

EUSEBIO RIVERO, PLAINTIFF AND APPELLANT, VS. MARIANO RIVERO, DEFENDANT AND APPELLEE.

G.R. No. 38572. December 06, 1933

Ponente: MALCOLM, J.

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MALCOLM, J.:

The parties to this action are the brothers Rivero, Eusebio, the plaintiff, 60 years of age, and Mariano, the defendant, 76 years of age. Because of their relationship and mature years, they should have been able to compose their differences amicably. That they once did so is disclosed by the fact that, when in 1928, Eusebio began an action for the partition of certain property and was met by the special defense of Mariano that the property was of his exclusive ownership, the brothers entered into a compromise which was judicially confirmed in the following:

"DECISION

"Las partes en este asunto han sometido un convenio del tenor siguiente:

" 'Los mismos interesados en este asunto los hermanos Eusebio Rivero y Mariano Rivero, han manifestado al Tribunal que llegan a este arreglo: que el demandante se quedara con el terreno senalado con la letra g en el parrafo 2 de la demanda enmendada, renunciando el demandante a cualquier derecho, interes o participacion que pueda tener en las demas parcelas descritas en el parrafo 2 de la demanda enmendada, o sean las señaladas con las letras a, b, c, d, e, f, y h, y con este arreglo el demandado, a su vez, se compromete a ceder al demandante otorgando la escritura correspondiente de traspaso a favor del demandante, la parcela g en la demanda, y con esta transaccion piden al Juzgado se dicte sentencia aprobando la misma, sin especial pronunciamiento de costas.'

"Como se pide, se aprueba el referido convenio, y se ordena al demandado Mariano Rivero a otorgar la correspondiente escritura de traspaso a favor del demandante Eusebio Rivero de la parcela g, y en la cual escritura se incorporara una clausula en el sentido de que el demandante renuncia a favor del demandado todo derecho, interes o participacion que pudiera tener en las parcelas a, b, c, d, e, f, y h.

"Se ordena a las partes a respetar el convenio arriba acotado que tendra toda su fuerza y vigor para las partes interesadas con este asunto. Sin especial condena en cuanto a las costas.

"Asi se ordena.

"Dada en Corte abierta en Malolos, Bulacan, hoy 17 de octubre de 1928."

The date of the decision above-quoted, it will be noted was October 17, 1928. On November 15, 1931, Eusebio began a new action intended to repudiate the agreement alleged to have been entered into and to secure the setting aside of the judgment previously rendered by the court. This attempt was unsuccessful for the trial judge, for two reasons, the first having to do with the finality of the previous judgment, and the second going to the merits, absolved the defendant from the complaint. Still dissatisfied, the plaintiff has brought the case to this court on appeal.

The judgment taken by the parties in 1928 was with their consent, and so had all the force and effect of any other judgment. Pursuant to the provisions of sections 306 and 307 of the Code of Civil Procedure, the plea of res adjudicata would prevail as in other cases when the judgment is assailed and identity of parties, causes of action, and subject matter are shown. Here, however, appellant predicates his argument on another section of the Code of Civil Procedure—section 27—which provides that lawyers "can not, without special authority, compromise their client's litigation." It is contended that the compromise was entered into by the attorney for the plaintiff without his client's consent. In this connection it has been held that when a judgment has been entered into by consent of an attorney without special authority, it will sometimes be set aside or reopened. (*Natividad vs. Natividad* [1928], 51 Phil., 613.) But it has also been held that a party who seeks to open a final judgment with a view to a renewal of the litigation should show that he has acted with diligence; and unexplained delay in seeking relief is a circumstance to be considered as affecting the application adversely. (*Banco-Español Filipino vs. Palanca* [1918], 37 Phil., 921.) When the evidence is sufficient to show that the plaintiff acquiesced in the compromise settlement, he cannot thereafter disavow it. (*Uy Chico vs. Union Life Assurance Society* [1915], 29 Phil., 163.)

The one essential fact to remember is, that the plaintiff waited over three years, before making any pretense that the agreement confirmed in open court was not in accordance with his desires. This period of time was considerably more than the six months allowed by section 113 of the Code of Civil Procedure within which to ask or equitable relief. It results, therefore, that plaintiff's right, if any, was defeated and destroyed by his own negligence. Conceding for present purposes that it was an unauthorized compromise, it is nevertheless binding on the plaintiff by his acquiescence for a considerable period of time. A client failing to object to the compromise of a judgment, a ratification will be presumed. Whenever it appears that the client, on becoming aware of the compromise and the judgment, fails to repudiate promptly the action of his attorney, he will not be afterward heard to contest its validity. (6 C. J., pp. 659-661; *Reid & Co. vs. Dickinson* [1873], 37 Iowa, 56; *Black vs. Rogers* [1882], 75 Mo., 441.)

So much for a resolution of the first question decided in the lower court and the first question discussed on appeal. On the merits, we do not speak except to observe that the plaintiff would experience great difficulty in surmounting: the documentary evidence presented on behalf of the defendant.

Judgment affirmed, without costs.

Avanceña, C. J., Villa-Real, Hull, and Imperial, JJ., concur.

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