

ELEVENTH DIVISION

[CA-G.R. CV No. 102698, March 12, 2015]

JOSEFA JUSTO, PLAINTIFF-APPELLEE, VS. JOSE ALESNA, EDITHA PERALTA, HEIRS OF DIEGO GALIZA, REPRESENTED BY ARIEL GALIZA, AND HEIRS OF NENA L. REMIGIO, REPRESENTED BY JULIUS REMIGIO, FELIPE DE VERA AND ROSALIA SUAREZ, DEFENDANTS-APPELLANTS.

DECISION

LIBREA-LEAGOGO, C.C., J.:

Before this Court is an appeal from the Decision^[1] dated 03 March 2014 of the Regional Trial Court, Second Judicial Region, Branch 35, Santiago City in the case entitled "*Josefa Justo v. Jose Alesna, et al.*," docketed as Civil Case No. 35-3632, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

- 1.] SUSTAINING the validity of plaintiff's TCT No. T-130466;*
- 2.] DECLARING as null and void ab initio OCT No. 5942;*
- 3.] DECLARING as null and void ab initio TCT No. T-131855 of Evaristo Dumalina;*
- 4.] NULLIFYING defendants' derivative titles, to wit:*
 - a. TCT No. T-139303 (Evaristo Dumalina);*
 - b. TCT No. T-139304 (Editha Peralta);*
 - c. TCT No. T-139305 (Jose Alesna);*
 - d. TCT No. T-139306 (Diego Galiza);*
 - e. TCT No. T-139307 (Nena Labucay); and*
 - f. TCT No. T-277416 (Sps. Felipe De Vera and Rosalia Suarez).*
- 5.] ORDERING the defendants to pay jointly and severally to the plaintiff the following damages:*
 - a. Php.100,000.00 as moral damages;*
 - b. Php.100,000.00 as exemplary damages;*
 - c. Php.100,000.00 as attorney's fees; and d. Cost of suit.*

SO ORDERED.”^[2]

Defendants-appellants and plaintiff-appellee filed their Briefs dated 26 November 2014^[3] and 15 December 2014,^[4] respectively. Per JRD^[5] verification, no reply brief was filed as per CMIS. Thus, the appeal is submitted for decision.

FACTUAL ANTECEDENTS

A Complaint^[6] for quieting of titles, cancellation of titles with damages was filed on 01 September 2010 by plaintiff Josefa Justo (“Josefa,” for brevity) against Jose Alesna (“Alesna,” for brevity), Editha Peralta (“Peralta,” for brevity), Heirs of Diego Galiza, represented by Ariel Galiza (“Galiza,” for brevity), and Heirs of Nena L. Remigio, represented by Julius Remigio (“Remigio,” for brevity), Felipe De Vera (“De Vera,” for brevity) and Rosalia Suarez (“Suarez,” for brevity), before the Regional Trial Court of Santiago City, docketed as *Civil Case No. 3632*, and raffled off to Branch 35.

