



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PHILIPPINE NATIONAL  
BANK,

*Petitioner,*

G.R. No. 180203

Present:

LEONEN, J.,  
*Chairperson,*  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
LOPEZ, J.Y., JJ.

- versus -

ROMEO B. DARADAR,  
*Respondent.*

Promulgated:

June 28, 2021

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DECISION

**HERNANDO, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> challenging the June 8, 2007 Decision<sup>2</sup> and September 19, 2007 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 71029 which reinstated the complaint filed in Civil Case No. 25981, an action for nullity of notarial rescission of a Deed of Sale, and directed the court *a quo* to conduct further proceedings.

**Antecedent Facts:**

Petitioner Philippine National Bank (PNB) and respondent Romeo B. Daradar (Daradar) entered into a *Deed of Promise to Sell* (Deed) covering two

<sup>1</sup> *Rollo*, pp. 10-27.

<sup>2</sup> *Id.* at 31-38; penned by Associate Justice Isaias P. Dicedican and concurred in by Associate Justices Antonio L. Villamor and Stephen C. Cruz.

<sup>3</sup> *Id.* at 29.

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parcels of land and improvements therein that were owned by PNB. Due to Daradar's failure to pay the yearly amortizations and interest due under the Deed, PNB rescinded the Deed through a *Notarial Notice of Rescission* dated November 27, 1989.<sup>4</sup>

Thus, Daradar filed an action for Annulment of Rescission, Accounting and Damages against PNB in the Regional Trial Court of Iloilo City (RTC) to annul the notarial rescission of the Deed. The case was docketed as **Civil Case No. 21375** and was raffled to **Branch 24** of said court.<sup>5</sup>

Due to respondent's failure to appear at the scheduled hearing, the RTC, in an April 5, 1995 Order (First Order) provisionally dismissed Civil Case No. 21375 without prejudice.<sup>6</sup> No motion for reconsideration was filed against the said Order.

After the lapse of four years, the RTC *motu proprio* issued its June 17, 1999 Order (Second Order) finally dismissing Civil Case No. 21375 on the ground of respondent's failure to prosecute the case under Section 3, Rule 17 of the Rules of Court, in view of respondent's failure to reinstate or revive the case despite the lapse of more than four years from the first dismissal.<sup>7</sup>

On October 18, 1999, Daradar filed another complaint for declaration of nullity of notarial rescission of the Deed with the RTC. The case was docketed as **Civil Case No. 25981** and raffled to **Branch 22**.<sup>8</sup> Summons was properly served upon PNB, who thereafter moved to dismiss the complaint on the ground that the second order of dismissal which dismissed Civil No. 21375 for failure of respondent to prosecute was an adjudication on the merits, thereby barring the subsequent filing of Civil Case No. 25981 on the ground of *res judicata*.<sup>9</sup>

### **Ruling of the Regional Trial Court:**

In its January 27, 2000 Order,<sup>10</sup> the RTC granted the motion to dismiss on the ground of *res judicata*. In so ruling, the RTC opined that the previous dismissal of Civil Case No. 21375 involving the same parties, the same cause of action and the same subject matter had the effect of adjudication upon the merits pursuant to Section 3, Rule 17 of the Rules of Civil Procedure, without prejudice to PNB's counterclaim in the same action.

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<sup>4</sup> Id. at 139, 157.

<sup>5</sup> Id. at 140.

<sup>6</sup> Id. at 164.

<sup>7</sup> Id. at 165.

<sup>8</sup> Records, pp. 1-5.

<sup>9</sup> Id. at 18-21.

<sup>10</sup> *Rollo*, pp. 166-167.

The *fallo* of the RTC's January 27, 2000 Order reads:

**WHEREFORE**, in view of the foregoing, the Complaint is hereby ordered **DISMISSED**. No pronouncement as to costs.

**IT IS SO ORDERED.**<sup>11</sup>

Respondent moved for reconsideration, but the RTC denied the same in its March 14, 2000 Order.<sup>12</sup>

Thus, respondent appealed the same before the CA on the ground that Civil Case No. 21375 was dismissed without prejudice and is thus not a bar to the filing of Civil Case No. 25981, and in the alternative, that petitioner's failure to prosecute its compulsory counterclaim for ejectment should also be barred.<sup>13</sup>

#### **Ruling of the Court of Appeals:**

The appellate court granted Daradar's Petition in its now assailed June 8, 2007 Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the appeal filed in this case, **SETTING ASIDE** the order dated January 27, 2000 issued by the RTC, Branch 22 in Iloilo City in Civil Case No. 25981 and **REINSTATING** the complaint filed in said case.

