

FIRST DIVISION

[G.R. NO. 164797, February 13, 2006]

**JOSEFINA M. CRUZ AND ERNESTINA M. CONCEPCION,
PETITIONERS, VS. THE HON. COURT OF APPEALS, SECOND
DIVISION, MARIANO "BOY" BUNAG AND ROLANDO BUNAG,
RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for *Certiorari* under Rule 65 of the Rules of Court which seeks to reverse and set aside the decision^[1] of public respondent Court of Appeals dated 19 March 2004 which dismissed the petition for *certiorari* asking for the nullity of the 13 May 2003 Order of the Regional Trial Court of Gapan, Nueva Ecija, Branch 35, in Civil Case No. 2583-02, and its Resolution^[2] dated 29 June 2004 denying petitioners' motion for reconsideration.

The antecedents are substantially stated by the Court of Appeals as follows:

There are four (4) cases involved in this controversy. The first case that was filed between the parties is Civil Case No. 4365 for Unlawful Detainer litigated before the Municipal Trial Court of Gapan, Nueva Ecija entitled "*Josefina M. Cruz and Ernestina M. Concepcion, plaintiffs, vs. Mariano 'Boy' Bunag, Rolando Bunag, Remedios Bunag, et al., Defendants.*" This case was decided on 6 November 1998 by the Municipal Trial Court in favor of herein petitioner Josefina M. Cruz and Ernestina M. Concepcion.

The second case is Civil Case No. 1600 for Quieting of Title, filed before the Regional Trial Court of Gapan, Nueva Ecija, Branch 36 with "*Carlos L. Bunag, Elias Bunag Natividad, Mariano Bunag, Salud Bunag Clanaoc and Juliana Bunag Arevalo, as Plaintiffs and Josefina M. Cruz and Ernestina M. Concepcion as Heirs of Sps. Carlos Maniquis and Marina Bunag, as Defendants.*" This case was dismissed for failure to prosecute as evidenced by the Regional Trial Court Order dated 10 March 2000.

The third case is Civil Case No. 2573-02 for Injunction, with "*Mariano 'Boy' Bunag and Rolando Bunag as Petitioners against Carlos Bunag, Elias Bunag Natividad, Mariano Bunag, Salud Bunag Clanaoc and Juliana Bunag Arevalo as Defendants.*" This case, which was filed before the Regional Trial Court of Gapan City, Branch 35, was dismissed on ground of *res judicata*. The 6 November 2002 Order, in effect, ruled that there is a substantial identity of parties in this case and in Civil Case No. 1600, a Petition for Quieting of Title.

The fourth case is the instant controversy for *Annulment of Title With*

Damages. Docketed as Civil Case No. 2583-02, it was lodged by herein private respondents Mariano "Bo[y]" Bunag and Rolando Bunag against herein petitioners Josefina M. Cruz and Ernestina M. Concepcion before the sala of Branch 35, Regional Trial Court of Gapan City.

It appears that herein petitioners interposed a *Motion for Outright Dismissal of Civil Case No. 2583* which was granted by the Court a quo as evidenced by an Order dated 18 February 2003, ratiocinating:

x x x

x x x

x x x

After a careful study of the arguments of both parties, the Court has found that herein case (2583) involve the same parties, subject matter and issue as that in Civil Case No. 1600 which has become final and executory and Civil Case No. 2573-02 which was already dismissed by this Court on the ground of *res judicata*. In all three cases, Mariano Bunag was included as party-plaintiff and Ernestina Concepcion as party-defendant. The subject matter involves a parcel of land located in San Nicolas, Gapan City with an area of 1,160 square meters, more or less, and the issue is who between the two parties has the lawful title over the same. Clearly, not only *res judicata* but also *accion pendente lite* is present in herein case which the plaintiffs and their counsel should have revealed in the Certificate/Verification of their complaint. The allegation that it is only now that they have learned of the existence of Civil Case No. 1600 is without merit considering that in the Motion for the Outright Dismissal of Civil Case No. 2573, dated September 19, 2002, its existence was already disclosed and even became the ground for the dismissal of Civil Case No. 2573 on the ground of *res judicata*.

Moreover, the Certification against forum shopping does not only refer to final and executory actions but also to pending controversies. Considering that plaintiffs have been represented by the same counsel in Civil Case No. 2573 and herein case (Civil Case No. 2583-02), it is very clear that plaintiffs counsel is appraised (sic) of the existence of Civil Case No. 1600 and Civil Case No. 2573.

