

LORENZA ASICAN, PETITIONER, VS. ANTONIO QUIRINO, JUDGE OF FIRST INSTANCE OF CAVITE, AND ROMAN CUSTODIO, RESPONDENTS.

G.R. No. L-60. January 30, 1946

Ponente: MORAN, C.J.

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MORAN, C.J.:

Seeking to annul on the ground of duress a deed of sale which he executed in favor of Lorenza Asican on March 18, 1944, over a parcel of land situated in the municipality of General Trias, Cavite, Roman Custodio filed a complaint in the Court of First Instance of Cavite on April 3, 1944. On July 10, 1944, the parties submitted a "Stipulation and Petition for Judgment," and thereupon the court rendered judgment accordingly. The stipulation, in brief, conceded the ownership of the land in question to Lorenza Asican who in turn bound herself to pay a mortgage debt of P3,500 owed by Roman Custodio to a third party, Crispulo Arnaldo.

On April 20, 1945, subsequent to the return of the American forces, Roman Custodio filed another complaint in the same Court of First Instance of Cavite, asking for the annulment of the same deed of sale executed by the parties on March 18, 1944, upon the same ground of duress. On May 8, 1945, defendant Asican filed a motion to dismiss the complaint upon the ground of *res adjudicata*, which was granted by the court, then presided by Honorable Ambrosio Santos. Meanwhile, the herein respondent judge, Honorable Antonio Quirino, was assigned to preside over the Court of First Instance of Cavite, substituting Honorable Ambrosio Santos. Roman Custodio filed a motion for reconsideration of the order issued by Judge Jimbrosio Santos, which was favorably granted by the court, already presided by respondent Judge Antonio Quirino. The order of reconsideration was predicated upon the fact pleaded that in the previous case "the cause of action was tainted by some amount of enemy influence or duress directly or indirectly applied on the plaintiff, in that a Japanese protegee had allegedly threatened to send him to jail if he did not convey the property as requested." Lorenza Asican filed a motion for reconsideration of this order of Judge Quirino, which was denied. Hence, this petition for certiorari asking for the annulment of Judge Quirino's order and for the reinstatement of Judge Santos' order of dismissal.

The respondent court had jurisdiction to act on the motion to reconsider the order of dismissal. Any error committed in the exercise of such jurisdiction is not an error of jurisdiction which may be reviewed in a petition for certiorari. Jurisdiction should be distinguished from exercise of jurisdiction. Since jurisdiction, in the instant case, is the power to act upon the motion for reconsideration, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decision rendered by the judge. Any error committed in the exercise of such power may be reviewed only by appeal.

Neither is there any grave abuse of discretion in the order issued by the respondent judge. Although the duress or intimidation alleged to have been exerted by a Japanese protegee is apparently made to refer to the execution of the contract sought to be annulled, yet the contract is so inseparable from the compromise agreement into which it was merged that the attack upon the one may be deemed as an attack upon the other. During the oral argument,

to clarify this point, members of the Court have made questions to counsel for respondent Roman Custodio who, in answer, announced his intention to attack the compromise agreement directly in an amended complaint.

Our ruling (Co Kim Cham vs. Valdez Tan Keh and Dizon, G.R. No. L-5, p. 113, ante, promulgated September 17, 1945) to the effect that judicial proceedings during the enemy occupation are valid, does not necessarily exclude an exception on judicial proceedings hall actually under duress or intimidation. We do not seem convenient, however, to state a final opinion on this matter until all the circumstances proved at the trial are properly before us. Upon the other hand, since the policy of terror and violence followed during the enemy occupation was of public knowledge, we feel it proper to give some latitude to the pleading and proof of particular instances, so that relief, if any, may be granted in the interest of justice.

For all the foregoing, the case is dismissed with costs against petitioner.

Jaranilla, Feria, De Joya, Pablo, Perfecto, Hilado, Bengzon, and Briones, JJ., concur.

