

**HOUDINI IBABAO, NENITA IBABAO AND GENOVEVA IBABAO,
PETITIONERS, VS. HONORABLE INTERMEDIATE APPELLATE COURT,
HONORABLE REGIONAL TRIAL COURT, BRANCH LXXXI (FORMERLY
COURT OF FIRST...**

G.R. No. 74848. May 20, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari, prohibition, and mandamus with preliminary injunction to: (a) set aside the Intermediate Appellate Court resolutions dated May 15, 1984 remanding the case to the Regional Trial Court for reconstitution and retrial; July 23, 1985 (corrected by resolution dated July 26, 1985 and re-corrected by resolution dated December 20, 1985) and January 10, 1986 denying the motion to dismiss the petition for relief from judgment filed by herein private respondents on October 24, 1985 on the ground that they were issued with grave abuse of discretion amounting to lack of jurisdiction; and (b) command the Intermediate Appellate Court to desist from conducting a reconstitution and retrial of the case, but instead to dismiss the appeal in this case for being moot and academic in view of the earlier and final decisions of the Intermediate Appellate Court and this Court on the Petition for Annulment of Judgment (G.R. No. 66141) which had already acted on the matters and issues now sought to be relitigated.

This case has its origins in two cases which were consolidated, Civil Case No. V-841 and Cadastral Case No. N-1, LRC Rec. No. N-425, of Branch LXXXI of the Court of First Instance (now Regional Trial Court) of Romblon.

Civil Case No. V-841 is an action for quieting of title, recovery of possession, and damages with preliminary injunction filed by herein private respondents, heirs of Zosimo Rico, against Pantaleon, Houdini, Nenita and Genoveva, all surnamed Ibabao.

On the other hand, Cadastral Case No. N-1, LRC Rec. No. N-425 is a cadastral proceeding which involves 927 cadastral lots, among which are Lot Nos. 21, 22, 23, 49, 175 and 194 subject matter of Civil Case No. V-841.

On June 21, 1979, the Court of First Instance of Romblon rendered its decision dismissing Civil Case No. V-841 and declaring Pantaleon Ibabao to be the true and lawful owner of Lots 21, 22, 49 and 175. The private respondents were ordered to vacate said properties and to surrender complete possession thereof to the petitioners. Lots 23, 177 and 194 were adjudicated in favor of private respondents in Cadastral Case No. N-1, LRC rec. No. N-425. No timely appeal having been filed, the decision became final and executory.

Against the trial court's decision, the private respondents filed on August 14, 1979, a Petition for Relief from Judgment with Preliminary Injunction.

On September 6, 1980, while the Petition for Relief was pending with the court, a fire of undetermined origin totally burned the provincial capitol of Romblon resulting in the loss of the records of the petition. Thus, on February 11, 1981, herein petitioners filed a Petition for Reconstitution of the Petition for Relief which the court

granted on October 1, 1982.

On July 13, 1983, the court rendered a decision in favor of herein petitioners, dismissing the Petition for Relief for lack of merit. The private respondents interposed an appeal from said decision with the Intermediate Appellate Court. The appeal was docketed as AC-G.R. CV No. UDK 1998 of the 3[rd] Civil Cases Division of the appellate court.

Pending this appeal, the private respondents filed an entirely separate and independent case for Annulment of Judgment with preliminary injunction, docketed as AC-G.R. Sp. No. 01875, with the 4[th] Special Cases Division of the Intermediate Appellate Court. The subject of this petition is, likewise, the judgment of the Court of First Instance of Romblon, Branch LXXXI, in the consolidated Civil Case No. V-841 and Cadastral Case No. N-1, LRC Rec. No. N-425.

On October 28, 1983, the Intermediate Appellate Court, 4th Special Cases Division, promulgated a decision in AC-G.R. SP No. 01875 dismissing the petition for annulment of the decision of the Court of First Instance of Romblon in the consolidated cases. The private respondents filed a motion for reconsideration which was denied in a resolution dated November 29, 1983.

On February 17, 1984, the private respondents appealed the appellate court's decision to this court by way of a petition for review on certiorari. The case was docketed as G.R. No. 66141. In a Resolution dated June 11, 1984, we resolved to dismiss the petition for lack of merit. On July 9, 1984 we issued an entry of judgment, rendering our decision therein final and executory. On August 29, 1984, herein petitioners filed a motion for execution of the Regional Trial Court's decision in the two consolidated cases. On May 25, 1985, the Regional Trial Court issued an order directing the issuance of the writ of execution.

Meanwhile, on January 20, 1984, the Intermediate Appellate Court issued a resolution in AC G.R. No. UDK 1998, (private respondents' appeal in their petition for relief from judgment) requiring the parties to inform the court of their willingness to dispense with the oral and documentary evidence considering that the records transmitted were merely reconstituted or to have the case remanded to the lower court for reconstitution and re-trial. The private respondents expressed willingness for a remand of the case, reconstitution, and new trial.

