

102 Phil. 899

[G. R. No. L-9689. January 27, 1958]

**JESUS T. QUIAMBAO, PLAINTIFF AND APPELLANT VS. PEDRO R. PERALTA,
DEFENDANT AND APPELLEE.**

D E C I S I O N

PADILLA, J.:

Pedro R. Peralta brought an action against Jesus T. Quiambao (civil No. 1793 of the Court of First Instance of Rizal) to recover from the latter P12,000 interest thereon from 9 February 1949 until paid; P15,000 for thereon for actual, moral and exemplary damages; and P5,200 for attorney's fees and expenses of litigation. After issues had been joined and trial held, the Court rendered judgement, the dispositive part of which is as follows:

IN VIEW OF THE FOREGOING, the Court hereby renders judgment in favor of the plaintiff and against the defendant, ordering the defendant: (1) to pay the plaintiff the sum of P12,000 plus interest at the legal rate, from the time of the presentation of this complaint up to the time that the said sum of P12,000 is fully paid; (2) to pay the plaintiff the sum of P5,000 as moral and exemplary damages because the defendant had taken advantage of the ignorance and lack of education of the plaintiff, and has made full use of his intelligence to defraud the plaintiff, an old man, of his money; (3) to pay the plaintiff P1,000 as attorney's fees; and (4) to pay the costs of this action. (Annex I, pp. 82, 87, Record on Appeal.)

On appeal by Jesus T. Quiambao from the judgment, the Court of Appeals affirmed it. The appellate court ordered the transmittal of the record of the case to this Court for whatever action it might deem proper to take against Attorney Jesus T. Quiambao for having committed acts unbecoming a member of the bar.

Jesus T. Quiambao brought an action against Pedro R. Peralta (civil case No. 2917 of the same Court) seeking to annul the judgment rendered in civil case No. 1783 and that of the Court of Appeals which affirmed it (CA-GR No. 11104-R), on the ground that the defendant committed fraud upon the plaintiff by concealing material and true facts; to suspend the execution of the judgment in said civil case, or, if already executed, to recover from the defendant the sum of P12,000, interest thereon from 30 June 1952, P5,000 for moral and exemplary damages, P1,000 for attorney's fees, all awarded in the former case and P10,000 for attorney's fees and expenses of litigation spent and to be incurred in this last case, and costs.

The defendant moved for the dismissal of the complaint upon the ground that the cause of action is barred by a prior judgment; the complaint states no cause of action the plaintiff is in estoppel; and the action is not the proper remedy. The plaintiff filed an objection to the motion and the defendant a reply thereto.

The Court dismissed the complaint and dissolved the writ of attachment therefor issued, from which order the plaintiff has appealed.

The appellant argues and contends that as the motion to dismiss admits the allegations of the complaint where it is alleged that the judgment rendered in civil case No. 1783 by the Court of First Instance of Rizal and that rendered on appeal in CA-GR No. 11104-R by the Court of Appeals, which affirmed it, are null and void, such nullity should be deemed admitted. This contention is preposterous, because the ground relied upon in the motion to dismiss that the cause of action is barred by a prior judgment, admits only the material allegations of the complaint. The allegation of nullity of a judgment in a complaint being a conclusion and not a material allegation is not deemed admitted by the party who files a motion to dismiss. The grounds invoked by the appellant to annul the judgment rendered in civil case No. 1783 by the Court of First Instance of Rizal and affirmed by the Court of Appeals in CA-GR No. 11104-R cannot be availed of, because the same are proper for an appeal, they constitute a direct attack on the judgment sought to be reversed which may not be attacked collaterally by another action. In connection with the judgment rendered in civil case No. 1783 against the herein appellant, then defendant, and affirmed by the Court of Appeals in CA-GR No. 11104-R, the herein appellant sought a review thereof by a petition or a writ of certiorari but this Court denied it for lack of merit.^[1]

A perusal of the judgment rendered in civil case No. 1783 by the Court of First Instance of Rizal and of that rendered on appeal in CA-GR No. 11104-R by the Court of Appeals

discloses that the facts alleged by the appellant in his complaint which he claims constitute fraud committed upon him by the appellee, were considered and passed upon by both Courts; and the fact that the appellant's claim was neither given credence nor sustained by both Courts is no reason for concluding that fraud was committed by the appellee upon the appellant.

The order appealed from is affirmed, with treble costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

^[1] G. R. No. L-7986, minute resolution of 29 July 1954.
