

**DOMINGA SALAZAR, ET AL., PLAINTIFFS AND APPELLEES VS.
FAUSTO JARABE, DEFENDANT AND APPELLANT.***G.R. No. L-4659. July 11, 1952*

Ponente: TUASON, J.

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This was an action to recover a parcel of land having an area of 17,784 square meters and situated in the municipality of Pinamalayan, province of Mindoro. This land was part of a tract of fourteen hectares covered by a certificate of title in the name of Margarito Afan, and was sold on May 18, 1926, and July 29, 1927, in two separate documents by Afan's widow to Gregorio Salazar, plaintiffs' parent. The rest or other portions of Afan's land, it seems, were acquired by Fausto Jarabe, the defendant, from Afan's heirs.

On a date on which the parties are in disagreement, Jarabe entered upon the possession of Gregorio Salazar's portion, claiming to have bought it from Salazar, and on August 10, 1946, a complaint for forcible entry and detainer was filed by this deceased heirs, the plaintiffs in the present case, through Attorney Lourdes Paredes-San Diego, against Jarabe. On the date set for trial, plaintiffs' lawyer asked for the dismissal of the case, stating that the parties had "arrived to an amicable settlement," and attaching a copy of the compromise agreement, which had been reduced to writing, to the motion to dismiss. On the same date, the justice of the peace entered an order of the following tenor: "It appearing that the parties in the above-entitled case have amicably settled their controversy in such a way that defendant, Fausto Jarabe will give to the plaintiffs, an amount amounting to Seventy Five Pesos (P75.00), as per agreement by the above parties submitted to this Court, and it appearing further that said amicable settlement represents the will of the parties, the same is hereby confirmed." The case was accordingly dismissed, without pronouncement as to costs.

The agreement recited that, "whereas, Gregorio Salazar, the plaintiffs' father, on April 14, 1932, executed a certain instrument, purporting to be a deed of sale in favor of the defendant," and "whereas, said plaintiffs recognized the signature of their deceased father in said document, and they desired to settle their claim amicably in order to avoid the trouble, expense and scandal of court litigations and asked of the defendant P75 as an additional sum to the purchase price paid by the defendant to Gregorio Salazar which amount the defendant was willing to pay and actually paid upon the execution of the document, the parties have hereunto set their hands, in the year and date first above written." This compromise was signed by Fausto Jarabe, the defendant, and Attorney Lourdes Paredes-San Diego, as counsel for the plaintiffs, but not by any of her clients.

On February 13, 1948, the present action was commenced in the Court of First Instance by the same plaintiffs through a different attorney and against the same defendant. Among other defenses which need not be stated, the defendant pleaded the compromise agreement, contending that it constitutes a bar to the instant suit. But the plaintiffs impugned the validity of this compromise and were sustained by the trial court. The resolution on this question is decisive of the whole case and to this issue discussion will be confined.

Section 21 of Rule 127 provides:

"Authority of attorneys to bind clients.—Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their clients litigation, or receive anything in discharge of a client's claim but the full amount in cash."

Applying this rule or its counterpart in the Code of Civil Procedure, this Court has held that without a special authority by the client an attorney cannot in his or her behalf, in or out of court, execute any act not necessary or incidental to the prosecution or management of the suit, or for the accomplishment of its purpose, for which he was retained. (*Sons of I. de la Rama vs. Estate of Benedicto*, 5 Phil., 512; *Natividad vs. Natividad*, 51 Phil., 613; *Tan Lua vs. O'Brien*, 55 Phil., 53; *Rodriguez vs. Santos*, 55 Phil., 721; *Monte de Piedad vs. Fernando Rodrigo*, 56 Phil., 310; *Alviar vs. Court of First Instance of La Union*, 64 Phil., 301; and *Angeles Rodriguez et al. vs. The Honorable Court of First Instance of Rizal, et al.*, 88 Phil., 417.) It is conceded that such authority plaintiffs' former counsel did not have, and that the compromise she entered into was outside the general powers of her retainer or employment.

The above rule notwithstanding, laches may operate to validate an agreement invalid at its inception, as when the client on becoming aware of the compromise fails to repudiate promptly the action of his attorney. In such case, lit has been held, ratification of the compromise will be presumed with the burden placed on the client to rebut the presumption. (*Rivero vs. Rivero*, 59 Phil., 15, citing 6 C. J., 659-661, *Banco Español Filipino vs. Palanca*, 37 Phil. 921, and *Uy Chico vs. Union Life Assurance Society*, 29 Phil., 163.)

