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**SUPREME COURT
SECOND DIVISION**

**SPOUSES MARINA G. VERGARA and
BENJAMIN SORIANO and SPOUSES
PABLO G. VERGARA and CORAZON
SANTILLAN,**

Plaintiffs-Appellants,

-versus-

**G.R. No. L-53971
June 19, 1982**

**LAUREANO OCUMEN and REMEGIO
OCUMEN,**

Defendants-Appellees.

X-----X

DECISION

DE CASTRO, J.:

This case was certified to Us by the Court of Appeals for the resolution of the legal question which is the only issue raised in this appeal from the order of the Court of First Instance of Pangasinan and the denial of the motion for reconsideration against said order.^[1]

The order appealed from dismissed this case on the ground that a previous case involving the same land had been dismissed between the same parties, and that the dismissal was with prejudice.

On May 29, 1978, plaintiffs-appellants filed the instant complaint against defendants-appellees to recover the middle and eastern portions of about one hectare in area, of the bigger land covered by T.C.T. No. 111254 in the name of the appellants.

In their answer, with counterclaim, defendants-appellees claimed to be the owners and in possession of said portions for more than thirty (30) years. They also claimed that the land in question was previously litigated in Civil Case No. D-2599 between one Apolonio Vergara as plaintiff and Laureano Ocumen, one of the appellees herein, as defendant.

In their answer to defendants-appellees' counterclaim plaintiffs-appellants claimed to have bought the land in good faith, and were not aware of the existence of Civil Case No. D-2699.

At the pre-trial, the parties submitted on different dates the following two sets of stipulation of facts:

“COME NOW the parties in the above-entitled case, through their respective counsel and unto this Honorable Court respectfully submit the following partial stipulations of facts:

- “1. That the parties agree as to the identity of the land in question and that the same is now covered by TRANSFER CERTIFICATE OF TITLE NO. 111254, of the Registry of Deeds of Pangasinan, in the names of the plaintiffs;”
- “2. That the same land involved in this instant case was previously litigated in CIVIL CASE NO. 2699, entitled ‘Apolonio Vergara vs. Laureano Ocumen’ for Quieting of Title, Recovery of Possession with Damages with Preliminary Injunction, which aforesaid CIVIL CASE No. D-2699 was ordered dismissed by the Court of First Instance of Pangasinan Branch IV, Dagupan City, in its order of September 2, 1974;”

- “3. That the plaintiff in said CIVIL CASE No. D-2699, Apolonio Vergara is the father of the plaintiffs in the present case;”
- “4. That the parties reserve their right to present further evidence on matters not covered by this Partial Stipulations of Facts.”

“Dagupan City, September 19, 1978.”^[2]

X x x

“COME NOW the parties, assisted by their respective counsel and unto this Honorable Court most respectfully submit the following additional stipulations of facts, to wit:

- “1. The parties stipulate that defendant Remegio Ocumen is the son of the defendant Laureano Ocumen;
- “2. That in CIVIL CASE NO. D-2699 (Apolonio Vergara vs. Laureano Ocumen) referred to and mentioned in the PARTIAL STIPULATIONS OF FACTS of September 19, 1978, which complaint in said CIVIL CASE NO. D-2699 was filed by the parties styled ‘MANIFESTATION’ and ‘COUNTER MANIFESTATION’ dated August 31, 1974 and September 2, 1974, respectively, and the genuineness, authenticity and due execution of the same will not be disputed by the parties;
- “3. That in said CIVIL CASE NO. D-2699, plaintiff Apolonio Vergara filed a complaint, a copy of which is hereto attached as Annex ‘3’, while the defendant Laureano Ocumen in said civil case also filed an ANSWER, a copy of which is hereto attached as Annex ‘4’, the authenticity and correctness of both pleadings, will not be disputed by the parties;

“4. That likewise, in said CIVIL CASE NO. D-2699, the Honorable Court issued a RESOLUTION under date of September 2, 1974, a copy of which is hereto attached as Annex ‘5’, the authenticity of the same will not be disputed by the parties.

“WHEREFORE, it is most respectfully prayed unto this Honorable Court that this ADDITIONAL STIPULATIONS OF FACTS be made of record and considered by this Honorable Court.

“Dagupan City, October 20, 1978.”^[3]

The only question raised in this appeal is whether the dismissal of Civil Case No. D-2699 was with or without prejudice. If it is with prejudice, the dismissal of the instant case would be proper, otherwise, the order of dismissal should have to be reversed and this case remanded to the court of origin for proper proceedings.

