

JOSE SAMINIADA, PETITIONER, VS. EPIFANIO MATA, JULIAN PONCE, AND ANGEL H. MOJICA, JUDGE OF THE COURT OF FIRST INSTANCE OF ALBAY, RESPONDENTS.

G. R. No. L-4358. January 02, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

The action which gave rise to this certiorari proceeding involves the ownership and possession of a riceland containing an area of 2 hectares, 76 ares, and 2 centares situated in Libon, Albay which Epifanio Mata claims to have purchased from Julian Ponce. Jose Saminiada, the defendant in the action, alleged that he occupied it by virtue of Free Patent Application No. 56140, entry No. 35499. After the issues had been joined, and with a view to simplifying the proceedings, the court, upon petition of the parties, designated one Ramon Rempillo, Junior Public Land Inspector, as commissioner to determine whether or not the land described in the complaint forms part of the land covered by free patent application No. 56140 of Saminiada. On June 13, 1949, Rempillo submitted his report, stating that the land subject of the action was the same land covered by free patent application No. 56140, entry No. 35499 (Annex H). He submitted a sketch of the property, Annex I, indicating that the land contains an approximate area of 7 hectares, 5 ares, and 50 centares. Thereafter, i.e., on January 18, 1950, the parties submitted an agreement, which reads as follows :

"The parties herein represented by their respective counsels, agree on the following:

1. That the plaintiff Epifanio Mata binds himself to limit his claim to the western portion of the land as described on the sketch plan appearing on page 119 of the record, which portion shall contain an area of 27,602 square meters, more or less, and more particularly described as follows:

'On the Northeast by Vicente Satuito; on the Southeast by part of the land belonging to defendant Jose Saminiada, covered by his free patent application No. 56140; on the Southwest by Glicerio Satuito; and on the Northwest by Nicolas Salando, now Juan Gonzales.'

2. That defendants agree to recognize the ownership of the plaintiff over the portion of land as described in paragraph 1 hereof, and limit their claim to the remaining portion of land appearing and described in said sketch, on page 119 of the record;

3. That the land to be taken by the plaintiff herein shall be segregated by a duly qualified surveyor, which the parties agree would be Mr, Ramon Rempillo, from the larger portion belonging to the defendants, at the expense of said plaintiff;

4. That the palay now deposited with the receiver Mr. Fausto Peralta, will be divided in equal shares between plaintiff Epifanio Mata and defendant Jose Saminiada, after the cost of the receivership has been deducted;, and

5. That the Director of Lands, represented Atty. Mr. Magno Clemente, has no objection to the above stipulations.

WHEREFORE, the parties herein pray this Honorable Court that judgment be rendered in accordance with the above agreement, without costs."

Upon the submission of the above agreement, the court rendered judgment in accordance therewith and enjoined the parties to comply with the terms and conditions therein provided (Annex K).

Under date of February 13, 1950, counsel for defendant Jose Saminiada presented a "motion for reconsideration of decision," stating that when the commissioner submitted his report to the effect that the land contained an area of more than 7 hectares, he entertained grave doubts regarding such supposed area, as his client, defendant Jose Saminiada, was of the belief that the area of the land was a little more than 5 hectares only; that believing that the commissioner's report was more reliable than his client's knowledge of the land, in justice to all the parties he prevailed upon his client to enter into the agreement; that when the commissioner went on the land to relocate the portion which had been designated to belong to plaintiff, he learned that the portion to be left to the defendant would be only 1 ½ hectares; that inasmuch as defendant's consent to the agreement was made upon the erroneous report of the commissioner, he prayed that the decision of January 18, 1950, be set aside, that the commissioner be ordered to explain the anomaly in his report, and that the case be definitely set for hearing on its merits. This motion of counsel for the defendant is not sworn to, and the court denied it for lack of merit on February 18, 1950 (Annex 3).

On May 26, 1950, attorneys for Jose Saminiada presented a "petition for relief," alleging that the boundaries of the land subject of the action, as originally found by, the commissioner, were exactly the same as that of the land covered by defendant's free patent application No. 56140, and that its area is 7 hectares, 5 ares, and 50 centares; that confident of the surveyor's ability and technical skill and relying on the commissioner's assurances, as well as on his report to the court (Annex H) that the land contained an area of 7 hectares, 5 ares, and 50 centares, he was induced to enter into the agreement, believing he would be left with 4 hectares, 29 ares, and 50 centares; that subsequently, upon trying to make the segregation of 2.76 hectares in accordance with the agreement, the commissioner found that the area was only 5 hectares, more or less. This petition is supported by Saminiada's affidavit. Opposition to this petition was registered by plaintiffs on the ground that the decision had become final, and that the petition contains no affidavit of merits (Annex 4). This motion was set for hearing on June 12, 1950, but before the same was acted upon Saminiada's counsel submitted a supplementary petition dated August 14, 1950. The court on August 15, 1950, denied the petition on the ground that the affidavit does not state the facts constituting petitioner's good defense (Annex 5).