Plaintiff alleged, *inter alia*, that: she is the registered owner of a parcel of land situated at Poblacion (now Plaridel), Santiago City, Isabela (“subject property,” for brevity), covered by Transfer Certificate of Title No. T-130466 issued by the Registry of Deeds of Isabela; she acquired the subject property by virtue of a Deed of Absolute Sale dated 10 April 1978 executed by Rosita Versola (“Rosita,” for brevity), who was the registered owner of the same; Rosita acquired the subject property by virtue of a Deed of Extra Judicial Settlement Partition; plaintiff came to learn that her title was also formerly covered by Original Certificate of Title No. 5945 (Decree No. 689684) in the name of Spouses Victor Dumalina and Primitiva Etrata (“Sps. Dumalina,” for brevity) of Santiago, Isabela; after the death of Sps. Dumalina, their alleged sole heir Evaristo Dumalina (“Evaristo,” for brevity) executed an Affidavit of Adjudication, and consequently, TCT No. 131855 was issued in his name; for reasons mentioned in an alleged deed, Evaristo reconveyed the subject property to the other defendants, thus, TCT Nos. T-139303, T-139304, T-139305, T-139306, and T-139307 were issued, thereby cancelling TCT No. 131855; Evaristo, the registered owner of the lot covered by TCT No. T-139303, transferred the same in 1983 to defendants De Vera and Suarez, who are now the registered owners thereof; her title dated 20 March 1981 shows that it was a “transfer” from TCT No. T-5452, which has been cancelled, and that the latter was a transfer from OCT No. 6143, pursuant to Decree No. 689684 of the Cadastral Record No. 1496; an examination of defendants' mother title shows that the number (5945) of the OCT, as well as the number of decree (689684), have been altered; the same was a reconstituted title by virtue of a Petition for the Issuance of Original and Duplicate Original Copies thereof filed by Evaristo with the former Court of First Instance, Branch IV, Roxas, Isabela dated 01 April 1981; come 21 May 1981, after more or less 51 days, an Order from the CFI was issued and registered the following day, 22 May 1981, that led to the issuance of TCT No. 131855 dated 05 June 1981, without awaiting finality of the said Order; the CFI has no jurisdiction over the subject matter of the petition as the real property is situated at Poblacion, Santiago, Isabela, and the court that has authority over the same is the former CFI Branch V, Echague, Isabela, thus, the reconstitution proceedings were null and void and no effect; the reconstituted title being null and void and of no effect, it follows that the derivative titles of the defendants have no force and effect; she was in possession

and occupation of the subject property at the time that she acquired the same in 1981 by declaring it for taxation purposes; she paid the taxes thereon as evidenced by receipts; she introduced improvements on the subject property; the titles of the defendants, which are apparently valid or effective, but in truth and in fact were invalid, ineffective and void, are casting doubt on her title, which prejudices the same; and she initiated the action so that the rights of the parties can be determined. Plaintiff prayed that: TCT No. T-130466 issued by the Register of Deeds of Isabela in her name be declared as valid and effective, and freed from the cloud caused by the titles of defendants; the reconstituted title OCT No. 5945 be declared null and void, and without effect; the certificates of title of defendants be cancelled; and defendants be held jointly and severally liable to pay her attorney's fees of Php50,000.00 plus appearance fee of Php2,000.00.

Defendants Alesna, Peralta, Galiza, and Remigio filed their Answer with Counterclaim^[7] dated 25 November 2010.

Plaintiff filed a Motion to Consolidate^[8] dated 02 December 2010 alleging, *inter alia*, that there is a necessity for the instant case to be consolidated with *Civil Case No. 36-2243* pending before the RTC of Santiago City, Branch 36 ("RTC Branch 36," for brevity).

Defendants filed a Motion to Hear Defendants' Affirmative Defenses^[9] dated 20 December 2010, which the trial court granted in its Order^[10] dated 03 January 2011.

Plaintiff filed a Motion to Disqualify Distinguished Counsel—Atty. Alfredo Remigio and Expunge from the Record (the) Answer of His Clients^[11] dated 28 December 2010 alleging, *inter alia*, that: from reliable information, Atty. Alfredo Remigio ("Atty. Remigio," for brevity) was the former Municipal Administrator, and now the Municipal Legal Officer of the Municipality of San Mateo, Isabela; and he is disqualified from representing defendants and appearing before the trial court pursuant to Republic Act No. 6713. She also filed her Comments/Opposition (to the affirmative defense of *res judicata*)^[12] dated 14 January 2011.

The trial court issued its Resolution^[13] dated 09 February 2011 denying plaintiff's Motion to Disqualify Atty. Remigio etc. and her Motion to Consolidate. In its Order^[14] dated 28 February 2011, the trial court held that the affirmative defense of *res judicata* was deemed waived and abandoned due to defendants' and their counsel's absence on the hearing for the same, despite due notice; and set the pre-trial of the case. Defendants filed its Memorandum to Support the Defense of *Res Judicata*^[15] dated 21 February 2011.