The dismissal of Civil Case No. D-2699 was brought about by two separate manifestations of plaintiffs and defendants therein. The pertinent portion of plaintiff’s manifestation submitted on August 31, 1974, reads as follows:

“2. That the plaintiff is sickly and is now no longer interested in prosecuting his complaint, provided, however, the defendant foregoes with his counterclaim.”^[4]

In defendant’s counter-manifestation dated September 2, 1974, the following was stated:

“2. That in order to terminate this instant case, the defendant through counsel hereby states and manifests that he agrees with the manifestation of plaintiff that this instant case be dismissed and that in line thereto, defendant hereby agrees that he will no longer prosecute his counterclaim against the plaintiff, and ask also for the dismissal of the same.”^[5]

Both manifestations have identical prayer for the dismissal of the complaint and the counterclaim.

The order of dismissal reads as follows:

“The ‘Manifestation’ (Motion to Dismiss) of plaintiff, dated August 31, 1974 and of the defendant, dated September 2, 1974, being meritorious, are GRANTED.

“Wherefore, the Court hereby orders the DISMISSAL of plaintiff’s complaint and defendant’s counterclaim, without costs.”^[6]

It is the above-quoted dismissal order of the court a quo that was held by same court as a dismissal with prejudice, and on that ground, it dismissed the instant case.

We disagree. The dismissal of Civil Case No. D-2699 comes under the contemplation of Section 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 plaintiff’s 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.” (Emphasis supplied).

A perusal of the “Manifestations” of the parties in Civil Case No. D-2699, will readily show that the plaintiff’s complaint was dismissed at his own instance, and with the conformity of the defendant whose counterclaim was also dismissed at his own instance, also with the conformity of the plaintiff. The order of dismissal did not specify that the dismissal was with prejudice. Also, in accordance with the aforequoted provision, the dismissal is without prejudice.

It seems all too clear both from Sections 1 and 2 of Rule 17 that when the notice or order of dismissal does not specify that the dismissal be one “with prejudice”, it is one “without prejudice.” It is, therefore, necessary that for a dismissal to be “with prejudice”, the order must expressly so state. The order of dismissal of Civil Case No. D-2699 did not specify that the dismissal is “without prejudice”; hence, to repeat, the dismissal is “without prejudice.”

What would be a dismissal with prejudice is when the notice of dismissal filed by the plaintiff refers to an action involving the same claim as the claim in an action previously dismissed at his instance. This is by express provision of Section 1 of Rule 17 which reads:

“Section 1. Dismissal by the plaintiff. — An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. A class suit shall not be dismissed or compromised without the approval of the court. (Emphasis supplied).

The underscored portion of the aforequoted provision clearly means that only when the dismissal of the case was based on a notice of dismissal filed by the plaintiff “who has once dismissed in a competent court an action based on or involving the same claim” would the dismissal of the subsequent case be with prejudice. In the case of Civil Case No. D-2699, the notice of dismissal (manifestation) filed by plaintiff did not refer to the same claim in an action previously dismissed at his instance. But there was no previous action involving the same claim. Only if there had been such previous action would, to quote the language of the Rule, the “notice operates as an adjudication upon the merits”, which simply means that the dismissal of the subsequent action would be with prejudice.

The Court fails to see in the records any “understanding” between the parties as alleged by defendants-appellees (p. 5, appellees’ brief) that if the court a quo holds the dismissal of Civil Case No. D-2699 to be

with prejudice, this case would be dismissed. In any case, this supposed understanding does not mean a commitment on the part of plaintiffs-appellants not to contest such a ruling of the court a quo. The order cited by appellee to support his allegation of the supposed “understanding” merely recites that “if the court finds the dismissal to be with prejudice that the above entitled case will be dismissed.” This is merely statement of a fact, by no means indicating that the parties will be bound by the ruling of the court without further recourse of the plaintiffs.

In view of the above discussion, it would not be necessary to take up the second question raised of whether plaintiffs-appellants are privies to Civil Case No. D-2699. Even if they were, the provision of Section 2 of Rule 17 of the Rules of Court would be applicable.

WHEREFORE, the Order of the court a quo dismissing this case is reversed. This case is ordered remanded to the court of origin for proper proceedings. No costs.

SO ORDERED.

Barredo, J., (Chairman), Aquino, Guerrero, Abad Santos and Escolin, JJ., concur.
Concepcion Jr., J., is on leave.

[1] p. 16, Rollo.

[2] pp. 16-17, Id.

[3] pp. 17-18, Id.

[4] p. 36, Record on Appeal, p. 5, Id.

[5] p. 38, Id.

[6] p. 4, Appellants’ Brief, p. 7, Rollo.