

**CONCEPCION MACABINGKIL, PLAINTIFF-APPELLANT, VS.
PEOPLE'S HOMESITE AND HOUSING CORPORATION, AND
IRENE DE LEON AND HER HUSBAND, VICENTE LLANES,
DEFENDANTS-APPELLEES.**

G.R. No. L-29080. August 17, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal by certiorari from a decision dated March 1, 1968 of the Court of Appeals in CA-G. R. No. 34870-R,[1] affirming en toto the Order dated June 6, 1964 of the Court of First Instance of Rizal, Quezon City Branch V, in Civil Case No. Q-7832 dismissing petitioner's complaint for lack of cause of action.

It appears from the records that petitioner-appellant Concepcion Macabingkil filed an action on February 21, 1964 for specific performance with preliminary injunction against the respondent-appellee, People's Homesite & Housing Corporation (hereinafter referred to as PHHC), with the Court of First Instance of Rizal (Civil Case No. Q-7832). Its purpose was, mainly, to compel the PHHC to execute a Deed of Conditional Contract to Sell Lot No. 27, Block E-148, East Avenue Subdivision, Quezon City, to petitioner, on the strength of PHHC Board Resolution No. 550, dated May 16, 1961, of the Board of Directors of the PHHC re-awarding Lot No. 27 in her favor. It also sought to enjoin PHHC and those claiming under it from ejecting petitioner therefrom, from demolishing her house and from removing the improvements on the premises.[2]

On March 25, 1964, the spouses Irene de Leon and Vicente Llanes filed an Urgent Motion for Intervention asking the trial court to allow them to intervene and to file their answer in intervention, since the lot involved in said case (Lot No. 27) had been sold to them by the PHHC pursuant to a final judgment in Civil Case No. Q-5866, declaring said PHHC Resolution No. 550 as void and of no effect and enjoining the PHHC to respect the Conditional Contract to Sell it executed on March 27, 1961 in favor of Irene de Leon involving Lot No. 27, and to eject any and all squatters thereon; and that this decision, on appeal by the PHHC, was affirmed, except as to the amount of attorney's fees, by the Court of Appeals on August 31, 1963 in CA-G. R. No. 31169-R.[3]

There being no opposition filed by the other parties, the said motion for intervention of the spouses aforementioned was granted by the trial court in its Order of April 15, 1963.[4]

On April 28, 1964, respondent PHHC filed its answer with counterclaim, admitting certain allegations of the complaint, and alleging, among others, that petitioner Concepcion Macabingkil has been illegally squatting on said Lot No. 27 and that PHHC Board Resolution No. 550 has been declared null and void on February 21, 1962 by the Court of First Instance of Rizal in Civil Case No. Q-5866, which declaration of nullity was affirmed on August 31, 1963 by the Court of Appeals in CA-G. R. No. 31169-R. As special and affirmative defenses, respondent PHHC alleged that:

1. The instant complaint is barred by prior judgment and/or conclusiveness of judgment;

2. The complaint states no cause of action;

3. The plaintiff is a squatter on the lot in question and an unauthorized occupant thereof and, therefore, has no right whatsoever over the property; and

4. The PHHC has awarded to plaintiff Concepcion Macabingkil another lot in the same subdivision known as Lot No. 15, Block E-121 for which she deposited 10% down pay-ment of P400.00 on August 13, 1957. Plaintiff, therefore, has no reason to complain that the PHHC has been remiss in the accomplishment of its purpose under its charter. On the other hand, to award another lot to the herein plain-tiff would be contrary to the PHHC's present policy of awarding only one lot to each family. The wisdom of such policy is beyond question.[5]

On May 8, 1964, petitioner filed her reply and answer to counterclaim of respondent PHHC.[6]

On May 15, 1964, the spouses intervenors (herein pri-vate respondents) filed their answer in intervention deny-ing the substantial allegations of petitioner's complaint and alleging, among others, that petitioner is unlawfully squatting on said Lot No. 27 with full knowledge that said lot had already been sold by PHHC to the intervenors when they executed the contract to sell on March 27, 1961 and that, in a decision rendered by the Court of First Instance of Rizal, Quezon City Branch V, in Civil Case No. Q-5866, which was affirmed by the Court of Appeals in CA-G. R. No. 31169-R, the PHHC Board Resolution No. 550 was declared void and of no effect and the PHHC was enjoined to respect the said Conditional Contract to Sell and to eject any squatters on Lot No. 27.[7]

On June 6, 1964, the trial court granted the motion of the intervenors that they be allowed to adopt the affirma-tive defenses raised in the answer of respondent PHHC. Thereafter, a preliminary hearing on the said affirmative defenses was conducted as if a motion to dismiss had been filed, after which all the parties agreed to submit the in-cident for resolution of the court on the basis of the pleadings filed therein.

