

**FRANCISCA GUTIERREZ, MONICA GUTIERREZ, JOSE GUTIERREZ
AND SPS. ERNESTO BEN AND ADELA BAJIT, PETITIONERS, VS. COURT
OF APPEALS, HON. ROMULO E. ABASOLO, IN HIS CAPACITY AS
PRESIDI...**

G.R. No. 82475. January 28, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit." [1]

This rule is invoked in the case at bar. The petitioners maintain that the respondent court committed reversible error when it sustained the denial by the trial court of their motion to dismiss a second case on all fours with an earlier case already decided on the merits.

The first case was an action for partition filed with the Regional Trial Court of Urdaneta on July 13, 1984, and docketed as Civil Case No. U-4122 in Branch 46. The plaintiffs were Eugenia Gutierrez, Aurelia Gutierrez, Leonila Gutierrez, Flora Gomez, and Arnel Gutierrez, the herein private respondents. The defendants were Francisca Gutierrez, Monica Gutierrez and Jose Gutierrez, the herein petitioners. The subject consisted of three parcels of land, one covered by Tax Declaration No. 7236 and the other two by OCT No. 20005, in the land records of Pangasinan. [2] An answer with counterclaim was filed by the defendants on December 26, 1984. [3]

This case was dismissed on August 4, 1986, by virtue of the following order:

When this case was called for a pre-trial conference, none of the plaintiffs together with their counsel appeared although the record shows that the setting of this case today is upon agreement of the parties.

Upon motion of Atty. Simplicio M. Sevilleja, counsel for the defendants, this case is hereby ordered dismissed with prejudice.

SO ORDERED.

The second case was filed on February 12, 1986, and docketed as Civil Case No. U-4357 in Branch 47 of the Regional Trial Court of Urdaneta. The same herein private respondents were again the plaintiffs. The defendants were also the herein petitioners plus the spouses Ernesto Ben and Adela Bajit. The action was for annulment of documents, ownership and possession of two parcels of land also covered by TCT No. 20005. [4] On March 10, 1986, the defendants filed their answer with counterclaim. [5]

On March 15, 1987, before the hearing on the merits, the defendants filed a motion to dismiss on the ground that the second case was barred by the prior judgment in the first case. Annexed inter alia to the motion was a certified

true copy of the above-quoted order of August 4, 1986.

After hearing, the motion was denied in an order dated April 28, 1987. Reconsideration was denied on July 11, 1987. The defendants went on certiorari to the Court of Appeals, which denied their petition.[6] They then came to this Court on the contention that both the trial and respondent courts erred in not dismissing the second action on the ground of res judicata.

For res judicata to operate as a bar to the re-opening of a matter already judicially determined by competent authority, the following requisites must concur: (1) the former judgment or order must be final; (2) it must be a judgment or order on the merits; (3) it must have been rendered by a court having jurisdiction over the subject-matter and the parties; and (4) there must be, between the first and second actions, identity of parties, subject-matter and cause of action.[7]

In sustaining the order of August 4, 1986, the respondent court held that the dismissal of the first case did not amount to an adjudication on the merits because such dismissal was made at the pre-trial stage. The trial not having commenced as yet, the following Rule 17, Section 3, of the Rules of Court invoked by the petitioners was not applicable:

Sec. 3. Failure to prosecute. – If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.

The Court of Appeals also noted: "While it is true that the order of dismissal carries the phrase 'with prejudice,' it is safe to assume that the court modified or rectified its previous order when it denied petitioners' motion to dismiss. The Court must have felt that its previous order was drastic, amounting to a denial of due process. After all, it is within the power of the court to amend and control its order to make it conformable with law and justice (Sec. 5, Rule 135)."

We do not agree with the respondent court that the aforesaid rule is not applicable because the trial had not yet commenced. Its interpretation of the term "trial" is unduly restrictive and does not square with the common concept given to this word, thus:

"Trial" includes all proceedings from the time when issue is joined, or, more usually, when the parties are called to try their case in court, to the time of its legal determination.[8]

In *Geralde v. Sabido*,[9] the trial court dismissed the plaintiffs' complaint because of their repeated motions for postponement of the pre-trial. In sustaining the dismissal of their second complaint based on the same cause of action against the same defendants, this Court declared:

For non-appearance at the pre-trial, a plaintiff may be non-suited and a dismissal of the complaint for failure to prosecute has the effect of an adjudication upon the merits unless otherwise provided by the trial court.

