



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

**HEIRS OF BARTOLOME J. G.R. No. 234999**  
**SANCHEZ, represented by**  
**EDNA N. VDA. DE SANCHEZ,** Present:  
*Petitioners,*

- versus -

**HELDELITA, ALLEN,**  
**ALBERTO, ARTHUR, MARIA**  
**ANITA, all surnamed**  
**ABRANTES,**  
*Respondents.*

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*  
 HERNANDO,  
 INTING,  
 GAERLAN, and  
 ROSARIO,\* JJ.

Promulgated:

**AUG 04 2021**

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**DECISION**

**INTING, J.:**

This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assails the Decision<sup>2</sup> dated April 21, 2017 and the Resolution<sup>3</sup> dated September 20, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 04048-MIN which affirmed the Order<sup>4</sup> dated October 20, 2014 (Second Dismissal Order) of Branch 3, Regional Trial Court (RTC), Butuan City (RTC Branch 3) dismissing the complaint filed by Heldelita, Allen, Alberto, Arthur, Maria Anita, all surnamed Abrantes, (respondents) in Civil Case No. 5806. The RTC Branch 3 and CA dismissed the complaint on the ground of *res judicata* and *litis pendentia*, respectively.

<sup>1</sup> Designated additional member per Special Order No. 2835 dated July 15, 2021.

<sup>2</sup> *Rollo*, pp. 11-26; filed under Rule 45 of the Rules of Court.

<sup>3</sup> *Id.* at 30-38; penned by Associate Justice Romulo V. Borja with Associate Justices Oscar V. Badelles and Perpetua T. Atal-Paño, concurring.

<sup>4</sup> *Id.* at 28-29.

<sup>5</sup> *Id.* at 168-170; penned by Acting Presiding Judge Emmanuel E. Escatron.

*The Antecedents*

The case involves two complaints.

A Complaint<sup>5</sup> for Declaration of Nullity of Deed of Confirmation of Absolute Sale, Reconveyance, Liquidation, Damages, and Attorney's Fees (First Complaint) was filed on March 19, 2002 by Horacio C. Abrantes (Horacio) against the heirs of Bartolome J. Sanchez, Jr. (Bartolome), namely: Edna, Gary, David, Ernesto, all surnamed Sanchez; Bernadette S. Tan; Christine S. Belanger; and Marissa S. Bensurto (petitioners), docketed as Civil Case No. 5204 before Branch 5, RTC, Butuan City (RTC Branch 5). Subject of the complaint is a registered parcel of land situated in Poblacion, Municipality of Butuan, Province of Agusan del Norte (disputed property).<sup>6</sup>

Bartolome's heirs moved to dismiss the First Complaint, but before the RTC Branch 5 could act on the motion, Horacio died on April 27, 2003.<sup>7</sup> Thereafter, Horacio's counsel, Atty. Patrick Battad (Atty. Battad), moved for the dismissal of the First Complaint on the ground that Horacio's heirs were no longer interested to pursue the case.<sup>8</sup> In its Order<sup>9</sup> dated August 13, 2004 (First Dismissal Order), the RTC dismissed the case on the ground that "*plaintiffs [were] no longer interested to pursue [the] case.*"<sup>10</sup> In an Entry of Judgment<sup>11</sup> dated October 18, 2010, the First Dismissal Order became final and executory on September 6, 2004.

More than four years after the death of Horacio, his heirs: respondents, together with Mae Abrantes Rhoades and Maria Louella Abrantes Torres, filed a Complaint<sup>12</sup> for Declaration of Nullity of Sale, Reconveyance, and Damages (Second Complaint) docketed as Civil Case No. 5806 against petitioners before the RTC Branch 3. The Second Complaint pertains to the same disputed property.<sup>13</sup>

<sup>5</sup> *Id.* at 44-55.

<sup>6</sup> *Id.* at 31.

<sup>7</sup> *Id.*

<sup>8</sup> See Motion to Dismiss dated July 31, 2008, *id.* at 89-116.

<sup>9</sup> *Id.* at 65.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 66.

<sup>12</sup> *Id.* at 67-78

<sup>13</sup> *Id.* at 31.

Notably, the two complaints involve the same subject matter, substantially the same parties,<sup>14</sup> the same causes of action, and the same underlying objectives, or reliefs sought, *i.e.*, nullification of sale executed by the late Horacio in favor of Bartolome covering the disputed property.

