

**ADORACION VALERA BRINGAS, IN HER CAPACITY AS
ADMINISTRATRIX OF THE ESTATE OF FRANCISCO VALERA,
PETITIONER, VS. HONORABLE HAROLD M. HERNANDO AND
HONORABLE LEOPOLDO B. GIRONELLA, ...**

G.R. No. 51983. February 29, 1988

Ponente: FERNAN, J.

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FERNAN, J.:

On September 24, 1986, this Court rendered a decision affirming a judgment on the pleadings rendered by respondent Judge Harold M. Hernando of the Court of First Instance of Abra and the order for the execution of said judgment on the pleadings. The affirmed judgment on the pleadings and the order of execution both applied the benefits of our decision in G.R. No. L-27526[1] to the heirs of Celso Valera.

The petitioners filed this motion for reconsideration of the September 24, 1986 decision on the ground that Abra CFI Case No. 1044, from which the judgment on the pleadings was issued, had already been dismissed and the dismissal was based on prior judgments coming from the Supreme Court no less. The movant contends that the order of Judge Hernando which denied her motion to dismiss, the judgment on the pleadings, and the order of execution, all issued in Abra CFI Case No. 1044, are null and void. The movant asks us to reconsider the decision affirming them.

It is undisputed that on September 29, 1945 two brothers, Celso Valera as petitioner and Virgilio Valera as counsel, filed a verified petition for the administration of the intestate estate of their brother, Francisco Valera, who died on March 10, 1945. Indicative of the need to write *finis* to this case is the fact that the petition, *Causa Civil No. 1, Intestado del Finado Francisco V. Valera, Celso Valera, Solicitante*, [2] was the first case filed with the Court of First Instance of Abra after World War II.

Virgilio was appointed special administrator and apart from administering the properties of the estate and gathering its fruits, he also collected insurance and war damage payments in behalf of Francisco's estate. The war damage payments were for the estate's interest in the Valera ancestral residence for which herein petitioner Adoracion would later seek and be awarded rental payments from her uncles.

Upon Virgilio's death, in March, 1961, Celso took over as administrator. However, Adoracion as early as 1952 had intervened in the intestate estate proceedings claiming continuous possession of the status of an acknowledged natural child. After the Court of First Instance of Abra declared her as the acknowledged natural child of Francisco Valera in its decision in Civil Case No. 374 later affirmed by this Court when a resolution of the Court of Appeals was elevated to us, [3] Adoracion took over as the administratrix of her father's estate on April 4, 1964. Neither Virgilio nor Celso had filed any inventory or rendered any accounting of the properties and fruits, war damage payments, etc. of the estate during the nineteen years that had elapsed. Among Adoracion's first acts was to amass the estate and file an inventory.

One of the properties of Francisco's estate was his interest in the Valera ancestral residence. On July 10, 1964 the probate court acted on a petition of the administratrix and ordered Virgilio and Celso to pay P100.00 a month plus interests from April, 1945 as rentals representing Francisco's share in the use of the Valera ancestral residence. It should be noted that Celso Valera and the heirs of Virgilio Valera had affixed their conformity to the amended inventory filed by Adoracion, which included the property for which the P100.00 monthly payments were ordered.

A writ of execution was issued on April 15, 1966 implementing the order of July 10, 1964. Consequently, the auction sale was held on April 3, 1967 and the properties subject of the instant petition were delivered to Adoracion being the only bidder. The disputed decision of Judge Hernando assumes jurisdiction over properties involving the 1966 writ of execution and the 1967 auction sale.

Meanwhile the heirs of Virgilio Valera came to us in G.R. No. L-27526, Angelita G. Vda. de Valera, et al. v. Hon. Macario M. Ofilada, et al.[4] In addition to the judge, the sheriff, and the deputy sheriff, both Celso Valera and Adoracion Valera-Bringas were party respondents in this petition which sought to set aside the orders and writ of execution insofar as the heirs or estate of Virgilio Valera are concerned.[5]

Since the questioned judgment on the pleadings of Judge Hernando applied or extended the benefits of L-27526 intended for Virgilio's heirs also to the heirs of Celso, we quote pertinent portions of the decision:

"After a careful study of the arguments of the parties in their memoranda, reply, rejoinder and surrejoinder, We find that, for the resolution of the case, it is not necessary to pass upon all those issues. The crucial issue in the last analysis is whether the lower court, sitting as a probate court in the intestate proceeding for the estate of Francisco Valera, could hold the heirs of Virgilio Valera answerable for certain supposed monetary liabilities of the latter to the estate and enforce said liabilities against the properties of the deceased Virgilio Valera.

