

**FORTUNATO PICHAY, ET AL., PLAINTIFFS AND APPELLANTS, VS.
MICHAEL S. KAIRUZ, DEFENDANT AND APPELLEE.***G. R. No. L-12658. May 18, 1962*

Ponente: BAUTISTA ANGELO, J.

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Fortunate Pichay, et al. filed an action before the Court of First Instance of Baguio for the annulment of a special power of attorney and a deed of mortgage on the ground that the same are fictitious because their consent thereto had been obtained through fraud and intimidation (Civil Case No. 454). The complaint was later amended to include the mother of defendant as party.

Prior to the institution of the above action, defendants commenced Civil Case No. 423 before the same court against plaintiffs in Civil Case No. 454. In their answer, defendants in the first case set up the defense of lack of consent and consideration, as well as fraud, duress and intimidation in the execution of the special power of attorney and the deed of mortgage involved in the second case. In Civil Case No. 454, defendants filed a motion to dismiss, as well as an answer, wherein they pleaded as a defense that there was another action pending between the same parties upon the same cause of action which warrants the dismissal of the case. Considering this plea, the court deferred action on the motion to dismiss until after Civil Case No. 423 shall have been decided.

Finally, after allowing plaintiffs in the instant case to present all their evidence and after the lower court had rendered judgment in Civil Case No. 423, it rendered the appealed judgment dismissing plaintiffs' complaint with costs, and ordering plaintiffs jointly to pay defendants the sum of P500.00 as attorney's fees.

The case is now before us, after having been certified by the Court of Appeals, where appellants raise as main issue the dismissal of their complaint by the trial court on the ground that there was another action pending between the same parties which involves the same subject matter and cause of action, apart from the fact that judgment has already been rendered therein which has the effect of barring the present case on the ground of res judicata. Another issue raised refers to the impropriety of imposing upon appellants the obligation to pay attorney's fees to appellees' counsel.

We find no merit in this appeal. To begin with, it cannot be disputed that the present case is predicated upon the plea that the power of attorney and the deed of mortgage which were allegedly executed by appellants are null and void on the ground that their consent thereto was obtained through fraud and intimidation. Here, the principal defendant is Michael Kairuz. On the other hand, in Civil Case No. 423, the complaint was filed by Michael Kairuz to recover certain amount of money making as defendants the same parties who appear as plaintiffs herein. And in both cases the parties brought to the fore the validity of the same documents. Then while the second case was pending trial, the court rendered judgment in the first case dismissing the complaint based on the finding that said two documents are null and void. The court even went further. It ordered plaintiffs to pay to defendants the sum of P12,650.00, as damages, plus an additional sum of P2,000.00 as attorney's fees. These facts show that the two cases really involve the same parties, the same subject matter, and the same cause of action. Indeed,

appellants herein not only obtained in the first case the relief they sought to obtain in the second but even obtained a judgment in their favor by way of damages and attorney's fees. The attitude of appellants in insisting on prosecuting the second case in spite of such favorable judgment is indeed beyond comprehension.

We also find no merit in the claim that the trial court erred in imposing the penalty of attorney's fees upon appellants considering the inconsistent stand taken by them which prompted the trial court to make the following remark:

"* * * Plaintiffs were warned time and time again both by counsel for defendant as well as this Court that the issues are identical and that this case should not proceed. Plaintiffs insisted in going ahead with the case. In order to give them their day in court in the event that the issues should prove different, this Court allowed plaintiffs to present all their evidence which in the final analysis proved the identity of the issues with Case 423. Accordingly this present action is completely unfounded and attorney's fees must be charged plaintiffs."

Wherefore, the decision appealed from is affirmed, with costs against appellants.

Padilla, Labrador, Concepcion, Reyes, J. B. L. Barrera, Paredes, and Dizon, JJ., concur.

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