

ARTURO SAMONTE, ET AL., PLAINTIFFS, VS. FAUSTINO SAMONTE, ET AL., DEFENDANTS. FAUSTINO SAMONTE AND LOURDES MANUEL, DEFENDANTS AND APPELLEES, VS. CAYETANO SAMONTE, ET AL., DEFEND...

G.R. No. L-40683. June 27, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

Appeal taken by the defendants-appellants Cayetano Samonte, et al. from a judgment of the Court of First Instance of Bulacan in Civil Case No. 3521, entitled "Arturo Samonte, et al. vs. Faustino Samonte, et al," which was certified to this Court by the Honorable Court of Appeals, purely on questions of law being raised therein.

The records before Us reveal that plaintiffs Arturo and Francisco and defendants Ricardo and Cayetano and Raul and Lourdes all surnamed Samonte are the children of defendant Faustino Samonte by his first marriage with Bernardina Rodriguez (now deceased). Raul Samonte during his lifetime married and begot Jaime Samonte. Lourdes Samonte also during her lifetime married Alejandro Villanueva and begot Cipriano, Ernesto and Teresita, all surnamed Villanueva. During the first marriage of defendant Faustino Samonte with Bernardina Rodriguez, they acquired conjugal properties consisting of three (3) parcels of unregistered land described in the complaint and a residential house. When Bernardina Rodriguez died in February 1935, defendant Faustino Samonte continued to hold and administer the above-described parcels of land, together with a parcel of land of Bernardina Rodriguez[1] situated at Bambang, Bulacan for the benefit of the afore-mentioned children and of his own. With the income from the properties and with a borrowed capital secured by them, defendant Faustino Samonte, with the help of his sons and son-in-law by his first wife entered in long term leases of first class fishponds in Bulacan, Bulacan among which are fishponds known as the "Kay Bituin", the "Kay Sombrero", the "Kay Gogue", the "Kay Katwiran", the "Kay Katig", and the "Kay Tubong".

In their complaint plaintiffs Arturo Samonte and Francisco Samonte claim that defendant Faustino Samonte contracted his second marriage with defendant Lourdes Manuel, without liquidating the conjugal properties and the income therefrom of his first marriage and as a matter of fact used their rights, interests and participation in said properties as his capital in the conjugal partnership with his second wife, defendant Lourdes Manuel. They therefore contend that whatever defendant Faustino Samonte has acquired during his second marriage as well as the income derived from the operations of the leased fishponds should be divided into two parts — one part to his children by the first marriage and the other to form part of the conjugal partnership between him and defendant Lourdes Manuel. Thus plaintiffs requested the defendant-spouses Faustino Samonte and Lourdes Manuel to account, partition and settle what is due to them out of the properties brought by defendant Faustino Samonte from the first to the second marriage and of the products from the leased fishponds, which request was unceremoniously ignored. To restrain defendant-spouses Faustino Samonte and Lourdes Manuel from gathering and harvesting the products of the properties in question and of the leased fishponds, plaintiffs prayed for the issuance of a writ of preliminary injunction ex parte upon the filing of the corresponding bond until such time that

a receiver shall have been appointed for all the properties in litigation. Most importantly, they prayed that they be declared as co-owners with defendant Faustino Samonte of all the properties described in paragraph 5 of the complaint and as one-half co-owners with defendant-spouses Faustino Samonte and Lourdes Manuel of all the properties described in paragraph 11 thereof and that said defendant-spouses Faustino Samonte and Lourdes Manuel be ordered to render a complete accounting of all the fruits and income of all the properties in litigation, including that of the leased fishponds, and to pay plaintiffs attorney's fees in the amount of P20,000.00.

On June 30, 1967 defendant-spouses Faustino Samonte and Lourdes Manuel filed their answer[2] admitting partially some of the material allegations of the plaintiffs' complaint and denying the others and by way of special defenses claim that the complaint has no cause of action inasmuch as he (defendant Faustino Samonte) was even before the filing of the complaint willing to partition the properties acquired by him during his first marriage with plaintiffs' mother and that said plaintiffs have absolutely no participation whatsoever with the properties acquired by him in his second marriage with defendant Lourdes Manuel. By way of counter-claim, defendant-spouses claim for moral damages and attorney's fees.

