

**FRANCISCO MAGNO, ESPERANZA MAGNO, EULOGIO MAGNO,
AMELIA MAGNO VASQUEZ, ULPIANO VASQUEZ, JOSE O. MAGNO,
NICANOR P MAGNO, FELECITAS O. MAGNO, AND LOURDES O.
MAGNO, PETITIONERS, VS...**

G.R. No. L-28486. September 10, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A petition for review on Certiorari of the judgment of the Court of Appeals promulgated on December 2, 1967.

Before the Bulacan Court of First Instance, in Civil Case No. 3198-M (Bulacan Case), which was an action between members of the same family for partition of war damage payments received from the United States Government, judgment by default was rendered on September 9, 1966 in favor of petitioners herein, as the plaintiffs in the said case, and against private respondent Donato M. Vergara and his father-in-law, Meliton Magno, jointly and severally, as defendants therein. Judgment having become final, the corresponding Writ of Execution was issued and the properties of private respondent were levied upon and scheduled for sale at public auction.

Private respondent resorted to an action for annulment of judgment and of Writ of Execution before the Court of First Instance of Nueva Ecija in Civil Case No. 275 (Annulment Suit) against petitioners and the Nueva Ecija Provincial Sheriff, as defendants, upon the main contention that judgment in the Bulacan Case was procured by means of extrinsic fraud committed by petitioner Francisco Magno against private respondent. Essentially, the extrinsic fraud allegedly consisted in assurances made by Francisco Magno to private respondent during a confrontation between them that it was never the intention of petitioners to involve private respondent in the suit and that he would be excluded therefrom. Convinced, private respondent was lured into inaction only to discover later that judgment was rendered against him and execution against his properties ordered. Private respondent also prayed for a Writ of Preliminary Injunction to restrain the enforcement of the judgment and of the Writ of Execution pending the determination of the Annulment Suit.

Petitioners moved to dismiss the Annulment Suit and opposed the Injunction on the principal ground that the Nueva Ecija Court had no jurisdiction to interfere by Injunction and to nullify a final judgment of the Bulacan Court, which is a Tribunal of concurrent and coordinate jurisdiction. In deferring determination of said Motion, respondent Judge ruled that the matters alleged in the Complaint are reflective of extrinsic fraud "which, if true, would evince the nullity of the Decision under litigation". They are "too evidentiary which could be resolved by the Court after having allowed both parties to adduce their respective evidence pertinent to this contentious issue." Respondent Judge granted the Injunction prayed for upon the filing of a bond of P1,000.00.

In petitioners' Motion for the reconsideration of the aforesaid Order, they averred that "there is no necessity of reception of evidence to prove the allegations of the complaint in order to resolve the defendants' motion to dismiss because the ground of the said motion to dismiss which is lack of jurisdiction assumes *arguendo* the truth

of the said allegations; and under said assumption, it is the defendant's stand that the Court has no jurisdiction to review, much less set aside, the final and executory decision"[1] of the Bulacan Court. Reconsideration was denied by respondent trial Judge.

The Court of Appeals, in Certiorari and Prohibition proceedings thereafter filed before it by petitioners, upheld the jurisdiction of the Nueva Ecija Court, stating:

"x x x we are satisfied that, at the very least, the complaint for annulment before the Nueva Ecija court alleges ultimate facts which, if substantiated, could probably constitute extrinsic fraud (Vide: II Moran, Comments on the Rules of Court, 1963 ed., p. 230, and cases cited). It follows that the propriety of the action for annulment aforesaid and the competence of the Nueva Ecija court to take cognizance thereof must be conceded. x x x"[2]

Petitioners assail the foregoing conclusion and contend:

I

The respondent Court of Appeals erred in disposing of case CA-G.R. No. 39715-R and dismissing the petitioners' petition on the basis of a legal point which was not in issue before it because the legal proposition that a court of first instance may set aside the judgment of another court of first instance on the ground of extrinsic fraud in the procurement of the said judgment is admitted all along by the petitioners.

