

**PEDRO DULAP AND DOLORES AMPARO, PETITIONERS, VS.
HONORABLE COURT OF APPEALS AND ASIAN SURETY & INSURANCE CO., INC., RESPONDENTS.**

G.R. No. L-28306. December 18, 1971

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In this appeal from the decision of the Court of Appeals reversing the judgment of the Court of First Instance of Manila, Branch III, in its Civil Case No. 56528, the question presented is whether the said Branch III has the power or authority to annul a judgment rendered by Branch XVII of the same court.

The spouses Pedro Dulap and Dolores Amparo, petitioners herein, were owners, of a parcel of land in Novaliches, Quezon City, containing an area of five thousand (5,000) square meters, more or less, and co-vered by TCT No. 66821. Through some happening which later became the subject of a criminal action, the Dulaps duplicate certificate of title came into the hands of herein private respondent Asian Surety & Insurance Co., Inc., which had in its possession, as well, a registered deed of mortgage in its favor allegedly signed by the Dulaps and ratified before a notary public, covering the same property. The obligation which was the subject matter of the mortgage having fallen due, private respondent sent a letter of demand to the Dulaps at Maysilo, Malabon, Rizal, the address given in the deed of mortgage. A copy of the letter was also sent to the same spouses at Bagumbong, Caloocan City, which was the address of the Dulaps appearing in the transfer certificate or title. The latter copy of the letter was received by the Dulaps, who, knowing that they had not obtained a loan from private respondent, nor mortgaged their land to it, ignored the same. What they did, instead, was to file a criminal complaint for forgery against the person whom they believed had deceived them into delivering to him their copy of TCT No. 66821, and was responsible for the forged deed of mortgage.

In view of the Dulaps' failure to answer the letter of demand, Asian Surety & Insurance Co., Inc. filed with the Court of First Instance of Manila an action for fore-closure of the mortgage. The case was docketed as Civil Case No. 52415 and assigned to Branch XVII. Upon private respondent's request, summons was issued through publication in a newspaper. The Dulaps failed to file an answer, hence were declared in default. After trial ex-parte, decision was rendered by the court on May 9, 1963, ordering the Dulaps to pay the Asian Surety & Insurance Co., Inc. the sum of P10,000.00 with interest, as well as attorney's fees and costs. The judgment having become final and executory, a writ of execution was issued.

The sheriff's sale took place on December 12, 1963, at which herein private respondent was declared the highest bidder with its bid of P12, 500.00. A sheriff's certificate of sale was issued on the same date, and, thereafter, private respondent filed a motion ex-parte for confirmation of the sale and issuance of a writ of possession. The Dulaps, learning of the said motion, filed an opposition there-to, expressing their surprise over the judgment and alleging that they had never executed a deed of mortgage in favor of private respondent, nor had they been properly summoned in the foreclosure suit, as the summons therein issued was improper. They also alleged that

the only paper which they had received in connection with the action was the notice of the sheriff's sale, and that upon receipt thereof they began preparing a draft of a complaint for annulment of the judgment. The court, in its order of February 7, 1964, de-nied the opposition to the confirmation of the sale and granted the writ of possession prayed for by private respondent, without prejudice to the filing by the Dulaps of their projected suit.

On March 14, 1964, the Dulaps filed an action for annulment of the judgment in said Civil Case No. 52415, on the ground that the said judgment was void ab initio for want of jurisdiction over their persons as defendants. The case was docketed as Civil Case No. 56528 and assigned to Branch III of the same court of first instance. On July 24, 1965, the court rendered a decision annulling the judgment in Civil Case No. 52415 on the ground that the deciding court (Branch XVII) did not acquire jurisdiction over the persons of the defendants therein for want of proper service of summons. The court (Branch III) was of the opinion that service of summons by publication requires that a copy of the summons and the order of publication be deposited in the post office, postage prepaid, directed to the defendant by registered mail at his last known address; but that in this case the same were sent to the defendants by registered mail at Maysilo, Malabon, Rizal, which was the address alleged in the complaint, although the undisputed fact was that the Dulaps had always been residing at Deparo, Caloocan City.

Asian Surety & Insurance Co., Inc. appealed the decision to the Court of Appeals, which, as stated at the beginning of this opinion, reversed the decision of the Court of First Instance of Manila, Branch III. Hence this petition for review by certiorari filed by the Dulaps.

