

LAZARO PASCUAL ET AL., PLAINTIFFS AND APPELLANTS, VS. FELIPE PASCUAL ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 9204. February 24, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the Province of Ilocos Norte, on the 28th of July, 1911. It was submitted to the Supreme Court for decision on the 11th day of January, 1916. The record contains no explanation of the long delay in its final disposition.

The purpose of the action was to recover of the defendants the sum of P586, the value of the rent of a certain piece or parcel of land, to which reference is made in subparagraph (a) of paragraph 2 of the complaint, and more particularly described in document No. 1, which was made a part of the complaint.

After several complaints, amended complaints, demurrers, etc., the defendants answered the final amended complaint, and interposed a general and special defense, as well as the defense of prescription and of res adjudicata. After hearing the evidence, the Honorable Dionisio Chanco, judge, reached the conclusion that the plaintiffs were not entitled to recover the sum demanded, and absolved the defendants from all liability under the complaint, with costs against the plaintiffs. From that judgment the plaintiffs appealed to this Court, and made several assignments of error.

The facts which gave rise to the present action are undisputed and are as follows:

- In the year 1907, the exact date not appearing of record, an action was commenced by Felipe Pascual against Apolinario Pascual, for the purpose of recovering a sum of money. (The exact amount does not appear of record.)
- In that action a judgment was rendered, at the close of the trial, in favor of Felipe Pascual and against Apolinario Pascual.
- In the same year (1907) an execution was issued upon said judgment and was levied upon the property involved in the present litigation and the same was advertised for sale at public auction.
- Some time before the date fixed for the sale of the said property Domingo Pascual appeared and notified the sheriff, in writing, that some of the land attached belonged to him and not to Apolinario Pascual, the judgment debtor.
- After said notice had been given by Domingo Pascual to the sheriff, the plaintiffs herein, except Pablo Antonio, who was the sheriff, executed and delivered the bond required by law to guarantee the sheriff against loss. Upon the execution and delivery of said bond the sheriff proceeded to sell the said parcels of land, and the same were sold to Paulino Acosta.
- Later an action was commenced by the said Domingo Pascual against Felipe Pascual, and Paulino Acosta, for the purpose of having said sheriff's sale declared null and void, to recover the possession of the parcels of land,

together with damages, and costs. At the close of the trial in that action, the lower court rendered a judgment absolving the defendants from all liability under the complaint. From that judgment Domingo Pascual appealed to the Supreme Court.

- Upon a consideration of said appeal (R. G. No. 5431, Pascual vs. Pascual and Acosta, 18 Phil. Rep., [notes], 594) the judgment of the lower court was reversed and it was declared that Domingo Pascual was the owner of the lands in question and that they had been sold illegally at the sheriff's sale, above indicated.

- Domingo Pascual died, the exact date not appearing of record. The plaintiffs are his legal heirs

In the action by Domingo Pascual against Paulino Acosta the plaintiff claimed damages, resulting from the illegal sale, based upon the amount of rents and profits which he had lost by reason of said illegal sale. The lower court not only denied that he was the owner of the lands in question but also denied that he was entitled to damages. In the appeal to this court Domingo Pascual, as appellant, waived his right to damages in said action. He made no claim, in that appeal, that he was entitled to damages. Having waived his right to recover damages in an action commenced primarily for that purpose, we hold that to be a bar to his right to recover damages in a subsequent action, where the facts upon which he relies are exactly the same as in the first action.

Moreover, it will be remembered that the present action was brought for the purpose of recovering rent for the parcels of land in question. There is no proof in the record that any of the defendants had received any of the rent, nor that any one of them had been in possession of the property. Had the present action been based upon the bond which the defendants herein gave to the sheriff, in order to obtain the sale of the lands at public auction, there might have been some merit in the contention of the plaintiffs. No such pretention is made by the plaintiffs.

After a full consideration of the facts in the present case and the fact that the question herein litigated has been heretofore litigated, we are of the opinion that the judgment of the lower court should be and is hereby affirmed with costs. So ordered.

Arellano, C. J., Torres, Carson, Moreland, Trent, and Araullo, JJ., concur.

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