

HASUMI OSAWA, Plaintiff
v.
ERNIST LUDWIG, Defendant
Civil Action No. 399
Trial Division of the High Court
Truk District
See, also, 3 T.T.R. 594

Hearing on motion to dismiss. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that where plaintiff's claims had previously been tried and an appeal taken they could not be considered again by court in another action between the same parties.
Action dismissed.

1. Judgments-Res Judicata

Res Judicata is defined literally as "the matter has been adjudged".

2. Judgments-Res Judicata

It is a fundamental principle of jurisprudence that material facts of questions which were in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies.

3. Judgments -Res Judicata

The fact that a party failed or neglected to establish certain facts at a former trial does not give his successor a right to do so by filing a new action covering the same subject matter.

4. Judgments-Res Judicata

Where the matter set forth in the complaint and in plaintiff's claim in a new action have been tried and decided in a prior action it cannot be tried again in a new proceeding.

Counsel for Plaintiff: KINTOKI JOSEPH
Counsel for Defendant: MITARO S. DANIS

CLIFTON, *Temporary Judge*

A pre-trial conference was held at Moen, Truk District on February 17, 1968, it appearing that the claims of the plaintiff in this action as set forth in his complaint and as stated by his counsel at the pre-trial conference have been tried and decided in another action in the Trial Division of the High Court, to wit: Civil Action No. 127, Truk District, 2 T.T.R. 428, and that the judgment in said action has been affirmed by the Appellate Division of the High Court in Civil Appeal No. 22, 3 T.T.R. 594, on motion of said counsel for the defendant,

It is ordered that the above action be and the same hereby is dismissed.

OPINION

[1,2] The motion of the defendant presented a plea in bar of the plaintiff's cause of action, that is, the defense of res judicata. Res judicata is defined literally as "the matter has been adjudged." A general explanation of res judicata is contained in the following quotation from 30-A Am. JUI' 2d, 411, 412 (§ 371, Judgments):-

"It is a fundamental principle of jurisprudence that material facts or questions which were in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies...."

The judgment in *Ernest L. v. Akung and Kintoki*, 2 T.T.R. 428, decreed as follows:-

"As between the parties and all persons claiming under them, the part of the land known as POW or POU, located in Muanitiw Village, Udot Island, Truk District, bounded as follows:-

On the north by the Village of Benia,

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On the east by the land Neimueden and
the main hill of Witonap,
On the south by the land Wnifou, and
On the west by the mangrove swamps and lagoon,
is owned by Ludwig who lives in Muanitiw Village, for whom the
plaintiff makes claim in this action, and neither the defendant
Akung nor the defendant Kintoki (both of whom live on Udot Is-
land) has any rights of ownership in this part of POW."

After the judgment was entered and the appeal taken,
Akung died, and the plaintiff herein was substituted in the
appeal for Akung who, according to the order allowing
substitution, was acting for the lineage Wisusu. The is-
sues between the parties in said action were spelled out
in detail by the complaint and the Pre-trial Order. In con-
sidering a plea of res judicata it is proper to consider the
pleadings and judgment in the action. See: 30-A Am. Jur.
2d; 507 (§ 467, Judgments).

At the pre-trial conference in this present action at
which time the defendant moved to dismiss, the counsel
for plaintiff Osawa admitted that the lands in question
herein were within the boundaries described in the judg-
ment order in Action No. 127 [2 T.T.R. 428] setout above.
However, he argued that the matter of this present com-
plaint should not be held to be res judicata, that is, de-
cided in No. 127 [2 T.T.R. 428], because, the pieces of prop-
erty mentioned in the present complaint were not included
in those transferred to Kamekichy for farming purposes,
the trees were not cut down which indicated that this
land was not among those paid for by Kamekichy and that
Akung did not share any of the money he got from .Ka-
mekichy with members of his lineage, including Tomato
who died in 1961 several years before the entry of the
judgment in Action Number 127 [2 T.T.R. 428]. It was
agreed that Akung, Tomato and Osawa, the plaintiff herein
are of the Wisusu. lineage.

Because of the above mentioned pleadings and the stipulation mentioned one cannot escape the conclusion that the matter which the plaintiff Osawa is asking to be heard in this action is the same matter as that already heard and determined in Action Number 127 [2 T.T.R. 428]. The parties are the same and the land in question in the present action is within the boundaries described in the judgment order in Action Number 127 [2 T.T.R. 428]. It should be noted that in the pre-trial order in Action Number 127 [2 T.T.R. 428] one of the questions to be determined was set forth as follows:

" (d) The location of the lands claimed to have been acquired from Kamekichy and the location of the lands claimed by the defendant and intervenor."

[3] It was, therefore, the responsibility of Akung to show what lands, if any, were not acquired by Kamekichy, that is, if he had not acquired certain lands it would follow that he could not have transferred such to Ludwig or to put in another way, Ludwig could not have acquired them. It is possible that Akung failed or neglected to do this during the trial, but this does not give Osawa, his successor, a right to now do this by filing this new action. See: 30-A Am. Jur. 2d, 410 (§ 369, Judgments). Furthermore, an examination of the brief filed on behalf of Osawa on the appeal in Civil Appeal No. 22 [3 T.T.R. 594] shows that some of the main arguments in the brief were as to why the lands in the present action should not have been included in the lands decreed to belong to Ludwig in Action Number 127 [2 T.T.R. 428], which are the same arguments Osawa now uses as a basis of his claims in this action.

[4] The matter set forth in the complaint and in plaintiff's claims at the pre-trial conference in this action having been tried and decided in Action Number 127 [2

T.T.R. 428], it cannot be tried again in this proceeding, and so the defendant's motion to dismiss must be granted, as above ordered. It follows that there is no need for the usual pre-trial order.

NGIRATEMARIKEL DELEMEL, Plaintiff-Appellant

v.

GILBERT TULOP, Defendant-Appellee

Civil Action No. 299

Trial Division of the High Court

Palau District

April 2, 1968

Hearing on motion for relief from judgment and for a new trial. The Trial Division of the High Court, E. P. Furber, Temporary Justice, held that from the record the meetings of clan in question as supervised by a master gave a fair expression of the clan's wishes and that that decision should stand subject to further determination of the clan or some substantial change of circumstances.

Motion for relief of judgment and for new trial denied.

1. Civil Procedure--Motion for New Trial-Newly Discovered Evidence

Affidavits filed in support of motions were clearly insufficient to show newly discovered evidence which by due diligence could not have been discovered in time to be presented either at one of previous meetings held or for use in support of a motion for new trial within the time allowed for that purpose after entry of judgment under Rule of Civil Procedure 1Sd.

2. Civil Procedure--Witnesses

Where a witness is allowed to testify without being sworn, and without objection at the time, at a hearing or trial participated in by the parties concerned, personally or through counsel, requirement of the oath is properly to be considered as waived.

3. Civil Procedure--Motion for New Trial-Equitable Grounds

Subsection 6 of Rule 18e of the Rules of Civil Procedure authorizes the court to set aside a judgment where justice so requires and it is based on a similar provision in Rule 60b of the Federal Rules of Civil Procedure which has been said to constitute a grand reservoir of equitable power to do justice in a particular case.