

**ANTONIO DEMETRIOU, HARRIET DEMETRIOU, ET AL., PETITIONERS,
VS. COURT OF APPEALS, HON. JUDGE RHODIE A. NIDEA, AND HILDA
RALLA-ALMINE, RESPONDENTS.***G.R. No. 115595. November 14, 1994*

Ponente: MENDOZA, J.

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Petitioners brought an action in the Court of Appeals seeking the annulment of the decision of the Regional Trial Court at Tabaco, Albay which ordered the Register of Deeds to issue a new owner's duplicate certificate of title to private respondent. Their petition was, however, denied due course on the ground that the fraud alleged therein was not extrinsic fraud but, if at all, only intrinsic fraud which did not justify setting aside the final decision of the trial court. Hence this petition for review of the decision of the Court of Appeals.[1]

The allegations of the petition for annulment of judgment are summarized in the following portion of the decision of the Court of Appeals:

Alleged in the petition, among other things, are that petitioners are the co-owners (to the extent of 2/3) of Lot No. 7651-A of the subdivision survey PSD-05-005263 (a portion of Lot 7651 Cad. 221 Tabaco Cadastre) situated at Poblacion, Tabaco, Albay, containing an area of one thousand ten (1,010) square meters covered by Transfer Certificate of Title No. T-65878 of the Register of Deeds of the Province of Albay in the name of Pablo Ralla, private respondent's deceased father (hereinafter referred to as the "Property"); that petitioners acquired two-thirds of the Property from Miriam Catherine Ralla by virtue of two deeds of absolute sale both executed on 11 July 1985, the sale from Miriam Catherine Ralla was reconfirmed by another Deed of Absolute Sale executed on July 1986 [sic], while the sale from Joan Pauline R. Belista was ratified and confirmed by virtue of an order dated 11 May 1989 of the Regional Trial Court of Fifth Judicial Region, Branch 8 Legaspi City; that at the time of the sale of the Property to the petitioners, there was a ten-year lease contract over the property which was scheduled to expire on 15 July 1991, for this reason, the petitioners decided to await the termination of the lease before registering the sale and obtaining a new title in their name; that soon after the expiration of the lease contract, sometime in the first week of August 1991, the father of the petitioners went to the Register of Deeds to have the deed of sale registered and to obtain a new title in the name of the petitioners; that to his great surprise and shock, the father of petitioners learned from the Register of Deeds that by an order of Judge Rhodie A. Nidea of the RTC of Tabaco, Albay, Branch 16, the owner's duplicate copy of TCT No. T-65878 in the possession of the petitioner had been declared of no further force and effect and that a new second owner's duplicate copy of said title has been issued to the private respondent; that subsequent investigation by the petitioners disclosed that on Sept. 20, 1990 private respondent filed a petition with the RTC of Tabaco, Albay, Branch 16 and docketed as CAD Case No. T-1024 wherein she falsely and fraudulently alleged that "the owner's duplicate copy of the said Transfer Certificate of Title No. T-65878 was lost and/or destroyed while in the possession and custody of herein petitioner as per her Affidavit of Loss and despite earnest effort to locate said title, the same have been fruitless;" that the representation of private respondent in her aforesaid petition and affidavit of loss that the owner's duplicate copy of Transfer Certificate No. T-65878 was delivered to her by her mother after the death of her father and that she lost the said copy

during the devastation wrought by typhoon "Sisang" is patently false, fraudulent, and perjurious since she knew fully well or ought to have known that 2/3 of the property covered by TCT No. T-65878 had already been sold to the petitioners on July 11, 1985 and the owner's duplicate copy of the said title was delivered by private respondent's brother, Gerardo Ralla, to the petitioners on the same day; that on the basis of the fraudulent representation of the respondent Judge Rhodie A. Nidea, the Presiding Judge of the Regional Trial Court of Tabaco, Albay, Branch 16, issued an order dated Dec. 7, 1990 ordering the Register of Deeds to issue a second owner's duplicate copy of transfer certificate of title No. T-65878, with all the annotations and encumbrances thereon, which shall be of like faith and credit as the one lost and declaring the lost or destroyed owner's duplicate copy of the TCT No. T-65878 of no further force and effect; and that pursuant to the order, the Register of Deeds issued a new second owner's duplicate copy of TCT No. T-65878 to the private respondent; that despite repeated demands by petitioners and despite protracted attempts at settlement, private respondent refused to deliver or turn over to the petitioners the second owner's duplicate copy of TCT No. 65878 issued pursuant to the aforesaid order of Judge Rhodie A. Nidea; that the aforesaid order of Judge Rhodie A. Nidea has become final and executory; that it was clearly issued on the basis of the false and fraudulent representations of private respondent, hence, it is null and void and must be annulled and set aside, and that because of private respondent's refusal to satisfy the petitioners' plainly valid and just claim, the petitioners have been compelled to litigate and to hire counsel for a fee and to incur other expenses of litigation.

