Supreme Court E-Library

ON THE FOREGOING PREMISES, the assailed judgment of respondent Court of Appeals dated April 1, 1977 is hereby *AFFIRMED in toto.*

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, and *Sarmiento, JJ.*, concur.

SECOND DIVISION

[G.R. No. 61527. December 26, 1990]

VICENTE GERARDO, VALENTINA GERARDO, CORNELIO GERARDO, BENJAMIN GERARDO, ANGEL GERARDO, & CONSTANTE GERARDO, *petitioners, vs.* **HON. FLORENTINO DE LA PEÑA, Presiding Judge, Branch VI, Court of First Instance of Ilocos Norte, TERESA ANTONIO BELZA, VISITACION ANTONIO ADINA, ILUMINADA PASCUA ANTONIO, FELICIDAD BATACAN MATA, POLICARPO BATACAN, BASILIO BATACAN, ISABEL BANGLOY, IRINEO BANGLOY, EDUARDO BANGLOY, DIONICIO BANGLOY, DOMINGA BANGLOY, and ERMINIO BANGLOY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; DOCTRINE APPLICABLE.— There is no question that petitioners have no right at all to claim exclusive ownership of the properties in question. Ownership thereof having been settled in favor of both herein petitioners and private respondents as co-owners of the subject properties in Civil Case No. 3191-

Supreme Court E-Library

11 which constitutes *res judicata* to Civil Case No. 7590. Such prior judgment in Civil Case No. 3191-11 is conclusive in the subsequent suit, *i.e.*, Civil Case No. 7590, between the same parties on the same subject matter, and the same cause of action, not only as to matter which were decided in the first action but could have been properly set up in the prior suit, which the petitioners apparently failed to do.

2. ID.; ID.; ANNULMENT OF; IF THERE IS NO SHOWING OF EXTRINSIC OR COLLATERAL FRAUD, THERE IS NO CAUSE OF ACTION FOR ANNULMENT OF JUDGMENT. — In the instant case, there is no showing whatsoever that extrinsic or collateral fraud, as hereinabove defined, indeed vitiated the proceedings in Civil Case No. 3191-11. Hence, there is no cause of action for annulment of the judgment in the said case.

APPEARANCES OF COUNSEL

Benjamin B. Barbero for petitioners.

D E C I S I O N

PARAS, *J.*:

This is a petition for *certiorari*, prohibition and *mandamus* seeking to reverse and set aside the order[1] dated August 13, 1982 of the then Court of First Instance of Ilocos Norte and Laoag City which denied petitioners' motion for reconsideration of the resolution dated July 26, 1982 of the said court which dismissed with prejudice Civil Case No. 7590 on the ground of *res judicata*.

The properties involved in the instant case are Lots 26022, 26158 and 9525 of Laoag Cadastre (*Rollo*, p. 13) containing an area of 34,478 square meters of agricultural lands and 722 square meters of residential land (*Ibid*., p. 5).

The original owner of said properties was Angel Gerardo, married to Andrea Tungpalan who predeceased him; that he

[1] Issued by Hon. Florentino De La Peña.

Supreme Court E-Library

declared said properties for taxation purposes as early as 1921; that out of the marriage, the following children were born, namely Filomina, Berta, Santiago and Delfina, all surnamed Gerardo; that Filomina was survived by her children, Policarpo and Basilio, both surnamed Batacan (private respondents herein); that Berta was survived by her children, Isabel, Irineo, Eduardo, Dionicio, Dominga and Herminio, all surnamed Bangloy (private respondents herein); that Santiago was survived by his children Vicente, Valentina, Cornelio, Faustino, Benjamin, Angel and Constante, all surnamed Gerardo (petitioners herein). (*Ibid*., p. 13)

The record further reveals that before the cadastral hearing involving the properties in question could commence, Angel Gerardo, father of Santiago Gerardo who in turn was the father of herein petitioners, died. Subsequently, Santiago Gerardo filed the corresponding answers for the three (3) lots in question. It was alleged in said answers that he (Santiago) was the heir of Angel Gerardo and that said three (3) lots were being claimed by him as his inheritance from his late father, Angel Gerardo (*Ibid*., p. 14).