On February 16, 1984, herein petitioners filed a motion to dismiss the appeal in AC-G.R. No UDK 1998 on the grounds that: (a) the appeal was not perfected on time; (b) the appeal had been abandoned by appellants private respondents when they filed their Petition for Annulment of Judgment; and (c) the appeal is merely dilatory and manifestly frivolous.

On May 15, 1984, the 3rd Civil Cases Division of the Intermediate Appellate Court issued a Resolution remanding the case in AC G.R. No. UDK 1998 for reconstitution and retrial. The records were duly transmitted to the Regional Trial Court of Romblon.

On July 10, 1985, the private respondents filed an urgent motion dated July 16, 1985 in AC G.R. No. UDK 1998 with the appellate court in the nature of certiorari, prohibition and mandamus with preliminary injunction, praying that the Regional Trial Court be ordered to recall the writ of execution issued in G.R. No. 66141 (AC G.R. SP. No. 01875 in the Intermediate Appellate Court) and to proceed with the reconstitution and retrial.

On July 17, 1985, herein petitioners filed their opposition to private respondents' urgent motion and reiterated their motion to dismiss respondents' appeal.

On July 23, 1985, the 3rd Civil Cases Division of the Intermediate Appellate Court issued a resolution enjoining the Regional Trial Court to maintain the status quo and to refrain from implementing its order of May 25, 1985

directing the issuance of a writ of execution in Civil Case No. V-841 and Cadastral Case No. N-1, LRC Rec. No. N-425.

On July 26, 1985, the appellate court issued a Corrected Resolution in AC G.R. No. UDK 1998 correcting its July 23, 1985 resolution.

On December 20, 1985, the appellate court issued a Recorrected Resolution in AC G.R. No. UDK 1998 correcting the Corrected Resolution dated July 26, 1985.

On January 9, 1986, the Regional Trial Court of Branch LXXXI, Romblon issued an Order resetting the retrial of the case in February 1986 pursuant to the Intermediate Appellate Court's Recorrected Resolution, dated December 20, 1985.

On January 10, 1986, the 3[rd] Civil Cases Division of the appellate court issued another resolution in AC G.R. No. UDK 1998 denying herein petitioners' motion to dismiss the respondents' petition for relief on the ground that respondents' appeal had already been perfected.

Hence, this petition.

The petitioners raise the following issues:

I

WHETHER OR NOT THE APPEAL FROM THE DECISION DISMISSING THE PETITION FOR RELIEF FROM JUDGMENT HAD BEEN ABANDONED BY THE FILING OF SEPARATE AND INDEPENDENT PETITION FOR ANNULMENT OF JUDGMENT.

II

WHETHER OR NOT THE DECISION IN THE PETITION FOR ANNULMENT OF JUDGMENT HAD RENDERED MOOT AND ACADEMIC THE APPEAL FROM THE DECISION DISMISSING THE PETITION FOR RELIEF FROM JUDGMENT.

III

WHETHER OR NOT THE REMANDING OF A CASE FOR RECONSTITUTION AND RETRIAL IS A JUDICIAL DISCRETION.

The resolution of the second issue raised by the petitioners in the case at bar must take precedence as the question is decisive of the fate of this petition.

The bone of contention lies in the effect of our decision in G.R. No. 66141 dated June 11, 1984 on the petition for review of judgment filed by the respondents before the respondent Court of Appeals. The petitioners seek the dismissal of the latter case on the ground of *res judicata*.

For a prior judgment to constitute a bar to a subsequent case, the following requisites must concur: (a) it must be a final judgment or order; (b) the court rendering the same must have jurisdiction over the subject matter and over the parties; (c) it must be a judgment or order on the merits, and (d) there must be between the two cases identity of parties, subject matter, and causes of action.

No doubt our decision in G.R. No. 66141, that is, respondents' action for annulment of judgment, was a pronouncement on the merits of the case, both final and executory. The jurisdiction of this Court is unquestioned. As to the final requisite, a perusal of the private respondents' petitions for relief and for annulment of judgment establishes the clear identity of parties, subject matter, causes of action and relief sought such that any judgment

rendered in one action will, regardless of which party is successful, amount to res judicata in the other action.

The congruence of both cases, involving the same parties cannot be overlooked, the respondents' petition for relief from judgment, subject of the appeal in AC G.R. No. UDK 1998 of the Intermediate Appellate Court seeks the reconsideration and setting aside of respondent trial court's decision in the Consolidated Civil Case No. V-841 and Cad. Case No. N-1, LRC Record No. N-425, dated June 21, 1979. It cites as grounds the respondent cadastral court's alleged lack of jurisdiction to adjudicate the lots in question to the petitioners who were covered by an order of general default and to grant damages in their favor and the respondent trial court's finding of petitioners' compliance with homestead requirements when final proof thereof had not yet been approved and the petitioners' application itself was rejected. The respondents' action to annul judgment duplicates these. Only a different form of action was availed of by respondents. However, it is well-settled that 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 (*Valera v. Banez*, 116 SCRA 648; *Ramos v. Pangasinan Transportation Co., Inc.*, 79 SCRA 170).