The present case comes within the purview of the exceptions to the general rule. There is no stipulation or evidence to show that the plaintiffs were not apprised of the agreement soon after, if not at the time of, its execution. Their failure for a considerable period to disavow it raises the presumption that they acquiesced in their attorney's action. What is more, this presumption, which they made no attempt to overcome, attains the stature of moral certainty in the light of their position. It is almost beyond belief that if they were ignorant of the compromise, for nearly two years, the plaintiffs did not, personally or through others, find out from the justice of the peace what became of their suit, living as they did in the same municipality where the action had been instituted. It required no legal training or high intelligence to be curious about the status of a case in which they were so much interested as to have engaged a Manila lawyer to represent them. They could not have been indifferent to or forgotten that case in the face of the fact that the defendant continued in his possession of the land.

In invalidating the compromise the court below planted its decision on the theory that the plaintiffs' attorney had stepped beyond the bounds of the litigation in that, while the suit related to possession, she bargained away the plaintiffs' title. For the same reason, His Honor would limit the effects of the dismissal of the detainer case to the question of possession in that, while the justice of the peace had jurisdiction to adjudicate possession, he had none to render judgment on the ownership. The latter view is predicated on the assumption that a compromise derives its force from a corresponding judgment, and the first on the other assumption that a compromise must be germane to the controversy. Both assumptions are, in our opinion, erroneous.

Article 1809 of the Spanish Civil Code, which was the Code in force in 1946 when the agreement in question was executed, defines compromise as "a contract by which each of the parties in interest, by giving, promising or retaining something avoids the provocation of a suit or terminates one which has already been instituted;" and by article 1816 it is provided that "A compromise shall have, with respect to the parties, the same authority as *res adjudicata*;" although "only a compromise made in court may be enforced by execution." These articles with a variation in language have been incorporated into the new Civil Code as Articles 2028 and 2037 respectively.

Far from making the rendition of a judgment in accordance with the compromise essential to the validity of a

settlement, the foregoing provisions by necessary implication give extrajudicial agreements the force of an adjudication, except that they can not be carried into effect in the manner provided for the enforcement of a judgment—execution. Judgment could not have been contemplated when one of the objects of a settlement is to avoid suits.

From the same provisions, any concession not contrary to law, public policy or moral, is binding. Thus, in *Castillo vs. De Gala* (Off. Gaz., September 13, 1941, p. 2328) it was ruled that even though a compromise agreement may have gone beyond the issues of the case that is settled, it has, with respect to the parties, the same authority as *res judicata*, because, as the Court said in another decision, compromise of any matter is not the settlement of a valid claim alone but of the controversy, including all its incidents and ramifications. (*McCarthy vs. Barber Steamship Lines*, 45 Phil., 488.)

In reality, however, the ownership of the land involved in the pending suit in the justice of the peace court was not foreign to the issues. From the allegations of the pleadings the ownership was the heart of the whole case. This resolved itself into who, as between the parties, had better title to the property, and upon this title entirely depended either party's right of possession. There was no question of one party having the right to the possession while the other held the title; and though the theory of the action was force and intimidation, no violence or stealth could have been used by the defendant if the plaintiffs' allegations were to be believed, that Jarabe occupied the land when the plaintiffs were out in hiding from Japanese troops.

We are of the opinion, therefore, that the present action is concluded by the compromise agreement set up by the defendant. And having arrived at this conclusion, it is unnecessary to go into the other questions extensively discussed in the parties' briefs.

The appealed decision will be reversed and the action dismissed, without costs.

Pablo, Bengzon, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

DISSENTING

FERIA, J.:

I dissent from the decision of the majority.

It is a well established principle that there are two kinds of compromise, judicial and extrajudicial. Judicial is a compromise made in and submitted to the court for approval in order to terminate a case already filed in court. And extrajudicial is a contract made out of and without the intervention of the court to avoid the provocation of a suit.

It is obvious that the compromise entered into by the parties in another case and submitted to the Justice of the Peace Court of Pinamalayan, Mindoro, for approval in order to terminate the case of forcible entry was a judicial compromise, because the said Justice of the Peace approved it and dismissed the plaintiffs' action on the merits in view thereof.

