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**SUPREME COURT  
SECOND DIVISION**

**EMMA GALLARDO-CORRO,  
MARCELINA GALLARDO-ARCENAS,  
FELICISIMO GALLARDO, TERESITA C.  
GALLARDO, JOAQUIN G.  
BOCANEGRA, SAGRARIO  
BOCANEGRA TINIO, JOSE ANTONIO  
BOCANEGRA, JAIME JESUS  
BOCANEGRA, THERESA M.  
GALLARDO, MARWILL M.  
GALLARDO, MELVIN M. GALLARDO,  
ALICE GALLARDO-CALALO, MILLAND  
M. GALLARDO, MICHAEL M.  
GALLARDO and JOHNNY M.  
GALLARDO,**

*Petitioners,*

*-versus-*

**G.R. No. 136228  
January 30, 2001**

**EFREN DON L. GALLARDO,  
DINAHBELLE EMILIA G. VALERO,  
JONATHAN VALERO, EVANGELINE  
FIDELA G. BORJA, GIL BORJA, AGNES  
AVITA G. FABUNAN, WILLIE  
FABUNAN, EDGAR DARIO L.  
GALLARDO, SUZANNE L. GALLARDO,  
JOSIE MARIE G. PO and ANTONIO PO,  
*Respondents.***

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## DECISION

**BELLOSILLO, J.:**

At the core of controversy in this Petition under Rule 45 of the Rules of Court is the applicability of the doctrine of *res judicata*, which does not permit a party to litigate the same issue more than once, such that when a right or fact has been judicially determined, the judgment of the court, so long as it remains undisturbed, is conclusive upon the parties and those in privity with them in law or estate.

This case is an offshoot of a conflict among the children of the spouses Dr. Marcelino Gallardo, Sr. and Patrocinia Vda. de Gallardo. Sometime in 1943 the patriarch of the Gallardo clan, Dr. Marcelino Gallardo, Sr., died leaving behind several properties in Dumaguete City, particularly referring to Lots Nos. 2, 1015, 1026, 1028, 6136, 1014 and 4347. He was survived by his wife Patrocinia Vda. de Gallardo and children Caridad Gallardo-Bocanegra, Jose Gallardo, Marcelina Gallardo-Arenas, Emma Gallardo-Corro, Marcelino Gallardo, Jr., Felicisimo Gallardo and Teresita Gallardo.

In 1977 Patrocinia Vda. de Gallardo together with her children Jose Gallardo, Marcelina Gallardo-Arcenas, Emma Gallardo-Corro, Felicisimo Gallardo, Teresita Gallardo and grandchildren Joaquin Gallardo Bocanegra III and Sagrario Gallardo Bocanegra<sup>[1]</sup> filed a Complaint for Declaration of Inexistence of Certain Documents, Receivership, Partition of Real Estate and Damages, docketed as Civil Case No. 6704, before the then Court of First Instance of Dumaguete City against spouses Marcelino Gallardo, Jr. and Ildefonsa L. Gallardo, and the Development Bank of the Philippines (DBP).<sup>[2]</sup> Plaintiffs alleged in their complaint that Marcelino Gallardo, Jr. misrepresented to them that he was applying for a housing loan with DBP and he needed the properties left by Dr. Marcelino Gallardo, Sr., as collaterals; that by means of fraud and trickery Marcelino, Jr., induced them into signing several simulated documents denominated "Assignment of Shares of Inheritance," "Deed of Quit Claims of Undivided Share," and "Extrajudicial Settlement of Estate and Deed

of Absolute Sale,” all of which purported to convey to Marcelino, Jr., their rights and interests over the properties therein described; that Marcelino, Jr., eventually transferred the title of the properties to DBP pursuant to the requirements of the bank that all collaterals for housing loans should be in the name of the bank, to be reconveyed to the owners as soon as the loans were fully paid; that DBP later reconveyed the title to the properties to Marcelino, Jr., after the latter paid in full the amount of his indebtedness to the bank; and, that Marcelino, Jr., and his wife Ildefonsa were now claiming sole ownership of the disputed properties to the exclusion of the other heirs of Dr. Marcelino Gallardo, Sr.