Even assuming that the scheduled pre-trial did not form part of the trial proper, the above rule still authorized the dismissal of the complaint for failure of the plaintiffs "to comply with the rules or any order of the court." In this case, there was non-compliance by the plaintiffs with the order of the court to appear at the scheduled pre-trial.

Under Rule 20, pre-trial and the presence of all parties therein are mandatory in civil proceedings, such that:

Failure to appear at a pre-trial may be considered as a failure to prosecute, which is a ground to dismiss an action under Section 3 of Rule 17 of the Rules of Court. American courts, interpreting Rule 16 of the Federal Rules of Procedure (from which the present rule on pre-trial has been adopted), have held the view that where

plaintiff fails to appear at a pre-trial conference ordered by the court, advance notice of which was given to the attorneys for both parties, the same shall be considered as a failure to prosecute and failure to comply with the rules, and defendant's motion to dismiss the action on the merits shall be granted.[10]

On the holding that the challenged order of April 28, 1987, "modified or rectified" the order of August 4, 1986, we find that this could not have been done legally. The first reason is that the earlier order was already final and executory and therefore could no longer be amended by the second order. No appeal had been taken by the plaintiffs from the order of August 4, 1986, notwithstanding that the dismissal was "with prejudice." That order was served on them on September 5, 1986, more than six months before the petitioners invoked it in their motion to dismiss the second case on March 17, 1987. On that date, it was no longer possible to revise the meaning of that order by considering the dismissal as "without prejudice."

The second reason is that the court that issued the original order of dismissal was not the same court that sought to change it later in the order dated April 28, 1987. The first order came from Judge Juanito M. Cagampan of Branch 46 whereas the second came from Judge Romulo E. Abasolo of Branch 47, of the Regional Trial Court of Urdaneta. Unquestionably, as they were of equal rank, Judge Abasolo had no authority to "modify or rectify" the order issued by Judge Cagampan.

In the case of *Mas v. Dumara-og*,^[11] this Court declared:

The question is thus condensed: Has the Court of First Instance of Antique authority to entertain an action to annul the judgment of the Court of First Instance of Iloilo? As collateral question - what court has jurisdiction over the matter?

The principle has been announced that a judge of a branch of one court should not annul the order of a judge of another branch of the same court (meaning the same judicial district) because both of them are judges of the same category who act coordinately and independently of each other - except of course, if the second judge acts in the place of the first judge in the same proceedings. Appellant's statement that the action is within the jurisdiction of the Court of First Instance is correct, and that the venue is within the 11th Judicial District. However, it is incorrect to lay as premise the proposition that the Court of First Instance of Antique is the 11th Judicial District. The true statement is that it is one of the branches of the 11th Judicial District. Another of its several branches is the Court of First Instance of Iloilo. These two courts are of the same class and category. Both discharge functions which are co-equal in character. Pursuant to the policy of judicial stability, the judgment of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction. For the same reason, the power to open, modify or vacate a judgment is not only possessed by, but is restricted to the court in which the judgment was rendered.

The power to open, modify, or vacate a judgment is not only possessed by, but is restricted to the court in which the judgment was rendered. It is regarded as an elementary principle of high importance in the administration of justice that the judgment of a court of competent jurisdiction may not be opened, modified, or vacated by any court of concurrent jurisdiction. (30-A, American Jurisprudence 605.)

The private respondents contend that *res judicata* is not applicable because there is no identity of cause of action or parties or subject-matter. They point out that the cause of action in Civil Case No. U-4122 was for partition whereas the cause of action in Civil Case No. U-4357 is for annulment of documents, ownership, and possession plus damages. A second parcel of land was included in the first case but not in the second; hence, there is no identity of subject-matter either. The parties in both cases are also different from each other because of the addition of two other defendants in the second case.

Significantly, the Court of Appeals found that "the second case is an offshoot of the first case, which relates to an action for the annulment of documents, ownership, possession against petitioners, involving identical parties, and

the same subject-matter as the preceding case."

It is conceded that the parties in the two cases are not exactly the same because of the addition of the spouses Ernesto Ben and Adela Bajit as defendants in the second case. There is no refutation, however, of the petitioners' allegation that these additional defendants are mere successors-in-interest in a portion of land they bought from Monica Gutierrez, one of the petitioners.

