

MAXIMINO DONATO, PLAINTIFF AND APPELLANT, VS. PETRONA MENDOZA, DEFENDANT AND APPELLEE.*G.R. No. 8046. August 11, 1913*

Ponente: TORRES, J.

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Appeal raised, through a bill of exceptions, by counsel for the plaintiff from the judgment of March 19, 1912, whereby the Honorable Dionisio Chanco, judge, absolved the defendant from the complaint, with the costs against the plaintiff.

By a written complaint filed on January 15, 1912, counsel for Maximino Donato brought suit in the Court of First Instance of Ilocos Sur against Petrona Mendoza, and alleged therein that the plaintiff was the lawful owner of five-sixths of a lot situated in the city of Vigan, including the wooden house with nipa roof constructed on the land; that said lot was bounded on the north by the lot of Mariano Arce, on the east by Calle Magallanes, on the south by Calle Paez, and on the west by a property of unknown ownership, and that a rough plan of the same accompanied the complaint as a part thereof; that, up to about the year 1903, and during the preceding years, he had exercised full control over the said five-sixths of the lot and house in question; that, in the year above mentioned, the defendant usurped the plaintiff's property by seizing the whole of the said house and lot; that, notwithstanding the repeated and friendly demands made upon the defendant to vacate the said property and deliver to the plaintiff the part thereof occupied by her which belonged to him, she had refused and continued to refuse to do so, and that thereby she has caused him losses and damages to the amount of P200. Said counsel therefore prayed that judgment be awarded in his client's behalf, by holding that the five-sixths of the house and lot referred to belonged to the plaintiff and ordering the defendant to deliver the same to the latter, to pay P200 for losses and damages, and the costs.

Counsel for the defendant, in answer, admitted paragraphs 1 and 2, but denied the other paragraphs of the complaint. In special defense and as a previous question he alleged that the said five-sixths part claimed by the plaintiff had already been the subject matter of a former suit between the same parties, as shown by the record, No. 325, of a case tried by the same court and relative to a division of property, for, although the herein plaintiff had in that suit set up a claim as the owner and possessor of the said five-sixths part of the property in question and adduced evidence in support of his contention, the court decided that the plaintiff had not proved his alleged ownership and possession, nor his relationship with the original owners of the said parts of the land and building in dispute; that, therefore, the issue now raised was involved in the previous suit and, as the plaintiff did not appeal from the judgment of absolution therein rendered, had acquired the character of *res adjudicata* since it was concerned in a judgment between the same parties and on the same subject matter; and that it was to be presumed that the issues argued in that suit were therein decided (in support of which averment he attached to the answer a certified copy of the judgment rendered in the former case between the same parties); that the defendant had the absolute and exclusive ownership of the property in litigation, and that, in defending herself in this suit until its termination, she had been occasioned losses and damages to the amount of P300. Said counsel therefore prayed

that judgment be rendered against the plaintiff by absolving the defendant from the complaint and sentencing the plaintiff to the payment of the losses and damages and the costs.

After a hearing of the case and the introduction of evidence by both parties, the court rendered the judgment aforementioned, to which counsel for the plaintiff excepted and moved for its annulment and the holding of a new trial. This motion was denied, exception to the ruling was taken by the plaintiff, and, upon presentation of the appropriate bill of exceptions, the same was approved and forwarded to the clerk of this court.

The principal and sole point to be decided in this suit is whether the exception of *res adjudicata* set up by the defendant, Petrona Mendoza, is or is not well founded, for, in an affirmative case, there would be no further need to determine whether or not the plaintiff is entitled to certain portions of the property in dispute and whether or not the other errors assigned to the judgment appealed from are improper and inadmissible.

In order to determine whether the issue herein set up by the plaintiff was previously decided in the said case, No. 325, heard by the same court of Ilocos Sur, it is necessary to show the nature and character of the action brought in that suit already terminated and in the present one for recovery.

In the final judgment rendered in the said former suit, No. 325, of which defendant's Exhibit 3 is a copy, it is recited that the plaintiff alleged that he was the owner and possessor, *pro indiviso* with the defendant, Petrona Mendoza, and another party named Severino Mendoza, of the property described in the complaint, and claimed to have a share of five-sixths thereof, and that but one-sixth belonged to the two defendants; that the plaintiff, therefore, asked that the said property be divided in the proportion stated; and that one of the defendants did not put in an appearance and the other denied the claim, on the ground that he, together with his brothers, was the owner of the property in question. The court decided that the plaintiff had not proved his ownership and possession of the said property, in the proportion aforementioned, nor the grounds upon which he alleged he became the owner of certain portions of the same, nor his relationship with the predecessors in interest. The defendants, therefore, were absolved from the complaint, without express finding as to costs. So, in the judgment referred to, the plaintiff requested a division or partition of certain *pro indiviso* property on the ground that he was a coowner and copossessor thereof.

In the complaint under which the present suit was brought the same plaintiff moved the court to hold that five-sixths of the house and lot in question lawfully belonged to him and must in due course of time be delivered to him by the defendant. Although it is now claimed that the action brought in this case is one for recovery of possession, it is nevertheless true that, both in the present complaint and in the former one which gave rise to that suit already terminated, it is now, as it was then, demanded that five-sixths of the property, the subject matter of the litigation, be delivered to the plaintiff, on the sole ground that he is, and was, the owner thereof.

