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SECOND DIVISION

[G.R. No. L-29300. June 21, 1978]

PEDRO D. H. GALLANOSA, CORAZON GRECIA-GALLANOSA and ADOLFO FORTAJADA, the deceased Pedro Gallanosa being substituted by his legal heirs, namely, his above-named widow and his children, ISIDRO GALLANOSA and LEDY GALLANOSA, and grandchildren named IMELDA TECLA GALLANOSA and ROSARIO BRIGIDA GALLANOSA, children of the late SIKATUNA GALLANOSA. son of Pedro D.H. GALLONOSA, *petitioners, vs.* **HON. UBALDO Y. ARCANGEL, Judge of Branch I of the Court of First Instance of Sorsogon and FLORENTINO G. HITOSIS, CASIANO G. HITOSIS, TEOTIMO G. HITOSIS, VICTORIO G. HITOSIS VDA. DE CRUZ, JOAQUIN R. HITOSIS VDA. DE CRUZ, JOAQUIN R. HITOSIS, FLORENTINO R. HITOSIS, VIRGINIA R. HITOSIS, DEBORAH R. HITOSIS, EDILBERTO R. HITOSIS, LEONOR R. HITOSIS, NORMA R. HITOSIS-VILLANUEVA, LEONCIO R. HITOSIS, minors ANGEL R. HITOSIS and RODOLFO R. HITOSIS, represented by their legal guardian and mother LOURDES RELUCIO VDA. DE HITOSIS, PETRONA HITOSIS-BALBIDO, MODESTO HITOSIS-GACILO, CLETO HITOSIS, AGUSTIN HITOSIS-FORTES, TOMASA HITOSIS-BANARES VDA. DE BORRAS, CONRADA HITOSIS-BANARES FRANCHE, RESTITUTO HITOSIS-BANARES, DAMIAN HITOSIS-BAÑARES, FIDEL HITOSIS-BAÑARES, SUSANA HITOSIS-BAÑARES RODRIGUEZ, JOSE HITOSIS, LOLITA HITOSIS-BANEGA, minors MILAGROS HITOSIS-BANEGA, ALICIA HITOSIS-BANEGA AND ELISA HITOSIS-BAÑEGA, represented by their legal guardian and father ERNESTO BAÑEGA,**

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FELICITAS HITOSIS-PEÑAFLOR, GENOVEVA HITOSIS-ADRIATICO, MANUEL HITOSIS, PEDRO HITOSIS, LIBRATA HITOSIS-BALMES, JUANITA HITOSIS-GABITO VDA. DE GABAS, MAURA HITOSIS-GABITO VDA. DE GAÑOLA and LEONA HITOSIS-GABITO GAMBOA, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; APPLICABLE IN CASE AT BAR.**— It is not only the 1939 probate proceeding that can be interposed as *res judicata* with respect to private respondents complaint. The 1952 order of dismissal rendered by Judge Mañalac in Civil Case No. 696, a judgment in *personam,* was an adjudication on the merits (Sec. 4, Rule 30, old Rules of Court). It constitutes a bar by former judgment under the aforequoted section 49(b). (*Anticamara vs. Ong*, L-29689, April 14, 1978). The plaintiffs or private respondents did not even bother to ask for the annulment of the testamentary proceeding and the proceeding in Civil Case No. 696. Obviously, they realized that the final adjudications in those cases have the binding force of *res judicata* and that there is no ground, nor is it timely, to ask for the nullification of the final orders and judgments in those two cases. It is a fundamental concept in the organization of every jural system, a principle of public policy, that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law.