WHEREFORE, premises considered, the Motion for Outright Dismissal is granted by reason of *res judicata* and *accion pendente lite* and the plaintiffs and their counsel are declared guilty of indirect Contempt of Court by reason of non-disclosure of Civil Case No. 1600 and Civil Case No. 2573 as required by Section 5, Rule 7 of the Revised Rules of Court and ordered them to pay a fine of P1,000.00 each.

SO ORDERED. (Rollo, p. 36)

x x x

x x x

x x x

However, when herein private respondents interposed their *Motion for Reconsideration*, the court a quo reversed itself and reinstated the present case, the *fallo* of the herein assailed Order reads:

x x x

x x x

x x x

In the light of the foregoing, the Order dated February 18, 2003 of this Court, granting defendants' Motion for the Outright Dismissal of this case and citing plaintiffs and counsel for contempt of court is hereby reconsidered and set aside. Accordingly, the instant case is reinstated and the defendants are directed to file their answer/responsive pleading within fifteen (15) days from receipt of this order.

SO ORDERED. (Rollo, pp. 11-13)^[3]

Via petition for review, petitioners went to the Court of Appeals. The latter dismissed the petition for lack of merit. It ruled that one of the elements of *res judicata*, *i.e.*, that there must be, between the first and the second actions, identity of parties, of subject matter and of cause of action, is lacking. It explained:

First. The issue in the Injunction case is the propriety of the demolition order; while in the present action (*Petition for Annulment of Title With Damages*), the pivot of inquiry is the ownership of the controversial estate.

Second. Private respondent Mariano Bunag denied that he authorized Carlos Bunag to sign the Verified Complaint in his behalf. Because of this, Mariano Bunag cannot be considered as a party litigant in the Injunction case. Concomitantly, there is no identity of parties between the present case and in Civil Case No. 2573-02 (*Injunction*). As correctly ruled by the trial court, thus:

"x x x

x x x

x x x

While it is true that this Court has earlier made a declaration in Civil Case No. 2573 that Carlos Bunag was authorized by his co-plaintiffs to file Civil Case No. 1600 including herein plaintiff Mariano Bunag, against herein defendants, such declaration was based on the verified complain[t] signed by Carlos Bunag. In the absence of any evidence to the contrary, the Court has to assume that indeed Carlos Bunag was authorized by his co-plaintiff Mariano Bunag to file Civil Case No. 1600. However, with the submission of the affidavit of Mariano Bunag on April 14, 2003, wherein he claimed that Civil Case No. 1600 for quieting of title was filed without his knowledge by Carlos Bunag for and in behalf of the other plaintiffs including himself, the verified complaint of Carlos Bunag is now disputed.

The categorical denial of Mariano Bunag that he was not aware that Carlos included him as one of the plaintiffs in Civil

was merely intended for delay. As regards the non-inclusion of private respondent Rolando Bunag in the case for Quieting of Title but who was a party in the Ejectment case (as well as in the Injunction case), they claim that same was in preparation for this stage of the proceedings. They added that insofar as identity of causes of action is concerned, it cannot be denied that the ownership and its concomitant right of possession are the issues in the cases for Quieting of Title, Injunction and Annulment of Title.

In their comment,^[8] private respondents Rolando Bunag and Monina Luzong Vda. de Bunag^[9] maintain that the public respondent did not err when it held that there was no *res judicata* in the instant case and that the disposition of the case should not be based on technicalities.

The question to be resolved is: Does *res judicata* apply in the case at bar?

Under the rule of *res judicata*, also known as "bar by prior judgment," a final judgment or order on the merits, rendered by a Court having jurisdiction of the subject matter and of the parties, is conclusive in a subsequent case between the same parties and their successor-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 requisites essential for the application of the principle are: (1) there must be a final judgment or order; (2) said judgment or order must be on the merits; (3) the Court rendering the same must have jurisdiction on the subject matter and the parties; and (4) there must be between the two cases identity of parties, identity of subject matter, and identity of causes of action.^[10]

Petitioners claim *res judicata* applies in this case because all the elements thereof are present. On the other hand, private respondents argue the contrary alleging that the second and fourth elements are lacking.

There being no dispute as to the presence of the first and third elements, we now determine if the second and fourth elements are attendant in the case.

On the second element, private respondents argue that the dismissal of Civil Case No. 1600 (for Quieting of Title) was not a dismissal on the merits. The dismissal of this case, they claim, will not bar the filing of the instant case (Civil Case No. 2583-02 for Annulment of Title) because there was neither litigious consideration of the evidence nor any stipulations submitted by the parties at the trial. In fact, there was no pre-trial conference and that after four years of court inactivity, the case was dismissed for failure to prosecute.^[11]

Their argument does not hold water. Section 3 of Rule 17 of the 1997 Rules of Civil Procedure provides:

Section 3. *Dismissal due to fault of plaintiff.* – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to