

JOSEFINA SANTOS, PETITIONER, VS. INTERMEDIATE APPELLATE COURT (SECOND SPECIAL CASES DIVISION) AND SPOUSES PAULA AND ISIDRO ESCOLAR, RESPONDENTS.

G.R. No. 66671. October 28, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the then Intermediate Appellate Court's decision which dismissed the petition for certiorari in AC-G.R. No. SP-01234 and its resolution which denied the petitioner's motion for reconsideration.

On February 21, 1979, private respondents Paula and Isidro Escolar filed an action for a sum of money with prayer for preliminary injunction against petitioner Josefina Santos and her husband Francisco B. Santos with the then Court of First Instance of Manila, Branch XXXIX presided by the Hon. Abelardo M. Dayrit. The case docketed as Civil Case No. 121878 sought to recover from the petitioner and her husband the sum of P412,685.00 representing the proceeds of various jewelries which were obtained by the petitioner from the private respondents on consignment basis. The jewelries were allegedly not returned to the respondents nor did the petitioner remit the value of the jewelries given to her despite the lapse of the agreed periods.

In her answer, the petitioner alleged that she had already returned all the jewelries in question to private respondent Paula Escolar but the latter failed to return the receipts for the jewelries to her. During the pendency of the case, a writ preliminary attachment was issued upon motion filed by the private respondents.

After trial, the lower court rendered the decision in favor of the private respondents. The dispositive portion of the decision reads as follows:

FOR ALL THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment, ordering the defendants to pay the plaintiffs, jointly and severally the amount of P412,685.00, representing the value of the receipts (Exhs. "A", "B" and "C"), with legal rate of interest, computed from their respective dates of maturity until fully paid, ordering further the defendants to pay the plaintiffs the sum equivalent to 25% of the total amount due for attorney's fees and to pay plaintiff the amount of P8,613.55, representing expenses on attachment bond as well as the costs of these proceedings.

"Failure of the defendants to substantiate the counterclaim, the same is hereby dismissed."

A motion for reconsideration filed by the petitioner and her husband was denied. On April 4, 1981, a notice of appeal, an appeal bond, and record on appeal were filed. These were duly approved by the court the following day.

On May 5, 1981, the lower court issued an order directing the clerk of court to forward the records of the case to the Court of Appeals. However, before they could be elevated, the records were burned in the fire that gutted the Manila City Hall in November, 1981.

Almost two years later, on March 30, 1983, the private respondents filed with the lower court a motion to dismiss the appeal for failure of the petitioner and her husband to prosecute it.

On April 15, 1983, the petitioner and her husband filed an opposition to the motion to dismiss the appeal averting that they should not be prejudiced by the nonfeasance of the clerk of court.

On April 20, 1983, the lower court issued an order dismissing the appeal on the ground that the records of the case were burned and neither one of the parties filed a petition for reconstitution within the prescribed period.

On May 4, 1983, the private respondents filed a motion to consider the annexes to their motion to dismiss the appeal and the other records presented by them as the reconstituted records of the case.

On May 10, 1983, the petitioner and her husband filed a motion for reconsideration of the order of dismissal and for reconstitution and transmittal of the records of the case to the appellate court.

On May 16, 1983, the private respondents filed a motion for execution of the judgment.

On June 7, 1983, the lower court issued the following order:

"For resolution before this Court is a motion for reconsideration and for reconstitution and transmittal of records to the Intermediate Appellate Court, filed by the defendants, thru counsel, dated May 10, 1983 as well as the opposition thereto filed by plaintiffs, thru counsel, dated May 23, 1983 and also the reply to opposition by defendants dated June 3, 1983.

"Considering the several occasions that the defendants failed to appear during the hearings to defend their rights and interest, this lack of concern is a clear indication that defendants are not truly serious in prosecuting their appeal and may forthrightly be considered pro-forma.

"Conformably, the above motion for reconsideration and for reconstitution and transmittal of records to the Intermediate Appellate Court should be, as it is hereby DENIED.

"Consequently, the records attached to the motion to dismiss appeal are therefore considered as the duly constituted records of this case.