DISSENTING

OZAETA, J., with whom concurs PARAS, J.:

The laconic opinion of the Court does not reflect all the essential and decisive facts, which I deem it necessary to state as follows:

On March 18, 1944, the respondent Roman Custodio executed a deed of sale in favor of the petitioner Lorenza Asican before Notary Public Mariano Prodlgalidad In the presence of Atty. F. T. Viniegra and Acting Provincial Fiscal Ollmpio Navarro as instrumental witnesses, whereby he conveyed to her lot No. 3510 of the San Francisco de Malabon Estate, situate in the municipality of General Trias, Province of Cavite, in consideration of the sum of P1,784.

In the month of April 1944 Roman Custodio Instituted civil case No. 159 in the Court of First Instance of Cavite against Lorenza Asican, alleging that the latter had succeeded in making him sign the said deed by means of duress and intimidation, and claiming to have suffered damages in the amount of P500 as a result of the illegal acts of the defendant. After the defendant had answered the complaint denying the alleged duress and intimidation, the parties filed the following:

"STIPULATION AND PETITION FOR JUDGMENT

"Come now the plaintiff and the defendant, assisted by their respective counsel, and before this Hon. Court respectfully submit the following agreement upon which a decision is prayed based on the same:

"1. That plaintiff Roman Custodio hereby recognizes the lawful ownership of the defendant over lot No. 3510 of the S.F. de Malabon Estate, which is the subject matter involved in the above-entitled case and therefore hereby asks for the dismissal of his complaint in said case;

"2. That defendant, in consideration of the foregoing hereby binds herself to pay the sum of P3,500.00 to Dr. Crispulo Arnaldo, pursuant to the mortgage contracted by the plaintiff covering lot No. 3510 and further asks for the dismissal of her counterclaim against the plaintiff Roman Custodio, as well as the lifting of the preliminary attachment on the house of said plaintiff.

"3. That the judgment be rendered without pronouncement as to costs."

On July 10, 1944, the court rendered judgment "in accordance with the above-quoted agreement, ordering the

parties to fulfil their respective part in the agreement, without costs."

That judgment was fully executed. The defendant Lorenza Asican fulfilled her part of the agreement by paying to the plaintiff Roman Custodio's creditor, Dr. Crispulo Arnaldo, the sum of P3,500 and by dismissing her counterclaim and lifting her preliminary attachment against the plaintiff Roman Custodio—all in consideration of his ratification of the deed of sale in question and his formal judicial recognition of the lawful ownership of the said defendant over lot No. 3510 covered by the said deed of sale.

Thereafter, and in April 1945, Roman Custodio instituted a new action (civil case No. 4001) in the Court of First Instance of Cavite against Lorenza Asican for the annulment of the self-same deed of sale upon the same ground of alleged duress and intimidation, without repudiating and offering to return to the defendant the considerations he had received from her of P1,784 and P3,500, as mentioned above.

In accordance with section 1 (e), Rule 8 of the Rules of Court, the defendant filed a motion to dismiss the new action on the ground that it was barred by a prior judgment.

After due hearing on said motion to dismiss, Judge Ambrosio Santos issued an order on June 5, 1945, wherein he found that there was identity of the parties, of the subject matter, and of the cause of action between the former civil case No. 159 and the new civil case No. 4001 of the same court, and that the judgment rendered in the former action (during the Japanese occupation) was valid, observing further that the stipulation upon which said judgment was based was not impugned or in any way questioned by the plaintiff, for which reasons he granted the motion and dismissed the action without special pronouncement as to costs.

Upon motion for reconsideration filed by the plaintiff Roman Custodio and submitted to Judge Antonio Quirino, who had in the meantime substituted Judge Ambrosio Santos, Judge Quirino issued an order in which he made a lengthy but rather incoherent and mostly irrelevant dissertation on the validity or invalidity of the acts and proceedings had during the Japanese occupation, laying down as a doctrine, among other things, the following:

"1. Civil proceedings terminated and completely executed during the Japanese occupation may not be questioned. Provided:

"(a) That they do not affect the supremacy of the State.

