513 Phil. 664

SECOND DIVISION

[G.R. NO. 157605, December 13, 2005]

SPS. ENRIQUETA RASDAS, AND TOMAS RASDAS, SPS. ESPERANZA A. VILLA, AND ERNESTO VILLA, AND LOLITA GALLEN, PETITIONERS, VS. JAIME ESTENOR, RESPONDENT.

D E C I S I O N

TINGA, J.:

The main issue in this *Petition for Review* under Rule 45 is whether the complaint below is barred by *res judicata.* We find that *res judicata* indeed obtains in this case, albeit of a mode different from that utilized by the trial court and the Court of Appeals in dismissing the complaint.

The antecedent facts, as culled from the assailed *Decision*[1] of the Court of Appeals Tenth Division, follow.

The dispute centers on a parcel of land with an area of 703 square meters, situated in Ilagan, Isabela. On 29 October 1992, respondent as plaintiff filed a *Complaint For Recovery Of Ownership And Possession With Damages* against petitioners as defendants. The complaint was docketed as Civil Case No. 673 and tried by the Regional Trial Court (RTC) of Ilagan, Isabela, Branch 16. In the same complaint, respondent asserted that he was the owner of the subject property, which was then in the possession of petitioners.

On 6 November 1995, the RTC decided Civil Case No. 673 in favor of petitioners. Respondent appealed the RTC decision before the Court of Appeals, and his appeal was docketed as CA-G.R. No. 52338.

On 25 September 1997, the Court of Appeals reversed the judgment of the RTC, and declared respondent as the owner of the subject property. As a result, petitioners were ordered to vacate the land. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, the Decision of the trial court dated November 6, 1995 is REVERSED and SET ASIDE, and a new one is rendered declaring the plaintiff as the owner of the land in question; and ordering the defendants-appellees to vacate the same and jointly and severally to pay the plaintiff reasonable compensation of P300.00 a month for the use and enjoyment of the land from June 1991 up to the time the land is vacated; attorney's fees of P10,000.00 and litigation expenses of P5,000.00.
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> Costs against the defendants-appellees.
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> SO ORDERED.[2]

The decision became final and executory after a petition for certiorari assailing its validity was dismissed by this Court.[3] Thereafter, a *Writ of Execution* and *Writ of Demolition* was issued against petitioners, who were ordered to demolish their houses, structures, and improvements on the property.

Petitioners as plaintiffs then filed a *Complaint* dated 6 July 1999 against respondent for just compensation and preliminary injunction with temporary restraining order. The case was docketed as Civil Case No. 1090, and heard by the same RTC Branch 16 that ruled on the first complaint. Notwithstanding the earlier pronouncement of the Court of Appeals, petitioners asserted therein that they were the lawful owners of the subject property[4], although they ultimately conceded the efficacy of the appellate court's final and executory decision. Still, they alleged that they were entitled to just compensation relating to the value of the houses they had built on the property, owing to their purported status as builders in good faith. They claimed that the Court of Appeals decision did not declare them as builders in bad faith, and thus, they were entitled to be reimbursed of the value of their houses before these could be demolished.[5] They posited that without such reimbursement, they could not be ejected from their houses.

Respondent as defendant countered with a *Motion to Dismiss,* arguing that petitioners' complaint was barred by *res judicata*, owing to the final and executory judgment of the Court of Appeals. The Motion to Dismiss was initially denied by the RTC in an *Order* dated 4 August 1999[6], and pre-trial ensued. However, before trial proper could begin, respondent filed a motion for preliminary hearing on the affirmative defense of lack of jurisdiction and *res judicata.*

This motion was resolved in an *Order* dated 16 February 2000, wherein the RTC declared itself "constrained to apply the principle of *res judicata*," thus reversing its earlier order. In doing so, the RTC concluded that the earlier decision of the Court of Appeals had already effectively settled that petitioners were in fact builders in bad faith. Citing *Mendiola v. Court of Appeals*,[7] the RTC held that the causes of action between the final judgment and the instant complaint of petitioners were identical, as it would entail the same evidence that would support and establish the former and present causes of action. Accordingly, the RTC ordered the dismissal of petitioners' complaint. The counsel for petitioners was likewise issued a warning for having violated the prohibition on forum-shopping on account of the filing of the complaint barred by *res judicata.*

The finding of *res judicata* was affirmed by the Court of Appeals in its assailed Decision. It is this finding that is now subject to review by this Court. Petitioners argue that since respondents' *Motion to Dismiss* on the ground of *res judicata* had already been denied, the consequent preliminary hearing on the special defenses which precluded the dismissal of the complaint was null and void.[8] Petitioners also claim that there was no identity of causes of action in Civil Case No. 673, which concerned the ownership of the land, and in Civil Case No. 1090, which pertained to just compensation under Article 448 of the Civil Code. Even assuming that *res judicata* obtains, petitioners claim that the said rule may be disregarded if its application would result in grave injustice.