The compromise and the order of the said Justice of the Peace Court approving it and dismissing the said action of forcible entry and illegal detainer without costs, set up in the present case by the defendant as a bar to the plaintiffs' action for recovery of ownership of a land, reads as follows:

"It appearing that the parties in the above-entitled case have amicably settled their controversy in such a way that defendant, Fausto Jarabe will give to the plaintiffs, an amount amounting to seventy-five pesos (P75), as

per agreement by the above parties submitted to this Court, and it appearing further that said amicable settlement represents the will of the parties, the same is hereby confirmed."

The plaintiffs impugned the validity of said judicial compromise as a bar to the action for recovery of ownership of the same land in the present case, and were sustained by the lower court of First Instance on the ground that, while the Justice of the Peace had jurisdiction to adjudicate the question of possession in the above mentioned action of forcible entry and illegal detainer, he had none to render judgment on the ownership, and a judicial compromise derives its force from the corresponding judgment rendered or based on said compromise.

This conclusion of the court a quo is correct and the majority's decision which holds the contrary is erroneous. The majority in quoting, on pages 3 and 4 of its decision, section 21, Rule 127 of the Rules of Court, which provides that "attorneys have authority to bind their clients in any case in court by any agreement in relation thereto made in writing, but they cannot, without special authority of his client, compromise their client's litigation," and all the cases decided by this Court which, construing said section 21, refer to judicial compromises, recognize that the compromise in question was a judicial one. As the compromise set up by the defendant as a bar to plaintiffs' action in the present case is a judicial compromise, and the Justice of the Peace Court who approved it and dismissed the plaintiffs' action of forcible entry and illegal detainer had no jurisdiction to take cognizance of and decide the question of title or ownership of the land in question between the parties, the order or decision of the Justice of the Peace who approved and dismissed the plaintiffs' action can not be considered a bar or conclusive as *res adjudicata* on the question of title or ownership between the plaintiffs and defendant in the present case.

General Statement of Doctrine.—The doctrine of *res judicata* is a principle of universal jurisprudence forming part of the legal systems of all civilized nations, * * * Briefly stated, this doctrine is that an existing final judgment or decree rendered upon the merits by a court of competent jurisdiction upon a matter within its jurisdiction is conclusive of the rights of the parties or their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction, on the points and matters in issue and adjudicated in the first suit. (2 Freeman on Judgment, pp.—.)

(b) Court must have jurisdiction.—A judgment, to be *res adjudicata*, must be valid. If it is void because of want of jurisdiction of the subject matter or of the parties, it cannot operate as an adjudication of the controversy. (*Gotamco vs. Chan Seng et al.*, 46 Phil. 532; *Smith vs. McMeal*, 109 U. S. 426, 27 Law ed., 986).

The majority admits that a judicial compromise entered into by the client without a special authority by his client is null and void, but holds that laches on the part of the client may operate to validate such compromise by failing to repudiate promptly the action of the attorney. And the majority concludes that the plaintiff in the present case having failed for a considerable period of time (one year and one half) to disavow the compromise in question, "raises the presumption that they acquiesced in their attorney's action", specially because "it is almost beyond belief that they were ignorant of the compromise."

It is obvious that the failure of the plaintiff to repudiate promptly the action of his attorney in entering into a judicial compromise in the action of forcible entry and illegal detainer in the Justice of the Peace Court of Pinamalayan, Mindoro, did not and could not validate the judicial compromise in so far as the question of title or ownership of the land is concerned, because no amount of laches, not even an express consent, may confer jurisdiction upon the Justice of the Peace over question of title or ownership.

5. Consent of Parties.—The agreement or consent of the parties cannot give the court the right to adjudicate upon any cause of action or subject matter which the law had withheld from its cognizance, and in such cases the judgment is void notwithstanding such consent. (33 C. J. pp. 1077.)

Notwithstanding the substantial difference in nature and effect between an extrajudicial compromise which is a mere contract, and a judicial one which has the nature and effect of a judgment, the majority, knowing as it ought to know that the judicial compromise in question is null and void as a bar to the present action or ownership of the same land, quotes in support of its contrary conclusion which considers the said judicial compromise as valid and a bar to the present action, the provisions of articles 1809 which defines a compromise in general and of 1816 of the old Civil Code which provides that "a compromise shall have, with respect to the parties, the same authority as res adjudicata, although only a compromise made in Court may be enforced by execution."

