

DEMETRIA DE LA PAZ, PLAINTIFF AND APPELLANT, VS. EULOGIA BIRING, BARCELISA GUTIERREZ AND DAVID SIASOCO, DEFENDANTS AND APPELLEES.*G.R. No. L-6652. March 31, 1955*

Ponente: PADILLA, J.

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This is an action to annul a judgment rendered in a partition proceeding (case No. 1376, Court of First Instance of Rizal); to set aside the sale of a lot and the house erected thereon in favor of the defendant David Siasoco; to secure a judicial declaration that the plaintiff is the owner of said lot and house; to recover P5,000 as damages for expenses incurred in bringing the action and for attorney's fees; and to obtain such other and further remedy as justice and equity warrant.

In the complaint filed on 15 December 1952 in this case (No. 1960), the plaintiff alleges that an action was brought by Eulogia Biring as guardian ad litem of the minor Liwayway de la Paz and Barcelisa Gutierrez for the partition of certain properties which included a parcel of land situated in barrio de Santo Nino, municipality of Marikina, Province of Rizal, more particularly described in the complaint, which belongs to her exclusively; that a house erected on a parcel of land owned by the Tuasons belonged to one Fausta Teodoro who sold it to Emilio de la Paz, Maria de la Paz, Demetria de la Paz and Barcelisa Gutierrez; that the latter agreed to remove the house from the land of the Tuasons and erect it on a lot owned by her and to give the house to her; that after summons she called on her sister Barcelisa Gutierrez to inquire about the partition and was assured by the latter that her lot and house erected thereon would be excluded from the partition; that due to this assurance made by her sister Barcelisa Gutierrez and believing in good faith in what the latter had told her about the exclusion of the lot and house belonging to her, she did not appear nor answer the complaint for partition; that on 5 April 1951 she was declared in default and the hearing of the case set for the 21st day of April 1951 without notice to her, and on that date the plaintiffs, therein presented evidence and the Court rendered judgment granting the petition for partition; that she was deprived of her day in court and of her property without due process of law, the judgment having been obtained in said case by means of fraud and false representations; that on motion of the attorney for the plaintiffs in the partition case the Court appointed as commissioner to partition the properties involved in the proceedings the district engineer of the province of Rizal who, without taking his oath of office as required by the Rules, entered upon the performance of his duties as such commissioner and rendered his report, and without setting the report for hearing and without affording her the opportunity to be heard, the Court approved the report instead of rendering judgment thereon; that upon petition of the attorney for the plaintiffs in the partition proceedings the Court authorized the sale at public auction of the lot and house and appointed Miguel Javillonar as commissioner who, without taking the oath as required by the Rules, acted as commissioner, published the notice of sale and auctioned and awarded the house and lot to David Siasoco, who after the auction sale and award asked the Court that he be placed in possession of the house and lot, which petition was granted by the Court; and that as a result of the fraudulent acts of the defendants, she incurred expenses amounting to P5,000, for instituting

the action and attorney's fees.

After summons the defendant David Siasoco filed a motion to dismiss the complaint, on the ground that the action for annulment of judgment and recovery of title and possession is barred by a prior judgment and that the complaint states no cause of action against him. In support of the first ground, he alleges that the question of fraud which the plaintiff claims had been committed by the defendant Barcelisa Gutierrez was raised and threshed out in the partition proceedings (case No. 1376) when on 13 November 1952 the herein plaintiff, then defendant, moved to have the judgment by default set aside and the plaintiffs therein objected thereto; and that on 28 November 1952 the Court denied the motion. In support of the second ground, David Siasoco alleges that as there is no averment that he took part in the fraudulent acts complained of, the sale of the lot and house erected thereon executed in his favor on 13 October 1952 and confirmed by the Court on 22 October 1952, in the partition proceedings was valid and vested in him title to the house and lot; and that he may not be held responsible for the fraudulent acts and representations complained of.

Barcelisa Gutierrez also filed a motion to dismiss, on the ground that the judgment sought to be annulled and set aside is now final and executory and that granting that the fraudulent acts alleged in the complaint were true, the time within which the plaintiff could pray for relief against said judgment had already expired, because twenty months had already elapsed from the entry of judgment to the date of the filing of the complaint in the case, or more than six months after the entry thereof.

Acting upon these motions the Court dismissed the complaint on the ground of res-judicata "pursuant to the doctrine laid down by the Supreme Court in Case No. L-6413, decided on January 16, 1953." The plaintiff has appealed.

Rule 38 provides for relief to be granted to an aggrieved party against whom a judgment or order had been entered or proceedings taken through fraud by the filing in such court and in the same proceedings of a petition to have the judgment, order, or proceedings set aside within sixty days after such party learns of the judgment, order, or proceedings, and not more than six months after such judgment or order had been entered, or proceedings taken. The plaintiff availed herself of the remedy by filing on 13 November 1952 a motion to have the judgment by default set aside on the same ground of fraud as alleged in the complaint filed in this case, to which the defendants herein filed an opposition denying that the fraud alleged in the motion had been committed; but unfortunately for her the Court denied the motion in its order of 28 November 1952. It does not appear whether the time within which an appeal from the last mentioned order denying the relief may be taken had expired on the date the plaintiff filed a petition for a writ of certiorari in this Court, which was denied for lack of merit, and whether after denial of the petition for a writ of certiorari there was still time to appeal from the aforesaid order. Not having appealed from the order denying the motion for relief, the plaintiff is now precluded from questioning the validity of the judgment sought to be annulled and set aside. The fact that this Court dismissed the petition for a writ of certiorari filed by her to have such denial set aside for lack of merit and because there was a pending action to have said judgment set aside, is no reason for the reopening of the partition proceedings by means of an action such as the one brought in this case.

As to the defendant Eulogia Biring there is no allegation that she committed any fraudulent act in connection with the partition proceedings.

As to the defendant David Siasoco, it is clear that there is no cause of action against him, because he took no part in the fraudulent acts and representations claimed to have been committed and made by the defendant Barcelisa Gutierrez to the plaintiff Demetria de la Paz. He was only a successful bidder, of the lot and house at the public auction sale conducted by a commissioner appointed by the Court in the partition proceedings.

The order of dismissal appealed from is hereby affirmed not on the ground relied upon by the Court below but upon the grounds hereinabove stated. No special pronouncement as to costs.

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

Order of dismissal, affirmed.

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