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successors-in-interest. One's ownership of a thing may be lost by prescription by reason of another's possession if such possession be under claim of ownership, not where the possession is only intended to be transient, as in the case of the U.S. Navy's occupation of the land concerned, in which case the owner is not divested of his title, although it cannot be exercised in the meantime.

WHEREFORE, premises considered, finding no merit in the petition the appealed decision is hereby AFFIRMED.

SO ORDERED.

Feria (Chairman), Alampay and *Feliciano,* JJ.*, concur.
Gutierrez, Jr., J., I concur *pro hoc vice* in the results.
Fernan, J., no part.

SECOND DIVISION

[G.R. No. 53692. November 26, 1986]

LOURDES RAMOS, ENRIQUE RAMOS, MILAGROS RAMOS, ANTONIO RAMOS, and ANGELITA RAMOS, *plaintiffs-appellants, vs.* **GUILLERMO N. PABLO, PRIMITIVA C. CRUZ, the EX-OFFICIO SHERIFF OF QUEZON CITY, and the REGISTER OF DEEDS OF QUEZON CITY,** *defendants-appellees.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; *RES JUDICATA*; REQUISITES; NOT PRESENT IN CASE AT BAR.—** The principle of *res judicata* to be applicable must have the following requisites: 1) the judgment or order invoked as *res judicata* must be final 2) the court rendering the same must have jurisdiction over the

* Feliciano was designated in lieu of *J.* Fernan.

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subject matter and the parties; 3) the judgment or order must be upon the merits and 4) there must be, between the two cases, identity of parties, identity of subject matter and identity of causes of action. Petitioner allege that the last requirement is absent. (a) There is no identity of parties. Petitioners while parties in the first case are impleaded only in their representative character, the principal party is the "estate of the deceased Socorro A. Ramos." Respondents are made parties in the present case, they being the buyers in the execution sale, the *Ex-Oficio* Sheriff of Quezon City is the principal and indispensable party since he conducted the execution sale but he was not a party in the first case. Neither is the Register of Deeds of Quezon City who is a new party. (b) There is no identity of causes of action. The cause of action of the first case was the alleged failure of Socorro A. Ramos to comply with her obligation, in the second case it is the illegal and improper execution or holding of the public sale by the *Ex-Oficio* Sheriff of Quezon City. In other words, the first is an action for damages and the second is an action for the annulment of the execution sale. (c) There is no identity of subject matter. In the first case the subject matter are the contracts of 1) Agreement to Sell and 2) a Deed of Absolute Sale, dated May 28, 1963 while in the second case the subject matter are the 18 parcels of land sold at the execution sale. The land involved in the first case is not even part of the 18 parcels in the second case. Moreover, the issue of *res judicata* is not even raised by respondents in their motion to dismiss before the lower court.

2. **ID.; ID.; ACTIONS; FOR A CASE TO BE CONSIDERED AS MOOT AND ACADEMIC, THE DETERMINATION OF SUCH EVENT CAN ONLY BE PASSED UPON IN A TRIAL ON THE MERITS.**— We find merit in petitioners' contention that there is nothing in the records of the present case to show what happened after an order (Exh. "5 - Motion") had been issued on October 17, 1977 in Civil Case No. Q-7229, Court of First Instance of Rizal. But the lower court gratuitously assumed that the issuance of said order allowed for the foreclosure over the 18 parcels of land, the subject matter of the instant case. In other words, the evidence on record is clear that no actual foreclosure yet has been effected by the prevailing party in Civil Case No. 7229, and the lower court was in palpable error in prematurely concluding that "whoever wins in that case is of no moment, because the plaintiffs' and defendants' rights if any on the subject 18 lots are now subordinated to Rodrigo Enriquez in Civil Case No. Q-7229, making the instant case moot and academic." Petitioners argue that the "action object" of the

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present appeal should be litigated for if the execution sale is vacated, and even if again sold at public sale the obligation secured by the 18 parcels of land, also involved in the present case would be satisfied in the best manner possible. Furthermore, for a case to be considered as moot and academic, the determination of such event can only be passed upon in a trial on the merits and not in a motion to dismiss. This case is far from being moot and academic because whoever wins will be the one who will have the right to pay the mortgage in favor of Rodrigo Enriquez, et al. As pointed out by petitioners in their brief, obviously, it will be foolish for herein plaintiffs (petitioners) to pay the mortgage when the titles to the said eighteen (18) lots have already been transferred to the names of the said defendants-spouses Pablo (respondents).

