

**ANTONIA ZAFRA DE ALVIAR AND PAULINO ALVIAR, PETITIONERS,
VS. COURT OF FIRST INSTANCE OF LA UNION, PRESIDED OVER BY
JOSE R. CARLOS, AND CHUA LIN AND KEH IT, KNOWN BY THE FIRM
NAM...**

G. R. No. 45291. March 30, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In this petition for certiorari, the petitioners seek to set aside the judgment "rendered, against them by the Court of First Instance of La Union, in civil case No. 1762, and the writ ordering, the execution thereof. Upon petition of the petitioners, who had filed the necessary bond, a writ of preliminary injunction was issued directing the respondent judge to refrain from ordering: the execution of the judgment in question until further orders.

In the said case, Attorney Francisco I. Ortega appeared for the petitioners and Eduardo. Zafra Amor, as defendants, the latter being the debtor and principal obligor. The action was brought against the petitioner Antonia Zafra de Alviar as surety and mortgagor, and her husband Paulino Alviar was joined as matter of form. When the case was called for trial in court, the then, plaintiffs, now respondents, and the principal debtor, assisted by their respective attorneys, agreed to make a compromise and in fact executed the so-called document, whereby the principal debtor and the petitioners admitted a debt in the amount of P1,250 in favor of the plaintiffs-respondents. They mutually agreed to ask the court to render judgment for the sum in question, which shall not be executed until after the lapse of one year from July 29, 1935, the date of the compromise. On said date the court rendered judgment in accordance with the terms of the compromise. This document was subscribed by the plaintiffs-respondents, the principal debtor and "their respective attorneys. The signature of the principal obligor appears at the bottom thereof in the following manner: "Eduardo Zafra Amor, Antonia Zafra de Alviar, Paulino Alviar, by: (Sgd.) Eduardo Zafra Amor." In fact the petitioners did not sign the document. Under the signature of Attorney Ortega, the following inscription appears: "Attorney for the defendants. San Fernando, La Union." On July 28, 1936, the plaintiffs-respondents requested the clerk of court to issue a writ of execution of the judgment and it was only then that the petitioners were informed for the first time of the existence of a judgment against them. They opposed the execution applied for and asked for the annulment of said judgment. They supported their petition by their affidavit stating that they had not subscribed the compromise, that they had not authorized the principal debtor to sign it in their name, and that they had no knowledge of the existence thereof nor of the trial of the case, having been absent therefrom. They likewise supported it by the affidavit of Attorney Ortega wherein the latter stated under oath that the compromise was made only by the plaintiffs-respondents and the principal debtor, that he was not authorized by the petitioners to compromise the case or to sign the compromise for them, and that in reality he signed the document merely as a witness. In spite of all this, the court, on August 17, 1936, overruled the opposition and denied the petition of the petitioners and ordered the issuance of a writ of execution of the judgment, upon the opinion that the judgment could not be annulled without evidence and that the evidence could not be taken in the incident so raised, but in another proceeding. The petitioners filed

a motion for reconsideration of the order and upon denial thereof, they excepted and instituted this proceeding. Before going further, it is advisable to state that in this proceeding the petitioners presented their affidavit and that of Attorney Ortega in support of the allegations contained in their petition also under oath. The respondents have presented no similar prima facie evidence to counteract them.

In view of the facts briefly stated above, this court does not hesitate to hold that the judgment in question is null and void ab initio. It is not binding upon and cannot be executed against the petitioners. It is evident that the compromise upon which the judgment was based was not subscribed by them (Exhibit D of the petitioners; Exhibit 1 of the plaintiffs-respondents; Exhibits G-I, H and K). Neither could Attorney Ortega bind them validly in the compromise because he had no special authority and because, as stated by him in his affidavit, Exhibit H, he really was not authorized to that effect (section 27, Code of Civil Procedure; *Sons of I. de la Rama vs. Estate of Benedicto*, 5 Phil., 512; *Natividad vs. Natividad*, 51 Phil., 613; *Tan Lua vs. O'Brien*, 55 Phil., 53; *Rodriguez vs. Santos*, 55 Phil., 72i; *Monte de Piedad vs. Fernando Rodrigo and De Yupangco*, 56 Phil., 310). A judgment for a sum of money rendered by a competent court, based upon a compromise agreement in writing, is conclusive and is legally binding only upon the parties to the suit who have subscribed it by themselves or by special attorney (section 306, subsection 2, Code of Civil Procedure; articles 1280, subsection 5, and 1713, subsection 2, of the Civil Code; *Balatbat vs. Tanjutco*, 2 Phil., 182; *Palanca Tanguinlay vs. Quiros*, 10 Phil., 360; *Manila Railroad Co. vs. Arzadon*, 20 Phil., 452; *Andres vs. Pimentel*, 21 Phil., 429; *Bowler vs. Estate of Alvarez*, 23 Phil., 561; *Compania General de Tabacos vs. Sheriff of Occidental Negros*, 27 Phil., 41; *Solano vs. Salvilla*, 29 Phil., 66; *Isaac vs. Padilla*, 31 Phil., 469; *Rubiso vs. Rivera*, 41 Phil., 39).

