

**SPOUSES CESAR DE RAMOS, AND CECILIA DE RAMOS, PETITIONERS,  
VS. HONORABLE COURT OF APPEALS AND SPOUSES FLAVIO  
DEMAMAY AND ESTELITA DEMAMAY, RESPONDENTS.***G.R. No. 86844. September 01, 1992*

Ponente: DAVIDE, JR., J.

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We are called once again to determine whether a case is barred by *res judicata*.

Private respondents mortgaged their 230 square meter residential lot located in Modern Village, Paciano Rizal, Calamba, Laguna and covered by Transfer Certificate of Title No. T-35475 in the Register of Deeds of the Province of Laguna, to the Luzon Development Bank (hereinafter, the Bank) as security for a loan of P10,000.00 which is evidenced by a promissory note. The said note provides that if there is a default in the payment of any of the installments as they become due, the entire unpaid balance, together with the accrued interest, shall automatically become due and payable without need of prior notice.

There being default in the payment of the installments on due dates despite several written demands, the Bank applied for the extrajudicial foreclosure of the mortgage. In a public auction on 30 July 1981, the Provincial Sheriff of Laguna sold the mortgaged property to the Bank, the lone bidder therein, for P23,808.29, the amount of its bid. The certificate of sale was duly recorded in the Office of the Register of Deeds on 24 August 1981. The private respondents failed to redeem the property within the one-year redemption period. So, on 13 September 1982, the Bank filed with the Office of the Register of Deeds an affidavit of consolidation of ownership. Consequently, said office cancelled TCT No. 35475 and issued TCT No. T-89122 in the name of the Bank.

On 26 July 1983, the Bank filed a petition for the issuance of a writ of possession with the Regional Trial Court (RTC) of Calamba, Laguna which was docketed as SLRC Case No. III-83-C.[1] The case was assigned to Branch 37 of the said court. Subsequently, Estelita Demamay filed a verified opposition to the petition alleging that the court has no jurisdiction over the petition because she was not notified of both the foreclosure proceedings and the auction sale, and that the issues involved are highly controversial and litigious in nature. She further claims that the foreclosure was premature because her obligation was to mature only on 29 July 1982.[2] The court conducted a hearing on the petition and received the evidence of the parties. In its Order dated 24 June 1985, the trial court granted the petition, ordered the issuance of a writ of possession and directed the Provincial Sheriff or any of his deputies to place the Bank in possession of the property;[3] the writ of possession was issued on 1 July 1985.[4]

During the pendency of the petition for a writ of possession, or specifically on 3 September 1983, the Bank sold to the herein petitioners the property in question under a Deed of Conditional Sale for P35,000.00 payable in installments, of which P15,000.00 shall be paid as down payment while the balance would be payable within six (6) months.[5] The said balance having been paid, the Bank executed in the petitioners' favor a Deed of Absolute Sale on 9 November 1983[6] which was registered in the Office of the Register of Deeds on 13 November 1983. Transfer Certificate of Title No. T-89122 was then cancelled and Transfer Certificate of Title No. T-119912 was

issued in the name of the petitioners.

The Demamays neither moved for a reconsideration of nor appealed from the aforesaid 24 June 1985 Order. Instead, on 5 July 1985, Estelita Demamay filed a complaint "To Set Aside the Sale of Mortgaged Property and Subsequent Transactions Pertinent Thereto And Cancel Writ of Possession Issued Thereon" which was docketed as Civil Case No. 894-85-C. This was assigned to Branch 36 of the same RTC.[7] In said complaint, she reiterated the grounds raised in her opposition to the petition for the issuance of a writ of possession and further alleged that the writ of possession has no more leg to stand on because the Bank had already sold the property to the petitioners herein. Her prayer in the petition reads:

"WHEREFORE, premises considered, it is respectfully prayed that the sale of the mortgaged property in question to the defendant and the consolidation thereof in its favor be set aside and the writ of possession issued thereon by the said Court cancelled (sic).

Likewise, the writ of possession be set aside for the property in question was no longer titled in the name of the defendant but to (sic) Cecilia de Ramos, married to Cesar de Ramos, to whom the defendant fraudulently sold it without the knowledge and consent of the petitioner.

It is also respectfully prayed the (sic) plaintiff be allowed to pay her mortgage obligation to the defendant.