It is to be noted that Rempillo, pursuant to the agreement, proceeded to segregate the portion of 27,602 square meters that was to be assigned to Mata. On June 8, 1950, he submitted a report wherein he declared that upon making the segregation he found that the land to be left would only be 14,113 square meters, because the area which he had given in his original report (70,550 square meters) was incorrect due to the use of a wrong scale.

A second motion for reconsideration was presented on September 11, 1950 (Annex Q), but the same was again denied by the court on September 23, 1950 (Annex Q-I). Upon denial of this motion, the present petition for certiorari was filed, the petitioner claiming that the court committed an abuse of discretion in denying his motion to set aside the decision, and that the decision and order of the respondent judge are null and void.

It is an admitted fact that petitioner gave his consent to the compromise because of the first report of the commissioner that the disputed land contained an area of more than 7 hectares. His consent to the agreement was, therefore, vitiated by error induced by the commissioner's act. The objection urged against the granting of the petition for relief (dated May 24, 1950; supplement dated August 12, 1950) is purely procedural, in that the petition was filed, beyond the 60-day period prescribed in Section 3 of Rule 38 of the Rules of Court. The record

bears out this objection, because the motion for reconsideration to set aside the "decision" was denied on February 18, 1950, and when the petition for relief was filed on May 26, 1950, more than 90 days had elapsed from said denial and 124 days from the decision. If the so-called "decision" of the court, which recites the compromise agreement and approves it, were the final judgment of the court on the issues involved in the case, the objection to the remedy under Rule 38 would seem to be valid. But the so-called "decision" of the court is not, in effect, a judgment, because no finding on any issue of fact or law is made, and no legal conclusion or pronouncement is made thereon as to the respective rights and obligations of the parties in so far as the subject matter of the action is concerned. A decision must "state clearly and distinctly the facts and the law upon which it is based" (section 1, Rule 35, Rules of Court); these essentials of a judgment are lacking in the "decision" in question. Under the old Civil Code the agreement entered into by the parties, which is embodied in the court's decision, is considered as a judicial compromise for the reason that its purpose is to terminate a suit already instituted. (Article 1809, Civil Code; *Ybolean vs. Sison*, 59 Phil. 281.) In American law, the agreement in question is known as a judgment by consent and is generally considered as a contract. The highest judicial authority in the United States has sustained the proposition that when a litigation is adjusted between the parties and said adjustment sanctioned by the decree of a 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 merely as an administrative recording of what has been agreed to between the parties.

"The prior decree was the consequence of the consent and not of the judgment of the court, and this being so, the court had the right to decline to treat it as *res judicata*. (*Lawrence Manufacturing Company vs. Janesville Cotton Mills*, 138 U.S. 552; 34 Law e., 1005.)

The decrees were entered by consent, and in accordance with the agreement, the courts merely exercising an administrative function in recording what had been agreed to between the parties, and it was open to the Supreme Court of Louisiana to determine, upon general principles of law, that the validity of article VI was not in controversy or passed upon in the causes in which the decrees were rendered. In doing so, that court did not refuse to give due effect to the final judgment of a court of the United States or of another State." (*Texas and Pacific Railway Company vs. Southern Pacific Company*, 137 U.S. 48; 34 Law ed., 614)

Pursuant to the above principles, the general rule in the United States is to allow consent judgments to be set aside on the ground of fraud or mistake.

"It was competent for the plaintiff to accept in open court the defendant's offer to pay the alternate value of the property, as assessed, and the execution of that agreement, as shown by the recitals of the judgment, was in legal effect a judgment by consent discharging the property from the operation of the judgment. Such a judgment must be "regarded as in the nature of a contract or binding obligation between the parties thereto, which neither, in the absence of fraud or mistake, has the right to set aside or disregard, and which, as against each, is a waiver of errors and irregularities." *Freeman on Judgments*, sec. 330. *Cowley vs. Farrow*, 193 Ala. 381, 384, 69 So 114. (*Garrett vs. Davis*, 216 Ala. 74, 112 So. 342.)