Accordingly, we hereby direct the court a quo to conduct further proper proceedings in Civil Case No. 25981.

SO ORDERED.<sup>14</sup>

In so ruling, the appellate court opined that the First Order dismissing Civil Case No. 21375 operated to divest the trial court of jurisdiction over the case; thus, the Second Order issued by the trial court four years later, which purportedly dismissed Civil Case No. 21375 with prejudice, is null and void for lack of jurisdiction.

Hence, the CA ruled that the Second Order did not bind respondent or produce the effect of an adjudication upon the merits of the case that would bar Daradar from reviving the same action by filing another complaint.<sup>15</sup>

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<sup>11</sup> Id. at 167.

<sup>12</sup> Id. at 34.

<sup>13</sup> CA *rollo*, pp. 26-30.

<sup>14</sup> Id. at 37-38.

<sup>15</sup> Id.

PNB moved for reconsideration, which was denied by the appellate court in its September 19, 2007 Resolution.<sup>16</sup>

Hence, this Petition.

### Issue

PNB contends that the court *a quo* erred in reinstating the complaint in Civil Case No. 25981, as the First Order provisionally dismissing Civil Case No. 21375 without prejudice was merely interlocutory and not a final order that terminated the proceedings, and the Second Order finally dismissing the case for respondent's failure to prosecute superseded the First Order and had the effect of an adjudication on the merits which barred Daradar from reviving the case.

PNB also asserts that the trial court erred in declaring that the Second Order was null and void since the same had already become final and immutable. Thus, petitioner prays for the reinstatement of the trial court's January 27, 2000 Order in Civil Case No. 25981, which granted PNB's motion to dismiss on the ground of *res judicata*.<sup>17</sup>

On the other hand, Daradar maintains that the First Order did not bar the filing of Civil Case No. 25981 as the First Order was a dismissal without prejudice, and the Second Order is null and void for want of jurisdiction.<sup>18</sup>

Thus, the sole issue for resolution is whether the appellate court erred in reinstating the complaint in Civil Case No. 21375 on the ground that the same is not barred by *res judicata*.

### Our Ruling

The Petition is granted.

**The First Order provisionally dismissing Civil Case No. 21375 is void for lack of legal basis.**

The Court of Appeals erred when it reinstated the complaint in Civil Case No. 25981 on the basis of the First Order, which provisionally dismissed Civil Case No. 21375 without prejudice and which purportedly operated to divest the trial court over its jurisdiction on the case.

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<sup>16</sup> *Rollo*, p. 29.

<sup>17</sup> *Id.* at 18-24.

<sup>18</sup> *Id.* at 60-68.

In the first place, the concept of a provisional dismissal in our jurisdiction contemplates the temporary dismissal of a *criminal* action that may be revived within the period set by the Rules of Court upon compliance with certain requisites.<sup>19</sup> There is nothing in the Rules of Civil Procedure, as amended, which provides for a provisional dismissal of a civil case.

Moreover, a judgment must be *definitive*; the decision itself must purport to decide finally the rights of the parties upon the issue submitted by specifically denying or granting the remedy sought by the action.<sup>20</sup> It is significant to note that in *Cu Unjieng E. Hijos v. Mabalacat Sugar Company*,<sup>21</sup> (*Cu Unjieng*) the Court held that when a definitive judgment cannot be rendered since the judgment is subject to a contingency, the judgment contains no disposition at all and is null and void. Similarly, we find that the provisional dismissal before Us fails to meet this standard of definitiveness discussed in *Cu Unjieng* and hence should not be sanctioned.

Guided by the foregoing, the Court is convinced that the First Order which provisionally dismissed Civil Case No. 21375 is void and without legal effect for lack of basis.

