

NARCISO CORTEZ, PLAINTIFF AND APPELLEE, VS. HERBERT BROWNELL, JR., IN HIS CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANT AND APPELLANT. GUILLERMA ABARQUEZ, DEFENDA...

G.R. No. L-7554. August 31, 1955

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BENGZON, ACTING C.J.:

On March 4, 1947, in Special Proceeding No. 56 for the summary settlement of the estate of the deceased Amario Cortez, the Court of First Instance of Davao decreed that Guillerma Abarquez, his mother, was his only legitimate heir, entitled to his properties including two parcels of land in the City of Davao, described in Transfer Certificate of Title No. 718 of that province. It appearing that she was married to K. Matsuo, a Japanese, the court ordered that copy of its decree shall be given to the Enemy Property Custodian of the U. S. in Davao.

On May 18, 1948, the Philippine Alien Property Administration issued Vesting Order No. P-644, (under the authority of the grading with the Enemy Acts, as amended, the Philippine Property Act of 1946 and other legal provisions), declaring that said landed property, being owned by a national of Japan, was thereby vested in the Philippine Alien Property Administrator for the use and benefit of the United States etc.

On January 29, 1951, Narciso Cortez, Filipino, filed a complaint in the Court of First Instance of Davao to annul the above judicial decree and Vesting Order in so far as one-half of the property was concerned. He alleged in substance that he was the lawful husband of Guillerma Abarquez and the father of Amario Cortez; that as such father, he was entitled to one-half of Amario's estate; that the court decree was void because it had been obtained thru false and fraudulent representations, inasmuch as the attorney who had filed the petition (Atty. Gonzales) knowing he was alive, asserted that the only heir of Amario was his mother Guillerma Abarquez; and that, consequently, the Vesting Order was also void, at least in so far as it affected his one-half share of the assets of his dead son.

The Attorney-General of the United States, who was substituted as party defendant vice the Philippine Alien Property Administrator presented an answer opposing plaintiff's demand, denying the alleged fraudulent representations, and asserting that the court had no jurisdiction to entertain the suit, because under the Philippine Property Act of 1946, a formal notice of claim had to be filed with the Alien Property Administration before the institution of a suit; and the plaintiff failed to comply with such condition, with the result that the action was, in effect, a suit against the United States government without its consent. Said defendant also averred that the false representations supposedly made to secure the award in favor of Guillerma Abarquez were not sufficient cause of annulment, because they did not constitute extrinsic or collateral fraud.

The Republic of the Philippines intervened, and made common cause with the Attorney-General of the U. S.

Guillerma Abarquez was impleaded as defendant. In her answer, however, she prayed that judgment be rendered in accordance with the complaint, acknowledging her to be the legal owner of the other half of the property in question.

After hearing both sides, the court declared itself with jurisdiction and found no fraud in the procurement of the judicial award, inasmuch as Atty. Gonzales came to know plaintiff was alive only after the said award had been duly promulgated. Said the court on this point,

"It is pointed out by the counsel for the plaintiff that fraud was committed in the procurement of the questioned Order of this Court in Special Proceedings No. 56, claiming that when Atty. Gonzales filed the petition he was advised by Corcuera that the plaintiff was alive, and that was one month after Corcuera received the power of attorney and the letter accompanying the same. Although Atty. Gonzales admitted that he was informed by Corcuera to the effect that the plaintiff was alive, yet it was only after March, 1947, when the Order was already issued.

Apparently Corcuera was not sure of the date, whereas Atty. Gonzales was certain that his knowledge of the plaintiff being alive was only had after March, 1947, when the question order was already issued.

Considering that the testimony of Corcuera as pointed out is noticeably uncertain with respect to dates, it cannot prevail over the testimony of Atty. Gonzales, who gave the exact date that it was in March 1947, when he was advised by Mr. Corcuera."

Nevertheless, the Court granted the relief demanded by plaintiff and his wife Guillerma Abarquez, following its opinion that Atty. Gonzales, as an employee of the Philippine Alien Property Administration "should have prevented the vesting of the properties" by said office, when he got information that Narciso Cortez was still alive.

The Attorney-General of the United States and the Republic of the Philippines appealed. In their joint brief they contend, in their first two assignments of error, that the lower court had no jurisdiction over the Attorney-General nor over the subject matter. By reason of such assignments the appeal is here, as involving a question of jurisdiction. We do not find it necessary, however, to discuss this phase of the controversy, because we are of the opinion that even if the court had jurisdiction, the appealed decision must be reversed and the complaint dismissed.