Petitioner further prays for other reliefs and remedies the Honorable Court may deem just and proper under the premises."[8]

In its Answer and/or Opposition to Petition filed on 13 September 1985,[9] the Bank interposed, as one of its special and affirmative defenses, the barring by res judicata of Estelita Demamay's filing of the complaint considering that the issues involved therein were already raised before Branch 37 of the same court in the aforementioned petition for a writ of possession (SLRC No. 111-83-C); a counterclaim for actual and exemplary damages, attorney's fees and litigation expenses was also set up. The lower court considered the defense of res judicata as a ground for a motion to dismiss and in its Order of 7 November 1985, required Demamay to put in writing her Reply thereto, after which the motion would be deemed submitted for resolution. On 3 January 1986, Branch 36 of the RTC handed down an Order dismissing Civil Case No. 894-85-C, the pertinent parts thereof, as well as the dispositive portion of which read:

"The aforementioned grounds are the same grounds ventilated and tried on the merits before Branch XXXVII of this Court. Although the petition for writ of possession filed with this Court and assigned to Branch XXXVII is summary in nature, plaintiff Damamay (sic) have (sic) filed a verified opposition thereto in the same petition and the court without objections on the part of the parties proceeded to hear the petition on the merits of the case. The Court received the evidence of both parties on the basis of which the questioned Order dated June 24, 1985 granting the petition for writ of possession was issued. Herein petitioner Damamay (sic) did not take any further action by way of appeal or certiorari to the appellate court. The present petition of petitioner Damamay (sic) clearly seeks the annulment of the final order of Branch XXXVII of this Court in RTC SLRC No. 111-83-C.

Under the provisions of BP 129 otherwise known as the Judicial Reorganization Act of 1980, more specifically Sec. 9(2) thereof, Intermediate (sic) Appellate Court has exclusive jurisdiction over acts for annulment of judgments or final orders of the Regional Trial Courts.

IN VIEW THEREOF, the Motion To Dismiss is hereby GRANTED. The complaint is hereby DISMISSED on the ground of lack of jurisdiction of this Court to annul the final order of Branch XXXVII of the Regional Trial Court of Calamba, Laguna."[10]

Again, Estelita Demamay neither moved to reconsider the above order nor appealed therefrom. It thus became

firm and final.

Then, seven (7) months later, or more specifically, on 8 August 1986, Estelita Demamay, now joined by her husband Flavio, filed a complaint for Annulment of Sales and Reconveyance of Real Property with Damages against the bank and herein petitioners with the RTC of Calamba, Laguna; the complaint was docketed as Civil Case No. 1031-86-C[11] and was raffled off to Branch 34 of the said court. In its Answer with Counterclaim and Opposition to the Issuance of Preliminary Injunction,[12] the Bank interposed Special and Affirmative Defenses, among which are (a) *res judicata*, the issues involved having already been raised and resolved by Branches 37 and 36 of the court, and (b) Branch 34 of the RTC has no jurisdiction to annul the final orders of the two (2) aforementioned branches of the court in SLRC No. 111-83-C and Civil Case No. 849-85-C, respectively.

The court (Branch 34) treated the special and Affirmative Defenses "as Motion to Dismiss under Section 5, Rule 16 of the Rules of Court" and in the Order of 1 April 1987, dismissed Civil Case No. 1031-86-C on the ground of *res judicata* in view of the final orders of 24 June 1985 in SLRC No. 111-83-C, and 3 January 1986 in Civil Case No. 894-85-C.[13] It ruled:

"In this case, plaintiff Demamay again seeks the annulment of the auction sale in favor of the defendant and prays that the property be reconveyed to her.

x x x

Notably, this issue is the very same issues (sic) presented in the aforesaid cases. Indeed, it is settled and adjudicated by the Order dated June 24, 1985, issued by Judge Odilon Bautista in RTC Civil Case No. 111-83-C.

x x x

Clearly the principle of *res judicata* applies in this case. There being clearly identical parties and identity of rights asserted in all three (3) cases -- the focal issue in this case having been fully adjudicated in the aforesaid cases -- this case must be dismissed." [14]

The Demamays appealed from the said Order to the respondent Court of Appeals which docketed the case as C.A.-G.R. CV No. 14411. On 21 September 1988, the respondent Court promulgated a decision[15] setting aside the Order of 1 April 1987 in Civil Case No. 1031-86-C (Branch 34 of the RTC) on the ground that *res judicata* cannot be invoked to bar said case for (a) it was not proper for the Demamays "to present their objections in the proceeding for the issuance of a writ of possession because the issuance thereof is a purely ministerial duty on the part of the court;" thus, "[w]hat is proper for plaintiffs to do is to file the present action so that they may be able to ventilate their grounds for the annulment of the foreclosure sale;" and (b) Civil Case No. 894-85-C cannot likewise bar Civil Case No. 1031-86-C because there was no adjudication on the merits in the former, the dismissal being for lack of jurisdiction.

A motion to reconsider said decision having been denied, petitioners filed this present petition.

Private respondents filed their Comment in compliance with the Resolution of 12 April 1989.

There is merit in the petition. This Court hereby gives due course to it, considers the Comment as the Answer of the respondents and decides it on the merits.