On the same date, June 6, 1964, the trial court issued an Order dismissing the complaint for failure to state a cause of action, in the following tenor:

"Going over the records of the case, it appears that the lot in dispute in this case had been awarded to the in-tervenors and a deed of conditional contract to sell had been executed in their favor by the defendant. Plaintiff asks that the same lot be awarded to her basing her claim under Resolution No. 550 of the PHHC dated May 16, 1961. It also appears that a decision involving, more or less, the award of the parties to this case, was promulgated by the Court of Appeals in CA-G.R. No. 31169-R, dated August 31, 1963, affirming the decision of the Court in Civil Case No. Q-5866 declaring null and void said Resolution No. 550 and which gave full force and effect to the award of the lot in favor of the intervenors.

"Resolving the issue raised, the Court believes that the complaint of the plaintiff states no cause of action. The Court of Appeals in the case of De Leon v. PHHC, supra held:

'Furthermore, it is our understanding of the law that once a contract has been perfect-ed, and more so if the same had already been partly complied with, the authority to annul it does not rest exclusively upon one of the par-ties. The matter must have to be submitted to the courts for adjudication.

'There is another point to consider. From the PHHC records submitted in evidence, not denied by the parties, we find that another PHHC Lot 15, Block E-121 was previously offered, if not awarded to Macabingkil * * *.

* * * * *

'We rule, therefore, in favor of the con-ditional contract to sell which must be given full force and effect.'

* * * * *

"Under the foregoing doctrine of the Court of Appeals which only affirms the decision of the Court in Civil Case No. Q-5866, the Court believes that the complaint states no cause of action. It is so because such decision upheld the right of the intervenor over the property in question. Secondly, the contract which the intervenor has with the PHHC was precisely given full force and effect by the Court of Appeals and to this Court cannot ignore the same and instead reaward the same lot to plaintiff as the latter seeks in this case. To do so would be ignoring a valid and final judgment. It has been argued that plaintiff was not a party to the said case. The Court believes the same is immaterial in as much as when the Court of Appeals affirmed the decision of this Court in said case it revoked and/or declared null and void Resolution No. 550 of the PHHC which is the basis of the complaint in this case. The Court believes that plaintiff need not be a party to the said case since that involves a question of law in the strict sense.

"WHEREFORE, the above entitled case is hereby ordered DISMISSED, for failure of complaint to state cause of action, without special pronouncement as to costs." [8]

From the foregoing Order, petitioner Concepcion Macabingkil appealed to the Court of Appeals. The Appellate Court rendered a decision on March 1, 1968 in CA-G.R. No. 34870-R, affirming en toto the appealed Order of the trial court, thus:

"* * *after taking up the ground 'That the complaint states no cause of action' dismissed the case on the said ground based on the following decision of this Court in CA-G.R. No. 31169-R, Irene de Leon, assisted by her husband, Vicente Llanes, plaintiffs-appellees, vs. People's Homesite & Housing Corporation, defendant-appellant:

* * * * *

'The basic facts are not seriously disputed.

'On January 30, 1957, plaintiff Irene de Leon filed with the People's Homesite & Housing Corporation, PHHC for convenience, an application to purchase the latter's Lot 27, Block E-148 of the East Avenue Subdivision, Quezon City. The application was approved by defendant corporation on February 1, 1957, and accordingly plaintiff was issued an order of payment requiring her to pay in advance 10%, or the sum of P1,053.00, of the total value of the property. The advance payment required of her was made and plaintiff was issued a passbook, after which several installments were made.

'On December 18, 1959, the PHHC Board of Directors passed and approved Resolution No. 370 cancelling the award thus made in favor of plaintiff De Leon and, instead, awarding the same property to one Concepcion Macabingkil who, as a squatter on the lot, claims to have a preferential right in the matter of awards. But before this Resolution No. 370 could be implemented and the property formally awarded to Macabingkil, plaintiff De Leon filed with the Court of First Instance of Quezon City a complaint for injunction docketed as Civil Case No. Q-5411 against the PHHC, Macabingkil and three others. Upon application, a writ of preliminary injunction was issued by that court temporarily enjoining the PHHC from implementing said resolution.

