

**APOLINARIO DE LA CRUZ, ET AL., PETITIONERS AND APPELLANTS,
VS. THE CITY FISCAL, ET AL., RESPONDENTS AND APPELLEES.***G. R. No. 13354. December 29, 1959*

Ponente: MONTEMAYOR, J.

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Petitioners-appellants Apolinario de la Cruz, et al. are appealing the order of the Court of First Instance of Dagupan of October 29, 1957, denying their petition for prohibition sought to restrain the City Fiscal of Dagupan City from filing an information against them or further prosecuting them for falsification of public document.

Carmelita de la Cruz filed in the Court of First Instance of Lingayen, Pangasinan, a complaint dated August 22, 1957, against Apolinario de la Cruz, for the purpose of declaring null and void the affidavit of adjudication executed by him, wherein he declared that he was the only heir of Francisca Bandong and adjudicated unto himself a parcel of land left by her. Carmelita claims that said parcel belongs to her, having inherited the same from her father Ludovico de la Cruz, to whom it had been donated by Francisca. In his answer, Apolinario alleged that the affidavit of adjudication was made by him in good faith, the same having been executed with the consent of all the heirs of Francisca. In his cross-complaint, he claimed that the deed of donation invoked by Carmelita was fictitious, and so should be declared null and void.

On September 20, 1957, petitioners-appellants were summoned by the Dagupan City Fiscal to appear before him for investigation of the charge of falsification of public document in connection with the affidavit of adjudication made by Apolinario. Counsel for petitioners-appellants informed the fiscal that there were two pending civil cases in the Court of First Instance of Lingayen, Pangasinan, one for the annulment of the deed of adjudication above referred to, and the other to annulment of the deed of donation said to have been made by Francisca in favor of Ludovico de la Cruz, and that this constituted a prejudicial question which warranted the criminal action being held in abeyance. Inasmuch as the Fiscal proposed to continue with his investigation, petitioners-appellants filed their petition for prohibition, which as already stated, was denied by the trial court. We reproduce that portion of the appealed order of the trial court, which gives its reason for the denial of the petition:

"* * * the contention of petitioners is untenable, as the civil action for annulment of the deed of adjudication has no connection whatsoever with the investigation being made by the City Fiscal over the fact that the petitioner, Apolinario de la Cruz, in said writ of adjudication made it appear that he was the only heir when in truth and in fact there were other heirs. It is clear that the information of falsification of public document does not in one way or another affect the pending civil case of annulment of said deed of adjudication.

"With respect to the other pending civil case for the annulment of the deed of donation, it should be noted that Apolinario de la Cruz, the petitioner in this case, is not a party to the donation, and the investigation made on him by the City Fiscal for falsification of public document, is entirely foreign and distinct from that civil case for annulment of the deed of donation.

"The foregoing facts show that the investigation being conducted by the City Fiscal of this City, for the falsification of public document against the herein petitioner has no bearing nor relation with the two civil

cases which were pending for trial before the Court of First Instance of Lingayen, and as such the petitioner, can not now invoke the theory of prejudicial question." (Record, pp. 55-56)

Prejudicial question has been defined and explained as follows:

"* * * that which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal (Cuestion prejudicial, es la que surge en un pleito o causa cuya resolucion es antecedente logico de la cuestion objeto del pleito o causa y cuyo conocimiento corresponda a los tribunales de otro orden o jurisdiccion.—X Enciclopedia Juridica Española, p. 228). The prejudicial question must be determinative of the case before the court; this is its first element. Jurisdiction to try said question must be lodged in another tribunal; this is the second element." (People vs. Aragon, 94 Phil., 357; 50 Off. Gaz. [10], 4863).

"Prejudicial question is understood in law to be that which must precede the criminal action, that which requires a decision before a final judgment is rendered in the principal action with which said question is closely connected. Not all previous questions are prejudicial, although all prejudicial questions are necessarily previous," (Herbari vs. Concepcion, 40 Phil., 837).

"A civil action is prejudicial when it refers to a fact separate and distinct from the offense charged but yet so intimately related thereto as to be determinative of the guilt or innocence of the accused. For example, a civil action for the annulment of the second marriage is, with respect to the criminal charge for bigamy a prejudicial question as to require its adjudication before the criminal prosecution may proceed. However, where the only ground upon which the civil action for annulment is based is that the second marriage was contracted allegedly in good faith at a time when the first marriage was still in existence, such civil action does not constitute a prejudicial question for there is no issue therein that may be determinative of petitioner's innocence in the criminal case. That second marriage was contracted in good faith is immaterial in the civil action. It is material only in the criminal case to show lack of criminal intent." (II Moran, pp. 652-653, 1957 ed.)

As regards the annulment of the deed of donation sought by petitioner Apolinario in his cross-complaint before the Court of First Instance of Lingayen, Pangasinan, we agree with the trial court that it has no intimate relation to the criminal investigation being conducted by respondent Fiscal, Apolinario not even being a party to said deed of donation; consequently, it may by no means be regarded as a prejudicial question.

Now, with respect to the annulment of the affidavit of adjudication sought by Carmella the execution by Apolinario of said affidavit with its narration of facts, is intimately related to his guilt or innocence of the charge of falsification being investigated by the Fiscal, it is true; however, resolution of the petition for annulment of the affidavit of adjudication, affirmative or other wise, does not and will not determine criminal responsibility in the falsification case. Regardless of the outcome of the pending civil case for annulment of the affidavit of adjudication, determination of the charge of falsification would be based on the truth or falsity of the narration of facts in the affidavit of adjudication, specially with reference to the existence of heirs of Francisca besides Apolinario. Therefore, the civil case aforementioned does not involve a prejudicial question.

In view of the foregoing, the appealed order is hereby affirmed, with costs.

Paras, C. J., Padilla, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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