

JOSE ARCE AND CONSUELO JOSE DE ARCE, PLAINTIFFS AND APPELLEES, VS. ROMAN AFABLE, DEFENDANT AND APPELLANT.*G.R. No. 47763. April 08, 1941*

Ponente: LAUREL, J.

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In civil case No. 2828, Court of First Instance of Cavite, Jose Arce and Consuelo Jose de Arce instituted an action against Ladislao Afable for the recovery and possession of lot No. 466 of the cadastral survey of Cavite and the rents which had been collected by the defendant. The complaint was later amended to include the herein appellant as party defendant, it having been alleged by Ladislao Afable in his answer that he had sold the property to his son, the herein appellant. It was proved during the trial of that case that a house owned by one Trinidad Afable de Abad occupied a portion of lot No. 466 and that said Trinidad Afable de Abad had been regularly paying rent to the herein appellant in the sum of three pesos a month. The lower court rendered judgment declaring the plaintiffs owners of the disputed lot, but expressly reserved to them the right to file the proper action for the removal of the house on the property and the collection of the rental for the occupation of the portion of the land. This decision was affirmed by the Court of Appeals on March 31, 1938. Subsequently, plaintiffs brought action to recover the rents collected and received by the defendant-appellant. The defendant filed his answer denying all and every allegation in the complaint and as a special defense alleged that the judgment in civil case No. 2828 of the Court of First Instance of Cavite was a bar to the present action. The lower court rendered judgment in favor of the plaintiffs. Defendant excepted and filed a motion for reconsideration and a new trial. This motion was denied and defendant duly excepted to this order and filed notice of appeal. The corresponding bill of exceptions was approved and the case is now before us on appeal.

Defendant-appellant in contending that the previous judgment rendered in civil case No. 2828 of the Court of First Instance of Cavite is a bar to the present action, relies mainly on *Santiago vs. Santos*, 54 Phil., 619, in which this Court, quoting the case of *Bingham v. Kearney*, 136 Cal. 175, said:

"It is a rule, long recognized in this country, that a judgment between the same parties is conclusive, not only as to the subject matter in controversy in the action upon which it is based but also in all other actions involving the same question, and upon all matters involved in the issues which might have been litigated and decided in the case, the presumption being that all such issues were met and decided. It is the policy of the law to put an end to litigation, and to aid the vigilant and not those who sleep upon their rights. It is not the policy of the law to allow a new and different suit between the same parties, concerning the same subject matter, that has already been litigated; neither will the law allow the parties to trifle with the courts by piece-meal litigation."

While admitting the scope and force of the principle enunciated in the above case, we find that the action here was expressly reserved and not settled in the judgment of civil case No. 2828. The lower court, in the dispositive part of the judgment in that case, said:

"Por todo lo expuesto, llegamos a la conclusion de que la totalidad del lote No. 466 es de la propiedad de los

esposos demandantes como la misma aparece cubierta por el certificado de transferencia de titulo No. 3604 (Exhibit A) y que dichos demandantes deben ser puestos en la posesion del mismo; pero en cuanto al desahucio o remocion de la casa enclavada en dicho lote y al pago de una renta por la ocupacion del terreno en la porcion donde esta enclavada la citada casa, no podemos hacer ningun pronunciamiento, por cuanto que la supuesta duena Trinidad Afable de Abad no ha sido parte en este litigio, quedando desde luego reservado a los demandantes, cuando fuere procedente ejercitar cualquiera action referente al desahucio o remocion de la finca y al pago de una renta del terreno ocupado por la misma." (Apellant's brief, p. 19.)

This being the case, the express reservation itself becomes res judicata and "prevents the raising of any question as to the right to bring or maintain such subsequent suit."

"A judgment or decree which expressly excepts or reserves from its operation specified rights or claims of the parties in suit, or the decision of questions in issue, or the right to take further proceedings in respect to certain matters, is not a bar to a subsequent action on the matters so reserved; but on the contrary, the reservation itself becomes res judicata, and prevents the raising of any question as to the right to bring or maintain such subsequent suit. The reservation of the right to bring a second action preserves plaintiff's right to prove his cause of action by any competent evidence, although it is identical with that in the first action." (34 C. J. 797.)

"A judgment is not conclusive with respect to matters which the court rendering the judgment expressly or impliedly excludes from its determination or consideration, as in case of issues the adjudication of which it holds to be unnecessary, or which it holds to be not involved in the case. Refusal to pass upon a particular matter for lack of jurisdiction is not an adjudication of it. If the jury is specifically instructed that certain matters are not in issue the judgment is not conclusive as to such issues.

"If the judgment expressly provides that specified issues or matters are not determined or are reserved for future adjudication or litigation, it is not res judicata as to the matters thus excluded, as where an injunction decree expressly reserves for future action the matters of damages, because of the insufficiency of the pleadings to warrant any adjudication of them. A decree in equity, which expressly reserves the right to litigate title incidentally involved in the suit, is not a conclusive adjudication thereof: In such cases the express reservation itself becomes res judicata, and this is true even though the judgment or decree purports to be on the merits and the reservation is erroneous 'and though in effect it splits an indivisible cause of action and permits a second action upon the same cause of action.'" (Freeman on Judgments, Vol. 2, 5th Ed., pp. 1485-1488; see also 23 Cyc. 1145-1146; 2 Black on Judgments, [2nd ed.], Sec. 721.)

It is alleged by the appellant that attorney for the appellees renounced the right to bring this present action during the trial in the former action. We do not think that abandonment could be implied from the words alleged to have been spoken by counsel for the appellees in the former action.

It is also alleged that granting that the right of the plaintiffs to bring this present action was expressly reserved in the previous judgment, the proper party is not the defendant-appellant but Trinidad Afable de Abad. We do not find any merit in this argument, it appearing that this is an action for the recovery of rents collected, and that the herein defendant had collected the rents regularly from the said Trinidad Afable de Abad.

Judgment is hereby affirmed,

Imperial, Diaz, Moran, and Horrilleno, JJ., concur.

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