

FIRST DIVISION

[G.R. No. 138518, December 15, 2000]

MARCELINA GACUTANA-FRAILE, PETITIONER, VS. ANGEL T. DOMINGO, BENJAMIN T. DOMINGO, ATTY. JORGE PASCUA AND THE PRESIDING JUDGE, RTC BRANCH 33, GUIMBA, NUEVA ECIJA, RESPONDENTS.

D E C I S I O N

PUNO, J.:

Does a lawyer's bungling of a case amount to extrinsic fraud sufficient to annul judgment?

The case at bar is a petition for review of the Court of Appeals resolutions dated March 10, 1999 and April 29, 1999 denying petitioner Fraile's petition for annulment of judgment^[1] rendered by the respondent judge of Branch 33, Regional Trial Court (RTC) of Guimba, Nueva Ecija.

The dispute over the ownership of a parcel of land in Trialala, Guimba, Nueva Ecija measuring 15 hectares, 2 ares and 39 centares spurred the present controversy.

The facts show that on March 29, 1996, petitioner Fraile filed a civil case for Quieting of Title and Damages against private respondents Angel T. Domingo and Benjamin T. Domingo, involving three parcels of land registered in her name under Transfer Certificates of Title (TCT) Nos. NT-229541, NT-229542 and NT-229543 of the Registry of Deeds of Nueva Ecija. The case was raffled to Branch 33 of the RTC of Guimba, Nueva Ecija and docketed as Civil Case No. 879-G. On August 11, 1997, while Case No. 879-G was pending, the private respondents Domingos also filed a case for Quieting of Title against petitioner Fraile involving the same parcels of land. The latter case was also assigned to the respondent judge and docketed as Civil Case No. 955-G.

Petitioner Fraile hired private respondent Atty. Jorge Pascua as counsel for both Civil Cases Nos. 879-G and 955-G. On September 1, 1997, Atty. Pascua filed a Motion to Dismiss Civil Case No. 955-G not on the ground of the pendency of Civil Case No. 879-G involving the same parties, subject matter and issues, but because of a decision earlier rendered by the RTC of Guimba, Nueva Ecija, reconstituting Fraile's titles over the subject parcels of land. Respondent judge deferred ruling on the motion and instead ordered the joint hearing of the cases. During the pre-trial conference, Atty. Pascua prevailed upon the petitioner Fraile to withdraw her Motion to Dismiss Civil Case No. 955-G as it would only delay the resolution of the case.

During the joint hearings, Atty. Pascua agreed to a continuous trial and the hearings for both cases were finished within four days, or from February 16, 1998 to February 19, 1998. Atty. Pascua also allowed the private respondent Domingos to

present their evidence ahead of the petitioner even if Fraile filed her case before the Domingos filed theirs.

Subsequently, on June 2, 1998, the respondent judge rendered a decision in favor of the Domingos.^[2] Atty. Pascua received a copy of the decision and on the last day for filing an appeal, filed a Notice of Appeal and Motion for Reconsideration of the adverse decision. In an Order dated July 23, 1998, respondent judge dismissed the Notice of Appeal and denied the Motion for Reconsideration for lack of proof of service to the adverse party and written explanation why service or filing thereof was not done personally, in violation of Rule 13 of the 1997 Rules of Civil Procedure.^[3] The pleadings likewise lacked a notice of hearing. The Notice of Appeal also failed to comply with Sec. 5, Rule 41 of the 1997 Rules of Civil Procedure because it failed to specify the court to which the appeal was being taken.^[4] Docketing fees were also not seasonably paid upon filing of the Notice of Appeal.^[5] On August 8, 1998, Atty. Pascua filed another Motion for Reconsideration, but the motion was again denied for the same formal infirmities of the first Motion for Reconsideration.

As Atty. Pascua did not challenge the Orders dated July 23, 1998 and August 8, 1998, the trial court issued on October 15, 1998 a Writ of Execution of the June 2, 1998 decision. Consequently, petitioner Fraile's TCT's over the subject parcels of land were cancelled by the Register of Deeds of Nueva Ecija. Appalled by the outcome of her cases, Fraile hired another lawyer, Atty. Renato M. Esguerra, and subsequently filed with the Court of Appeals a petition for annulment of the June 2, 1998 judgment citing the procedural lapses allegedly amounting to extrinsic fraud committed by her previous counsel, Atty. Pascua, viz:^[6]