On August 8, 1967 defendants Cayetano Samonte, Alejandro Villanueva, Cipriano Villanueva, Ernesto Villanueva, Teresita Villanueva, Jaime Samonte and Juliana Vda. de Samonte filed their answer[3] to the plaintiffs' complaint denying the material allegations therein and by way of cross-claim against defendant-spouses Faustino Samonte and Lourdes Manuel allege that they have joined the two in their business venture with the owner of the fishpond "Kay Bituin" who agreed to lease to them for 20 years the fishpond with a yearly rental of P4,000.00 payable in advance every five years or sooner. In this business venture Cayetano Samonte, et al. agreed to place all contracts of leases of fishponds in the name of defendant Faustino Samonte with Raul Samonte as manager and administrator of all the fishponds they will lease. Cayetano Samonte was to help Raul. Under the set-up, several fishponds were taken by defendants Cayetano Samonte, et al. for long term lease, among which was fishponds, the "Kay Katwiran". When Raul Samonte died, Cayetano Samonte with the help of Jaime and Ricardo Samonte took over the management of the leased fishponds. Sensing that defendant-spouses Faustino Samonte and Lourdes Manuel would take away from him the management of the leased fishponds, Cayetano Samonte and the other defendants who joined the latter in the business set-up were forced to file an ex parte motion to restrain defendant-spouses Faustino Samonte and Lourdes Manuel from disturbing and/or modifying the agreed business arrangement.

On September 1, 1967 defendants Cayetano Samonte, et al. filed an urgent motion for preliminary injunction[4] to restrain defendant-spouses Faustino Samonte and Lourdes Manuel from executing or signing any contract whatsoever relative to the leased fishponds until further orders from the Court.

On September 15, 1967 plaintiffs Arturo Samonte, Francisco Samonte and Deogracias Samonte and defendants Ricardo Samonte, Jaime Samonte, Cayetano Samonte, Romeo Samonte, Cipriano Villanueva, Teresita Villanueva, Ernesto Villanueva and Alejandro Villanueva and defendant-spouses Faustino Samonte and Lourdes Manuel signed and executed a compromise agreement which reads as follows:

"COMPROMISE AGREEMENT

"COME NOW the undersigned parties in the above-entitled case, and to this Honorable Court, respectfully submit the following agreement:

1. That defendants spouses Faustino Samonte and Lourdes Manuel, Cayetano Samonte, Ricardo Samonte, Romeo Samonte, Jaime Samonte, Cipriano Villanueva, Ernesto Villanueva agree to pay as they have paid to plaintiffs the total sum of P40,000.00 in consideration of the latter's claim for accounting and further agree to give to said plaintiffs whatever share they are entitled under the law in the property acquired by Faustino Samonte with his first wife;

2. That plaintiffs Arturo Samonte, Francisco Samonte and Deogracias Samonte, together with Romeo Samonte and Consolacion Donato, hereby waive any and all claims for accounting and partition of the properties in question;
3. That defendants Faustino Samonte, Lourdes Manuel, Alejandro Villanueva, Cayetano Samonte, Jaime Samonte and Ricardo Samonte are partners in capital of all the fishponds under leasehold mentioned in the complaint and cross-claim;
4. That the fishponds known as Katwiran and Sombrero now under the leasehold of said defendants shall pertain to defendants Cayetano Samonte, Alejandro Villanueva, Jaime Samonte and Ricardo Samonte; however, with respect to the improvements to be introduced thereon, defendants spouses Faustino Samonte and Lourdes Manuel agree to share one-half of whatever amount to be spent in excess of P5,000.00;
5. That the fishpond Kay Katig now under leasehold of said defendants shall pertain to the spouses Faustino Samonte and Lourdes Manuel to the exclusion of the other defendants;
6. That defendants Alejandro Villanueva, Cayetano Samonte, Jaime Samonte and Ricardo Samonte hereby waived and renounced whatever capital they have invested in the partnership;
7. That upon the signing of this Agreement, the partnership among the defendants for the lease of the aforementioned fishponds shall be deemed terminated and each and every partner warrant to each other their complete and peaceful possession of the fishpond that each will respectively occupy and manage;

WHEREUPON, the parties hereby pray that the foregoing Compromise Agreement be approved and that judgment be rendered in accordance therewith.

Malolos, Bulacan, September 15, 1967."

On September 19, 1967, the lower court rendered a decision^[5] approving the compromise agreement and enjoining the parties to comply strictly with the terms and conditions thereof.