The trial court was correct in dismissing Civil Case No. 1031-86-C on the ground that it is barred by *res judicata* because of the final orders dated 24 June 1985 in SLRC No. 111-83-C, and 3 January 1986 in Civil Case No. 894-85-C.

The principle of *res judicata* is enshrined in paragraph (b), Section 49, Rule 39 of the Rules of Court which reads:

"SEC. 49. Effect of Judgments. -- The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

X X X

(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the 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."

The doctrine of *res judicata* is an old axiom of the law, dictated by wisdom and sanctified by age, and is founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties over a subject once fully and fairly adjudicated.[16] It is "a rule pervading every well-regulated system of jurisprudence, and is put upon two grounds embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the state that there should be an end to litigation -- *republicae ut sit litium*; the other, the hardship on the individual that he should be vexed twice for the same cause -- *nemo debet bis vexari et eadem causa*." A contrary doctrine would subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.[17]

The essential requisites of *res judicata* are (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and over the parties; (3) it must be a judgment or order on the merits; and (4) there must be between the two cases identity of parties, identity of subject matter, and identity of action.[18]

The parties do not dispute the fact that Branches 37 and 36 of the Regional Trial Court of Calamba, Laguna had jurisdiction over SLRC No. 111-83-C and Civil Case No. 894-85-C, respectively; that their Orders which were pleaded as a bar to Civil Case No. 1031-86-C are firm and final; and that the principal parties, causes of action and issues involved in the latter are identical to those in the first two (2) cases. The only issue to be determined is whether or not the said Orders are adjudications on the merits of the causes of action and the issues involved.

Respondent Court does not place any importance on (a) the Order of 24 June 1985 in SLRC No. 111-83-C on the ground that said order merely disposed of the petition for a writ of possession; the respondent Court further declares that it was not proper for the private respondents to raise in the said case issues concerning the validity of the foreclosure sale, as this must be done in a proper action, and (b) on the 3 January 1986 Order in Civil Case No. 894-85-C because it is a dismissal on the ground of lack of jurisdiction.

Both propositions do not stand on solid ground.

While it may be true, as held in *De los Angeles vs. Court of Appeals*,<sup>[19]</sup> relied upon by the respondent Court, that under Section 8 of Act 3135, it is the ministerial duty of the court to issue a writ of possession in favor of the purchaser in a foreclosure sale of a mortgaged piece of property and the only remedy of the mortgagor is to question the validity of the sale in the manner provided for by law, namely, by a petition to set aside the sale and to cancel the writ of possession which should be disposed of in accordance with the summary procedure prescribed in Section 112 of the Land Registration Act, provided that the petition is filed not later than thirty days after the purchaser was given possession, the fact remains that in SLRC No. 111-83-C, a full-blown hearing was conducted by the court with Estelita Demamay presenting her evidence. In its Order of 24 June 1985, the trial court found and held that:

"The claim of Teresita (sic) Demamay that her obligation was to mature on July 29, 1982, as shown by the

Disclosure Statement of Loan/Credit Transaction (Exhibits "2-A" and "2-C") and consequently, the extra-judicial foreclosure was premature, cannot be sustained by the Court. Such Disclosure Statement on Loan/Credit Transaction, cannot be considered as sufficient evidence to render ineffective the terms and conditions of the Promissory Note (Exhibit "B"), wherein it was provided that in case of default in any of the scheduled installments, the unpaid balance becomes due and payable without necessity of any prior notice.

The irregularities alleged and testified to by oppositor (sic) in the conduct of the extrajudicial foreclosure of the property in question were negated by the fact that the Notice of Sheriff's Sale as well as the auction sale were conducted in accordance with law. Likewise, the fact that the redemption period expired without the oppositor redeeming the property militated against the stand taken by the oppositor. The case cited by the oppositor (Calimlim, et. vs. Hon. Pedro A. Ramirez, et. al., 118 SCRA 399), cannot be used in this case for the simple reason that the facts therein were (sic) different to (sic) those in the instant petition."<sup>[20]</sup>

After having submitted to the jurisdiction of the court in SLRC No. 111-83-C, testifying therein and offering documentary evidence to resist the petition for a writ of possession and to obtain affirmative relief such as the nullification of the foreclosure proceedings and all incidents thereto including, necessarily, the sale at the public auction, Demamay cannot now be heard to challenge the jurisdiction of the said court and to suggest, in order to escape from the effects of the finality of the Order, that all that had transpired in the said case was an exercise in futility. A party cannot invoke the jurisdiction of the court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction. Put differently, it is not proper for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape penalty.<sup>[21]</sup> That order was, undoubtedly, an adjudication on the merits of Demamay's claim and cause of action.

