

ESTRELLA, E. SERRANO, LEONOR E. ALMAZAN, CONCEPCION E. TOBIAS, LETICIA E. SALVADOR AND PAZ E. TOLENTINO, PETITIONERS, VS. HON. ANDRES REYES, JUDGE OF THE COURT OF FIRST INSTANCE...

G.R. No. L-16153. December 29, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is an original petition for mandamus filed by petitioners Estrella E. Serrano, Leonor E. Almazan, Concepcion E. Tobias, Leticia E. Salvador, and Paz E. Tolentino, under Section 15, Rule 41, of the Rules of Court, to compel respondent Judge of the Court of First Instance of Rizal, to certify and elevate to this Court the record on appeal in Special Proceedings Nos. 2598 and 2600.

It appears that Special Proceedings Nos. 2598 (In the Matter of the Testate Estate of the deceased Jose L. Elchico, Eduardo V. Elchico, Petitioner), and 2600 (In the Matter of the Intestate Estate of the deceased Jose L. Elchico, Florencio Elchico, et al., Petitioners) were joined together in the sala of respondent Judge since 1957, the above-mentioned petitioners Estrella E. Serrano, et al., on the one hand, and respondents Eduardo V. Elchico, Florencio Elchico, Elena V. Elchico, Dominador Elchico, Alfredo Elchico, Clara E. Casanas, Gloria E. Aldana, and Rosalinda de Pano, on the other hand, being the contending parties.

On February 23, 1959, respondent Judge issued an order of the following tenor, approving a Compromise Settlement executed by the parties:

"Petitioner Eduardo V. Elchico, assisted by counsel, submitted a manifestation on February 21, 1959, together with the conformity thereto in writing of Florencio Elchico, one of the petitioners in Sp. Proc. No. 2600, alleging that the compromise settlement between the parties had been duly signed by them, a copy of which is attached to said manifestation, and in view of the unnecessary delay and the confusion that confront the parties, arising from the retention of Atty. Navarro of the original thereof and duplicate originals, petitioner Eduardo V. Elchico, 'is left no other alternative but to submit' the said compromise settlement for the approval by this Court, the pertinent portions of which read as follows:

'1. That all the assets of the estate of the decedent, Dr. Jose L. Elchico, shall be divided into fourteen (14) equal portions, after all the debts, taxes and other charges shall have been paid:

'2. That the fourteen (14) equal portions shall then be distributed as fellow's:

- a. To Eduardo Elchico shall pertain two-fourteenths (2/14);
- b. To Elena V. Elchico, Alfredo V. Elchico, Gloria E. Aldana, Concepcion E. Tobias, Dominador V. Elchico, Florencio V. Elchico, Leonor E. Almazan, Leticia E. Salvador, Estrella E. Serrano, Clara E. Casanas and Rosalinda L. de Pano, shall pertain one-fourteenths (1/14) each; and

c. To Paz E. Tolentino shall pertain one-twenty-eight (1/28) and Vicente and Visitation Elchico, shall pertain the remaining one-twenty-eight (1/28).

'3. In the interest of family peace, all charges and countercharges of all the parties in the above-entitled cases shall be as they hereby are considered withdrawn so that no one shall be held liable on the basis of said charges and countercharges;

'4. That pending the liquidation of the estate of the decedent Dr. Jose Elchico, the administration of the properties of the estate shall devolve jointly on Eduardo Elchico and Florencio Elchico;

'5. That pending the payment of the debts other charges of the estate, the management of the transportation business, the New Angat Transportation Company shall be, as it is hereby vested in:

Florencio Elchico, Manager, and
Eduardo Elchico, Treasurer-Cashier.

That all checks, disbursements and withdrawals shall be signed by Florencio Elchico, as manager, and countersigned by Eduardo Elchico, as Treasurer; Provided that in the event of mismanagement or maladministration or unjustifiable orders or instructions on the part of Florencio Elchico or mishandling of funds and/or unjustifiable refusal to countersign on the part of Eduardo Elchico, both of them shall be subject to recall, upon order of this Honorable Court.