The majority confuses the nature and effect of a judicial and those of an extra judicial compromise, which are very different. The first part of the provision of article 1816 of the Civil Code to the effect that an extrajudicial compromise shall have, with respect to the parties, the authority of res adjudicata, does not mean that it has the same nature and effect of a judicial judgment or compromise, for the compromise referred to in the last part thereof which provides "although only a compromise made in Court may be enforced by execution" refers to a judicial compromise, it only means that the extrajudicial compromise, if validly entered into, is as binding upon the parties as res adjudicata. An extrajudicial compromise or contract, (Art. 1809, Civil Code) may be set up as a defense, but not as a bar to another action. Only a compromise made in court, a judicial one, may be enforced by execution or set up as a bar to another action for the same cause between the same parties as the judicial compromise in question, which was made in court and approved by the Court of Justice of the Peace of Pinamalayan, Mindoro, has been set up by the defendant as a bar to the plaintiffs' action in the present case. Said compromise, as a judicial one, derives naturally its force and effect from the corresponding judgment, as it was rightfully held by the court below.

That the majority is confusing a judicial with an extra-judicial compromise is further shown by the following paragraphs which he adds after quoting articles 1809 and 1816 on page 6 of its decision.

"Far from making the rendition of a judgment in accordance with the compromise essential to the validity of a settlement, the foregoing provisions by necessary implication give extrajudicial agreements the force of an adjudication, except that they can not be carried into effect the manner provided for the enforcement of a judgment-execution. Judgment could not have been contemplated when one of the objects of a settlement is to avoid suits.

From the same provisions, any concession not contrary to law, public policy or moral is binding. Thus, in Castillo, vs. De Gala, Off. Gaz., September 13, 1941, p. 2328, it was ruled that even though a compromise agreement may have gone beyond the issues of the case that is settled, it has, with respect to the parties, the same authority as res adjudicata, because, as the Court said in another decision, compromise of any matter is not the settlement of a valid claim alone but of the controversy, including all its incidents and ramifications. (McCarthy vs. Barber Steamship Lines, 45 Phil., 488.)"

The first quoted paragraph clearly speaks of extra-judicial compromise, and the second or last quotes decisions of this Court on judicial compromise, and yet the majority considers the different compromises referred to in both paragraphs in support of its conclusion as if they were of the same nature, force and effect. It is obvious that an extrajudicial compromise which is a mere contract (Art. 1809, Civil Code) entered into in the name of the client by an attorney, who has neither the client's authorization nor legal representation, is void unless ratified by the client (Art. 1259 of the old Civil Code), and a mere lapse of time cannot produce ratification (Tipton vs. Velasco, 6 Phil., 67; Salunga vs. Gutierrez, 20 Phil., 270). The case of Rivero vs. Rivero, 59 Phil., 15, wherein the rule on the effect of laches to impugn the validity of a judicial compromise was laid down, as well as the cases of Banco Español Filipino vs. Palanca, 37 Phil., 921, and Uy Chico vs. Union Life Insurance Society, 29 Phil., 163 cited on page 4 of the decision of the majority, which have nothing to do with the question involved in the present case, refer to a judicial compromise.

Besides, the last argument of the majority on the last page of its decision is the following:

"In reality, however, the ownership of the land involved in the pending suit in the justice of the peace court was not foreign to the Issues. From the allegations of the pleadings the ownership was the heart of the whole case. This resolved itself into who, as between the parties, had better title to the property, and upon this title entirely depended wither party's right of possession."

This conclusion and argument is contrary to the express and clear provision of Art. 7, Rule 72 of the Rules of Court which reads as follows:

SEC. 7. Judgment conclusive only on possession, not conclusive in certain actions.—The judgment rendered in an action for forcible entry or detainer shall be effective with respect to the possession only and in no wise bind the title or affect the ownership of the land or building. Such judgment shall not bar an action between the same parties respecting title to the land or building, nor shall be held conclusive of the facts thesis, found in a case between the same parties upon a different cause of action.

In view of the foregoing, the judgment appealed from is affirmed with costs against the defendant-appellant.

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