

FERMIN RAMOS, ET AL., PLAINTIFFS AND APPELLANTS, VS. MIGUEL ALBANO, ET AL., DEFENDANTS AND APPELLEES.*G. R. No. L-5380. March 25, 1953*

Ponente: BAUTISTA ANGELO, J.

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This appeal stems from an action filed in the Court of First Instance of Ilocos Norte wherein plaintiffs prayed that (1) the judgment rendered in Civil Case No. 4147 of the same court be annulled and the land therein involved divided as follows: 2/10; to Pedro Albano, 1/10; to Lorenzo Pascual, 3/10; to Vito Arios; and 4/10; to Fermin Ramos; (2) the total gross yield of the land be declared to be only 100 uyones of palay for each agricultural year, ½ thereof to belong to the tenants, and the other half to the Albanos; (3) the liability of paying the palay that had accrued to the Albanos from the land in litigation be shouldered exclusively by Feliciano Nicolas; and (4) a writ of preliminary injunction be issued to enjoin the execution of the judgment pending final termination of the case.

The defendants filed a motion to dismiss on the ground that the complaint does not state sufficient cause of action. To this plaintiffs replied alleging that their action is predicated on section 2, Rule 38, of the Rules of Court, which gives them the right to seek relief from a judgment based on fraud, accident, mistake or excusable negligence and that, therefore, the contention of the defendants should not be entertained. The court dismissed the case on the ground of *res judicata*, and the case is now before this Court on appeal taken by the plaintiffs.

It appears that on May 5, 1937, the appellees herein, all bearing the surname of Albano, filed a complaint in the Court of First Instance of Ilocos Norte against the appellants and one Lorenzo Pascual for the partition of sixteen (16) parcels of land, which was docketed as Civil Case No. 4147. On July 5, 1944, the complaint was amended to include Feliciano Nicolas as one of the defendants. On January 4, 1946, the complaint was again amended to include the heirs of Vito Arios, one of the defendants who died; and later the complaint was finally amended to include the heirs of Feliciano Nicolas, who also died.

The complaint of the Albanos demanded that the partition of the sixteen parcels of land be made into four equal parts, to wit: ¼ for the Albanos; ¼ for Vito Arios, ¼ for Lorenzo Pascual and ¼ for Fermin Ramos. The defendants in turn claimed that the partition should be made as follows: 2/10; should be given to the Albanos; 4/10; to Fermin Ramos; 3/10; to Vito Arios; and 1/10; to Lorenzo Pascual.

Issues having been joined, and evidence presented by both parties, the court rendered decision declaring (1) that the property should be divided as follows: ¼ should go to the Albanos, ¼ to Fermin Ramos, ¼ to Lorenzo Pascual and ¼ to Vito Arios; (2) that the defendants should deliver to the plaintiffs 25 uyones of palay valued at P12 per uyon annually from 1938 to 1942, and valued at P60 per uyon since 1943; (3) and that should the parties not come to an agreement as to the partition of the land within thirty (30) days the court would appoint commissioners of partition.

From this decision the defendants brought the case to the Court of Appeals, and on October 13, 1950, it confirmed the decision with the only modification that a portion with an area of two (2) hectares belonging to one Ireneo

Ranjo should be excluded from the parcels of land to be partitioned. The defendants attempted to further appeal the case to the Supreme Court, but the petition for review was dismissed for lack of merit.

The contention now of appellants in the present appeal is that the Court of First Instance of Ilocos Norte as well as the Court of Appeals which confirmed its decision in civil case No. 4147 have committed several errors in that (1) they did not make any pronouncement as to the liability of Feliciano Nicolas in the payment of damages that were adjudged against the defendants, (2) they adjudicated to Lorenzo Pascual $\frac{1}{4}$ of the land to be partitioned, (3) they did not give to the plaintiffs the portions they were claiming, (4) they fixed the annual yield of the land at 100 uyones of palay when it should be otherwise, (5) they adjudicated 25 uyones of palay yearly to the Albanos, and (6) they ordered the plaintiffs to pay damages to the defendants Albanos. And they contend that these errors can be corrected in the present action on the strength of section 2, rule 38, of the Rules of Court, which they are invoking, and, therefore, it was a mistake on the part of the lower court to dismiss the case on the ground of res judicata.

This claim of appellants is not well taken. The decision of the Court of First Instance of Ilocos Norte in civil case No. 4147 which appellants desire now to set aside on the alleged ground that it has committed several mistakes in the appreciation of the evidence, which decision by the way was confirmed with a slight modification by the Court of Appeals, had already become final long ago, and the only way by which the same can be modified or rendered ineffective is to invoke Rule 38 of the Rules of Court, which refers to relief from judgments, orders or other proceedings on the ground of fraud, accident, mistake or excusable negligence. But, in order that this relief may be invoked, it is necessary that the petition be submitted in the same case and "within 60 days after the petitioner learns of the judgment, * * * and not more than 6 months after said judgment" has been rendered (sections 2 and 3, Rule 38). This the appellants failed to do. Instead of filing the petition for relief in the same case they chose to file an independent action. This is a departure from the procedure prescribed in said Rule 38.

True, a defeated party may also procure a final and executory judgment to be set aside with a view to the renewal of the litigation (a) when the judgment is void for want of jurisdiction, and (b) when it has been obtained by fraud (Anuran vs. Aquino, 38 Phil., 29; Banco Español-Filipino vs. Palanca, 37 Phil., 921, 949; Garchitorena vs. Sotelo, 74 Phil., 25). But it has been held that "Fraud to be ground for nullity of a judgment must be extrinsic to the litigation. Were not for this rule there would be no end to litigation, perjury being of such common occurrence in trials. In fact, under the opposite rule, the losing party could attack the judgment at any time by attributing imaginary falsehoods to his adversary's proof" (Almeda vs. Cruz, 84 Phil., 636; 47 Off. Gaz., 1179; In re De Leon, 87 Phil, 551).

The case under consideration does not raise any of the grounds above mentioned. It merely imputes the commission of certain mistakes in the appreciation of the evidence to the court of origin as well as to the Court of Appeals. These mistakes should have been raised in a motion for reconsideration, or in a petition for relief under Rule 38. Since this issue involves questions of fact it is to be presumed that they have already been considered and passed upon in civil case No. 4147, and in this sense they are now res judicata. In our opinion, the lower court did not err in dismissing the case on this ground.

The decision appealed from is hereby affirmed, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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