'At a pre-trial conference in said Civil Case No. Q-5411, the PHHC duly represented by its authorized officers and representatives, agreed to reconsider Res. No. 370 and to respect the award previously made in favor of De Leon and, pursuant thereto, passed and approved Resolution No. 430 which authorized the award of the lot in dispute to plaintiff De Leon. Making good its commitment, the PHHC on March 27, 1961, executed a conditional contract to sell the property to plaintiff Irene de Leon who, on the basis of that pre-trial agreement and the contract to sell thus executed in her favor by the PHHC, moved to dismiss Civil Case No. Q-5411 without prejudice, and fulfilled partly her obligation under the contract by paying several installments more. Without objection on the part of either of the defendants therein, the case, as prayed for, was ordered dismissed without prejudice.

'Shortly after the dismissal of Civil Case No. Q-5411, or on May 16, 1961, the Board again passed and approved Resolution No. 550 reconsidering altogether its commitments to plaintiff De Leon, totally disregarding the conditional contract to sell previously executed, and re-awarding the subject property to Macabingkil.

'Plaintiff Irene de Leon, assisted by her husband Vicente Llanes, instituted the present complaint for injunction with damages against the PHHC seeking, among others, to enjoin the latter, its officers, representatives, agents or persons acting for and in its behalf from implementing PHHC Board Resolution No. 550 dated May 16, 1961, or from awarding or selling the lot in question to Concepcion Macabingkil or any other person or persons.

'As its main defense, the PHHC contends, among others, that plaintiff De Leon was not qualified for nor entitled to the award, and that the conditional contract to sell was void.

* * * * *

'* * * Subsequently, a decision by the court a quo was rendered the dispositive part of which reads as follows:

'In view of the foregoing considerations, the court hereby renders judgment, one in favor of plaintiffs and against the defendant, by declaring the preliminary injunction issued in this case permanent; by declaring the PHHC Board Resolution No. 550 dated May 16, 1961, void and of no effect, enjoining the defendant corporation to respect the Conditional Contract to Sell it executed in favor of plaintiff Irene de Leon involving Lot 27, Block No. E-148 on March 27, 1961, and to eject any and all squatters on the said lot in question; by ordering the defendant to pay to plaintiffs the sum of P500.00 by way of moral and exemplary damages aside from the sum of P300.00 by way of attorney's fees; and for the defendant to pay the costs. For lack of evidence, the court cannot grant the plaintiffs the amount of P10,000.00 which they claim as actual damages.'

A subsequent motion for reconsideration filed by defendant was denied.

'The case is now before us on appeal interposed by defendant PHHC on the bases of the following assignments of error:

* * * * *

'But we are more concerned with the validity of the evidence which the defendant intended to present if its motion for postponement was granted. For, indeed, if the evidence sought to be presented is of such a character and nature and of sufficient weight and value as to probably alter the findings and conclusions of the trial court, we might not hesitate to sacrifice legal or technical inconvenience for substance by resending the case to the lower court for the reception of the defendant's evidence, our findings and conclusions of the propriety of denial of defendant's action notwithstanding. The only evidence – it seems — which defendant PHHC seeks to present and upon which it bases its main defense, as can be gathered from their pleadings, arguments and affidavits attached to defendant's Rejoinder dated March 30, 1962, tends to prove that the spouses plaintiffs De Leon and Llanes, had previously been awarded PHHC lots and that these lots were sold to others. From these, defendant would draw the conclusion that plaintiffs are engaged in speculative activities and, therefore, are disqualified from acquiring a lot from the PHHC.

'These are matters already made and appearing of record, both testimonial and documentary. That the plaintiffs had previously acquired PHHC lots and that some of which had been sold to others were admitted by Llanes, the lone witness. In fact, these transactions were shown by PHHC records and documents submitted in evidence the genuineness of which were admitted by defendant. It was likewise shown from the PHHC records, not denied by defendant, that the PHHC itself had approved the previous awards and/or sales in favor of Llanes and De Leon and their subsequent transfers to other parties. But do these transactions, by themselves,

necessarily show speculative activities on the part of the spouses? We do not think so. But even if they do, we believe that upon them can not be predicated any right for the PHHC to rescind the consummated and partly fulfilled conditional contract to sell in favor of De Leon. While that ground may have been a valid and legitimate one for purposes of denying approval of an application for award, it ceases to be so after the merits of the application had been duly passed upon and approved, the formal contract duly executed, and the parties, pursuant thereto, had partly fulfilled the obligation under it, by paying several installments as in this case, unless valid grounds exist to vitiate the contract. Contrary to defendant's contention, there was no misrepresentation or pretense made by the plaintiff De Leon in her application for an award because her own application bears the admission that her husband Llanes was a holder of a PHHC lot. From the moment of perfection of the contract there accrued in favor of DeLeon certain rights of which she can only be denied and deprived in accordance with and on the grounds provided for by law.

