

FIRST DIVISION

[G.R. No. 137306, March 12, 2001]

**VIRGINIA AVISADO AND JOCELYN AVISADO GARGARITA,
PETITIONERS, VS. AMOR RUMBAUA, VICTORIA C. RUMBAUA AND
COURT OF APPEALS, RESPONDENTS.**

D E C I S I O N

PARDO, J.:

The Case

The case before this Court is a petition^[1] assailing the decision of the Court of Appeals^[2] reversing and setting aside the order of the Regional Trial Court, Branch 77, Quezon City^[3] dismissing respondents' complaint for being barred by prior judgment.

The Facts

Respondents Abelardo "Amor" Rumbaua and Victoria Consengco-Rumbaua (hereafter "Amor" and "Victoria") are husband and wife, Filipinos, residents of Jacksonville, Florida, U.S.A.^[4]

On July 1, 1971, Victoria became the registered owner of a parcel of land measuring two hundred thirty five square meters and sixty square decimeters (235.60), located on Maayusin St., U.P. Village, Diliman, Quezon City covered by Transfer Certificate of Title No. 166065 of the Register of Deeds of Quezon City, described as follows:

"A parcel of land (lot 30-A of the subd. plan (LRC) Psd-142482, being a portion of Lot 30, Blk. 26-A, described on plan Psd-74130, LRC Rec. No. 7681), situated in the Dist. of Diliman, Q. City, Is. of Luzon, Bounded on the NE., pts. 2-3, by Lot 31, Blk. 26-A, Psd-74139; on the SE., points 3 to 4, by Lot 12, Block 26, Psd-56573; on the SW., points 4 to 1 by Lot 30-B of the subdivision plan, and on the NW., points 1 to 2 by Road Lot 1, Psd-74129, Maayusin Street (12.00 m. wide). Beginning at a point marked "1" on plan, being N. 13 deg. 53'E., 1196.78 m., Quezon City; thence S. 62 deg. 26 E. 12.67 m. to point 2; thence S. 46 deg. 23'E. 17.58 m to point 3; thence."^[5]

On June 28, 1971, respondents Rafael and Aurora Consengco (hereafter "Rafael" and "Aurora") became the registered owners of the lot adjacent to Amor and Victoria's lot.^[6] The lot registered in Rafael and Aurora's name measured about two hundred thirty five square meters and fifty square decimeters (235.50) as evidenced by Transfer Certificate of Title No. 166066 of the Register of Deeds of Quezon City, described as follows:

"A parcel of land (lot 30-B of the subdivision plan LRC Psd-142482, being a portion of Lot 30, Block 26-A, described on plan Psd-74139, LRC Rec. No. 7681), situated in the District of Diliman, Quezon City, Island of Luzon. Bounded on the NE., points 1 to 2, by Lot 30-A of the subdivision plan; on the SE., points 2 to 3, by Lot 12; points 3 to 4, by Lot 11, Block 26, Psd-56573; on the SW., points 5 to 6 by Lot 29, of Block 26-A, Psd-74139; and on the NW., points 6 to 7 and 7 to 1, by Road Lot 1, Psd-74139, Maayusin Street, (12.00) m wide). xxx"[7]

Amor, Victoria, Rafael and Aurora contend that on or about the second week of February 1973, they discovered that Abelardo and petitioner Virginia Avisado (hereafter "the Avisados") were occupying both parcels of land described above[8] and had built thereon a bungalow made of strong materials. Respondents demanded that the Avisados vacate the lots, to no avail.[9]

On December 3, 1977, Victoria executed a "special power of attorney" authorizing Rafael to:

"...ask, demand, sue for, recover, extrajudicially and/or judicially, that certain real property located at Maayusin St., Diliman, Quezon City, Philippines, covered by and described in Transfer Certificate of Title No. 166065 of the Register of Deeds of Quezon City, belonging to me solely and exclusively, my title, my title thereto being evidenced by said Transfer of Certificate Title No. 166065, in connection thereto, to represent me in the pre-trial and trial of that case which he will have to institute and file for that purpose, with full power and authority to enter into any compromise agreement with anybody under any terms and conditions which he may deem just, proper and equitable under the premises."[10]