'6. That Florencio Elchico and Eduardo Elchico shall exert all efforts to settle as soon as feasible all the charges against the estate, liquidate the business, and distribute and partition the estate in accordance with the proportions established in par. 2 hereof.

'7. This agreement shall take effect upon its approval by the Court.

'Whereof, the parties respectfully submit this compromise settlement to this Honorable Court, with the prayer that the same be approved and the above-entitled cases considered terminated and closed as to them.

'Manila for Pasig, Rizal, December 22, 1958.

(Sgd) Eduardo Elchico

(Sgd) Leticia E. Salvador

(Sgd) Elena Elchico

(Sgd) Estrella E. Serrano

(Sgd) Alfredo Elchico

(Sgd) Clara E. Casanas

(Sgd) Gloria E. Aldana

(Sgd) Rosalinda L. de Pano

(Sgd) Concepcion E. Tobias

(Sgd) Paz E. Tolentino

(Sgd) Dominador V. Elchico

(Sgd) Vicente Elchico

(Sgd) Florencio V. Elchico

(Sgd) Visitacion Elchico

(Sgd) Leonor E. Almazan

Assisted by:

(Sgd) Jovito R. Salonga

Counsel for Eduardo Elchico, et al. (Sgd) Emiliano Navarro

Counsel for Florencio Elchico, et al.

"Considering the allegations of said manifestation, together with the written conformity of Florencio Elchico, and finding said compromise settlement to be in order the Court hereby approves said compromise settlement and enjoins the parties to faithfully comply with the terms and conditions, thereof. Pursuant to said compromise and pending the liquidation of the estate, Eduardo V. Elchico and Florencio Elchico are hereby appointed joint administrators of the estate, with powers, duties and obligations to perform their respective functions under the agreement and under the provisions of the Rules of Court. The administrators are ordered to exert utmost efforts to liquidate unpaid debts and obligations of the estate, including payment of the corresponding inheritance and estate taxes due on the, estate, and to submit a quarterly accounting of the income and expenses of the estate.

It is so ordered."

On March 4, 1959, petitioners filed a motion to set aside said order alleging, inter alia, that although said compromise settlement was signed by them, it was never intended to be delivered to become effective; that respondent Florencio Elchico obviously retained or smuggled a carbon copy thereof which he showed to the court on February 21, 1959; that their counsel (Atty. Emiliano R. Navarro) retained the deed of settlement with their full knowledge and consent, as they wanted a few alterations made thereon, due to subsequent discoveries, and they did not intend to settle on its original terms; and that they never authorized respondent Florencio Elchico to deliver said settlement to the court, nor were they notified of, nor present at said presentation of the settlement in court; however, this motion to set aside. "would not have been necessary had not Florencio Elchico. withdrawn his resignation and Attorney Salonga objected to his substitution." On March 9, 1959, petitioners filed a supplemental motion, reciting supposed violations of the canons of professional ethics committed by Atty. Jovito R. Salonga, respondents' counsel, in securing the order in question. To this motion, respondents duly filed an opposition on March 10, 1959, emphasizing that the compromise settlement was agreed upon in the presence of the court and later signed by all the parties, and that even the manifestation and urgent motion of the petitioners recognized the validity of the compromise settlement and were ready to abide by it, were it not for certain questionable acts of Florencio Elchico, for which reason, they wanted him to be removed as co-administrator. Finally, respondents called attention to the fact "that there is no pretense on the part of movants (petitioners) that their signatures were obtained through deceit, violence or intimidation."

On July 7, 1959; respondent Judge issued an order denying said motion to set aside.

On July 15, 1959, petitioners filed a notice of appeal. They filed their appeal bond and record on appeal on July 17 and August 12, 1959, respectively.

On August 15, 1959, respondents filed an opposition to, said record on appeal, on the grounds that (1) the order complained of is unappealable, as it embodies a compromise settlement which is res judicata; and (2) even if said order is appealable, said record on appeal is defective. To this opposition, petitioners duly filed a reply on August 20, 1959.