'The defendant also contends that the award of the lot in question to plaintiff De Leon was in violation of the policy of the law creating the PHHC which enunciates that the homes should be for the homeless. Arguing, defense counsel says that the violation was against a public policy and therefore the conditional contract to sell was void. We do not agree that there was any violation of public policy. If anything has been violated at all the same is merely a rule or regulation of the PHHC which does not affect the obligation of a contract. But while the award in her favor may appear to be contrary to certain rules and regulations of the PHHC for the reason that at the time she applied for the lot in question plaintiffs have had previous awards of acquisitions of PHHC lots, it does not square with reason to prejudice the latter for the defendant's own acts in approving her application as well as the previous ones. It perforce will appear, that it was the PHHC that had caused, if not the doer of, the violation.

'Furthermore, it is our understanding of the law that once a contract has been perfected, and more so if the same had already been partly complied with, the authority to annul it does not rest exclusively upon one of the parties. The matter must have to be submitted to the courts for adjudication.

'There is another point to consider. From the PHHC records submitted in evidence, not denied by the parties, we find that another PHHC Lot 15, Block E-121 was previously offered, if not actually awarded to Macabingkil, which lot the latter wanted to have it exchanged with the disputed Lot 27, Block E-148 on which she was squatting. The refusal of De Leon to accept the exchange after her application was approved, had motivated the PHHC to propose a compromise solution whereby to De Leon would be awarded Lot No. 15 and to Macabingkil Lot No. 27, but the former had refused. (pp. 53-54, Rec.). If this is true, as the defendant corporation wishes us to believe, then the defendant's theory that De Leon was disqualified to an award of another PHHC lot becomes untenable. If she was disqualified, why was the offer of another lot made to her as a means of settling the tug-of-war over the disputed Lot No. 27 by and between De Leon and Macabingkil? We find as rather inconsistent the position taken by the defendant's counsel.

'Again, defendant claims that when the PHHC awarded the lot in question to De Leon and subsequently executed the contract to sell in her favor, it was not aware of the speculative activities of De Leon. This claim does violence to what appears in the record and to defendant's own arguments in the brief. The evidence discloses that long before the conditional contract to sell was executed, the PHHC had already made investigations of the status and qualifications of De Leon to acquire a lot from the PHHC, because of the complaint or protest filed by Macabingkil with it and with the Office of Economic Coordination (OEC). It will thus appear that the PHHC was not without knowledge of the disqualifications, if any, of plaintiffs to acquire the lot in question, and yet it proceeded to execute the conditional contract to sell.

'We rule, therefore, in favor of the conditional contract to sell which must be given full force and effect.

'Assigned Error No. 4 need not be discussed in view of our findings and conclusions.

'The attorney's fees awarded by the court a quo should be increased to P500.00.

'WHEREFORE, except as modified with respect to attorney's fees, the decision appealed from is hereby affirmed in all respects.'

* * * * *

"The above decision is quoted in full because we think that it governs and sets at rest the case at bar. Note that the said decision affirms that of the lower Court which declares 'the PHHC Board Resolution No. 550 dated May 16, 1961, void and of no effect.' Inasmuch as the said Re-solution No. 550 is the basis of the alleged cause of action of plaintiff in the present case before us, it is evident that the said alleged cause of action has no leg to stand on after this Court in said CA-G.R. No. 31169-R affirmed the lower Court's decision declaring said Resolution No. 550 void and of no effect. We accordingly find no error in the appealed order in the instant case which dismissed the same 'for lack of complaint to state a cause of action'.

"WHEREFORE, the appealed order is hereby affirmed, without special pronouncement as to costs."[9]

A copy of the decision of the Court of Appeals in CA-G.R. No. 34870-R was received on March 8, 1968 by the counsel of petitioner Concepcion Macabingkil. It was only on March 25, 1968, or more than fifteen (15) days after she received copy of the judgment, that she filed her first motion for reconsideration. This was denied by the Court of Appeals and a copy of its Resolution was served on petitioner Macabingkil on May 15, 1968. On May 20, 1968, petitioner filed a second motion for reconsideration, but this was also denied by Resolution of August 14, 1968 of the Court of Appeals, a copy of which was received by petitioner on September 4, 1968.

