

CRESENCIO YU, EMETERIO YU, YU CHIN HOCK, ROBERT YU, ROSITA YU, ANITA YU, VALENTINO YU, TERESITA YU, YU CHU HA, PATROCINIO YU, ANITA ABELLANOSA, ONG OH, RONNIE YU, SONNY YU, SALL...

G.R. No. 56766. February 28, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

Petitioners in this special civil action of CERTIORARI and PROHIBITION seek to annul and set aside for allegedly having been issued with grave abuse of discretion amounting to lack of jurisdiction, the Resolutions of the then Court of Appeals (now the Intermediate Appellate Court) dated October 13, 1980 and March 17, 1981 issued in CA-G.R. No. 65149-R. Petitioners likewise pray that pending resolution of this petition on its merit, a temporary restraining order be issued enjoining the respondents from enforcing the said questioned resolutions.

Petitioners are respectively the Heirs of Yu Tiong and Yu Sun and are co-owners of the lot and the commercial building standing thereon covered by Transfer Certificate of Title No. 58345 of the Register of Deeds of Cebu City. Private respondents, on the other hand, are occupying separate portions of the aforesaid property as lessees thereof, pursuant to a verbal contract of lease on a "month-to-month basis" entered into by them with petitioners, and as such lessees, private respondents were paying one-half (1/2) of the agreed rentals to the heirs of Yu Tiong and the other one-half (1/2) to the heirs of Yu Sun.

On July 22, 1976, petitioners wrote private respondents informing them that they are increasing the rentals to take effect on January 1977. Private respondents refused to agree to the proposed new rental rates. On September 30, 1976, petitioners wrote another letter to private respondents this time informing them that general repair and renovation of the building had to be undertaken starting March 1, 1977. Private respondents again refused to allow the repair and renovation. In view thereof, written demands were made upon the private respondents to vacate the premises respectively occupied by them.

Instead of vacating the premises, private respondents started to deny the title of petitioners as their lessors and filed a complaint in intervention in Civil Case No. R-14977 of the Court of First Instance of Cebu, Branch IV. This case was dismissed sometime in March 1977 but was appealed by private respondents to the then Court of Appeals.

Meanwhile, and more specifically on March 9, 1977, private respondents filed this case, Civil Case No. R-15971 in the Court of First Instance of Cebu against petitioners for "Interpleader, Specific Performance, Fix Duration of Lease, Consignation with Prayer for Injunction."

Within the reglementary period, petitioners filed their answer with special and affirmative defenses.

After a hearing on the affirmative defenses, the trial court in its order dated January 25, 1978[1] dismissed the complaint. The pertinent portion of the order of dismissal reads -

"After a careful scrutiny of the allegations and arguments of the parties, in support of and against the motions under consideration, the Court finds no cogent reason to proceed with this interpleader case against the defendant Heirs of Yu Tiong, considering that the plaintiffs have all along been paying the rentals to them without objection from defendant-oppositors Ronnie Yu, Evangelista Yu, Rosario Yu, Ignacia Yu and Sonny Yu which clearly shows that plaintiffs and said defendant-oppositors have recognized the rights of co-ownership of the defendant Heirs Yu Tiong over the property in question. There is, therefore, no legal justification in requiring them to interplead their rights in the instant case.

With respect to the defendant Heirs of Yu Sun, there is also no valid reason to proceed with this case as there is actually an earlier interpleader case between the parties in this case with Branch IV of this Court, which is now pending appeal in the Court of Appeals.

In the case of defendant-oppositor Ronnie Yu, the City Court of Cebu, Branch VIII, has rendered judgment in Civil Case No. R-17491, dismissing his claim of co-ownership over the property involved. In fact, his appeal from that decision to this Court was dismissed and which order of dismissal is now the subject of a certiorari proceedings in the Court of Appeals.

