

TEODORA DOMINGO AND MARIANO SANTOS, AS JUDICIAL ADMINISTRATOR OF THE ESTATE OF THE DECEASED ANTONIO MANUEL, PETITIONERS, VS. MARGARITA DAVID, RESPONDENT.*G.R. Nos. 45705-45707. May 23, 1939*

Ponente: IMPERIAL, J.

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The petitioners ask in their petition for certiorari that we review and reverse the decision rendered in the cases by the Court of Appeals, reversing in turn that of the Court of First Instance of Manila which held valid the judgment rendered by said court in civil case No. 43654, sentenced the petitioners, in civil case No. 46982 of the same court, to pay the respondent, jointly and severally, the sum of P1,000, with interest thereon at 12 per cent per annum, from June 18, 1931, plus P200 by way of attorney's fees, and the costs, and ordered that said amounts be paid within thirty days from the finality of the judgment and, in default thereof, that the two rings pledged be sold at public auction and the proceeds thereof applied to the payment of the aforesaid sums of money.

Civil case No. 43655 (G. R. No. 45705 of this court) was commenced by the respondent in the Court of First Instance of Manila to recover from the petitioners the amount of P1,000, being the amount of a note signed by the spouses Antonino Manuel and Teodora Domingo, plus interest thereon at 12 per cent per annum and the penalty of P200 by way of attorney's fees and cost of collection. Due to the death of Antonino Manuel, the petitioner Mariano Santos was joined as his judicial administrator appointed by the court. In this case the court rendered judgment absolving the petitioners from the complaint, and this is the judgment which was reversed by the Court of Appeals which sentenced the said petitioners in the manner above-indicated.

Civil case No. 46982 of the Court of First Instance of Manila (G. R. No. 45707 of this court) was instituted by the petitioners to annul the judgment which said court rendered the civil case No. 43654, a judgment which foreclosed the mortgages upon which the complaint was based and ordered the petitioners to pay to the respondent the sum of P4,000 and, in default thereof, to sell at public auction the encumbered real property. In the said case the court rendered judgment nullifying that rendered in the said civil case No. 43654 and said judgment is the one reversed by the Court of Appeals.

While these cases were on appeal to the Court of Appeals, they were assigned, in accordance with the rules, to the First Division thereof composed of Justices Concepcion, Moran, Sison, Paras and Albert and were set for oral argument on July 24, 1936. After the oral arguments, the cases were submitted for decision. However, the First Division did not consider, vote, or decide the cases, and they were thus left undecided. On January 28, 1937, while these cases were still pending decision, the Court of Appeals adopted a resolution effective on February 1st of the same year, changing the composition of its divisions. Under the said resolution, the Second Division was composed of Justices Moran, Imperial, Bengzon, Padilla and Lopez Vito and to this Division was assigned the consideration and decision of the said cases. After studying and voting them, the Second Division promulgated the joint decision appealed from on July 29, 1937.

The petitioners contend in their first assigned error that the decision thus promulgated by the Second Division is null and void because it was signed by Justices who, with the exception of Justice Moran, have not heard the oral arguments therein made, and that the cases were decided without affording them the due process of law. This same question was submitted on motion for reconsideration and the Court of Appeals denied it as untenable. We believe and so hold that the contention is indefensible and unsupported by law. Rule 31 of the Rules of this Court, adopted by the Court of Appeals as a part of their Rules, provides:

"31. All matters submitted to the court for its consideration and adjudication will be deemed to be submitted for consideration and adjudication by any and all of the justices who are members of the court at the time when such matters are taken up for consideration and adjudication, whether such justices were or were not members of the court and whether they were or were not present at the date of submission: Provided, That only those members present when any matter is submitted on oral argument will take part in its consideration and adjudication, if the parties, or either of them, express a desire to that effect in writing filed with the clerk at the date of submission."

Under this rule, the cases submitted to the divisions of which the Court of Appeals is composed for its consideration and adjudication or decision, are deemed submitted for the same purpose to all the members composing the said court, whether or not they have been members thereof on the date when the said cases have submitted; and only those members present when the cases are submitted on oral argument will take part in its consideration and adjudication, if the parties, or either of them, so ask in writing. The rule is squarely applicable to the case because it is undeniable that none of the parties has asked in writing, or otherwise, that only the members of the Court of Appeals who were present during the oral argument should consider and decide the cases. The rules of the Court of Appeals, when not contrary to any legal provision, have the force of law and are binding upon the parties litigant (*Paterno vs. City of Manila*, 17 Phil., 26; *Ynchausti & Co. vs. De Leon*, 24 Phil., 224; *Shioji vs. Harvey*, 43 Phil., 333).

The petitioners cite section 145-K of Commonwealth Act No. 3 in their insistence that the Second Division of the Court of Appeals did not afford them due process of law when it decided the cases without giving them the benefit of oral argument, because the former oral argument took place before the First Division. This contention is likewise without merit. To show this lack of merit, it would suffice to cite the aforementioned Rule 31 which expressly permits the consideration and decision of submitted cases by members of the Court of Appeals who have not been present at the oral argument, unless the contrary is so requested in writing by the parties or by any of them. But there is also another reason justifying Rule 31 and showing the unsoundness of the contention. Commonwealth Act No. 3 and its amendment, No. 259, contains no provision defining the hearing required to be granted to parties in appealed cases submitted to the Court of Appeals for decision. The hearing required by these laws is the same as that required in cases appealed to the Supreme Court and differs from the trial held in Courts of First Instance where evidence is adduced by the parties. The hearing in the Court of Appeals and in the Supreme Court is held upon the record, the bill of exceptions or record on appeal and the briefs, and a case is deemed heard and submitted after it has been included in the calendar of hearings and this has been read or published on the dates fixed by law, unless during the reading of the calendar the parties or their counsel ask for oral argument, in which event the case will not be deemed submitted until after such oral argument (*Serra vs. Mortiga*, 204 U. S., 470, 11 Phil., 762).

