

ROSA SABADLAN VALENCIA, AMADO VALENCIA, AND MIGUEL S. VARQUEZ, PETITIONERS, VS. THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 90, THE COURT OF APPEALS AND CORAZON C. LLANES, R...

G.R. NO. 82112. April 03, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This petition seeks the review and reversal of the Amended Decision of respondent Court of Appeals in CA-G.R. SP No. 09276,[1] promulgated on 11 February 1988 (Rollo, p. 27), amending its earlier Decision dated 5 February 1987 (Rollo, p. 35). Petitioners initially prevailed in the original Decision of the Appellate Court. However, since the Amended Decision handed down by the same Court after the filing of a Motion for Reconsideration by the losing party was adverse to petitioners, the latter have availed of the present recourse.

Records (Rollo, pp. 187-189) disclose that the disputed property in the case at bar is a Philippine Housing and Homesite Corporation (PHHC) lot, designated as Lot 4, Block E-139, situated at No. 83 Mabilis St. Pinyahan, Quezon City (the Litigated Lot, for short). Irene Dadul, herein petitioner Rosa Sabadlan Valencia's mother, built in 1950 a house on this lot and lived there with her family, including petitioner, who married Amado Valencia in 1956 (henceforth, the Valencias).

On a date which does not appear of record, the Valencias and Irene Dadul went to the PHHC and informed said office of their desire to buy the subject lot, but they were informed that the lots in the area (the Pinyahan estate) were not yet ready for subdivision. They were, however, told to continue residing on the subject lot. When the area was finally subdivided in 1957, the Valencias returned to the PHHC and filed an application to buy the lot which they were occupying. In 1958, they inquired from the PHHC whether they could already pay for the lot. However, they were informed that the application they had earlier filed could not be found. The Valencias were thus required to execute an affidavit to the effect that they had filed the necessary application (Rollo, p. 188). Subsequently, the Valencias were surprised to learn that the subject lot had already been awarded to a non-occupant of the area, a certain Jose Balot of Nueva Ecija (Rollo, pp. 36 and 94).

The Valencias filed a Complaint with the PHHC (now the National Housing Authority) on 26 May 1960 contesting the award of the Litigated Lot to Balot, which Complaint, however, was dismissed. Another Complaint was filed by them on 14 November 1962 but the PHHC again upheld the award of the Litigated Lot to Balot (Rollo, p. 95). On 14 July 1964, a Conditional Sale covering the Litigated Lot was executed between the PHHC and Balot, and on 12 April 1972, TCT No. 175695 covering the premises was finally issued in Balot's name by the Register of Deeds of Quezon City (Rollo, p. 95).

On 26 February 1973, the Valencias instituted Civil Case No. Q-17465 with the Regional Trial Court of Quezon City, Branch LXXXIX, seeking the cancellation and annulment of the award in favor of Jose Balot (Record on Appeal, G.R. No. 59668). Donelita Carino, a sister-in-law of herein private respondent Corazon Llanes,

intervened in the said civil case on the ground that petitioner Rosa Sabadlan Valencia had sold her "squatter's rights" over the Litigated Property to her (Donelita Carino). Donelita Carino's further contention was that in January 1965, she had applied with the PHHC for the purchase of the Litigated Lot where she had built a house, lived thereon up to 1970, when she relinquished it in favor of her daughter, Jocelyn Catbagan. After hearings on the merits, the Trial Court decided in favor of the Intervenor, Donelita Carino. On appeal however, the then Intermediate Appellate Court, in CA-G.R. No. 65912-R,[2] reversed the Trial Court and ruled in favor of the Valencias in a Decision promulgated on 29 December 1981. That judgment made the factual finding that Donelita Carino never purchased the rights of the Valencias over the Litigated Lot and that no such sale had taken place (Rollo, p. 189).

Relative to the PHHC's award of the Litigated Lot to Jose Balot, the Appellate Court ruled that preference should have been given by the PHHC to the Valencias instead of to non-resident Balot, who had never constructed any improvements on the premises whereas the Valencias had filed their application earlier and were actually residing on the property as bona fide occupants (Rollo, p. 189). The Appellate Court thus ordered the cancellation of the award in favor of Jose Balot and Donelita Carino and awarded the Litigated Lot to the Valencias upon payment of the required consideration to the PHHC. The Court also ordered the issuance of a new Transfer Certificate of Title in their favor and the cancellation of all inconsistent previous titles (Rollo, p. 191).