Under Sec. 1(3) of Rule 16, Rules of Court, pendency of another action between the same parties for the same cause is a ground for the dismissal of an action, provided that: (1) there is identity of parties, or at least such as representing the same interest in both actions; (2) identity of rights asserted or relief prayed for, the relief being founded on the same facts; (3) and the identity on the two preceding particulars should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to res judicata in the action under consideration. (Francisca Vda. de Blas, L-5073, May 4, 1953; *Diana v. B.T.C.*, 49 O.G. 2238)

The fact that the parties in Civil Case No. R-14977, Civil Case No. R-17491 and this case are not exactly identical will not prevent the action from being dismissed if there is identity of issue.

'Since the identity of parties is not a mere matter of form, but of substance, the rule of res judicata should not be defeated by minor differences of parties. Thus, where the issues in separate suits are the same, the fact that the parties are not precisely identical is not necessarily fatal to the conclusive effect of prior judgment. In applying the rule, the Courts have allowed themselves a good deal of latitude observing the spirit thereof rather than the letter and there are some well recognized exceptions to or modifications of it.' (50 C.J.S., 291-292)

Likewise, there is no merit to the contention of the defendant-oppositors that the dispositive portion of the decision rendered in Civil Case No. R-17491 did not contain any declaration that the defendant-movants are the owners of the property to the exclusion of the defendant-oppositors for it has been held that:

'No strict formality in the language is necessary to express the adjudication of the court. The judgment is tested by its substance rather than its form. It is sufficient if the entry shows that the issue between the parties has been passed upon by the court and the merits of the case finally determined.' (*Melton vs. St. Louie, I.M. & S.R. Co.*, 99 Ark. 433; 139 S.W. 289, *Lutrell vs. Reynolds*, 63 Ark. 254; 37 S.W. 1051; *Policarpio v. Philippine Veterans Bank, et al.*, 106 Phil. 125).

'The determinative factor is the intention of the court as gathered from all parts of the judgment itself. In applying the rule, effect must be given to that which is unavoidably and necessarily implied in a judgment, as well as to that which is expressed in the most appropriate language.' (*Am. Jur.* 212-213; *Falcon vs. Arca*, 8 SCRA 591).

Furthermore, in the case of *Leoncia D. Aguirre, et al., versus Vicente Aguirre et al.*, (58 SCRA 461-466), the Highest Tribunal, speaking through the Honorable Justice Antonio Barredo, posited the rule that in interpreting the rights settled in a decision, the tenor of the opinion and the ratiocination in the decision should be resorted to, to get the intention of the court. Likewise, if what appears in the dispositive portion is

absurd if set against what appears in other parts of the decision, construction of judgment might be sanctionable notwithstanding jurisprudence to the effect that it is the dispositive part of a decision that controls irrespective of what might appear in the opinion part thereof.'

Anent the plaintiffs' second cause of action which is to fix the period of the lease and the amount of rentals, it was held by the Honorable Supreme Court in the case of *Lim Si vs. Lim*, L-84961, April 25, 1956, that consignation under Art. 1256 of the Civil Code is not the proper proceeding to determine the relation between landlord and tenant, the period of life of the lease or tenancy, the reasonableness of the amount of rental, the right of the tenant to keep the premises against the will of the landlord, which are to be decided not in action of consignation but in that of unlawful detainer that the lessor institute when the lessee refuses to pay the rents he has fixed for the property.

From this, it is very clear that plaintiffs' cause of action for the fixing of the period of lease and the amount of rentals cannot stand legal scrutiny."

Private respondents appealed the aforesaid order of dismissal to the then Court of Appeals under CA-G.R. No. 65149-R.

On November 23, 1979, petitioners filed before respondent Court of Appeals a Motion to Dismiss private respondents' appeal on the ground that their record on appeal was filed out of time.[2]

In a Resolution dated November 27, 1979, respondent Court of Appeals admitted private respondents' record on appeal and required them at the same time to file their appellants' brief within a period of forty-five (45) days.

On February 25, 1980, on motion of private respondents for an extension of time to file brief, they were granted an unextendible period of ninety (90) days, to expire on May 15, 1980.