APPEARANCES OF COUNSEL

Santos Madric As Cacho & Associates for plaintiffs-appellants.
Galileo P. Brion & Associates for defendants-appellees.

DECISION

PARAS, *J.*:

This is an appeal from the Order dated December 1, 1977 in Civil Case No. Q-22850 of the Court of First Instance of Rizal, Branch XVI sitting in Quezon City, dismissing the complaint upon motion filed by defendants-appellees (private respondents herein) just after answer on grounds of *res judicata*, improper remedy, failure to raise the issue of inadequacy of price as shocking to conscience, and being moot and academic. Their motion for reconsideration having been denied, plaintiffs-appellants (Petitioners herein) went on appeal to the respondent Court of Appeals, docketed as CA-G.R. No. 63718-R.

By virtue of a resolution of the Court of Appeals in said case, acting on a "Motion to Transfer Case to the Supreme Court" filed by plaintiffs-appellants, as the issues in the present case are all purely legal, this case was forwarded to Us for consideration as a Petition for Review on *Certiorari*.

This case originated from the decision of the Court of First Instance of Rizal, Branch VII, Pasay City in Civil Case No. 3066-P

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entitled *Guillermo N. Pablo and Primitiva C. Cruz vs. Estate of deceased Socorro Ramos* finding in favor of the plaintiffs and which was affirmed by the Court of Appeals on appeal in CA-G.R. No. 49848-R.

The complaint in Civil Case No. 3066-P, Court of First Instance of Rizal, Branch VII sitting in Pasay City, alleged the following material statements.

"2. On July 31, 1957, plaintiffs entered into an 'Agreement' with Pedro del Rosario/Del Rosario Realty, whereby the latter agreed to sell on installment basis a parcel of land covered by a subdivision Transfer Certificate of Title No. 34610, more particularly described as follows:

> A parcel of land (Lot 3, Block 1 of the subdivision plan Psd-5073, being a portion of Lot 614-C (LRC) described on plan Psd. 1879, G.L.R.O. Record No. 5975, situated in the District of Bago Bantay, Quezon City. Bounded on the NE., along line 1-2 by Lot 4; along line 2-3 by Lot 3, both of Block 1; along line 3-4 by Road Lot 2; along line 4-5 by Lot 7; and along line 5-1 by Lot 6, both of Block 1, all the subdivision plan Beginning at a point marked "1" on plan, being S.3 deg. 23'E., 978.72 m. from L. M. 9, Piedad Estate, x x x containing an area of FOUR HUNDRED ONE (401) Square Meters.

which said contract and all rights and interests appertaining thereto belonging to Pedro del Rosario/Del Rosario Realty were transferred and assigned by the latter to Socorro A. Ramos on June 16, 1959 under an Assignment of Right whereby, Socorro A. Ramos obtained Transfer Certificate of Title No. 44501 under her name.

"3. Plaintiffs, having paid in full the amount of P8,020.00 selling price stated in the foregoing Agreement, Socorro A. Ramos executed a Deed of Absolute Sale of the land on March 28, 1963 in their favor, a copy of which, is integrated hereto as Annex A, subject to the condition that plaintiffs will not register this deed for purposes of transferring the title of the said property to them and in their names until and after the final determination of the case between, Rodrigo Enriquez, et al., and Socorro A. Ramos, presently pending before the Supreme Court under G.R. No. L-16797, and the subsequent release thereof by said Rodrigo Enriquez, et al.

"4. Unknown to the plaintiff, as Socorro A. Ramos did not disclose to them, is the fact that when the foregoing deed of sale was executed, it had already an existing mortgage in favor of Rodrigo Enriquez and that the

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latter had already filed an action for foreclosure of the same in the Court of First Instance of Rizal on April 29, 1959, which is the subject of appeal in the aforecited case, and the further fact, that when the same deed was executed by Socorro A. Ramos on March 28, 1963, she already knew that the Supreme Court case referred to had already been decided as her lawyer, Atty. Vicente K. Aranda received the decision rendered therein on March 1, 1963, whereby she lost the case, and consequently, the transfer of the land to Rodrigo Enriquez — all, wanton acts of dishonesty and bad faith.

"5. Till her death on November 10, 1965, Socorro A. Ramos did not disclose to the plaintiffs the foregoing facts nor what happened to said case, so much so that upon verification later with the Register of Deeds of Quezon City, plaintiffs discovered that the land sold to them by Socorro A. Ramos had been foreclosed and titled under the name of Rodrigo Enriquez, who later on, sold the same to Maria Cristina F. Villadolid.

