SPOUSES PRISCO P. CAL, JR. AND ALICE CANOY CAL, PETITIONERS, VS. MARIANO A. ZOSA, SUBSTITUTED BY FILOMENA REYES-ZOSA, WINFRED R. ZOSA, GLORIA ZOSA-SENO, EMMANUEL R. ZOSA, ZELDA ...

G.R. NO. 152518. July 31, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the February 11, 2002 Decision[1] of the Court of Appeals in CA-G.R. CV No. 65860, entitled "Spouses Prisco, Jr. and Alice Cal, petitioners, versus Mariano A. Zosa, respondent."

Vidal Jimeno, a resident of Barili, Cebu died intestate. He was survived by his widow, Salud Montemayor Jimeno, and their four children namely: Jaime, Jesus, Oscar and Annie, all surnamed Jimeno. They all inherited his estate, including a parcel of land, located in Bulongan, Toledo City, covered by Tax Declaration No. 03320.

On September 17, 1949, Salud filed with the then Court of First Instance (CFI) of Cebu a Petition for Letters of Administration over the estate of her husband, docketed as Special Proceedings No. 570-R.

Thereafter, Salud died intestate and was survived by her four children. On May 28, 1952, they filed with the then CFI of Cebu a Petition for Letters of Administration over the estate of their parents, docketed as Special Proceedings No. 932-R.

Later, the two cases were consolidated in one branch of the court.

Thereafter, Atty. Mariano A. Zosa, the herein original respondent, was hired by the four children as their counsel. On August 28, 1957, they executed a Deed of Assignment conveying to him all their rights and interests in the parcel of land in Bulangan, Toledo City as payment for his legal services. On December 18, 1964, the trial court issued an Order in Special Proceedings No. 932-R approving the Deed of Assignment.

On various dates, the four siblings again sold their pro-indiviso shares in the same lot to spouses Felix and Pacita Barba.

In the meantime, the Bureau of Lands effected a cadastral survey of the lots located in Toledo City. The parcel of land covered by Tax Declaration No. 03320, sold by the Jimeno siblings to both Atty. Zosa and spouses Barba, was identified as Lot 3616 in LRC Cadastral Records No. N-585.[2]

The Director of the Bureau of Lands then filed with the City Court of Toledo City a Petition for the Registration of Lot 3616 in the name of any claimant found to be entitled thereto, docketed as Cadastral Case No. N-3-T. Later, the records of the case were elevated to the Regional Trial Court (RTC), Branch 10, Cebu City, which has jurisdiction over the case considering the value of the lot involved. It was docketed as Cadastral Case No. N-2-T.

Respondent Atty. Zosa filed an answer[3] claiming ownership of Lot 3616. He attached Tax Declaration No. 03320 and the December 18, 1964 Order of the court in Special Proceedings No. 932-R approving the sale of the lot to him by the Jimenos.

Felix Barba, also filed his answer,[4] opposing respondent's claim. He alleged that he is the owner of the lot by virtue of the various Deeds of Absolute Sale executed in his favor by the Jimeno children. Despite his adverse claim, Felix Barba still sold the same lot to spouses Crispin Tango-an and Conchita Dacalus, who in turn, sold it to spouses Prisco Cal, Jr. and Alice Canoy, herein petitioners.

Meanwhile, on February 18, 1988, the RTC, Branch 10, Cebu City, sitting as a cadastral court, issued an Order adjudicating Lot No. 3616 in favor of Atty. Zosa. The trial court held:

> The Court finds merit in Zosa's application.
>
> First and foremost to be considered is that when the deeds of sale were executed by the Heirs of Vidal Jimeno in favor of Barba the administration proceedings for the settlement of the estate of Vidal Jimeno and Salud Montemayor has not yet been terminated. In fact, the deeds of sale required approval of the court in order that it could be registered. The administration proceedings not having been terminated yet, there was no summation of the estate of Vidal Jimeno minus the obligations both from private persons and from the government. In other words, there was no total settlement yet of the obligations left by the estate of the deceased and residue been fully determined which the heirs may inherit. Moreover, the sale to Barba by the heirs of Vidal Jimeno failed to comply with the requirements laid down by Rule 74 of the Rules of Court. Claimant Zosa, being the lawyer of the administration case should be considered as one of the creditors of the estate of Vidal Jimeno. The order which approved the cession and assignment executed by the heirs of Jimeno in favor of Zosa in consideration of his services is already final and executory. Necessarily, therefore, claimant Zosa has a better right over and above the claim of Barba.