Private respondents failed to file the required brief within this period. Consequently, on August 21, 1980, respondent Court of Appeals issued the following Resolution -

"Considering that despite receipt by counsel for the plaintiffs-appellants of the resolution of this court granting them a non-extendible period of 90 days within which to file appellants' brief, no brief was filed up to this date, the Court RESOLVED to CONSIDER the appeal on the above-entitled case ABANDONED and DISMISSED."[3]

On September 10, 1980, private respondents filed a "Motion to Reconsider Order of Dismissal of Appeal and to Admit Attached Brief of Appellants", alleging as grounds therefor, the following -

"3. That the brief could not be filed earlier, as the case was referred back to Carlos Po (in his lifetime) by counsel so that another counsel would appear and make the brief, but as it appears now, this never happened and the records were all kept in the file of the deceased and which is the main reason for the non-filing thereof.

x x x x x

5. That the preparation of the brief would not have been delayed were it not for the untimely death of Carlos Po on May 14, 1980.

x x x x x

7. That there was no intent to de-lay or frustrate this appeal and that plaintiffs-appellants have all interest to have this appeal prosecuted to its end, and that they seek the liberality of the Honorable Court in the application of the rules, in the interest of justice that their appeal be allowed or reinstated and that the non-filing on time of the brief was purely due to accident, i.e., the death of Carlos Po."[4]

This motion was opposed by petitioners[5] but in a Resolution dated October 13, 1980, (one of the assailed resolutions) respondent Court of Appeals reconsidered its previous Resolution dismissing the appeal and admitted

private respondents' brief.[6] Petitioners moved to reconsider said resolution alleging mainly that the appeal of private respondents is "frivolous and dilatory." [7] Respondent Court of Appeals in its Resolution dated March 17, 1981 (the second questioned resolution) denied petitioners' motion for reconsideration.[8]

Hence, the instant petition, petitioners contending that the two questioned resolutions dated October 13, 1980[9] and March 17, 1981[10] are null and void having been issued with grave abuse of discretion amounting to lack of jurisdiction.

On June 19, 1981, We required respondents to comment on the petition and issued a temporary restraining order enjoining respondents from enforcing and/or implementing the questioned resolutions.

In a subsequent Resolution dated August 31, 1981, We gave due course to the petition and required the parties to file their respective memoranda.

We view the circumstances narrated above as justifying the setting aside of the questioned resolutions of respondent Court of Appeals. We find merit in the petition and consequently grant the reliefs prayed for by the petitioners.

The records show that the extended period granted to the private respondents within which to file their brief expired on May 15, 1980. The period granted lapsed without counsel having filed the required appellants' brief nor having explained his failure to do so. Consequently, the appeal was considered "dismissed and "abandoned" in the resolution of respondent Court dated August 21, 1980. It was only on September 15, 1980 or after a period of four (4) months from the due date that private respondents through counsel, Atty. Benedicto H. Alo, (who was the same counsel of private respondent in the lower court) mailed their brief, after receiving on September 4, 1980, the resolution of respondent Court dismissing the appeal. The reason advanced by counsel for private respondents runs thus -

"that the brief could not be filed earlier, as the case was referred back to Carlos Po (in his lifetime) by counsel, so that another counsel would appear and make the brief, but as it appears now, this never happened and the records were all kept in the files of the deceased, and which is the reason for the non-filing thereof."

The above explanation of counsel, Atty. Benedicto H. Alo, is far from being satisfactory. If there were really moves to replace him as counsel and that for this reason he was unable to file the briefs on time, it was his duty to inform respondent Court of Appeals of said fact.