"6. The acts imputed to Socorro A. Ramos in pars. 3, 4, and 5 *supra*, and the unjust refusal of her children-heirs, defendants herein, to substitute the lost land from the mass estate of the deceased Socorro A. Ramos or to pay its equivalent market value to the plaintiffs in spite of repeated verbal and written demands, resulted in plaintiffs' loss of not less than P30,000.00, representing the present market value of the said land, which, the defendants are duty bound to compensate plaintiffs by way of actual damages.

"7. The same acts, as well as the consequences thereof, caused, and still is, causing plaintiffs mental anguish, wounded feelings, serious anxiety and the like which, defendants are under obligation to compensate plaintiffs the sum of P40,000.00, by way of moral damages.

"8. And, by way of example for the public good, defendants, are likewise, under obligation to compensate plaintiffs the sum of P15,000.00 by way of exemplary damages.

"9. By reason of the unjust refusal of the defendants to return to the plaintiffs the present market price of the lost land or to substitute the same with another land from the mass estate left by the late Socorro A. Ramos, plaintiffs were compelled to file the instant suit and in so doing was constrained to seek the services of their undersigned counsel for P10,000.00, which, defendants should be compelled to pay plus expenses of litigation as may be duly proved and costs.

"WHEREFORE, it is respectfully prayed that judgment be rendered in favor of the plaintiffs and against the defendants directing the latter to pay to the former the following:

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"a) Actual damages in the sum of P30,000.00 or to direct the defendants to execute a "Deed of Absolute Sale" of a land with the same value from the mass estate left by the deceased Socorro A. Ramos in favor of the plaintiffs;

"b) Moral damages in the sum of P40,000.00;

"c) Exemplary damages in the sum of P15,000.00;

"d) Attorney's fees in the sum of P10,000.00;

"e) Expenses of litigation as may be duly provided; and

"f) Costs of the instant suit." (Italics supplied Record on Appeal in CA-G.R. No. 49848-R, pp. 2-6).

Pursuant to said decision, the *Ex-Officio* Sheriff of Quezon City levied upon and sold at execution 18 parcels of land, each with an average area of 500 square meters, more or less or having a total area of 10,588 square meters covered by separate Transfer Certificates of Title of the Registry of Deeds of Quezon City in the name of Socorro A. Ramos to defendants-spouses (respondents herein) Guillermo N. Pablo and Primitiva C. Cruz as the sole bidders for one lump sum bid price of P56,885.22. Said amount constituted the entire judgment debt of Socorro Ramos including the expenses of sale as reflected in the "Minutes of the Public Auction Sale." The certificate of sale was issued after a "Motion for the Confirmation of the Sheriff's Final Deed of Sale and for the issuance of Writ of Possession" was filed unopposed. Subsequently, the Register of Deeds (one of the respondents herein) cancelled the certificates of title in the name of Socorro Ramos and issued new Transfer Certificates of Title in the name of spouses Guillermo Pablo and Primitiva Cruz.

Such facts having been brought to the knowledge of the heirs of the deceased Socorro A. Ramos, they filed an action in the Court of First Instance of Quezon City to declare as null and void 1) the public auction sale or execution sale held by the Sheriff of Quezon City 2) the minutes of the Public Auction Sale 3) the Certificate of Sale 4) the Sheriff's Final Deed of Sale and 5) the Transfer Certificate of Title issued in the name of spouses Pablo, alleging among other things that the aforementioned transactions or events were in gross violation of plaintiffs' rights as the lump sum sale of

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the 18 parcels of land was contrary to the provision of Sec. 21, Rule 39 of the Rules of Court which requires the separate bidding and individual sale of real estate properties levied upon on execution and of Sec. 27, Rule 39 which requires the statement of the price paid for each distinct lot or parcel. Plaintiffs alleged that a larger amount could have been realized from a sale in parcels or that a sale of less than the whole of the 18 parcels would have brought sufficient proceeds to satisfy the debt. Plaintiffs alleged that they were not given the required notice as surviving heirs of their deceased mother, thereby preventing them from taking part therein at least to the extent of directing the order in which the said 18 parcels of land shall be sold to their advantage as permitted by the rules. Defendants filed their answer setting forth as special and affirmative defenses lack of cause of action, lack of jurisdiction, estoppel and multiplicity of suits. Thereafter, defendants filed their motion to dismiss which was set for hearing Defendants formally offered their documentary exhibits for admission to the trial court. After hearing, the trial court dismissed the case, hence this appeal by plaintiffs assigning errors in their brief, to wit:

I

THE TRIAL COURT ERRED IN HOLDING THAT THE PRINCIPLE OF *RES JUDICATA* WAS APPLICABLE IN THE INSTANT CASE.