In its Order<sup>15</sup> dated October 20, 2014, the RTC Branch 3 dismissed the Second Complaint on the ground of *res judicata* relative to the First Dismissal Order of the RTC Branch 5.<sup>16</sup> The RTC Branch 3 ruled that the dismissal of the First Complaint on the ground of respondents' lack of interest to pursue the case is analogous to failure to prosecute under Section 3,<sup>17</sup> Rule 17 of the Rules of Court, a ground for dismissal amounting to an adjudication on the merits.<sup>18</sup>

Failing to obtain reconsideration of the Second Dismissal Order,<sup>19</sup> respondents elevated the case to the CA, ascribing grave abuse of discretion on the part of the RTC Branch 3 in dismissing the Second Complaint on the ground of *res judicata*.<sup>20</sup>

#### *Ruling of the CA*

In the assailed Decision<sup>21</sup> dated April 21, 2017, the CA affirmed the Second Dismissal Order on the ground of *litis pendentia*, not *res judicata*, relative to the First Complaint.

The CA disagreed with the RTC Branch 3 that the First Dismissal Order amounted to an adjudication on the merits. Characterizing the First Dismissal Order as a patent nullity, the CA reasoned as follows: (1)

<sup>14</sup> With qualification as regards the plaintiffs in that in the First Complaint, Horacio was the plaintiff; while, in the Second Complaint, Horacio's heirs were the plaintiffs.

<sup>15</sup> *Rollo*, pp. 168-170.

<sup>16</sup> *Id.* at 169-170.

<sup>17</sup> Section 3, Rule 17 of the Rules of Court provides:

Section 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. *This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.* (Italics supplied.)

<sup>18</sup> *Rollo*, p. 170.

<sup>19</sup> See Resolution dated February 26, 2015 penned by Acting Presiding Judge Emmanuel E. Escatron, *id.* at 193-194.

<sup>20</sup> *Id.* at 211.

<sup>21</sup> *Id.* at 30-38

the basis of Atty. Battad in moving for the dismissal of the First Complaint, *i.e.*, information he received that Horacio's heirs were no longer interested to pursue the case, following Horacio's death, was based entirely on hearsay;<sup>22</sup> (2) Atty. Battad no longer had authority to move for the dismissal of the complaint as his client's death severed their lawyer-client relationship;<sup>23</sup> and (3) Atty. Battad violated his duty to give the names and address of Horacio's legal representative/s pursuant to Section 16,<sup>24</sup> Rule 3 of the Rules of Court pertaining to the rule on substitution in case of death of a party.<sup>25</sup>

The CA held that the RTC Branch 5 should have insisted on the application of the rule on substitution; and the trial court's failure to do so constitutes grave abuse of discretion amounting to lack of jurisdiction, thus rendering the dismissal void and without legal effect. Following this premise, the CA considered the First Complaint as pending that barred the filing of the Second Complaint.<sup>26</sup>

Petitioners then moved for reconsideration,<sup>27</sup> but the CA denied it in a Resolution<sup>28</sup> dated September 20, 2017.

Hence, the petition before the Court.

Petitioners argue that the First Dismissal Order was an adjudication on the merits, *i.e.*, failure to prosecute under Section 3, Rule 17, which barred the filing of the Second Complaint on the ground of *res judicata*.

### *Issues*

The issues before the Court are procedural: (1) whether the CA committed reversible error in ruling that the First Dismissal Order was a

<sup>22</sup> *Id.* at 35.

<sup>23</sup> *Id.*

<sup>24</sup> Section 16, Rule 3 of the Rules of Court provides:

Section 16. *Death of party; duty of counsel.* -- Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the *duty of his counsel* to inform the court within thirty (30) days after such death of the fact thereof, and *to give the name and address of his legal representative or representatives*. Failure of counsel to comply with his duty shall be a ground for disciplinary action. (Italics supplied.)

<sup>25</sup> *Rollo*, pp. 35-36.

<sup>26</sup> *Id.* at 36-37.

<sup>27</sup> See Motion for Reconsideration dated May 16, 2017, *id.* at 39-42.

<sup>28</sup> *Id.* at 28-29.

nullity; and (2) whether the CA gravely erred in dismissing the Second Complaint on the ground of *litis pendentia*.

