

GERTRUDES CARREON, CIRILA CARREON, JOSE CARREON, JULIETA CARREON AND CONSOLACION CARREON, PLAINTIFFS-APPELLEES, VS. MANUEL CARREON, DEFENDANT-APPELLANT.*G.R. No. 51805. February 25, 1982*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-51805/>**DE CASTRO, J.:***

This case was certified to this Court by the Court of Appeals in its Resolution dated October 12, 1979 the issue raised therein being one purely of law, which is whether under certain facts which are not disputed, the legal conclusion of the court of origin, is correct or not.

Plaintiffs Gertrudes, Cirila, Jose, Trinidad, Julieta, Consolacion and defendant Manuel, all surnamed Carreon, are brothers and sisters and are the children of the late spouses Andres Carreon and Ambrosia Azcuna. During the lifetime of Ambrosia Azcuna, she inherited from her parents a parcel of land containing an area of 3.5041 hectares, more or less, covered by Transfer Certificate of Title No. T-306, situated at Tangian (now Roxas), Zamboanga del Norte. Ambrosia Azcuna died sometime in 1964. In 1966 Felix Carreon, a brother of the parties herein, died in-testate and without issue, but during his lifetime has sold his undivided share on the property in favor of Gertrudes Carreon. On August 21, 1969 the parties executed a Deed of Extra-Judicial Partition adjudicating among them-selves one-eight (1/8) each pro-indiviso share of the pro-property.

On February 21, 1973 plaintiffs filed an action for specific performance and damages against defendant, docketed as Civil Case No. 2370, before the Court of First Instance of Zamboanga del Norte, Branch III, presided by Judge Dimalanes Buissan. The complaint alleged that defendant occupied more than his share of the property to the damage and prejudice of the plaintiffs, particularly Cirila and Gertrudes; that defendant and his children have been cutting down the coconut trees growing thereon over the objection of the plaintiffs. Plaintiffs prayed among others that defendant be ordered to occupy only such portion equivalent to his one-eight (1/8) share after the same has been duly determined and delimited by a duly licensed geodetic engi-neer.

Defendant Manuel Carreon, in his answer dated July 2, 1973 alleged that if he has occupied a portion beyond his inheritance, he did so as the original and absolute owner of said portion, recognized and acknowledged as such by the plaintiffs. In his counterclaim, defendant alleged that the filing of the complaint is malicious because the plaintiffs knew that the property has not yet been physical-ly divided; that the plaintiffs knew that the area adjoin-ing the Tangian river belongs to the defendant, and yet they filed the present case; and that defendant suffered moral damages in the amount of P10,000.00 and incurred expenses in the amount of P1,500.00.

During the pendency of this case, Cirila Carreon, on February 21, 1974, filed a petition for summary settle-ment of the estate of Ambrosia Azcuna docketed as Special Proceeding No. R-728 and assigned with Branch II of the Court of First Instance of Zamboanga del Norte presided by Judge Doroteo de Guzman.

On June 11, 1974 plaintiffs filed a motion to dismiss the present case (Civil Case No. 2370), on the ground that their co-plaintiff, Cirila Carreon, had filed a petition for summary settlement of the estate left by their deceased parents before the Court of First Instance of Zamboanga del Norte, Branch II.

On July 10, 1974, the lower issued an order dismissing plaintiffs' complaint, but directed the hearing on the defendants' counterclaim on the ground that the same can stand independent adjudication.

Per agreement of the parties and their counsel, the Court, on October 4, 1974, appointed Cirilo Ladera as commissioner to receive the evidence for both parties on the counterclaim.

On October 9, 1974, defendant and Consolacion Carreon filed an opposition to the petition for summary settlement in Special Proceeding No. R-728. In the counterclaim, they alleged that the filing of the petition is malicious and motivated in bad faith because the estate of Ambrosia Azcuna had already been settled and partitioned, and that due to the filing of the petition, they suffered mental anguish and torture for which they demand P20,000.00 and incurred expenses in the amount of P1,500.00 for the services of their lawyer.

On January 13, 1975, plaintiffs filed a motion to dismiss Civil Case No. 2370 on the ground that defendant has presented the same counterclaim in Special Proceeding No. R-728 of which he is an oppositor.

On January 21, 1975 defendant filed an opposition to the motion to dismiss on grounds that the moral suffering and fees for the counsel are distinct and separate from Special Proceedings R-728 and that the counterclaims in both cases are distinct and separate from each other.

While Civil Case No. 2370 was pending, Branch II rendered its decision in Special Proceeding No. R-728 on September 5, 1975, declaring, among others, the parties herein to be the legal heirs of the late Ambrosia Azcuna, the specific shares of each of the heirs; and ordering the subdivision of the estate to be undertaken by a geodetic engineer. On October 16, 1975 plaintiffs filed a supplemental motion to dismiss Civil Case No. 2370 on the ground that defendant's counterclaim for damages which was denied by Branch II in Special Proceeding No. R-728 is the same counterclaim for damages in Civil Case No. 2370.