After hearing, Lots 26022 and 26158 were registered in the name of Santiago Gerardo and OCT No. 15059 was correspondingly issued in the latter's name, and so with OCT No. 9801 covering Lot 9525 (*Ibid*.)

About sixteen (16) years later, or on April 28, 1960; private respondents instituted an action for ownership, partition and accounting against herein petitioners in the then Court of First Instance of Ilocos Norte, which was docketed as Civil Case No. 3191-11, praying, among others, for the cancellation of OCT Nos. 15059 and 9801 (*Ibid*., pp. 14, 26).

On February 18, 1964, the lower court rendered judgment in favor of private respondents and against herein petitioners, declaring all the former and the latter as legal heirs of the late Angel Gerardo and co-owners of Lots 26022, 26158 and 9525 (*Ibid*., pp. 14, 27).

Supreme Court E-Library

Petitioners elevated the case to the Court of Appeals, which dismissed the same in a resolution dated September 21, 1965 (*Ibid*., p. 28). Consequently, the judgment in Civil Case No. 3191-11 became final and executory on October 11, 1965 (*Ibid*., p. 15).

Upon motion of herein private respondents, on January 31, 1966, a writ of execution was issued and the same was duly served as per sheriff's return dated February 12, 1966, placing private respondents in possession of their respective portions or shares in the properties in question (*Ibid*., p. 28).

Again, upon motion of herein private respondents, an *alias* writ of execution dated April 6, 1970 was issued by the lower court for the collection of damages and the costs of suit from herein petitioners. Accordingly, levy on execution was made on the rights, shares, interest and participation of herein petitioners in question. Thereafter, said shares, interest and participation of herein petitioners were sold at public auction to a certain Luis Antonio. The certificate of sale covering said properties were then registered in the Office of the Register of Deeds of Ilocos Norte on March 16, 1971 (*Ibid*., pp. 28-29).

Several years later, or on March 18, 1982, petitioners herein filed a complaint as pauper-litigants for reconveyance of properties, annulment of judgment and damages against private respondents in the lower court, which was docketed as Civil Case No. 7590 (*Ibid*., p. 4).

On May 4, 1982, private respondents filed a motion to dismiss said complaint on the grounds of *res judicata*, prescription of action and lack of cause of action, which motion was granted by the lower court in its resolution dated July 26, 1982 discoursing, *viz*:

"The essential requisites for the existence of *res judicata* are:

'(1) the former judgment must be final;

'(2) it must have been rendered by a court having jurisdiction of the subject matter and the parties;

'(3) it must be a judgment on the merits; and

Supreme Court E-Library

'(4) there must be between the first and second actions identity of the parties, identity of the subject matter and identity of cause of action.'

"There is no doubt that the judgment in Civil Case No. 3191-II became final on October 11, 1965, and likewise, that the court in taking cognizance of the case had jurisdiction over the subject matter and the parties because it involves question of co-ownership of real properties arising from rights of the parties as heirs of Angel Gerardo, their predecessor-in-interest. Likewise, it had jurisdiction over the persons of the parties, the defendants having been duly summoned and filed their corresponding answers to the plaintiffs' complaint; that the judgment rendered was on the merits of the case because there was actual trial where both parties presented their evidence; and lastly, in both cases, the same parties and properties, and the same causes of action are involved. All the essential requisites of *res judicata*, therefore, are present.' (*Ibid*., p. 15)

The motion for reconsideration having been denied, petitioners elevated the case to this Court by way of *certiorari*, prohibition and *mandamus*.

The only issue for resolution in the instant case is whether or not the lower court committed a grave abuse of discretion when it ordered the dismissal of the complaint in Civil Case No. 7590 on the ground of *res judicata*.

The petition is devoid of merit.