II

The respondent Court of Appeals erred in not holding that the allegations of the complaint in Civil Case No. 275, having been hypothetically admitted in the motion to dismiss, a hearing on the merits in order to prove the said allegations is not necessary for the purpose of resolving the said motion to dismiss.

III

The respondent Court of Appeals erred in not holding that the allegations of the complaint in Civil Case No. 275 of the Court of First Instance of Nueva Ecija, even granting them to be true, do not constitute extrinsic fraud, or stated in another way, do not state a cause of action as to justify the respondent Court of First Instance of Nueva Ecija, in exercising its jurisdiction to interfere with and annul the final and executory judgment of the Court of First Instance of Bulacan in Civil Case No. 3198-M.

We find the foregoing bereft of merit.

In regards to the first assignment of error, although petitioners now admit that if, indeed, there was extrinsic fraud, the judgment of the Bulacan Court can be set aside by the Nueva Ecija Court, the record shows that before the Appellate Court they had argued "that the respondent Judge has no jurisdiction to interfere with, much less annul, the final and executory decision of x x x the Court of First Instance of Bulacan x x x because they have co-equal and concurrent jurisdiction". To prevent further discussion on that point, we wish to state that the authority of a Court of First Instance to take cognizance of a suit to annul a final and executory Decision rendered by another Court of First Instance is beyond doubt. This was the doctrine enunciated in *Dulap et al. vs. Court of Appeals, et al.*[3] wherein it was held that since the cause of action in an annulment suit is entirely different from the action which gave rise to the judgment sought to be annulled, a direct attack against it being the main object of such proceeding, there is no plausible reason, why the venue of the action to annul the judgment should necessarily follow the venue of the previous action. This ruling was reiterated in the subsequent cases of *Gianan vs. Imperial, et al.*[4] and *Francisco vs. Aquino*.^[5] The conclusion follows that, as admitted even by the petitioners, the Nueva Ecija Court has the power to annul the judgment of the Bulacan Court if, as alleged, extrinsic fraud attended the procurement of the same.

We will now discuss the third error assigned. The issue raised is whether the allegations in the Complaint filed before the Nueva Ecija Court constitute extrinsic fraud as to justify said Court in exercising its jurisdiction to interfere with and set aside the judgment of the Bulacan Court and to enjoin the execution thereof.

The portions of the Complaint in the Nueva Ecija Court pertinent to the allegation of extrinsic fraud read:

"(6) Under date of August 31, 1965, the defendants filed an amended complaint in said Civil Case No. 3198-M, accompanied by a motion to admit the same, bearing the date of September 1, 1965; and in said amended complaint, the defendants as plaintiffs therein included the plaintiff herein, Dr. Donato M. Vergara, as a co-defendant; and the defendants herein alleged in their amended complaint that Meliton Magno is the father-in-law of Dr. Vergara, which is true; and that they were living together in the same house in Barrio Sto. Cristo, San Antonio, Nueva Ecija, which is not true, because Dr. Vergara lived and is still living in his own house in Barrio San Roque, San Isidro, Nueva Ecija; defendants also alleged in their amended complaint that plaintiff Dr. Vergara conspired with his father-in-law Meliton Magno to defraud the defendants by having the war damage check indorsed to him and then depositing it in his own savings account with the Philippine National Bank on October 13, 1964, which is not true, because said check was not indorsed to the plaintiff herein and plaintiff had not deposited it in his own savings account, as in fact he had not and has not opened any savings account with the Philippine National Bank. Defendants prayed in their amended complaint that plaintiff Dr. Vergara be held solidarily liable with Meliton Magno for the claims stated therein. A true copy of said amended complaint, together with its annexes, is hereto attached as Annex 'C' and made part hereof.