II

GRANTING *EN ARGUENDO* THAT THE PRINCIPLE OF *RES JUDICATA* IS APPLICABLE HAD IT BEEN RAISED, THE TRIAL COURT ERRED IN IMPROPERLY CONSIDERING THE SAME AS IT WAS NOT RAISED.

III

THE TRIAL COURT ERRED IN HOLDING THAT PLAINTIFFS' "REMEDY IS NOT ANOTHER ACTION BUT A MOTION WITH THE COURT OF ORIGIN ATTACKING THE EXECUTION SALE."

IV

THE TRIAL COURT ERRED IN CONSIDERING THE "[I]N THE INSTANT CASE IT IS NOT MERELY THE DECISION OF COURT OF FIRST INSTANCE WHICH IS SOUGHT TO BE ANNULLED BUT ALSO THE DECISION OF THE HIGHER COURT x x x."

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V

GRANTING *EN ARGUENDO* THAT ASSAILING AN EXECUTION SALE CAN BE CONSIDERED AS AN ATTACK AGAINST THE DECISION OF THE TRIAL COURT, SAID COURT ERRED IN NOT APPLYING THE AUTHORITATIVE DOCTRINE LAID DOWN IN *DULAP V. COURT OF APPEALS*, G.R. NO. L-28306, 18 DECEMBER 1971, 42 SCRA 537.

VI

THE TRIAL COURT ERRED IN FINDING THAT "PLAINTIFFS DID NOT RAISE THE ISSUE THAT THE PRICE IS SO INADEQUATE AS SHOCKING TO CONSCIENCE."

VII

THE TRIAL COURT ERRED IN HOLDING THAT THE FINALITY OF THE DECISION OF THE SUPREME COURT IN G.R. NO. L-23616, 30 SEPTEMBER 1976 ENTITLED "*RODRIGO ENRIQUEZ, ET AL. V. SOCORRO A. RAMOS, ET AL.* "MADE THE INSTANT CASE MOOT AND ACADEMIC."

We find merit in petitioners' contentions. The principle of *res judicata* to be applicable must have the following requisites: 1) the judgment or order invoked as *res judicata* must be final 2) the court rendering the same must have jurisdiction over the subject matter and the parties; 3) the judgment or order must be upon the merits and 4) there must be, between the two cases, identity of parties, identity of subject matter and identity of causes of action. Petitioner allege that the last requirement is absent. (a) There is no identity of parties. Petitioners while parties in the first case are impleaded only in their representative character, the principal party is the "estate of the deceased Socorro A. Ramos." Respondents are made parties in the present case, they being the buyers in the execution sale, the *Ex-Oficio* Sheriff of Quezon City is the principal and indispensable party since he conducted the execution sale but he was not a party in the first case. Neither is the Register of Deeds of Quezon City who is a new party. (b) There is no identity of causes of action. The cause of action of the first case was the alleged failure of Socorro A. Ramos to comply with her obligation, in the second case it is the illegal and improper execution or holding of the public sale by the *Ex-Oficio* Sheriff of Quezon City. In other

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words, the first is an action for damages and the second is an action for the annulment of the execution sale. (c) There is no identity of subject matter. In the first case the subject matter are the contracts of 1) Agreement to Sell and 2) a Deed of Absolute Sale, dated May 28, 1963 while in the second case the subject matter are the 18 parcels of land sold at the execution sale. The land involved in the first case is not even part of the 18 parcels in the second case. Moreover, the issue of *res judicata* is not even raised by respondents in their motion to dismiss before the lower court.

There is no question that the action of petitioners in the lower court for annulment does not seek to annul the final decision of the Court of Appeals but only to annul the execution sale and acts done in pursuance thereof The acts complained of in the present case arose after the Court of Appeals issued its decision and therefore, it is not possible that the matter of execution sale now in question could have been covered or considered in or a part of the decision of the appellate court.