As we also held in the Geralde case:

The fact that in the first case there were twelve plaintiffs and in the second case there were fourteen plaintiffs is of no moment. A party may not evade the application of the rule of res judicata by simply including additional parties in the subsequent case or by not including as parties in the later case persons who were parties in the previous suit (*Anticamara v. Ong*, L-29689, April 14, 1978, 82 SCRA 337).

As for the subject-matter, it is true that the complaint of July 12, 1984, included another parcel of land with an area of 17,000 square meters that was not claimed in the second complaint. The petitioners categorically state, however, that they have never claimed that particular lot because it admittedly belongs to the respondents as their advance inheritance. This allegation has not been denied by the private respondents.

It is obvious that the addition of two other parties and the exclusion of the other parcel of land in the second case were intended by the respondents to give it a semblance of difference from the earlier case. So too, as we find it, was the different designation of the second complaint although it was also in effect one for partition like the first case.

In this regard, we have repeatedly held:

Although postulated in a lightly different form, the present action is barred by the final order of dismissal, since a party cannot, by varying his form of action or adopting a different method of presenting his case, escape the effects of res judicata.[12]

The employment of two different forms of actions does not enable one to escape the operation of the principle that one and the same cause of action shall not be twice litigated.[13]

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.[14]

x x x

The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment. It has been held 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 between the same parties and their privies.[15]

When the Court gave due course to the petition and required the parties to submit their respective memoranda, the petitioners argued their case vigorously, explaining in detail why they believed the doctrine of res judicata should be applied. For their part, the private respondents appeared to be merely making the motions of compliance and did not seem to have the will to fight for the victories they had won in the lower court. Their 6-page memorandum was a limp elaboration of their 3-page comment, devoting only 2 pages to their argument, such as it was.

While we do not suggest that mere length of the memoranda is our criterion for decision, we do note that in the case at bar the private respondents seemed to lack the spirit, if not the reasons, to support their position.

Apparently, they were content to just rely on the challenged decision (which merely declared there had been no trial on the merits) and had no additional arguments of their own to offer.

Precisely, that decision was being questioned and it was for the private respondents to defend it. All they virtually did was restate the requisites of *res judicata* and pronounce that the principle was not applicable to the case at bar. No serious effort was made to refute the petitioners' assertion that there was a final judgment on the merits rendered by a competent court and that the judgment could no longer be "modified or rectified" by another court of equal rank. No rebuttal was made of the petitioners' conclusion that there was identity of cause of action, parties and subject-matter in the first and second complaints. All the private respondents said was that there was no such identity.

Our own finding, on the basis of the established or un rebutted facts and the other records of this case, is that *res judicata* is indeed applicable and that the second complaint is barred by prior judgment. We hold that the order of August 4, 1986, was an adjudication on the merits by a competent court and could no longer be "modified or rectified" after it had become final and executory, much less by another court of equal rank only, and that there was an identity of cause of action, subject-matter and parties in the first and second cases. Hence, the motion to dismiss the second complaint should not have been denied by the trial court and such denial should not have been affirmed by the respondent court.

WHEREFORE, the petition is GRANTED, and Civil Case No. U-4357 in the Regional Trial Court of Urdaneta, Branch 47, is hereby DISMISSED, with costs against the private respondents. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Black's Law Dictionary, p. 1470 (Rev. 4th ed., 1968).

[2] Rollo, p. 34.

[3] Ibid., p. 39.

[4] Id., p. 24.

[5] id., p. 30.

[6] id., pp. 51-55. Francisco, J., ponente, with Lombos-de la Fuente and Benipayo, JJ., con-curring.

[7] Republic v. Sebastian, 166 SCRA 140; Eternal Gardens Memorial Parks Corp. v. Intermediate Appellate Court, 165 SCRA 439; Legarda v. Savellano, 158 SCRA 194.

[8] Black's Law Dictionary, p. 1675 (Rev. 4th ed., 1968).

[9] 115 SCRA 839.

[10] Francisco, Revised Rules of Court, Vol. 2, pp. 24-25 (1966)

[11] 12 SCRA 34.

[12] Rasay-Laboz v. Leonor, 38 SCRA 48.

[13] Yusingco v. Ong Hing Lian, 42 SCRA 589.

[14] Valera v. Bañez, 116 SCRA 648; Ramos v. Pangasinan Transportation Co., Inc., 79 SCRA 170.

[15] Sangalang v. Caparas, 151 SCRA 53.

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