"In view thereof, the motion for execution filed by plaintiffs dated May 16, 1983 is hereby granted. Let therefore a writ of execution issue against the defendants, in pursuance of the decision of this Court dated November 18, 1980, the same to be served by the Deputy Sheriff of this Branch."

On June 14, 1983, the deputy sheriff served a notice of levy and a notice of sale on execution of real property upon the petitioner and her husband.

On July 25, 1983, the petitioner with her husband as a formal party, filed with the Intermediate Appellate Court (IAC) a petition for certiorari with restraining order ex parte and preliminary injunction against Branch XXXIX of the Regional Trial Court of Manila, Deputy Sheriff Angel Borja, and the private respondents. The petition, docketed as AC-G.R. No. SP-01234, was given due course by the IAC Second Special Cases Division and the parties were required to submit their respective memoranda simultaneously.

The following day, on July 26, 1983, the petitioner's husband Francisco B. Santos filed a separate petition for certiorari and prohibition with prayer for the issuance of a writ of preliminary injunction against the same parties, namely, the Hon. Abelardo M. Dayrit, the City Sheriff of Manila, and the private respondents. The petition, docketed as AC-G.R. No. SP-01251, was raffled to the IAC First Special Cases Division.

On October 3, 1983, the private respondents submitted their memorandum in AC-G.R. No. SP 01234 while the petitioner with her husband again as a formal party, submitted theirs on October 17, 1983.

The IAC First Special Cases Division decided AC-G.R. No. 01251 ahead of the other petition, AC-G.R. No. 01234, filed with the IAC Second Special Cases Division. On October 6, 1983, it dismissed the petition, thus sustaining the contention of the private respondents that the trial court did not gravely abuse its discretion when it issued the order dismissing the appeal in view of the failure of the parties to prosecute it.

In view of this development, the private respondents filed a supplementary memorandum with the Second Special Cases Division in AC-G.R. No. 01234 on October 14, 1983, alleging that a similar petition involving the same parties and the same subject matter had already been resolved by the First Special Cases Division of the same appellate court.

On November 29, 1983, the Second Special Cases Division dismissed AC-G.R. No. SP-01234 on the alternative grounds of *res adjudicata* or *lis pendens* depending whether AC-G.R. No. SP-01251 had become final and executory or was still pending.

On December 9, 1983, the petitioner was served with a copy of the decision in AC-G.R. No. SP-01251. She alleged that this was the first time she came to know about the petition filed with the other Division. A motion for reconsideration subsequently filed was denied for lack of merit in a minute resolution dated March 13, 1984.

The issues raised in this petition for review are:

- THE HONORABLE PUBLIC RESPONDENT ERRED WHEN IT DISMISSED THE PETITION FOR CERTIORARI BASED ON *LIS PENDENS* OR *RES ADJUDICATA* IN ITS DECISION DATED NOVEMBER 29, 1983 AND WHEN IT DENIED PETITIONERS' MOTION FOR RECONSIDERATION OF THE DECISION IN ITS RESOLUTION DATED MARCH 13, 1984.

- THE PETITION FOR CERTIORARI, AC-G.R. SP NO. 01234, IS MERITORIOUS, AND THE HONORABLE PUBLIC RESPONDENT ERRED IN NOT SETTING ASIDE (1) THE ORDER OF THE HONORABLE REGIONAL TRIAL COURT JUDGE ABELARDO DAYRIT IN CIVIL CASE NO. 121878 (a) ALLOWING THE RECONSTITUTION OF THE LOST RECORDS IN SAID CASE, WHEN THEIR MOTION FOR RECONSTITUTION WAS FILED LONG OUT OF TIME, AND (b) REQUIRING, PREMATURELY AND WITHOUT BASIS, THE ISSUANCE OF THE WRIT OF EXECUTION AND (2) THE ORDER OF THE HONORABLE REGIONAL TRIAL COURT JUDGE ABELARDO DAYRIT DISMISSING THE APPEAL IN CIVIL CASE NO. 121878.

