SUPREME COURT
SECOND DIVISION

BENJAMIN VALLANGCA, RODOLFO VALLANGCA and ALFREDO VALLANGCA,
***Petitioners*,**

-versus-

G.R. No. L-55336
May 4, 1989

HON. COURT OF APPEALS and NAZARIO RABANES,
***Respondents*.**
x----------x

D E C I S I O N

PADILLA, *J.*:

Involved in this Appeal by *Certiorari* from a Decision[**] of the Court of Appeals, is a controversy over possession of a parcel of land, the proper resolution of which calls for a determination of the ownership thereof.

The more than eleven (11) hectares of agricultural land in dispute is located in Buguey, Cagayan, originally registered on 28 December 1936 in the name of "Heirs of Esteban Billena", and covered by Original Certificate of Title (OCT) No. 1648. In 1940, said certificate of title was cancelled and, in lieu thereof, Transfer Certificate of Title

(TCT) No. 1005 was issued in the name of Maximiniana Crisostomo and Ana Billena, wife and daughter, respectively of the deceased Esteban Billena. Each of the then new owners owned an undivided one-half (1/2) portion of, or interest in the land.

Maximiniana Crisostomo died during the Japanese occupation, leaving behind her only child Ana Billena, then married to Fortunato Vallangca with whom she had three (3) children, namely, Benjamin, Rodolfo and Alfredo, all surnamed Vallangca who are the petitioners herein.

According to the petition at bar, the following events led to the present controversy:

> Upon Fortunato Vallangca's death in 1944, his widow Ana Billena, together with her eldest son Benjamin, went to Centro, Buguey, Cagayan and mortgaged the land in dispute to her cousin Nazario Rabanes (private respondent herein) for Eight Hundred Pesos (P800.00) in Japanese war notes, to cover the burial expenses of her deceased husband Fortunato Vallangca. There being no notary public in the place at the time, the agreement was not reduced to writing. At the time of said mortgage of the land to Nazario Rabanes, the land was already mortgaged to the Philippine National Bank (PNB), said first mortgage having been executed on 16 November 1940, and annotated on said TCT No. 1005.
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> After the Pacific war, Nazario Rabanes went to the residence of Ana Billena on 2 February 1946 and made the latter sign a document which Rabanes represented to Ana Billena as a mortgage contract written in the Ilocano dialect. Billena, being an illiterate and trusting in her cousin (Rabanes), affixed her signature on the document in the space indicated to her.
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> In that same year, 1946, Billena was informed by a cousin of Rabanes and another witness to the document that the alleged mortgage contract which she had signed was actually a deed of absolute sale to Rabanes of the land covered by TCT No. 1005. Ana Billena and her son Benjamin, thereupon, went to Rabanes' place for the purpose of redeeming the land and actually

tendered to him the loan amount of P800.00, this time, in genuine and legal Philippine currency. However, Rabanes told them that the land could no longer be redeemed and he drove them out of his house.

Since Ana Billena and her three (3) sons were in possession and actual cultivation of the land in question, Rabanes filed against them on 7 July 1971 an injunction suit before the Court of First Instance of Cagayan (Civil Case No. II-14).[1] At the pre-trial of said injunction suit, plaintiff Rabanes was advised by the trial court that injunction was not the proper cause of action, because injunction was merely an ancillary or provisional remedy to a main action. On 11 September 1972, another complaint entitled "Recovery of Possession" (Civil Case No. II-39)[2] was lodged by Rabanes before the same court against the same defendants in the action for injunction. Two (2) days later, or on 13 September 1972, the action for injunction was ordered dismissed by the trial court. The order of dismissal reads as follows:

> "O R D E R
>
> "As prayed for, the above-entitled case is hereby dismissed.
>
> "SO ORDERED."[3]

Respondent Nazario Rabanes (later substituted by his heirs) had another version of the events. According to him, Ana Billena knowingly signed a deed of absolute sale in his favor on 2 February 1946 as she had actually sold and not merely mortgaged the land in controversy for P800.00. Rabanes alleged that from then on, his tenants, Serapio dela Cruz and Fernando Gagmante, cultivated the land, until they were driven out by the three (3) sons of Ana Billena sometime in 1962.