Intervenor, Donelita Carino, appealed the Decision in CA-G.R. No. 65912-R to this Court, which was docketed as G.R. No. 59668, entitled "Donelita Carino v. The Honorable Court of Appeals and Spouses Amado Valencia and Rosa Sabadlan". We denied the Petition on 8 March 1982 for lack of merit. Similarly, Jose Balot appealed the adverse judgment rendered against him to this Court in another case, G.R. No. 64133, entitled "Jose Balot v. Intermediate Appellate Court, Amado Valencia and Rosa Sabadlan". On 25 July 1983, this Court also denied Balot's petition for lack of merit. With the denial by this Court of the two Petitions for Review, the Decision of the Appellate Court in CA-G.R. No. 65912-R, awarding the Disputed Lot to the Valencias was, in effect, affirmed (Rollo, p. 36).

Even after the finality of the mentioned Resolutions of this Court and of the Decision of the Court of Appeals, however, the execution of the judgment by the Trial Court (RTC, Branch 89) was suspended pending clarification sought by the Intervenor Donelita Carino from the Appellate Court, as suggested by Presiding Judge Rodolfo Ortiz in his Order of 5 July 1984, as to whether the Decision included the ejectment of the occupants of the Litigated Lot. The Appellate Court, in a clarifying Resolution, dated 12 October 1984, ruled that the present occupants of the subject premises must vacate the same in favor of the Valencias. Meanwhile, Transfer Certificate of Title No. 314805 covering the lot was issued to the Valencias (Rollo, p. 37).

Still, the final Decision in CA-G.R. No. 65912-R was not executed because Jocelyn Carino Catbagan, daughter of Intervenor Donelita Carino, filed a Petition for Certiorari with this Court, dated 29 October 1984, docketed as G.R. No. 68974, entitled "Jocelyn Catbagan v. Intermediate Appellate Court, Spouses Amado Valencia and Rosa Sabadlan and the Sheriff of Quezon City." That Petition assailed the clarifying Resolution of the Appellate Court, dated 12 October 1984, ordering the ejectment of the occupants of the Litigated Lot in favor of the Valencias. Petitioner therein, Jocelyn Catbagan, alleged that although she is an occupant of the lot under litigation, she was never made a party in the cases concerning the Litigated Lot, hence her ejectment therefrom would violate her right to due process. This Court, in a Resolution dated 27 February 1985, dismissed Jocelyn Catbagan's petition for lack of merit. Her Motion for Reconsideration was likewise denied (Rollo, p. 37). After the finality of that Resolution, the Valencias moved for execution. The Trial Court issued not only the Writ itself on 30 October 1985 but an Alias Writ as well on 15 December 1985.

Notwithstanding, controversy over the Litigated Lot continued unabated. For in the meantime, on 6 November

1984, herein private respondent Corazon C. Llanes, sister-in-law of Donelita Carino, filed a new Complaint with the Regional Trial Court of Quezon City, Branch 90 (Civil Case No. Q-43239), for Specific Performance and Recovery of Ownership and Possession with Damages against herein petitioner Rosa Sabadlan Valencia. Corazon C. Llanes alleged that Rosa, who was her maid previously, had sold the latter's alleged "squatter's rights" over the Litigated Lot to her in August 1965 for the total consideration of P800.00 (Rollo, p. 37). Private respondent Llanes thus prayed that she be declared the legal owner of the Litigated Lot; that the Valencias be ejected from the premises and a restraining order be issued to prevent them from exercising acts of ownership over the lot; that TCT No. 314805 in the name of the Valencias be cancelled; and that the latter be ordered to execute a formal document of sale and transfer of the lot pursuant to Articles 1434 and 1456 of the Civil Code,[3] aside from the payment of damages and attorney's fees (Rollo, p. 38).