Defendants filed their Pre-trial Brief^[16] dated 31 March 2011 and a Motion to Reinstate Affirmative Defense of *Res Judicata*^[17] of even date. Plaintiff filed her Pre-trial Brief^[18] dated 01 April 2011. Plaintiff filed her Comments/Opposition (to the Motion to Reinstate the Affirmative Defense of *Res Judicata*)^[19] dated 11 April 2011. The said Motion was granted by the trial court in its Order^[20] dated 06 June 2011.

Defendants Peralta and Alesna, *et al.* presented documentary evidence to prove their affirmative defense of *res judicata*.^[21] Thereafter, plaintiff filed her Comments/Objections (to Documentary Evidence of Defendants Peralta and Alesna, *et al.* to Prove their Affirmative Defenses)^[22] dated 22 July 2011. In its Order^[23] dated 01 August 2011, the trial court admitted Exhibits "1" to " 10" Peralta and Exhibits "1" to "8" Alesna, *et al.* Plaintiff filed her Offer of Documentary Evidence in Opposition to Defendants' Affirmative Defenses^[24] dated 02 August 2011.

In its Resolution^[25] dated 20 December 2011, the trial court found all the requisites of *res judicata* to be present in the instant case and dismissed the Complaint. Plaintiff filed her Motion for Reconsideration^[26] dated 06 January 2012, to which defendants filed their Comment/Opposition^[27] dated 21 January 2012. The trial court issued a Resolution^[28] dated 05 March 2012 granting plaintiff's Motion, setting aside its 20 December 2011 Resolution, and reinstating plaintiff's Complaint.

Defendants manifested in Court its intention to amend their Answer as a consequence of the Resolution issued against them,^[29] which the trial court granted in its Order^[30] dated 29 March 2012. Defendants Alesna, Galiza, and Remigio filed their Amended Answer with Counterclaim^[31] dated 12 April 2012 alleging, *inter alia*, by way of special and affirmative defenses, that: there is *res judicata* in the instant case; defendants, except De Vera and Suarez, filed a case as plaintiffs, against Rosita, Josefa and Robin^[32] So ("Robin," for brevity) for recovery of ownership, possession, preliminary injunction and damages with RTC Branch 36 docketed as *Civil Case No. 36-2243*; Josefa is the same plaintiff in the instant case; in a Decision dated 08 November 1999, the said court disposed the case in favor of therein plaintiffs and against therein defendants (including herein plaintiff); said Decision was appealed by therein defendants to the Court of Appeals docketed as *CA-GR No. 68059*, but the same was dismissed in a Decision dated 27 July 2005 and the motion for its reconsideration was denied by the appellate court in a Resolution dated 08 February 2006; therein defendants filed a Petition for Review before the Supreme Court docketed as *G.R. No. 171645* which was denied in the Resolution dated 10 July 2006 which became final and executory on 06 November 2006; in its Order dated 21 February 2008, RTC Branch 36 granted therein plaintiffs' motion for the issuance of a writ of execution, and the latter was issued by the clerk of court on 26 February 2008; on 04 September 2000, a copy of the trial court's Decision was recorded as Entry No. 44 at the back of herein plaintiff's TCT No. T-130466; on 11 July 2008, the Writ of Execution was also recorded as Entry No. 7209 on therein plaintiff's title, which was declared null and void; all the elements of *res judicata* are present in the instant case; there is no question that the Decision dated 08 November 1999 in *Civil Case No. 36-2243* has already become final and executory as evidenced by the entry of judgment issued by the Supreme Court; the RTC Branch 36 was clothed with jurisdiction to try and decide *Civil Case No. 36-2243*; herein plaintiff Josefa is one of the defendants in *Civil Case No. 36-2243* while herein answering defendants were the plaintiffs in the said case; the subject matter in the instant case was the parcel of land covered by plaintiff's TCT No. T-130466, which is also the subject matter in *Civil Case No. 36-2243*; the causes of action in *Civil Case No. 36-2243* were recovery of ownership, possession, preliminary injunction and damages while the causes of action in the instant case are quieting of title, and cancellation of title with damages; while the causes of action in the instant case are worded differently from those in *Civil Case No. 36-2243*, the main objective