According to the Rules, the court order of March 4, 1947 adjudging the properties of Amario to his mother Guillerma Abarquez, as his only heir, could be annulled or modified to give other heirs (Narciso, the father) their share within two years after March 4, 1947. When on January 29, 1951 Narciso Cortez began this proceeding more than two years had already elapsed. He knew that under the Rules he had no chance; therefore he elected another course of action: a direct attack on the ground of fraud, which is made to consist in the alleged knowledge (before the institution of the proceeding for the settlement of Amario's estate) of Atty. Gonzales that he was living, and despite such knowledge, Atty. Gonzales falsely asserted that he (Narciso) was dead. But the lower court believed Gonzales' testimony that he came to know Narciso was alive only after the award had been promulgated. So, the court found there was no fraud in obtaining the Court adjudication. Nevertheless, reasoning that after knowing Narciso was alive, Gonzales should have impeded the issuance of the Vesting Order, the court annulled both the judicial order, and the Vesting Order based thereon. Now, this is a prejudicial non sequitur. In the first place it is not shown how Atty. Gonzales could have prevented the promulgation of the Vesting Order. He was just an attorney in the office of the Philippine Alien Property Administrator. In the second place, no relation existed between Narciso Cortez and Atty. Gonzales imposing on the latter the active duty to protect the former's interests. In the third place, granting that Atty. Gonzales neglected his duty (if any) to prevent the forfeiture, how could such neglect nullify the judicial order already issued, and which was final and irrevocable?

Now then, if the order of March 4, 1947 cannot be declared null and void by reason of a subsequent neglect of duty of Gonzales, how again may the Vesting Order be annulled, being—as it is—based upon an outstanding judicial declaration that the property belongs to Guillerma Abarquez married to a Japanese, i. e. a national of

enemy country (Japan)?

Detecting this flaw in the appealed decision, the appellees claim in their brief that the lower court erred in not finding that Atty. Gonzales acted fraudulently, because "in September 1946, he knew that plaintiff and his son Loreto were alive and in Manila, and yet he concealed this fact from the Court and misrepresented them to be dead when he filed on January 6, 1947, the petition for the summary settlement of the estate of Amario."

This contention is premised on the testimony of Vedasto Corcuera who had allegedly told Gonzales in September 1946 that "according to Loreto Cortez his father is still living." Atty. Gonzales affirmed under oath that Corcuera gave him the information after March 1947. And the court believed him; rightly, because Atty. Gonzales was presented as witness by the plaintiff himself. Anyway even if it were true that Corcuera spoke to him in 1946, Atty. Gonzales could not be blamed in discounting such hearsay evidence, in the face of positive information given to him of Narciso's death by Ciriaco Cavanos (who had engaged him to file the petition and also by Guillerma Abarquez, information which he was justified to believe, since Guillerma's marriage to the Japanese could only be explained with her previous husband's demise. In any event, the refusal of Atty. Gonzales to believe that Narciso was alive does not by any means constitute fraud. Much less does it constitute extrinsic or collateral fraud, since his fault, at most was the unintentional presentation of false testimony that Narciso was dead; or in the concealment (also unintentional) of the fact that Narciso was alive. And we have recently ruled that presentation of false testimony or the concealment of evidentiary facts does not per se constitute extrinsic fraud, the only kind of fraud sufficient to annul a court decision.

"Anyway the deception by the Floreses, if any, was intrinsic, being in the same category as presentation of perjured testimony or false evidence. Such fraud does not prevent application of res judicata. According to repeated decisions, only extrinsic fraud in procuring a judgment is ground to nullify it." (Arsenio Escudero et al. vs. Gertrudo Flores et als.,[*] G. R. No. L-7401, June 25, 1955.) (Citing many cases.)

There is therefore no ground to annul the court's adjudication of March 4, 1947. And so long as it stands, the Vesting Order must also stand.

And this plaintiff has only himself to blame. He was advised on time by Atty. Gonzales that amendment of the court decree could be obtained by motion within two years, yet he did not take appropriate action. Furthermore he separated from his wife for many years (since 1925), and took no legal steps when she was living with, or when she married the Japanese, thereby allowing the impression to prevail in Davao that he was already dead. He has to bear the consequences.

If it be argued that Guillerma's marriage to the Japanese was void, and therefore she was not an alien enemy whose property is subject to forfeiture, the answer is that according to existing court order, she is married to the Japanese K. Matsuo. It should be remembered that under the law then in force.

"Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(a) The first marriage was annulled or dissolved;

(b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be, so by the spouse present at the time of contracting such subsequent marriage, the marriage so contracted being valid in either case until declared null and void by a competent court." (Sec. 29 Art. 3613 Civil Code.) (Italics ours.)

The appealed decision is reversed, the complaint is dismissed and the questioned orders are sustained. Costs

against plaintiff-appellee. So ordered.

Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J.B.L., JJ., concur.

Judgment reversed.

[*] Supra, p. 240.

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