On the basis of these allegations the appellate court ruled that the fraud alleged was, if at all, only intrinsic and not extrinsic in character:

An action to annul a final judgment on the ground of fraud will lie only if the fraud is extrinsic or collateral in character. Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case, by fraud or deception practiced on him by his opponent (*Macabingkil vs. People's Homesite and Housing Corporation*, 72 SCRA 326 cited in *Canlas vs. CA*, 164 SCRA 160). On the other hand, intrinsic fraud takes the form of "acts of a party in a litigation during the trial such as the use of forged or false document or perjured testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case" (*Libudan vs. Gil*, 45 SCRA 17). In the present petition, the allegation of fraud involves admission by the respondent court of an alleged false affidavit of loss, which alleged fraud is intrinsic in character. Thus, as the alleged fraud committed by the private respondent is not extrinsic in character, the instant petition for annulment of the said December 1, 1990 order of the lower court should be dismissed.

The appellate court is certainly right in holding that the use of a false affidavit of loss does not constitute extrinsic fraud to warrant the invalidation of a final judgment. The use of the alleged false affidavit of loss by private respondent is similar to the use during trial of forged instruments or perjured testimony. In the leading case of *Palanca v. Republic*,^[2] it was held that the use of a forged instrument constituted only intrinsic fraud for while perhaps it prevented a fair and just determination of a case, the use of such instrument or testimony did not prevent the adverse party from presenting his case fully and fairly. In the case at bar, petitioners were not really kept out of the proceedings because of the fraudulent acts of the private respondent. They could have rebutted or opposed the use of the affidavit and shown its falsity since they were theoretically parties in the case to whom notice had been duly given.

But a judgment otherwise final may be annulled not only on the ground of extrinsic fraud but also because of lack of jurisdiction of the court which rendered it. In *Serra Sera v. Court of Appeals*,^[3] on facts analogous to those involved in this case, this Court already held that if a certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void and the court rendering the decision has not acquired jurisdiction. Consequently the decision may be attacked any time. Indeed, Rep. Act No. 26, § 18 provides that "in case a certificate of title, considered lost or destroyed be found or recovered, the same shall prevail over the

reconstituted certificate of title." It was, therefore, error for the Court of Appeals to dismiss the petition for annulment of judgment of the petitioners.

Nor was the filing of such a petition forum shopping in violation of Circular No. 28-91. Private respondents allege that in an action for recovery of possession of the lands which they had brought against the JB Line in the Regional Trial Court of Albay (Civil Case No. T-1590), petitioners intervened and alleged substantially the same facts as those alleged by them in their petition for annulment of judgment. We have gone over petitioners' answer in intervention in that case. We find that the allegation of forum shopping is without basis. While they indeed alleged that private respondent had obtained a second owner's duplicate of TCT T-65878 knowing that 2/3 of the land covered by the certificate had been sold to them and that the "2nd owner's copy should be cancelled and recalled considering the fact that the original is in fact still existing and not lost," the allegation was made more for the purpose of demanding a partition, recognizing that private respondent is the owner of 1/3 of the land. Petitioners' intervention is thus different from their action in the Court of Appeals which is solely for the purpose of seeking the annulment of the judgment in CAD Case No. T-1024 granting private respondent's petition for the issuance of a new owner's duplicate certificate of title.

WHEREFORE, the decision appealed from is REVERSED and the case is REMANDED to the Court of Appeals for further proceedings.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.

[1] Decision of the Seventh Division, per Justice Gloria C. Paras (Chairman), with the concurrence of Justices Jainal D. Rasul and Ramon U. Mabutas, Jr.

[2] 24 SCRA 819 (1968).

[3] 195 SCRA 482 (1991).

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