We find that a separate action for annulment of execution sales is in order. The lower court ruled that plaintiffs' (petitioners') remedy is not another action but a motion attacking the execution sale with the court of origin. Petitioners do not agree because 1) improper remedy was not raised by spouses in their motion to dismiss 2) there is no provision of law limiting an attack on an execution sale only through a motion with the court of origin.

A reading of plaintiffs' (petitioners') complaint shows that inadequacy of price was raised as one of the issues. Assuming that the price was shockingly low, the same cannot vitiate the auction sale for *redemption* would be comparatively easier.

Finally, the lower court erred in holding that the finality of Our decision in G.R. No. L-23616, 73 SCRA 116 entitled *Rodrigo Enriquez, et. al, vs. Socorro A. Ramos*[1] made the instant case moot and academic. In said case, Rodrigo Enriquez, et al., sold to Socorro A. Ramos 20 subdivision lots in Quezon City for the sum of P235,056.00 of which only P35,056.00 had been paid and the

[1] Said case is docketed as Civil Case No. Q-7229 in the Court of First Instance of Rizal.

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balance of P200,000.00 was not paid within the stipulated period by the buyer Socorro A. Ramos. The sellers obtained favorable judgment this Court ruling that:

"Should the defendant-appellee[2] fail to pay the aforementioned mortgage indebtedness within the period granted in this decision, the properties mortgaged shall be sold at public auction and the proceeds thereof shall be applied to the satisfaction of this judgment and the costs of the auction sale. Costs against the defendant-appellee. The motion of Guillermo N. Pablo to join defendant-appellee as co-party is denied."

We find merit in petitioners' contention that there is nothing in the records of the present case to show what happened after an order (Exh. "5 - Motion") had been issued on October 17, 1977 in Civil Case No. Q-7229, Court of First Instance of Rizal. But the lower court gratuitously assumed that the issuance of said order allowed for the foreclosure over the 18 parcels of land, the subject matter of the instant case. In other words, the evidence on record is clear that no actual foreclosure yet has been effected by the prevailing party in Civil Case No. 7229, and the lower court was in palpable error in prematurely concluding that "whoever wins in that case is of no moment, because the plaintiffs' and defendants' rights if any on the subject 18 lots are now subordinated to Rodrigo Enriquez in Civil Case No. Q-7229, making the instant case moot and academic." Petitioners argue that the "action object" of the present appeal should be litigated for if the execution sale is vacated, and even if again sold at public sale the obligation secured by the 18 parcels of land, also involved in the present case would be satisfied in the best manner possible. Furthermore, for a case to be considered as moot and academic, the determination of such event can only be passed upon in a trial on the merits and not in a motion to dismiss. This case is far from being moot and academic because whoever wins will be the one who will have the right to pay the mortgage in favor of Rodrigo Enriquez, et al. As pointed out by petitioners in their brief, obviously, it will be foolish for herein plaintiffs (petitioners) to pay the mortgage when the titles to the said eighteen (18) lots have already been transferred to the names of the said defendants-spouses Pablo (respondents).

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[2] Socorro A. Ramos.

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WHEREFORE, premises considered, the Order dated December 1, 1977 and the Order, dated March 8, 1978 of the lower court are hereby SET ASIDE, and the case is hereby REMANDED to the lower court for proper trial on the merits.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 55912. November 26, 1986]

HEIRS OF DOMINGO P. BALOY, represented by RICARDO BALOY, ET AL., *respondents, vs.* **COURT OF APPEALS, DIRECTOR OF LANDS and PHILIPPINE NAVY,** *respondents.*

SYLLABUS

CIVIL LAW; PROPERTY; PUBLIC LAND; STEPS TO BE FOLLOWED BEFORE ANY AFFECTED LAND CAN BE CONCLUSIVELY ADJUDGED TO BE PUBLIC LANDS. — One of the vital issues is whether or not the property became public lands pursuant to Act 627 for failure of Domingo Baloy to claim the same in accordance with the said Act. In the sister case, We affirmed the judgment of the Court of Appeals resolving the question in the negative pointing out that the property could not have been adjudged to be public land pursuant to Act 627 for the reason that since there has not been presented a formal order or decision of the Land Registration Court declaring the land public due to the failure of Domingo Baloy to file his application within the prescribed period. Quoted hereunder is the pertinent portion of Our ruling in the sister case: "A cursory reading of Sec. 3, Act 627 reveals that several steps are to be followed before any affected land can "*be conclusively adjudged to be public lands.*" Sec. 3, Act 627 reads as follows: "SEC. 3. Immediately upon receipt of the notice from the Civil