

SANTIAGO LAXAMANA, DECEASED, SUBSTITUTED BY RITA CANILAO VDA. DE LAXAMANA, AND THEIR CHILDREN NAMED NICO-LAS, TERESA, AUGUSTO, LOURDES AND JUAN, ALL SUR-NAMED LAXAMANA, PETITION...

G.R. No. L-37317. November 24, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

Originally, this was a litigation between Eleuterio Mallari and his wife's nephew, Santiago B. Laxamana, a lawyer, now both deceased, over Lot 8-A, with an area of twenty-one and two-tenths (21.2) square meters, located at 816 Trabajo, now Manuel de la Fuente Street, Sampaloc, Manila. The following antecedents reveal why much energy, time and money, altogether disproportionate to the value of the land in controversy, were spent in the instant certiorari case:

1. On February 2, 1960, Mallari filed an action against Laxamana in the Court of First Instance of Manila in order to establish his ownership over Lots 8-A and 8-B, with a total area of 119.7 square meters, to secure a declaration that the adjoining Lot 8-C, with an area of 74.1 square meters, belonged to Laxamana and that the latter's house on Lot 8-A was constructed in bad faith and should be ceded to Mallari, and to re-cover damages. (Civil Case No. 42486)
2. Laxamana in his answer to the complaint conceded that he and Mallari were the respective owners of Lot 8-C and Lot 8-B (with an area of 98.5 square meters) but he (Laxamana) prayed that he should be declared the owner of Lot 8-A.
3. At the hearing of the case on December 21, 1961, Laxamana and his counsel, although duly notified, did not appear. At nine-thirty-seven in the morning of that day, the trial court allowed plaintiff Mallari to present his evidence ex parte.
4. On February 22, 1962, the trial court rendered a decision declaring Mallari the owner of Lots 8-A and 8-B, ordering Laxamana to convey those lots to Mallari, to remove his store or construction thereon and to pay him a monthly rental of fifty pesos from the filing of the complaint until the store is removed and the said lot is vacated and to pay P200 as attorney's fees.
5. A copy of that decision was served upon Laxamana's lawyers on February 28, 1962. Thirty-five days later, or on April 4, 1962, Laxamana filed a petition for relief on the ground that his lawyer had "misplaced" the notice of hearing. The petition was supported by an affidavit of merits. The heirs of Mallari (who died on May 3, 1962 at the age of eighty-one years) opposed the petition for relief.
6. The lower court denied it in its order of January 7, 1963. The court did not consider as excusable neglect the failure of Laxamana's counsel to appear at the hearing scheduled on December 21, 1961 of which he was admittedly notified on November 2, 1961. As to the merits of the case, the court regarded as binding the

stipulation in the notarial agreement dated December 9, 1946 that Laxamana was entitled to a portion of Lot 8 with an area of around seventy-five (75) square meters.

7. Laxamana filed a motion for the reconsideration of that order. He presented evidence in support of his motion. The court denied it in its order of July 22, 1963 wherein it found that Laxamana's counsel was guilty of gross and patent neglect and that the movant "did not have good and substantial cause of action or defense". It held that Laxamana was bound by the negligence of his counsel.

8. Laxamana filed a second motion for reconsideration wherein he alleged that his lawyer had fraudulently connived with the plaintiffs or Mallari's heirs who paid Laxamana's counsel P1,500. That allegation was supported by the affidavits of Laxamana and Tiburcio Umlas. Evidence was received in support of that motion.

9. While that motion was pending, the parties submitted manifestations dated June 30, 1966 and April 4, 1967 stating that they would settle the case amicably by dividing the disputed area "into two equal parts". On March 16, 1968, the lower court issued an order requiring the parties to inform the court as to "what happened with their effort" to settle the case amicably.

10. On August 31, 1971, the trial court dismissed the case without prejudice in view of the failure of the parties to prosecute it. The plaintiffs moved for the reconsideration of that order. The trial court in its order of July 22, 1972 set aside the order of dismissal and at the same time denied Laxamana's second motion for the reconsideration of its decision.

11. Laxamana filed a motion for the reconsideration of that order. He prayed that the parties be given another chance to settle the case amicably and that the denial of his second motion for reconsideration be set aside. Judge Amante P. Purisima, in his order of September 2, 1972, set aside his order of July 22, 1972 and directed that the second motion for reconsideration (which had been pending before Judge Gregorio T. Lantin) should be considered submitted for resolution after the transcripts of the testimonies had been submitted.

12. The lower court in its order of November 7, 1972 denied the second motion for reconsideration. It did not give credence to Laxamana's claim that his lawyer had been fixed by the plaintiffs. His third motion for reconsideration was denied in the order of January 6, 1973.

13. Laxamana filed in the Court of Appeals a petition for certiorari wherein he questioned the orders denying his petition for relief from judgment. The Court of Appeals in its resolution of February 14, 1973 dismissed the petition. It blamed Laxamana's lawyer for not having perfected an appeal from the lower court's judgment (Laxamana vs. Court of First Instance of Manila, Branch VII, et al., CA-G.R. No. SP-01739).