On 8 January 1985, the Valencias, as defendants in Civil Case No. Q-43239, filed an Answer with special and affirmative defenses alleging that the Complaint states no cause of action and that the same is barred by prior judgment in accordance with the Decision of the then Intermediate Appellate Court in CA-G.R. No. 65912-R, dated 29 December 1981, adjudicating the lot in question to the Valencias (Rollo, p. 83). On 30 January 1985, the Valencias also filed a Motion to Dismiss the case raising, as grounds, the special and affirmative defenses alleged in the Answer, specifically, prior adjudication of the lot in their favor (Rollo, p. 85). In the said Motion, the Valencias also prayed that the plaintiff, herein private respondent Corazon C. Llanes, be declared in default for failure to file an Answer to their Counterclaim. On 18 April 1985, claiming that the Trial Court did not resolve the first Motion to Dismiss filed by them, the Valencias filed a second Motion to Dismiss based on the same grounds in the first Motion to Dismiss. Instead of resolving the Motions, however, the Trial Court[4] set the case for pre-trial on several dates (Rollo, pp. 8-9). On 14 July 1985, Llanes filed a Motion to Admit an Amended Complaint, which was subsequently granted by the Trial Court over the objection of the Valencias. The Amended Complaint also prayed for the issuance of a Restraining Order seeking the maintenance of the status quo in the Litigated Lot, and after hearing, a Writ of Preliminary Injunction prohibiting defendants, herein petitioners, the Valencias, from exercising any and all acts of ownership (Rollo, p. 106). On 23 September 1985, the Trial Court granted the Writ of Preliminary Injunction prayed for by Llanes, followed on 14 November 1985, by another Order for the issuance of said Writ (Rollo, p. 109). The Valencias filed several Motions for the reconsideration of the aforesaid Orders, but to no avail. (Rollo, p. 10).

The Valencias then availed, on 18 April 1986, of this Petition for Review on Certiorari, Prohibition and Mandamus (G.R. No. 82112) against the Regional Trial Court of Quezon City, Branch 90,[5] questioning: (1) the alleged neglect and refusal of the Trial Court to resolve their special and affirmative defenses in the Answer and their first and second Motions to Dismiss; (2) the admission of Llanes' Amended Complaint; and (3) the issuance of a Restraining Order and Preliminary Injunction that prevented the execution of the final judgment in CA-G.R. No. 65912-R, dated 29 December 1981 (Rollo, p. 10). This Court, in a Resolution, dated 6 June 1986, referred the case to the respondent Court of Appeals for proper disposition and determination (Rollo, p. 35).

In its original Decision, dated 5 February 1987, the Court of Appeals ruled in favor of the Valencias.[6] It annulled: the Order of the Trial Court admitting the Amended Complaint and directing the maintenance of the status quo in the Litigated Lot; the Order granting the Writ of Preliminary Injunction; the Orders denying the Motions for Reconsideration of the Valencias; and the Orders setting this case for pre-trial and subsequently suspending the pre-trial, all for having been issued with grave abuse of discretion amounting to want of jurisdiction. Civil Case No. Q-43239 was thereupon ordered dismissed (Rollo, p. 46). In so ruling, the Appellate Court held that said case was clearly an attempt to prevent or delay the execution of the Decision of the Court of Appeals in CA-G.R. No. 65912-R, and affirmed by the Supreme Court in G.R. Nos. 59668, 64133 and 68974. The Court of Appeals further noted that the cause or causes of action in Civil Case No. Q-17465 filed by the

Valencias against Jose Balot, with Donelita Carino as Intervenor, are substantially similar with the causes of action in Civil Case No. Q-43239 filed by Corazon C. Llanes against the Valencias, so that the latter case should have been dismissed by the Trial Court [Branch 90, RTC of Quezon City] (Rollo, p. 41).

The Court of Appeals however, reversed itself in an Amended Decision, dated 11 February 1988,[7] after Llanes had filed a Motion for Reconsideration. The Amended Decision held this time that Civil Case No. Q-17465 was completely different from Civil Case No. Q-43239, rendering the principle of *res judicata* inapplicable since there is no identity of parties in the two cases, Corazon C. Llanes not being an heir, assignee or privy of Donelita C. Carino who intervened in Civil Case No. Q-17465; and that the causes of action in the two cases are different in that the first case involves the question of who has the better right among the Valencias, Balot and Carino over the Litigated Lot, while the latter case deals with the consolidation of ownership in favor of Corazon C. Llanes and the recovery of said property from the Valencias (Rollo, p. 31-32).

The Valencias thus interposed the present Petition before this Court. After the filing of the Comment, Reply, Rejoinder and Sur-rejoinder, the Court, in a Resolution, dated 16 January 1989, resolved to give due course to the Petition and required the parties to submit their respective Memoranda. Petitioners, the Valencias, filed their Memorandum. Private respondent Corazon C. Llanes, however, failed to comply. Accordingly, on 17 July 1989, the Court issued a Resolution directing private respondent to show cause why she and/or counsel should not be disciplinarily dealt with or held in contempt for such failure. To date, there has been no compliance. To avoid delay in the disposition of this case, the Court opted to dispense with said Memorandum and to resolve the case without prejudice to whatever disciplinary measure may be imposed against the erring parties for failure to comply with the Orders of this Court.