On August 28, 1959, respondent Judge issued an order disallowing said record on appeal for the reasons, among

others, that an order or judgment of a court approving a compromise voluntarily and freely entered into, is res judicata from the moment it is rendered, and that no evidence of any kind was offered to prove any of the legal grounds for revoking or setting aside a compromise agreement or for altering any of its terms.

On September 11, 1959, petitioners filed a motion for reconsideration of said order to which, respondents filed an opposition on September 18, 1959. On September 28, 1959, respondent Judge issued an order denying said motion for reconsideration, on the ground that petitioners failed to substantiate their allegations of fraud and connivance relative to the issuance of said order of February 23, 1959 which approved the compromise settlement in question, notwithstanding the opportunity afforded them to prove or substantiate the same.

Hence, this petition for mandamus.

Petitioners claim that the respondent Judge erred in disallowing their record on appeal.

We find no merit in this contention. As a rule, a judgment on a compromise is not appealable and is immediately executory, unless a motion is filed to set aside the compromise on the ground of fraud, mistake, or duress, in which event, an appeal may be taken from the order denying the motion (*De los Reyes vs. Ugarte, et al.*, 75 Phil., 505; *Enriquez vs. Padilla, et al.*, 77 Phil., 373). The reason for the rule is that when both parties enter into an agreement to end a pending litigation and request that a decision be rendered approving said agreement, it is only natural to presume that such action constitutes an implicit, as undeniable as an express, waiver of the right to appeal against the decision. For a party to reserve under the circumstances, the right to appeal against said decision, is to adopt an attitude of bad faith which courts cannot countenance (*De los Reyes vs. Ugarte, supra*). To be entitled to appeal from a judgment approving a compromise, a party must move, not only to set aside said judgment, but also to annul or set aside the compromise itself, on the ground of fraud, mistake, or duress, vitiating his consent to said compromise.

In the instant case, petitioners did not ask the lower court (and neither do they seek in their attempted appeal) to have the compromise settlement entered into by them with respondents set aside. Instead, they manifested their recognition of the due execution and validity of said compromise settlement, as well as their willingness to abide by it, if only respondent Florencio Elchico would resign as administrator of the estate subject thereof. Thus, Atty. Emiliano R. Navarro, acting as counsel for petitioners, manifested to the court, on February 24, 1959, that the only change he wanted in the terms of the compromise settlement was the removal of respondent Florencio Elchico as administrator of said estate and as manager of the estate's transportation business "if the group represented by him would so vote or decide", and that his clients (herein petitioners) "need not annul the order of this court (of February 23, 1959) referred to above", if such change could be made. And, in their very motion dated March 4, 1959, to set aside the order (of February 23) approving the compromise settlement, petitioners declared that "this motion would have been unnecessary had not Florencio Elchico (respondent) withdrawn his resignation (as administrator of the estate) and Atty. Salonga (respondents' counsel) objected to his substitution." In fine, petitioners seek to use their attempted appeal (which was disallowed, and which they pray this Court to compel the lower court, by mandamus, to allow) not to set aside the compromise settlement between them and respondents co-heirs, but only to compel an alteration or amendment of the same, by the removal of respondent Florencio Elchico as administrator of the estate and, if this is done, they would not even push through their motion to annul the order approving the compromise settlement. In this connection, the lower court observed:

"There is no dispute that the duplicate original submitted to this Court contains the terms of settlement agreed between the heirs. No signature appearing thereon has been challenged by anyone as not genuine. There is no assertion that in affixing their signatures, or in the preparation and execution of the settlement, error, fraud, force or intimidation intervened. The said Compromise Settlement, signed by all the heirs, contains a formal petition stating that in their desire to settle amicably their differences and thereby preserve family unity and

harmony in deference to the memory of the decedent, they have agreed to compromise the above-entitled cases, under the terms and conditions set forth therein, and asking this Court to approve the same and that 'the above-entitled cases be considered terminated and closed as to them.' That is precisely what this Court did in its order of February 23, 1959. The claim as to lack of notice regarding a settlement and petition, signed by all of the heirs including the movants themselves, is not therefore correct.