After trial in the second action involving recovery of possession, the Court of First Instance of Cagayan, on 24 September 1976, rendered judgment declaring plaintiff Rabanes (herein respondent) as the

rightful owner of the land and ordered the defendants (herein petitioners) to vacate the same.[4] The trial court reasoned thus —

> "The only witness of the defendants to prove this vital point is their co-defendant Benjamin Vallangca who is a son of Ana Villena [sic]. He testified that he was only 14 years old when his mother signed the document under the alleged influence of the plaintiff. He also signed it as a witness. With that tender age, we doubt if he understood the meaning or difference between a mortgage and a sale of real property, so how can he say now that his mother was influenced into signing Exhibit 'F'. He did not say how Nazario Rabanes influenced his mother. He merely stated that Nazano Rabanes was his uncle, being the cousin of his mother. They were not living in the same house and there is no evidence that he was giving them money, food or in any manner supporting them so as to exercise influence over her. He did not state the nature of the influence exerted over his mother, whether it was moral, physical, spiritual or religious. So the court is at a loss to see how this undue influence over his mother existed.
>
> X x x
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> "The testimonies of Serapio de la Cruz and Fernando Dagmante are stronger and more convincing than the lone testimony of Benjamin Vallangca."

The decretal part of the judgment reads —

> "WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants and ordering the defendants to leave the land in question, referring to the parcel of land described in paragraph 2 of the complaint and declaring herein the plaintiff as the rightful owner of said parcel of land; 2) Ordering the defendants to pay the plaintiff the amount of P640.00 corresponding to the value of the owner's share of the land for four (4) years and to pay the costs."

From the above judgment, the defendants appealed to the Court of Appeals[5] where the appeal was docketed as CA-G.R. No. 61133-R. On

18 September 1980, the appellate court rendered judgment, affirming in toto the trial court's judgment, after finding no reversible error therein.

Hence this petition.[6]

Petitioners, invoking the rule on "*res judicata*," contend that the dismissal of the "Injunction" case filed on 7 July 1971 by Rabanes against them, barred the filing by Rabanes against them of the second action for "Recovery of Possession." Petitioners maintain that the first suit, although styled as for "Injunction", had for its actual primary purpose the recovery of the land in dispute and, therefore, after its dismissal, no other action for recovery of possession of the same land and against the same parties (herein petitioners) could be pursued by the same complainant (Rabanes). In this connection, petitioners would stress the fact that the dismissal of the suit for injunction was not made without prejudice.

It is also petitioners' contention that the respondent's complaint for injunction had already prescribed, before its filing on 7 July 1971, under Section 40 of Act 190, which provides that:

> "Sec. 40. Period of Prescription as to real estate — An action for recovery of title to, or possession of real property, or an interest therein, can only be brought within 10 years after the cause of such action accrues." (Emphasis supplied).

According to petitioners, from the date private respondent claims to have bought the land, that is, 2 February 1946, more than ten (10) years had elapsed when Rabanes filed on 7 July 1971 his action for injunction which, in effect, was an action for recovery of possession of the disputed land. Hence, the action was barred by prescription.

It is further urged by petitioners that it was not likely that their mother Ana Billena would consent to sell the land to Rabanes for only Eight Hundred (P800.00) Pesos, for the entire eleven (11) hectares, forty one (41) areas and thirty three (33) centares comprising its total area, considering that the land was then assessed already at Two Thousand Six Hundred Twenty (P2,620.00) Pesos as indicated in Tax Declaration No. 7957.[7] And, even assuming arguendo that there was

indeed a sale, petitioners postulate that since the land is registered in the name of both Maximiniana Crisostomo and Ana Billena, the latter could not outrightly dispose of the undivided one-half share of the former (Crisostomo), without first accomplishing an affidavit of adjudication of Crisostomo's interest or share, and registering said affidavit of adjudication.

During this appeal before the Court, Nazario Rabanes died in 1982. An order for his substitution by his legal heirs was issued.

The heirs of private respondent Rabanes in turn aver, among others, that the Court of Appeals was correct in finding petitioners' reliance on *res judicata* as untenable. We sustain the Rabanes heirs on this point.