It cannot be assumed that the petitioners were present when the case was called for hearing and that they actually took part in the compromise merely because it is stated in the judgment that the parties were present when the compromise was submitted, for the following reasons: First, because it clearly appears from the petition under oath and the affidavits in support thereof that they were not really present and, second, because it irrefutably appears from the compromise that they neither took part therein nor signed the document executed to that effect. Inasmuch as the judgment is based upon the compromise and the compromise incorporated into the judgment, this court must base its conclusions upon the real contents of the compromise. It should not be understood, however, that the statement of facts contained in the judgment is ignored. In this case, it is the duty of this court to reconcile and complete the facts in order to do justice to all the parties.

As the judgment in question is null and void ab initio, it is evident that the court acquired no jurisdiction to render it, much less to order the execution thereof. Consequently, certiorari lies in favor of the petitioners as it is clear that against said judgment there is no longer any plain, speedy, and adequate remedy in the ordinary course of law (section 217, Code of Civil Procedure; *Springer vs. Odlin*, 3 Phil., 344; *Gala vs. Cui and Rodriguez*, 25 Phil., 522; *Government of the Philippine Islands vs. Judge of First Instance of Iloilo and Bantillo*, 34 Phil., 157).

Inasmuch as the judgment in question is null and void ab initio, the petitioners were entitled to impugn it when the execution thereof was sought and it was the duty of the court to hear the evidence tending to disclose and determine its validity. A judgment, which is null and void ab initio, rendered by a court without jurisdiction to do so, is without legal efficacy and may properly be impugned in any proceeding by the party against whom it is sought to be enforced (*Rich vs. Mentz*, 134 U. S., 632; *Kansas City, etc., R. Co. vs. Morgan*, 76 Fed., 429; *Hatch vs. Ferguson*, 68 Fed., 43; *Oswald vs. Kampmann*, 28 Fed., 36; *Carter vs. Atkinson*, 77 S. E., 370; *Hawk vs. Day*, 126 N. W., 955; *In re Phillips*, 122 N. W., 554; *Condit vs. Condit*, 168 Pac., 456; *Puckett vs. Wynns*, 178 S. W., 1184; *Alexander vs. Montpelier*, 71 A., 720; *Ferrell-Michael Abstract, etc., Co. vs. McCormac*, 184 S. W., 1081).

For the foregoing reasons, the remedy prayed for is granted the decision of July 29, 1935, and the order of August 17, 1936, in question are declared null and void and are set aside in so far as they affect the petitioners, and the

writ of preliminary injunction issued becomes final, with costs to the plaintiffs-respondents Chua Lin and Keh It. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, and Laurel, JJ., concur.

DISSENTING

CONCEPCION, J.,

I regret to have to dissent from the majority opinion although I have great respect for it.

It is sought to prevent by means of certiorari the execution of a perfectly valid and legal judgment. The respondents Chua Lin and Keh It brought an action against Eduardo Zafra de Alviar (Eduardo Zafra Amor), Antonia Zafra de Alviar and Paulino Alviar, for the recovery of a certain sum of money. The petitioners, defendants therein, answered the complaint and the court, on July 29, 1935, rendered judgment which reads as follows:

"When this case came up for hearing this morning, the parties, assisted by their respective counsel, submitted the following agreement for settlement:

"Come now both parties assisted by their respective attorneys and to this Hon. Court respectfully submit this compromise:

"That the defendants admit that they are indebted to the plaintiffs in the sum of one thousand two hundred fifty pesos (P1,250) secured by the mortgage which is the subject matter of the complaint.

"That the defendants shall pay this sum within a period of twelve (12) months from the date of the judgment and once said period expires, the judgment shall be executory against the mortgaged property.

"Therefore, the parties respectfully pray this Honorable Court to render judgment in, accordance with this compromise.

"Wherefore, the court hereby approves the foregoing agreement and renders judgment in accordance with the precise terms thereof, without special pronouncement as to costs."

One year later, or in July 1936, the plaintiffs, respondents herein, asked for the issuance of a writ of execution of the judgment in question and on the 30th of said month the defendants, petitioners herein, Antonia Zafra de Alviar and Paulino Alviar, filed a motion in opposition to the issuance of the writ alleging that they had neither signed nor authorized anybody to sign for them' the compromise inserted in the court's decision. On August 17th, the motion was denied on the ground that the validity or illegality of the judge's decision was a question of evidence and that said decision could only be impugned in another proceeding, not by means of a motion because the decision has already become final. The petitioners asked for reconsideration of the court's order, which was denied. Hence this petition.

After examining the above-quoted decision of the court, there is nothing therein which shows, at first sight, any defect of nullity. To all appearances it is a valid and legal decision.