"The judgment, being by consent, is to be construed as any other contract of the parties. It constitutes the agreement made between the parties and a matter of record by the court, at their request. The judgment, being a contract, can only be set aside on the ground of fraud or mutual mistake. *Massey vs. Barbee*, *supra*; *Deaver vs. Jones*, 19 S. E. 637, 114 N.C. 650; *Lynch vs. Loftin*, 69 S. E. 143, 153 N.C. 270; *Bank vs. McEwen*, 76 S. E. 222, 160 N.C. 414, Ann. Cas. 1914C, 542; *Gardiner vs. May*, 89 S. E. 955, 172 N.C. 192; *In re Chissolm's Will*, 96 S. E. 1031, 176 N.C. 211; *Morris vs. Patterson*, 105 S. E. 25, 180 N.C. 434; *Walker vs. Walker*, 117 S. E. 167, 185 N.C. 380; *Southern Distributing Co. vs. Carraway*, 127 S. E. 427, 189 N.C. 423; *Smith vs. Smith*, 130 S. E. 614, 190 N. C. 751; *Coburn vs. Board of County Commissioners*, 131 S. E. 372. (*First National Bank of Spring Hope vs. Mitchell, et al*, 131 S. E. 656, 191 N.C. 190.)"

The above principles of procedure may be considered as having been adopted in this jurisdiction by the enactment of Act No. 190, entitled a Code of Civil Procedure in the Philippines, so the compromise agreement in the case at bar could be set aside on the ground of mistake, the approval of the court thereof notwithstanding. It is suggested in the minority decision, however, that a compromise agreement approved under the Civil Code, in accordance with article 1809, has the character of *res judicata* as expressly provided in article 1816 of the same Code. The provision of this article seems to be at variance with the principles of procedure set forth above, because, as we have pointed out, no such character is attached in judicial proceedings in the United States to judgments or decrees entered by consent of the parties. The provision (Article 1816), however, has no other meaning than that the agreement is binding between the parties, because the next article (Article 1817) expressly provides that the agreement may be set aside on the ground of error, deceit, violence, or forgery of documents.

"ART. 1817. A compromise vitiated by error, deceit, violence, or forgery of documents, shall be subject to the provisions of article 1265 of this code.

"Nevertheless, neither of the parties can set up an error of fact against the other, if by reason of the compromise the latter has withdrawn from a suit already began."

In the case of *Manila Railroad Co. vs. Arzadon*, (20 Phil., 452), this Court insinuated that a judgment by consent may be set aside by the court upon proof of error or fraud.

One who appears in court entry of a judgment against him must be held to have admitted the existence of every fact necessary to sustain the judgment except that of the jurisdiction of the court over the subject matter of the action. Such being the case, and judgment having been entered upon such facts, an appeal from such judgment by way of bill of exceptions, or otherwise, will not lie on behalf of the party according such consent. The only remedy in such case is an application to open the judgment upon the ground of fraud or mistake. (Page 457)"

To the same effect is its decision in the case of *Ybleon vs. Sison* (59 Phil., 231), thus:

"In view of the foregoing considerations, we are of the opinion and so hold that a judge or court, which sets aside a judgment rendered upon consent of the parties and based on a compromise entered into by them, which is converted into such judgment, cannot amend or set it aside without the consent of the said parties, or without first having declared in an incidental preliminary hearing that such compromise is vitiated by any of the grounds for nullity enumerated in article 1817 of the Civil Code. (Page 292.)"

From whatever point of view we may consider the compromise agreement, whether as a contract or as a judgment of the court, we are of the opinion that the petition for relief against it filed on August 12, 1950, was presented in due time. The parties expressly agreed "that the land to be taken by the plaintiff shall be segregated by a duly qualified surveyor, which the parties agree would be Mr. Ramon Rempillo." Under the compromise agreement as a contract, the segregation had yet to be made to have the contract fully and completely carried out. Under the compromise agreement as a judgment, the segregation had yet to be made also in order, to vest the plaintiff with the title to the portion to be segregated, and after the report of the commissioner, court approval was intended to be obtained in the same manner as in an action of partition. (See Sec. 11, Rule 71, Rules of Court.) For all practical purposes, the proceedings after the compromise agreement was a partition of real estate, because a parcel of land was being divided between the two parties to the action.

It is suggested in the minority opinion that the court did not intervene in the designation of the commissioner. The court did intervene because it approved the agreement as a whole. If it approved the whole agreement, it must also be deemed to have approved each and every part thereof, including the designation of the commissioner who was to make the segregation. The report of the commissioner in the segregation was, therefore, an essential requirement to fully carry out the agreement or judgment, and while it was not forthcoming and the metes and

bounds of the portion to be segregated for plaintiff not set forth, the consummation of the contract was not complete. If we consider the agreement and the court's approval, thereof as a "judgment," the same conclusion will be arrived at, i.e., that it had not yet acquired the character of finality such that relief therefrom could be had only within the provision of Rule 38 of the Rules of Court. The judgment was merely an interlocutory order because something yet had to be done, i.e., the segregation agreed upon, which, together with the court's approval, will be the ones to give it finality.