We hold that the trial court, as a probate court, erred in adjudging in the said intestate proceeding the monetary liabilities of the late Virgilio Valera to the estate of Francisco Valera and in issuing a writ of execution against his properties to enforce the supposed liabilities.

x x x x x x x x

We have studied carefully respondents' memorandum and rejoinder. We have not found therein any citation of a rule or precedent which would justify arbitrary and irregular procedure followed by the lower court in determining the liability of a dead person without hearing the legal representative of his estate and in holding his heirs answerable for his supposed liabilities and then enforcing those liabilities against his estate. x x x

x x x x x x x x

WHEREFORE, the writ of execution and the Sheriff's execution sale on April 3, 1967 and all proceedings relative thereto as well as the orders of July 10, 1964, April 15, 1966, January 4 April 3 and May 2, 1967 of the lower court, are declared void and are set aside, insofar as the heirs of Virgilio Valera or his estate are concerned, without prejudice to the right of Adoracion Valera Bringas to institute the proper action against the administrator of the estate of the late Virgilio Valera and to file the appropriate claims in the proceeding for the settlement of his estate. No pronouncement as to costs."[6] [Emphasis supplied]

It bears emphasizing that Celso Valera was a party to the petition brought by the heirs of Virgilio. The Court's decision set aside the order to pay rentals and the writ of execution only "in-sofar as the heirs of Virgilio Valera or his estate are concerned." The order and the writ were set aside not because they had no merit but because they were directed at a dead person whose legal representative had not been heard. Adoracion was ordered to file her actions against the administrator of Virgilio's estate, with which order she later complied.

Judge Hernando's ruling that since the heirs of Virgilio could not be made liable for the mis-appropriations on

Francisco's estate, it follows that Celso was also not liable, is fallacious. Celso was alive and was properly proceeded against.

In truth, Celso Valera was later declared as having lost his right to appeal the order and the writ of execution against his properties. He went to the Court of Appeals which dismissed his petition for mandamus to compel the approval of his appeal. His petition to this Court questioning the appellate decision was denied for lack of merit in *Celso Valera v. Court of Appeals*.^[7]

The records sustain the arguments of Adoracion Valera-Bringas that Civil Case No. 1044, CFI Abra which seeks the restoration of Celso's properties sold at public auction is merely a rehash and a reiteration of many cases long terminated, filed against Adoracion by Celso Valera and Wencesla Valera, et al. and also by the Roman Catholic Bishop of Bangued to whom a property of Francisco's estate had been sold by Celso. The Bishop of Bangued filed Civil Case No. 861 with the CFI of Abra to stop execution on the lot sold to him. The trial court decided the case against the Bishop. We denied due course to the petition brought by the Bishop of Bangued in G.R. No. L-48601.

Among these cases which have been long final and which Judge Hernando tried to render nugatory are:

- CA-G.R. No. 37751, *Celso Valera v. Hon. Ofilada*, for Mandamus, to reopen the final order directing him to pay rental, which was DENIED FOR LACK OF MERIT;
- L-26560, November 7, 1966; *Celso Valera v. Court of Appeals, et al.*, for certiorari, to set aside the resolution of the Court of Appeals in CA-G.R. No. 37751, which was DISMISSED FOR LACK OF MERIT;
- L-27886, *Celso Valera v. Domingo Banez, et al.*, [116 SCRA 648] to annul the writ of execution decided by this Honorable Court on September 21, 1982;
- L-29896, July 7, 1969; *Celso Valera v. Domingo Banez*, for certiorari, to annul the sale of CELSO's properties which was DISMISSED FOR LACK OF MERIT;
- L-35292, August 25, 1972; *Celso Valera v. Court of Appeals, et al.*, invoking L-27526, to set aside the writ of mandamus directing the probate court to deliver the properties executed against CELSO to ADORACION, which was DISMISSED FOR LACK OF MERIT;
- Adm. Matter No. P-159, February 21, 1975, *Wencesla Valera v. Sheriff Belarmino*, 62 SCRA 374, a complaint against the Sheriff who implemented the writ of possession, which was dismissed by the Supreme Court."

After we dismissed the petition in *Celso Valera v. Court of Appeals*^[8] thereby sustaining the Court of Appeals decision that Celso had lost the right to appeal the order to pay rentals and the writ of execution, Celso filed Civil Case No. 481 with the CFI of Abra seeking to declare the writ of execution null and void. The trial court dismissed the case. He again came to this Court.