(7) Immediately after plaintiff Dr. Vergara and his wife, who is a carnal niece of defendant Francisco Magno, learned of his inclusion as co-defendant in the amended complaint in Civil Case No. 3198-M, plaintiff and his wife sought defendant Francisco Magno and remonstrated with him, asking him why plaintiff should be involved in said case when he had nothing to do with it except to identify his father-in-law before Mr. Corrado Sevilla who in turn identified him with the Philippine National Bank for the purpose of collecting the war damage check; and on that occasion defendant Francisco Magno assured the plaintiff and more especially Mrs. Vergara who is Francisco Magno's carnal niece that it was never his intention to involve the plaintiff in the case or to require him to pay any amount claimed therein; and that plaintiff's inclusion as co-defendant of his father-in-law must have been the thought of defendants' lawyers, because the plaintiff had signed on the check in question; and on that occasion defendant Francisco Magno unequivocally told plaintiff and his wife not to worry or be bothered with his inclusion in the case, and not to mind it, and assured them that he would take care that plaintiff was taken out of the case and was not prejudiced.

(8) With said assurances of defendant Francisco Magno, which plaintiff and his wife believed in good faith, they paid no more attention to the case, nor followed its developments, nor paid any attorney's fee to the lawyer defending Meliton Magno to defend herein plaintiff in said case."

Additionally, private respondent contended that he was never informed of the pre-trial thereby misleading the Bulacan Court into believing certain false allegations as true, to wit:

"(12) Although the records of Civil Case No. 3198-M show that Atty. Pablo received notice of the pre-trial, plaintiff was never informed of the same; and because of plaintiff's absence during the taking of defendants' evidence, the Court was misled into holding in its decision that Meliton Magno indorsed the war damage check to the plaintiff and that the plaintiff then deposited the check in his account with the Philippine National Bank, which is not true, as has already been stated. The Court was also misled to make the finding that plaintiff acted with gross bad faith in depositing the war damage money in his account with the Philippine National Bank, which as has already been stated is not true."

We agree with the Court of Appeals that the foregoing allegations contain ultimate facts which, if substantiated, could constitute extrinsic fraud. Extrinsic fraud is one which prevents the losing party from defending the action brought against him.[6]

"Among the instances given in the books of extrinsic or collateral fraud are such as these: Keeping the unsuccessful party away from court by a false promise of compromise, or purposely keeping him in ignorance of the suit; or where an attorney fraudulently pretends to represent a party, and connives at his defeat, or being regularly employed, corruptly sells out his client's interest"[7] (Italics ours)

So also has it been held:

"We think it sufficiently appears from the testimony of Baker that he was misled by the statement of Judge Walker, who was the attorney for Craddock and Stotts. He had a right to assume from his version of their conversation that the case would not be taken up without notifying him. It appears that he thought that the court had no jurisdiction because an attempt was made to foreclose in the same action a mortgage on real estate which was situated in another district in the same county. He says it was understood that he should be notified when the case was to be taken up, and did not appear at the adjourned term because no depositions had been taken by either party, and he relied upon his understanding that the case would not be taken up without notice to him. He stated that Craddock was only present during a part of the conversation that he had with Judge Walker. Judge Walker was not a witness in the case, and there is nothing to contradict the testimony of Baker. It is true Craddock contradicted his testimony in regard to some other matters which occurred during the conversation, but we do not think there is any contradiction of Baker's testimony with regard to the postponement of the trial. There was no negligence on his part in placing reliance upon the statements made to him, and, while we do not think that any fraud was intended to be practiced upon Montague, the result was that Montague was deprived of his right to appear and defend the action and this constituted a fraud in law. This principle has been recognized in the case of *Lawson v. Bettison*, 12 Ark. 401. Relief against fraud in judgment and decrees has also been recognized as a ground for equitable jurisdiction. Where by mistake or fraud a party has gained an unfair advantage in proceedings in a court which must operate to make that court an instrument of injustice, courts of equity will interfere and restrain him from reaping fruits of the advantage thus improperly gained. In the application of the principle an injunction will be granted against a judgment taken in violation of an agreement to continue the case, where there is a good defense to the action. *Beams v. Denham*, 2 Scam. (III) 58; *Sanderson v. Voelcker*, 51 Mo. App. 328; *Brooks v. Twitchell*, 182 Mass. 443, 65 N.E. 843, 94 Am St. Rep. 662."[8] (Italics ours)