"(b) That they do not affect the patrimony of the State or give anyone a right to exploit them for a period beyond the life of the Japanese occupation, or confer rights and privileges to exploit the natural resources of the country beyond the said period.

"(c) That they were not terminated and executed under enemy influence or duress.

"(d) That they did not, in any manner, serve to transfer property from a Filipino or American in favor of a Japanese subject or national, or their agents."

but concluding that

"Inasmuch as the judiciary equally shares with the other branches of the government the responsibility of protecting the interests of the State and of the people, it has equal right and authority, when the welfare of the State and the people are threatened, to assert its right to consider and rule which act, proceeding or obligations it will recognize as binding to the State and to the people, when acts and proceedings of the Japanese sponsored and influenced de facto government, such as this or similar ones, are presented to it for evaluation.*
* *

"THEREFORE, it appearing from the pleadings that the cause of action is tainted with some amount of enemy influence or duress directly or indirectly applied on the plaintiff, in that a Japanese protegee had allegedly

threatened to send him to jail if he did not convey the property as requested, this Court, in the exercise of its power and duty to choose which acts and proceedings of the de facto government are valid, cannot recognize the validity of the prior decision rendered in the case, and is consequently constrained to refuse full faith and credit to it in the interest of justice; and HEREBY DIRECTS that this case be heard on its merit for a free and unexpressed determination of the issues involved."

After peremptory denial by Judge Quirino of her motion for the reconsideration of the order last above mentioned, Lorenza Asican filed the present petition for certiorari in this Court to annul said order on the ground that it had been entered by the respondent judge with grave abuse of discretion amounting to an excess of Jurisdiction.

In their answer the respondents, making no denial of the allegations of fact contained in the petition for certiorari, assert among other things the following:

"Evidently, the petitioner appears to labor under the belief that respondent Roman Custodio, in instituting Civil Case No. 4001 on April 20, 1945, her Annex C, seeks to annul the judgment entered in Civil Case No. 159 filed under date of April 3, 1944, her Annex A. Such, however, is not the remedy sought by respondent Roman Custodio in his complaint of April 20, 1945.***"

"The institution of Civil Case No. 159 by respondent Roman Custodio is not in issue. No mention of it is made in Civil Case No. 4001. And this, notwithstanding that said case was terminated as alleged upon a STIPULATION AND PETITION FOR JUDGMENT dated July 10, 1944. It is clear that what the plaintiff seeks in Civil Case 4001 is the annulment of a deed of sale which he was forced to execute during the enemy occupation brought about under enemy influence or duress by an agent of the enemy, as appears in the aforementioned complaint, and by virtue thereof, dispossessing one who had title to a property way back in the year 1936; and which, by the way, could not have been otherwise disturbed. It certainly is a transaction which is political in character. * * *"

The opinion of the Court, delivered by the Chief Justice, reads as follows:

"The respondent court had jurisdiction to act on the motion to reconsider the order of dismissal. Any error committed in the exercise of such jurisdiction is not an error of jurisdiction which may be reviewed in a petition for certiorari. Jurisdiction should be distinguished from exercise of jurisdiction. Since jurisdiction, in the instant case, is the power to act upon the motion for reconsideration, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decision rendered by the judge. Any error committed in the exercise of such power may be reviewed only by appeal.

"Neither is there any grave abuse of discretion in the order issued by the respondent judge. Although the duress or Intimidation alleged to have been exerted by a Japanese protegee is apparently made to refer to the execution of the contract sought to be annulled, yet the contract is so inseparable from the compromise agreement into which it was merged that the attack upon the one may be deemed as an attack upon the other. During the oral argument, to clarify this point, members of the Court have made questions to counsel for respondent. Roman Custodio who, in answer, announced his intention to attack the compromise agreement directly in an amended complaint."