"The Court understands, however, that after the signing of the Compromise Settlement, certain irregularities on the part of Florencio Elchico pertaining to the management at the transportation business were supposedly discovered by the members of this group, and for this reason a motion to revoke or reconsider the order of February 23, 1959, approving the Compromise Settlement was submitted. Movants' alleged discovery of certain irregularities imputed to one who used to be in their own group and who was appointed under the settlement as a co-administrator, as a result of their own insistence, does not justify the setting aside of the Compromise Settlement. It is clear to this Court, that if Florencio Elchico has resigned from his position as Manager of the transportation business and as Administrator of the estate of the deceased, as the movants themselves wanted in their urgent motion dated February 25, 1959, and as stated by them in their motion dated March 4, 1959, there would have been no controversy at all. In other words, movants' quarrel is with Florencio Elchico, and not with the Compromise Settlement. Their own urgent motion of February 25, 1959, seeking the replacement of Florencio Elchico as manager of the transportation business and as co-administrator of the estate, on the strength of an alleged resignation from these positions", recognizes the binding effect of the Compromise Settlement, as otherwise there would be no point in the alleged resignation of Florencio Elchico. Inasmuch as it was under this Compromise Settlement that Florencio Elchico was appointed.

"When the motion to revoke or reconsider the order of February 23, 1959 was set for hearing and actually heard on June 27, 1959, no evidence of any kind was offered to prove any of the legal grounds for revoking or setting aside a compromise agreement or for altering any of its terms. Attorney Mojica, who then represented the movants, merely submitted the said motion for the resolution of this Court, without argument and without proof, or even say, offer of proof. Before Atty. Mojica came into the picture, the attorney who represented the movants was Atty. Magpoc who asked this Court, in the presence of the movants, sufficient time to allow movants to propose for the consideration of the other heirs certain amendments to the Compromise Settlement. This was granted by this Court in its order of March 10, 1959, as follows:

'By agreement of the parties, the hearing of all pending motions filed by Atty. Navarro is postponed until further assignment in order to give the movants time to settle amicably with the opposing party on amendments to the existing amicable settlement.'

This Court was afterwards informed by the parties, through their attorneys, that the proposed amendments, were not acceptable to most of the heirs.

"It is clear then that if movants' desire was to oust Florencio Elchico, the setting aside of the settlement is not the remedy. As pointed out by the oppositors, there is a provision in the Compromise Settlement that disposes of this situation, since under Paragraph 4 thereof, in the event of mismanagement or maladministration on the part of Florencio Elchico, he is subject to ouster." (Order of Aug. 28, 1959; italics supplied.)

Furthermore, petitioners were given the opportunity to present evidence to substantiate their allegations of fraud and connivance in connection with the submission to, and approval by the lower court of the compromise settlement in question, but they failed to present the same. On this point, the lower court stated.

"* * * On the scheduled hour of hearing of the Motion for Reconsideration of the Order of August 28, 1959 on September 15, 1959, which was set at the request of movants, neither movants nor their attorney appeared. However, Atty. Salonga, in representation of Eduardo Elchico, et al. (herein respondents) asked that the Motion be called again after the disposition of the other motions on the calendar of this Court to give movants the opportunity to prove their allegations of fraud found in said Motion. The alleged fraud relates to the

promulgation of the Order of this Court of February 23, 1959 which approved the Compromise Settlement of December 22, 1958. Acceding to the request, this Court called the 'aforesaid Motion at 9:20 o'clock. A certain Amado Tobias, who signed the motion as attorney-in-fact of Concepcion E. Tobias, one of the heirs, appeared in Court with a pleading 'Reiteration of Opposition wherein counsel asked that two Motions of the adverse parties of August 26, 1959, regarding the sale of personal properties, be held in abeyance 'pending resolution of the various pending incidents in these cases.' One of these pending incidents is a Motion for Reconsideration of the Order of August 28, 1959. Notwithstanding this act, Atty. Salonga (of Respondents herein) asked this Court to give a third opportunity to the movants to their counsel, Atty. Malolos to substantiate their allegations of fraud and connivance as found in said Motion, so that this Court may have the benefit of evidence in disposing of said Motion. The Opposition filed by Atty. Salonga, and signed by the latter's clients, challenging movants to prove their allegations was furnished Amado Tobias and transmitted to Atty. Malolos thru a letter dated September 19, 1959 of Atty. Salonga, and which the latter read into the records of this case. A copy of said letter, showing proof of service, has been furnished the Clerk of Court.