On October 23, 1975 Judge Dimalanes Buissan of Branch III wherein Civil Case No. 2370 was pending transferred the case to Branch II for the reason that Civil Case No. 2370 and Special Proceeding R-728 involve same parties, same property and same cause of action.

On December 4, 1975 Judge Doroteo de Guzman of Branch II, acting on plaintiffs' motion and supplemental motion to dismiss Civil Case No. 2370 granted the motions and dismissed defendants counterclaim on the ground of res judicata.

Now, defendant assigns the following errors as having been committed by the Court of First Instance of Zamboanga del Norte, Branch II:

"I. THE LOWER COURT ERRED IN DISMISSING APPELLEES' COMPLAINT AND IN DISMISSING DEFENDANT-APPELLANT'S COUNTERCLAIM ON THE GROUND OF PLAINTIFF-APPELLEES' FILING OF SPECIAL PROCEEDING NO. R-728 FOR SUMMARY SETTLEMENT OF ESTATE AFTER DEFENDANT-APPELLANT HAD PRESENTED HIS EVIDENCE IN FULL TO SUBSTANTIATE HIS COUNTERCLAIM IN CIVIL CASE NO. 2370;

"II. THE COURT A QUO ERRED IN DISMISSING THE COUNTERCLAIM OF THE APPELLANT IN THIS INSTANT CASE AND IN HOLDING THAT THE SAME ARE IDENTICAL TO THE COUNTERCLAIM PLEADED IN SPECIAL PROCEEDING NO. R-728 WHICH WAS INSTITUTED VERY MUCH LATER THAN THIS CASE;

"III. THE COURT A QUO ERRED IN HOLDING THAT THE JUDGMENT IN SPECIAL PROCEEDING NO. R-728 CONSTITUTES RES JUDICATA TO APPELLANT'S COUNTERCLAIM IN CIVIL CASE NO. 2370."

As may be seen, the pivotal issue involved in this case is whether or not the decision of the lower court in Special Proceeding No. R-728 operates to bar defendant's counter-claim in Civil Case No. 2370.

In order that there may be res judicata, the following must be present: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions (a) identity of parties; (b) identity of subject matter; and (c) identity of cause of action.[1] Where one or more of the requisites for the application of the doctrine are not present the decision or determination will not constitute a bar to the subsequent proceeding.

There is no doubt that the decision in Special Proceeding No. R-728 was on the merits and rendered by a court having jurisdiction of the subject matter and the parties. However, said decision is not yet final when the present case was dismissed on the ground of res judicata. The judgment that may be invoked as res judicata is that which is final and executory, and not merely final and appealable, because the former is already beyond the power of the court to alter while the latter is still subject to modification by the appellate court.[2] As a matter of fact, the decision in Special Proceeding No. R-728 was appealed to the Court of Appeals docketed as CA-G. R. No. 60833-R and is still pending decision by said court.[3]

Although both cases substantially involve the same parcel of land covered by Original Certificate of Title No. T-306 having an area of 3.5041 hectares between the same parties, defendant in both cases filed separate and distinct counterclaims for moral damages which defendant allegedly suffered as a consequence of the actions filed against him. It is true that defendant, as oppositor in Special Proceeding No. R-728, failed to substantiate his counterclaim for moral damages in said case. But the worries and mental anxiety he allegedly suffered in the present case when he was haled into court as a defendant in the litigation, is distinct and separate from the mental anguish he allegedly underwent in relation to Special Proceeding No. R-728 and suffered by reason of the filing thereof. Moreover, this case was still pending in Branch III, when Special Proceeding No. R-728 was decided, and defendant might have opted to prove his counterclaim for damages therein, foregoing to do so with respect to his counterclaim in Special Proceeding No. R-728, because this case has for its sole remaining object of inquiry the counterclaim of defendant, and for which, by consent of both parties a commissioner was already appointed to receive the evidence.

WHEREFORE, the order appealed from, issued by the Court of First Instance of Zamboanga del Norte, Branch II, in Civil Case No. 2370 dated December 4, 1975 is hereby re-versd and the counterclaim is reinstated and the records remanded to said court for further proceedings. No costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Plana, J., in the result.

Teehankee, J., (Chairman), no part.

[1] Municipality of Daet vs. CA, 93 SCRA 503; Anti-camera vs. Ong, 82 SCRA 337; Municipality of Hagonoy vs. Secretary of Agriculture and Natural Resources, 73 SCRA 70; Cruz vs. Mossegeld, 24 SCRA 1006; Aber vs. Rodil, 17 SCRA 822; Philippine Farming Corporation, Ltd. vs. Llanos, 14 SCRA 949;

[2] Macapinlac vs. Court of Appeals, 86 Phil. 359.

[3] p. 8, Petitioner's Brief, p. 45, Rollo.

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