

5 Phil. 195

[ G.R. No. 1497. November 02, 1905 ]

**TOMASA VERA MOGUER, PLAINTIFF AND APPELLANT, VS. RITA JUAN CARBALLO ET AL., DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**ARELLANO, C.J.:**

On July 24, 1902, Tomasa Vera Moguer brought an action against the two defendants Rita Juan Carballo and Telesforo Ablaza.

Demurrers having been interposed by both defendants, Ablaza finally withdrew his and answered the complaint, setting up as a defense the plea of *res judicata*.

The court held that under section 125 of the Code of Procedure in Civil Actions, it could order, as it did, that the action against the defendant Telesforo Ablaza be dismissed, and that it should be continued in the next term of court as regards the other defendant Rita Juan Carballo. (Bill of exceptions, p. 30.)

The plaintiff took exception to this order.

But during the next term of court the action was continued to its end without Telesforo Ablaza being a party thereto.

Being no longer a party to the action, the judgment rendered therein by a judge who was not the same who had excluded him from the action, it declared rescinded the purchase that Ablaza had made of the house in question, and ordered him to turn the same over to the plaintiff, and to pay the costs of the action.

Ablaza's attorney made, a motion to have this judgment declared

null, and a third judge who tried the case annulled the same "as regards Ablaza."

The attorney for the plaintiff excepted to this last judgment.

The bill of exceptions forwarded to this court contains the entire record of the case, the appellant being Tomasa Vera Moguer and the appellee Rita Juan Carballo, they having filed their respective briefs.

It is the opinion of this court that there has not been submitted to it the entire case, but only the last judgment of June 4, 1903, annulling the decision rendered April 30, 1903. It would be otherwise if in the judgment of June 4, 1903, upon the annulment of the judgment of April 30, it had been decreed, instead of the order of annulment, one that would put an end to the action.

But such has not been the case; the last judgment rendered was restricted to annulling the former judgment, for the reason that it included Ablaza, who was no longer a party to the action and had not been a party thereto since the order of October 17, 1902, had excluded him therefrom. We have only, therefore, to examine the question of the legality or illegality of the annulment of the sentence of April 30, 1903, made on the 4th of June following, which affects the whole case.

If the declaration of annulment is proper, no judgment has been rendered in the action and it is evident that it must be ended by a judgment. If on the contrary it was not legal, the judgment of April 30, 1903, stands, and at least the petition for a new trial formulated by the other defendant Rita Juan Carballo should be granted, instead of being denied as was done by the judge, for the sole reason "*that he does not see that the plaintiff can obtain any benefit from the decision against the defendant Carballo.*"

The annulment of the judgment of April, 30, 1903, being in accordance with law, we affirm it only in that part which declares the annulment of the anterior judgment, without special provision as to costs.

And we order that the case be immediately remanded to the lower court to the end that the case may be placed in condition to pass judgment thereon and that the same may be rendered in accordance with law. So ordered.

*Torres, Mapa, Johnson and Carson, JJ., concur.*

*Willard JJ., did not sit in this case.*

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