

RENATO B. SUAREZ, PETITIONER, VS. COURT OF APPEALS, HON. ZENAIDA BALTAZAR AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 158, PASIG, METRO MANILA, AND ROSEMARIE MANESE, ...

G.R. No. 83251. January 23, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review of the decision of the Court of Appeals dismissing the special civil action for certiorari and prohibition filed by petitioner to annul and set aside the orders of the trial court and to enjoin the latter from proceeding with the petition for custody of and support of minor Rafael Carlos Suarez docketed as Sp. Proc. No. 840-J filed by respondent Manese.

The antecedent facts are as follows:

On December 11, 1986, respondent Manese filed with the trial court a petition for writ of habeas corpus against petitioner Renato Suarez, his mother Paz Suarez and his sister Milagros Suarez docketed as Sp. Proc. No. 734-J.

On February 23, 1987, before she could finish the presentation of her evidence, respondent Manese filed a motion to dismiss without prejudice to her right to file another action for custody of minor under Rule 99 of the Rules of Court, contending that the issue as to who between the parties has the rightful and legal custody of the minor child could be fully adjudicated in another action and not in the present action for writ of habeas corpus.

On February 24, 1987, the trial court issued a resolution granting the motion with prejudice.

Thereafter, respondent Manese filed another action for custody of minor and support on May 27, 1987 before the trial court, docketed as Sp. Proc. No. 840-J against petitioner. The latter moved to dismiss the action on the ground of bar by prior judgment rendered in Sp. Proc. No. 734-J dismissing the same with prejudice. On October 1, 1987, the motion to dismiss by petitioner was denied by the trial court. Petitioner, however, moved for the reconsideration of the denial which was also denied.

Respondent Manese filed on December 1, 1987 a motion for visitorial rights and on December 14, 1987, a motion for custody of the minor during the Christmas season.

On December 15, 1987, the trial court issued an order denying petitioner's motion for reconsideration and granting respondent Manese's two motions.

On January 22, 1988, the trial court issued another order setting aside its order dated December 15, 1987, which granted the petitioner's motion for visitorial rights over the minor, and setting the pre-trial of the case on a scheduled date.

Not satisfied with the orders of the trial court, petitioner filed with respondent appellate court a petition for

certiorari and prohibition with application for restraining order/preliminary injunction, seeking to set aside the orders of the trial court of October 1, 1987 and December 15, 1987.

On February 12, 1988, the Court of Appeals rendered judgment dismissing the special civil action.

Hence, this petition was filed with the petitioner assigning the following errors of the respondent appellate court:

"I

THE ORDER OF THE HONORABLE JUDGE EUTROPIO MIGRINO IN SP. PROC. NO. 734-J DISMISSING THE PETITION FOR HABEAS CORPUS IS A VALID JUDGMENT.

"II

UNDER SECTION 2, RULE 17 OF THE RULES OF COURT, THE HON. JUDGE MIGRINO HAS THE RIGHT TO DISMISS THE HABEAS CORPUS CASE FILED BY MANESE WITH PREJUDICE.

"III

THE PROPRIETY OR VALIDITY OF JUDGE MIGRINO'S ORDER OF DISMISSAL (ANNEX 'D') OF THE HABEAS CORPUS CASE CANNOT BE PASSED UPON BY THE COURT OF APPEALS, BECAUSE IT WAS NOT APPEALED.

"IV

IN THE LIGHT OF THE FOREGOING, MANESE'S CAUSE OF ACTION (PETITION FOR CUSTODY OF MINOR) IS BARRED BY A PRIOR RESOLUTION (SEC. 1, PAR (F), RULE 16 OF THE RULES OF COURT).

"V

GRANTING IN GRATIA ARGUMENTI THAT THE ORDER OF DISMISSAL BY JUDGE MIGRINO IS NULL AND VOID UNDER THE CONSTITUTION, WHICH SUAREZ VEHEMENTLY DENIES, NEVERTHELESS, THE PETITION FOR CUSTODY OF MINOR SHOULD STILL BE DISMISSED ON THE GROUND OF LITIS PENDENTIA.

"VI

GRANTING, FURTHER, THAT THE ORDER OF DISMISSAL IS NOT A VALID JUDGMENT, WHICH SUAREZ VEHEMENTLY DENIES, NEVERTHELESS, RESPONDENT JUDGE BALTAZAR COMMITTED NOT ONLY GRAVE ABUSE OF DISCRETION BUT EXCEEDED HER JURISDICTION WHEN SHE GRANTED MANESE'S MOTION FOR CUSTODY OF THE MINOR (ANNEX 'M') IN HER ORDER OF 15 DECEMBER 1987 (ANNEX 'N').