In an impressive line of cases,[8] the requisites for res judicata have long been established. They are: (a) that there be an earlier final judgment; (b) that the court which rendered it had jurisdiction over the subject matter and the parties; (c) that it is a judgment on the merits; and (d) that there is between the first and the second actions, identity of parties, subject matter and causes of action.

When the issue of *res judicata* is raised, at least two (2) actions before a competent court are necessarily involved; one, still pending and the other, already decided with finality. It is the final judgment that ends the controversy and precludes a re-litigation of the same causes of action.

Coming to the case at bar, it is to be noted that the first action for injunction was filed on 7 July 1971, while the second action for recovery of possession was filed on 11 September 1972. The order of dismissal of the injunction suit was issued on 13 September 1972. The defense of *res judicata* was invoked by herein petitioners (as defendants) in their "Answer" dated 6 November 1972 in the action for Recovery of Possession.[9] Given the abovementioned dates, it is clear that, while the Injunction suit had not yet been disposed of with finality when the second action was filed, yet, at the time the defendants interposed *res judicata* as an affirmative defense in their "Answer" in the second action, the order of dismissal in the injunction case had already become final. The dismissal order assumed the

character of finality, there being no showing that there was an appeal of the order when the "Answer" in the second action was filed on 6 November 1972.

The Court of Appeals in holding that the date of the filing of the second complaint determines whether or not there existed at that time a prior final judgment, overlooked the date when *res judicata* was actually set up as a defense in the second action. The latter date may also be a proper determining point. In other words, when the law says that a prior final judgment is a requisite for *res judicata* to validly apply as a defense, it may refer to a judgment that has become final and executory before the second action is instituted or to a judgment that has become final and executory only after the second action is filed but before the defense is actually set up in the Answer.

Despite the above oversight, the ruling of the Court of Appeals is nonetheless correct when it held that the defense of *res judicata* was unavailing to the petitioners, because the prior injunction suit against them, which was dismissed, was merely an ancillary and not a main action. Sections 1 & 3, Rule 58 of the Rules of Court, provide:

> "Sec. 1. Preliminary Injunction defined; classes. — A preliminary injunction is an order granted at any stage of an action prior to the final judgment." (Emphasis supplied).
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> "Sec. 3. Grounds for issuance of preliminary injunction — A preliminary injunction may be granted at any time after the commencement of the action and before judgment, when it is established: (Emphasis supplied).
>
> "X x x"

From the above provisions, it can be clearly deduced that a writ of injunction presupposes the pendency of a principal or main action. There being no main action when the 7 July 1971 suit for injunction was filed, the latter was correctly dismissed. Accordingly, there could be no prior judgment on the merits to speak of that resulted in *res judicata*, from such dismissal of the injunction suit on 13 September 1972.

Petitioners would also like to impress that the dismissal order of 13 September 1972, in the injunction suit, not having been made without prejudice, bars the second action for recovery of possession. Under Sec. 2, Rule 17 of the Rules of Court which provides:

> "Sec. 2. Dismissal by order of the court. — Except as provided in the preceding section, an action shall not be dismissed at the plaintiffs instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice."

a dismissal order is generally deemed to be without prejudice to the filing of another action. The only instance when dismissal of an action is with prejudice is, when the order itself so states. Stated differently, when the court issues, upon the plaintiff's instance, a dismissal order that is silent as to whether it is with or without prejudice, such as in the case at bar, the presumption is, that it is without prejudice. The cases cited[10] by petitioners to support their contention cannot be made to apply here as they deal with dismissal orders issued as a result of plaintiff's failure to prosecute, and are covered by Section 3, and not Section 2, Rule 17 which provides:

> "Sec. 3. Failure to prosecute. — If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or 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 upon the merits, unless otherwise provided by court."

Dismissals of actions (under Section 3) which do not expressly state whether they are with or without prejudice are held to be with prejudice or on the merits.

