

JUAN ALQUIGUE, PLAINTIFF AND APPELLANT, VS. FORTUNATO DE LEON, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-15059. March 30, 1963*

Ponente: MAKALINTAL, J.

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Plaintiff-appellant filed this case in the Court of First Instance of Leyte to recover damages, actual and moral, in the amount of P1,000,000.00 and attorney's fees in the amount of P5,000.00. Appellees are lawyers who, according to the complaint, rendered professional services to appellant, particularly in connection with the last will and testament of appellant's wife, Tomasa. Catalan, -who died on. 27 April 1958. The specific allegations are that the said will was executed by the testatrix on 17 February 1951 under the direction and supervision of appellees; that for a period of two (2) years thereafter it was kept inside a steel safe of appellee Fortunato de Leon, under the exclusive control of himself and his co-appellee, Filomeno Q. Almazan, who was then associated with him in the same law office; that after the death of the testatrix appellees, through Filomeno Q. Almazan, presented the will for probate in the Court of First Instance of Manila; that the petition for probate was denied as a result of the negligence of appellees in not examining and revising the will to make it conform to the requirements of law while the testatrix was still living; and that after the adverse decision was rendered said appellees, especially Almazan, did not take steps to appeal therefrom in spite of repeated requests to that effect by appellant.

The denial of probate was based on the finding by the court that "the will was executed on and dated February 17, 1951, but afterwards it was purposely: altered or changed to 1950 so as to conform (sic) said document to the provisions of the old civil law which do not require acknowledgment of a will before a notary public." The alteration was, the court found, done by appellant, in connivance with his counsel, Attorney Almazan. On 4 August 1956, resolving a motion for reconsideration filed by the proponent of the will (appellant herein) and the reply thereto of the oppositor (Isabel Catalan), the court issued an order amending the decision by inserting therein the following finding:

"Moreover, in the opinion of the Court, the oppositor has satisfactorily proved that when the said document Exhibit A was executed by the decedent it was done through force employed - upon her by the petitioner with the aid of Attorney Almazan. Consequently, even if it is true as claimed by the petitioner that said document Exhibit A was really executed on February 17, 1960, and not on February 17 or 21, 1951, as claimed by the oppositor, the same cannot be admitted to probate as it was not executed freely and voluntarily by the decedent."

No, appeal from the decision was taken and the same became final and executory. On 14 April 1958 appellant commenced the present action for damages allegedly suffered by him as a result of the denial of probate of the will, under which he was instituted as universal heir to his wife's estate after deducting certain bequests to other persons.

Both defendants-appellees filed separate motions to dismiss, alleging that the complaint states no cause of action, that the cause of action had already prescribed, and that the venue was improperly laid. Appellant filed an

opposition to the motions and on. 30 June 1968 the court issued an order of dismissal on two grounds: (1) that since plaintiff had been found by the probate court to have employed force, with the aid of defendant Attorney-Almazan, upon the testatrix in connection with the execution of her: will, he was, guilty of a "condemnable act" and therefore barred from seeking relief under the principle that he who comes to court seeking equity must come with clean hands; and (2) that the action had already prescribed. It is from that order of dismissal that the present appeal has been taken.

The allegations in the complaint against both Attorney de Leon and Attorney Almazan are: that the will of appellant's wife was executed under their direction and supervision; that the said will was executed on 17 February 1951, as the probate court found, but was not properly acknowledged before a notary public as required by the new Civil Code then already in force; that such fatal omission of an indispensable legal requirement was due to the negligence of both appellees; and that as far as Attorney de Leon in particular is concerned, he was likewise negligent in keeping the will inside his safe for two years after its execution without examining it so that it could be revised or amended to make it conform to law. These allegations are sufficient to constitute a cause of action. They are denied by Attorney de Leon in his motion to dismiss; indeed, he denies entirely any relation of attorney and client between him and appellant. But this denial is not a valid ground for the dismissal of the complaint upon a simple motion. For in order to test in this manner whether or not a cause of action is made out in the complaint, the motion must admit, if only hypothetically, the truth of the allegations. A denial of the material allegations should be embodied in the answer and the issue raised thereby made the subject of evidence at the trial.

The existence of a cause of action against both appellees on the basis of the allegations just considered is not affected by the fact, stated in the order appealed from; that appellant is before the court with unclean hands, inasmuch as he was declared in the probate, proceeding to have employed force, with the aid of Attorney Almazan, upon the testatrix in connection with the execution of the will. For irrespective of the employment of force, the will would have been declared void just the same because of the lack of notarial acknowledgment due, according to the complaint, to the negligence of appellees herein so much so that, as the probate court found, the date on the will had to be falsified and made to appear as 1950 instead of 1951.

Now with respect to the case against Almazan alone. It is true that if in the execution of the will force was employed by appellant, with the aid of Attorney Almazan, then both of them were guilty and appellant may no longer be heard to recover damages for having failed to benefit by the will which was null and void through his own doing. But Almazan avers—and this averment is found both in his motion to dismiss the complaint herein and in his motion, for reconsideration of the decision in the probate proceeding—that said decision was contrary to law' and the evidence. In this respect he and appellant are in agreement, for in his complaint the latter alleges that if an appeal had been taken from that decision it would have been reversed because it was based on "weak, false and fabricated evidence." In other words, therefore, the cause of action against Almazan is not that the will was denied probate because force had been used in its execution, but that Almazan failed to prosecute an appeal as attorney for appellant. It is on this point that a contentious issue exists. On one hand the complaint alleges that Almazan was grossly negligent in not having appealed notwithstanding the fact that appellant had repeatedly urged him to do so, while on the other hand Almazan states in his motion, to dismiss that after the decision denying probate of the will was rendered appellant took the case out of his hands and entrusted it to another law firm—that of Pelaez and Jalandoni—and that he, Almazan, reminded the said law firm and appellant himself to appeal the case after the motion for reconsideration was denied, but was, disregarded by them. These allegations are a matter of defense that should be raised in the answer to the complaint, not in a motion to dismiss on the ground of lack of cause of action.

The ruling of the court a quo that the present action had prescribed when the complaint was filed is erroneous. The cause of action accrued when the decision of the probate court, as amended on 4 August 1956, became final by reason of appellee Almaan's alleged neglect to perfect an appeal—not, as stated by the court a quo, on 17 February 1950, the date of execution appearing on the will. From 1956 (the decision became final 30 days after notice)' to 14 April 1958, when the complaint herein was filed, the four-year period of prescription under 1146 of the Civil Code had not yet expired.

The order appealed from is set aside and the case remanded to the lower court for further proceedings. Costs against defendants-appellees.

Bengzon, C. J., Padilla, Bautista Angela, Reyes, J.B.L, Barrera, Paredes, Dizon, and Regala, JJ., concur.

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