

SECOND DIVISION

[G.R. No. 121182, October 02, 2000]

**VICTORIO ESPERAS, PETITIONER, VS. THE COURT OF APPEALS
AND HEIRS OF PONCIANO ALDAS, REPRESENTED BY ANASTACIO
MAGTABOG AND JOSEFINA MAGTABOG, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This petition for certiorari under Rule 65 of the Rules of Court seeks to annul the resolutions of the Court of Appeals, Second Division, promulgated May 13, 1994^[1] and April 19, 1995^[2] in CA-G.R. CV No. 29581, denying herein petitioner's prayer for dismissal of private respondents' appeal and the subsequent motion for reconsideration, respectively.

On August 30, 1989, the Regional Trial Court of Palo, Leyte, Branch 8, rendered a decision in Civil Case No. 7623, entitled *Heirs of Ponciano Aldos, represented by Anastacio Magtabog and Josefina Magtabog, vs. Victorio L. Esperas*, in favor of herein petitioner, Victorio Esperas, and dismissing herein private respondents' complaint for lack of merit. The motion for reconsideration was also denied.

Private respondents filed their notice of appeal. The appeal was perfected on September 28, 1989. Eight months later, on May 28, 1990, petitioner filed before the trial court, a motion to dismiss the appeal for failure to prosecute for an unreasonable length of time. On June 15, the trial court granted the motion to dismiss the appeal.

After the denial of their motion for reconsideration, private respondents went to the Court of Appeals and filed a Petition for Certiorari and *Mandamus*, docketed as CA G.R. SP No. 22695. It alleged that the trial court had no jurisdiction to dismiss their appeal.

On October 8, 1990, the Special Eighth Division of the Court of Appeals declared null and void the trial court's orders of June 15, 1990 and August 8, 1990, for having been issued without jurisdiction.^[3] It said that the Motion to Dismiss Appeal should have been filed with the Court of Appeals.

Taking its cue from this resolution and to correct his erroneous filing before the trial court, petitioner filed anew his motion to dismiss appeal, this time with the Court of Appeals. The appeal was given the same docket number, CA G.R. SP No. 22695. On November 27, 1990, the appellate court granted the motion to dismiss appeal.^[4] Private respondents' opposition was denied and likewise their motion for reconsideration.

Private respondents elevated to this Court, CA G.R. SP No. 22695 in a petition for

review on certiorari, docketed as G.R. No. 101461. We dismissed it for being filed out of time.^[5] The dismissal became final and executory and entry of judgment was made on January 28, 1992.^[6]

Nine months later, on November 25, 1992, private respondents received a notice from the Court of Appeals, requiring them to submit copies of their briefs in CA-G.R. CV No. 29581. Petitioner manifested to the Court of Appeals that CA-G.R. CV No. 29581 was the same case CA-G.R. SP No. 22695 that originated from RTC as Civil Case No. 7623,^[7] previously appealed in the Court of Appeals and elevated to this court as G.R. No. 101461. Petitioner thus, prayed for the dismissal of the appeal docketed as CA-G.R. CV No. 29581.

On May 13, 1994, the Second Division of the Court of Appeals promulgated the now assailed resolutions, and denied the prayer for dismissal of CA-G.R. CV No. 29581 and the subsequent motion for reconsideration.^[8] The Second Division's dismissal, in effect reversed the dismissal of the appeal by the Special Eighth Division and paved the way for the re-litigation of Civil Case No. 7623.

Hence, this petition, invoking that:

1. THE COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION WHEN IT TOOK COGNIZANCE OF A CASE WHICH HAD ALREADY BEEN FINALLY ADJUDICATED.
2. THE COURT OF APPEALS DID NOT HAVE THE POWER NOR DOES IT HAVE THE POWER TO SET ASIDE/NULLIFY A PREVIOUS DECISION RENDERED BY ANOTHER DIVISION ON THE SAME COURT OF APPEALS.
3. THE PROCEEDINGS HAD BY THE PUBLIC RESPONDENT (SECOND DIVISION) WAS NOT VALID AND BARRED BY PRIOR JUDGMENT.
4. THE PRINCIPLE OF *RES JUDICATA* HAS APPLICATION TO THE INSTANT CASE.

Notwithstanding the formulation of four issues by petitioner, we only have to resolve one issue, whether or not respondent Second Division of the Court of Appeals erred and abused its discretion when it took cognizance of an appeal allegedly already barred by prior judgment and in so doing, reversed a decision of another division of the same court.

When the Second Division of the Court of Appeals issued its resolution promulgated May 13, 1994, denying petitioner's prayer to dismiss the appeal,^[9] it stated that petitioner had the mistaken impression that CA- G.R. CV No. 29581, before it, and CA-G.R. SP No. 22695, decided by the Special Eighth Division, elevated to the Supreme Court as G.R. No. 101461 are one and the same. The Second Division explains that the petition dismissed with finality by this Court was a special civil action distinct from the case before it which is an ordinary appeal. It explained that the appeal the trial court itself considered perfected, does not deserve outright dismissal since the dismissal of such perfected appeal would not conform to law nor