The assigned errors boil down to the following issues: 1) Whether or not the order of dismissal with prejudice in the action for the writ of habeas corpus, docketed as Sp. No. 734-J is res judicata to the present action for custody of minor and support docketed as Sp. No. 840-J; 2) whether or not the respondent appellate court committed grave abuse of discretion in granting custody to the private respondent during the Christmas season as stated in the questioned order of December 15, 1987.

We find the petition devoid of merit.

Anent the first issue, petitioner contends that the petition for custody of minor cannot prosper due to the prior judgment dismissing the petition for writ of habeas corpus and the principle of res judicata applies even if the party changed the form of its cause of action in filing the present action for custody of minor.

There are four well known requisites to the principle of res judicata: (1) there must be a final judgment or order; (2) the court rendering the same must have jurisdiction over the subject matter of 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 parties, of subject matter and of causes of action (*Filipinas Investment Corporation v. Court of Appeals*, G.R. 66059-60, December 4, 1989). However, the foregoing requisites should be subservient to the most significant requirement that the former judgment must be a valid one. We agree with the conclusion of the Court of Appeals that the former order issued by the trial court in Sp. Proc. No. 734-J, dismissing the habeas corpus case is null and void for having been rendered in violation of the constitutional mandate that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based (Article VIII, Section 14, 1987 Constitution). Further, the circumstances surrounding the dismissal of the case show that the order of the trial court was issued whimsically and capriciously and with grave abuse of discretion tantamount to nullity of the order.

Records show that the motion to dismiss of respondent Manese, who was the plaintiff in the trial court was filed during the trial and hearing stage of the petition for writ of habeas corpus. The general rule governing dismissal of actions by the plaintiff after the answer has been served is laid down in Rule 17 of the Revised Rules of Court, which rule is summarized as follows - an action shall not be dismissed at the request of the plaintiff after the service of the answer except by order of the court and upon such terms and conditions as the court deems proper. Hence, the trial court has the judicial discretion in ruling on a motion to dismiss at the instance of the plaintiff, but this discretion should be exercised within reasonable limits. In such case, the trial court has to decide whether the dismissal of the case should be allowed, and if so on what terms and conditions.

In the case at bar, the motion to dismiss filed by the plaintiff states that it was without prejudice to the filing of an action for the custody of minor on the ground that the issue as to the custody of the child would be properly determined in a second action to be filed under Rule 99 of the Revised Rules of Court. Clearly, the purpose of the plaintiff in dismissing the first action for a writ of habeas corpus was not to end litigation concerning the right of the former to the custody of her child but on the contrary, to pursue it in a second action, this time for custody of minor. It is worthy to note that the ground upon which respondent Manese filed her motion for dismissal is erroneous since the question as to who shall have the custody of the child can be sufficiently resolved in the petition for writ of habeas corpus pursuant to Rule 102, Revised Rules of Court without the necessity of filing a separate action under Rule 99 of the said rules for that purpose. Nevertheless, it is error for the trial court to dismiss the first case with prejudice to the filing of the second action without stating the reasons or basis thereof. This should not prevent the filing of the second action for custody of minor, since no opportunity was granted by the trial court to the plaintiff to raise this issue for the determination of the court in the habeas corpus case. Hence, We believe that the order of dismissal of the petition for the writ of habeas corpus cannot be considered as a valid adjudication on the merits which would serve as a bar to the second action for custody of minor.

Assuming in gratia argumenti that the prior judgment of dismissal with prejudice was validly rendered within the lawful discretion of the court and could be considered as adjudication on the merits, nonetheless, the principle of res judicata should be disregarded if its application would involve the sacrifice of justice to technicality (*Republic v. De los Angeles*, No. L-30240, March 25, 1988, 159 SCRA 264). The application of the said principle, under the particular facts obtaining, would amount to denial of justice and/or bar to a vindication of a legitimate grievance (*Ronquillo v. Marasigan*, No. L-11621, May 31, 1962, 5 SCRA 304). It is worth stating here that the controversy in the instant case is not just an ordinary suit between parties over a trivial matter but a litigation initiated by the natural mother over the welfare and custody of her child, in which the State has a paramount interest. The fundamental policy of the State as embodied in the Constitution in promoting and protecting the welfare of children shall not be disregarded by the courts by mere technicality in resolving disputes which involve the family

and the youth.

The other issue raised by petitioner concerning grave abuse of discretion of the trial court in granting the custody of the child to respondent Manese during the Christmas season from December 18, 1987 to January 2, 1988 is already moot and academic.

ACCORDINGLY, the petition is hereby DENIED and the decision of the respondent Court of Appeals dated February 12, 1988 is AFFIRMED.

SO ORDERED.

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

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