In *Celso Valera v. Domingo Banez, et al.*^[9] we denied the prayer for injunction to stop Sheriff Banez from selling the properties levied upon. We made it clear in this case --L-27886-- that the order directing Celso to pay the rentals belonging to Francisco's estate had already become final and that Celso's appeal was unmeritorious and frivolous.

We stated:

"The factual setting of this case as well as the issue raised herein are not of first impression to Us. The appeal, unmeritorious as it is frivolous, should be dismissed.

"Thus, this Court takes notice of the fact that the instant case is factually related to another case bearing on the same issue and subject matter and adversely decided against herein plaintiff-appellant Celso Valera.

"It may be recalled that in the case of Celso Valera v. Hon. Macario Ofilada, Adoracion V. Bringas, and Court of Appeals, G.R. No. L-26560, November 29, 1966, plaintiff-appellant Celso Valera then filed a notice of appeal, appeal bond and proposed record on appeal dated April 25, 1966, April 28, 1966, and May 17, 1966, respectively, from the order dated July 10, 1964 of Judge Macario Ofilada of the Court of First Instance of Abra in Civil Case No. 64, R-1. In an order dated June 10, 1966, the CFI of Abra said:

"The petitioner, Celso Valera, is appealing from the order of the Court dated July 10, 1964, directing him and the heirs of Virgilio Valera to pay rentals of the properties belonging to the estate of the deceased Francisco Valera. This Order has already become final and any appeal interposed against said order cannot now be entertained.

"The same petition also interposed an appeal from the Order of the Court dated April 15, 1966. The Order referred to being interlocutory, the same is not subject to appeal.

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the appeal interposed by the petitioner Celso Valera dated April 25, 1966, is hereby denied. x x x'. [p. 17, rec. of G.R. No. L-26560].

"Undaunted, plaintiff-appellant Celso Valera filed on July 26, 1966 a petition for mandamus in the Court of Appeals [C.A. G.R. No. 37751-R, entitled Celso Valera v. Hon. Macario Ofilada, et al.] seeking among others, to compel the respondent Judge to approve and certify the proposed record on appeal and appeal bond.

"In a resolution dated July 28, 1966, the Court of Appeals dismissed the petition for mandamus filed by plaintiff-appellant Celso Valera on the ground that the record on appeal was defective, citing the ruling of this Court in *Government of the Philippines v. Antonio* [G.R. No. L-23736, Oct. 19, 1965], wherein it is stated that where the record on appeal does not include all pertinent dates and data necessary to determine whether the appeal was perfected on time, the appeal should be dismissed.

"A motion for reconsideration was filed by herein plaintiff-appellant [then petitioner] from the resolution of the Court of Appeals dated July 28, 1966, but the same was denied by the Court of Appeals in a resolution dated August 23, 1966 [p. 28, rec. of L-26560].

"Still unfazed by the foregoing adverse rulings, herein plaintiff-appellant came to this Court in a petition for certiorari assailing the resolution of the Court of Appeals dismissing his petition for mandamus.

"In a resolution dated November 7, 1966, this Court dismissed the petition for review on certiorari filed by herein plaintiff-appellant Celso Valera for being late and for lack of merit [p. 4, rec. of L-26560]. [at pp. 653-654].

x x x x x x x x

"As noted earlier, the appeal, being unmeritorious and frivolous, must fail.

"It is indubitably clear that the issue raised herein had already been resolved when this Court dismissed the petition for certiorari filed by herein plaintiff-appellant in *Celso Valera v. Hon. Macario Ofilada, Adoracion V. Bringas, and Court of Appeals, supra*, for lack of merit, thus in effect upholding the legality and validity of the order or orders upon which the assailed writ of execution was issued.

"Likewise, We uphold defendants'appellees' contention that:

"The causes of action in both cases are definitely substantially the same. The orders upon which the writ of execution was issued were pleaded in the petition for Certiorari and in the instant case and the object in both is to render them ineffective. 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. [*Penalosa v. Tuazon, supra*; *Tehedor v. Palet*, 61 Phil. 503; *Francisco v. Blas, et al.*, G.R. No. L-5078, May 24, 1953; *Ran v. Dela Cruz, et al.*, G.R. No. L-10877, Feb. 29, 1958; *Cayco, et al. v. Cruz*, G.R.