### *The Court's Ruling*

Relevant to the CA's ratiocination and petitioners' arguments are the principles of *litis pendentia* and *res judicata*.

The requisites of *litis pendentia* are: "(a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other."<sup>29</sup>

On the other hand, the elements of *res judicata* are: (1) *the judgment sought to bar the new action must be final*; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) *the disposition of the case must be a judgment on the merits*; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.<sup>30</sup>

Undoubtedly, the second and fourth elements attend in the case. Controversy lies with respect to the first and third elements, *i.e.*, whether the First Dismissal Order is final and whether it is an adjudication on the merits.

The resolution of the case may be confined to the foregoing two elements to categorically address the following: (1) whether the First Dismissal Order is valid; (2) whether the First Dismissal Order is an adjudication on the merits under Section 3, Rule 17; and (3) whether the First Dismissal Order is one without prejudice under Section 2, Rule 17.

### *Validity of the First Dismissal Order*

The rule on substitution by the heirs in case of death of a party is not a matter of jurisdiction, but a requirement of due process.<sup>31</sup> It is

<sup>29</sup> *Villarica Pawnshop, Inc. v. Gernale*, 601 Phil. 56, 78 (2009), citing *Dayot v. Shell Chemical Company, (Phils.) Inc.*, 552 Phil. 602, 614 (2007) and *Spouses Abines v. Bank of the Philippines Islands*, 517 Phil. 609, 615-617 (2006).

<sup>30</sup> See *Republic v. Court of Appeals*, 381 Phil. 558 (2000).

<sup>31</sup> *Spouses De la Cruz v. Joaquin*, 502 Phil. 803, 811 (2005).

designed to preserve the representation of the deceased party in the suit through his/her heirs or the duly appointed legal representative of his/her estate.<sup>32</sup> Noncompliance with this rule results in the “denial of the right to due process for the heirs who, though not duly notified of the proceedings, would be substantially affected by the decision rendered therein.”<sup>33</sup>

While the contemplated denial of due process may constitute a ground for the nullification of proceedings and the judgment thereon,<sup>34</sup> this right may be invoked *only* by the heirs whose rights have been violated.<sup>35</sup> The violation of due process being personal to the party asserting the defense,<sup>36</sup> the CA, in this case, erred in declaring the First Dismissal Order a patent nullity sans any adverse action by respondents against it.

It bears underscoring that while the unauthorized act of Horacio’s counsel (*i.e.*, filing of a motion to dismiss in the First Complaint after Horacio’s death) may have warranted the nullification of the First Dismissal Order based on violation of respondents’ right to due process, respondents no longer assailed the order of dismissal. Instead, after gaining knowledge of the First Dismissal Order, respondents retained Atty. Battad as their counsel in opting to file the Second Complaint. Respondents’ action is tantamount to an implied ratification of Atty. Battad’s actions. Faced with the underlying principle on the rule of substitution, *i.e.*, observance of the constitutional right to due process, the absence of a formal substitution is immaterial in the case, as no due process right of respondents may be said to have been violated.

Indeed, respondents’ inaction against the First Dismissal Order, notwithstanding the lack of formal substitution of parties under Section 3, Rule 16 which could have otherwise given rise to violation of due process, *gives validity to the dismissal, as well as its final and executory character.*

Considering, thus, the finality of the First Dismissal Order, there is *no pending* case to speak of as would constitute *litis pendentia* to the

<sup>32</sup> *Heirs of Bertuldo Hinog v. Melicor*, 495 Phil. 422, 438-439 (2005), citing *Imperial v. Court of Appeals*, 374 Phil. 740, 750 (1999) and *Torres, Jr. v. Court of Appeals*, 344 Phil. 348, 366 (1997).

<sup>33</sup> *Vda. de Salazar v. Court of Appeals*, 320 Phil. 373, 378 (1995).

<sup>34</sup> *Spouses De la Cruz v. Joaquin*, *supra* note 31.

<sup>35</sup> See *Carandang v. Heirs of Quirino A. De Guzman*, 538 Phil. 319 (2006).

<sup>36</sup> *Id.*

Second Complaint. The provision in Section 1(e), Rule 16 of the Rules of Court that an action may be dismissed because “there is another action pending between the same parties for the same cause” presupposes that two similar actions are simultaneously pending in two courts.<sup>37</sup> The First Dismissal Order being a final disposition, the CA erred in treating the First Complaint before the RTC Branch 5 as subsisting, as would bar the filing of the Second Complaint on the ground of *litis pendentia*.

