

MODESTA LANUZA, PLAINTIFF AND APPELLANT, VS. CEFERINO GONZALEZ ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 5663. December 07, 1910

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff, alleging that she bought the house described in the complaint from the defendants, seeks in the action to establish her right of ownership, and to obtain possession of the house, together with damages for its unlawful detention.

It appears that in a former proceeding, wherein the plaintiff in this action was intervener, and the defendants herein were made defendants, together with one Prudencia Esguerra, plaintiff relying upon precisely the same allegations and evidence as she now relies upon in this action, sought to recover possession of the house in question, and to establish her right of ownership therein.

In those proceedings the court, after due trial, held that plaintiff was not the owner of the house, the title thereto being in the defendants, and that she was not entitled to the possession thereof, whereupon the complaint in intervention was dismissed on the merits. From that judgment plaintiff took no appeal, and it is clear therefore that giving that final judgment the effect prescribed in section 306 of the Code of Civil Procedure the question of ownership of the house submitted in this action-must be deemed to be *res judicata*. It may be admitted that we might, and probably would have reversed the judgment in the former case had it been appealed to this court, but no appeal having been taken neither the court below nor this court can grant the relief in a second action which might have been secured on appeal in the former action. (*Begalado vs. Luchsinger & Co.*, 5 Phil. Rep., 625; *Macondray & Co. vs. Quintero*, 6 Phil. Rep., 429; *Tanguinlay vs. Quiros*, 10 Phil. Rep., 360.)

The following remarks of the Supreme Court of California in a somewhat similar case (*Quirk vs. Rooney*, 130 Cal., 511), aptly express the grounds upon which the doctrine of *res judicata* is based, and are worthy of quotation in this connection:

"We fully appreciate the fact that if there had been no final decree of distribution in the estate of Bryan Lynch, deceased, and no former adjudication, the plaintiff's claim would be meritorious. But courts must follow general and well-established rules of law applicable to all cases and for the benefit of all. If plaintiff, through negligence in not properly presenting her case at the former trial, has lost her right to the property in controversy, it is a hardship, but one from which we have no power in this action to grant relief. To adopt any other rule than this one we have followed would open a 'Pandora's box' of evils that would upset the rules of property and the respect for final judgment of the courts."

Counsel for appellant contends that the judgment in the former case was not a bar to another action, because the disposing part thereof merely dismissed the plaintiff's action, and did not in express terms absolve (absolver) the defendants from the cause of action set out in the complaint. But the court expressly held that the plaintiff in that action was "not entitled to the relief sought," and after due trial and submission of the case dismissed the action,

wholly and completely disposing of all the issues raised in the pleadings; this dismissal did in effect absolve the defendants. Such a dismissal is not to be confounded with the dismissal of an action under the provisions of section 127 of the Code of Civil Procedure, wherein the right to a new action is expressly reserved to the plaintiff, the judgment of dismissal not being a judgment based upon a decision of the issues raised by the pleadings.

The judgment in the former case was in English, and counsel's erroneous contention as to its effect is probably based upon a translation wherein the English word "dismissed" is treated as a precise equivalent of the Spanish word *sobreseido*. Strictly speaking, however, the Spanish word *sobreseer* taken by itself is properly limited to cases of dismissal of a complaint or action such as those mentioned in section 127 of the Code of Civil Procedure, wherein the judgment does not dispose of the issues raised by the pleadings; and the English word dismissed in the phrases "the complaint is dismissed" or "the action is dismissed" is not accurately rendered by the use of the Spanish word "*sobreseer*" when this English word is used in the disposing part of a judgment which disposes of the issues raised in the pleadings. In such cases the Spanish words "*sobreseer definitivamente*" would more nearly express the full meaning and effect of the English word dismiss when used in this connection, the dismissal in English being understood to be "without day."

Plaintiff in this action based her prayer for relief on her allegations that by virtue of certain advances made to the defendants she became the owner of the house in question, and the defendants on the witness stand admitted that some of these advances were in fact made them, but insisted that they were made by way of loans, and not as the purchase price of the house in question. In the light of this evidence of record, we think it proper to indicate that while the plaintiff can not have the relief prayed for in this action, neither the judgment in the former case nor the judgment in this case deprives the plaintiff of her right of action to recover the amount of any such advances still remaining unpaid.

Basing our decision strictly upon the doctrine of *res adjudicata* as laid down in the above-cited section of the code, the judgment of the lower court in this case in favor of the defendants and against the plaintiff must be affirmed, with the costs of this instance against the appellant.

Arellano, C. J., Torres, Mapa, Moreland, and Trent, JJ., concur.

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