No. L-12663, Aug. 21, 1959; Ipekjdian Merchandising v. Court, et al., G.R. No. 15430, September 30, 1963; Raymundo, et al., v. Afable, et al., G.R. No. L-10548, April 25, 1958 cited in pp. 162, 163, Martin, *ibid*]. [pp. 10-11, Brief for Defendants?Appellees, p. 47, rec.]". [at p. 655, Emphasis supplied]

In the case of Celso Valera v. Domingo Bañez,[10] which we denied for lack of merit, Celso questioned the Abra CFI's order dismissing his complaint to declare the sheriff's sale null and void.

In Celso Valera v. Court of Appeals,[11] Celso questioned the decision of the Court of Appeals in CA-G.R. No. 45266-R. We denied the petition for lack of merit. The Court of Appeals' decision which we, in effect, sustained stated:

"Considering that as a result of the appealed cases CA-G.R. No. 37751, before the Court of Appeals, and in G.R. Nos. L-26560, 27886 and 29146 before the Supreme Court, private respondent Celso Valera can no longer assail the validity of the Order of Execution against him as well as the subsequent levy and sale at public auction of his properties; x x x whatever resolution the Supreme Court will make on the petition for certiorari by the heirs of Virgilio Valera, will not in any way affect his liability as a judgment debtor.

"Should the Supreme Court resolve in favor of the heirs of Virgilio Valera, they alone will be benefited as they did not lose the right to appeal the merits of their case. It will not in any way benefit private respondent, Celso Valera, for he had slept on his right by not elevating the merits of his case within the reglementary period. On the other hand, should the Supreme Court sustain the lower court in the petition for certiorari by the heirs of Virgilio Valera, any further delay in effecting the herein Order under review in the Supreme Court will only augment and aggravate the denial to the heirs of Francisco Valera of the right to have and to hold whatever rights and interest they have in his estate."

We also had occasion to pass upon the dis-puted writ of execution in Valera v. Sheriff Belarmino.¹² In this Administrative Matter No. P-159, we stated plainly:

"In Civil Case 64 R-1 the Court of First Instance of Abra issued an order directing the heirs of Celso Valera, a brother of the deceased Francisco Valera, to deliver certain properties to the administratrix of the latter. The complainant herein, Wencesla Valera, is a daughter of Celso Valera, and the residential house and lot occupied by the complainant was one of the properties ordered delivered to the administratrix, Mrs. Adoracion Valera Bringas. This order of the Court of First Instance of Abra was appealed to the Court of Appeals [Case No. not given] and later to the Supreme Court [G.R. No. L-35392, 'Celso Valera v. Court of Appeals, et al.'] but it was affirmed in both instances. After the judgment on appeal had become final and executory, Judge Leopoldo B. Gironella of the lower court issued an order dated December 15, 1972 granting the issuance of a writ of possession and designating deputy provincial Sheriff Benjamin Belarmino, now respondent, to implement the writ. [pp. 5-6, rollo] Copies of the order and writ of possession were served on the heirs of Celso Valera, one of whom as We said earlier is the complainant Wencesla Valera. Because of the belligerent attitude of Wencesla Valera, respondent Belarmino sent a letter dated January 9, 1973, to her and to the other heirs giving them until January 20, 1973, to vacate the residential house and lot with the warning that should they still fail to vacate he would be constrained to employ such means available within his authority to eject them. x x x." [at p. 376]

x x x x x x x x

"Obviously, the filing of this complaint is the outcome of a resentment and ill-feeling harbored by complainant towards the respondent sheriff on whose shoulders fell the unpleasant task of enforcing a writ of possession against her. Just as We will not countenance any abusive and unnecessary use of force in the implementation of judicial orders, [see *People v. Hernandez*, 59 Phil. 343, 354-355] We shall likewise not look with favor upon one who makes a mockery of court orders and processes by the simple expediency of adopting a hostile and belligerent attitude towards their execution." [at p. 380]

It can be seen from the words of the decisions themselves that the issues sought to be revived by the heirs of Celso Valera when they instituted Civil Case No. 1044 have long been resolved squarely on their merits and that the cause of action is barred by prior judgment. Judge Hernando, therefore, had no jurisdiction to issue the orders questioned in the instant petition.

Was the order to pay rentals issued after hearing on the merits? Was the court's order directing Celso Valera to pay the estate of his deceased brother, a resolution on the merits?

There can be no dispute from the records that the petition to pay rentals was heard by the court. Evidence was adduced and the issues resolved accordingly.