On September 19, 1968, Concepcion Macabingkil appealed by certiorari the aforesaid judgment to this Court, which appeal was given due course on October 1, 1968. However, upon motion for reconsideration filed on October 14, 1968 by private respondent spouses on the ground of lack of jurisdiction, as the present appeal was filed out of time, this Court, by Minute Resolution of October 22, 1968, deferred its action on the "motion to resolve independently the issue on jurisdiction before going into the merits of the petition, until the case is considered on the merits." [10]

In her brief, petitioner-appellant Concepcion Macabingkil contends that the Court of Appeals (Third Division) erred:

"1. In having decided a question of substance affirming the decision of the lower court which is not in accordance with law and/or with the applicable decisions of this Honorable Highest Tribunal, and besides, the fact that the Court of Appeals (Third Division) has ostensibly departed from the accepted and usual course of judicial proceeding by being inconsistent with its decision involving almost identical facts in the case of People's Homesite & Housing Corporation vs. Hilario Cabagbag, CA-G.R. No. 29953-R, promulgated August 31, 1963;

"2. In not holding that plaintiff-appellant's complaint in Civil Case No. Q-7832 states sufficient cause of action; and

"3. In holding that Board Resolution No. 550 is null and void and of no effect."

I

Perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional.[11] Section 1 of Rule 45 of the Revised Rules of Court requires that a "party may appeal by certiorari from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari, within fifteen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time, * * *". (Italics supplied.) Under Section 1 of Rule 52 of the said Rules, a motion for reconsideration of an

order or judgment of the appellate court must be filed within fifteen (15) days from notice of the final order or judgment. Section 10 of Rule 51 of the Rules also provides that entry of judgment shall be made "upon the expiration of fifteen (15) days after service of notice thereof upon the parties".

In the case at bar, petitioner's counsel received a copy of the appealed decision dated March 1, 1968 of the Court of Appeals in CA-G. R. No. 34870-R on March 8, 1968. Thereafter, her counsel filed on March 25, 1968 a first motion for reconsideration of said decision, or after the lapse of seventeen (17) days. This motion was denied on April 2, 1968 by the Court of Appeals and a copy of its denial was received by petitioner's counsel on May 14, 1968. On May 20, 1968, said counsel again filed a second motion for reconsideration dated May 16, 1968, but this motion was also denied by said court in its Resolution of August 14, 1968, a copy of which was also received by petitioner's counsel on September 4, 1968.

As above pointed out, petitioner's first motion for reconsideration on March 25, 1968 was filed beyond the fifteen-day reglementary period. This matter was extensively discussed in the concurring opinion of Justice Magno S. Gatmaitan in the Resolution of the Court of Appeals of August 14, 1968, thus: "on the back of page 59 rollo, it is seen that counsel for plaintiff (Macabingkil) received copy of the decision on 8 March 1968, therefore, his last day to file motion for reconsideration was 23 March, but as it was filed on March 25, page 77, therefore it was too late, and judgment had already become final",^[12] and this fact of receipt on March 8, 1968 by Macabingkil's counsel was also confirmed by the certification dated October 12, 1968 of the Clerk of the Court of Appeals, Jose A. Aguilin,^[13] and by the Registry Return Receipt.^[14] These provisions of the Rules of Court prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial businesses.^[15] The time can be extended only if a motion for extension is filed within the time or period provided therefor. In the case at bar, no motion for extension was ever filed by petitioner Macabingkil before March 23, 1968, and, as such, the said decision of March 1, 1968 has already become final and executory. To reiterate, perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal as required by the Rules has the effect of rendering the judgment final and executory.

II

Viewing, however, the present petition as a special civil action for certiorari under Rule 65 of the Revised Rules of Court, in which case petitioner need not comply with the provisions of Rule 45 of the Rules, nevertheless, petitioner must comply with the requirements called for by such special civil action. It is incumbent upon petitioner to show that the Court of Appeals, in promulgating the decision in question, acted without or in excess of its jurisdiction, or with grave abuse of discretion. For the office of the writ of certiorari has been reduced to the correction of defects in jurisdiction solely and cannot legally be used for any other purpose.^[16] It is not intended to correct errors of procedure or mistakes in the judge's findings or conclusions. The only issue that confronts Us for determination, therefore, is – whether or not the Court of Appeals acted without or in excess of its jurisdiction, or with grave abuse of discretion. Concededly, the Appellate Court had jurisdiction over the subject matter of the action. The only question, therefore, is – whether the Appellate Court gravely abused its discretion in affirming the trial court's Order of dismissal of petitioner's action "for failure of complaint to state a cause of action".

There is no question that in the afore-mentioned Civil Case No. Q-5866, which was affirmed by the Court of Appeals on August 31, 1963 in CA-G. R. No. 31169-R, the Appellate Court found as fully established by the evidence that Irene de Leon, not Concepcion Macabingkil, is the rightful awardee from the PHHC of Lot No. 27, Block E-148, East Avenue Sub-division, Quezon City. Said Court found that De Leon's application to purchase

said lot was duly processed and approved by the PHHC after it had determined that the afore-mentioned applicant was qualified to purchase the said property under the existing law. As a consequence, a contract of sale was duly executed on March 27, 1961 by the PHHC in favor of Irene de Leon and, pursuant thereto, the latter, complying with her obligations as vendee under said contract, paid to the PHHC the required installments.