A void judgment or order has no legal and binding effect for any purpose. In contemplation of law, it is non-existent and may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored. All acts performed pursuant to it and all claims emanating from it have no legal effect. In this sense, a void order can never attain finality.<sup>22</sup> Being void, the issuance of the First Order never became final nor operated to divest the trial court of jurisdiction over the complaint.

Nevertheless, while the present Rules of Civil Procedure do not provide for provisional dismissals, this Court in a 1940 case equated a provisional order with an interlocutory order that was subject to vacation or amendment at any time before final judgment is rendered or has become executory.<sup>23</sup> It is settled that an order is considered interlocutory when it does not completely dispose of the case because it leaves something to be done by the trial court with respect to the merits, and “refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy.”<sup>24</sup> An interlocutory order is always under the control of

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<sup>19</sup> Section 8, Rule 117 of the Rules of Court; Sections 10 and 14, A.M. 12-11-2-SC, known as the Guidelines for Decongesting Holding Jails by Enforcing the Rights of the Accused to Bail and Speedy Trial.

<sup>20</sup> *Heirs of Kishinchand Hiranand Daldas v. Court of Appeals*, 412 Phil. 491,501 (2001), citing *Cu Unjieng e Hijos v. Mabalacat Sugar Company*, 70 Phil. 380, 383-384 (1940).

<sup>21</sup> *Supra*.

<sup>22</sup> *Land Bank of the Philippines v. Spouses Orilla*, 703 Phil. 565, 574-575 (2013).

<sup>23</sup> *Cu Unjieng e Hijos v. Mabalacat Sugar Company*, *supra* note 20, at 384-385.

<sup>24</sup> *Hanlon y Santos v. Samontina y Ceballos*, G.R. No. 237236, April 18, 2018.

the court until the final decision of the suit, and may be modified or rescinded upon sufficient grounds shown at any time before final judgment.<sup>25</sup>

Here, the First Order which provisionally dismissed the case is interlocutory because it did not completely dispose of the case and did not decide with finality the rights and obligations of the parties. Hence, even assuming *arguendo* that provisional dismissals of civil cases such as the First Order could be sanctioned, the First Order should be considered interlocutory and could not have operated to divest the trial court of jurisdiction. The trial court accordingly acted within its jurisdiction in issuing its Second Order and in *motu proprio* dismissing the case for respondent's failure to prosecute under Rule 17, Section 3 of the Rules of Civil Procedure.

**The Second Order already attained finality and is beyond the courts' power to amend or revoke.**

In its Second Order, the trial court dismissed Civil Case No. 21375 for respondent's failure to prosecute his action. Dismissal of an action due to a plaintiff's failure to prosecute is governed by Rule 17, Section 3 of the Rules of Court, which provides:

**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.** (Emphasis supplied)

The appellate court opined that the circumstances did not amount to a failure to prosecute by respondent as contemplated under Rule 17, Section 3 since the said rule presupposes that an action had been pending in the court's docket for quite some time and that the plaintiff unreasonably failed to have it set for hearing or pre-trial.<sup>26</sup> We disagree.

To begin with, the courts can no longer delve into the legality of the Second Order absent any indication that the same is void. No other procedural law principle is more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no

<sup>25</sup> *Commissioner of Internal Revenue v. Omya Chemical Merchants, Inc.*, G.R. No. 237079, November 7, 2018, citing *Matute v. Court of Appeals*, 136 Phil. 157, 203-204 (1969).

<sup>26</sup> *Rollo*, p. 37.

prejudice to any party, or where the judgment itself is void. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite time fixed by law. After all, the very object for which courts were constituted was to put an end to controversies.<sup>27</sup>

Here, respondent did not move for the reconsideration of the Second Order nor appeal the same, thus allowing it to become final and executory. On this score, the Second Order is already beyond the power of the courts to amend or revoke.

In any event, the question of whether a case should be dismissed for failure to prosecute is mainly addressed to the sound discretion of the trial court. The true test for the exercise of such power is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude.<sup>28</sup> There must be unwillingness on the part of the plaintiff to prosecute.<sup>29</sup> As to what constitutes an “unreasonable length of time,” this Court has ruled that it depends on the circumstances of each particular case and that the sound discretion of the court in the determination of the said question will not be disturbed, in the absence of patent abuse.