As earlier stated, a distinction should be drawn between the heirs of Virgilio Valera, who were not parties in the intestate proceedings, and Celso Valera who was alive and who was not only the petitioner but also an administrator in said proceedings. We ruled in *Vda. de Valera v. Judge Ofilada*[12] that the probate court had no jurisdiction over the heirs of Virgilio Valera but the same cannot be said for Celso Valera. Judge Hernando could not validly extend the benefits of our decision, and include Celso Valera because the probate court had jurisdiction over him and correctly ordered him to pay rentals for his admitted use of real property owned by Francisco's estate.

Section 4 of Rule 85, Rules of Court provides:

"Accountable for income from realty used by him. -- If the executor or administrator uses or occupies any part of the real estate himself, he shall account for it as may be agreed upon between him and the parties interested, or adjusted by the court with their assent; and if the parties do not agree upon the sum to be allowed, the same may be ascertained by the court, whose determination in this respect shall be final."

The records also show that the judgment on the pleadings rendered by Judge Hernando in Civil Case No. 1044 was issued only on oral motion in spite of the private respondents having been required to put down their motion in writing with a written offer of evidence and for petitioner Adoracion to file her opposition to it. The order of execution dated January 17, 1980 was issued even before the January 11, 1980 judgment on the pleadings was received by petitioner Adoracion and before the judgment itself had become final. Judge Hernando had to designate his interpreter as acting clerk of court to issue a manifestly improper writ of execution which the regular clerk of court would not have issued.

And while this petition was pending before us, Judge Hernando tried to pre-empt our action by issuing orders to implement the writ of execution of his judgment so much so that we had to hurriedly enjoin the respondents from enforcing the judgment on the pleadings and the resulting writ of execution. It is pertinent to point out that because of the undesirable record and many administrative cases filed against the respondent Judge, he was not reappointed in the judicial reorganization of 1983.

The petitioner states in her reply that she has developed the properties she purchased at the auction sale pursuant to decisions and orders long final:

"More than forty [40] years ago, scheming uncles tried to deprive petitioner, then a helpless minor, of her birthright. She has fought for her rights all these years; the courts of this land had recognized and given her such right. But, respondents' falsehood would now thwart what the courts had already awarded and delivered to her - the sole and universal heir of her father. Worse, she has invested and spent her own money, her and her husband's lifetime earnings, to improve the lands which were delivered to her upon a writ of mandamus issued by the Court of Appeals and upheld by this Honorable Court. She has built an air-conditioned hotel; she has planted hundreds of mango trees which are now fruit bearing. She and her husband invested heavily in these properties because this Honorable Court had already finally settled the matter a long, long time ago. It would

be a travesty of justice to take away from her what the courts had ordered delivered to her more than twelve [12] years ago.

On the ground of bar by prior judgment and grave abuse of discretion in the promulgation of the judgment on the pleadings and the order and writ of execution, we rule that the questioned decision and order of the respondent Judge are null and void.

WHEREFORE, the motion for reconsideration is hereby GRANTED. The petition for certiorari, pro-hibition, and mandamus is GRANTED. The orders of the respondent Judge dated January 23, 1979; August 3, 1979; and September 19, 1979 are SET ASIDE. The complaint and the complaint-in-intervention in Civil Case No. 1044 are DISMISSED. The Regional Trial Court of Abra is ordered to close Civil Case No. 64, R-1.

This RESOLUTION is IMMEDIATELY EXECUTORY.

SO ORDERED.

Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

Paras, J., see dissenting opinion.

[1] 59 SCRA 96

[2] Annex A, motion for reconsideration

[3] Valera v. Court of Appeals, 37 SCRA 80, 82

[4] 59 SCRA 96

[5] ibid at page 98

[6] Ibid, at pp. 106, 109, and 110.

[7] G.R. No. L-26560, November 7, 1966

[8] G.R. No. L-26560, supra

[9] 116 SCRA 648

[10] G.R. No. L-29896, July 7, 1969

[11] G.R. No. 35292, August 25, 1972

[12] supra, L-27526

DISSENTING OPINION

PARAS, J.:

This Motion for Reconsideration seeks to set aside the decision of this Court in the instant case rendered on September 24, 1986, the dispositive portion of which states, to wit:

"PREMISES CONSIDERED, We rule: (a) that respondent Court's judgment on the pleadings rendered on January 11, 1980 and the Order of January 17, 1980 both applying the benefits of the decision in L-27526 also

in favor of the heirs of Celso Valera should be, as they are hereby, AFFIRMED; (b) that the other issues in this case are hereby considered moot and academic by virtue of the decision in this case; and (c) that the 'Comment on Private Respondents' Motion for Affirmation of Resolution Dismissing Petitioner's Petition', is hereby noted.