The principal issue posed in this petition is whether or not the doctrine of *res judicata* is applicable. The requisites of *res judicata* are: (1) there is the presence of a final former judgment; (2) the former judgment was rendered by a court having jurisdiction over the subject matter and the parties; (3) the former judgment is a judgment on the merits; and (4) there is, between the first and the second action, identity of the parties, subject matter, and causes of action (*Yusingco, et al. v. Ong Hing Lian*, 42 SCRA 589; *Philippine Commercial and Industrial Bank v. Pfleider*, 65 SCRA 13; *Dacasin v. Court of Appeals*, 80 SCRA 89; *Aroc v. People's Homesite and Housing Corporation*, 81 SCRA 350; *Gatus v. Court of Appeals*, 95 SCRA 530; *Pagsisihan v. Court of Appeals*, 95 SCRA 540; *Heirs of Matilde Cenizal Arguson v. Miclat*, 135 SCRA 678; and *Martinez v. Court of Appeals*, 139 SCRA 558).

As far as the first requisite is concerned, it is clear that the judgment in the petition filed by the husband of the petitioner has become final after the 15-day period within which to appeal the decision lapsed without any appeal having been perfected (See *Batas Pambansa Blg. 129*, Section 39; *Alvero v. de la Rosa*, 76 Phil. 428; *Galima, et al. v. Court of Appeals, et al*, 16 SCRA 140; and *Garcia v. Echiverri*, 132 SCRA 631).

Regarding the second requisite, the petitioner, herself, does not assail the jurisdiction of the appellate court over

her husband's petition.

With respect to the third requisite, a judgment on the merits is one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point (See Black's Law Dictionary, p. 979). The IAC First Special Cases Division discussed point by point the allegations in AC-G.R. NO. SP-01251 after which it found the petition devoid of merit and sustained the private respondents' contention that the trial court's order of dismissal of the appeal was issued without grave abuse of discretion.

Anent the fourth requisite, the petitioner argues that there is no identity of parties and causes of action in AC-G.R. NO. SP-01251 and AC-G.R. NO. SP-01234. On the claim that there is absence of identity of the parties, the petitioner asserts that in the latter case, she joined her husband merely as a formal party because she and her husband had in fact been separated even before the jewelry transactions were entered into so that whatever obligations she incurred as a result were personal in nature and did not involve the conjugal partnership. She further states that when her husband filed the second petition, she was not bound by it since he was then acting alone for his sole interest.

We find no merit in the above claim of the petitioner. If her husband was merely a formal party, she could have opted to exclude him because formal parties are those who may be made parties or not at the option of the complainant. Art. 113 of the New Civil Code gives her liberality of choice. It provides that:

"Art. 113. The husband must be joined in all suits by or against the wife, except:

xxx xxx xxx

(2) If they have in fact been separated for at least one year;"

xxx xxx xxx

The petitioner's attempt to distance herself from the decision rendered in AC-G.R. No. SP-01251 has no merit. Francisco Santos had a right to file the petition. The complaint in Civil Case No. 121878 was against husband and wife. Conjugal property was attached. The separation of the two was factual and not legal. The husband continued to be the administrator of the property.

As stated by the respondents:

"1.

Both of them defended the complaint under a common Answer and thru their common counsel;

"2.

A property of the conjugal partnership was attached to answer for the judgment.

"3.

A joint appeal again thru their common counsel was filed by both of them after a judgment was issued against them;

"4.

Upon the dismissal of their joint appeal, both of them raised the matter by way of a Petition For Certiorari thru a common counsel;

"5.

The First and Second IAC Petitions had a principal common cause of action - the nullification of the order

dismissing their appeal;

"6.

Petitioner remained silent after a copy of private respondent's Supplemental Memorandum was served upon them giving notice of the Resolution of respondent IAC in the Second IAC Petition;

"7.

It can not be claimed that Francisco Santos had no interest at all in the controversy, that Francisco Santos acted contrary to the interest of the herein petitioner or that he acted to prejudice their attached conjugal property."

Josefina included her husband as a co-petitioner in the petition for certiorari filed with the appellate court. To allow her to change that situation in this petition for review before us is improper (*Dosch v. National Labor Relations Commission*, 123 SCRA 296). The petitioner did not question on appeal that part of the trial court's decision which adjudged her husband as a party jointly and severally liable with her to the private respondents. Consequently, when her husband filed AC-G.R. No. SP-01251, the petitioner was bound by its outcome, whether favorable or not, in the same way as the lower court's decision had affected her husband and their conjugal property. Thus, in the two petitions filed separately by the allegedly estranged husband and wife, there was identity of the parties involved.