Felix Barba interposed an appeal to the Court of Appeals, docketed as CA G.R. CV No. 22941, entitled "Director of Lands v. Felix Barba."

On January 29, 1992, the Court of Appeals rendered its Decision[5] affirming the Order of the cadastral court.

On February 22, 1992, the Decision became final and executory. The records were thus remanded to the cadastral court.

On July 3, 1992, the cadastral court issued an Order directing the Director of the Bureau of Lands to issue the corresponding Decree in favor of Atty. Zosa.

On November 18, 1992, the Land Registration Commission issued Decree No. N-199584 over Lot 3616 in the name of Atty. Mariano Zosa. Accordingly, on December 9, 1992, Original Certificate of Title (OCT) No. O-203 was issued in his name. As a new owner, he had the property declared in his name for taxation purposes under Tax Declaration No. 50568.

On November 30, 1993, petitioners filed with the RTC, Branch 29, Toledo City, a "Petition for Review or Reopening of the Decree in LRC Case No. N-3-T"[6] entitled "Spouses Prisco Cal v. Mariano Zosa," docketed as LRC Case No. 92.

Petitioners alleged that respondent Atty. Zosa acquired the Decree through extrinsic fraud; and he failed to adduce evidence to prove his claim.

After hearing, or on September 28, 1999, the trial court rendered a Decision[7] dismissing petitioner's complaint and declaring that Atty. Zosa is the true and lawful owner of Lot 3616 and OCT No. O-203 was lawfully issued and registered in his name.

Petitioners interposed an appeal to the Court of Appeals, docketed as CA G.R. CV No. 65860.

On February 11, 2002, the appellate court rendered the assailed Decision[8] holding that:

> We do not agree with the appellants. Central to the issue is Section 38 of Act 496, as amended, quoted, infra:
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> SEC. 38. x x x Such decree shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decree, subject, however, to the right of any person deprived of land or of any state or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. x x x (idem, supra)
>
> A re-opening or review of a "Decree," issued by the trial court, on the ground of fraud is allowed, provided that the following elements are present, namely:
>
> x x x (1) that the petitioner has real or dominical right; (2) that he has been deprived thereof; (3) through fraud; (4) that the petition is filed within one year from the issuance of the decree; and (5) that the property has not as yet been transferred to an innocent purchaser." (Pascual Libudan v. Heirs of Jose Palma Gil, 45 SCRA 17, at page 27, supra)
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> Our Supreme Court emphasized in the above case that "fraud" envisaged in the law is extrinsic or collateral fraud, as distinguished from intrinsic fraud, x x x
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> x x x
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> The "fraud" is that which affects and goes into jurisdiction of the court. And the reason d'etre of the principle is that "equity will enjoin a party from enforcing a judgment which he has obtained by means of fraud. Fraud will vitiate a judgment and a court of equity may declare it a nullity. Equity has so great an abhorrence of fraud that it will set aside its own decrees if founded thereupon.
>
> x x x
>
> "Intrinsic fraud," in contrast, does not go into or affect the jurisdiction of the trial court. Where the fraud, alleged or invoked by a losing party, is based on facts which were controverted and litigated by the parties and resolved by the court after due trial, such fraud does not affect the jurisdiction of the court. Whether the resolution of the court on the issue of fraud is correct or not and, in the meantime, the "Decision" of the court has become final and executory and a "Decree" had already been issued, the same cannot be impugned in a separate or collateral proceeding. x x x
>
> x x x
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> In the present recourse, the issue of whether or not Felix Barba and his successor-in-interest or the appellee was in actual or constructive possession of the property and the lawful owner of the property was posed to the court a quo for resolution and litigated by the parties. Felix Barba filed his "Answer/Claim" and adduced evidence. Hence, he was not deprived of an opportunity to oppose the claim of the appellee and adduce evidence in support of his claim. After calibration of the evidence of the parties, the court a quo decreed the property to and under the name of the appellee. The Order of the court a quo was appealed to the Court of Appeals and the latter affirmed the Order of the court a quo x x x "

Hence, the present petition raising the following issues:

I.