"When counsel did not file the brief for the accused because the latter's parents had considered retaining the services of another lawyer for that purpose, the least that was expected of counsel of record was that he should inform this tribunal of the developments set forth in his explanation and ask that he be allowed to withdraw as counsel." [11]

An examination of the records of this case failed to reveal any withdrawal made and formally filed by Atty. Benedicto H. Alo as counsel for private respondents. Neither has there been a valid substitution of counsel which maybe allowed only upon compliance with the following requirements: (1) filing of a written application for substitution; (2) written consent of the client; (3) written consent of the lawyer to be substituted, if such consent can be obtained; and (4) in case such written consent cannot be procured, then application for substitution must be accompanied with proof of the service of notice of such motion in the manner required by the rules, on the attorney to be substituted.[12]

There being no withdrawal nor substitution of counsel made, Atty. Benedicto H. Alo remains as counsel for private respondents and for his failure to file the required briefs on time, his clients (herein private respondents) should suffer the consequences thereof. For, it is settled that clients are bound by the mistakes, negligence and

omission of their counsels.[13]

But what militates very heavily against the reinstatement of respondents' appeal is its utter lack of merit. We see no prospect of the Order sought to be appealed, being reversed or at least modified. From the assailed Order which is herein earlier quoted, it is clear that private respondents' action is one of "Interpleader, Specific Performance, Fix Duration of Lease, Consignation with Prayer for Injunction." The trial court ruled, after hearing on the affirmative defenses and on the motion to dismiss, that the matters intended to be litigated are not contentious since private respondents had, all the while been "paying the rentals to the heirs of Yu Tiong without objection from defendant-oppositors. With respect to the heirs of Yu Sun, there is actually an earlier interpleader case filed by the same parties." Besides, "consignation under Art. 1256 of the Civil Code is not the proper proceeding to determine the relationship between landlord and tenant." Moreover, it is not disputed that private respondents' stay on the leased premises, is on a "month-to-month" basis, and as such, the lessors (herein petitioners) may terminate the lease at the end of every month.[14] The records show that as early as September 1976, demands were made by petitioners upon private respondents as les-sees, to vacate the leased premises. Instead of vacating the premises, private respondents filed "Several cases of Interpleader and consignation of rentals, aside from this instant case, before several branches of the Court of First Instance of Cebu.[15] No doubt, said cases were resorted to by private respondents in order to prolong their stay in the leased premises to the prejudice of the owners, herein petitioners. To sustain, therefore, the reinstatement of private respondents' appeal and remand the case to respondent court for further proceeding will serve no purpose whatsoever. Rather, it will only impair the speedy administration of justice, private respondents' appeal from the order of the trial court dismissing their complaint, being manifestly frivolous and completely devoid of merit.[16]

WHEREFORE, the petition is GRANTED. The questioned Resolutions of the Court of Appeals dated October 13, 1980 and March 17, 1981 are hereby SET ASIDE and REVERSED. Civil Case No. R-15971 of the Court of First Instance of Cebu, Branch XII is hereby ordered DISMISSED. No pronouncement as to costs.

SO ORDERED.

Aquino, Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.
Makasiar, J., (Chairman), in the result.

[1] Annex "A", Petition, pages 23-27, Rollo.

[2] Annex "B", Petition, pages 28-29, Rollo.

[3] Annex "C", Petition, page 30, Rollo.

[4] Annex "D", Petition, pages 31-32, Rollo.

[5] Annex "E" and Annex "E-1", Petition, pages 34-37, Rollo.

[6] Annex "F", Petition, page 38, Rollo.

[7] Annexes "G" and "G-1", Petition, pages 39-46, Rollo.

[8] Annex "H", Petition, page 47, Rollo.

[9] Annex "F", Petition.

[10] Annex "H", Petition.

[11] People vs. Casimiro, 45 SCRA 555.

[12] Aban vs. Enage, L-30666, February 25, 1983, 120 SCRA 778; Philippine Apparel Workers Union vs. National Labor Relations Commission, 125 SCRA 391.

[13] Tolentino vs. Mangapit, 124 SCRA 741; Pulido vs. Court of Appeals, 122 SCRA 63; Gaba vs. Castro, 120 SCRA 505.

[14] Bulacacang vs. Francisco, 122 SCRA 498; Ducusin vs. CA, 122 SCRA 280.

[15] Civil Case No. R-18689; Civil Case No. 15971; Civil Case No. 16671.

[16] Vanguad Assurance Corporation vs. Court of Appeals, 64 SCRA 148.

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