In *Ko v. Philippine National Bank*,<sup>30</sup> the Court affirmed the trial court’s dismissal of the complaint therein for failure to prosecute and held that the span of three years from the filing of the complaint to the order of dismissal shows that the petitioners therein had no interest in seeing their case terminated at the earliest possible time, or that the case was unmeritorious from inception.

Moreover, in *Roasters Philippines, Inc. v. Gaviola*,<sup>31</sup> the Court found that the actions exhibited by respondents demonstrate their lack of interest in prosecuting the case after considering that: (1) almost two years had lapsed from finality of the CA Decision but respondents did not file any pleading to revive the case; (2) respondents only acted at the behest of petitioner; and (3) respondents and counsel failed to attend the scheduled pre-trial, mediation and hearing for the initial presentation of their evidence-in-chief.

Similarly, herein respondent’s actions clearly demonstrate his lack of interest and due diligence to prosecute the case. He failed to act on the First Order and allowed the trial court to issue its Second Order four years later. Respondent’s lack of interest and due diligence to prosecute his case is further highlighted by his failure to assail the Second Order and the lapse of another four years before he filed another complaint based on the same cause of action. All told, we find no compelling reason to disturb the trial court’s dismissal of respondent’s complaint under Rule 17, Section 3.

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<sup>27</sup> *Navarro v. Metropolitan Bank & Trust Company*, 612 Phil. 462, 471 (2009).

<sup>28</sup> *Allied Banking Corp. v. Spouses Madriaga*, 797 Phil. 182, 191 (2016).

<sup>29</sup> *Roasters Philippines, Inc. v. Gaviola*, 768 Phil. 309, 318 (2015).

<sup>30</sup> 515 Phil. 276, 282-283 (2006).

<sup>31</sup> *Supra* at 319-320.

**The Second Order bars the revival of the case through a new complaint. Thus, the trial court did not err in granting PNB's motion to dismiss on the ground of *res judicata*.**

Under the principle of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies; and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action. For a claim of *res judicata* to prosper, the following requisites must concur: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter, and causes of action.<sup>32</sup>

All elements of *res judicata* are present in the instant case. Anent the first and second elements, the Second Order is a final judgment which has already attained finality and was rendered by a court of competent jurisdiction. It is likewise undisputed that there is an identity of parties, subject matter, and causes of action between Civil Case Nos. 21375 and 25981.

Finally, the third element of *res judicata* is present as the Second Order dismissing Civil Case No. 21375 operated as a judgment on the merits. Here, the Second Order did not state that the dismissal of the complaint is without prejudice. A dismissal based on any of the grounds in Section 3, Rule 17 operates as an adjudication on the merits. Unless otherwise qualified by the court, a dismissal under said rule is considered with prejudice, which bars the refile of the case.<sup>33</sup>

Guided by the foregoing, respondent was barred from reviving his action by filing a new complaint, which he did in Civil Case No. 25981. In fine, the trial court in Civil Case No. 25981 correctly granted petitioner's motion to dismiss on the ground of *res judicata*.

**WHEREFORE**, the Petition is **GRANTED**. The June 8, 2007 Decision and September 19, 2007 Resolution of the Court of Appeals are hereby **REVERSED and SET ASIDE**. The January 27, 2000 Order of the Regional Trial Court of Iloilo City, Branch 22 in Civil Case No. 25981 is hereby **REINSTATED**.


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<sup>32</sup> *Land Bank of the Philippines v. Del Moral, Inc.*, G.R. No. 187307, October 14, 2020.


<sup>33</sup> *Martinez v. Buen*, 808 Phil. 424, 435 (2017).




**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

WE CONCUR:

  
**MARVIC M. V. F. LEONEN**  
Associate Justice  
Chairperson


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

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

**ATTESTATION**

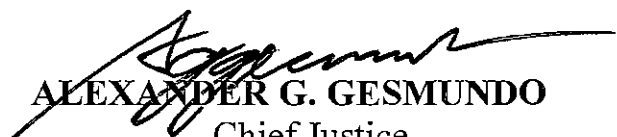
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M. V. F. LEONEN**  
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