

**JULIANA SOLANO ET AL., PLAINTIFFS AND APPELLANTS, VS.
VICENTA SALVILLA ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 9225. December 24, 1914*

Ponente: TORRES, J.

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Appeal brought up by bill of exceptions filed by counsel for the plaintiffs from the judgment of April 10, 1913, whereby the Honorable P. M. Moir, judge, dismissed the complaint, with the costs against the plaintiffs.

On September 1, 1906, Macario Samson filed in the Court of First Instance of Albay a suit for recovery of possession of a tract of land located in Mabaryu, of the municipality of Polangui, Albay, from the married couple, Vicenta Salvilla and Pascual Sierra, who held it by usurpation. After due trial, the court absolved the defendants, declaring that the plaintiff is not the owner of the land claimed in the complaint, wherein it was also prayed that said defendants be sentenced to pay the plaintiff P1,000 as damages.

A bill of exceptions was brought into this court by virtue of an appeal raised by the plaintiff Samson from the judgment of the court below, and such appeal having been found to be proper, the court, under date of January 16, 1909, reversed the judgment appealed from and declared that ownership and possession of the land claimed pertained to the plaintiff. Defendants were sentenced to deliver and restore possession of the same to the plaintiff, but they were absolved from the claim for damages, as neither the existence nor the amount thereof had been proven (*Samson vs. Salvilla and Sierra*, 12 Phil. Rep., 497).

At this point, as in the meanwhile the said Macario Samson had died, counsel for his widow Juliana Solano and their children and only heirs, Domingo Samson and Felisa Samson, filed suit on October 24, 1912, to recover rents from the said Vicenta Salvilla and Pascual Sierra. He alleged that, by virtue of the decision rendered by the Supreme Court, the sheriff of the Province of Albay had, on March 10, 1909, carried out its mandates by placing the predecessor in interest of the plaintiffs in possession of the land in litigation, which the defendants had held by usurpation from June, 1906, to March 10, 1909. They had tilled it and enjoyed the products thereof but had failed to deliver to the owner of the land, the predecessor in interest of the plaintiffs, the third of the crops that belonged to the latter in the years 1907, 1908, and 1909. This third was the rent of the said land, of which they were only tenants on shares, and consisted of 51 trojes and 35 manojos of paddy, -as harvested each year, equivalent to 103 cavaness and 10 gantas, worth P413.60 a year. The value of the three crops for the years 1907, 1908, and 1909 amounts to the total sum of P1,240.80, which was not paid to the deceased Macario Samson in his lifetime, nor to his heirs the plaintiffs, although the defendants knew that they were obligated to deliver to the owner of the land a third of its products in those three years, or the value thereof. They refused to make delivery of the same and appropriated the third to their own use, wherefore counsel for the plaintiffs asked for judgment ordering the defendants to deliver to the plaintiffs 310 cavaness and 5 gantas of paddy, or the value thereof, P1,240.80, together with the interest on this amount, and to pay the costs of the case;

The demurrer filed to the foregoing complaint by counsel for the defendants was overruled on the ground that the

plea of res adjudicata cannot be set up in a demurrer, but must be alleged as a special defense in answer and must be afterwards proven as such. In answer to the complaint, counsel for the defendants then denied each and all of the allegations contained therein and not expressly admitted in the answer, but he admitted the allegations set forth in paragraphs 1, 2, 3, 4, 5, and 6 of the complaint and the documents forming a part thereof, marked "A" and "B". He especially denied the allegations in paragraphs 7 and 8 thereof.

In special defense he alleged that the subject-matter of this litigation is res adjudicata in the civil case No. 636 of the Court of Albay and No. 4461 of the general docket of the Supreme Court, as appears in the said Exhibits A and B, and he therefore prayed the court to absolve the defendants from the complaint and to sentence the plaintiffs to pay the costs and forever hold their peace.

As a result the court rendered the decision that has been mentioned, whereupon counsel for the plaintiffs excepted thereto and appealed by filing the corresponding bill of exceptions.

The question arising in this suit is whether the claim for rent, or price of leasing the land usurped, which was ordered restored in the said judgment, consisting of the third of the products of the said land at the rate of 103 cavanos and 10 gantas of paddy for each of the three years 1907, 1908 and 1909, or the value thereof, P1,240.80, is involved and included in the complaint filed in the previous suit and the final judgment rendered therein, and therefore whether it has already been finally decided.

In the complaint filed in the previous suit the plaintiff Macario Samson asked that the defendants be sentenced to pay him the sum of P1,000 as damages, and in reversing the judgment appealed from this Court declared that the plaintiff Samson was not entitled to such damages as he had not proved the existence or the amount thereof.