14. On June 7, 1973, the plaintiffs filed a motion for execution. It was granted by the trial court in its order of June 23 and a writ of execution was issued on August 4, 1973. Laxamana filed on June 13, 1973 in the Court of Appeals a motion for "the recall of entry of judgment" and for the reconsideration of the resolution dismissing his petition. That motion was denied by the Court of Appeals in its resolution of July 11, 1973. His motion for the reconsideration of that resolution was denied on August 2, 1973.

15. On August 22, 1973, Laxamana filed in this Court a petition for certiorari wherein he assailed the resolutions of the Court of Appeals dated July 11 and August 2, 1973. After receiving respondent Mallaris' comment on that petition, this Court dismissed it on September 27, 1973. The motion for the reconsideration of that dismissal resolution was denied on November 20, 1973.

16. Laxamana filed a second motion for reconsideration which was expunged from the record for having been filed without leave of court. However, in view of a personal letter of Laxamana dated November 29, 1973,

praying that he be given a day in court, that dismissal resolution was set aside on January 18, 1974 and the respondents were required to answer the petition. After the respondents had submitted their answer, the parties filed their memoranda. Laxamana died on January 1, 1975. He was substituted by his heirs.

We have conscientiously examined the voluminous records of the lower court, Court of Appeals and this Court, consisting of more than 1,500 pages, attesting to Laxamana's tenacity and persistence in asserting his claim for the twenty-one-square-meter lot in question. The situation of the three lots is shown in the following sketch: (see sketch on p. 402 Philippine Reports Volume 176)

Lots 8-A, 8-B and 8-C are the component portions of Lot 8, Block 27 of the subdivision operated by Rita Legarda, Inc. It is not disputed that Laxamana was the prewar lessee of Lot 8 and that he subleased to Mallari a portion thereof, now known as Lot 8-B with an area of 98.5 square meters. The rental for the sublease was "nominal" "due to the close affinity" of Mallari to Laxamana (p. 291, Rollo).

When Laxamana decided to buy Lot 8, Mallari expressed the desire to become a co-purchaser to the extent of the portion he was "occupying". So, Mallari and Laxamana on November 14, 1946 entered into an agreement as to how they would divide Lot 8. It was stipulated therein that Laxamana's share would be the portion with an area of 75 square meters actually occupied by him and the rest would be Mallari's share.

As correctly found by the trial court, that agreement to divide Lot 8 is dated December 9, 1946 but it was signed on November 14, 1946 (p. 1, Respondent's reply memorandum, p. 446, Rollo; pp. 1-2, Lower court's decision, p. 294, Rollo; See p. 309, Rollo). December 9, 1946 was the date when the agreement was notarized. The original date, November 14, as typed in the agreement was changed to December 9, 1946 (pp. 408-409, Rollo).

This clarification is important in interpreting that agreement because on November 15, 1946 a contract to sell Lot 8 was executed between Rita Legarda, Inc., as seller, and Laxamana and Mallari as buyers. In that contract to sell, the area of Lot 8 is specified to be 173 square meters and it was sold on the installment plan at P30 a square meter or for the total price of P5,190. The area of 173 square meters is the combined area of the portions occupied by Mallari and Laxamana, or 98 square meters and 75 square meters, respectively, now represented by Lots 8-B and 8-C in the subdivision plan.

It is likewise undisputed that on September 1, 1947, or nine and a half months after the signing of the contract to sell, Rita Legarda, Inc. executed a final deed of sale for Lot 8 in favor only of Laxamana who paid the balance of the price amounting to P4,777.19. In that final deed of sale, the area of Lot 8 is 193.8 square meters (not 173 square meters only). As a result of that sale, Transfer Certificate of Title No. 9258 was issued to Laxamana on September 2, 1947 (p. 2, Lower court's decision; p. 294, Rollo) See p. 424, Rollo).

In a unilateral conveyance dated December 2, 1954, Laxamana ceded to Mallari the portion (now Lot 8-B), with an area of 98 square meters, occupied by the latter, in consideration of the sum of P3,745.04 which was paid by Mallari to Laxamana as follows: P1,000 on December 9, 1946; P1,000 on August 2, 1950, and P1,745.04 on November 29, 1954 (p. 415, Rollo; p. 2, Lower court's decision, p. 294, Rollo).

Then, on September 19, 1959, Jose Y. Valenton, a private land surveyor, made a subdivision plan for Lot 8 at Laxamana's instance. The plan, reproduced in the sketch included therein, shows that, aside from the 98 and 74 square-meter portions allocated to Mallari and Laxamana as Lots-8-B and 8-C, respectively, there is a portion, Lot 8-A, with an area of 21.2 square meters, which is the disputed area in this case (p. 414, Rollo; p. 3, Lower court's decision, p. 295, Rollo).