Defendants seasonably filed their Answer and the pre-trial conference was set on 26 September 1979. Before that date, however, Patrocinia Vda. de Gallardo fell ill and died soon thereafter at the San Juan de Dios Hospital, Pasay City.

On 25 September 1979 plaintiffs through a telegram informed the trial court that they could not attend the scheduled pre-trial conference in view of their matriarch’s serious condition then. Apparently to avoid being declared non-suited by the trial court, plaintiffs manifested their desire to settle the case amicably.

The pre-trial in Civil Case No. 6704 was reset to 21 November 1979 but was again postponed by the trial court through its Order<sup>[3]</sup> of even date to give Atty. Franklin Esmeña, counsel for the deceased Patrocinia Vda. de Gallardo, sixty (60) days within which to file his amended complaint “in view of the death of the mother of the parties.”

On 6 October 1980 the case was dismissed without prejudice, perhaps by reason of the parties’ efforts to settle amicably<sup>[4]</sup> they being members of the same family. The defendants moved for reconsideration but manifested that they would agree to a dismissal if it was with prejudice.

The trial court deferred its resolution of defendants’ motion for reconsideration and directed plaintiffs’ counsel, in the meantime, to comply with the 21 November 1979 Order concerning the amendment of the Complaint.<sup>[5]</sup> Still, plaintiffs’ counsel failed to comply with the

order, prompting the trial court to dismiss the case, this time with prejudice, through its Order of 27 October 1982.<sup>[6]</sup>

On 19 April 1983 the trial court denied plaintiffs' Motion for Reconsideration.<sup>[7]</sup> No appeal or certiorari was taken therefrom by any of the parties.

On 3 March 1997 or fourteen (14) years later, a Complaint for Partition of Inherited Properties with Damages was filed before the Regional Trial Court of Dumaguete City, docketed as Civil Case No. 11861. The same members of the Gallardo family litigated the case, except that Jose C. Gallardo, the original plaintiff in Civil Case No. 6704 already died and was replaced as party-plaintiff by his spouse Theresa Gallardo, and children Marwill, Melvin, Alice, Milland, Michael and Johnny.

On the other hand, Marcelino, Jr., the original defendant in Civil Case No. 6704, also died and was survived and subsequently replaced as party-defendant by his children Efren Don, Dinahbelle Emilia, Evangeline Fidela, Agnes Avita, Edgar David and Josie Marie. The same contested parcels of land in Civil Case No. 6704 with the addition of Lot No. 4347 were involved in Civil Case No. 11861.

The defendants moved to dismiss the complaint on the ground of *res judicata*, arguing that the issues raised by the plaintiffs in their complaint have already been resolved with finality in Civil Case No. 6704. On 12 May 1997 plaintiffs filed their opposition thereto.

On 11 July 1997 the trial court in due course denied defendants' motion to dismiss and gave them a fresh period of fifteen (15) days within which to file an answer thus<sup>[8]</sup> —

It was not necessary for the lawyer of the plaintiffs [in Civil Case No. 6704] to amend the complaint, evidently to implead the heirs of the deceased plaintiff Patrocinia Vda. de Gallardo. Neither an amendment of the complaint, nor an appointment of a legal representative, was necessary in said case because the heirs of the deceased plaintiff who are, in fact, her children and grandchildren were already made original parties-plaintiffs in the complaint. As original parties-plaintiffs, there was no doubt

that said heirs voluntarily submitted themselves to the jurisdiction of the court. Without digressing from the frame of the foregoing disquisition, the orders of November 21, 1979 and November 18, 1980 directing the amendment of the complaint in Civil Case No. 6704 were all void. When, on October 27, 1982, the case was dismissed with prejudice and its reconsideration denied in the order of April 19, 1983, the same orders were, likewise, void for they were results of previous void orders. This Court is aware of jurisprudence prohibiting interference with orders or judgments of courts with coordinate or concurrent jurisdiction. However, as viewed above, the orders of dismissal issued in Civil Case No. 6704 violated due process and were, therefore, void, in view of which it is the inherent power of every court to “amend and control its processes and orders so as to make them conformable to law and justice” (Rule 135 (g), Rules of Court). For being void, the Orders of November 21, 1979, November 18, 1980, October 27, 1982 and April 19, 1983, did not attain finality and, therefore, produced no effect of res adjudicata, in like manner that said orders could not be justified, for being void, under Sec. 3, Rule 17, Rules of Court.