It is also undisputed that PHHC Board Resolution No. 550, which is the basis of petitioner's cause of action in the case at bar, was declared by the Court of Appeals in CA-G. R. No. 31169-R as void and of no legal effect because it was proven that there was no misrepresentation in the application of Irene de Leon. As a matter of fact, the PHHC conducted an investigation on the status and qualifications of Irene de Leon to acquire the lot in question because of the protest filed by Macabingkil with the PHHC and with the Office of the Economic Coordination. On the basis of its factual findings, the Appellate Court concluded that the purported factual basis of Resolution No. 550, which cancelled the contract of sale in favor of Irene de Leon, did not exist. It was also found by said Court as undisputed in the record that "another PHHC Lot No. 15, Block E-121 was previously offered, if not actually awarded, to Macabingkil, which lot the latter wanted to have it exchanged with the disputed Lot No. 27, E-148, on which she was squatting." The refusal of De Leon to accept the exchange after her application was approved, had motivated the PHHC to propose a compromise solution awarding to De Leon Lot No. 15 and to Macabingkil Lot No. 27, which the former had refused.

The decision dated August 31, 1963 of the Court of Appeals in CA-G. R. No. 31169-R, which affirmed the decision dated February 21, 1962 of the Court of First Instance of Rizal, Quezon City Branch V, in Civil Case No. Q-5866, "declaring the PHHC Board Resolution No. 550 dated May 16, 1961, void and of no effect", and "enjoining the defendant corporation to respect the Conditional Contract to Sell it executed in favor of plaintiff Irene de Leon involving Lot 27, Block E-148 on March 27, 1961, and to eject any and all squatters on the said lot in question", had already become final and executory before petitioner Concepcion Macabingkil filed the case at bar, Civil Case No. Q-7832, on February 21, 1964, with the same Court of First Instance of Rizal, Quezon City Branch V. The rule is well-settled that once a court renders a final judgment, all the issues between or among the parties before it are deemed resolved and its judicial functions as regards only matter related to the controversy litigated comes to an end,^[17] and the same cannot be relitigated on its merits in the lower court as well as in the appellate courts.

"When an appellate court has once declared the law in a case, such declaration continues to be the law of that case even on a subsequent appeal. Such a rule is necessary to enable an appellate court to perform its duties satisfactorily and efficiently, and as a matter of policy in order to end litigation."^[18]

"Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were instituted was to put an end to controversies. To fulfill this purpose and to do so speedily, certain time limits, more or less arbitrary, have to be set up to spur on the slothful."^[19]

Petitioner, however, insists that since she was not a party in CA-G. R. No. 31169-R, the judgment thereon, which affirmed that of the trial court in Civil Case No. Q-5866, is not final and binding as to her. This point has been answered by Associate Justice Magno S. Gatmaitan in his concurring opinion in the Resolution of the Court of Appeals of August 14, 1968, denying petitioner's Motion for Reconsideration in CA-G.R. No. 34870-R. While it is true that the judgment in Civil Case No. Q-5866 could not be enforced against Macabingkil, she not being a party therein, it does not necessarily lead to the conclusion that the judgment in Civil Case No. Q-5866 was "without any value at all" for the said judgment was binding upon the PHHC which was a party therein and its privies. It must be noted that the subject matter of that case was the same land that appellant now claims, and since the judgment therein declared void and of no effect PHHC Board Resolution No. 550, dated May 16, 1961,

which is the basis of the claim of Macabingkil, and compelled PHHC to abide by its commitment to sell said lot to De Leon that judgment consequently disabled PHHC from disposing again the same property in favor of petitioner. The only recourse of Macabingkil was, therefore, to have secured a declaration of nullity of the aforementioned judgment, not in a collateral manner, as she attempts to do in the present proceedings, but by a direct action to annul the same.