From a broader perspective, the attempt of the parties in court to settle their litigation in a definite manner in the case at bar should be considered as a single proceeding. The signing of the agreement and its submission to the court for its approval was the first act to carry out their intent. The designation of the surveyor is another act leading to the same final purpose. His report is still another step towards that the same end, and so would have been the parties', as well as the court's, approval thereof. The different steps should not be taken separately, independently one from the other. They are the necessary, inseparable, and integral parts of one proceeding—the definite settlement of the controversy—and while they had not all been finished and carried out, the compromise agreement was not complete. If it was incomplete because not fully carried out, how could any act forming part thereof acquire the character of finality? It is against the whole proceeding, that was to be fully carried out, that the petition for relief is directed at, not against any single part thereof. How can the petition for relief be considered late if it was presented even before the last parts or acts of the proceeding had been carried out? The justice of petitioner's case is evident; it is not denied. Would we not be adhering to a procedural technicality, to the prejudice of a substantial right, if we deny the motion for reconsideration and the petition for relief filed? Fortunately, the very words of the rule (Rule 38, sec. 1) expressly authorize relief against a "proceeding" not against an order or judgment alone. We hold that the petition for relief was filed on time, because it was filed before the compromise agreement, a proceeding, was consummated.

Even if we consider the motion for reconsideration of February 13, 1950, independently, its denial, may not bar the subsequent petition for relief for other reasons. The parties expressly agreed that Ramon Rempillo (the commissioner previously appointed by the court) was to make the segregation of the portion to be awarded respondent, and this commissioner did not submit his report until after June 10, 1950. (See Annex L.) Not until this report was filed did the error both of the commissioner and of the parties become patent, and the cause or reason for setting aside the compromise agreement may be said to have arisen. Petitioner may have been previously advised thereof, but until the report was made, no formal or definite action by the court or by petitioner could be taken. The first motion filed by petitioner was only an advance notice of the error under which he gave his consent to the agreement. The first motion being premature, the movant could again file another motion when the fact upon which it is based became apparent on the record. The following cases support our view.

"The mortgage was duly foreclosed, and a decree of sale of the mortgaged premises made and entered, and an order of sale duly issued thereon and placed in the hands of the sheriff for execution. On the day on which the sale was advertised to take place the plaintiff and also one of his attorneys were present at the time and place of sale; the plaintiff personally made a bid of an amount somewhat less than the total sum then due. His attorney also on his behalf made a bid of the total sum due. There were no other bidders. A misunderstanding arose between the sheriff and the plaintiff as to the sum actually bid, the sheriff insisting that he had struck off the property for the amount of the plaintiff's personal bid. Thereupon, and before the sheriff had made any return of sale, the plaintiff moved the court for an order vacating and setting aside the sale. When this motion came on for hearing, the sheriff not yet having made his return of sale, the court denied the motion. Thereafter, the sheriff made his return of sale, which, while reciting the fact that the property was sold, returned the order of sale as wholly unsatisfied. Thereupon the plaintiff moved the court to set aside this return of sale and direct a new order of sale to be issued. Upon the hearing of this motion the court granted the same, and from its order to that effect this appeal has been taken.

"The first point urged by the appellants is that the trial court had no jurisdiction to make the order appealed from for the reason that the first order of said court denying the plaintiff's motion to vacate the sheriff's return of sale rendered the matter *res adjudicata*, and hence the court had no power to grant the plaintiff's second motion to set aside the return of sale. The point is utterly without merit for two reasons. First, that the two motions are dissimilar in the important respect that at the time plaintiff's first motion was made no return of sale had yet been made by the sheriff, and the motion was therefore premature and doubtless was denied for that reason, while said return of sale was on file when the second motion was made, presenting an entirely different situation to the trial court; and the second reason why the point is without merit is that under the settled practice in this state the doctrine of *res adjudicata* does not apply to motions, the matter of their renewal being in the discretion of the trial court. *Ford vs. Doyle*, 44 Cal., 635; *Bowers vs. Cherokee Bob*, 47 Pac., 686; *Gay vs. Gay*, 146 Cal., 237; 79 Pac., 885. (*Johnson vs. Nelson, et al.*, 43 Cal., App. 113; 184 Pac., 501, 502.)

