



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ATTY. FELINO M. GANAL,
MANUEL G. ABAN and AIDA
ABAN, MILAGROS ABAN-
JALOP, the heirs of ANDRES G.
ABAN, JR., namely: CONSUELO
B. ABAN, CHERRY B. ABAN,
BRENDA B. ABAN, YURI B.
ABAN, ANDRES B. ABAN III,
JOSEPH KEN B. ABAN and
JOSETTE G. ABAN, and the heirs
of ANITA ABAN-ALMAZORA,
namely: DANE A. ALMAZORA,
YOLANDA A. JAMISOLA,
JOSELITO A. ALMAZORA and
GERARDO A. ALMAZORA, all
represented by their Attorney-in-
fact MANUEL G. ABAN,
Petitioners,

G.R. No. 205194

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS, JJ.

- versus -

ANDRES ALPUERTO, RICO
ROQUITTE, ROSALINDA
GABALLO and LEONILA
PALALA, as officers of Bayanihan
Homeowners Association who filed
Civil Case No. 3747 as a class suit on
their behalf and on behalf of all
their co-occupants of the subject
land who are all members of the
association,

Respondents.

Promulgated:

12 FEB 2020

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RESOLUTION**INTING, J.:**

The Court resolves the instant Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by Atty. Felino M. Ganal (Atty. Ganal), Manuel G. Aban and Aida Aban, Milagros Aban-Jalop, the heirs of Andres G. Aban, Jr., namely: Consuelo B. Aban, Cherry B. Aban, Brenda B. Aban, Yuri B. Aban, Andres B. Aban III, Joseph Ken B. Aban and Josette G. Aban, and the heirs of Anita Aban-Almazora, namely: Dane A. Almazora, Yolanda A. Jamisola, Joselito A. Almazora and Gerardo A. Almazora, all represented by their Attorney-in-fact Manuel Aban (collectively, petitioners) assailing the Order dated September 26, 2012 of Branch 2, Regional Trial Court (RTC), Butuan City dismissing their complaint, and the Order dated December 5, 2012 denying the motion for reconsideration thereof.

Antecedents

A Complaint² for the Annulment and/or Declare Void the Deed of Sale and Transfer Certificate of Title (TCT) No. RT-22372, Damages, with Restraining Order and/or Preliminary Injunction was filed by Andres Alpuerto (Alpuerto), Rico Roquitte (Roquitte), Rosalinda Gaballo (Gaballo), and Leonila Palala (Palala), as officers of Bayanihan Homeowners Association, (collectively, respondents) against petitioners, the City of Butuan and the Register of Deeds. It was raffled to Branch 5, RTC, Butuan City and was docketed as Civil Case No. 3749.³ It was alleged therein by respondents that its members are purchasers for value and in good faith of several portions of Lot 427 registered in the name of Eleuterio Cuenca (Cuenca) under Original Certificate of Title (OCT) No. RO-156 (360). Lot 427 has an approximate area of 215,001 square meters (sq.m.) located in Libertad, Butuan, Agusan (now Langihan, Butuan City).⁴ They continued that after the sale, the buyers immediately obtained physical possession over their purchased properties and, with the necessary government permits, constructed therein houses of durable materials, and paid the corresponding realty taxes due thereon.⁵ Thus,

¹ *Rollo*, pp. 7-17.

² *Id.* at 30-49.

³ *Id.* at 30.

⁴ *Id.* at 33.

⁵ *Id.* at 34.

they argued that the Deed of Sale executed by Cuenca in favor of Andres Aban (Aban) on May 17, 1941 which conveyed a 40 sq.m. portion of Lot 427, thereafter subdivided as Lot 427-C-1 (disputed property), for a measly sum of ₱180.00 as null and void.⁶ Aside from Cuenca's alleged illiteracy, respondents raised that Aban, nor his heirs, including Atty. Ganal, were never in possession of the disputed property.⁷ Consequently, respondents sought for the cancellation of TCT No. RT-22372 issued in the name of petitioners for allegedly being fraudulent and illegal.⁸

In response thereto, petitioners, in their Answer,⁹ narrated the circumstances surrounding the issuance of TCT No. RT-22372 in their favor. According to petitioners, OCT No. 360, reconstituted as TCT No. RO-156, was cancelled and the following titles were issued in its stead:

- a. TCT No. RT-1584 for 6.5 hectares consisting of Lots 427-A and 427-B in favor of the heirs of Eleuterio Cuenca; and
- b. TCT No. RT-1585 for the remainder of 15 hectares consisting of Lot 427-C, in the names of Severo Malvar for 8 hectares, Eleuterio Cuenca for 3 hectares (apparently because no deed of sale for Udarbe had yet been registered) and 4 hectares for Andres Aban as per Entry No. 4384 annotated at the back thereof.¹⁰