Stripped of the verbiage in the pleadings of the parties, the determinative issue in this case is whether or not the action in Civil Case No. Q-43239 is barred by the prior judgment rendered in Civil Case No. Q-17465. Corollary to this issue is whether or not the Presiding Judge of the Regional Trial Court, Branch 90,[8] where Civil Case No. Q-43239 is pending, committed grave abuse of discretion in not resolving the Motions to Dismiss said case filed by the Valencias, based essentially on the same ground of *res judicata*.

Under the rule of *res judicata*, also known as "bar by prior judgment," a final judgment or order on the merits, rendered by a Court having jurisdiction of the subject-matter and of the parties, is conclusive in a subsequent case between the same parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity (Rule 49(b), Rules of Court). The requisites essential for the application of the principle are: (1) there must be a final judgment or order; (2) said judgment or order must be on the merits; (3) the Court rendering the same must have jurisdiction over the subject matter and the parties; and (4) there must be between the two cases identity of parties, identity of subject matter, and identity of cause of action (Yusingco, et al., vs. Ong Hing Lian, G.R. No. L-26523, 24 December 1971, 42 SCRA 589; Daeng vs. Intermediate Appellate Court, et al., G.R. No. 71313, 24 September 1987, 154 SCRA 250).

There is no question about the presence of the first three elements. The Appellate Court, however, upheld the posture of private respondent, Corazon C. Llanes, and opined that the fourth requisite is wanting.

We find ourselves unable to sustain such conclusion. That there is identity of subject matter, there can be no question. What are allegedly lacking are identity of parties and identity of cause of action.

Granted, there is no absolute identity of parties. What is required, however, for the application of the principle of *res judicata* is not absolute, but only substantial identity of parties (Santos vs. Gabriel, et al., G.R. No. L-22996, 31 May 1972, 45 SCRA 228; Angat vs. Court of Appeals, G.R. No. 86571, 19 April 1989). Hence, although

Corazon C. Llanes was not a party in the prior case, Civil Case No. Q-17465, her claim in the subsequent case, Civil Case No. Q-43239, was identical to that of Donelita J. Carino, that is, that she had purchased Rosa Sabadlan Valencia's "squatter rights" to the Litigated Lot. They thus shared an identity of interest from which flowed an identity of relief sought, namely, to be declared the owners of the same property, premised on the same alleged purchase. Such identity of interest is sufficient to make them privy-in-law, one to the other (*Comilang vs. Buendia*, G.R. No. L-24757, 25 October 1967, 21 SCRA 486), and meets the requisite of substantial identity of parties.

There is likewise substantial identity of cause of action, defined as "the act or omission of one party in violation of the rights of another causing him loss or injury; and its essential elements are the legal right of the plaintiff, correlative obligation of the defendant, and an act or omission of the defendant in violation of such legal right." Donelita J. Carino's cause of action in the first case, Civil Case No. Q-17465, was her right of ownership over the Litigated Lot by virtue of an alleged sale to her by Rosa Sabadlan Valencia but resisted by the latter, and/or her right to purchase filed with the PHHC. Similarly, Corazon Llanes' cause of action in the second case, Civil Case No. Q-43239, was an identical right of ownership by virtue also of an alleged sale to her by Rosa Sabadlan Valencia, which the latter has denied. Whatever difference there may be in the alleged actual date of purchase is of no moment as both their rights already existed during the lifetime of Civil Case No. Q-17465.

One test of identity of causes of action is whether or not the judgment sought in a subsequent case will be inconsistent with the prior judgment (*Tan vs. Arador*, G.R. No. L-38745, 6 August 1975, 66 SCRA 61). If no inconsistency will result, the prior judgment cannot be held to be a bar. Herein, the Valencias have been pronounced by final judgment in a prior case to be the owners of the Litigated Lot, and all occupants thereof to be illegal occupants. If affirmative relief is granted to Corazon C. Llanes in the second case, that judgment will definitely be inconsistent with the prior judgment in the first case, which has conclusively resolved the specific issue of sale and the overall question of ownership. Tried by the inconsistency test, therefore, identity (at the very least, substantial identity) of causes of action must be held to be present.