"Under our rules of procedure, the validity of a judgment or order of the court, which has become final and executory, may be attacked only by a direct action or proceeding to annul the same, or by motion in another case if, in the latter case, the court had no jurisdiction to enter the order or pronounce the judgment (section 44, Rule 39 of the Rules of Court). The first proceeding is a direct attack against the order or judgment, because it is not incidental to, but is the main object of, the proceeding. The other one is the collateral attack, in which the purpose of the proceedings is to obtain some relief, other than the vacation or setting aside of the judgment, and the attack is only an incident. (I Freeman on Judgments, sec. 306, pages 607-608.) A third manner is by a petition for relief from the judgment or order as authorized by the statutes or by the rules, such as those expressly provided in Rule 38 of the Rules of Court, but in this case it is to be noted that the relief is granted by express statutory authority in the same action or proceeding in which the judgment or order was entered. * *

*"[20]

Under existing rules, there are three (3) ways by which a final and executory judgment may be set aside. The first is by petition for relief from judgment under Rule 38 of the Revised Rules of Court, when judgment has been taken against the party through fraud, accident, mistake or excusable negligence, in which case the petition must be filed within sixty (60) days after the petitioner learns of the judgment, but not more than six (6) months after such judgment was entered. The second is by direct action to annul and enjoin the enforcement of the judgment. This remedy presupposes that the challenged judgment is not void upon its face, but is entirely regular in form, and the alleged defect is one which is not apparent upon its face or from the recitals contained in the judgment.[21] As explained in *Banco Español-Filipino v. Palanca*,[22] "under accepted principles of law and practice, long recognized in American courts, the proper remedy in such case, after the time for appeal or review has passed, is for the aggrieved party to bring an action enjoining the judgment, if not already carried into effect; or if the property has already been disposed of, he may institute suit to recover it." The third is either a direct action, as certiorari, or by a collateral attack against the challenged judgment or order. This remedy presupposes that the challenged judgment is void upon its face, or that the nullity of the judgment is apparent by virtue of its own recitals. As aptly explained by Justice Malcolm in his dissent in *Banco Español-Filipino v. Palanca*, supra, "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its want of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power so to do exists."

Since the afore-mentioned decision in Civil Case No. Q-5866 is not void upon its face, it may only be annulled by direct action on the ground of fraud.

It is only extrinsic or collateral fraud, as distinguished from intrinsic fraud, however, that can serve as a basis for the annulment of judgment.[23] Fraud has been regarded as extrinsic or collateral, within the meaning of the rule, "where it is one the effect of which prevents a party from having a trial, or real contest, or from presenting all of his case to the court, or where it operates upon matters pertaining, not to the judgment itself, but to the manner in which it was procured so that there is not a fair submission of the controversy." [24] In other words, extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case, by fraud or deception practiced on him by his opponent. This was explained by Justice Miller, thus:

"But there is an admitted exception to this general rule, in cases where, by reason of something done by the

successful party to a suit, there was, in fact, no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his op-ponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side – these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are rea-sons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing. See, Wells, Res Adjudicata, sec. 499; Pearce v. Olney, 20 Conn., 544; Wierich v. De Zoya, 7 Ill., (2 Gilm.) 385; Kent v. Ricards, 3 Md. Ch., 396; Smith v. Lowry, 1 Johns. Ch., 320; De Louis v. Meek, 2 Green (Iowa), 55.

"In all these cases and many others which have been examined, relief has been granted on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been preven-ted from presenting all of his case to the court." [25]

Petitioner does not pretend, however, that she had been prevented from exhibiting fully her case in Civil Case No. Q-5866, by means of fraud or deception practiced on her by her opponent. On the contrary, it is worthwhile to note that, as a matter of fact, she had all the opportunity to present fully her side of the case. Thus, in her "Motion for Leave to Intervene", dated September 2, 1961 and filed in said Civil Case No. Q-5866, petitioner Macabingkil prayed therein that she "be allowed to intervene in the above-entitled case, by joining with the defendant (PHHC) in ans-wering the complaint and against the latter through a cross complaint", thereby implying that petitioner had a common defense with PHHC. Petitioner's motion for intervention was, however, denied on September 9, 1961 by the trial court after hearing for the case had "already been partially tried and was not anymore within the pleading period." [26] Although petitioner appeared to have a direct interest in the subject matter of the litigation, said party did not seek a reconsideration of said order, much less did she question on appeal the validity of said order. On the basis of the foregoing, it is evident that even if we were to consider the present appeal as a petition for certiorari under Rule 65 of the Revised Rules of Court, still the said petition could not be granted.