Subsequently, TCT No. RT-1585 registered under the name of Cuenca was subdivided into TCT No. RT-1693 in the name of Aban, TCT No. RT-1694 and TCT No. RT-1695, respectively. However, the RTC, in an Order dated July 29, 1968 in Civil Case No. 1005, nullified Aban's title over the disputed property for being issued despite the absence of any registered document of sale or conformity. The RTC thus ordered for the revival of TCT No. RT-1585. This case attained finality with the Court's denial of the petition assailing the Order dated July 29, 1968.¹¹

However, contrary to the Order dated July 29, 1968, the Register of Deeds of Butuan City cancelled TCT No. RT-1693 and issued TCT No. RT-17664, without reviving TCT No. RT-1585. By reason thereof, petitioners caused the annotation of their adverse claim as well as a

⁶ *Id.* at 36-37.

⁷ *Id.* at 37.

⁸ *Id.* at 40.

⁹ *Id.* at 50-76.

¹⁰ *Id.* at 63.

¹¹ *Id.* at 64.

notice of *lis pendens* over TCT No. RT-17664. Several other claims were allegedly registered and likewise annotated at the back of TCT No. RT-17664, TCT No. RT-1585 and TCT No. RT-1693, which, according to petitioners did not include that of any of the respondents herein nor their members.¹²

On December 18, 1985, the RTC directed the proper execution of the Order dated July 29, 1968. The Register of Deeds was thereby ordered to cancel TCT No. RT-17664 and to revive TCT No. RT-1585 in the name of Cuenca, carrying the annotations therein, which included Aban's purchase of the disputed property. An entry of judgment appeared to be issued upon the finality of the Court's Decision on this matter.¹³

During the pendency of the foregoing incidents, petitioners contended that they filed a case for quieting of title and issuance of a new certificate of title over the disputed property which was docketed as Civil Case No. 2966. This complaint was then granted by the RTC and was affirmed by the Court, which consequently brought about the issuance of TCT No. RT-22372 in favor of petitioners.

Under the foregoing circumstances, petitioners posited that all actions to annul the deed of sale, including the Torrens title issued as a result thereof are now barred by prescription, laches and *res judicata*. They likewise questioned the validity of respondents' cause of action to annul the sale executed in their favor and to enforce respondents' alleged unregistered deeds of sale.¹⁴

On September 12, 2002, the RTC dismissed the respondents' complaint for annulment and declaration of nullity of deed of sale and TCT for failure of respondents to prosecute their action for an unreasonable length of time.

The Complaint before the RTC

Several years later, particularly on August 23, 2012, petitioners filed a Complaint for Revival of Judgment¹⁵ with Branch 2, RTC, Butuan

¹² *Id.* at 65-66.

¹³ *Id.* at 67-68.

¹⁴ *Id.* at 74.

¹⁵ *Id.* at 22-26.

City, wherein they alleged that, in the absence of an appeal, the Order¹⁶ dated September 12, 2002 of the RTC already attained finality thereby making the questioned ownership, title and possession of petitioners and their successors-in-interest indefeasible to the exclusion of respondents and their successors. Thus, they sought for the full implementation of the dismissal order, specifically insofar as possession over the property is concerned.

Ruling of Branch 2, RTC, Butuan City

On September 26, 2012, the RTC issued the assailed Order¹⁷ the pertinent portions of which are cited herein:

Succinctly, the plaintiffs in this case claims that the judgment of the court dated September 12, 2002 in Civil Case No. 3749 which dismissed the complaint of herein defendants (then plaintiffs) on the ground of failure to prosecute has adjudged them as rightful owners and possessors of the property involved in this case.

The court disagrees.

It is a basic legal principle that a judgment dismissing a civil case on the ground of failure to prosecute on the part of the plaintiff is not a judgment on the merits that warrants execution or implementation by the prevailing party. There was no adjudication on the merits in Civil Case No. 3749 therefore, no rights whatsoever was acquired by either of the parties in the said case. The court obviously cannot execute a judgment of dismissal, so legally speaking there would be nothing to revive.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the instant case is hereby ordered DISMISSED for lack of cause of action.

SO ORDERED.¹⁸

Aggrieved, petitioners filed a Motion for Reconsideration¹⁹ which was denied by the RTC in an Order²⁰ dated December 5, 2012.

On February 28, 2013, petitioners immediately elevated the case to the Court through the instant petition. Subsequently, on April 1, 2013,

¹⁶ *Id.* at 77.

¹⁷ *Id.* at 78.

¹⁸ *Id.*

¹⁹ *Id.* at 79-80.

