

FRANCISCO L. DAYRIT, PLAINTIFF AND APPELLANT, VS. NORBERTO L. DAYRIT AND FLORA REGNER-DAYRIT, DEFENDANTS AND APPELLEES.*G.R. No. L-7858. October 26, 1955*

Ponente: CONCEPCION, J.

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This is an appeal from an order of dismissal of the Court of First Instance of Manila.

It appears that on January 27, 1951, a decision was rendered in Special Proceeding No. 747-R of the Court of First Instance of Cebu, entitled "In the Matter of the Adoption of the Minor, Lydia Duran—Norberto L. Dayrit and Flora Regner-Dayrit, petitioners," granting the latter's application for the adoption of Lydia Duran, a minor five years of age, whose mother, Lutgarda Duran, had consented thereto. About a year later, or on January 3, 1952, Francisco L. Dayrit filed a motion for reconsideration of said decision, upon the ground that the same had been obtained through fraud and that said movant is the father of Lydia Duran—whose true name is said to be Lydia Dayrit—and a brother of petitioner Norberto L. Dayrit, who knew the relation between the movant and Lydia Duran, and concealed this fact from the court. By an order dated on February 4, 1952, the Court of First Instance of Cebu granted this motion, set aside the aforementioned decision and directed a new trial. In an action for certiorari and prohibition, instituted by Norberto L. Dayrit before this Court, G. R. No. 1[^]5627, entitled "In re adoption of the minor Lydia Duran—Norberto L. Dayrit et al. vs. Edmundo S. Piccio, et al.," said order of February 4, 1952 was annulled in a decision promulgated on February 27, 1953, the dispositive part of which reads:

"Se declara nula y de ningun valor la orden revocatoria de 4 de febrero de 1952 y se hace definitiva la orden de interdicto prohibitorio preliminar expedida por este Tribunal, con costas contra Francisco L. Dayrit."

Meanwhile, Francisco L. Dayrit had instituted civil case, G. R. No. L-6013, entitled "Francisco and Lutgarda Duran vs. Norberto L. Dayrit and Flora Regner-Dayrit," for the purpose of obtaining the custody of Lydia Duran by writ of habeas corpus, which was denied in a decision rendered on March 10, 1953. Thereafter, or on September 4, 1953, Francisco L. Dayrit instituted the present case in the Court of First Instance of Manila. In his complaint, plaintiff prayed:

1. "That the order of the Court granting the adoption of the minor, Lydia Duran, whose true name is Lydia Dayrit, under Sp. Proc. No. 747-R of the Court of First Instance of Cebu, 14th Judicial District, in favor of Norberto L. Dayrit and Flora Regner-Dayrit be rendered null and void and without any force or effect for having been obtained fraudulently.
2. "That patria potestad over Lydia Dayrit be restored unto plaintiff herein;
3. "That pending this proceeding, the minor Lydia Dayrit be placed in the custody of the plaintiff or in some respectable institution run by Catholic nuns in the City of Manila;
4. "That defendants jointly and severally be condemned to pay plaintiff herein in the total sum of P150,000 by

way of moral damages;

5. "That defendants be condemned to pay jointly and severally attorney's fees in the sum of P20,000;

6. "That defendants jointly and severally be condemned to pay the costs of this suit.

That plaintiff herein be given and granted such other and further reliefs as are by law and equity warranted,"
(Record on Appeal, pp. 9-10.)

In due course the defendants, Mr. and Mrs. Norberto L. Dayrit, filed a motion to dismiss upon the ground that the action is barred by prior judgments, namely the decision of the Court of First Instance of Cebu, in Special Proceeding No. 747-R, and the decisions of the Supreme Court in cases G. R. Nos. L-5627 and L-6013. By an order dated February 5, 1954, the Court of First Instance of Manila granted said motion and dismissed the case, with costs against the plaintiff. The case is now before us on appeal taken by the latter.

The only issue for determination is whether or not the present action is barred by the aforementioned decisions of the Court of First Instance of Cebu and of this Court. It is obvious, to our mind, that the answer must be in the negative, for none of said decisions had passed upon the question whether or not the decision in Special Proceeding No. 747-R had been secured through extrinsic fraud. Indeed, although in its order dated February 4, 1952, the Court of First Instance of Cebu found the herein appellees guilty of such fraud, said order was annulled in case G. R. No. L-5627, upon the sole ground that said court had no jurisdiction to issue it, the judgment rendered on January 27, 1951 having already become final and executory. The existence of extrinsic fraud in obtaining said judgment was not taken up in our decision, either in case G. R. No. L-5627, or in case G. R. No. L-6013. The only question involved in the latter case was whether or not appellees were entitled to the custody of Lydia Duran. For obvious reasons, this was resolved in the affirmative, in view of the decree of adoption in favor of said appellees, and would have to be so resolved in the future, as long as said decree is not set aside or annulled upon the ground of fraud, which is precisely the purpose of the present case.

In the case of *Anacleto Uy Almeda, et al. vs. Adriano F. Cruz*, (84 Phil., 636) we held:

"The lower court committed a technical error in dismissing the case on the ground of *res adjudicata*. The doctrine of *res adjudicata* is predicated on a prior valid judgment. As the very purpose of the action is to annul that judgment, the latter, its stands to reason, may not be invoked as a bar to the new suit."

Wherefore, the order appealed from is hereby reversed and set aside, and let the record of the case at bar be remanded to the lower court, for further proceedings not inconsistent with this decision, with costs against defendants-appellees. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Reyes, J.B.L., JJ., concur.

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