Next, the respondent Court of Appeals was correct in holding that the action for recovery of possession of the land in question was timely filed, citing Art. 1141 of the Civil Code which provides that real actions over immovables prescribe after thirty (30) years. Here, the Court of Appeals found that Rabanes was dispossessed by the petitioners in 1962, and the action for recovery of possession was filed on 11 September 1972, or more or less ten (10) years after dispossession.[11]

Coming now to the main issue as to who is the rightful owner of the property in question, the parties to this case have presented two (2) entirely different versions of the antecedents. We will not weigh all over again the entire evidence, because in a petition for review, such as the case at bar, generally, this Court's duty is to accept the findings of fact of the Court of Appeals and pass only on questions of law.

The trial court and the Court of Appeals arrived at the conclusion that the deed of sale of 2 February 1946 was indeed one of sale and not of mortgage. We, however, conclude differently. Under Art. 1602 and Art. 1604 of the Civil Code, a contract shall be presumed to be an equitable mortgage in any of the following cases:

> "Art. 1602
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> 1) When the price of a sale with right to repurchase is unusually inadequate;
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> 2) When the vendor remains in possession as lessee or otherwise;
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> X x x
>
> "Art. 1604. — The provisions of Art. 1602 shall also apply to a contract purporting to be an absolute sale."

These articles embody decisional rules laid down even before the effectivity of the Civil Code (30 August 1950) so that it is of no moment that the 2 February 1946 deed of sale was executed before the effectivity of the Civil Code.[12]

There was gross inadequacy of price, because the land was sold for P800.00 in Japanese war notes at that, or for barely thirty percent (30%) of its total assessed value of P2,620.00. The Court can take judicial notice of the fact that real estate, including agricultural land, usually commands a market value much higher than assessed value.

The other factor to consider is the continuous physical possession by the petitioners of the property for almost nine (9) long years, or from 1962 to the filing of the injunction case by respondent Rabanes in 1971. Even assuming for the sake of argument, as the Court of Appeals believed, that Rabanes acquired possession of the land thru his tenants in 1946 and continued such possession till 1962, when they were allegedly dispossessed by the petitioners, one nevertheless can not ignore the unrefuted fact that, from 1962 until the filing of said injunction case in 1971, it was the petitioners Vallangcas who were in actual and physical possession of the property. Why did it take Rabanes nine (9) years more or less to take action to recover possession of the property he claimed to have been forcibly and unlawfully taken from his tenants?

Apart from the foregoing considerations is still one fact that the trial court and the Court of Appeals failed to appreciate. We refer to the fact that the land in dispute was acquired under a free patent in the year 1936 as shown on Transfer Certificate of Title No. 1005, its covering title, which states —

> "It is further certified that said land was originally registered on 28th day of December, in the year nineteen hundred and thirty-six, in Registration Book No. 1-7, page 55, of the Province of Cagayan, pursuant to a Free patent granted by the President of the Philippines, on the 5th day of December, in the year nineteen hundred and thirty-six, under Act Nos. 2874 & 496."[13]

Consequently, not to be ignored are the provisions of Act No. 2874 (an Act to amend and compile the laws relative to lands of the public domain) and Act No. 496 (The Land Registration Act), which govern the said free patent.

Sections 116 and 117 of Act No. 2874 provide:

> "Section 116. — Lands acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period;"[14]
>
> "Section 117. — Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow or legal heirs, for a period of five years from the date of the conveyance."[15]

Restrictions are thus imposed on the conveyance of patented lands within five (5) years from the date of the issuance of the free patent; the owner of the land is precluded from subjecting the same to any encumbrance or alienation. After the lapse of five (5) years, such prohibition is lifted, but the owner-vendor is entitled to repurchase the property from the vendee within five (5) years from the date of the execution of the deed of sale or conveyance.