True, Corazon C. Llanes made it ostensibly appear that her cause of action in the second case was for the recovery of property and the execution of a formal deed of sale. No matter how differently formulated, however, the same basic relief was sought, that is, the declaration of ownership and the eventual ejectment from the Litigated Lot of the adverse party. It is well settled that a party, by varying the form of action or method of presentation, cannot escape the effect of the principle of *res judicata* (*Ramos vs. Pangasinan*, G.R. No. L-26986, 30 September 1977, 79 SCRA 176).

It is apropos to point out that too restrictive an application of the doctrine of *res judicata* is not favored. In *Machoca vs. Carriaga*, G.R. Nos. 75109-10, 28 June 1989 (per Regalado, J.), we held: "authorities tend to widen rather than to restrict the doctrine of *res judicata* on the ground that public interest, as well as private interest, demand the ending of suits by requiring the parties to sue once and for all in the same case all the special proceedings and remedies to which they are entitled" (at p. 13).

But even if there were no identity of cause of action, the rule on conclusiveness of judgment, another aspect of the *res judicata* doctrine, becomes applicable. "Even if there is no identity of cause of action, provided there is identity of parties and subject matter, the doctrine of *res judicata* in its second form, namely, conclusiveness of judgment would be applicable (*Comilang vs. Court of Appeals*, G.R. No. L-37312, 15 July 1975, 65 SCRA 69). The judgment is conclusive in the second case only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.

The Appellate Court Decision in CA-G.R. No. 65912-R, promulgated on 29 December 1981, categorically

declared the Valencias entitled to the Litigated Lot; ordered a new title issued to them; and required the Register of Deeds to cancel all previous inconsistent titles. More importantly, it ruled squarely on the invalidity of the alleged sale of Rosa Sabadlan Valencia's alleged "squatter rights" to Donelita J. Carino, assuming that it had really taken place. Said the Court:

"(4) Assuming that there was indeed such a sale, the same would have been null and void, considering the purpose of the law in granting preferential rights to the occupants.

"(5) Assuming that the VALENCIAS had validly sold their rights in favor of CARINO, the latter's application to purchase could not have been given due course, in view of Balot's prior application.

It is clear from the foregoing that the award by the trial court in favor of CARINO was improper." (at. p. 6).

The invalidity of any sale of the Litigated Lot, therefore, is a settled issue and covers all sales, whether to Donelita J. Carino or to Corazon C. Llanes in view of the preferential rights given to bona fide occupants, the Valencias in this case.

Further, the Appellate Court Resolution in the same case, CA-G.R. No. 65912-R, rendered on 12 October 1984, in resolving the clarification prayed for by the Valencias, as suggested by the Trial Court in Civil Case No. Q-17465, ruled explicitly that "the present occupants are illegal squatters" and were ordered to vacate in favor of the Valencias. That ruling includes Corazon C. Llanes, admittedly one of the occupants.

Stated differently, the issues raised by Corazon C. Llanes in the second case, Civil Case No. Q-43239, having been actually and directly controverted and determined in the first case, Civil Case No. Q-17465, she must now be held estopped, or precluded by law, from asserting the same allegations all over again. The rule is that if the defendant committed one and the same wrong, he should not be twice tried (*Machoca vs. Carriaga*, supra). Such is the character of an estoppel by matter of record relative to issues on questions of fact, already judicially tried and decided (*Oberiano vs. Sobremesana*, 91 Phil. 921 [1952]; *Grimn vs. Atok Big Wedge*, 106 Phil. 1170 [1959]). The same issues should not be permitted to be litigated more than once.

All told, we agree with the original Decision of the Appellate Court in CA-G.R. SP No. 09276 holding that the institution of Civil Case No. Q-43239 by Corazon C. Llanes is a clear attempt to prevent and or delay execution of the judgment in CA-G.R. No. 65912-R, which has become final by reason of the three affirmances by this Court in G.R. Nos. 59968, 64133, and 69874.

It should also be pointed out that in issuing the Writ of Preliminary Injunction and the status quo Orders, the Court below (RTC, Branch 90) had exceeded its jurisdiction since a Court has no power to stay the order of execution of another branch of the Court of equal jurisdiction (*Luciano vs. Provincial Governor*, L-30306, 20 June 1969, 28 SCRA 517; *Calderon vs. Gomez*, L-25239, 18 November 1967, 21 SCRA 1002).