On November 17, 1978, Amor and Victoria, represented by Rafael (and in his own capacity as co-plaintiff) and Aurora filed with the Court of First Instance of Rizal, Branch 16, Quezon City, a complaint for "recovery of possession of realty with damages" against the Avisados.[11]

In their complaint, respondents prayed that the Avisados be ordered to vacate the lots, to surrender possession to respondents and to pay damages.[12]

On April 15, 1980, Rafael (in his own capacity), Amor and Victoria (through Rafael), and Aurora entered into a "compromise agreement" with the Avisados, stating: **First**, the Avisados (vendees) shall pay Amor and Victoria (vendors) the amount of seventy thousand pesos (P70,000.00), after which Amor and Victoria shall execute an "absolute deed of sale" in favor of the Avisados. The total purchase price shall be paid in installments. The first payment of five thousand pesos (P5,000.00) to be paid on April 14, 1980 and the second payment of the balance of sixty five thousand pesos (P65,000.00) to be paid on or before September 30, 1980. **Second**, within a month from the registration of the absolute deed of sale, the Avisados shall remove any portion of their residential house located within the boundaries of the lot belonging to Rafael and Aurora. **Third**, all expenses for the registration of the lot shall be borne by the Avisados. **Fourth**, should the Avisados violate the "compromise agreement" they shall forfeit five thousand pesos (P5,000.00) in favor

of the vendors and shall vacate the lot within thirty (30) days from the time of default. In such event, the agreement to sell shall be *ipso facto* cancelled. **Fifth**, the "compromise agreement" shall have the effect of a mutual quit-claim of all claims for damages and reimbursement set up in the complaint and the answer that the parties may have against each other.^[13] The "compromise agreement" was submitted to the trial court for approval.^[14]

On April 15, 1980, the trial court^[15] approved the "compromise agreement", to wit:

"WHEREFORE, finding the above-quoted Compromise Agreement not contrary to law, good morals, public policy, the Court hereby fenders (*sic*) judgment approving en toto the said compromise agreement and hereby enjoins the parties therein to abide by and comply with the terms and conditions thereof, without pronouncement as to costs.

"SO ORDERED."^[16]

On October 3, 1980, Amor and Victoria (through Rafael), Rafael (in his own capacity) and Aurora filed with the trial court a "manifestation" stating that the "compromise agreement" was violated by the Avisado's refusal to pay the amount of sixty five thousand pesos in cash on or before September 30, 1980.^[17]

On October 17, 1980, the trial court noted the "manifestation".^[18]

On August 18, 1981, Aurora, Rafael, in his own capacity and on behalf of his co-plaintiffs, Amor and Victoria filed with the trial court a "motion for execution of judgment," praying that given that the Avisados breached the "compromise agreement", a writ of execution be issued ordering them to vacate the lots.^[19]

On February 12, 1982, the trial court denied the "motion for execution of judgment" reasoning that the "compromise agreement" involved reciprocal obligations of the parties (i.e., the vendees to pay the purchase price and for the vendors to execute the absolute deed of sale).^[20]

On July 12, 1985, the Avisados filed with the trial court a "motion for execution" of the April 15, 1980 decision.^[21]

On July 19, 1985, the trial court granted the "motion for execution."^[22]

On August 14, 1985, the trial court,^[23] through branch clerk of court Virginia M. Pagoron, issued a "writ of execution" addressed to the ex-officio sheriff of Manila. We quote:

"WHEREFORE, you are hereby commanded to order the plaintiffs to execute the Deed of Sale over TCT No. 166065 of the Register of Deeds of Quezon City in favor of the defendant spouses Amado Avisado and Virginia Avisado, free from any liens and encumbrances and upon payment by the said defendants to the said plaintiffs the sum of P65,000.00, and make a return of your proceedings with this writ within sixty (60) days from date of receipt hereof."^[24]

On October 29, 1993, Amor and Victoria (through their new attorney-in-fact, Noemi Candido Natividad)^[25] filed with the Regional Trial Court, Branch 77, Quezon City a complaint for "recovery of real property with damages" against the Avisados.^[26] The complaint was docketed as **Civil Case No. Q-93-18138**. Essentially, the complaint alleged that the "compromise agreement" of April 15, 1980 resulting in the sale of Victoria and Amor's lot to the Avisados was invalid as the "special power of attorney" executed by Victoria in Rafael's favor never authorized him to sell the lot in question.