"The manner by which the cases were handled by petitioner's counsel, Atty. Jorge A. Pascua, by not filing a Motion to Dismiss Civil Case No. 955-G despite the pendency of Civil Case No. 879-G involving the same parties and the same subject matter; in filing a motion to dismiss instead based on an unfounded ground which is the reconstitution of petitioner's title which motion was later on withdrawn by petitioner's counsel himself; in consenting for (sic) a joint-trial which only lasted for four (4) days; in allowing private respondents Angel T. Domingo and Benjamin T. Domingo in presenting (sic) their evidence ahead of the petitioner despite the fact that their case was filed later than the case filed by herein petitioner; in filing a defective notice of appeal and defective motions for reconsideration and in not elevating nor advising herein petitioner to elevate said orders to the higher court for review are not MERE negligence on the part of petitioner's counsel but said acts constitute EXTRINSIC FRAUD deliberately done, **in connivance with private respondents Angel and Benjamin Domingo**, designed to defeat the cause of herein petitioner and to deprive her of her right to due process." (emphasis supplied)^[7]

On March 10, 1999, the Court of Appeals dismissed the petition on the ground that the negligence of Atty. Pascua did not constitute extrinsic fraud, the remedy of Petition for Relief was not used in violation of Sec. 2, Par. 2, Rule 47 of the 1997 Rules of Civil Procedure,^[8] and affidavits of witnesses supporting her cause of action

were not submitted by petitioner as required by Sec. 4, Rule 47 of the 1997 Rules of Civil Procedure.^[9] The petitioner filed a Motion for Reconsideration of the March 10, 1999 resolution, but this was likewise denied for lack of merit in a resolution promulgated on April 29, 1999. Hence, this petition for review on *certiorari* assailing the appellate court's March 10, 1999 and April 29, 1999 resolutions with the following assignment of errors:

"I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE ACTS OR OMISSIONS OR PROCEDURAL LAPSES BY ATTY. JORGE PASCUA IN THE HANDLING OF PETITIONER'S CASE ARE NOT GROSS AND PALPABLE ENOUGH AS TO CONSTITUTE EXTRINSIC FRAUD.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE PETITIONER SHOULD HAVE FIRST AVAILED OF AND FILED A PETITION FOR RELIEF FROM JUDGMENT UNDER RULE 38 OF THE 1997 RULES OF CIVIL PROCEDURE.

III

THE HONORABLE COURT APPEALS (SIC) GRAVELY ERRED IN NOT CONSIDERING THE VERIFICATION AND EVIDENCE ON RECORD AS SUBSTANTIAL COMPLIANCE WITH SECTION 4 RULE 47 OF THE 1997 RULES OF CIVIL PROCEDURE."^[10]

The applicable rule is Rule 47 of the 1997 Rules of Civil Procedure, viz:

"Section 1. Coverage. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Section 2. Grounds for annulment. - The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

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Section 4. Filing and contents of petition. - The action shall be commenced by filing a verified petition alleging therein with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or

defense, as the case may be.

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The petitioner shall also submit together with the petition affidavits of witnesses or documents supporting the cause of action or defense . . . "

Applying the foregoing rule to the case at bar, we find that petitioner Fraile's allegation of extrinsic fraud committed by her former counsel, Atty. Pascua, and the evidence presented in support thereof do not warrant a reversal of the appellate court's March 10, 1999 and April 29, 1999 resolutions.

It is well-settled that "(i)n order for fraud to serve as basis for annulment of a judgment, it must be extrinsic or collateral in character, otherwise there would be no end to litigations. Extrinsic fraud refers to any fraudulent act of the **prevailing party which is committed outside the trial of the case**, whereby the defeated party has been prevented from exhibiting fully his side of the case, by fraud or deception practised on him by his opponent."^[11] Thus, it "refers to some act or conduct of the **prevailing party** which has prevented the aggrieved party from having a trial or presenting his case to the court, or was used to procure judgment without a fair submission of the controversy." (emphasis supplied)^[12] This Court has not just once ruled that the fraud must be committed by the **adverse party and not by one's own counsel**.^[13]

Petitioner's allegation that the acts of Atty. Pascua constitute extrinsic fraud "deliberately done **in connivance with private respondents Angel and Benjamin Domingo**, designed to defeat the cause of herein petitioner and to deprive her of her right to due process" (emphasis supplied)^[14] is merely a conclusion drawn by petitioner Fraile and does not find support in the evidence on record. To impute negligence on her counsel is one thing, to prove that such negligence was in collusion with the private respondents is another. We cannot therefore subscribe to petitioner Fraile's contention.

On the other hand, the doctrinal rule is that the negligence of counsel binds the client because otherwise, "there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned."^[15] We have, however, carved out exceptions to this rule as where the reckless or gross negligence of counsel deprives the client of due process of law, or where the application of the rule will result in outright deprivation of the client's liberty or property or where the interests of justice so require and relief ought to be accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.^[16] What must be determined therefore is whether the instant case falls under the above exceptions.

The Court of Appeals found that while the acts or omissions of Atty. Pascua may have been "indicative of professional lapses, inefficiency, carelessness and negligence," they constituted merely simple negligence and not gross or palpable negligence amounting to extrinsic fraud which would deprive her of her day in court.

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