2. **CIVIL LAW; CIVIL CODE; PRESCRIPTION; ARTICLE 1410 DOES NOT APPLY TO LAST WILLS AND TESTAMENTS.**— Article 1410 cannot possibly apply to last wills and testaments. The trial court and plaintiffs' counsel relied upon the case of *Dingle vs. Guillermo*, 48 O.G. 4410, allegedly decided by this Court, which cited the ruling in *Tipton vs. Velasco*, 6 Phil. 67, that mere lapse of time cannot give efficacy to void *contracts*, a ruling elevated to the category of a codal provision in article 1410. The *Dingle* case was decided by the Court of Appeals. Even the trial court did not take pains to verify the misrepresentation of plaintiffs' counsel that the *Dingle* case was decided by this Court. An elementary knowledge of civil law could have alerted the trial court to the egregious error of plaintiffs' counsel in arguing that article 1410 applies to wills.

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APPEARANCES OF COUNSEL

Haile Frivaldo for petitioners.
Joaquin R. Hitosis for private respondents.

D E C I S I O N

AQUINO, *J.*:

In this special civil action of *certiorari*, filed on July 29, 1968, the petitioners seek to annul the orders of respondent Judge dated May 3 and June 17, 1968, wherein he reconsidered his order of January 10, 1968, dismissing, on the ground of prescription, the complaint in Civil Case No. 2233 of the Court of First Instance of Sorsogon.

The case involves the sixty-one parcels of land in Sorsogon left by Florentino Hitosis, with an estimated value of ₱50,000, and claims for damages exceeding one million pesos. The undisputed facts are as follows:

1. Florentino Hitosis executed a will in the Bicol dialect on June 19, 1938 when he was eighty years old. He died on May 26, 1939 at Irosin, Sorsogon. A childless widower, he was survived by his brother, Leon Hitosis. His other brothers, named Juan Tito (Juancito), Leoncio (Aloncio) and Apolonio and only sister, Teodora, were all dead.

2. On June 24, 1939 a petition for the probate of his will was filed in the Court of First Instance of Sorsogon (Special Proceeding No. 3171). *The notice of hearing was duly published.* In that will. Florentino bequeathed his one-half share in the conjugal estate to his second wife, Tecla Dollentas, and, should Tecla predecease him, as was the case, his one-half share would be assigned to the spouses Pedro Gallanosa and Corazon Grecia, the reason being that Pedro, Tecla's son by her first marriage, grew up under the care of Florentino: he had treated Pedro as his foster child, and Pedro has rendered services to Florentino and Tecla. Florentino likewise bequeathed his separate properties consisting of three parcels of abaca

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land and parcel of riceland to his protege (*sasacuyang ataman*) Adolfo Fortajada, a minor.

3. Opposition to the probate of the will was registered by the testator's legal heirs, namely, his surviving brother, Leon, and his nephews and nieces. After a hearing, wherein the oppositors did not present any evidence in support of their opposition, Judge Pablo S. Rivera, in his decision of October 27, 1939, admitted the will to probate and appointed Gallanosa as executor. Judge Rivera specifically found that the testator executed his last will "*gozando de buena salud y facultades mentales y no obrando en virtud de amenaza, fraude o influencia indebida.*"

4. On October 24, 1941, the testamentary heirs, the Gallanosa spouses and Adolfo Fortajada, submitted a project of partition covering sixty-one parcels of land located in various parts of Sorsogon, large cattle and several pieces of personal property which were distributed in accordance with Florentino's will. The heirs assumed the obligations of the estate amounting to ₱7,129.27 in the portion of ₱2,376.42 for Adolfo Fortajada and ₱4,752.85 for the Gallanosa spouses. The project of partition was approved by Judge Doroteo Amador in his order of March 13, 1943, thus confirming the heirs' possession of their respective shares. The testator's legal heirs did not appeal from the decree of probate and from the order of partition and distribution.

5. On February 20, 1952, Leon Hitosis and the heirs of Florentino's deceased brothers and sister instituted an action in the Court of First Instance of Sorsogon against Pedro Gallanosa for the recovery of the said sixty-one parcels of land. They alleged that they, by themselves or through their predecessors-in-interest, had been in continuous possession of those lands *en concepto de dueño* and that Gallanosa entered those lands in 1951 and asserted ownership over the lands. They prayed that they be declared the owners of the lands and that they be restored to the possession thereof. They also claimed damages (Civil Case No. 696).