After the promulgation of the decision of the court in civil case No. 43654 and within the six months following, the petitioners filed a motion under section 113 of the Code of Civil Procedure and asked that the said decision be set aside on the ground that the same had been obtained by the respondent through fraud. The fraud is made to consist in the same facts alleged in the action subsequently instituted to annul the said decision, that is, that the mortgage deeds on which the decision is based are fictitious and fraudulent. The court denied the motion and the

petitioners did not appeal from the order of denial. The Court of Appeals held in its appealed decision that the failure to appeal said order is a bar to the action for nullity of the judgment. The petitioners alleged in their second assigned error that this ruling is erroneous because the remedy granted by section 113 is cumulative and could be availed of without thereby losing their right to the action for nullity. In the cases of *Banco Espanol-Filipino vs. Palanca* (37 Phil., 921), and *Philippine Manufacturing Co. vs. Imperial* (47 Phil., 810), we have held that an order denying a motion under section 113 is appealable; but it seems plain that the denial of said motion is not a bar to the institution of the action for nullity of judgment based upon fact that this has been fraudulently obtained. This is more obvious, considering that fraud is not one of the causes or grounds mentioned by section 113, namely, error, inadvertence, surprise or excusable neglect on the part of the applicant. But the assignment of error is of no consequence in view of our ruling on the following assigned errors.

In their third assigned error, the petitioners allege that the Court of Appeals erred in holding, in turn, that the decision of the court which held null and void that rendered in civil case No. 43654 is erroneous. In the fourth assigned error it is contended that the Court of Appeals erred in denying the petitioners' equitable remedy upon the sole ground that the alleged fraud is not extrinsic. And in the fifth assigned error it is contended that the Court of Appeals erred in not holding that the petitioners are entitled to the equitable remedy on the ground of newly discovered evidence. These three assignments of error which the attorney for the petitioners tries to substantiate jointly, raise the sole question of whether or not the action for nullity of the decision rendered in civil case No. 43654, based upon the ground of fraud, lies. The Court of Appeals resolved the question in the negative and adversely to the petitioners because it found that the facts established that the alleged fraud was not extrinsic or collateral inasmuch as it had been controverted and decided in the said civil case. And it was not extrinsic because in that case the petitioners had already alleged the same fraud and had made it to consist in the falsity of the mortgage deeds and in the fact that the loans which they guaranteed were fictitious because the money had never been received by them, and the action subsequently commenced by the petitioners to nullify the judgment was based upon the same facts or grounds, that is, that the judgment sought to be nullified had been obtained fraudulently by the respondent as the mortgage deeds upon which it was based were fraudulent and fictitious. The legal conclusion thus reached by the Court of Appeals is correct and finds support in the jurisprudence uniformly established in this jurisdiction. An action to annul a judgment, on the ground of fraud, will not prosper unless the fraud be extrinsic or collateral and the facts constituting it have not been controverted or decided in the case where the judgment sought to be annulled was rendered (*Anuran vs. Aquino and Ortiz*, 38 Phil., 29; *Javier vs. Paredes and Gregorio*, 52 Phil., 910). The petitioners argue that the questions in the two cases are distinct and separate because the first had to do with the falsity of the mortgage deeds, whereas, the second alleged as a ground for nullity the fraud availed of by the respondent to obtain the judgment. We find no weight in the argument. Under the facts found established by the Court of Appeals, which this court cannot disturb, in the first as well as in the second case the falsity of the mortgage deeds and the fictitious loan were the questions raised and submitted by the petitioners and the court decided said questions in favor of the respondent. The cause of action of the second case could not be different from that of the first because the fraud attributed to the respondent was made to consist in the falsity of the same mortgage deeds and this falsity is what the petitioners claim to be the fraudulent means availed of by the respondent to secure the judgment sought to be annulled.

As to the allegation that the judgment should be annulled at least on the strength of the newly discovered evidence, Exhibits 1 to 41 and 44 to 55, we are of the opinion that the alleged newly discovered evidence does not change the result of the cases and the doctrine laid down on the subject. On the other hand, the Court of Appeals held that a consideration of said evidence would not alter the facts found to have been established.

In the sixth assignment of error it is contended that the defense of *res judicata* interposed by the respondent and sustained by the Court of Appeals should not have been sustained. We hold that the facts upon which the

petitioners base the alleged fraud have already been raised, discussed and decided by the court in the first case where the judgment sought to be annulled was rendered, the parties therein being the same as those who have intervened in the second, and that the judgment thus rendered is res judicata with respect to the second case.

In the seventh and last assigned error the petitioners contend that the Court of Appeals erred in reversing the decision of the Court of First Instance. In view of what has been said, it is obvious that the Court of Appeals did not commit the alleged error, because the decision which it rendered, as above shown, is in accordance with the facts and the law.

In view of the foregoing, the petition for certiorari is denied, with the costs to the petitioners. So ordered.

Avanceña, C, J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

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