"It is contended, that the court was precluded from making the order appealed from because of the order of January application for alimony previously made; that the matter was *res adjudicata*. The doctrine of *res adjudicata* has no application to motions in a pending action, nor is it of moment that in denying the former application the court did so without prejudice to a renewal of the motion "in case a motion for a new trial is made and denied by this court." The court did not thereby preclude itself from entertaining a motion, subsequently made, before the disposition of the motion for a new trial, if it thought proper to do so. A renewal of motion, supported by no additional evidence, might have afforded sufficient reason for the refusal of the court, to again entertain it. But where a motion is renewed, based upon new evidence, it is within the discretion of the court to entertain it. When the application, which was denied on January 8, 1904, was made, no appeal from the judgment had been perfected by plaintiff. The subsequent motion, upon which the order in question is based, was made after such appeal was perfected, and the bill of exceptions on motion for a new trial served and the affidavits filed. This latter motion was made under a new state of facts, which in the judgment of the court warranted it in again entertaining the motion, and it had the discretion to do so." *Johnson vs. Brown*, 115 Cal., 697; 47 Pac., 686. (*Gay vs. Gay*, 146 Cal., 237 79 Pac., 885, 837.)

In the same manner that an action, based on a cause of action that has not yet arisen or matured, had previously been presented and dismissed, is no bar to the action subsequently filed after the cause of action had arisen or matured, so the denial of a premature motion may not be considered as a bar to the second motion, filed after the ground for the motion, has arisen or come into existence.

Viewed from another angle, the so-called petition for relief dated May 26, 1950, and the supplementary one dated August 14, 1950, this having been filed after the report of the commissioner (disclosing the error in the previous report upon which the compromise agreement was based) had been submitted, may be considered as amendments to the original motion filed by the petitioner on February 13, 1950, praying that the compromise agreement be set aside. In the case of *Williamson vs. Williamson Pulp & Paper Co.*, 8 Federal Rules Service, 7b. 2, Case 1, a motion filed on time was considered as amended by another motion subsequently filed stating additional ground therefor. In another case, *Alcaro vs. Jean Jordeau, Inc.*, 6 Federal Rules Service, 7b.2, case 2, additional grounds for a previous motion, already denied, were also allowed. Both of these cases were decided by United States District Courts from whose rules our Rule 26 on Motions has been adopted.

In the case at bar, inasmuch as at the time of the presentation of the original motion filed by the petitioner to set aside the compromise agreement (February 13, 1950) the report of the commissioner disclosing the error committed in the previous report had not yet been submitted, the petitioner should be allowed to renew or amend his motion, setting forth the facts already found by the commissioner in his report dated June 3, 1950, even if the first motion of petitioner had already been denied and even if the sixty- day period had already lapsed from the time of its denial.

In arriving at the above conclusion we have taken into account the fact that the petitioner in the case at bar had

two alternative remedies against the compromise approved by the court. He could file the petition for relief under Rule 38 of the Rules of Court, or file a new action to annul the contract or agreement within the period established by the statute of limitations. Even if his present remedy is barred, this would not prevent him from pursuing the other remedy, filing a new action to declare the contract void, in accordance with the provisions of the New Civil Code. The denial by the court of the petition for relief would not be considered as a final determination of the merits of his claim for relief, because it was denied merely because it was filed out of the period fixed by Rule 38 of the Rules of Court, not because it was without merit. We believe, however, that the first remedy in this same action was still available to him when he presented his petition for relief, the objection thereto being purely technical, which should not deter us from granting justice to petitioner.

Summarizing what we have set forth above, we find that the compromise agreement was entered into by petitioner in error with the utmost good faith, error induced by the commissioner-surveyor appointed by the court, and that the respondent court committed grave abuse of discretion in denying the motion to set it aside. The writ is, therefore, hereby granted, the compromise agreement set aside, the orders of the court denying the petitions for relief vacated, and the case ordered to continue in the court a quo for further proceedings. Without costs.

Paras, C.J., Bengzon and Jugo, JJ., concur.

Pablo, J., concurs in the dispositive part.

Padilla and Bautista Angelo, JJ., concur in the result.