Section 3, Rule 2 of the Revised Rules of Court, on which the principle of res judicata rests, provides:

"A party may not institute more than one suit for a single cause of action."

The underlying philosophy of the doctrine of res judicata is that parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate. (*Marapao v. Mendoza*, 119 SCRA 97; *Sy Kao v. CA*, 132 SCRA 302). It is to the interest of the public that there should be an end to litigation by the same parties and their privies over a subject once fully and fairly adjudicated. Interest republicae ut sit finis litium. (*Valera v. Banez*, supra; *Masagana Telemart, Inc. v. CA*, 135 SCRA 694). Thus, where as in the case at bar, the same evidence would support and establish both present and former causes of action in the petition for review and that for annulment of judgment, respectively, and there being a previous decision in the latter, the former action may no longer be allowed (*Zanzibarian Residents' Association v. Municipality of Makati*, 135 SCRA 235; *Heirs of Matilde Cenizal Arguson v. Meclat*, 135 SCRA 678; *Martinez v. Court of Appeals*, 139 SCRA 558). The respondents' appeal from the dismissal of the petition for review is rendered moot and academic.

A further note, however, on the respondents' recourse to a petition for relief from the judgment of the trial court.

Relief from judgment under Rule 38 of the Rules of Court is a remedy provided by law to any person against whom a decision or order is entered into through fraud, accident, mistake or excusable negligence. The relief provided for is of equitable character, allowed only in exceptional cases as when there is no other available or adequate remedy. When a party had another adequate remedy available to him, which was either a motion for new trial or appeal from the adverse decision of the lower court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking the appeal, he cannot avail himself of the relief provided in Rule 38. The rule is that relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or a mistaken mode of procedure; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to a mistake in the mode of procedure by counsel (*Francisco*, *The Revised Rules of Court*, Vol. II, 1966, citing *Espinosa v. Yatco*, 7 SCRA 78 January 31, 1963).

From the decision of the trial court from which respondents seek relief, a motion for reconsideration was filed but this was, however, withdrawn for being fatally defective. The motion had failed to contain a notice of the time and

place of hearing as required by the Rules of Court. Thereafter, no appeal was filed by the respondents causing the trial court's decision to become final and executory. Only then did the respondents file the petition for relief from judgment (Annex "F", page 68, Rollo) explaining therein the reasons for the lack of notice of time and place of hearing of their motion for reconsideration and alleging that "there is no other remedy left of the plaintiff-claimants to pursue or avail of but that provided in Sec. 2, Rule 38 of the Rules of Court." Yet no reasons were offered for their failure to appeal. No allegations of fraud, accident, mistake, or excusable negligence as to prevent them from having done so was made by the respondents. There was, likewise, no assertion that the decision of the Court sought to be set aside was entered against them through such fraud, accident, mistake, or excusable negligence. Thus, as the trial court held in its decision dated July 13, 1983, dismissing the respondent's petition for relief from judgment, "Plaintiffs' failure to appeal within the reglementary period of perfecting an appeal is NOT a ground to grant a petition for relief from judgment."

We find no error in this pronouncement of the court. The petition was at the outset, rightfully dismissed by the trial court and the same should have been done by the appellate court. The latter's order for the reconstitution and retrial of the case was erroneous. There had already been a reconstitution and trial of the case in the trial court and judgment had been rendered thereon (Annex "C", p. 93, Rollo) under date of July 13, 1983. In fact said decision begins with a statement that "this is a reconstituted case." Consequently, the remand of the case is improper and would be dilatory. More so, after this Court had already passed upon those very issues.

The remand of cases for purposes of reconstitution or retrial is not a matter of discretion. Rather it is a matter of necessity for the proper disposition of cases. It cannot be denied where circumstances call for the retrial of the case by a lower court or for further presentation of evidence by the parties where these are not within the jurisdiction of the appellate court. However, it cannot be ordered where finality of judgment dictates otherwise. There is no exercise of discretion in cases where remand is unnecessary bearing in mind that justice delayed is justice denied.

As to the first issue raised by the petitioners, the filing of an independent action for annulment of judgment does not of necessity result in the abandonment of a petition for relief from judgment or an appeal therefrom, save in a case where both actions are predicated on identical grounds. No law precludes the simultaneous pursuit of both actions. However, the same may be barred by the principle of res judicata and the proscription of the Rules of Court on multiplicity of suits as had obtained in the case at bar. (Sec. 3, Rule 2; Sec. 2, Rule 38. The Revised Rules of Court).

WHEREFORE, in view of the foregoing, the petition is hereby GRANTED. The resolutions of the respondent Intermediate Appellate Court, now Court of Appeals, dated May 15, 1984, July 23, 1985, July 26, 1985 and January 10, 1986 are set aside. The Court of Appeals is ordered to desist from remanding the case for reconstitution and retrial. The respondents' appeal from the dismissal of their petition for relief from judgment is dismissed for being MOOT and ACADEMIC.

SO ORDERED.

Paras, Padilla, Bidin, and Cortes, JJ., concur.
Fernan, (Chairman), on official leave.

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