We observe at the onset that it does appear that the RTC's act of staging preliminary hearing on the affirmative defense of lack of jurisdiction and *res judicata*

is not in regular order. Under Section 6, Rule 16 of the 1997 Rules of Civil Procedure, the allowance for a preliminary hearing, while left in the discretion of the court, is authorized only if no motion to dismiss has been filed but any of the grounds for a motion to dismiss had been pleaded as an affirmative defense in the answer. In this case, respondents had filed a motion to dismiss on the ground of *res judicata*, but the same was denied. They thus filed an answer alleging *res judicata* as a special affirmative defense, but later presented a *Motion for Preliminary Hearing* which was granted, leading to the dismissal of the case.

The general rule must be reiterated that the preliminary hearing contemplated under Section 6, Rule 16 applies only if no motion to dismiss has been filed. This is expressly provided under the rule, which relevantly states "[i]f no motion to dismiss has been filed, any of the grounds for dismissal provided for in [Rule 16] may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed." An exception was carved out in *California and Hawaiian Sugar Company v. Pioneer Insurance,*[9] wherein the Court noted that while Section 6 disallowed a preliminary hearing of affirmative defenses once a motion to dismiss has been filed, such hearing could nonetheless be had if the trial court had not categorically resolved the motion to dismiss.[10] Such circumstance does not obtain in this case, since the trial court had already categorically denied the motion to dismiss prior to the filing of the answer and the motion for preliminary hearing.

We observe in this case that the judge who had earlier denied the motion to dismiss, Hon. Teodulo E. Mirasol, was different from the judge who later authorized the preliminary hearing,[11] Hon. Isaac R. de Alban, a circumstance that bears some light on why the RTC eventually changed its mind on the motion to dismiss. Still, this fact does not sanction the staging of a preliminary hearing on affirmative defenses after the denial of the motion to dismiss. If a judge disagrees with his/her predecessor's previous ruling denying a motion to dismiss, the proper recourse is not to conduct a preliminary hearing on affirmative defenses, but to utilize the contested ground as part of the basis of the decision on the merits

On the part of the movant whose motion to dismiss had already been filed and denied, the proper remedy is to file a motion for reconsideration of the denial of the motion. If such motion for reconsideration is denied, the ground for the dismissal of the complaint may still be litigated at the trial on the merits.

Clearly, the denial of a motion to dismiss does not preclude any future reliance on the grounds relied thereupon. However, nothing in the rules expressly authorizes a preliminary hearing of affirmative defenses once a motion to dismiss has been filed and denied. Thus, the strict application of Section 6, Rule 16 in this case should cause us to rule that the RTC erred in conducting the preliminary hearing.

However, there is an exceptional justification for us to overlook this procedural error and nonetheless affirm the dismissal of the complaint. The complaint in question is so evidently barred by *res judicata*, it would violate the primordial objective of procedural law to secure a just, speedy and inexpensive disposition of every action and proceeding[12] should the Court allow this prohibited complaint from festering in our judicial system. Indeed, the rule sanctioning the liberal construction of procedural rules is tailor-made for a situation such as this, when a by-the-numbers

application of the rule would lead to absurdity, such as the continued litigation of an obviously barred complaint.

Why is the subject complaint barred by *res judicata*? It is uncontroverted that in the decision by the Court of Appeals in Civil Case No. 673, it was observed:

> When the occupancy of the lot by Luis Aggabao which was transmitted to his son Vivencio Aggabao, and later transmitted to the latter's children . . . expired in April 1965, the late Vivencio Aggabao verbally begged and pleaded to plaintiff-appellant that he be allowed to stay on the premises of the land in question as his children, herein appellees, were still studying and it would be very hard fro them to transfer residence at that time. The plaintiff, out of Christian fellowship and compassion, allowed the appellees to stay temporarily on the land in question.
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> In this case, the possession of the land by the appellees derived from their father Luis Aggabao from March 31, 1955 to March 31, 1965 was by virtue of a stipulation in the deed of sale (exh. G), while their possession derived from their father, Vivencio Aggabao, from March 31, 1965 to 1982 (the latter died in 1982) was only by tolerance because of the pleading of Vivencio Aggabao to the plaintiff-appellant that he be allowed to stay because of the children going to school. . . . [13]

Evidently, the Court of Appeals had previously ruled in the first case that as early as 1965, the father of the petitioners (and their predecessor-in-interest) had already known that he did not own the property, and that his stay therein was merely out of tolerance. Such conclusion in fact bolstered the eventual conclusion that respondents were the owners of the land and that petitioners should vacate the same.

This fact should be seen in conjunction with the findings of the RTC and the Court of Appeals in this case that the structures for which petitioners sought to be compensated were constructed in 1989 and 1990, or long after they had known they were not the owners of the subject property.

These premises remaining as they are, it is clear that petitioners are not entitled to the just compensation they seek through the present complaint. Under Article 448 of the Civil Code, the builder in bad faith on the land of another loses what is built without right to indemnity.[14] Petitioners were in bad faith when they built the structures as they had known that the subject property did not belong to them. Are these conclusions though sufficient to justify dismissal on the ground of *res judicata*?

The doctrine of *res judicata* has two aspects.[15] The first, known as "bar by prior judgment," or "estoppel by verdict," is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. The second, known as "conclusiveness of judgment" or otherwise known as the rule of *auter action pendant*, ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.[16] It has the effect of preclusion of issues only.[17]