DISSENTING

MONTEMAYOR, J.:

I agree with the majority that the judgment rendered in this case by the trial court was a judicial compromise because it sought to terminate a suit already instituted. It may also be called consent judgment because it is a decision based on the consent of the parties. But I cannot agree that such consent judgment is a mere contract between the parties that can be assailed, rescinded, avoided or annulled by them like any ordinary contract. The very authority, Freeman on Judgments, cited by the majority to support its theory that a consent judgment is only a contract, does not seem to sustain said theory as shown by the following quotations from that books:

"Sec. 1350. Nature and Effect. -- A consent judgment is undoubtedly contractual in its nature and should be construed as though it were a contract. It is based wholly upon the agreement of the parties with respect to the matter in controversy in, the action and involves no judicial inquiry into or preliminary adjudication of, the facts or the law applicable thereto. The agreement or consent renders this unnecessary and improper. But nevertheless, and notwithstanding statements frequently made to the contrary, the judgment is obviously something more than a contract, being rather the result of a contract and its embodiment in a form which places it and the matter covered by it beyond further controversy. The rendition and entry of the judgment requires the judicial action of the court, and it is therefore valid though it requires the parties to do what they could not contract to do; neither can it be vacated because the agreement pursuant to which it was entered is not performed. Such a judgment has substantially the same effect as any other judgment rendered in ordinary course, and is entitled to the same presumptions. As we have elsewhere seen, it is equally conclusive as to the matters adjudicated, is not subject to collateral attack except upon jurisdictional grounds, and is entitled to full faith and credit in a sister state.

In some cases, however, the statement is made that a consent judgment or decree is not the result of judicial action and is not entitled to the same conclusive effect as an ordinary judgment. But these are mostly cases in which persons who were parties in a representative capacity, such as the board of commissioners of a municipal corporation, had exceeded their powers in consenting to a judgment upon an obviously illegal claim

and which they could not have contracted or authorized. It is difficult to conceive upon what theory the action of the court in rendering judgment upon the agreement of the parties may be treated as not judicial and conclusive. It may not, of course, be *res judicata* of matters not actually passed upon by the court, but this goes rather to the question of what may be deemed to have been adjudicated rather than whether the judgment is entitled to any effect as *res judicata*. (Vol. 3, Freeman on Judgments, Sec. 1350, pp. 2773-2775. Italics supplied.)

And, the very Philippine cases cited by the majority in support of its theory negative rather than sustain said theory. In the case of *Yboleon vs. Sison*, (59 Phil., 281), this Court has this to say:

"According to the legal provision cited above (Art. 1809, Civil Code), a compromise may either be judicial or extrajudicial, depending upon whether its purpose be to terminate a suit already instituted or to avoid the provocation thereof. In the former case, the compromise is deemed judicial while in the latter extrajudicial.

"Whether it be judicial or extrajudicial, a compromise has, with respect to the parties the same authority as *res judicata* with the sole difference that only a compromise made in court may be enforced by execution, in accordance with the provisions of article 1816 of the Civil Code. Although a judicial compromise has the authority of *res judicata* as if a final judgment had been rendered therein, and may be executed in the manner provided for by the Code of Civil Procedure, if the parties submit it for the consideration and approval of the court praying that the suit be considered terminated and the thing agreed upon be made effective (*Manila Railroad Co. vs. Arzadon*, 20 Phil., 452; *Hernandez vs. Barcelon*, 23 Phil., 599, 610; Decision of the Supreme Court of Spain of April 22, 1911), the judgment rendered to that effect shall be subject to the provisions of said Code of Civil Procedure, except that, as a judgment by consent, it may not be amended, modified, nor corrected in any of its essential parts without the consent of all the parties to the compromise, on the ground that if the court changes it wholly or in part without such consent, it ceases to be a judgment agreed upon by them. Such exercise of judicial power would be tantamount to depriving the aggrieved party of his right to be heard in the manner provided for by law. (3 Freeman on Judgments, p. 2776, sec. 1352; 34 Corpus Juris, p. 418, sec. 668.) Neither can such judgment be reopened or set aside without the consent of the parties who applied for it to sanction and approve their compromise, converting said compromise into a judgment to terminate the suit, or without sufficient evidence that the compromise was obtained through error, deceit, violence, or forgery of documents, which are the only grounds authorized by article 1817 of the Civil Code on which to base an action for the nullity of a judicial or extrajudicial compromise already perfected. (See Freeman on Judgments, Vol. 3, p. 2776, sec. 1352; 34 Corpus Juris, p. 419, sec. 670.)" *Yboleon vs. Sison*, 59 Phil., 281, 290, 291.

In the case of *Hernandez vs. Barcelon*, (23 Phil., 599), this Tribunal also said the following:

"* * * said compromise thereby acquired the nature of a bar to the prosecution of a suit and gave to the question that had arisen between the lessee *Hernandez* and the administrator *Barcelon* the character of *res judicata* with the effects of a final judgment between the parties who had duly made it." (*Hernandez vs. Barcelon* 23 Phil., 599, 607.)

And, in the case of *Manila Railroad Co. vs. Arzadon*, (20 Phil., 452), this Court said:

"A judgment by consent of the parties is more than a mere contract in pais; having the sanction of the court and entered as its determination of the controversy, it has all the force and effect of any other judgment, being conclusive as an estoppel upon the parties and their privies.