While I agree that the respondent Judge Quirino had jurisdiction to act on the motion to reconsider the order of dismissal previously entered by Judge Ambrosio Santos, I am nevertheless of the opinion that he acted capriciously and therefore with grave abuse of discretion amounting to an excess of jurisdiction in setting aside the order of Judge Ambrosio Santos of the same court. It is capricious for a judge to refuse to apply the law (section 1, Rule 8) which is clearly applicable, to refuse to recognize the validity of a prior decision of a competent court without any plausible reason, and to set aside an order of a coordinate judge of the same court without any valid reason therefor. In such a case the writ of certiorari lies. (Leung Ben vs. O'Brien, 38 Phil, 182;

Salvador Campos y Cia. vs. Del Rosario, 41 Phil. 45; Abad Santos vs. Province of Tarlac, 38 Off. Gaz., 830; Tavera-Luna vs. Nable, 38 Off. Gaz. 62; Alafriz vs. Nable, 40 Off. Gaz., 532.)

The action which the herein petitioner sought to dismiss and which Judge Ambrosio Santos did dismiss, is one for the annulment of a deed of sale of a parcel of land upon the, alleged ground of duress and intimidation. That very same action between the same parties had been previously decided in accordance with a written agreement of the parties supported by pecuniary and other valuable considerations, by which whatever defect, if any, that might have vitiated the deed of sale in question was totally cured. That agreement, as Judge Ambrosio Santos observed and as counsel for the respondents expressly manifested in his answer to the petition for certiorari, is not impugned or put in issue in the new action. The only issue raised is the same issue that had been raised in the previous action between the same parties, namely, the validity of the deed of sale, which, as I have noted, had been ratified, and any defect it might have had had been cured, by the subsequent agreement of the parties which they formally and solemnly submitted to the court for approval and adjudication.

The only question involved in the petitioner's motion for dismissal was whether or not the plea of *res judicata* upon which it was based should be sustained. Since there was identity of the parties, identity of the subject matter, and identity of the cause of action—since all the elements of the plea were present—it could not but be sustained, unless the previous judgment were void on its face. Not being *prima facie* void, said judgment could not be collaterally attacked for the purpose of defeating the plea of *res judicata*. A direct action to annul it has to be instituted and favorable judgment obtained therein before it could be ignored or refused "full faith and credit" as the respondent judge did. Under the decision of this Court in the case of *Co Kim Cham vs. Tan Keh and Dizon* (G.R. No. L-5, p. 113, ante) there can be no question that said judgment is valid notwithstanding that it was rendered during the enemy occupation.

The respondent judge did not and could not declare the previous judgment to be *prima facie* void. He merely refused to give it "full faith and credit"; and his reasons for so refusing are diametrically contrary to the doctrine laid down by this Court in the *Co Kim Cham* case. As far as I can gather from his obtuse dissertation, his reasons are: that the judiciary has the right and authority "to consider and rule which act, proceeding or obligations it will recognize as binding to the State and to the people"; that in the exercise of such right he could not "recognize the validity of the prior decision rendered in the case," and was "consequently constrained to refuse full faith and credit to it" because it appeared from the pleadings "that the cause of action is tainted with some amount of enemy influence or duress directly or indirectly applied on the plaintiff"; and that the case should be heard on its merits "for a free and unrepressed determination of the issues involved." I hold that such reasoning is arbitrary and capricious:

- (1) By it the court arrogates to itself the arbitrary and whimsical power to declare one act or proceeding valid and another act or proceeding void, evidently as its whim or fancy dictates.[a]
- (2) The statement of the respondent judge that it appeared from the pleadings that the cause of action was tainted with some amount of enemy influence or duress, for which reason he refused to give full faith and credit to the prior judgment, is purely whimsical, first, because if he referred to the pleadings in the former case he could not properly say that the "stipulation and petition for judgment" submitted to the court by the parties was "tainted with some amount of enemy influence or duress directly or Indirectly applied on the plaintiff," inasmuch as in plaintiff's complaint in the second action he did not question or impugn said stipulation and petition for judgment; and, second, because the respondent judge had neither the right nor the occasion to make any pronouncement as to whether or not the cause of action (in the former case) was tainted with enemy influence or duress because it was not an issue before him and because the validity of the previous judgment was not and could not be collaterally attacked at the hearing of defendant's motion for the dismissal of the second action. (31 Am. Jur.,

Judgments, sec. 595, p. 191.)