There is no dispute about the identity of the subject matter because both of the petitions under consideration were the result of the trial court's decision in Civil Case No. 121878. But was there identity of the causes of action?

A cause of action is an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are a legal right of the plaintiff, correlative obligation of the defendants and act or omission of the defendant in violation of said legal right (*Ma-ao Sugar Central Co. v. Barrios, et al.*, 79 Phil. 666). We find the causes of action in the separate petitions identical because both relate to the petitioners' right to appeal which each claimed had been denied when the trial court issued its order dated April 20, 1983. The petitioner is under the mistaken notion that the reasons raised for the allowance of a given petition become the causes of action themselves. The test for determining whether or not there is identity of the causes of action between the first and the second actions is whether the same evidence would support and establish both the present and former causes of action. (*Garcia v. Court of Appeals*, 14 SCRA 721; *Viray v. Mariñas*, 49 SCRA 44; *Vda. de Vocal v. Vda. de Suria, et al.*, 90 SCRA 336). Utilizing this test, it becomes manifestly clear that the causes of action in AC-G.R. No. SP-01251 and AC-G.R. No. SP-01234 are substantially the same.

In view of the foregoing, we rule that the requisites of *res judicata* are present.

In the other issue raised by the petitioner, she questions the reconstitution of the records by the trial court claiming that the respondents' motion for this purpose was filed long out of time. The reconstitution effected by Judge Dayrit was only to write *finis* to a long pending case. The reconstitution was intended to allow the court to formally dismiss an abandoned appeal, declare its decision final and executory, and, subsequently, issue a writ of execution. If reconstitution is denied, the effect would still be the dismissal of the petitioner's appeal.

We gave due course to this petition to enable the petitioner not only to support more fully her arguments on *res judicata* but also to enable her to present compelling grounds of equity as would warrant a different result. On the basis of the records, we are constrained to affirm the conclusions of the court below.

The Manila City Hall was burned in November, 1981. As of April 20, 1983, the petitioner had taken no steps to either pursue her appeal or reconstitute the burned records. In their May 4, 1983 motion, the respondents pointed out that Civil Case No 121878 was a decided case. Citing *Yatco v. Cruz* (6 SCRA 1077), they stated that the court

had inherent power under Rule 135, Par. 5(h) to itself reconstitute the records in such cases. On this ground, the respondents prayed for reconstitution on the basis of records earlier presented and the records attached to the motion. The trial court, in its June 7, 1983 order, stated that during the hearings on the various motions, the opposition, and reply, the petitioner and her husband failed to appear to defend their rights and interest.

Granting the petitioner's contention that her estrangement from her husband calls for a different application of precedents, we note that Civil Case No. 121878 was pursued and defended as a common case in the trial court. There was no grave abuse of discretion when the IAC Second Special Cases Division dismissed AC-G.R. No. SP-01234 as follows:

"WHEREFORE, premises considered, instant petition is hereby dismissed outright with the warning that the filing of double petitions over one and the same subject matter and involving the same parties, being speculative, and is trifling with the Court, shall not be countenanced by this Court. The preliminary injunction issued by this Court on September 15, 1983, is hereby dissolved. Costs against petitioners."

And finally, there appears to be no equitable grounds to reverse at this time, the trial court's decision in the initial controversy due to manifest error or grave abuse of discretion. The Escolars alleged that the petitioner obtained P412,265.00 worth of jewelries on consignment basis, agreeing to sell them for cash and remit to Escolar the proceeds of the sale and, if unsold, to return the pieces of jewelry. The trial court did not give credence to the petitioner's evidence that the jewelries had been returned but because of Escolar's trickery, the receipts were not returned to her. It ordered payment of the indebtedness.

WHEREFORE, the PETITION is hereby DISMISSED for lack of merit. The judgment in AC-G.R. No. SP-01234 is AFFIRMED.

SO ORDERED.

Feria, (Chairman), Fernan, Paras, and Feliciano, JJ., concur.
Alampay, J., no part.

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