Even if We were to disregard the foregoing exposition, the fact remains that the same causes of action and issues were raised again and revived by Estelita Demamay herself in Civil Case No. 894-85-C. Respondent Court, however, opined that the dismissal of said case cannot bar Civil Case No. 1031-86-C because the dismissal was grounded on the lack of jurisdiction. Respondent Court must have been misled by the dispositive portion of said order. Both the basis of the issuance of the order and the body thereof unmistakably show that the dismissal is based on *res judicata*. In its Order of 7 November 1985,<sup>[22]</sup> the trial court, applying Section 5, Rule 16 of the Rules of Court which provides:

"SEC. 5. Pleading grounds as affirmative defenses. - Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed."

required Estelita Demamay "to put in writing his (sic) reply to the motion to dismiss contained in defendants' Answer on the ground of *res judicata*," after which the motion would be deemed submitted for resolution. Furthermore, the 3 January 1986 Order narrates in no uncertain terms what SLRC No. 111-83-C is all about, ruled that the grounds raised therein by Estelita are the same as those raised by her in Civil Case No. 894-85-C and declared that the court in the former case heard the petition on the merits "without objections on the part of the parties" who presented their evidence on the basis of which the court entered its 24 June 1985 Order.

If the court in Civil Case No. 894-85-C finally decreed the dismissal of the case for lack of jurisdiction, it was because the Order of 24 June 1985 in SLRC No. 111-83-C was already final; the court could not, therefore, annul it. The authority to annul the same is vested in the then Intermediate Appellate Court (now Court of Appeals) pursuant to Section 9(2) of B.P. No. 129. The message the court wanted to convey was that the Order of 24 June 1985 constituted a prior final judgment which barred Civil Case No. 894-85-C.

The 3 January 1986 Order in Civil Case No. 894-85-C was, by itself, an adjudication on the merits of the

Demamay spouses' claim because it declared them no longer entitled to the right upon which their claims are based. A judgment is deemed to be rendered upon the merits when it amounts to a declaration of the law as to the respective rights and duties of the parties, based upon the ultimate fact or state of facts disclosed by the pleadings and evidence, and upon which the right of recovery depends, irrespective of formal, technical or dilatory objectives or contentions.[23]

WHEREFORE, the instant petition is GRANTED. The decision of 21 September 1988 of the respondent Court of Appeals in C.A.-G.R. CV No. 14411 is hereby SET ASIDE and the Order of 1 April 1987 of Branch 34 of the Regional Trial Court of Calamba, Laguna in Civil Case No. 1031-86-C is hereby REINSTATED.

Costs against private respondents.

**SO ORDERED.**

Gutierrez, Jr., (Chairman), Bidin, and Romero, JJ., concur.  
Feliciano, J., on official leave.

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[1] Annex "F" of Petition; Rollo, 41-43.

[2] Id., 45-46.

[3] Annex "G" of Petition; Rollo, 44-47.

[4] Annex "H", Id.; Id., 48.

[5] Annex "R", Id.; Id., 75-77.

[6] Annex "S", Id.; Id., 79-80.

[7] Annex "J", Id.; Id., 50-56.

[8] Rollo, 56.

[9] Annex "K" of Petition; Id., 58-61.

[10] Rollo, 67-68.

[11] Annex "W" of Petition; Rollo, 90-97.

[12] Annex "X", Id.; Id., 108-115.

[13] Annex "Y", Id.; Id., 118-122.

[14] Rollo, 121-122.

[15] Annex "Z" of Petition; Id., 123-127.

[16] *Filipinas Investment and Finance Corp. vs. Intermediate Appellate Court*, 179 SCRA 728 [1989]; *Escarte, Jr. vs. Office of the President*, 192 SCRA 1 [1990], both citing *Fernandez vs. Sebido*, 70 Phil. 151 [1940].

[17] *Yusingco vs. Ong*, 42 SCRA 589, 601-602 [1971].

[18] *Yusingco vs. Ong*, supra.; *Santos vs. Gabriel*, 45 SCRA 288 [1972]; *Viray vs. Mariñas*, 49 SCRA 44 [1973]; *Philippine Commercial and Industrial Bank vs. Pfleider*, 65 SCRA 13 [1975]; *Maglalang vs. Court of Appeals*, 175 SCRA 808 [1989]; *Maningo vs. Intermediate Appellate Court*, 183 SCRA 691 [1990]; *Valencia vs. RTC of*

Quezon City, 184 SCRA 80 [1990].

**[19] 60 SCRA 116 [1974].**

[20] Rollo, 46.

[21] Tijam vs. Sibonghanoy, 23 SCRA 29 [1968]; Calderon vs. Public Service Commission, 38 SCRA 624 [1971]; People vs. Munar, 53 SCRA 278 [1973].

[22] Annex "L" of Petition; Rollo, 65.

[23] Escarte, Jr. vs. Office of the President, supra., citing FRANCISCO, Rules of Court, vol. II, 841-842.

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