On March 14, 1968, defendants Cayetano Samonte, et al. filed a motion^[6] to suspend the compromise agreement dated September 15, 1967 and to maintain status quo alleging that they have agreed to accept the fishpond "Kay Katwiran" on the understanding and representation of defendant-spouses Faustino Samonte and Lourdes Manuel that the leasehold of said fishpond will expire yet in 1972 as per contract which said spouses promised to show in some future date; but which lease they later learned was to expire in 1970 instead of 1972. Because of the misrepresentation they were allegedly deprived of the benefits and enjoyment of the lease contract for two years.

On March 25, 1968 the lower court issued an order^[7] denying the motion to suspend the compromise agreement for lack of merit.

On April 10, 1968, defendants Cayetano Samonte, et al. filed a motion^[8] to set aside the aforesaid judgment claiming that they did not have any knowledge thereof until the hearing of the motion to suspend the compromise agreement on March 21, 1968 when they received a copy of the aforesaid decision.

On April 25, 1968 defendant-spouses Faustino Samonte and Lourdes Manuel filed an opposition^[9] to the motion to set aside the judgment in question on the ground that it was filed beyond the 6-month period from the date of said judgment and beyond 60 days from knowledge of the same; that the allegations in the motion do not constitute any of the grounds provided for by law to set aside the judgment and that the motion to set aside is fatally defective because it is not verified and the affidavits of merits are deficient.

After several exchanges of pleadings between the party-litigants relative to the question as to whether the aforesaid judgment based on the compromise agreement could still be set aside, the lower court finally issued an

order[10] denying the aforesaid motion.

From said order of the lower court, defendants Cayetano Samonte, et al. have taken an appeal to the Honorable Court of Appeals. However, after finding that no question of fact is involved in the controversy, the Honorable Court of Appeals[11] has certified the same to this Court pursuant to Section 3, Rule 50 of the Rules of Court in relation to Section 17 (4) of the Judiciary Act of 1948, as amended by Section 2 of Republic Act No. 5440.

In their appeal, defendants-appellants Cayetano Samonte, et al. raised the following assignment of errors:

1. The lower court erred in denying the motion to set aside the judgment filed by the defendants-appellants dated April 4, 1968.
2. The lower court erred in not declaring and holding that the lease of the fishpond "Kay Katwiran" will expire in 1972 as expressly and impliedly admitted by the defendants-appellees.
3. The lower court erred in not exercising its inherent power of amending its decision so as to make it conformable to law and justice.

The threshold issue in this appeal is whether or not the lower court committed a mistake in denying the motion filed by defendants-appellants Cayetano Samonte, et al. to set aside the judgment of the lower court approving the compromise agreement submitted by the parties-litigants. Defendants-appellants contend that they have thirty (30) days from receipt of the decision by their counsel within which to set aside pursuant to Section 1, Rule 37[12] in relation to Section 3, Rule 41[13] of the Rules of Court. Since the motion to set aside said judgment was filed on April 10, 1968 or 20 days from receipt of the judgment by their counsel, they submit that said motion was well within the period. Defendants-appellants Cayetano Samonte et al. claim that although they signed the compromise agreement in question on September 15, 1967, they never received a copy of the decision of the lower court based on the compromise agreement. It was only their counsel who received officially a copy of the same on March 21, 1968. Thus, they reason out that the period within which to file their motion to set aside the judgment or order in question should be reckoned with from the date their counsel was formally notified of said decision as notice to their lawyer is the one recognized as notice in law (citing cases of Chainani vs. Tancinco, et al, G.R. No. L-4782, February 29, 1952; Palad vs. Cui, et al., 28 Phil. 44, 48).

A more incisive reading of Section 1, Rule 37 of the Rules of Court will reveal that only when a judgment is not yet final and therefore appealable may the aggrieved party move the trial court to set aside the judgment and grant new trial. However, when the judgment has already become final and executory because the period for perfecting the appeal has already prescribed, the aggrieved party can no longer avail himself of the remedy provided in Rule 37. It is by now a well established doctrine that a judgment of the court approving a compromise agreement is final and immediately executory.[14] In the words of the Supreme Court it is "right there and then writes finish to the controversy." [15] The reason why a judgment based on a compromise agreement is final and immediately executory is that when the parties agree to settle their differences to end up litigation and request the court render judgment on the basis of their agreement, there is an implied waiver of their right to appeal from the judgment.[16] But of course there is an exception to this rule. A party to a compromise agreement may move to set it aside on the ground of fraud, mistake or duress in which case an appeal may be taken from the order denying the motion.[17] The question then is, under what provision of the Rules of Court can the judgment be set aside? Certainly under Rule 37 for as earlier expounded said Rule 37 contemplates a judgment that is not yet final and is therefore still appealable.