Defendants’ motion for reconsideration having been denied by the trial court, they elevated the case on a petition for certiorari and prohibition to the Court of Appeals. On 4 September 1998 the appellate court rendered a decision annulling the order of the trial court and declaring the proceedings in Civil Case No. 11861 void<sup>[9]</sup> —

It is regarded as an elementary principle of high importance in the administration of justice that the judgment of a court of competent jurisdiction may not be opened, modified or vacated by any court of concurrent jurisdiction at any rate, the counsel for the plaintiffs-respondents should be faulted for all these legal entanglements. In the first place, he initiated the move to amend the complaint in lieu of the death of one of the plaintiffs. Time passed and he never filed any amended complaint. Thus, the court was forced to issue an order to effect the amendment. But still, he did not comply despite the order . . . rightly so, the court ordered Civil Case No. 6704 dismissed with prejudice. Surprisingly, he did not file a motion for reconsideration or

appeal against this order. Instead, he allowed almost fourteen (14) years to pass and filed an altogether different case, with practically the same parties and the same subject matter and same cause of action. As evidenced by the records of this case, this second case is effectively barred by the former judgment (*res judicata*) rendered in Civil Case No. 6704. In addition, the filing of the second case with a false certification coupled with the inclusion of Lot 4347 which was admitted to have been erroneously included constitutes deliberate forum-shopping, another ground which warrants the dismissal of Civil Case No. 11861.

The resolution of this case hinges on the sole issue of whether Civil Case No. 11861 is now barred by Civil Case No. 6704 by the operation of the principle of *res judicata*. The focal point of petitioners' thesis is that the order of the trial court in Civil Case No. 6704 to amend the complaint is void and imposes upon the plaintiffs therein no obligation to comply therewith; that since the dismissal of the case was grounded upon a void order, the dismissal itself was also void; and that, consequently, the dismissal of Civil Case No. 6704 may not be asserted to bar the subsequent prosecution of the same or identical claim in Civil Case No. 11861, citing *Caseñas vs. Rosales*.<sup>[10]</sup>

We find no merit in the petition. The second case, Civil Case No. 11861, suffers from serious procedural infirmities that render null and void all proceedings had thereon.

The doctrine of *res judicata* is a rule which pervades every well-regulated system of jurisprudence and is founded upon two (2) grounds embodied in various maxims of the common law, namely, (a) Interest *reipublicae ut sit finis litium* (public policy and necessity which make it the interest of the State that there should be an end to litigation) and, (b) *Nemo debet bis vexari et eadem causa* (the hardship on the individual that he should be vexed twice for the same cause).<sup>[11]</sup> For the doctrine to apply, the following requisites must concur: (a) there must be a final judgment or order; (b) the Court rendering the same must have jurisdiction over the subject matter and the parties; (c) the judgment or order must be on the merits; and, (d) there must be between the two (2) cases identity of parties, identity of subject matter and identity of causes of action.<sup>[12]</sup>

All these requisites obtain in the present case. First, the order of the trial court dismissing Civil Case No. 6704 for failure of the plaintiffs therein to amend the complaint despite reasonable time given them by the trial court became final when the dismissal was not seasonably appealed. Second, cases involving the declaration of inexistence of certain documents, receivership, partition of real estates, and damages are within the jurisdiction of the Regional Trial Court of Negros Oriental, as the properties involved are located in Dumaguete City. The Court likewise obtained jurisdiction over the parties, considering that the defendants filed their answer and other pleadings prior to the dismissal of Civil Case No. 6704. Third, the dismissal of Civil Case No. 6704 was with prejudice, which came about after petitioners continuously disregarded the repeated orders of the trial court to amend their complaint. A dismissal with prejudice is an adjudication on the merits under Sec. 3, Rule 17, of the Rules of Court (now Sec. 3, Rule 17 of the 1997 Rules of Civil Procedure) —

SECTION 3. Failure to prosecute. — If plaintiff fails to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication on the merits, unless otherwise provided by the court.