While the Trial Court may not be faulted with grave abuse of discretion in not resolving the two Motions to Dismiss filed by the Valencias below because the Rules authorize a deferment of their determination until the trial where the grounds therefor do not appear to be indubitable, we note with distress, however, that the litigations involving the Litigated Lot have dragged on since the 1970s and execution of the final judgment has been delayed for well-high nine (9) years.

The interests of the speedy dispensation of justice, therefore, require that rather than remand the case to the Trial Court for resolution of the Motions to Dismiss, particularly taking into consideration that the determinative facts and issues are clearly before us, it is best to grant the said Motions and to dismiss Civil Case No. Q-49239 pending before the Regional Trial Court of Quezon City, Branch 90. The Orders issued by the Trial Court therein, as listed in the original Decision of the Court of Appeals in CA-G.R. SP No. 09276, supra, must be declared null

and void.

It is high time that we write an end to a litigation that has pended for years to the prejudice of the prevailing parties, to the detriment of the prompt determination of controversies, and in violation of the fundamental concept that public policy and sound practice demand that judgments of Courts should become final at some definite date fixed by law. The very object for which Courts were constituted was to put an end to controversies (*Dy Cay vs. Crossfield and O'Brien*, 38 Phil. 521 [1918]; *Layda vs. Legaspi*, 39 Phil. 83 [1918]).

WHEREFORE, the assailed Amended Decision of respondent Court of Appeals, dated 11 February 1988, in CA-G.R. No. SP No. 09276, is hereby SET ASIDE, and its original Decision of 5 February 1987 hereby REINSTATED. Civil Case No. Q-43239 of the Regional Trial Court of Quezon City, Branch 90, is hereby ordered DISMISSED and the Writ of Preliminary Injunction issued therein hereby ordered LIFTED. No legal obstacle now exists to the execution of the judgment of the Court of Appeals in CA-G.R. No. 65912-R, dated 29 December 1981, which had long attained finality.

Costs against private respondent Corazon C. Llanes.

SO ORDERED.

Sarmiento and Regalado, JJ., concur.

Padilla, J., separate opinion.

Paras, J., no part, having been the “ponente” in CA-G.R. No. 65912-R.

[1] Penned by Justice Rodolfo A. Nocon and concurred in by Justices Leonor Ines-Luciano and Emeterio C. Cui.

[2] Per Justices Milagros A. German, Edgardo L. Paras, ponente, and Mariano A. Zosa.

[3] ART. 1434. When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.

ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[4] Judge Abraham P. Vera, Presiding.

[5] *ibid*.

[6] Penned by Justice Rodolfo A. Nocon and concurred in by Justice Leonor Ines Luciano and Emeterio C. Cui.

[7] Justice Rodolfo A. Nocon, ponente, concurred in by Justices Leonor Ines-Luciano and Emeterio C. Cui.

[8] Judge Abraham P. Vera, Presiding.

SEPARATE OPINION

PADILLA, J.:

I differ from the majority's opinion that the action in Civil Case No. Q-43239 is barred by the prior judgment rendered in Civil Case No. Q-17465 under the doctrine of *res judicata*. However, I agree with the majority's conclusion that there is nothing more to be litigated, as Corazon Llanes' failure to intervene in Civil Case No. Q-17465 has the effect of a waiver or estoppel.

For res judicata to apply it is settled that the following elements must be present: (a) the earlier judgment or order must be final, (b) said judgment or order was rendered by a court with jurisdiction over the subject matter and the parties, (c) said judgment or order was rendered on the merits, and (d) there must be between the first and second actions identity of parties, subject matter and cause of action.[1]

Between Civil Case No. Q-17465 and Civil Case No. Q-43239, the first three (3) elements of res judicata are, no doubt, present. However, the fourth element appears to be lacking between said two (2) cases.

As to identity of parties, it is true that res judicata does not require absolute, but only substantial, identity of parties[2] and that where separate actions for the protection of common or identical interests are brought individually by the parties, such identity of interests between them is sufficient to make them privy, one to the other;[3] still, these rules are not applicable in the case at bar, given the facts obtaining therein.