²⁰ *Id.* at 81.

respondents were required to file their Comment.²¹ Because some of the notices to respondents were returned unserved,²² petitioners were required to furnish the Court with the concerned respondents' present addresses.²³ Despite compliance,²⁴ some of the notices remained unserved with notations, "Moved left no address; Unclaimed; Moved."²⁵ The Court further noted that notices to Atty. Ganal were returned unserved with notation "RTS, Deceased;" hence, his co-petitioners were required to furnish the Court with the name and address of their new counsel as well as the present addresses of Palala and Roquitte.²⁶

Thereafter, for his noncompliance, Manuel G. Aban as petitioner and attorney-in-fact of his co-petitioners, was required to show cause as to why petitioners should not be held in contempt.²⁷ However, this show cause order was likewise returned unserved to Manuel G. Aban with notation: "Unknown."²⁸

The Issue

The core of the controversy herein is the full implementation of the September 12, 2002 dismissal order of the trial court, which, for petitioners, was a recognition of their ownership and possession over the disputed property.

The Ruling of the Court

On the procedural aspect, petitioners continuously failed to provide the Court with the correct address of respondent Roquitte, and while some of the notices appeared to have been received by Alpuerto, Gaballo and Palala, there were notices which kept returning with postal notations of "Moved left no address; Unclaimed; Moved." Nonetheless, this Court's Minute Resolution dated April 1, 2013 which required respondents to submit their comment remained unserved only with respect to Roquitte. But with regard to the other respondents, the records reveal that Alpuerto, Gaballo and Palala received this Court's Resolution which resolved to await their comment to the petition.²⁹

²¹ *Id.* at 82-83.

²² *Id.* at 90-92.

²³ *Id.* at 106.

²⁴ *Id.* at 112-113.

²⁵ *Id.* at 123-133; 138-152.

²⁶ *Id.* at 302-304.

²⁷ *Id.* at 309-314.

²⁸ *Id.* at 335.

²⁹ *Id.* at 88 (dorsal portion).

It is an elementary rule that when a party files any pleading or motion, a copy thereof must be served on the adverse party.³⁰ For the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.³¹ An adverse party must be given an opportunity to be heard through his/her comment, before the case can be presented for adjudication.³²

It must not be overlooked that respondents herein were impleaded as officers representing the Bayanihan Homeowners' Association, and that Alpuerto, Gaballo and Palala were duly notified of the Court's directive requiring the filing of their Comment. Under the foregoing circumstances, due receipt of the notice by his co-respondents Alpuerto, Gaballo, and Palala could be considered as due notice to Roquitte since each of them were impleaded as representatives of the Bayanihan Homeowners' Association and are represented by the same counsel. Hence, the Court deems it proper to consider their non-compliance as a waiver of the filing of their comment to the petition.

With respect to petitioners, records reveal that Manuel G. Aban is in due receipt of this Court's Resolution³³ dated October 10, 2016 which required them to avail of the services of a new counsel in view of Atty. Ganal's demise and a directive as well to inform the Court thereafter of the new counsel's name and address.³⁴ Despite the lapse of more than three years, no compliance was forthcoming from petitioners.

Pursuant to Section 5, Rule 56 of the Rules of Court, aside from petitioners' duty to supply this Court with the correct address of respondents as proof of service of the appeal, it is beholden upon them to comply with all directives or orders from the Court within a reasonable period. For petitioners' failure to comply with the Court's directives without justifiable cause, the present petition should be dismissed *motu proprio*. Petitioners' inaction had already caused the arbitrary dragging of this petition for review on *certiorari* which had been pending since February 23, 2013 and to await for the parties' compliance would again put in jeopardy the timely resolution of this appeal.

³⁰ *Metropolitan Bank and Trust Co. v. Spouses Villena*, G.R. No. 206668 (Notice), March 11, 2015.

³¹ *Id.*

³² *Id.*

³³ *Rollo*, pp. 281-282.

³⁴ *Id.* at 281 (dorsal portion).

Technicalities aside, the petition still lacks merit on substantive grounds.

To recall, respondents first filed a complaint for annulment and declaration of nullity of the deed of sale and TCT over the disputed property which was dismissed by the RTC on September 12, 2002 for *non prosequitor*. Subsequent thereto, petitioners filed a complaint against respondents for quieting of title and issuance of a new TCT in their favor which was docketed as Civil Case No. 2966. This was favorably granted by the trial court and attained finality thereafter which consequently brought about the issuance of TCT No. RT-22372 in favor of petitioners. Notwithstanding the issuance of TCT No. RT-22372 under the name of petitioners, possession over the disputed property remained with herein respondents. As a consequence thereof, herein petitioners seek to revive the judgment of dismissal of the trial court dated September 12, 2002 which dismissed the action for *non prosequitor*.