Fourth, the plaintiffs and defendants in Civil Case No. 6704 and Civil Case No. 11861 are substantially identical, although plaintiffs Patrocina Vda. de Gallardo and Jose Ed Gallardo, and defendant Marcelino Gallardo, Jr., were no longer made parties in Civil Case No. 11861 in view of their demise, but were replaced nonetheless by their children. The rule is, although new parties are joined in the second action, *res judicata* still applies if the party against whom the judgment is offered in evidence was a party to the first action; otherwise, a case can always be renewed by the mere expedient of joining new parties in the new suit. Fifth, the disputed parcels of land in Civil Case No. 6704, i.e., Lots Nos. 2, 1014, 1015, 1026, 1028 and 6136, were the same properties involved in Civil Case No. 11861, except with respect to Lot No. 4347 which was included in the complaint in Civil Case No. 11861. Sixth, the reliefs sought in both cases are likewise identical. Thus, in Civil Case No. 6704, plaintiffs

prayed that (a) a receiver be appointed; (b) the defendants be required to render an accounting of all the rentals received for the lease of the properties; (c) the litigated properties be partitioned among the parties; and, (d) defendants be ordered to pay plaintiffs moral and exemplary damages, attorney's fees, expenses of the litigation and costs of suit. On the other hand, plaintiffs in Civil Case No. 11861 sought the following reliefs: (a) that a suitable person, such as the Branch Clerk of Court, be appointed as a receiver of the properties pending litigation; (b) that the defendants be ordered to partition the contested properties; and, (c) that defendants be ordered to pay actual, moral and exemplary damages, attorney's fees, expenses of the litigation and costs of suit.

With this result, petitioners cannot thus resuscitate and restore to life Civil Case No. 6704 to be litigated anew as Civil Case No. 11861 since it is already barred under the principle of *res judicata*.

Petitioners' reliance on the ruling in *Casañas* is misplaced, as it is inapplicable in the case at bar. In that case, the plaintiffs filed a complaint for specific performance and enforcement of their right under a certain deed of sale. During the pendency of the case, however, one of the plaintiffs died. The trial court *motu proprio* directed the surviving plaintiff to amend the complaint to effect the necessary substitution of parties. When the plaintiff failed to comply with the order, the lower court dismissed the case. No appeal was taken by the plaintiff and the order, in due time, became final. Three (3) years later, the same plaintiff filed a similar complaint with the same trial court, but was dismissed on the ground of *res judicata*. In reversing the trial court's order of dismissal of the second case and holding that there was no *res judicata*, this Court held —

An order to amend the complaint, before the proper substitution of parties is void and imposes upon the plaintiff no duty to comply therewith to the end that an order dismissing the said complaint, for such non-compliance, would similarly be void grounded as it was upon a void order, the dismissal was itself void. Consequently, as the dismissal of Civil Case No. 261 was void, it clearly may not be asserted to bar the subsequent prosecution of the same or identical claim.

However, much unlike in Caseñas, the judge in Civil Case No. 6704 did not motu proprio direct the plaintiffs therein to amend their complaint. It was Atty. Esmeña, plaintiffs' counsel, who sought to amend the complaint and induced the trial court to grant the same. Stated otherwise, the trial court merely dignified Atty. Esmeña's request which found its way into the Order of 21 November 1979. Certainly, plaintiffs could not just disregard then that order at their whim and thereafter assail its validity should they obtain an unfavorable result therefrom.

Moreover, it is significant to note that what was involved in Caseñas was the nullity of the order of dismissal predicated upon the failure of the plaintiff to effect the substitution of parties. In the instant case, there was no showing that the dismissal of Civil Case No. 6704 was for failure of the plaintiffs' to effect the substitution of parties. Thus, in its Order of 27 October 1982, the trial court merely stated in part —

The court directed plaintiffs' counsel to comply with the order of this court dated November 21, 1979 within a period of Sixty (60) days up to now however, the plaintiffs failed to comply with said order.