"SO ORDERED." (p. 590, Rollo)

For purposes of clarity the following antecedent facts are restated as follows:

Francisco Valera, Virgilio Valera and Celso Valera (all deceased) were brothers. Francisco died on March 10, 1945 as an unmarried man without known compulsory heirs at the time. In the settlement of the intestate estate of Francisco Valera filed in the Court of First Instance (CFI) of Abra as Sp. Proc. No. 64, R-1, Virgilio Valera was appointed administrator until his death in March, 1961. Celso Valera took over but his being administrator was cut short by the appointment of herein petitioner as administratrix having been declared an "acknowledged natural child of Francisco Valera" in a decision rendered by CFI Abra in Civil Case No. 374 (Please see 37 SCRA 80, 82).

In an Order of the probate court dated July 10, 1964, Virgilio and Celso Valera were ordered to pay the amount of P100.00/month as rentals plus legal interest since April, 1945, for the use of an ancestral home, the amount to be paid to the administratrix.

A writ of execution was issued on April 15, 1966 implementing the order of July 10, 1964. Consequently, an auction sale was held on April 3, 1967 and the questioned properties were ordered to be delivered to herein petitioner being the only bidder.

Celso Valera brought the matter to this Court by filing a petition for the annulment of the Writ of Execution with Preliminary Injunction against the Deputy Provincial Sheriff of Abra, docketed as G.R. No. L-27886 entitled "Celso Valera v. Banez, etc., et al.", which was dismissed on the ground that respondents were performing ministerial functions which the court cannot enjoin, and the court having ordered the issuance of the writ of execution cannot issue the writ prayed for.

In his desire to appeal against the Orders of July 10, 1964 and April 15, 1966, which appeal was denied by the lower court, Celso filed a petition for Mandamus in the Court of Appeals, docketed therein as CA-G.R. No. 37751 to compel respondent Judge to approve said appeal which petition was dismissed by the Court of Appeals on the ground that the record on appeal failed to show on its face that the appeal was filed on time. On review by certiorari, in G.R. No. L-26560, "Celso Valera v. Ofilada, et al.", the Supreme Court dismissed the petition for being late and for lack of merit.

When the Probate Court issued an Order dated February 5, 1970, suspending action on the motion of herein petitioner for the delivery to the estate of thirteen (13) parcels of land belonging to Celso Valera, petitioner filed in the Court of Appeals, CA-G.R. No. 45266-R "Bringas v. Aquino et al.", wherein the Court of Appeals ordered the respondent Judge to issue a writ of possession directing respondent Deputy Provincial Sheriff to deliver to and place petitioner-administratrix in possession of the properties in question. On appeal to this Court in L-35292, the petition was denied for lack of merit.

The heirs of Virgilio Valera, by way of questioning the enforceability of the Writ of Execution issued by the Probate Court, filed L-27526 wherein this Court pronounced as void the writ of execution and the sheriff's execution sale on April 3, 1967 and all proceedings relative thereto as well as the orders of July 10, 1964, April 15, 1966, January 4, April 3 and May 2, 1967 of the lower court.

On the theory that a void order produces no effect, herein private respondents as heirs of Celso Valera, filed Civil

Case No. 1044 against herein petitioner for the resto-ration of the properties of Celso Valera which were levied upon on execution and delivered to Adoracion Valera Bringas by virtue of the above orders voided by this Court.

Petitioner moved for the dismissal of Civil Case No. 1044 in the lower court on the grounds of res judicata, lack of jurisdiction over the subject or nature of the action, plaintiffs' lack of personality to sue and lack of cause of action.

Judge Hernando denied the motion to dismiss in his Order dated January 23, 1979 and on January 11, 1980, said court decided the case by a judgment on the pleadings order-ing herein petitioner to surrender, return and deliver the actual possession of the questioned properties to the heirs of Virgilio Valera and Celso Valera.

In a petition for Certiorari, Prohibition and Mandamus with Restraining Order filed with this Court by herein petitioner on November 27, 1979, she prayed for a decision dismissing Abra CFI Civil Case No. 1044 on the ground that the same is barred by the following prior judgments: (1) CA-G.R. No. 37751 "Celso Valera v. Hon. Macario M. Ofilada"; (2) L-26560 "Celso Valera v. Court of Appeals"; (3) L-27886 "Celso Valera v. Banez"; (4) CA-G.R. No. 45266-R "Bringas v. Aquino"; (5) L-35292 "Celso Valera v. Court of Appeals".