In concluding that one branch of the Court of First Instance of Manila has no jurisdiction to annul the judgment of another branch of the same court, respondent Court of Appeals relied on the decision of this Court in *Mas vs. Dumaraog*, G.R.No.L-16252, September 29, 1964 (12 SCRA 34), where this Court held that "the power to open, modify or vacate a judgment is not only possessed by, but is restricted to the court in which the judgment was rendered". Petitioners contend that the doctrine in *Dumaraog* finds no application in this case, because while there the judgment sought to be annulled was rendered by the Court of First Instance of Iloilo and the action for annulment was filed with another court (the Court of First Instance of Antique), although belonging to the same judicial district, here both Branches XVII and III belong to the same Court of First Instance of Manila. But then came the case of *J.M. Tuason & Co., Inc. vs. Torres, et al.*, G.R. No. L-24717, December 4, 1967 (21 SCRA 1169), where this Court, holding that "the jurisdiction to annul a judgment of a branch of the Court of First Instance belongs solely to the very same branch which rendered the judgment," enjoined the Court of First Instance of Rizal, sitting at Pasig, from taking cognizance of, or acting in, a suit to annul a judgment rendered by the Court of First Instance of Rizal, Branch IV, sitting at Quezon City. That case was followed by *Sterling Investment Corporation, et al. vs. Ruiz, et al.*, G.R.No.L-30694, October 31, 1969 (30 SCRA 318), where this Court likewise enjoined Branch XV of the Court of First Instance of Rizal from taking cognizance of an action filed with it to an judgment of Branch VI of the same court.

In all three cases, the underlying philosophy is, as expressed in the *Dumaraog* case, the "policy of judicial stability," to the end that the judgment of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction. This Court feels that this is as good an occasion as any to re-examine the doctrine laid down in the aforementioned cases.

In an action to annul the judgment of a court, the plaintiff's cause of action springs from the alleged nullity of the judgment based on one ground or another, particularly fraud, which fact affords the plaintiff a right to judicial interference in his behalf. In such a suit the cause of action is entirely different from that in the action which gave rise to the judgment sought to be annulled, for a direct attack against a final and executory judgment is not incidental to, but is the main object of, the proceeding. The causes of action in the two cases being distinct and separate from each other, there is no plausible reason why the venue of the action to annul the judgment should

necessarily follow the venue of the previous action. The rules on venue provided in Section 2, Rule 4 of the Revised Rules of Court, to wit:

"SEC. 2. Venue in Courts of First Instance.-(a) Real actions. - Actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies.

"(b) Personal actions.- All other actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.

"(c) Actions against nonresidents.- If any of the defendants does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff, or any property of the defendant located in the Philippines, the action may be commenced and tried in the province where the plaintiff resides or the property or any portion thereof, is situated or found,"

should not be disregarded simply to prevent one court of first instance or one branch thereof from taking cognizance of an action to annul the judgment of another court of concurrent jurisdiction or of another branch.

The present doctrine which postulates that one court or one branch of a court may not annul the judgment of another court or branch, not only opens the door to a violation of Section 2 of Rule 4, but also limits the opportunity for the application of said rule. If, for instance, the action is a personal one under Section 2, paragraph (b), under the prevailing doctrine the action can only be commenced and tried in the place where the first action was tried, regardless of "where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides." This can very well result in the difficulties precisely sought to be avoided by the rules; for it could be that at the time of the filing of the second action for annulment, neither the plaintiff nor the defendant resides in the same place where either or both of them did when the first action was commenced and tried. The present doctrine likewise unduly deprives the parties of the right expressly given them under Rule 4, Section 3, to change or transfer venue from one province to another by written agreement ? a right conferred upon them for their own convenience and to minimize their expenses in the litigation – and renders innocuous the provision on waiver of improper venue in Section 4. Furthermore, Section 5 explicitly provides that Rule 4 "shall not apply in those cases where a specific rule or law provides otherwise." In none of the three (3) cases under consideration is any specific rule or law pointed to, providing that an action for annulment of a judgment should be commenced and tried in the same court or branch that tried the action which gave rise to the judgment sought to be annulled.