Applying the foregoing rules in the instant case, it is to be noted that the free patent was issued to the heirs of Esteban Billena on 5 December 1936. From this date and until 5 December 1941, any transfer, conveyance or alienation of the property covered by TCT 1005 was not allowed. Assuming then that what Ana Billena and Nazario Rabanes actually agreed upon in 1944 was indeed a sale of the land, which transaction was formally put in writing on 2 February 1946, the said sale, while valid — because it occurred after the period of five (5) years when sale was prohibited — yet, the sale was subject to Billena's light to repurchase within five (5) years from 2 February 1946. For, notwithstanding the absence of any stipulation in the deed of sale of the vendor's right to repurchase the land, Billena or her heirs are granted such right by operation of law. The restrictions and qualifications attached to every alienation of these lands are mandatory, with the primordial aim to preserve land grants to the family of the applicant for free patent.[16]

Now, did Ana Billena repurchase in time the land in dispute? It is worth noting that private respondents did not refute petitioners' averment that Billena, together with her son Benjamin, went to

Rabanes' residence in 1946 to redeem the property and tendered to him (Rabanes) the amount of P800.00 in Philippine currency, but the latter made a statement that the land could no longer be redeemed. By Ana Billena's act of tendering to Rabanes the P800.00, she had in effect exercised her right to repurchase. In fact, in Peralta, et al. vs. Alipio,[17] it was held that since the Public Land Law is silent as to the form and manner in which the right to repurchase a homestead or land acquired under a free patent may be exercised, any act which amounts to a demand for reconveyance should be sufficient.

In effect, if the 2 February 1946 deed was actually intended to evidence a sale of the disputed land, made by Ana Billena to Nazario Rabanes, as found by the trial court and the Court of Appeals, it was a sale with *pacto de retro* wherein title of the vendees-Rabanes to the property was to become absolute and irrevocable only upon the failure of Billena or her heirs to repurchase the same within five (5) years from 2 February 1946. As earlier stated, Billena exercised her right to repurchase the land, also in 1946, and her heirs are up to the present time in actual and physical possession of the land. With these as premises, it can be said that Rabanes' title to the property remains to this date revocable and unconsolidated.

WHEREFORE, the appealed decision of the Court of Appeals in CA-G.R. No. 61133-R is **REVERSED** and **SET ASIDE**. Petitioners may redeem the property covered by TCT No. 1005 upon the return of the amount of Eight Hundred Pesos (P800.00) to private respondents, with interest at the rate of twelve percent (12%) per annum from 1 January 1962 until fully paid.

SO ORDERED.

Melencio-Herrera, *J.*, *(Chairman)*, Paras, Sarmiento and Regalado, JJ., concur.

[**] CA-G.R. No. 61133-R, Justice Onofre A. Villaluz, ponente; Justices Guillermo P. Villasor and Vericio Escolin, concurring, the latter only in the result; Rollo, pp. 23-32.

[1] Petition, Rollo, p. 10.

[2] Record on Appeal, pp. 1-7, Rollo, p. 43.

[3] Petition, last paragraph, Rollo, p. 11.
[4] Penned by Judge Alfredo C. Florendo, Record on Appeal, pp. 13-21, Rollo, p. 43.
[5] Petition, Rollo, p. 4.
[6] Rollo, p. 8.
[7] Par. 2 of the Complaint, Record on Appeal, pp. 1-2, Rollo, p. 43.
[8] Gatus vs. Court of Appeals, 95 SCRA 530; Pagsisihan vs. Court of Appeals, 95 SCRA 540; Manila Electric Co. vs. Gaerlan, 97 SCRA 840; Republic vs. Court of Appeals, 99 SCRA 742; Cuano vs. CA, 143 SCRA 417; Bringas vs. Hernando, 144 SCRA 346, etc.
[9] Record on Appeal, pp. 9-12, Rollo, p. 43.
[10] Brief for the Defendants-Appellants, p. 6, Rollo, p. 44.
[11] Petition, Rollo, pp. 23-30.
[12] Government of the Philippine Islands vs. Javier, 53 Phil. 415, G.R. No. 30421, 28 August 1929; Cabigao vs. Lim, 50 Phil. 844, G.R. No. 20832, 11 February 1924; Aguilar vs. Rubiato, 40 Phil. 570, G.R. No. 14823, 9 December 1919.
[13] "Annex B", Petition, Rollo, p. 31.
[14] Commonwealth Act No. 141 (1936), Section 118.
[15] Ibid., Section 119.
[16] Pascua vs. Talens, 89 Phil. 792; Umengan vs. Butacan, G.R. No. 16036, Feb. 2, 1963, 7 SCRA 311.
[17] 97 Phil. 719.