But could not the defendants-appellants Cayetano Samonte, et al. have resorted to Section 3, Rule 38 of the Rules of Court.[18] Pursuant to said provision a motion to set aside a judgment must be filed within 60 days after the petitioner learned of the judgment, order or other proceeding to be set aside, and not more than six (6) months

after such judgment or order was entered, or such proceeding was taken. In the instant case, have the defendants-appellants Cayetano Samonte, et al. come within the two periods fixed in the provision? Was their motion to set aside filed within the 60-day period from the time they learned of the judgment but not more than six (6) months after such judgment was entered? Admittedly the parties signed the compromise agreement on September 15, 1967 and submitted it to the Court for approval and prayed that judgment be rendered thereon on the same date. On September 19, 1967 the lower court issued and promulgated a decision approving said compromise agreement. Defendants-appellants Cayetano Samonte, et al. therefore cannot deny that they have learned the judgment approving their compromise agreement on the very day the same was rendered on September 19, 1967 since they were themselves concerned in its immediate implementation. From September 19, 1967 therefore their right to set aside the judgment in question has commenced and since they filed their motion only on April 15, 1968, unmistakably they were way out of time — out of the 60-day period from the time they learned of the judgment and out of the 6-month period from the time such judgment or order was entered or such proceeding was taken. Elucidating on the two periods set forth in Section 3 of Rule 38, the Supreme Court explicitly said:

"The law does not say six months after the date of the default order. No mention there is made of the date of rendition of the judgment or order. Neither does it speak of the date of the finality of the judgment or order. It does say, in plain terms — six months after the judgment or order "was entered" (*Dirige vs. Biranya*, Vol. 17, SCRA, p. 840, 849).

And according to Section 2, Rule 36 of the Rules of Court, the judgment or order shall be entered by the clerk of court if no appeal or motion for new trial is filed within the time provided in these rules. The recording of the judgment or order in the book of entries of judgments constitutes its entry. The record shall contain the dispositive part of the judgment or order and shall be signed by the clerk, with a certificate that such judgment or order has become final and executory. This, of course, applies to judgment or order that has to be entered, but as to the alternative phrase "such proceeding was taken" as used in Section 3 of Rule 38, the Supreme Court in the same case of *Dirige vs. Biranya*, supra, further explained:

"The alternative phrase "or such proceeding was taken" employed in Section 3, of Rule 38 could be taken to mean other proceeding which are not to be "entered", such as a writ of execution (*Aquino vs. Blanco*, 79 Phil. 647, 650) and an order approving a compromise agreement (*Bodiongan vs. Ceniza*, 102 Phil. 750). In such case, the period must have to commence from the date of occurrence because entry is either unnecessary or inconsequential."

In the light of the foregoing doctrine, it can be safely concluded that the six-month period within which defendants-appellants Cayetano Samonte, et al. could file their motion to set aside the judgment in question should have started from September 19, 1967 — the date of the occurrence of the "proceeding which need not be entered." And since they filed the motion only on April 10, 1968, they were not only out of the 60-day period from knowledge of the judgment but also beyond the six-month limit from its rendition. Evidently, even under Rule 38 of the Rules of Court their right to set aside the judgment in question had been foreclosed by their omission to plead on time.

Granting that defendants-appellants Cayetano Samonte, et al. were on time to set aside the judgment in question they have to show that there was fraud in the procurement of the judgment and not merely fraud in the original cause of action.[19] Fraud in the procurement of a judgment means any trick or device which prevents the adversary from presenting defense or conceals from him pendency of action.[20] The fraud must be perpetrated upon the Court in rendering the judgment, and it must also appear that there is a valid defense to the judgment.[21] In the present case, the fraud was allegedly committed by the defendants-spouses Faustino Samonte and Lourdes Manuel when they made representation and assurances that the lease contract on the