On September 24, 1986, the Court rendered a decision holding that the doctrine of res judicata does not apply to the case. It was explained therein that the cited cases will not at all bar Civil Case No. 1044 on the ground that in disposing of those cases the Court resolved not the merits of the case but on grounds that they were filed beyond the reglementary period or on account of other incidents not necessarily involving the same parties or the same cause of action.

Dissatisfied with this pronouncement, petitioner filed a "Motion for Reconsideration" expounding once again that Abra CFI Civil Case No. 1044 is barred by prior judgments (Rollo, pp. 592-620).

On November 11, 1986, the Court issued a Temporary Restraining Order enjoining the parties from enforcing the decision in this case dated September 24, 1986, pending resolution of the petitioner's motion for reconsideration (Rollo, p. 649).

In view of the letter (ANNEX B, Rollo, p. 638) sent by Atty. Demetrio Pre, counsel of private respondents, to the Agrarian Reform Office of Abra informing said office of the Decision in this case and seeking to reinstate the tenants of private respondents over the land in question, petitioner filed an "Urgent Motion/Petition for Contempt" praying for an order restraining the supposed tenants of private respondents, Atty. Demetrio Pre and Atty. Macrino Elvena of the Agrarian Reform Office of Bengued, Abra, from disturbing the possession of the petitioner over the lands until the Court shall have finally decided the case at bar, and praying further that these persons be cited in contempt of court (Rollo, pp. 633-635).

In the same Resolution dated November 10, 1986, wherein the temporary restraining order was issued, the aforesaid persons were required to comment (Rollo, p. 648).

In the Comment filed by Atty. Pre, he explained that the said letter was for the purpose of getting a clearance certificate from said office to be used for filing an agra-rian case for reinstatement of their tenants (Rollo, pp. 651-654).

A separate Comment was filed by Atty. Macrino Elvena praying for the dismissal of the petition for contempt against him for the reason that he merely acted in the discharge of official duties (Rollo, pp. 666-669).

Petitioner filed her reply to respondents' opposition to the motion for reconsideration on November 26, 1986 (Rollo, pp. 670-683) and a separate reply to Atty. Pre's comments on the motion for contempt (Rollo, p. 684).

Petitioner's motion for reconsideration relies on the following grounds:

"I.

THE HONORABLE COURT HAD ALREADY DIS-MISSED ABRA CFI CIVIL CASE NO. 1044, HENCE, THERE ARE NO JUDGMENT ON THE PLEADINGS/ORDER (OF EXECUTION) TO AFFIRM.

II.

ABRA CFI CIVIL CASE NO. 1044 WAS DIS-MISSED BECAUSE IT IS BARRED BY PRIOR JUDGMENTS, INCLUDING SC-G.R. No. L--27526, ANGELITA VDA. DE VALERA, ET AL., VS. OFILADA, ET AL., SEPTEMBER 12, 1974 (59 SCRA 96).

III.

THE ORDER DENYING THE MOTION TO DISMISS, JUDGMENT ON THE PLEADINGS, ORDER AND WRIT OF EXECUTION IN ABRA CFI CIVIL CASE NO. 1044 ARE VOID BECAUSE THEY WERE ISSUED WITH GRAVE ABUSE OF DISCRE-TION AMOUNTING TO LACK OF JURISDICTION." (Rollo, p. 592)

In arguing that Abra CFI Civil CAse No. 1044 had al-ready been dismissed by the Supreme Court, petitioner made use of what had transpired in the hearing of March 12, 1980, when this Court tried its best to assist the parties in arriving at a compromise agreement. Unfortunately, the effort proved futile.

It needs to be stated that the statements quoted by petitioner from the records of said hearing may be regarded as nothing more than mere opinions so much so that they "must yield against the decision promulgated by this Court in the case" (Dayrit v. Court of Appeals, 36 SCRA 548).

Petitioner still insists that Abra CFI Civil Case No. 1044 should be dismissed because it is barred by prior judgments. Indeed there were various cases already decided by this Court originating from Abra Special Proceeding No. 64, R-1; however, those decisions involved either diffe-rent parties or carried different causes of action, and more so, they were not resolutions on the merits of the case. As pointed out in the original decision, a judgment, to be a bar to a subsequent case, must possess the following requisites: (1) it must be a final judgment; (2) the court which rendered it had jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be identity between the two cases, as to parties, subject matter and cause of action (Martinez v. C.A., 139 SCRA 563, Nov. 11, 1985; Carandang v. Venturanza, Nov. 21, 1984, 133 SCRA 344; Pantranco North Express, Inc. v. NLRC, Dec. 29, 1983, 126 SCRA 526; Gatus v. C.A., Jan. 28, 1980, 95 SCRA 530).