That the court had jurisdiction not only over the parties but also over the subject matter of the litigation and that the petitioners had the opportunity to be heard before judgment was rendered, are facts clearly appearing in the decision itself. The majority opinion, however, concludes that it clearly appears from the petition under oath and the affidavits in support thereof that the petitioners were not really present at the hearing and that it irrefutably

appears from the compromise that they neither took part therein nor signed the document executed to that effect, stating further that "as the judgment in question is null and void ab initio, it is evident that the court acquired no jurisdiction to render it, much less to order the execution thereof. Consequently, certiorari lies * * *

I cannot agree with the majority to that manner of appreciating the questions involved herein. Granting that the petitioners have neither signed nor authorized anybody to sign the compromise for them, I have to say in this connection:

- That the alleged fact that they did not sanction the compromise, by themselves, or by attorney authorized to that effect, does not destroy the court's assertion in the judgment that the petitioners and the plaintiffs appeared before it during the hearing and submitted the compromise for approval. The decision reads: "When this case came up for hearing this morning, the parties, assisted by their respective counsel, submitted the following agreement for settlement." (Underscoring ours.) If they presented the compromise and asked the court to render judgment thereon, I do not see how said judgment can be characterized as null and void ab initio. Any defect of nullity in the compromise has been cured, and the compromise thereby validated, by the mere fact that the parties presented it and asked the court to render judgment in accordance therewith.

- The petitioners deny that they appeared before the court during the hearing. This is a matter not revealed by an examination of the record. On the contrary, it appears from the record that they were present during the hearing. Then where is the judgment's defect of nullity ab initio?

- If it is true that the petitioners did not appear before the court during the hearing, may they allege such fact in a motion to oppose the execution of the judgment and ask incidentally the annulment thereof? No. Is it sufficient to present affidavits in support of the motion? Absolutely not, because * * *.

"At the common law a domestic judgment could not be collaterally impeached or called in question if rendered in a court of competent jurisdiction, but must be attacked directly by writ of error, petition for new trial, or by bill in chancery, and the general rule at the present time is that a judgment or decree of a court of competent jurisdiction cannot be impeached collaterally in any other court for errors at law or irregularities in practice. Judgments which are merely voidable cannot be collaterally attacked, and until set aside in a proper proceeding for the purpose, possess all the attributes of valid judgments. The reason for the rule prohibiting the making of a collateral attack on a judgment of a court having jurisdiction is that public policy forbids an indirect collateral contradiction or impeachment of such a judgment." (15 R. C. L., 835-837.)

"A judgment rendered by a court having jurisdiction of the parties and the subject matter, unless reversed or annulled in some proper proceeding, is not open to contradiction or impeachment, in respect to its validity, verity, or binding effect, by parties or privies, in any collateral action or proceeding, except for fraud in its procurement. Even if the judgment is voidable, that is, so irregular or defective that it would be set aside or annulled on a proper direct application for that purpose, it is well settled as a general rule that it is not subject to collateral impeachment so long as it stands unreversed and in force." (34 C. J., 511-513.)

The motion presented in court by the petitioners is a collateral attack upon the judgment.

"A collateral attack upon a judgment has been defined to mean any proceeding in which the integrity of a judgment is challenged, except those made in the action wherein the judgment is rendered or by appeal, and except suits brought to obtain decrees declaring judgments to be void ab initio." (15 R. C. L., 838.)

The foregoing principles are not unknown in this jurisdiction. In the case of *Ledesma vs. Boronila* (9 Phil., 119, 120), this court said:

"It is maintained that it does not appear from the record that the surety, Vicenta Jalbuena, was made a formal

party to the action either by service of summons or by appearance by attorney. (Act No. 190, sees. 396 and 397.) However this may be, we are not called upon to decide the point in this action for the reason that she has not appealed from the judgment entered against her and its validity must consequently be left to be determined in other proceedings."

In the case of *Banco Espanol-Filipino vs. Palanca* (37 Phil., 921, 949), this court said:

"But the judgment in question is not void in any such sense. It is entirely regular in form, and the alleged defect is one which is not apparent upon its face. It follows that even if the judgment could be shown to be void for want of jurisdiction, or for lack of due process of law, the party aggrieved thereby is bound to resort to some appropriate proceeding to obtain relief. Under accepted principles of law and practice, long recognized in American courts, a proper remedy in such case, after the time for appeal or review has passed, is for the aggrieved party to bring an action to enjoin the judgment, if not already carried into effect; or if the property has already been disposed of he may institute suit to recover it. In every situation of this character an appropriate remedy is at hand; and if property has been taken without due process, the law concedes due process to recover it." (Underscoring ours.)

Therefore the remedy afforded to the petitioners to attack the alleged nullity of the judgment in question, not having appealed therefrom for one reason or other, is not the motion presented to the court, but an ordinary action brought in said court for such purpose. Consequently, I am of the opinion that the writ of certiorari applied for must be denied.

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