Thus, the judgment of the trial court of April 15, 1980, approving the compromise agreement "has since become a stale judgment that can no longer be enforced, either by motion or action."^[27] Amor and Victoria then prayed that the Avisados peacefully vacate the lots in question, surrender possession to them and pay damages.^[28]

On April 23, 1994, Abelardo Avisado died.^[29]

On February 12, 1996, the trial court^[30] dismissed the complaint for being barred by prior judgment.^[31]

On March 12, 1996, Amor and Victoria interposed an appeal to the Court of Appeals.^[32]

On June 17, 1998, upon motion of Virginia Avisado, the Court of Appeals issued a resolution allowing the deceased, Abelardo Avisado to be substituted by his heir, Jocelyn Avisado Gargarita.^[33]

On October 27, 1998, the Court of Appeals decided that the causes of action in **Civil Case No. Q-26392** and **Civil Case No. Q-93-18138** were different. The former case is an *accion publiciana* for the recovery of possession of realty and damages, while the latter case is based on the violation of the compromise agreement. *Res judicata* does not apply.^[34] Hence, it ruled:

"WHEREFORE, the Order appealed from dismissing plaintiffs' complaint is hereby **RECONSIDERED and SET ASIDE** and the above case is hereby remanded to the court of origin for further proceedings.

"SO ORDERED."^[35]

On January 12, 1999, petitioners filed with the Court of Appeals a motion for reconsideration with the Court of Appeals.^[36]

On January 25, 1999, the Court of Appeals denied petitioners' motion for reconsideration.^[37]

Hence, this appeal.^[38]

The Issue

The issue is whether or not the Court of Appeals erred when it did not consider **Civil**

Case No. Q-26392 as a bar to **Civil Case No. Q-93-18138** on the ground of *res judicata*.

The Court's Ruling

The petition is meritorious.

Finality of Judgment

When Amor and Victoria filed **Civil Case No. Q-93-18138**, and argued that Rafael did not have the authority to enter into the "compromise agreement," they collaterally attacked the judgment in **Civil Case No. Q-26392** which approved the "compromise agreement." This cannot be done.

The judgment in **Civil Case No. Q-26392** has become final and executory. What Amor and Victoria should have done was to either timely appeal the decision to the Court of Appeals under Rule 41, 1997 Rules of Civil Procedure, or to seasonably file a "petition for relief from judgment" under Rule 38.^[39] A party who fails to acquire complete relief from a decision of a court has various remedies to correct it. A party may move for a correction or clarification of judgment, or even seek its modification through ordinary appeal.^[40] This they did not do. There must, therefore, be an end to litigation.^[41]

In *Bustos v. Court of Appeals*,^[42] we held that once a decision becomes final and executory, it is the ministerial duty of the court to order its execution. Execution can be suspended when suspension is warranted by the higher interest of justice^[43] and when certain facts and circumstances ***transpired after the finality of the judgment*** which would render the execution of judgment unjust.^[44] Neither circumstance obtains in the present case.

Res Judicata

Furthermore, even if we limit ourselves to the issue of whether or not *res judicata* applies, still the Court of Appeals decision must be reversed.

Res judicata exists when the following elements are present:

- "(a) the former judgment must be final;
- "(b) the court which rendered judgment had jurisdiction over the parties and the subject matter;
- "(c) it must be a judgment on the merits;
- "(d) and there must be between the first and second actions identity of parties, subject matter, and cause of action."^[45]

There is no question with respect to the existence of the first three elements of *res judicata*.

As to the last issue, specifically with respect to "identity of causes of action," we find