is the ownership of the subject property; Decree No. 689684 was issued on 10 February 1939 in favor of Sps. Dumalina covering a parcel of land identified as Lot 6086, Cadastral Survey of Santiago with an area of 13,113 square meters, more or less, situated at Santiago (now Santiago City), Isabela; as a consequence, OCT No. 5945 was issued on 10 February 1939 to Sps. Dumalina, the parents of Evaristo; upon the death of Sps. Dumalina, Evaristo, being a lone child, inherited the property; after the Affidavit of Self-Adjudication was registered on 08 June 1981 with the Office of the Registry of Deeds of Isabela, OCT No. 5945 was cancelled and in lieu thereof, TCT No. T-131855 was issued to Evaristo; plaintiff's alleged TCT No. T-130466 was purportedly issued on 20 March 1981 and derived from TCT No. T-5452, which was earlier taken from OCT No. 6143; plaintiff did not attach copies of TCT No. T-5452 and OCT No. 6143 in her Complaint; based on her title, the land covered thereby was originally registered on 11 February 1939 as OCT No. 6143 pursuant to Decree No. 689684 issued in L.R.C. Cadastral Record No. 1496; there was no available machine copy of OCT No. 6143; a perusal of how plaintiff acquired the land shows that her title covered the same land already decreed to Sps. Dumalina and OCT No. 5945 was issued to the latter on 10 February 1939; plaintiff allegedly purchased the land from Rosita by virtue of a Deed of Sale dated 10 April 1978, who became the owner of the property through a Deed of Extrajudicial Partition of even date; no title was issued to Rosita but she transferred ownership using TCT No. 5452; the latter title was issued on 25 June 1954 to plaintiff Josefa and not to Rosita; plaintiff's documents attached to her Complaint failed to show that Decree No. 689684 was granted to her or her immediate transferor; likewise, TCT No. 5452 did not indicate that the owner Justo Verzola was the grantee of Decree No. 689684 because the latter allegedly acquired the land previously covered by OCT No. 6143, whose owner was unknown because there was no available copy of the same; without any legal and factual bases, plaintiff and/or his predecessor-in-interest Rosita made it appear in her title that it was originally registered on 11 February 1939 or one (1) day after Decree No. 689684 was issued on 10 February 1939; it cannot now be ascertained, due to the absence of OCT No. 6143, whether the same date of original registration and decree number were recorded therein; Decree No. 689684 was granted to Sps. Dumalina, and no one else; prior to the registration of the Affidavit of Self-adjudication, Evaristo caused the reconstitution of both the original and owner's duplicate copies of OCT No. 5945 in the name of his deceased parents, as evidenced by Entry Nos. 2412 and 2413 at the back of OCT No. 5945 on 22 May 1981; Evaristo caused the reconstitution of his parents' title; plaintiff has no legal and factual bases to challenge the reconstitution of both the original and owner's duplicate copies of OCT No. 5945 because she has not shown that she and/or her predecessor-in-interest Rosita were the grantee of Decree No. 689684; she failed to show that she acquired the subject property from Sps. Dumalina or Evaristo; her title was already declared null and void in *Civil Case No. 36-2243*; and defendants' titles were all derived from Evaristo's title, the acquisitions of which were all legitimate and beyond dispute by plaintiff. By way of counterclaim, they alleged, *inter alia*, that: the purported recording of Decree No. 689684 with incorrect date of original registration on 11 February 1939, instead of 10 February 1939, and number of OCT No. 6143 instead of OCT No. 5945 in TCT No. T-130466 and TCT No. 5452 were mysteries which only plaintiff and/or her immediate transferor can explain to the satisfaction of the court to avert nullity of her title; assuming for the sake of discussion that the missing copy of OCT No. 6143 would indicate that the date of original registration was 11 February 1939 and issued pursuant to Decree No. 5984, said missing title, including TCT No. 5452 and plaintiff's title, would certainly be null and void from the beginning because they