Having established that the First Dismissal Order is valid and final, there is a need to characterize whether the dismissal was an adjudication on the merits, and/or one without prejudice.

Section 3, Rule 17 governs dismissals due to the fault of the plaintiff such as the failure to prosecute, *viz*:

SEC. 3. Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. *This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.* (Italics supplied.)

The fundamental test for “failure to prosecute” contemplates want of due diligence attributable to the plaintiff in failing to proceed with reasonable promptitude.<sup>38</sup> There must be unwillingness on the part of the plaintiff to prosecute, as manifested by any of the following instances: (1) plaintiff fails to appear at the time of trial; or (2) plaintiff fails to prosecute the action for an unreasonable length of time; or (3) plaintiff fails comply with the Rules of Court or any order of the court.<sup>39</sup>

In the case, the First Dismissal Order cannot be characterized as one for failure to prosecute, as the dismissal did not proceed from any of the foregoing instances. As pointed out by the CA, Atty. Battad's claim that Horacio's heirs were no longer interested in pursuing the case was

<sup>37</sup> See *Ching v. Cheng, et al.*, 745 Phil. 93 (2014).

<sup>38</sup> *Producers Bank of the Philippines v. Court of Appeals*, 396 Phil. 497, 505-506 (2000), citing *Perez v. Perez*, 165 Phil. 500 (1976).

<sup>39</sup> *De Knecht v. CA*, 352 Phil. 833, 849 (1998).

based entirely on hearsay. More, the dismissal of the case was sought not by the *defendant* petitioners, but by Atty. Battad, counsel for *plaintiff* Horacio, who moved for the dismissal of the complaint, which the RTC Branch 5 granted, without any declaration against respondents' supposed lack of diligence. Not being a dismissal under Section 3, Rule 17, the First Dismissal Order did not amount to an adjudication on the merits, as would bar the filing of the Second Complaint.

Lastly, the First Dismissal Order<sup>40</sup> is one without prejudice, there being no express declaration to the contrary,<sup>41</sup> and does not bar the re-filing of the action.

In fine, (1) the First Dismissal Order is valid and final, thus there is no pending action to speak of as would constitute *litis pendentia* to the filing of the Second Complaint with the RTC Branch 3; and (2) the First Dismissal Order, albeit final, is not an adjudication on the merits and is one without prejudice, thus negating the applicability of *res judicata*.

**WHEREFORE**, the petition is **DENIED**. The Decision dated April 21, 2017 and the Resolution dated September 20, 2017 of the Court of Appeals in CA-G.R. CV No. 04048-MIN are **SET ASIDE**, and a new one is entered **REINSTATING** Civil Case No. 9806. Accordingly, the case is **REMANDED** to Branch 3, Regional Trial Court, Butuan City for the continuation of proceedings with dispatch.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

<sup>40</sup> *Rollo*, p. 65. A portion of the Order dated August 13, 2004 reads:

“On record is a motion to dismiss filed by counsel for the plaintiff on the ground that plaintiffs are no longer interested to pursue the case.

Finding the said motion to be meritorious, the same is hereby granted. As prayed for, this case is DISMISSED.


SO ORDERED.”

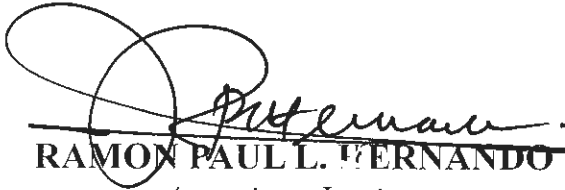
<sup>41</sup> Section 2, Rule 17 of the Rules of Court provides:

SEC. 2. *Dismissal upon motion of plaintiff.* — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. xxx. *Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice.* x x x (Italics supplied.)



WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*


  
**RAMON PAUL L. FERNANDO**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

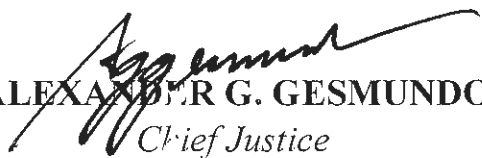
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*