(3) The statement that the case should be "heard on its merit for a free and unrepressed determination of the issues involved" implies that the hearing of the former action was not free and unrepressed, whereas not only was there no contention to that effect but it positively appeared that the former action was decided upon a stipulation and petition for judgment involving pecuniary and other valuable considerations in favor of the plaintiff in return for the latter's recognition of the validity of the deed of sale in question.

I cannot accept the majority view that the deed of sale executed by Roman Custodio on March 18, 1944, is so inseparable from the stipulation and petition for judgment submitted to the court by the parties in July of the same year that an attack upon the one may be deemed as an attack upon the other. Assuming for the sake of argument that the deed of sale was not freely executed by the vendor, it does not necessarily follow that when he ratified it before the court about four months later for a further consideration of P3,500 and other valuable considerations he did so involuntarily. As a matter of fact there is no allegation or pretension on his part to that effect. The Court goes out of its way when it assumes without any basis that the vendor intended to attack also his subsequent petition for judgment. On the contrary, in his answer Roman Custodio expressly disclaims any intention to disturb civil case No. 159, or what took place therein, in any manner whatsoever. The announcement by counsel during the oral argument of his intention to amend his complaint was made only when a leading question or insinuation to that effect was made to him by a member of the Court. It cannot be, and should not have been, taken into consideration in deciding this case (1) because it does not form part of the issue and (2) because we know, and counsel knows, that the complaint cannot be amended so as to change the nature of the cause of action from one of annulment of the deed of sale to one of annulment of the judgment whereby said deed of sale ratified and validated both by the parties and by the court. The cause of action to annul a contract is entirely different from one to annul of judgment. If Custodio desires to annul said judgment, let him bring a new action for that purpose instead of allowing, even suggesting to him to superimpose such new action on the one in question, which is barred by a prior judgment.

Lastly the Court says that the ruling in the Co Kim Cham case validating judicial proceedings had during the enemy occupation "does not necessarily exclude an exception on judicial proceedings held actually under duress or intimidation." That is correct; but it is only the first premise. The second premise, which the Court does not dare state but evidently implies, namely, that the judicial proceedings held in civil case No. 159 were allegedly held under duress or intimidation, is false because there is no allegation to that effect. Hence the Court's conclusion has no leg to stand on. The Court makes a final effort to bolster up its conclusion by saying: "Upon the other hand, since the policy of terror and violence followed during the enemy occupation was of public knowledge, we feel it proper to give some latitude to the pleading and proof of particular instances, so that relief, if any, may be granted in the interest of justice." Again, the premise here is but a loose assertion that is not only unsupported but flatly contradicted by the record of this case. The respondent Roman Custodio expressly stated in his answer herein that "the institution of civil case No. 159 by respondent Roman Custodio is not in issue." In other words he makes no claim that said case was in any way affected by "terror and violence." As a matter of fact no case has up to now been brought to the attention of this Court in which the enemy meddled with or in any manner exerted influence over the courts during the occupation. The terror and the violence that were of public knowledge were applied to the resistance and underground movements of the Filipinos and not to their suits in the courts.

Aside from the potent reason that the decision of the Court is, as I have shown, not based on the Issue and the facts before it but rather on vague surmises and suspicions, I cannot give my assent thereto because it not only countenances what seems to me an unfair and apparently dishonest act of a litigant who, after receiving pecuniary

and other valuable considerations from his adversary in return for his recognition of the validity of the contract questioned by him and after formally and solemnly asking the court to recognize such validity, again brings a new action to annul that very same contract, but also permits that litigant to make a mockery of judicial proceedings.

My vote is to annul the order of the respondent judge and to reinstate and affirm that of Judge Ambroio Santos.

[a] In the Co Kim Cham case this Court has laid down the safe and sound rule, based on international law, that judicial processes had during the Japanese occupation that were not of a political complexion (like the one herein involved) were valid.

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