111 Phil. 335

[G.R. No. L-13461. March 20, 1961]

PEDRO TUBALLA, PLAINTIFF AND APPELLANT, VS. MARIA DE LA CRUZ, ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Davao dismissing appellant's complaint on the ground (1) that appellant's cause of action is barred by a prior final judgment (Civil Case No. 1430) of the same court; and (2) that said court has no jurisdiction over the subject matter of the complaint.

On June 1, 1957, appellant filed against appellees a complaint seeking to annul Original Certificate of Title No. P-2026 on the ground of fraud. Said certificate was issued by the Register of Deeds of Davao on March 8, 1954 in lieu of Sales Patent No. V-1129 issued on November 16, 1953 by the Director of Lands.

It appears that prior to the filing of the above-mentioned complaint, appellant on October 13, 1954 filed in the same court of first instance an action over the same subject matter between the same parties, and for the same cause of action (Civil Case No. 1430). This latter case was dismissed on November 7, 1956 on the ground that appellant does not possess legal personality to file the action. The order of dismissal became final for lack of appeal.

Predicated on the above order and on the fact that the action of appellant was filed out of time, the trial court dismissed the complaint. Hence this appeal.

Appellant argues that as Civil Case No. 1430 was dismissed for lack of legal personality on his part the dismissal is not an adjudication on the merits and so it does not have the effect of *res judicata* as to bar future action. He also argues that the one-year period within which an action for review on the ground of fraud of a decision adjudicating a portion of public land should be computed from the date of the issuance of the certificate of title and not from the date of the issuance of the patent.

While the dismissal of Civil Case No. 1430 was not made after the presentation of the evidence or after trial where the issues raised are passed upon, it cannot be said that the same is not an adjudication on the merits. Under Section 4, Rule 30, any dismissal of the case predicated under Section 3 of said Rule or under Section 1, Rule 8, operates as an adjudication upon the merits unless the court expressly directs that the dismissal is *without prejudice*. The only exception is when the dismissal is based on lack of

jurisdiction. Considering that the former case was dismissed on the ground of lack of personality, the same operates as an adjudication upon the merits and, therefore, is a bar to another action between the same parties on the same subject matter.

The contention that the period of one year to review a decree in a registration proceeding on the ground of fraud should be computed from the date of the issuance of the certificate of title runs counter to the ruling of this Court that said period should be computed from the date of issuance of the patent.[1] Thus computed the period of one year has already expired. But even if appellant's claim be followed still the action was filed out of time. From March 8, 1954 to June 1, 1957, when the complaint was filed, a period of 3 years 2 months and 23 days have elapsed. And even if we deduct the time during which the former cage was pending (2 years, 1 month and 14 days), the remainder would be 1 year 1 month and 9 days, or an excess of 1 month and 9 days.

Wherefore, the order appealed from is affirmed, with costs against appellant.

Bengzon, Acting C.J., Padilla, Reyes, J. B. L., Paredes, and *Dizon, JJ.*, concur.

Labrador, J., concurs in the result.

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[1] Sumail *vs*. Court of First Instance of Cotabato, 96 Phil., 948; 51 Off. Gaz., 2413.

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