There is no identity of parties between the two (2) cases here considered, because it was Donelita Carino (Donelita hereafter) sister-in-law of Corazon Llanes, who intervened in Civil Case No. Q-17465, and who alleged that she had a preferential right over the lot in question predicated on an alleged sale (prior to August 1965) in her favor by Rosa Sabadlan Valencia (Valencia, for short) of her (the latter's) squatter's rights over the land, and which is evidenced by Exhibit 4-Intervenor.[4] Corazon Llanes was not a party in said Civil Case No. Q-17465. Neither was she (Llanes) an heir or assignee of Donelita. The fact that Corazon Llanes is Donelita's sister-in-law and that she testified in Civil Case No. Q-17465 to the effect that she (Llanes) helped negotiate the alleged sale to Donelita of the lot and that she was a witness in the execution of Exhibit 4-Intervenor[5] does not warrant, it seems, the legal conclusion that Llanes made common cause with Intervenor Donelita in Civil Case No. Q-17465. Neither does Llanes' allegations in her complaint in Civil Case No. Q-43239 that she had purchased in August 1965 Valencia's squatter's rights to the litigated lot and her knowledge of her sister-in-law Donelita's pending application to purchase the same lot with the PHHC[6] warrant the conclusion that both intervenor Donelita and Llanes had an identical or common interest in the property sufficient to make them privy to one another. The fact of being a kin or a witness of one party having a distinct claim on a property does not establish the privity in law contemplated in *Comilang vs. Buendia*, supra. Identity of interest in the same property by the parties must be clearly established.

There is also no identity of causes of action between the two (2) cases here considered. Donelita intervened in Civil Case No. Q-17465 alleging that, as against Balot and the Valencias, she has a preferential right over the lot on the ground that prior to August 1965, Valencia sold to her Valencia's squatter's rights to said lot. On the other hand, in Civil Case No. Q-43239, Corazon Llanes seeks to be declared the legal owner of the same lot on the ground that Valencia sold to her in August 1965 her squatter's rights as evidenced by Annexes A, A-1 and B of her (Llanes) complaint.[7]

But, as earlier stated, although I find that not all of the elements of res judicata are present to warrant its application, I agree with the majority's finding that the institution by Corazon Llanes of Civil Case No. Q-43239 is a clear attempt to prevent and delay the execution of the judgment in CA-G.R. No. 65912. Further Llanes' failure to intervene earlier in Civil Case No. Q-17465 has the effect of a waiver and estoppel.

For, if it were true, as alleged by Llanes in her complaint in Civil Case No. Q-43239, that Valencia had sold to her sometime in August 1965 her squatter's rights in the questioned lot, then, at the time of the trial of Civil Case No. Q-17465, Llanes could have intervened therein in her own behalf, as she had by then an actual legal interest in the lot adverse to the original parties therein and was so situated as to be adversely affected by the disposition of said property. But she opted not to do so. Instead, in Civil Case No. Q-17465, she (Llanes) merely testified in support of her sister-in-law Donelita's intervention, claiming that, prior to August 1965, she helped negotiate the alleged

sale between intervenor Donelita and Valencia and that she (Llanes) was a witness to the deed evidencing the aforementioned sale to Donelita. More significantly, she did not interpose any objection to intervenor Donelita's application with the PHHC in 1965 to purchase the lot and even allowed her to build in the same year a house on one side thereof.[8]

While, as a rule, intervention in an action is not compulsory or mandatory but optional and permissive,[9] it is submitted that where the rights of a third person are interwoven in the pending case and he has due notice or knowledge of the proceedings therein, it is his duty to intervene in said proceedings. He cannot idly sit by, or, worse, assume a position inconsistent or contradictory to his own interest.

By her (Llanes') silence and acts as well as representations in Civil Case No. Q-17465, when she ought to have spoken out to assert her alleged rights, Llanes had induced others to believe that she had waived whatever rights she might have to the lot, such that she is now estopped to plead or prove in another action (Civil Case No. Q-43239) that she is the real legal owner of the lot.

[1] Santos vs. Gabriel, et al., G.R. NO. L-22996, 31 May 1972, 45 SCRA 288

[2] Ibid.

[3] Comilang vs. Buendia, et al., G.R. NO. L-24757, 25 October 1967, 21 SCRA 486

[4] Rollo, p. 189

[5] Ibid., p. 285

[6] Ibid., p. 37

[7] Ibid., pp. 98-99

[8] Ibid., p. 37 and p. 66

[9] Rule 13, Sections 1 to 3, Rules of Court, Cruzcoza, et al. vs. Hon. H. Concepcion, et al., 101 Phil. 146

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