The cases of *Dumaraog, J.M. Tuason, & Co., Inc. and Sterling Investment al., supra*, would give the impression that when a suit to annul the judgment of a court of first instance or of a branch thereof is filed with another court of first instance or another branch of the same court, the question of jurisdiction inevitably comes up. This question was squarely ruled upon by this Court in the decision penned by Mr. Justice (now Chief Justice) Roberto Concepcion in *Vda. de Ursua vs. Pelayo*, G.R. No. L-13285, April 18, 1960 (107 Phil., 622), some four (4) years before the *Dumaraog* decision, to wit:

"It would seem from this order that the lower court considered itself devoid of authority or jurisdiction to annul an order issued or decision rendered by a judge of another branch of the same court. This view is untenable, for the jurisdiction of all courts in the Philippines, insofar as the authority thereof depends upon the nature of the litigation, is defined in the Revised Judiciary Act, pursuant to which courts of first instance shall have exclusive original jurisdiction over civil cases the subject matter of which are not capable of pecuniary estimation, and an action for the annulment of a judgment and an order of a court of justice belongs to this category. The case cited in the order appealed from (*Montesa vs. Manila Cordage Co., supra*) is not point, for

the issue involved therein was whether the Court of First Instance of Manila, may indirectly - not in an action for the specific purpose of annulling a judgment - and by interlocutory order, or a writ of preliminary injunction, set aside an attachment levied in pursuance of an order issued in another case pending before another branch of the same court. Such is not the nature of the proceeding before us."

To hold that a court or a branch thereof has no authority or jurisdiction to annul a judgment simply because that judgment was rendered by another court of concurrent jurisdiction or by another branch, would, therefore, practically amount to judicial legislation, affecting, as it will, the provisions of the Revised Judiciary Act. In an action to annul a final judgment or order, the choice of which court the action should be filed with is not left to the parties; by legal mandate the action should be filed with the court of first instance. The question is in what place (with what particular court of first instance) the action should be commenced and tried. The question, as discussed above, is actually one of venue. In the present case venue was properly laid, because it is averred in the complaint, which was filed with the Court of First Instance of Manila, and it is not disputed, that the defendant corporation has its principal place of business and office address in Manila.

In support of the principle of judicial stability, Dumaraog cites the following:

"The power to open, modify, or vacate a judgment is not only possessed by, but is restricted to the court in which the judgment was rendered. It is regarded as an elementary principle of high importance in the administration of justice that the judgment of a court of competent jurisdiction may not be opened, modified, or vacated by any court of concurrent jurisdiction." (30-A, American Jurisprudence 605)

Assuming that the principle is soundly supported by the authority cited above, the said authority might suffice to support the ruling in Dumaraog, for there two distinct courts of first instance were involved. However, the subsequent cases of J.M. Tuason & Co., Inc. and Sterling Investment Corporation, et al., were different: in each of them, one branch of a court of first instance was acting on a suit to annul the judgment of another branch of the same court. Apparently having in mind the above-quoted authority, this Court, in the said two subsequent cases, applied with equal force the doctrine in Dumaraog. But the citation as quoted above, while it may be valid in the Dumaraog case, may not find application in the present case, for it is further stated that:

"x x x This rule does not apply, however, to different departments of the same court." (Id.)

The authority itself, therefore, cited in Dumaraog, excludes the different branches of the same court from the application of the principle that "the judgment of a court of competent jurisdiction may not be opened, modified, or vacated by any court of concurrent jurisdiction." Hence, there is no parallelism between the Dumaraog case on one hand, and the J.M. Tuason & Co., Inc. and Sterling Investment Corporation, et al. cases on the other. With particular reference to the different branches of a court of first instance, the correct view is that expressed in Ba-calzo, et al. vs. Ramolete, etc., et al., L-22488, October 26, 1967 (21 SCRA 519), to wit:

"x x x The various branches of the Court of First Instance of Cebu under the Fourteenth Judicial District, are a coordinate and co-equal courts, and the totality of which is only one Court of First Instance. x x x."

Nor may it be said that the question herein raised involves interference on the part of Branch III with the judgment rendered by Branch XVII, both of the same Court of First Instance of Manila, since the latter court, in confirming the foreclosure sale and denying the opposition thereto interposed by herein petitioners, had expressly reserved unto them the filing of their projected action for annulment of judgment. That, precisely, was what petitioners did. This is not a case where one branch of the same court has sought to interfere in the exercise of jurisdiction by another branch of the same court over a case still under consideration by the latter; it is simply one where, after a case had been finally terminated in one branch, an action to annul judgment was filed in another branch. The cause of action in one is different from that obtaining in the other.