fishpond, the "Kay Katwiran" was to expire in 1972 when it actually expired in 1970 and it was because of such representation and assurances that defendants-appellants Cayetano Samonte, et al. entered into a compromise agreement with defendants-spouses Faustino Samonte and Lourdes Manuel. It is evident then that the alleged fraud was not employed in the procurement of the judgment. It was not perpetrated upon the court. It did not prevent the parties from having a trial or from presenting all of their case to court. If at all the alleged fraud could at most be considered intrinsic and not extrinsic. Extrinsic fraud is that where the alleged deceit was not on a matter raised, controverted or decided.[22] The alleged representation and assurances made by the defendants-spouses Faustino Sainonte and Lourdes Manuel that the lease on the fishpond the "Kay Katwiran" will expire in 1972 relates to a lease of the fishpond which was a matter raised and controverted in the pleadings of the parties. As a matter of fact, defendants-appellants Cayetano Samonte, et al. in their motion to set aside the judgment in question claim that the matter of lease of the fishpond the "Kay Katwiran" was discussed in the in-chambers meeting of the parties with the trial judge. Besides the claim of defendants-appellants Cayetano Samonte, et al. that they were the victims of fraud and misrepresentations in entering into a compromise agreement with the defendants-spouses Faustino Samonte and Lourdes Manuel appears to be baseless in the face of the admission of defendants-appellants Cayetano Samonte, et al. in their pleadings that they were in partnership with defendants-spouses Faustino Samonte and Lourdes Manuel over the lease of the fishponds, including the "Kay Katwiran" in which partnership defendant-appellant Cayetano Samonte took over as the manager after Raul Samonte died. As manager therefore of the partnership, he had every reason to know the period of the leases of the fishponds covered by the partnership. How could defendants-appellants Cayetano Samonte, et al. allege that they were defrauded in entering into the aforesaid compromise agreement?

Vainly, defendants-appellants Cayetano Samonte, et al. submit that their motion to suspend the compromise agreement and to maintain status quo of the case filed on March 14, 1968 could have served the same purpose as a motion to set aside the judgment in question under Section 3, Rule 38 of the Rules of Court. To this contention, the Court cannot concede for the motion to suspend the compromise agreement failed to meet the essential requirements of Section 3 of Rule 38. It was not accompanied by an affidavit of merits showing the fraud, mistake, or excusable negligence relied upon and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. Consequently from March 14, 1968 when they filed the motion to suspend the compromise agreement up to March 25 when the same was denied, the 6-month period has not stopped to run so that when defendants-appellants Cayetano Samonte, et al. filed their motion to set aside the judgment on April 10, 1968, they were way beyond the 6-month period. This is particularly so in view of the established doctrine that the periods provided for in Section 3, Rule 38 is unextendible and is not subject to any conditions or contingency.[23]

Finally, in their futile attempt to impugn the judgment in question, Cayetano Samonte, et al. contend that a judgment based on the compromise agreement is no judgment at all, mistakenly invoking the doctrine laid down in the case of *Saminiada vs. Mata*, 92 Phil. 426, 431, wherein the Supreme Court held:

"... A decision must state clearly and distinctly the facts and the law upon which it is based. Where the so-called "decision" embodying a compromise agreement lacks these essentials of a judgment, it is not a decision. When a litigation is adjusted between the parties and said adjustment is sanctioned by a decree of the court, the agreement or settlement does not have the effect of a final judgment or the character of *res judicata*, the court's approval being considered mainly as an administrative recording of what has been agreed between the parties."

It must be noted, however, that in the case of *Vda. de Corpus vs. Phodaca-Ambrosio*[24] the Court ruled that the *Saminiada vs. Mata* case is no longer authority for the contention that a decision based on a compromise agreement is not a judgment. This is so because the view that a decision based upon a compromise agreement

does not become immediately final and executory, was arrived at only by four members of the Supreme Court, which view is inconsistent with what was adhered to in subsequent cases and the explicit provision of Article 2037 of the Civil Code. Besides, even the four justices of the Supreme Court acknowledged, in the Saminiada case, that a decision based upon a compromise agreement is a judgment.