On the other hand, its Order dated 21 November 1979 referred to above simply read —

As prayed for by Atty. Franklin Esmeña, he is given a period of sixty (60) days within which to file his amended complaint in view of the death of the mother of the parties.

In fact, it is not pristinely clear from the records why Atty. Esmeña proposed to amend the complaint in the first place. Was the intention of the proposed amendment to implead the heirs of Patrocinia Vda. de Gallardo? If it was, then that would not be necessary as the heirs of the deceased had already been impleaded in their individual capacities. Or was it for the purpose of including in the partition case the properties left by Patrocinia? To be sure, we can only surmise the reasons of Atty. Esmeña in requesting for the amendment of the complaint. But to conclude with finality that the order to amend was precisely to implead the heirs of Patrocinia Vda. de Gallardo, as what the

lower court did in this case, is purely speculative and unsupported by the evidence. The proper remedy that should have been pursued by petitioners in Civil Case No. 6704 was to elevate the order of dismissal on appeal or certiorari. This they did not do. They decided to holler “foul” and assail the legality of the dismissal only after almost fourteen (14) long years. It is thus too late now to raise those objections after the trial court’s order of dismissal had long become final and executory.

Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.<sup>[13]</sup> Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law;<sup>[14]</sup> otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.

Finally, another circumstance that militates heavily against the instant petition is the fact that the RTC-Br. 38 has absolutely no authority in Civil Case No. 11861 to declare void the order of dismissal of RTC-Br. 40 in Civil Case No. 6704. The rule is, no court has the authority to nullify the judgments or processes of another court of equal rank and category, having the equal power to grant the reliefs sought. Such power devolves exclusively upon the proper appellate court. The *raison d’etre* for the rule is to avoid conflict of power between different courts of equal or coordinate jurisdiction which would surely lead to confusion and seriously hinder the proper administration of justice.<sup>[15]</sup>

In fine, the confluence of the foregoing considerations impels us to withhold our imprimatur to the continuation of Civil Case No. 11861, in absolute fidelity to our trust. It is time indeed to put an end to this litigation among the members of the same family.

**WHEREFORE**, the petition is **DENIED**. The Decision of the Court of Appeals dated 4 September 1998 declaring void all the proceedings in Civil Case No. 11861 and dismissing the case instead, is **AFFIRMED**.

**SO ORDERED.**

**Mendoza, Quisumbing, Buena and De Leon, Jr., JJ., concur.**

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- [1] Caridad Gallardo-Bocanegra, who died prior to the controversy, was represented by her children.
  - [2] Raffled to RTC-Br. 40, Dumaguete City, after the reorganization.
  - [3] Penned by Judge Francisco H. Ledesma.
  - [4] 6 October 1980 Order by Judge Eleuterio E. Chiu.
  - [5] 18 November 1980 Order by Judge Eleuterio E. Chiu.
  - [6] Penned by Judge Eleuterio E. Chiu. Annex "B."
  - [7] Penned by Judge Luis R. Ruiz, Jr.
  - [8] Penned by Judge Alfonso P. Briones, RTC-Br. 38, Dumaguete City.
  - [9] Decision penned by Associate Justice Romeo A. Brawner, concurred in by Associate Justices Arturo B. Buena and Consuelo Ynares-Santiago (the last two (2) now Justices of the Supreme Court).
  - [10] No. L-18707, 28 February 1967, 19 SCRA 462.
  - [11] See *Linzag vs. Court of Appeals*, G.R. No. 122181, 26 June 1998, 291 SCRA 304.
  - [12] *Casil vs. Court of Appeals*, G.R. No. 121534, 28 January 1998, 285 SCRA 264.
  - [13] *Johnson & Johnson (Phils.), Inc. vs. Court of Appeals, et al.*, G.R. No. 102692, 23 September 1996, 262 SCRA 298.
  - [14] *Garbo, et al. vs. Court of Appeals*, G.R. No. 100474, 10 September 1993, 226 SCRA 250.
  - [15] *Arabay, Inc. vs. Salvador, et al.*, No. L-31077, 17 March 1978, 82 SCRA 138.