

PROCESO ECHARRI AND GREGORIA AZORES, PLAINTIFFS AND APPELLANTS, VS. JUAN BELEN VELASCO, FELIPE COSICO, MARCELINO DYNING, PASTOR MARINO AND FELICIANO EXCONDE, DEFENDANTS AND APPE...

G. R. No. 39478. February 24, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiffs Proceso Echarri and Gregoria Azores from an order of the Court of First Instance of Laguna sustaining the demurrer to the said plaintiffs' complaint and ordering them to amend the same within the reglementary period, on the ground that the facts alleged therein are not sufficient to constitute a cause of action, inasmuch as every legal remedy for the purpose of having the judgment rendered against them set aside has already prescribed and the allegations contained in the complaint are vague.

In support of their appeal the appellants assign the following alleged errors as committed by the court a quo in its decision, to wit:

"1. The Hon. Court a quo erred in sustaining the demurrer interposed by the defendant and appellee Juan Belen Velasco, for not overruling it and for not ordering the said appellee to answer the complaint.

"2. The Hon. Court a quo erred in dismissing the complaint of the plaintiffs-appellants."

The pertinent facts necessary for the solution of the question of procedural law raised in this appeal and which have been impliedly and hypothetically admitted through the filing of the demurrer in question are those which are alleged in the complaint as follows:

On March 24, 1930, the herein defendant and appellee Juan Belen Velasco brought an action in the Court of First Instance of Laguna, civil case No. 5444 of said court, against the herein plaintiffs-appellants Proceso Echarri and Gregoria Azores for breach of the contract dated November 4, 1929. Juan Belen Velasco, testifying in his favor at the trial of said case, said, among other things, that he had really received the 45 shares of stock of the Belen Velasco Transportation Co. mentioned in the said contract, which shares he bound himself to acquire in payment of the sum of P4,500 loaned by him to the said plaintiffs-spouses Proceso Echarri and Gregoria Azores, but he returned them later because the said spouses had transferred to Cayetano Orlanes their shares in the said Belen Velasco Transportation Co., Inc.

The court, in its judgment rendered in the said civil case No. 5444 on March 11, 1931, condemned the herein plaintiffs Proceso Echarri and Gregoria Azores to pay jointly and severally to Juan Belen Velasco the sum of P4,500 together with interest thereon at 12 per cent per annum from November 4, 1929, until fully paid, with costs.

The defendants in the former case, within the reglementary period, excepted to the said judgment, filed a motion

for a new trial, excepted to the order denying said motion, and announced their intention to appeal, but, due to the negligence and inadvertence of their counsel, they filed their bill of exceptions two days after the expiration of the period allowed by the law for that purpose.

The judgment of the court having become final for lack of appeal, a writ of execution for the sum of P4,000 plus interest thereon in the sum of P830.83 was issued on May 28, 1931.

The principal question to be decided in this appeal is whether or not the plaintiffs-appellants have the right to institute this action for the purpose of vacating the judgment, alleged to have been obtained through fraud, in accordance with the provisions of section 113 of the Code of Civil Procedure.

It will be noted that in civil case No. 5444 of the Court of First Instance of Laguna, wherein Juan Belen Velasco was the plaintiff and Proceso Echarri and Gregoria Azores, the defendants, the court rendered a decision, the dispositive part of which reads as follows: "Wherefore, this court renders judgment condemning the defendants Proceso Echarri and Gregoria Azores to pay jointly and severally to the plaintiff Juan Belen Velasco the sum of P4,500 with interest thereon at 12 per cent per annum from November 4, 1929, until fully paid, with the costs against the said defendants."

The therein defendants Proceso Echarri and Gregoria Azores, plaintiffs in this case, excepted to the said judgment, applied for a new trial, which was denied, and announced their intention to appeal after having excepted to the order denying their motion for a new trial but, through negligence or inadvertence on the part of their counsel, they did not file their bill of exceptions until two days after the expiration of the period allowed by the law for that purpose. In consequence of such failure, the aforesaid judgment became final and the corresponding order of execution for the sum of P4,500 plus interest thereon in the sum of P830.83 was issued on May 28, 1931.

It will also be noted that the plaintiffs themselves admit that the judgment, which was rendered against them by the Court of First Instance of Laguna in civil case No. 5444, became final by reason of their counsel's negligence to file the bill of exceptions on time.

The plaintiffs-appellants had, therefore, an adequate remedy at law for the purpose of vacating the judgment claimed to have been obtained by the defendant-appellee through fraud, and it is a rule of law that relief will in no case be granted to a party, who seeks to be relieved from the effects of a judgment which he claims has been obtained against him through fraud, where the loss of the remedy at law was due to said party's own negligence or fault or that of his counsel (34 Corpus Juris, 437, 438).

In view of the foregoing, this court is of the opinion, and so holds, that the relief granted by section 113 of the Code of Civil Procedure to a party against whom a judgment, order, or other proceeding has been taken through his mistake, inadvertence, surprise, or excusable neglect, may not be invoked by such party if he has an adequate remedy at law for the purpose of vacating such judgment, order, or other proceeding taken against him through fraud, but has lost it through his own negligence or that of his counsel.

Wherefore, finding no error in the order appealed from, it is hereby affirmed in toto with double costs against the appellants, the appeal being frivolous. So ordered.

Malcolm, Hull, Imperial, and Goddard, JJ., concur.

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