

OSMUNDO C. RAMOS, PLAINTIFF AND APPELLANT VS. DEFENDANTS AND APPELLEES.

G. R. No. 11263. January 30, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Osmundo C. Ramos appeals from a judgment of the Court of First Instance of Manila dismissing his complaint in civil case No. 16051.

In his complaint the appellant alleges that he was a licensed real estate broker who was authorized and commissioned by the appellee R. C. Deane, attorney-in-fact of the appellees Minka, Walter, Conrad and Carl Weinzheimer, surviving spouse and heirs of the late Ludwig Weinzheimer, to sell two parcels of land containing an area of 13,409 sq. m. more or less, situate at barrio San Dionisio, municipality of Parañaque, province of Rizal, covered by transfer certificates of title Nos. 14570 and 16776, belonging to the estate of the deceased; that the appellee Robert O. Ferguson, judicial administrator of the estate of the deceased (special proceedings No. 70808, Court of First Instance of Manila), confirmed and ratified the agreement entered into by and between the appellant and the appellee R. C. Deane, fixed the selling price of the two parcels of land at P75,000: and agreed to pay the appellant a 5% commission of the selling price; that the appellant offered for sale the aforesaid parcels of land to Alberto Guevara y Sanchez who bid to buy them at P53,000; that at his (appellant's) suggestion, the prospective buyer conferred with the appellees R. C. Deane and Robert O. Ferguson and after negotiations, the sale was consummated at a price of P65,000, which transaction redounded to the benefit of the appellees, heirs of the deceased; that after the sale was effected, the appellant demanded from the appellees his commission on P65,000 or P3,250, but they refused to pay him; that the appellant brought an action against the first two appellees in the Court of First Instance of Manila to collect from them his commission (case No. 8898) and also filed a claim in special proceedings No. 70808, "Estate of Ludwig Weinzheimer," for payment of the commission; that the appellant's claim was denied by the probate court because it was not a money claim against or a debt of the estate or an expense of administration, and his complaint was dismissed by the Court because of the pendency of his claim in the probate court; and that the dismissal of his complaint in civil No. 8898 was predicated on a mistake of fact, because when the order dismissing it was entered on 26. May 1950, the appellant's claim had already been dismissed by the probate court on 22 February 1950. Upon the foregoing averments the appellant prays that judgment be rendered setting aside its order in civil case No. 8898 which dismissed his complaint and ordering the appellees, jointly and severally, to pay him the sums of P3,250, with interest thereon at the legal rate from 12 August 1948 until paid, and P10,000 as damages and the costs of the suit. He also prays that judgment be rendered upon the evidence presented at the trial in civil case No. 8898 or that a new trial be held and judgment be rendered after such trial, and that the service of summons upon the appellees, heirs of the late Ludwig Weinzheimer, residents of Sacramento, California, U.S.A., be made by registered mail as provided for in section 17, Rule 7.

The appellees moved that the appellant's complaint be dismissed upon the ground that it is barred by a prior

judgment, the appeal taken by him from the order dismissing his complaint in civil case No. 8898 having been dismissed by the Court of Appeals for failure to deposit within the reglementary period. the estimated cost of printing the record on appeal, and that pursuant to section h, Rule 30, such dismissal operated as an adjudication upon the merits of the case. The appellant objected to the motion. The Court denied the motion to dismiss. Answering the appellant's complaint, the appellees allege that they did not authorize and commission the appellant to sell the property in question and as special defense invoke the ground relied upon in their motion to dismiss. By way of counterclaim they pray that the appellant be sentenced to pay them P5,000 as damages and P2,000 for attorney's fees for bringing a clearly unfounded civil action against them. The appellant controverted the appellees' counterclaim. Both parties submitted the case for judgment upon the evidence adduced in civil case No. 8898. On 21 February 1955 the Court rendered judgment dismissing the appellant's complaint on the ground that it is barred by a prior judgment. Motion for reconsideration having been denied, the appellant appealed to the Court of Appeals which certified the appeal to this Court for the reason that it only involves a question of law.

It appears that on 12 August 1949 the appellant commenced civil case No. 8898 to collect from the appellees Robert O. Ferguson, as administrator of the estate of the late Ludwig Weinzheimer, and R. C. Deane, as attorney-in-fact of the appellees Minka, Walter, Conrad and Carl Weinzheimer, a sum of money claimed due him as commission for the sale of two parcels of land (pp. 27-30, record on appeal; Exhibit 1); that on 13 October 1949 and 5 May 1951, while the aforesaid case was pending determination, the appellant filed a claim in special proceedings No. 70808 for collection of the same commission which was dismissed by the probate court on 22 February 1950 and the order of dismissal reiterated by the same court on 19 June 1951, because the claim did not involve a money claim against or a debt of the estate or an expense of administration (pp. 22-23; 23-26. record on appeal; Exhibit 4; Exhibit B) from which orders the appellant did not appeal; that on 26 May 1950 the Court dismissed the appellant's complaint in civil case No. 8898 in view of the pendency of his claim in special proceedings No. and that the appellant appealed to the Court of Appeals but his for lack of jurisdiction, operates as an adjudication upon the merits," and the dismissal of the appellant's action in appeal was dismissed for failure to deposit within the reglementary period the estimated cost of printing the record on appeal.

There is no doubt that the Court of First Instance had jurisdiction to hear and determine the [appellant's complaint for collection of the sum of P3,250 in civil case No. 8898 and that the dismissal thereof was in the exercise of that jurisdiction. The dismissal was regular on its face and not tainted with fraud in its procurement and issuance. If the dismissal was erroneous, as it seems to be, the aggrieved party's remedy was appeal, a direct attack, and not another action to set it aside, a collateral attack. Since the appellant's appeal was dismissed for his failure to deposit on time the estimated cost of printing the record on appeal, the dismissal of the action in the lower court stood as though no appeal had been taken.[1] Inasmuch as "Unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal civil case No. 8898 was not for lack of jurisdiction but on account of the pendency of his claim in special proceedings No. 70808, the said dismissal operates as an adjudication upon the merits.[2] Hence the appellant's second complaint is barred by prior judgment.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

[1] Section 2, Rule 52.

[2] Section 4, Rule 30; Enriquez vs. Perez, G.R. No. L-5296.

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