Our conclusion must therefore be that a court of first instance or a branch thereof has the authority and jurisdiction to take cognizance of, and to act in, a suit to annul a final and executory judgment or order rendered by another court of first instance or by another branch of the same court. The policy of judicial stability, which underlies the doctrine laid down in the cases of *Dumara-og, J.M. Tuason & Co., Inc. and Sterling Investment Corporation, et al.*, supra, should be held subordinate to an orderly administration of justice based on the existing rules of procedure and the law. Apposite is what this Court said in *Garchitorena, et al. vs. Sotelo*, 74 Phil., 25, 32, to wit:

"Petitioners vehemently invoke reasons of public policy which favor the stability of judicial decisions. Suffice it for us to say that such reasons are mute in the presence of fraud, which the law abhors."

It may be argued that the abandonment of the doctrine in *Dumara-og*, etc. may lead to chaos, nay, even enmity, among the judges of the different courts whose judgments or orders become the subject of annulment proceedings before other courts of concurrent jurisdiction. The matter should, however, be viewed academically and objectively. On the other hand, it may be said that to limit the authority to annul a judgment to the very branch that rendered the same, may, in some cases, result in a failure of justice, for if the branch that tries the annulment case is presided over by the same judge who penned the decision sought to be annulled, the tendency might be for the said judge to uphold the validity of his judgment regardless of the evidence. This consideration, however, is not one among those that have led this Court to arrive at the new doctrine, for we have great and abiding faith in the sense of justice and responsibility of the members of the judiciary.

The next question which we should now proceed to determine is whether the judgment rendered by Branch III is correct.

In arriving at the conclusion that Branch XVII did not acquire jurisdiction over the persons of the Dulaps, the court (Branch III) held that there was no proper service of summons upon the defendants. The pertinent provision of the Revised Rules of Court in connection with service of summons by publication is found in Rule 14, Section 21, which requires as proof, among others, "an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address." It is not disputed that copy of the summons and order for publication were directed to the defendants -Dulaps by registered mail to Maysilo, Malabon, Rizal, and that the said address is the one appearing in the complaint filed by Asian Surety & Insurance Co., Inc. against the Dulaps, which address was in turn copied from the deed of mortgage purportedly executed by the Dulaps in favor of the plaintiff; that the defendants had - even previous to the filing of the case against them - always been residing at Deparo, Caloocan City; and that the said defendants did not receive said copy of the summons and order for publication.

In the circumstances, we must uphold the judgment of Branch III. It will be recalled in this connection that sometime before the filing of its complaint, the plaintiff had sent two letters of demand to the Dulaps: one addressed to Maysilo, Malabon, Rizal, and the other to Bagumbong, Caloocan City, the latter being the Dulaps address as appearing in their duplicate certificate of title. The first was not received by the addressees; the second was received by them. This only goes to show: (a) that the Dulaps were - even at that time - already residing in Caloocan City and not in Malabon, Rizal; and that although the plaintiff obviously knew this, it chose to use the said Malabon address in its complaint, with the consequence that copy of the summons and the order for publication were sent thereto, which address now turns out to be fictitious, because it was merely used in the deed of mortgage precisely disowned by the Dulaps as a forgery piece. Copy of the summons and the order for publication not having been directed to the defendants to their last known address, which in the premises should be Deparo, Caloocan City, or, at the very least, Bagumbong, Caloocan City, but certainly not Maysilo, Malabon, Rizal, there was, as the trial court held, a fatal defect in the service of summons. (Cf. *Dy Reyes, et al. vs. Ortega*,

et al., L-21471, April 30, 1966 [16 SCRA 903, 9077].) As held by this Court:

"It is the duty of the court to require the fullest compliance with all the requirements of the statute permitting service by publication. Where service is obtained by publication, the entire proceeding should be closely scrutinized by the courts and a strict compliance with every condition of law should be exacted. Otherwise great abuses may occur, and the rights of persons and property may be made to depend upon the elastic conscience of interested parties rather than the enlightened judgment of the court or judge." (*Bachrach Garage and Taxicab Co. vs. Hotchkiss & Co.*, 34 Phil., 506, 508.)

IN VIEW OF THE FOREGOING CONSIDERATIONS, the judgment of respondent Court of Appeals appealed from is hereby re-versed and set aside, and the judgment of Branch III of the Court of First Instance of Manila annulling that of Branch XVII is upheld. No pronouncement as to costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Ruiz Castro, Barredo, and Makasiar, JJ., concur.

Fernando, J., did not take part.

Teehankee, J., in the result.

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