"A judgment rendered upon an admission of fact or by consent is conclusive on the parties to the same extent as though rendered upon a contest. (Black on Judgments, sec. 705; *Railway Co. vs. U. S.*, 113 U. S., 261; *Burgess vs. Selgman*, 107 U. S., 20; *Thomson vs. Wooster*, 114 U. S., 104; *Bank vs. Higginbottom*, 9 Peters 48; *U. S. vs. Parker*, 120 U. S., 89.)" (*Manila Railroad Co. vs. Arzadon*, 20 Phil., 452, 456.)

Article 1816 of the Civil Code itself says that "a compromise shall have, with respect to the parties, the same authority as *res judicata*; but only a compromise made in court may be enforced by execution."

Even on general principles, it would be unwise, nay even dangerous to hold and to maintain that after parties to a suit had entered into a formal, written agreement and had asked the trial court to render judgment according to the same, which it did, and after such judgment has become final, that at any time thereafter, regardless of the finality of said judgment, the parties be; allowed to back out from the terms of both agreement and the final judgment. The judicial sanction placed upon a formal agreement of the parties must mean something. A judgment so rendered is a solemn act of the court binding on the parties who asked for it. As a matter of fact, a consent judgment is even stronger than an ordinary judgment which decides the issues and points of difference, because while in the latter the court may make a mistake and the parties disagree as to the findings of the court, in a judicial compromise or consent judgment, the court is not supposed to make a mistake because it bases its judgment on the very agreement and consent of the parties and the parties are presumed to know what they have agreed upon. If we are to place a consent judgment in the same category of an ordinary contract, as the majority would do, then there would absolutely be no necessity or need for parties to come to court and have their agreement approved and converted into, judgment, because they would gain nothing by such solemn judicial sanction. After said consent judgment, they would be no nearer to a definite and final solution of their controversy, because under the theory of the majority, anyone of the parties may later denounce and avoid the consent judgment though already final, I suppose at any time before prescription sets in. We must bear in mind that a final judgment affects not only the immediate parties to the case but also third persons who may have occasion to rely upon such final judgment. When a controversy is finally decided all the material points involved therein are supposed to have been finally determined for all time, at least between the parties, their privies and successors-in-interest. But if we allow a consent judgment to be regarded and treated as a mere ordinary contract between the parties, there would be instability and uncertainty in the case supposed to have been finally determined. There would be no difference at all between an ordinary contract and a judicial compromise or consent judgment. That was the very reason why the parties in the present case, after finally coming to an agreement, submitted the same to the court for approval and for judgment. They would not be satisfied with a mere agreement or contract. They wanted and needed a formal judicial sanction in the form of a solemn decision, later to become final, conclusive and binding upon them.

As to articles 1817 and 1265 of the Civil Code, the same merely enumerates the grounds upon which a compromise, including one resulting in a consent judgment may be set aside, because without said legal provision it would be rather anomalous and strange that a party who has given his consent to a judgment should later ask that the same be set aside. He must have a legal reason for it. As this Court has said in the case of *Manila Railroad Co. vs. Arzadon*, *supra*, a party cannot appeal from a consent judgment. All he can do is to ask that the judgment be reopened on certain grounds such as fraud, deceit, or mistake, and if that motion for reopening is denied by order, the latter would be appealable. So, I believe that the articles of the Civil Code just cited should be construed as not treating a consent judgment or judicial compromise as a mere ordinary contract between the parties but as authorizing the parties on the grounds enumerated in said articles to reopen a judgment based on a compromise or agreement. Now, the procedure involved in such reopening is, in my opinion, to be found in the old Code of Civil Procedure (now the Rules of Court) as stated by this Court in the case of *Ybleon vs. Sison*, *supra*. In other words, a party in a consent judgment may file a motion for reopening before the judgment becomes final or within the period prescribed by the Rules of Court, he may file a petition for relief under Rule 38.

Now, going to the procedural aspect of the case, the majority believes that the motion for reconsideration of the decision filed on February 13, 1950, was premature because it is said that "a commissioner was appointed to segregate the portion to be awarded respondent, and this commissioner did not submit his report until after June

10, 1950." Consequently, it is claimed that not until said report was filed did the error both of the Commissioner and of the parties become evident, or the cause or reason for setting aside the compromise agreement, arise. So the majority concludes that movant could again file another motion to be regarded as an amendment of the first. I am afraid the majority is laboring under a misapprehension of facts when it says that in accordance with the express terms of the agreement a Commissioner was appointed to segregate the portion to be awarded to the respondent. The truth is that the parties never agreed to the appointment of a commissioner to make the segregation and the court never appointed a commissioner to make said segregation. According to paragraph 3 of the agreement of the parties reproduced in the first part of the majority opinion, it was agreed:

"That the land to be taken by the plaintiff herein shall be segregated by a duly qualified surveyor which the parties agreed to be Mr. Ramon Rempillo from the larger portion of the land belonging to the defendant at the expense of the plaintiff."