According to Mallari, in December, 1959, Laxamana made on Lot 8-A, over Mallari's opposition, a construction which has been used as a store. That probably triggered the 1960 action of Mallari against Laxamana to establish

his (Mallari's) ownership over that twenty-one-square-meter strip of land. The latest episode in that protracted litigation is this certiorari case.

The trial court incorrectly found that the 74-square-meter portion occupied by Laxamana was near Estero Balic-balic. As shown in the sketch, it is Mallari's 98-square-meter portion that is near the estero. The trial court adjudicated to Mallari the 21-square-meter portion (Lot 8-A) on the basis of "the principle of accretion" since it was allegedly "formerly a part of Estero Balic-balic" adjoining Mallari's Lot 8-B.

That ruling is disputed by Laxamana because accretion or alluvion takes place only with respect to lands adjoining the banks of rivers as a result of the effects of the current of the waters (Art. 457, Civil Code). There is no proof that Estero Balic-balic is a river or creek and has a regular and continuous current. (See *Guison vs. City of Manila*, 72 Phil. 437). Laxamana alleged that he made fillings on Lot 8-A (p. 115, Record of Lower Court).

It was Laxamana's theory that the contract to sell dated November 15, 1946 executed between Rita Legarda, Inc. and Laxamana and Mallari for Lot 8 and the contemporaneous agreement to divide the same lot, executed between Laxamana and Mallari on November 14, 1946, refer only to Lot 8, with an area of 173 square meters. Laxamana also contended that, when on September 1, 1947, he purchased Lot 8, with an area of 193.8 square meters, he made a separate and additional payment of P624 for that Lot 8-A and, therefore, that portion should belong to him and not to Mallari who paid only for the 98 square meters actually occupied by him.

Laxamana was not able to prove his contentions because his lawyer allegedly did not notify him of the trial and did not appear at the trial. The lower court decided the case only on the basis of Mallari's evidence offered at an ex-parte hearing. It steadfastly refused to grant relief to Laxamana. Laxamana's lawyer did not seasonably file a motion for new trial and did not appeal from the adverse decision.

The issue is whether at this late hour Laxamana's heirs should still be given a chance to prove their contentions which apparently have some semblance of merit.

Laxamana had directly charged his lawyer with having deliberately failed to appear at the trial after having received P1,500 from Mallari. He introduced evidence in support of that charge. His lawyer, although subpoenaed by the Mallari plaintiffs, did not testify to deny that charge (p. 241, Rollo).

After a searching and judicious examination of the records, we find that extrinsic or collateral fraud was employed to prevent Laxamana from presenting his evidence at the trial and from interposing a timely appeal from the trial court's adverse decision. That was the reason why he could not reconcile himself to a verdict which divested him of his claim for the twenty-one-square-meter strip of land and which was rendered without taking into consideration his evidence. That was also the reason why this Court set aside the resolution dismissing Laxamana's petition and gave due course to it.

Laxamana in his letters dated November 29, 1973 to the President of the Philippines and the Chief Justice vehemently insisted that he be given his day in court. He repeatedly declared that he was denied due process due to the skullduggery of his lawyer who was allegedly suborned by the opposing party.

Lack of due process of law and extrinsic or collateral fraud vitiate a final and executory judgment and are valid grounds for setting it aside (2 Moran's Comments on the Rules of Court, 1970 Ed., p. 245). In an adversary litigation, fundamental fairness requires that as much as possible both parties should be heard so that a just and impartial verdict may be promulgated.

The extrinsic or collateral fraud which invalidates a final judgment, "must be such as prevented the unsuccessful party from fully and fairly presenting his case or defense; it must be such as prevented the losing party from

having an adversary trial of the issue". Thus, the act of the successful party in inducing the lawyer of the losing party to commit professional delinquency or infidelity constituted extrinsic or collateral fraud (49 C.J.S. 741-3).

In other words, there is extrinsic fraud when a party was prevented from having presented all of his case to the court as when the lawyer connives at his defeat or corruptly sells out his client's interest (46 Am Jur 2nd 983; 49 C.J.S. 860-1; Crouch vs. McGaw, 138 S. W. 2d 94, 134 Tex. 633; Brady vs. Beams, 132 F. 2nd 985; Soriano vs. Asi, 100 Phil. 785, 788; Heirs of Celestino vs. Court of Appeals, L-38690, September 12, 1975, 67 SCRA 22, 29; Olego vs. Rebuena, L-39350, October 29, 1975, 67 SCRA 446, 455; 2 Moran's Comments on the Rules of Court, 1970 Ed., p. 246-7).

WHEREFORE, we reverse and set aside the trial court's decision dated February 22, 1962 in Civil Case No. 42486, its resolution of November 7, 1972 and the writ of execution in the same case as well as the resolutions of the Court of Appeals in CA-G.R. No. SP-01739 promulgated on February 14 and July 11, 1973. If a last effort to settle the case amicably is not fruitful, then the trial court is directed to allow the petitioners to cross-examine Mallari's witnesses, who had already testified, and to receive any additional evidence of the plaintiffs and the evidence of Laxamana's heirs. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

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