"This Court granted the motion of Atty. Salonga and thereupon set the hearing for Tuesday, September 22, 1959 at 8:30 in the morning. The records show that Atty. Malolos and the movants have been duly informed of this hearing, and the letter of Atty. Salonga of September 19, 1959 also informed Atty. Malolos of this fact.

"Again on September 22, 1959, neither the movants nor their counsel appeared, and instead a certain Urgent Motion dated September 21, 1959 was filed by Atty. Malolos for the immediate consideration of this Court. Said Urgent Motion states:

"That if undersigned counsel will be required to present evidence as Atty. Salonga demands in his opposition, undersigned counsel would like to have some time to consider whether or not to present evidence before the Court;

"That, in any event, undersigned counsel would be unable to present his evidence within such short notice; and

"That undersigned counsel has a previous engagement for tomorrow."

"The records show that since August 20, 1959, in a 'Reply to Opposition to Record on Appeal' Atty. Malolos has made the same serious allegations of fraud and connivance. Hence, his assertions that at such short notice, he cannot present evidence of fraud is not supported by his own acts, unless he made the allegation without taking into account any kind of supporting proof. This Court also finds the position of movants inconsistent, since on the one hand they make before this Court serious allegations of fraud and connivance, but on the other hand assert that they still have 'to consider whether or not to present the evidence before the Court.' For that reason, this Court has resolved to deny, as it hereby denies, the Urgent Motion for lack of merit, taking into account the fact that movants have been given three occasions to make good their allegations of fraud and connivance, twice on September 19, 1959, and a third time on September 22, 1959." (Order of Sept. 11, 1959; *Italics supplied.*)

The case of *Enriquez vs. Padilla*, et al, supra, relied upon by petitioners as authority in support of their petition, is inapplicable to the case at bar, because in said case, petitioner assailed the validity of the compromise itself and not merely the judgment of the lower court based thereon. In the *Enriquez* case, it appears that the parties were summoned by then Judge Alfonso Felix of the Court of First Instance during the pendency of the action in his sala, for a conference regarding an amicable settlement of the case. The parties and their attorneys appeared, proposals and counterproposals were made, and then Judge Felix rendered a decision containing the agreement of the parties and approving the same. Petitioner then filed a motion for reconsideration, on the ground that "he had not in fact agreed to some of the conditions stated" in the stipulations on which the judgment was based. In the instant case, petitioners do not assail the fact that they freely entered into and signed the compromise settlement in question, and that they agreed to all its terms when they executed and signed the same.

At this juncture, it may be pointed out that we dismissed the petition for mandamus to compel the certification and approval of petitioner's record on appeal in the Enriquez case, not only because the allegations of fraud or mistake he made were found to be untrue, but also because his "motion for reconsideration did not appear to have pointed out any misstatements or inaccuracies in the decision; it was limited to proposing new matters for incorporation into the decision." In the present case, the same situation obtains. From the record, it is clear that petitioners' allegations of fraud and connivance are unproved, and their motion to set aside the order approving the compromise settlement, instead of pointing out inaccuracies or misstatements in said order relative to the terms of the compromise settlement, is limited to proposing the change of respondent Florencio Elchico as administrator of the estate, which change, if granted by the lower court or acceded to by respondents, would render it unnecessary (in the very words of petitioners themselves) for them to annul the said order approving the compromise settlement.

For all the foregoing the writ prayed for is denied, and the petition dismissed, with costs against the petitioners. So ordered.

Paras, C.J., Bengzon, Bautista Angelo, Concepcion, Reyes, J.B.L., Gutierrez David, Paredes, and Dizon, JJ., concur.

Labrador, J., concurs in the result.

Writ denied, petition dismissed.

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