A judgment sought to be revived is one that is already final and executory; therefore, it is conclusive as to the controversy between the parties up to the time of its rendition.³⁵ Otherwise stated, the new action is an action the purpose of which is not to reexamine and retry issues already decided but to revive the judgment.³⁶ The cause of action of the petition for revival is the judgment to be revived, *i.e.*, the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered.³⁷

In the instant case, petitioners are seeking to revive the judgment rendered by the court below which dismissed respondents' action arguing that the dismissal was a judgment on the merits; hence, the question on the validity of the deed of sale and the Torrens title issued in favor of Aban had already been settled in their favor making them as rightful owners and possessors of the disputed property.

It is important to note that a dismissal of an action for failure to prosecute operates as a judgment on the merits.³⁸ This is expressly provided under Section 3, Rule 17 of the Rules of Court, as amended, which provides:

³⁵ *Bangko Sentral ng Pilipinas v. Banco Filipino Savings and Mortgage Bank*, G.R. Nos. 178696 & 192607, July 30, 2018.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Heirs of the late Flor Tungpaian v. Court of Appeals*, 499 Phil. 384, 390 (2005).

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.

The Order dated September 12, 2002 does not state that the dismissal of the complaint is without prejudice. Thus, the dismissal shall have the effect of an adjudication upon the merits. However, the dismissal operates only as a bar to the filing of another action alleging the same cause of action. Unequivocally, the RTC's conclusion that the dismissal was not an adjudication on the merits was only with respect to the effect being sought by herein petitioners, which is the execution or implementation of a dismissal order.

While the Court agrees with petitioners that the dismissal order had the effect of adjudication on the merits, our acquiescence ends there. Dismissal with prejudice means that there is an adjudication on the merits as well as a final disposition, barring the right to bring or maintain an action on the same claim or cause.³⁹ An “adjudication on the merits” for *non prosequitor* cases imposes as a sanction “prejudice to the refiling of the same claim.”⁴⁰ An involuntary dismissal generally acts as a judgment on the merits for the purposes of *res judicata*.⁴¹

It must be recalled that the complaint filed by respondents against petitioners was for annulment of the deed of sale and the Torrens title issued as a consequence thereof. Hence, its dismissal only operates as a bar to the filing of another action alleging the same cause of action. Corollarily, all the claims of respondents against petitioners with respect to the latter's rights of ownership over the disputed property on the strength of the deed of sale and the Torrens title are barred by *res judicata*.

³⁹ *Colonial Auto Ctr. v. Tomlin*, 184 B.R. 720, 724 (1995).

⁴⁰ *Ching, et al. v. Cheng, et al.*, 745 Phil. 93, 107 (2014).

⁴¹ *Kisaka v. Univ. of S. California*, 2018 Cal. App. Unpub. LEXIS 8687, 2018 WL 67165308.

As it stands, the status *quo* between the parties should be observed. The dismissal order did not and could not enforce any rights of ownership or possession whatsoever in favor of petitioners because it merely barred the refiling of the same claim by respondents against petitioners. In effect, adjudication on the merits apply to respondents only insofar as to bar any action by the latter against petitioners arising from the same questioned deed of sale and Torrens title. Thus, concomitant to the foregoing established principles, petitioners' argument that possession was awarded in their favor as a consequence of the dismissal order is misplaced.


Veritably, the Court upholds the dismissal of the action for revival of judgment for lack of cause of action because there is nothing for this Court to enforce or execute in the trial court's dismissal order dated September 12, 2002. It is evident from the allegations in the complaint and the supporting documents attached therein that the complaint deserves scant consideration. There is nothing in the subject dismissal order which imposed upon respondents any correlative obligation or liability in favor of petitioners. There was neither a grant of any legal right or rights in favor of any of the parties therein. More importantly, there is no act or omission alleged to have been committed by respondents which could be in violation of petitioners' legal right or rights. In the same vein, neither of the cases cited by petitioners squarely apply in this case because there was no writ of possession nor any adjudication on any of the parties' possessory rights over the disputed property which could be executed or implemented.

WHEREFORE, the petition is **DENIED**. The Orders dated September 26, 2012 and December 5, 2012 issued by Branch 2 of the Regional Trial Court of Butuan City are both **AFFIRMED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

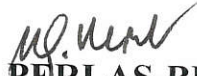

ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

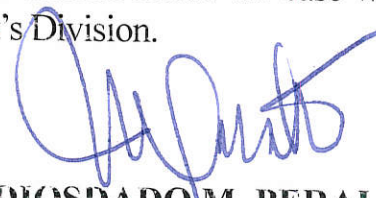
ATTESTATION

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


DIOSDADO M. PERALTA
Chief Justice