In the present suit the widow and heirs of Macario Samson pray that the defendants be directed to pay them a third of the paddy crop they harvested from the land usurped during those three years, which in all amounts to 310 cavanos and 5 gantas, the value whereof is P1,240.80, alleging that the defendants failed to deliver said third of the products as rent or price of the lease stipulated, after presentation in September of 1906 of the complaint in said previous suit, up to March, 1909, when possession of the land in question was restored to the plaintiff. This claim for rent for these three years cannot be regarded as included in the previous suit for recovery, wherein among other things payment was demanded from the defendants of the sum of P1,000 as damages, for these damages referred to injury done before the filing of the complaint, in which no claim was set up with reference to later damages.

Counsel for the defendants alleges that the plaintiff, in fixing the sum of P1,000 as the amount of damages caused him, did not specify that they were incurred only up to the date of the complaint and he asked for payment thereof without any distinction and without reservation of his right to claim damages subsequent to the filing of the complaint, since indemnity for damages, although it might have two sources, ought to be the subject matter of a single action, which cannot be divided merely on account of time. The right of the owner of the tract to be indemnified arose and could be enforced from the moment when the occupation of the property became illegal on the part of the defendants until the time when the owner should be restored to possession, the action being single for the reason that the cause thereof, the illegal occupation of the property, is single.

In order that a final and executory judgment justify the plea of res adjudicata in another suit subsequently instituted, and that such plea be admissible, it is indispensable that there exist in both actions identity of persons, things and rights of action requisites that must concur in common between the first suit already carried to judgment and the one subsequently instituted, by showing that in this second suit the complaint is based upon the same thing that was the subject matter of the previous litigation, that the same ground was alleged and that it was between the same parties. (Bowler vs. Estate of Alvarez, 23 Phil. Rep., 561.)

Every question determined by final judgment in a trial before the courts is considered *res adjudicata*. (Civil Code, art. 1252; Code of Civil Procedure, sees. 306, 307.)

Identity of the parties litigant does really exist between the previous suit finally determined by the decision, Exhibit B, and the present one, for the defendants in this suit are the same persons who were sentenced in the preceding one to restore possession of the land they held by usurpation, and as Macario Samson, the plaintiff in that suit, had died, the claimants in the present action are his widow and children, his legal successors in interest to his rights to the land in question and to the damages the usurpers of the tract caused him.

Likewise identical is the right of action arising from the right to claim indemnity for damages caused by said usurpation of the land belonging to the plaintiff in the first suit, Macario Samson, to whose rights his heirs, now the plaintiffs, have succeeded through his death, since the same ground for seeking indemnity for said damages has been alleged in both actions.

But a like identity does not exist in the subject matter of the two suits, for in the previous one claim was made upon the defendants for payment of the sum of P1,000 as damages caused to the plaintiff from the date of the usurpation until that of the complaint, September 1, 1906, by the illegal occupation of the land which is the subject matter of the action for recovery of possession; and in the present suit it is prayed that the same defendants be sentenced to deliver the third of the crops harvested by them from the land they usurped during the years 1907, 1908, and 1909, as rent for the tract, which third part of the crops amounts to 103 cavanese and 10 gantas of paddy a year, worth annually P413.60 and for the three years P1,240.80. The defendants kept that third of the products of the land detained during the three years subsequent to the action for recovery until the land recovered was, in compliance with the judgment of execution, restored to its owner, the predecessor in interest of the herein plaintiff.

Accordingly, with respect to damages, the things that were the subject matter of the complaint in the first action and those of the claim herein are not the same nor are they identical. In the former action indemnity was sought for damages caused to the plaintiff from the commencement of the usurpation until the date of the complaint, and in the present one payment is demanded of the amount of the rent of the land detained, consisting of the third of the crops grown during the three years following the complaint, until the land was returned to its owner or the value of each of the said crops of paddy was paid.

On the supposition therefore, that the subject matter in each case is different, the first being with reference to damages, it is evident that there is a lack of one of the requisites indispensable to make the result of the first suit, as shown by the final judgment, Exhibit B, *res adjudicata*, in the present one, and consequently the absolution of the defendants from the complaint for damages, calculated by the plaintiffs at P1,000, is not *res adjudicata* in the present case. Their prayer that the defendants be sentenced to deliver to the plaintiffs 310 cavanese and 5 gantas of paddy, or the value thereof, P1,240.80, was not made or decided in the previous suit, so it cannot be understood to have been duly included in the judgment therein rendered, Exhibit B.

This being the case, and as it has been shown in this decision that the plaintiffs, successors in interest of Macario Samson, are entitled to claim the said quantity of paddy, a third part of the crops of three years or the value thereof, from the defendants, whose plea that the claim was finally decided in the previous action is inadmissible and as the parties have not introduced their respective proofs to show whether or not such crops are owed as rent, trial of the case should be proceeded with in first instance for that purpose.

Therefore, the judgment appealed from is set aside, and the case will be returned to the court from which it comes, with a certified copy of this decision, so that the Court of First Instance may, in accordance with law, direct the taking of such evidence as the parties may present in these proceedings. So ordered.

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

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