III

Even on equitable grounds, the contention of petitioner cannot be sustained. It should be recalled that in Civil Case No. Q-5411, [27] which was filed by Irene de Leon against the PHHC and Concepcion Macabingkil and others, to compel the PHHC to execute the contract of sale of Lot No. 27 in her favor and to enjoin the PHHC from selling said lot to Macabingkil, several pre-trial conferences were held by the parties in order to reach an amicable settlement. It should be noted that Macabingkil, in her answer in the case, claimed the right to be awarded Lot No. 27 because of Resolution No. 370. As a result of such conferences, the members of the Board of Directors of the PHHC agreed to rescind Resolution No. 370, dated December 18, 1959, which annulled the original award of Lot No. 27 to Irene de Leon in 1957, and to re-award Lot No. 27 to Concepcion Macabingkil and Lot No. 15 to Irene de Leon. On March 21, 1961, the PHHC Board passed Resolution No. 430, reconsidering the aforesaid Resolution No. 370 and maintained the original award of Lot No. 27 in favor of Irene de Leon and Lot No. 15 in favor of Concepcion Macabingkil, and ordered Maca-bingkil to transfer whatever improvements she may presently have on Lot No. 27 to Lot No. 15. On March 27, 1961, the PHHC executed a "Conditional Contract to Sell" Lot No. 27 in favor of Irene de Leon. Pursuant to this contract, Irene de Leon paid to the PHHC her monthly installments corresponding to the months of April through and including August, 1961. On the basis of the foregoing compromise agreement, Irene de Leon filed, on April 22, 1961, a Motion to Dismiss Civil Case No. Q-5411. Copies of this motion were furnished to all the parties, including the counsel of Concepcion Macabingkil. At the hearing of the motion on April 25, 1961, the counsel of Macabingkil was granted five (5)

days, or until April 28, 1961, to file his opposition, if any, to the motion. On May 10, 1961, the trial court, upon finding that "no opposition was filed by the defendants, notwithstanding the fact that they were given time to do so", dismissed Civil Case No. Q-5411, with prejudice. It is evident that petitioner Macabingkil must have acquiesced in this compromise, since she did not question therein this settlement of the case by the re-awarding of Lot No. 27 to Irene de Leon and the execution of the sales agreement of said lot by the PHHC on March 27, 1961, but on the contrary accepted the re-award to her of Lot No. 15, Block E-121, and continued with her purchase agreement with the PHHC over said property. A party cannot, in law and in good conscience, be allowed to reap the fruits of a compromise and repudiate what does not suit her.

WHEREFORE, the present appeal should be, as it is here-by, **DISMISSED**, with costs against plaintiff-appellant Concepcion Macabingkil.

Concepcion, Jr., and Martin[*], JJ., concur.

Fernando, Acting C.J., and Aquino, J., in the result.

Barredo (Acting Chairman), J., did not take part.

[1] Entitled "Concepcion Macabingkil, Plaintiff-Appellant, versus People's Homesite & Housing Corporation, Defendant-Appellee. Irene de Leon and her husband, Vicente Llanes, Intervenors-Appellees."

[2] Record on Appeal, pp. 2-7.

[3] Entitled "Irene de Leon, assisted by her husband, Plaintiff-Appellee, versus People's Homesite & Housing Corporation, Defendant-Appellant." Record on Appeal, pp. 11-14.

[4] Record on Appeal, pp. 27-28.

[5] Ibid., pp. 30-34.

[6] Ibid., pp. 50-60.

[7] Ibid., pp. 61-115.

[8] Ibid., 116-118.

[9] Decision in CA-G. R. No. 34870-R, Rollo, pp. 90-106.

[10] Rollo, p. 131.

[11] Caisip, et al. v. Cabangon, 109 Phil. 150.

[12] Rollo, p. 114.

[13] Ibid., p. 124.

[14] Ibid., p. 208.

[15] Alvero v. De Leon, 76 Phil. 428.

[16] Albert v. Court of First Instance, 23 SCRA 948. See also Herrera v. Barretto, 25 Phil. 245, 271.

[17] Bayer Philippines, Inc. v. Agana, 63 SCRA 355.

[18] Zarate v. Director of Lands, 39 Phil. 747.

[18] *Dy Cay v. Crossfield & O'Brien*, 38 Phil. 521, 526.

[20] *Reyes, et al. v. Datu*, 94 Phil. 446, 448-449.

[21] *Abbain v. Chua*, 22 SCRA 798; *Cadano v. Cadano*, 49 SCRA 33; *Anuran v. Aquino*, 38 Phil. 329.

[22] 37 Phil. 921, 949.

[23] *Aring v. Original*, 6 SCRA 1021, 1025; *Velasco v. Velasco*, 2 SCRA 736.

[24] 46 Am. Jur. 913.

[25] *U.S. v. Throckmorton*, 25 L. ed. 93, 95.

[26] See Appendices "C-1", "C-2" and "C-3", pp. 61-65, Brief for Respondent-Appellees Irene de Leon and Vicente Llanes.

[27] Entitled "Irene de Leon, assisted by her husband, Vicente Llanes, Plaintiffs, versus People's Homesite & Housing Corporation, Concepcion Makabingkil, Paula Makabingkil, Vicenta Makabingkil, and Romana M. Anies, Defendants."

[*] Justice Ruperto G. Martin was designated to sit in the Second Division.

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