Consequently, if in the first action only a division was asked of the property claimed to be held *pro indiviso*, it was undoubtedly because of the supposition that the plaintiff was coowner thereof; and in the complaint filed in the present case delivery was demanded of the same five-sixths part of the *pro indiviso* property, with no other difference than, that in the former case the plaintiff alleged and took it for granted that he was a coowner of the property held in common and entitled to a five-sixths share thereof, while in the present suit, in demanding the delivery of the said five-sixths of the property he does so as owner of that part and prays the court to hold him to be such.

In the midst of the confusion and diversity of the petitions made by the plaintiff, perhaps due to an effort to establish some dissimilarity between the action prosecuted in the present case and that brought in the former one, the sole fact which stands out clear and certain is that in both of them a demand was made for the delivery of the five-sixths of the property considered by the plaintiff lawfully to belong to him, and although the action instituted

in the present suit be denominated one for recovery of possession, it is still true that in the case at bar claim is made for a certain portion of pro indiviso property, the same portion that was the subject matter of the judgment rendered in the previous case.

After Petrona Mendoza, together with another, was absolved from the complaint, under the finding that the plaintiff had not proved that he was the owner and possessor of the property in question, in the proportion stated of five-sixths thereof, and such absolution having become final, under no consideration may it be sustained in accordance with law that the demand made by the same plaintiff in this second suit must be granted, to wit, that the herein defendant, also a defendant in the former case, shall deliver to him the same five-sixths of the property in question on the assumption that such part thereof lawfully belongs to the plaintiff.

The question of the propriety or impropriety of the delivery by partition of a certain portion of pro indiviso property, on the hypothesis that the claimant is the owner thereof, has already been decided by a final judgment, rendered in an action for recovery, and is deemed to be *res adjudicata*, against which no further remedy lies.

In order that the exception of *res adjudicata*, in relation to the subject matter of a previous action, may be valid in a subsequent one, it is indispensable that there be between both suits an identity of persons, things and actions; and these requisites must conjointly exist between the first case already finally decided and the second prosecuted afterwards, but pending judgment. It must appear that in the latter case the complaint presented concerns the same thing that was the subject matter of the former one, that the same cause of action is alleged, supported by the same grounds and between the same parties.

Article 1252 of the Civil Code prescribes, in its first paragraph: "In order that the presumption of *res adjudicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such."

Except in the cases specified in paragraph 1 of section 306 of the Code of Civil Procedure, and as provided in paragraph 2 of the same, the effect of a judgment or final order in an action is, in respect to the matter adjudged, conclusive between the parties, and their successors in interest, litigating for the same thing and under the same title, and in the same capacity.

In the former suit, finally decided, a division of the property in litigation was requested undoubtedly in order that it might be delivered to the plaintiff, on the presumption that he was a coowner thereof; and in demanding in the case at bar the delivery of the same five-sixths of that property, on the averment that he is the owner of such part thereof, the plaintiff prosecuted, both in that first suit and in the present one, an action based on the same cause, to wit, on the right of ownership which lies in behalf of the coowner of a property held in common, for he who seeks a division of pro indiviso property assumes at the start the existence of an ownership right which he, jointly with another, has in such property; therefore, in both the said actions but one single cause is recognized, which is that of the right of ownership alleged by the plaintiff in the present case and in the previous one.

It is unquestionable that there is perfect identity between the five-sixths part of the property claimed in the previous suit and the part thereof that is the subject matter of the case at bar. In each case the plaintiff and the defendant are the same persons and both claim under the same title, that of coownership in the property concerned. It is therefore undeniable that between both litigants there is an identity of persons, things, and actions, although the action instituted in the present case be termed one for recovery of possession, and that brought in the former suit, one for division of property, since in both actions but one single cause, motive, or reason is recognized, to wit, the right of ownership which the plaintiff now claims, and previously claimed, to have in the property in litigation.

It having been finally decided by a competent judge, and through the absolution of the defendant, Petrona Mendoza, that the plaintiff, Maximo Donato, was not entitled to demand, through a division and as a coowner, the five-sixths part of the property in question, there is no warrant in law to enable us to hold in the present case that he is the lawful owner of the said five-sixths part of the property and to sentence the defendant to deliver the same to him, inasmuch as, pursuant to the provisions of section 307 of the Code of Civil Procedure, the right which the plaintiff claims to have in the said five-sixths part of the disputed property was previously adjudged and his claim made in the present suit was necessarily included in the former final judgment.

For the foregoing reasons, it is unnecessary for this court to pass upon the other errors assigned to the judgment appealed from, or to discuss the rights which the plaintiff claims to have in the property in question. Since the plaintiff filed no appeal from the judgment rendered in the former suit, it is evident that he recognized the justness thereof and waived any right he might have had in the said property.

The judgment appealed from is in accordance with law and is hereby affirmed, with the costs against the appellant.

Arellano, C. J., Johnson, Carson and Trent, JJ., concur.

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