The Supreme Court possesses no authority to rule upon non-jurisdictional issues in a *certiorari* proceeding. The only question involved in *certiorari* is jurisdiction, either want of or in excess thereof. (*C & C Commercial Corporation v. Philippine National Bank, et al.*, 175 SCRA 1 [1989]). In the case at bar, respondent Judge correctly dismissed the complaint in Civil Case No. 7590 based on *res judicata* considering the prior judgment in Civil Case No. 3191-11.

There is *res judicata* when the following requisites are present: (1) the judgment or order must be final; (2) the court rendering it must have jurisdiction over the subject matter and of the parties; (3) identity of parties, identity of subject matter and

Supreme Court E-Library

identity of cause of action (*Maglalang v. Court of Appeals,* 175 SCRA 808 [1989]).

There is no question that petitioners have no right at all to claim exclusive ownership of the properties in question. Ownership thereof having been settled in favor of both herein petitioners and private respondents as co-owners of the subject properties in Civil Case No. 3191-11 which constitutes *res judicata* to Civil Case No. 7590. Such prior judgment in Civil Case No. 3191-11 is conclusive in the subsequent suit, *i.e.*, Civil Case No. 7590, between the same parties on the same subject matter, and the same cause of action, not only as to matter which were decided in the first action but could have been properly set up in the prior suit, which the petitioners apparently failed to do.

Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty enjoined by or to act at all in contemplation of law (*Carson, et al. v. Judge Pantanosas, Jr.*, G.R. No. 75934, December 15, 1989), which circumstances are not obtaining in the present case.

Respondent judge who dismisses a complaint on the ground of *res judicata* does not commit grave abuse of discretion.

Petitioners maintain that the judgment in Civil Case No. 3191-11, being inconsistent with the decisions in Cadastral Cases Nos. 31, 44 and 47 dated August 31, 1937, November 28, 1934 and December 31, 1935, respectively, awarding OCT No. 15059 solely in the name of the late Santiago Gerardo (petitioners' father), OCT No. 9801 likewise solely in the latter's name, and OCT No. 11942, naming Santiago Gerardo as one of the co-owners of the parcel of land embraced in the said title, respectively (*Ibid.*, pp. 5-6), is void *ab initio* (*Ibid.*, p. 8).

It is well-settled that a judgment may be annulled on the ground of extrinsic or collateral fraud (*Islamic Da'Wah Council*

Supreme Court E-Library

of the Philippines vs. Court of Appeals, G.R. No. 80892, September 29, 1989) and such extrinsic or collateral fraud must be committed by the adverse party (*Sanchez v. Tupas*, 158 SCRA 465 [1988]). It is only extrinsic or collateral fraud that can serve as a basis for the annulment of judgment. There is extrinsic or collateral fraud "where it is one the effect of which prevents a party from having a trial, or real contest, or from presenting all of his case to the court, or where it operates upon matters pertaining, not to the judgment itself, but of the manner in which it was procured so that there is not a fair submission of the controversy." In other words, extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case, by fraud or deception practiced on him by his opponent (*Canlas v. Court of Appeals*, 164 SCRA 160 [1988]; *Macabingkil v. People's Homesite and Housing Corporation*, 72 SCRA 326 [1976]).

In the instant case, there is no showing whatsoever that extrinsic or collateral fraud, as hereinabove defined, indeed vitiated the proceedings in Civil Case No. 3191-11. Hence, there is no cause of action for annulment of the judgment in the said case.

Moreover, the trial court has no jurisdiction to entertain an action to annul the judgment in the prior case, Civil Case No. 3191-11 rendered by a court of coordinate branch. Exclusive original jurisdiction over actions for annulment of judgments of a regional trial court is vested in the Court of Appeals (Section 9[2], Batas Pambansa Blg. 129) (*Islamic Da'Wah Council of the Philippines v. Court of Appeals, supra*).

PREMISES CONSIDERED, the instant petition is hereby DISMISSED and the order appealed from is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera (Chairperson), Padilla, Sarmiento, and *Regalado, JJ.*, concur.