

**GREGORIO FRANCES, ET AL., PLAINTIFFS AND APPELLANTS, VS.
CRISPULO NICOLAS, ET AT., DEFENDANTS AND APPELLEES.***G.R. No. L-19855. October 31, 1964*

Ponente: CONCEPCION, J.

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This is an appeal from an order of the Court of First Instance of Nueva Ecija dismissing the complaint herein, without costs. The case is before us only questions of law being involved in the appeal.

The record shows that in 1917 one Sergio Nicolas, hereinafter referred to as Nicolas, applied for a homestead involving a parcel of land of about 10.0709 hectares, located at San Fabian, Santo Domingo, Nueva Ecija, and now known as Lot No. 1841 of the Santo Domingo cadastre. This application was approved on June 27, 1917. Nicolas died sometime later. He was survived by his widow Nieves Tinio, hereinafter referred to as Mrs. Nicolas, and their children, namely: Crispulo, Carlos, Carolina, Maxima, Elena and Rodolfo, all surnamed Nicolas.

In the aforementioned complaint, filed on March 14, 1961, against Mrs. Nicolas and her aforementioned children, it is alleged that on October 10, 1945, defendant Carlos Nicolas, hereinafter referred to as Carlos acting on behalf of his mother, Mrs. Nicolas, sold a portion of said lot, of about 8.0709 hectares, to herein, plaintiffs, Mr. & Mrs. Frances, for the sum of P10,000; the prior thereto, or on May 19, 1945, plaintiffs had bought the rest of said lot, of about two (2) hectares, for P500, from one Pedro Salazar, to whom Carlos had sold it on December 21, 1943; that, subsequently, Mrs. Nicolas asked the Bureau of Lands that the rights of the heirs of Nicolas in and to said lot be transferred to plaintiffs herein; that although other heirs of Nicolas objected to such transfer, the objection of Crispulo, Maxima, Carolina and Amor Nicolas was withdrawn upon payment to them by the plaintiff's of P2,500; that on January 2, 1948, plaintiff's paid P700 to Carlos for his rights in and to said lot; that plaintiff's have, accordingly, paid the aggregate sum of P11,700 for the rights of the heirs of Nicolas in and to said lot; that, this notwithstanding, on May 11, 1953, Mrs. Nicolas and her aforementioned six (6) children instituted Civil Case No. 1180 of the Court of First Instance of Nueva Ecija against plaintiff's herein to annul the transfer of said rights in their favor, as well as to recover Lot No. 1841-A and damages, upon ground of fraud on their part; and that, in due course, said court rendered a decision in favor of plaintiff's herein, which was appealed to this Court and docketed therein as G. R. No. L-7747, which was decided on November 29, 1955. It is not disputed that in its decision in G. R. No. L-7747, this Court had nullified the conveyance made by the heirs of Nicolas to plaintiff's herein and ordered the; cancellation of the transfer certificate of title issued in their favor by the Register of Deeds of Nueva Ecija, as well as the return of the possession of the disputed lot to said heirs of Nicolas, upon refund of the price received by them from plaintiff's herein.

The complaint herein further alleges that, when the records were remanded to the lower court, the heirs of Nicolas except Carlos, fraudulently misrepresented that the price received by them from plaintiff's herein was P2,500.00 only, not the sum of P13,700 actually paid by the latter; that, accordingly, said court issued, on August 2, 1956, an order directing plaintiffs herein to turn over the possession of said lot to the heirs of Nicolas upon the refund by them of the sum of P2,500; and that, in consequence thereof, plaintiffs have suffered damages, which they ask that

the heirs of Nicolas, except Carlos, be sentenced to pay, in addition to the aforementioned sum of, P13,700.00.

Upon being served with summons, the heirs of Nicolas moved to dismiss the complaint upon the ground that it is barred by our decision in said G. R. No. L-7747, and by our resolution, dated September 26, 1956, in G. R. No. L-11249 entitled "Gregorio Frances, et al. vs. Nieves Tinio," dismissing the petition filed therein for lack of merit.

After due hearing, the lower court issued an order dated December 13, 1961, granting this motion and dismissing the complaint. A reconsideration of this order having been denied, plaintiffs interposed the present appeal, which is clearly devoid of merit.

It should be noted that in G. R. No. L-7747, this Court held the heirs of Nicolas entitled to recover the land in question upon refund to the plaintiffs of the price paid by them to the former. Thereupon, the heirs of Nicolas filed with the lower court a motion stating that said price was P2,500, which they offered to pay and praying that plaintiffs be ordered to receive said sum and to turn over the possession of the land to the heirs of Nicolas. This motion was granted in an order dated August 2, 1956. A motion to reconsider the same, was denied on August 23, 1956. Thereupon, or on or about September 18, 1956, plaintiffs instituted said case G. R. No. L-11249 of this Court, for a writ of certiorari annulling said orders of August 2 and 23, 1956, upon the theory that they were issued by the lower court in excess of its jurisdiction or with grave abuse of discretion, because: (a) said court had allegedly no authority to receive evidence on the amount refundable to the plaintiffs by the heirs of Nicolas; (b) in fixing the amount due from the latter, said court had, in effect, amended our decision in G. R. No. L-7747; and (c) owing to illness, plaintiffs' counsel could not appear before said court on the date set for the reception of the evidence on the sum recoverable by the plaintiffs, so that the evidence thereon of the heirs of Nicolas was, in effect, introduced ex parte. Despite these allegations, plaintiffs' petition in G. R. No. L-11249 was dismissed by this Court, on October 21, 1956, for lack of merit.

In their complaint herein, plaintiffs no longer assail the jurisdiction of the lower court to issue said orders of August 2 and 23, 1956. Said orders particularly that of August 2, 1956, partook of the nature of a decision or judgment, insofar as it fixed the amount recoverable by plaintiffs herein. No Appeal having been taken therefrom, and this Court having dismissed the petition for a writ of certiorari, in G. R. No. L-11249, to annul said orders, the same have become final and executory. Consequently, the issue as regards the sum collectible by plaintiffs herein, pursuant to our decision in G. R. No. 7747, is now definitely settled by said orders and may no longer be reopened in these proceedings (see Soriano vs. Sahagun, L-17847, March 31, 1964), instituted over four (4) years after the issuance of said orders and the dismissal of the petition for certiorari in G. R. No. L-11249.

Wherefore, the orders appealed from are hereby affirmed, with costs against plaintiffs-appellants. It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B.L., Barrera, Paredes, Dizon, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

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