Nothing was said about a commissioner and nothing was said about his appointment, much less by the court. The parties merely agreed upon Rempillo to make the segregation. The court did not intervene at all. Naturally, in making the segregation of the portion involved Rempillo never acted as a commissioner or as a court officer or agent. He acted only as an ordinary qualified surveyor by agreement and selection of the parties. Consequently, he did not have to make any report to the court. No report was required or necessary to make the decision complete. As a matter of fact, the report was made very much later by Rempillo, that is, several months after the rendition of the judgment, and it was not made direct to the court as was done in the first report dated June 13, 1949 (Annex H) but through the Provincial Land Officer of the Bureau of Lands; and there is every reason to believe and suspect that said report was submitted at the instance of petitioner to bolster his petition for relief, and on the part of Rempillo, to correct his blunder and ease a troubled conscience.

In support of the majority's theory that the first motion was premature, citation is made of the case of a foreclosure sale wherein a party moved for the annulment of the sale before the Sheriff had made a return of the same, and the motion was held to be premature. Said case is in my opinion inapplicable. In a foreclosure sale, the law requires that the sheriff conducting the sale make a return of the same to be approved by the court. Without such approval the foreclosure sale is incomplete. Naturally, a motion to set aside the sale before the sheriff's return is premature because there is no complete, valid sale to set aside. In the present case, however, the judgment whose reconsideration was sought in the motion of February 13, 1950, was complete in every respect. Nothing remained to be done except to execute it. And that is what the parties tried to do, namely, execute the judgment and carry out its terms by segregating the portion corresponding to the plaintiff. One cannot execute a judgment which is incomplete. All will agree that if there had been no discrepancy in the preliminary survey and report of Commissioner Rempillo, the execution of the judgment would have been carried out smoothly and to the entire satisfaction of the parties. Does the fact that a mistake was discovered later affect the completeness of the judgment? Most assuredly, it does not.

I agree that a grievous mistake was committed in the first report of Rempillo leading the parties, especially petitioner herein to believe that by excluding the portion assigned to the plaintiff, a portion of about five hectares in area will remain to him, and I greatly sympathize with that as a result of this grievous mistake, he would be losing the greater portion of his free patent entry. But I cannot get myself to allow my sympathies for an innocent but negligent party to change the rules of procedure, and lay down a doctrine not warranted by the rule providing for the filing of petitions for relief.

The petitioner neglected to file his petition for relief on time. What he should have done in the first place was to appeal from that order of the trial court denying his first motion for reconsideration. Or, he should have filed his petition for relief within the 60 days after his motion for reconsideration was denied. It was not necessary for

petitioner to wait for the second report of Rempillo which was submitted, on June 10, 1950. He already knew that there was a discrepancy in the first report as a result of which he would be receiving only about a hectare and a half instead of five hectares. That is the reason he filed a motion for reconsideration of the decision and alleged that discrepancy. He even asked the court to require Rempillo to explain the error or discrepancy in his first report. In other words, he already know when he filed his first motion for reconsideration that the decision of the court based on the agreement of the parties which in turn was based on the erroneous report was adverse to him. The sixty (60) days within which to file his petition for relief should be counted from that date, or from the day his motion was denied.

In conclusion I hold that due to the failure of petitioner to appeal from the order of the trial court dated February 18, 1950 (Annex 3) denying his motion for reconsideration, as well as his failure to file his petition for relief within sixty days from the time his motion for reconsideration was denied, he has lost his legal remedy to reopen and set aside the judgment of the trial court. His present petition for certiorari should therefore be denied.

However, on grounds of justice and equity, we might urge the trial court to execute the judgment, not according to its letter but according to the original intention of and understanding between the parties as embodied in their agreement, namely, that the plaintiff was to have the smaller and the defendant (petitioner) the larger portion of the parcel in the proportion of 27,602 square meters to 50,000 square meters, whatever the real and actual total area of the whole parcel involved, may turn out to be, as determined by actual survey. Such an arrangement would serve the ends of justice and practically cure the mutual error into which both parties have fallen with no fault on their part. Even if the petition for relief were granted and the judgment reopened, it is not improbable that considering the facts of the case, the trial court would not accord the same remedy now suggested.

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