

FIRST DIVISION

[G.R. No. 135394, April 29, 2003]

JOSE V. DELA RAMA, PETITIONER, VS. HON. FRANCISCO G. MENDIOLA, JUDGE, RTC PASAY CITY, THE COURT OF APPEALS AND TITAN CONSTRUCTION CORP., RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court assailing the orders^[1] of the Regional Trial Court of Pasay City, Branch 115, in Civil Case No. 97-0734 which denied petitioner's Motion to Dismiss and Motion For Direct Contempt based on Forum Shopping, as well as his Motion for Reconsideration.

On December 1, 1978, petitioner sold to the government on expropriation a parcel of land consisting of 1,225 square meters, which was part of Lot 831-A, covered by Transfer Certificate of Title No. 22066, for use in the construction of the EDSA Extension Project. The sale was subject to the reconveyance to petitioner of any unused portion of the property after the project is completed.^[2]

On June 17, 1988, petitioner entered into a "Contract to Sell", whereby he undertook to sell to respondent Titan Construction Corporation a parcel of land adjacent to the one expropriated.^[3] Subsequently, petitioner failed to comply with his obligations under the "Contract to Sell"; thus respondent filed a complaint for rescission/annulment of contract with the Regional Trial Court of Pasay City, Branch 116, which was docketed as Civil Case No. 6020. The parties entered into a compromise agreement and, on May 19, 1989, the trial court rendered judgment approving the parties' compromise agreement. The pertinent portion of the judgment reads:

1. That the parties shall execute a deed of absolute sale over the subject property, including the improvements thereon in the total amount of TWO MILLION FIVE HUNDRED THOUSAND PESOS (P2,500,000.00);
2. That relative to the parcel of land sold to the government, a separate agreement is likewise to be executed by the parties;
3. That Atty. and Mrs. Dela Rama will be given a period of 60 days from the signing of this document to fully vacate the premises sold;
4. That failure on their part to vacate within the said period, an ex-parte ejectment writ of execution shall issue;

5. That the written agreement relative to the lease of houses in said premises shall be respected.^[4]

Pursuant to the compromise judgment, petitioner executed a deed of absolute sale of the subject property in favor of respondent. Likewise, he executed an Agreement to Sell and Buy, stating among others:

1. That in the event the Republic of the Philippines will return to the vendors (Jose Dela Rama and Esperanza Belmonte) the area sold which is 1,224 sq. ms. or any portion therein, the Vendee (Titan Construction Corporation) is given the exclusive option to buy any area returned at P2,000.00 per square meter.
2. That in consideration of said exclusive option granted to the said Vendee by the Vendors, the Vendee upon registration of this instrument at the back of T.C.T. No. 22066 shall pay P200,000.00 to the Vendors.^[5]

After the execution of the Agreement to Sell and Buy, respondent paid petitioner the amount of P200,000.00, for which the latter issued a receipt which contained the inscription: "amount is not refundable & not deductible from the agreed price."^[6]

Meanwhile, petitioner sought the reconveyance of the unused portion of the property from the government. On December 4, 1996, the Office of the President executed the corresponding Deed of Reconveyance in favor of petitioner over 303 square meters of unused land.^[7]

On January 3, 1997, respondent filed with the Regional Trial Court of Pasay City, Branch 110, a Petition for Declaratory Relief, Prohibition, Mandamus and Preliminary Injunction with Prayer for Restraining Order,^[8] which was docketed as Civil Case No. 97-1275. It prayed that the Deed of Reconveyance be declared void on the grounds that the same violated its right of preemption under Article 1622 of the Civil Code; and that no public bidding was conducted, resulting in a denial of respondent's right to bid considering that petitioners had waived any and all rights over the land by virtue of their Deed of Agreement to Sell and Buy. Respondent also prayed that the Office of the President be ordered to give due course to its application to purchase the subject land. The trial court dismissed the case for lack of merit on March 5, 1997.^[9] Thus, respondent instituted a petition for certiorari before this Court on March 24, 1997 which, however, was referred to the Court of Appeals, where it was docketed as CA-G.R. SP No. 44094.^[10]

On June 4, 1997, respondent filed an action for specific performance based on the compromise judgment with the Regional Trial Court of Pasay City, which was docketed as Civil Case No. 97-0734.^[11] Petitioner thus filed with the Court of Appeals, in CA-G.R. SP No. 44094, a Motion for Direct Contempt and to Dismiss based on Forum Shopping.^[12] He also filed a similar motion with the Regional Trial Court of Pasay City in Civil Case No. 97-0734.^[13]

On July 18, 1997, respondent filed a motion to withdraw the petition in CA-G.R. SP No. 44094,^[14] which the Court of Appeals, in its Resolution dated December 10,

1997, granted. Thus, the case was dismissed with finality.^[15]

Meanwhile, the Regional Trial Court of Pasay City denied the motion to dismiss and for direct contempt based on forum shopping filed by petitioner. It held that the alleged violation of Supreme Court Circular No. 04-94 was cured when CA-G.R. SP No. 44094 was dismissed by the Court of Appeals. Moreover, petitioner failed to show that the two cases have the same causes of action.^[16] Petitioner filed a motion for reconsideration, which was denied.^[17]

Hence the instant petition based on the sole assigned error:

THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT RESOLVING PETITIONER'S MOTION TO DISMISS AND FOR DIRECT CONTEMPT BASED ON FORUM SHOPPING AND, BY REASON OF THAT SERIOUS ABUSE OF DISCRETION, IT SANCTIONED THE CONTINUANCE OF SAID ACTION BEFORE THE RESPONDENT RTC WHICH ITSELF GRAVELY AND SERIOUSLY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REFUSING TO DISMISS THE CASE BASED ON *AUTER ACTION PENDANT* AND *RES JUDICATA*, AND TO PUNISH FOR DIRECT CONTEMPT THE PRIVATE RESPONDENT AND ITS LAWYERS BASED ON FORUM SHOPPING.^[18]

The decisive issue posed by petitioner is whether or not the specific performance case (Civil Case No. 97-0734) is barred by the petition for declaratory relief case (Civil Case No 96-1725 and CA-G.R. SP No. 44094) on the ground of *res judicata*.

There is *res judicata* where the following four essential conditions concur, viz: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter and causes of action.^[19]

Reviewing the records of the case, there is no question that all the first three elements of *res judicata* are present. The declaratory relief case, which was elevated by way of a petition for certiorari to the Court of Appeals, has been dismissed with finality. The decision was rendered by a court of competent jurisdiction and the case was resolved on its merits.

As regards the fourth condition, it is clear that there is identity of parties in the two cases. The declaratory relief case was filed by respondent Titan against Executive Secretary Ruben D. Torres, DPWH Secretary Gregorio R. Vigilar, the Register of Deed of Pasay City, petitioner Jose V. Dela Rama and Esperanza Belmonte (deceased). On the other hand, the specific performance case was filed by respondent Titan against petitioner Dela Rama and the heirs of Esperanza Belmonte. Although the public respondents in the declaratory relief case were not impleaded in the specific performance case, only a substantial identity is necessary to warrant the application of *res judicata*.^[20] The addition or elimination of some parties does not alter the situation.^[21]

The subject matters and causes of action of the two cases are likewise identical. A subject matter is the item with respect to which the controversy has arisen, or