale (Exhibit A-1), the present case is one for the recovery of possession. We are unable to find weight in this argument. Apart from the fact that courts of the present day are not concerned so much with the form of actions as with their substance (*Palanca Tanguinlay vs. Quiros*, 10 Phil., 360, 365), section 307 of the Code of Civil Procedure and the adjudicated cases are emphatic in providing that that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. (*Merchant vs. International Banking Corporation*, 9 Phil., 554; *Palanca Tanguinlay vs. Quiros*, 10 Phil., 360; *Tan-Suyco vs. Javier*, 21 Phil., 82; *Domingo vs. Santos, Ongsiako, Lim y Cia.*, 55 Phil., 361; *Chua Tan vs. Del Rosario*, 57 Phil., 411.) Thus it has been held that a former judgment is conclusive upon any fact which serves as a necessary basis of decision (*Domingo vs. Santos, Ongsiako, Lim y Cia.*, 55 Phil., 361, 372), and that although it is true that the relief sought, the rendition of accounts in a former case, was different from the relief sought in another case, which was the partition of funds, the relief sought in both cases necessarily involved, as a main question, the ownership of the aforementioned funds and its products (*Chua Tan vs. Del Rosario*, 57 Phil., 411). Applying these pronouncements to the case at bar, we hold that while the relief sought in civil case No. 131, namely, the annulment of the sale in question, is different from the relief sought in the present action, namely, the recovery of the land covered by the sale, the relief in both cases involves, as a main question, the validity of the sale itself, and that although the decision in civil case No. 131 did not expressly decree that the *pacto de retro* sale (Exhibit A-1) is valid, said decision is nevertheless conclusive on the herein appellees because the validity of the sale served as necessary basis thereof. Stated in another way, the rule is that when the existence and validity of a deed or other contract is adjudicated, either by being put in issue and tried, or in the sense of being necessarily determined by a judgment refusing to set it aside, the question is conclusively settled by the judgment for the purposes of all further litigation between the same parties. (34 C. J., 944-945.) The trial court was of the opinion that, even assuming the validity of Exhibit A-1, the appellant is estopped from placing reliance thereon on the ground that he failed to set it up by way of counterclaim or cross-complaint in civil case No. 131. This is error. It is to be noted that the due execution and validity of the document had been alleged by way of special defense in the appellant's amended answer in said case. Said special defense, if established, was sufficient to defeat the action for annulment. Moreover, the purpose of the present case could not have been the proper subject of a counterclaim on the part of the defendant in civil case No. 131 for it is not a claim for a sum of money. And if it be said that a cross-complaint should have been presented (sec. 98, Code of Civil Procedure) the failure to do so is not, like the failure to set up a counterclaim in certain cases (sec. 97, Code of Civil Procedure), a bar to the institution of a separate action thereon.

It is also erroneously pretended that the appellant has waived the benefit of *res judicata* as a result of the failure of his attorney to object to the introduction by the appellees of evidence on the merits in civil case No. 131 and of the fact that said attorney cross-examined appellees' witnesses. In the first place, the intention to waive a right or advantage must be shown clearly and convincingly, and when the only proof of intention rests in what a party does, his act should be so manifestly consistent with, and indicative of an intent to, voluntarily relinquish the particular right or advantage that no other reasonable explanation of his conduct is possible. (67 C. J., 311). In the case at bar the alleged omission or act on the part of appellant's attorney does not lead to the infallible conclusion that he ever intended to renounce the benefit of *res judicata*. Indeed, no such intention can be consistent with the insertion in appellant's complaint in this action of the proper plea of *res judicata* and the introduction of the corresponding evidence in the trial. In the second place, a party bound by a prior adjudication cannot escape the estoppel by producing at a second trial additional or different evidence in support of the proposition which was

decided adversely to him. (34 C. J., 906.) At any rate, we are inclined to adopt a liberal view on this point and to overrule appellees' technical objection since the general tendency is to attach the same final and conclusive effect to a prior adjudication wherever and whenever it is set up, whether that be done by plea or in the course of the evidence. (Alzua and Arnalot vs. Johnson, 21 Phil., 308, 377, quoting Black on Judgments, vol. 2, par., 783.)

Having reached the conclusion that the validity of the pacto de retro sale (Exhibit A-l) has already been upheld by virtue of the final judgment in civil case No. 131 which is conclusive on the appellees, it becomes unnecessary to discuss the other propositions involved in this case.

The appealed judgment will therefore be reversed and another one entered declaring the plaintiff and appellant to be the owner of the property covered by and described in the pacto de retro sale Exhibit A-l, and ordering the defendants and appellees to pay to the plaintiff and appellant the sum of P5 a month as rental for said property beginning September 17, 1926 until the premises shall have been surrendered to the plaintiff and appellant, with costs against the appellees in both instances. So ordered.

Avanceña, C.J., Imperial, Diaz, and Moran, JJ., concur.

Judgment reversed.

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