> WHETHER OR NOT DECREE NO. N-199584 ISSUED OUT OF CADASTRAL CASE NO. N-2-T, LRC RECORD NO. 585, CADASTRAL CASE 3, TOLEDO CADASTRE, INVOLVING LOT 3616 SITUATED AT BULONGAN, TOLEDO CITY, THAT LED TO THE ISSUANCE OF OCT NO. O-203 IN HEREIN RESPONDENT'S NAME, WAS ATTENDED WITH ACTUAL FRAUD WITHIN THE LEGAL CONTEMPLATION OF SECTION 32, PRESIDENTIAL DECREE (P.D.) NO. 1529 (FORMERLY SECTION 38 OF ACT 496) OTHERWISE KNOWN AS THE PROPERTY REGISTRATION DECREE.
>
> II.
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> WHETHER OR NOT PETITIONERS ARE BOUND BY THE JUDGMENT RENDERED IN CA-G.R. CV No. 22941, THUS MAKING THE PROCEEDINGS AT BAR ALREADY BARRED LEGALLY.

In their Comment, the lawful heirs of Atty. Zosa, now herein respondents, maintain that their father did not commit any extrinsic fraud; that petitioners were not deprived of their day in court; that their predecessor, Felix Barba, ably opposed Atty. Zosa's claim in the cadastral proceedings; and that their conflicting claims were fully ventilated as they were allowed by the cadastral court to present their respective evidence.

The petition must fail.

The right of a person deprived of land or of any estate or interest therein by adjudication or confirmation of title obtained by actual or extrinsic fraud is recognized by law under Section 32 of P.D. No. 1529,[9] thus:

> Review of decree of registration; Innocent purchaser for value. - The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance (now the Regional Trial Court) a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. x x x (emphasis supplied)

Fraud is of two kinds: actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons.[10]

Fraud may also be either extrinsic or intrinsic. Fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured, so that there is not a fair submission of the controversy.[11] Extrinsic fraud is also actual fraud, but collateral to the transaction sued upon.[12]

The "fraud" contemplated by Section 32, P.D. No. 1529 is extrinsic. For fraud to justify a review of a decree, it must be extrinsic or collateral, and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered.[13]

Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact, they are; or in willfully misrepresenting that there

are no other claims; or in deliberately failing to notify the party entitled to notice; or in inducing him not to oppose an application; or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his application. In all these examples, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court.[14]

On the other hand, we have repeatedly held that relief on the ground of fraud will not be granted where the alleged fraud goes into the merits of the case, is intrinsic and not collateral, and has been controverted and decided, [15] like what is very much obtaining in the present case.

Here, petitioners failed to prove that then respondent Atty. Zosa committed acts constituting extrinsic fraud in obtaining OCT N0. O-203. Indeed, there is no showing how Felix Barba, petitioners' predecessors-in-interest, was prevented by the said respondent from presenting his case.

WHEREFORE, the petition is DENIED. Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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[1] Penned by Associate Justice Romeo J. Callejo, Sr. (now a member of this Court) and concurred in by Associate Justice Remedios Salazar-Fernando and Associate Justice Perlita J. Tria-Tirona (retired).

[2] Records, p. 135.

[3] Id., pp. 615-618; 135-142.

[4] Id., pp. 608-614.

[5] Id., pp. 745-751.

[6]Id., pp. 4-14.

[7] Id., pp. 1162-1171.

[8] Annex "A," Rollo, pp. 36-52.

[9] Property Registration Decree (Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes).

[10]Heirs of Roxas v. Court of Appeals, G.R. No. 118436, March 21, 1997, 270 SCRA 309.

[11] Id.

[12] Id.

[13]Director of Lands v. CFI of Rizal, G.R. No. L-31681, July 31, 1987, 152 SCRA 487.

[14] Republic of the Philippines v. Benjamin Guerrero, G.R. No. 133168, March 28, 2006, 485 SCRA 424.

[15]Id., citing Libudan v. Gil, 45 SCRA 17 (1972).

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