May not the defendants-appellants Cayetano Samonte, et al. contend that since the compromise agreement was signed by the parties-litigants without the assistance of their counsels, the same should not have any force and effect against them? The Court is not aware of any provision of law or of any existing jurisprudence that has pronounced a compromise agreement entered into by parties-litigants without being assisted by their counsel to be null and void and of no legal effect. On the contrary, there is authority to the effect that an attorney by virtue of his general authority as such, has the exclusive control of the litigation in which he represents his client,[25] his client on the other hand, is generally conceded to have the exclusive control over the subject-matter of the litigation[26] and may, according to the great weight of authority, at any time before judgment, if acting in good faith, compromise, settle and adjust his cause of action out of court without his attorney's intervention, knowledge, or consent[27] and, even though he has agreed with his attorney not to do so.[28] The parties may ordinarily settle and adjust their cause without the intervention of their attorneys.[29]

But even granting that defendants-appellants Cayetano Samonte, et al. could take recourse to the provisions of Rule 38 of the Rules of Court, still they could not get any relief therefrom for the reason that the motion to set aside filed by them suffered from two fatal defects — (1) the petition for relief has not been verified and (2) the petition was not accompanied by affidavits of merits. A close examination of the motion to set aside in question shows these two fatal defects. The lack of verification is strikingly obvious. So is the absence of the required affidavits of merits.

IN VIEW OF THE FOREGOING, the judgment of the lower court is hereby affirmed in toto with costs against defendants-appellants Cayetano Samonte, et al. So ordered.

Makalintal, C.J., Castro, Makasiar, and Esguerra, JJ., concur.

[1] Declared under Tax Declaration No. 5643.

[2] Amended Record on Appeal, p. 22.

[3] Amended Record on Appeal, p. 35.

[4] Amended Record on Appeal, p. 44.

[5] Amended Record on Appeal, p. 55.

[6] Amended Record on Appeal, p. 56.

[7] Amended Record on Appeal, p. 62.

[8] Amended Record on Appeal, p. 63.

[9] Amended Record on Appeal, p. 71.

[10] Amended Record on Appeal, p. 121.

[11] First Division: Reyes, L.B., Gaviola, de Castro, JJ.

[12] SECTION 1. Grounds of and period for filing motion for new trial.— Within the period for perfecting appeal,

the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes and materially affecting the substantial rights of said party:

- (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;
- (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result;
- (c) Award of excessive damages, or insufficiency of the evidence to justify the decision, or that the decision is against the law.

[13] SECTION 3. How appeal is taken.— Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

But where such a motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion.

[14] Cadano vs. Cadano, Vol. 49, SCRA, p. 34,43; see also De los Reyes vs. Ugarte, 75 507; Enriquez vs. Padilla, 77 Phil. 373; Bodiongan vs. Cenizo, et al., 102 Phil. 750, 755.

[15] Dirige vs. Biranya, Vol. 17, SCRA, pp.840, 850.

[16] Periquet vs. Reyes, Vol. 21, SCRA, pp. 1503, 1510.

[17] Cadano vs. Cadano, Vol. 49, pp. 34, 43; see also Periquet vs. Reyes, Vol. 21, SCRA; pp. 1503, 1510.

[18] Sec. 3. Time for filing petition; contents and verification.— A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order; or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be."

[19] 17 A Words and Phrases 115.

[20] Fadler vs. Gabbert, 63 S.W. 2d 121, 130.

[21] Holland et. al., vs. Wart, et. al., 86, S.W. 2d 415, 416, 191 Ark. 405.

[22] Soriano vs. Asi, G.R. No. L-9633, January 29, 1957, 100 Phil. 785, 788.

[23] Palomares vs. Jimenez, G.R. No. L-4573, Jan. 31, 1952; 90 Phil. 773, 776.

[24] G.R. No. L-30206, March 30, 1970, 32 SCRA 279, 287.

[25] Hightower vs. Detroit Edison Co., 247 N.W. 97, 100; Bacon vs. Mitchell, et al., 106 N.W. 129, 130.

[26] Paulson vs. Lyson, 97 N.W. 533; In re Snyder, 190 N.Y. 66, 82 N.E. 742, 744.

[27] Millsap vs. Sparks, 21 Ariz. 317, 188 P. 135, 136, citing RCL, 175 S.W. 1170,1173; Nichols 'vs. Orr, 63 Colo. 333, 166 P 561; Cameron et al. vs. Boeger, et al., 200 111 N.E. 690, 692.

[28] Hanna vs. Island Coal Co., 31 N.E. 846, 848; Southworth vs. Rosendahl, 133 Minn. 447, 158 N.W. 717, 718, A.C. R. 468; Randall vs. Van Wagener, et al. 115 N.Y. 527, 22 N.E. 361, 362; Davy vs. Fidelity and Casualty Ins. Co., 78 Ohio St., 256, 85 N.E. 504, 506.

[29] Sentco, Inc. vs. McCulloh, 84 So. 2d 498, 499.

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