

CLEMENTE PASILAN, PLAINTIFF AND APPELLANT, VS. FRANCISCO VILLAGONZA, DEFENDANT AND APPELLEE.*G.R. No. L-7331. May 06, 1955*

Ponente: LABRADOR, J.

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This is an appeal from an order of the Court of First Instance of Surigao, dismissing a complaint on the ground that the action is barred by a prior final judgment. The complaint was filed on July 1, 1953 and alleges that in the year 1947, Clemente Pasilan brought an action in the same court of first instance (civil case No. 61) against Francisco Villagonza to recover a parcel of land containing one-half of a hectare; that after the issues were joined, the parties submitted a verbal agreement in open court whereby one hectare, which forms part of the property described in the complaint, was to be adjudicated to Francisco Villagonza, as owner, with all the improvements thereon; that the court approved said agreement by an order of December 3, 1947; that on December 31, 1947 Pasilan moved the court to set aside the order on the ground that the plaintiff is illiterate and did not understand the true import of the agreement had between his counsel and that of the defendant, and that he understood the agreement to mean that the property was to be divided between him and the defendant in equal shares, as prayed for in the complaint; and that the records of the said civil case No. 61 were either lost or destroyed and have not been reconstituted, and no action was taken by defendant for the reconstitution of the same. The defendant, having been served with summons, filed a motion to dismiss on the ground that the action was barred by prior judgment and by the statute of limitations. The motion to dismiss contains as annex thereto (Annex 1, Rec. on Appeal, p. 16) an order of the court in civil case No. 61, dated February 14, 1948, overruling the motion to set aside the judgment of the court, dated December 3, 1947, on the ground that the decision of December 3, 1947 was in accordance with a sketch submitted by the parties.

The court sustained the motion to dismiss on the ground that the complaint is already barred by a prior final judgment. It is against this order that the appeal has been made.

It is not true, therefore, as alleged by the plaintiff in his complaint, that the motion to set aside the judgment was not acted upon; the order denying the said motion, annexed to the motion to dismiss, belies said contention. The above order of denial adversely decided the motion to set aside the judgment (on the ground of mistake or error on the part of the plaintiff in entering into the agreement). The plaintiff may not raise the same question again, because the order of the court overruling his motion to set aside had become final and bars the present action.

It is true that in paragraph 4 of the complaint the allegation is made that the plaintiff did not give his consent or authority to the agreement entered into by his attorney. It also alleges, in general terms, that the defendant succeeded by fraud in obtaining said judgment. This allegation of fraud, however, is a conclusion of law and not an allegation of fact, because the facts and circumstances constituting fraud are not specifically alleged. These new matters are not alleged in the original motion to set aside the judgment and are considered to have been waived under the principle of omnibus motion, under which objections not included in a motion attacking a proceeding are deemed waived (Sec. 8, Rule 26).

Insofar as the allegation of error is concerned, the same was expressly passed upon by the order annexed to the motion to dismiss, this order constituting an express adjudication that the alleged error of the plaintiff did not exist (Sec. 45, Rule 39), and insofar as the allegations of lack of authority and fraud are concerned, the said. order (annexed to the motion to dismiss) bars them from being raised under the principle of estoppel by judgment enunciated in paragraph (b) of Section 44 of Rule 39.

The order appealed from is hereby affirmed, with costs against appellant.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion and Reyes, J.B.L., JJ., concur.

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