It is likewise argued by the petitioner that Celso's failure to appeal the order of July 10, 1964 of the intes-tate court in Abra Case No. 64, R-1, finally settled the matter and it is a resolution on the merits insofar as Celso, his heirs, successors and assigns are concerned (Motion for Reconsideration, Rollo, p. 598).

The Argument is untenable. A judgment is said to be on the merits when it amounts to a declaration as to the respective rights and duties of the parties, based on the ultimate facts or state of facts disclosed by the pleadings and evidence upon which the recovery depends (Buenafe v. Bayona, 52 O.G. 691). It is one rendered after a consideration of the evidence submitted by the parties during the trial of the case (Saberon v. Alikpala, 63 O.G. 11270). There was thus no resolution on the merits.

Not even the case of Angelita Vda. de Valera (L-27526, Sept. 12, 1974, 59 SCRA 96) could bar Abra CFI Civil Case No. 1044. In the former, one of the orders voided by the Supreme Court was the July 10, 1964 order of the lower court which order was the very basis upon which herein petitioner acquired possession of the properties in question. Being null and void, "it does not exist in the eyes of the law" (David v. Aquilizan, 94 SCRA 707, 714). It is "as though it had not been done" (Herrera v. Barretto, 25 Phil. 252). In legal contemplation, it is no judgment at al (Chavez v. C.A., et al., 24 SCRA 663, 685). "By it, no rights are divested. From it, no rights can be obtained.

Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. x x x" (Planas v. Collector of Internal Revenue, 3 SCRA 395; Comia v. Nicolas, 29 SCRA 492, 503).

Petitioner assails as void the order of respondent court denying the motion to dismiss, the judgment on the pleadings, and the order of execution of the judgment on the pleadings.

It is contended that petitioner denied all the paragraphs in the complaint so much so that judgment on the pleading is improper (Rollo, p. 616). It must be recalled that Abra CFI Civil Case No. 1044 was for the recovery and repossession of properties of Celso Valera which were delivered to petitioner by virtue of the Writ of Execution subsequently declared void by this Court along with the Sheriff's Auction Sale on April 3, 1967. As stated earlier, if the basis upon which such properties were obtained was null and void it is as if there was no basis at all and the properties obtained therein must necessarily be re-turned. This is in consonance with the decision in the case of Manila Surety & Fidelity Co., Inc., v. Lim, 106 Phil. 772, 776 (1959), wherein the Court ordered the return of the amount in question upon finding that the judgment upon which the plaintiff-appellee made payment was declared null and void and consequently the execution of said judgment and the payment made thereunder were also null and void. Since the return of these properties was the very issue in Abra CFI Civil Case No. 1044, judgment on the pleadings is in order because there is no more dispute to speak of in said case.

It is alleged that in Valera v. Banez, L-27886, September 21, 1982, Justice (later Chief Justice) Felix Makasiar, said that the Supreme Court in Valera v. Ofi-lada, L-26560, November 29, 1966 that the order directing the heirs to pay rent has already become final, but said case was resolved in a mere resolution, is not on the merits (except the procedural aspect), and is not reported in the SCRA. It is clear that res judicata does not apply in the instant litigation.

Incidentally, We have the following certification:

"Supreme Court of the Philippines
Manila

Judicial Records Office
JUDGMENT DIVISION

November 26, 1987

To Whom it may Concern:

This is to certify that rollo of case G.R. No. L-26560 entitled "Celso Valera vs. Hon. Macario M. Ofilada, et al.," were among those that were not saved during the flood caused by typhoon "Yoling" in the year 1976.

(Sgd.) ROBERTO MIRANDA
Chief, Judgment Division"

Another ground of petitioner is that the motion for judgment on the pleadings was not in writing. While it is true that Rule 15, Section 2 of the Revised Rules of Court requires all motions to be in writing, the court may, in its discretion, and in the absence of statute or rules of court requiring the motion to be written, entertain an oral motion, although the better practice is to make the motion in writing (I Francisco, Rules of Court, p. 852). Nowhere under Rule 19 of the Rules of Court is it stated that the motion for judgment on the pleadings must be in writing. Hence, the allegation that it was issued with grave abuse of discretion is untenable.

PREMISES CONSIDERED, and it being evident that petitioner has not raised any matter in this case which has

not yet been resolved by Us, the Court RESOLVED to DENY this Motion for Reconsideration.

SO ORDERED.

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