True, private respondent had hired the legal services of Atty. Simeon S. Pablo who, on October 15, 1965, had filed an Answer wherein defendants Meliton Magno and Donato Vergara interposed a counterclaim for attorney's fees, moral and exemplary damages in the total amount of P99,000.00. That, however, was prior to the pre-trial which neither private respondent nor his counsel was able to attend, and before private respondent had remonstrated with petitioner Francisco Magno regarding the former's inclusion as party litigant. Private respondent can-not be faulted with negligence for relying on the promises of petitioner Francisco Magno considering the close relationship between them. It should also be recalled that it was a default judgment that was rendered against private respondent and Meliton Magno, thereby lending truth to private respondent's contention that he no longer followed up the developments in the case, with the result that he was deprived of the opportunity to appear and present his defense to the action.

By moving to dismiss, petitioners, as defendants in the Annulment Suit hypothetically admitted the truth of the ultimate facts alleged in the Complaint therein. Thus, they admitted that "Francisco Magno unequivocally told plaintiff (private respondent) and his wife not to worry or be bothered with his inclusion in the case, and not to mind it, and assured them that he would take care that plaintiff was taken out of the case and was not prejudiced".[9] They also admitted that "with said assurances of defendant Francisco Magno, which plaintiff (private respondent) and his wife believed in good faith, they paid no more attention to the case nor followed its development."[10] They also admitted that "defendant Francisco Magno convinced and lured the plaintiff (private respondent) not to resist the action, only to take advantage of the decision thereafter procured by him by seeking its execution and satisfaction."[11]

With those ultimate facts hypothetically admitted by petitioners, it has to be held that the Complaint in the Annulment Suit has sufficiently made out a cause of action for extrinsic fraud, with the result that the competence of the Nueva Ecija Court to take cognizance of that action and to issue the Writ of Preliminary Injunction has to be upheld.

However, what petitioners hypothetically admitted are only ultimate facts because the law does not require probative or evidentiary facts to be alleged in the complaint.[12] Evidentiary facts, at best factual, to prove the material elements of extrinsic fraud must still be established in a full-dress trial. Private respondent's defense that he had not deposited the war damage payments in his own personal account and did not profit therefrom should be fully ventilated.

After having concluded that the Complaint filed by private respondent before the Nueva Ecija Court alleges ultimate facts which, if proven, can justify the annulment of the judgment of the Bulacan Court, the second error assigned by petitioners becomes obviously tangential. It can not be alleged, as petitioners do, that since those allegations of ultimate facts have been admitted by them in their Motion to Dismiss, then those facts cannot support the annulment of the judgment of the Bulacan Court. The fallacy of that reasoning is so obvious that we find no need to dwell on it at length.

WHEREFORE, the Decision of the Court of Appeals, subject of this review, is hereby affirmed; the jurisdiction of the Court of First Instance of Nueva Ecija to entertain Civil Case No. 275 for annulment of judgment and to issue the Writ of Preliminary Injunction is hereby upheld; and this case is hereby remanded to said trial Court for appropriate action pursuant to the tenor of this judgment.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] p. 95, Rollo.

[2] Decision, p. 30, Rollo.

[3] 42 SCRA 537 (1971).

[4] 55 SCRA 755 (1974).

[5] 72 SCRA 140 (1976).

[6] Tarca vs. Carretero, 52 O.G., 3558; Jones vs. Jones, 254 SW 2d 260, cited in 46 Am Jur 2d, Judgments, subsection 825, p. 979.

[7] US vs. Throckmorton, 98 U.S. 65, 25 L. ed. 96; Donovan v. Miller, 88 Pac. 82, 84; Varela vs. Villanueva et al., 50 O.G. p. 4242, cited in 2 Moran, 1979 ed., p. 237.

[8] Montague v. Craddock, 193 SW. 268, 270 cited in 30 A Am. Jur. 738.

[9] p. 38, Rollo.

[10] Ibid.

[11] p. 42, Rollo.

[12] Pomeroy, Code Remedies, 5th ed., Sec. 420; Sutherland's Code Pleading, p. 82, 41 Am. Jur. 292.

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