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6. Gallanosa moved to dismiss the above complaint for lack of cause of action and on the ground of bar by the prior judgment in the probate proceeding, Judge Anatolio C. Mañalac dismissed the complaint on the ground of *res judicata* in his order of August 14, 1952 wherein he said:

"It also appears that the plaintiffs and or their predecessors-in-interest had intervened in the testate proceedings in Civil Case No. 3171 of this Court for the purpose of contesting the probate of the will of (the) late Florentino Hitosis; and had their opposition prospered and the will denied of probate, the proceedings would have been converted into one of intestacy (Art. 960 Civil Code) and the settlement of the estate of the said deceased would have been made in accordance with the provisions of law governing legal or intestate succession x x x, in which case the said plaintiffs, as the nearest of kin or legal heirs of said Florentino Hitosis, would have succeeded to the ownership and possession of the 61 parcels of land in question forming part of his estate (art. 1003, Civil Code).

"However, the decision of the Court was adverse to them, when it dismissed their opposition and ordered the probate of his will. From this decision (Annex K). legalizing the said will, the oppositors did not file any appeal within the period fixed by law, despite the fact that they were duly notified thereof, so that the said decision had become final and it now constitutes a bar to any action that the plaintiffs may institute for the purpose of seeking a redetermination of their right to inherit the properties of the late Florentino Hitosis.

"In other words, the said decision of this Court in Civil Case (Special Proceeding) No. 3171, in which the herein plaintiffs or their predecessors-in-interest had intervened as parties oppositors, constitutes a final judicial determination of the issue that the said plaintiffs, as ordinary heirs, have no legal rights to succeed to any of the properties of the late Florentino Hitosis; consequently, their present claim to the ownership and possession of the 61 parcels of land in question is without any legal merit or basis."

7. The plaintiffs did not appeal from that order of dismissal which should have set the matter at rest. But the same plaintiffs or oppositors to the probate of the will, and their heirs, with a persistence befitting a more meritorious case, filed on September 21, 1967, or fifteen years after the dismissal of Civil Case No.

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696 and twenty-eight years after the probate of the will, another action in the same court against the Gallanosa spouses and Adolfo Fortajada for the "annulment" of the will of Florentino Hitosis and for the recovery of the same sixty-one parcels of land. They prayed for the appointment of a receiver.

8. As basis of their complaint, they alleged that the Gallanosa spouses, through fraud and deceit, caused the execution and simulation of the document purporting to be the last will and testament of Florentino Hitosis. While in their 1952 complaint the same plaintiffs alleged that they were in possession of the lands in question, in their 1967 complaint they admitted that since 1939, or from the death of Florentino Hitosis, the defendants (now the petitioners) have been in possession of the disputed lands (Par. XIV of the complaint, p. 70, *Rollo* in Civil Case No. 555, Gubat Branch, which was transferred to Branch I in Sorsogon town where Special Proceeding No. 3171 and Civil Case No. 696 were decided and which was re-docketed as Civil Case No. 2233).

9. As already stated, that 1967 complaint, upon motion of the defendants, now the petitioners, was dismissed by respondent Judge. The plaintiffs filed a motion for reconsideration Respondent Judge granted it and set aside the order of dismissal. He denied defendants' motion for the reconsideration of his order setting aside that dismissal order.

The petitioners or the defendants below contend in this *certiorari* case that the lower court has no jurisdiction to set aside the 1939 decree of probate and the 1952 order of dismissal in Civil Case No. 696 and that it acted with grave abuse of discretion in not dismissing private respondents' 1967 complaint.

The issue is whether, under the facts set forth above, the private respondents have a cause of action for the "annulment" of the will of Florentino Hitosis and for the recovery of the sixty-one parcels of land adjudicated under that will to the petitioners.

We hold that the lower court committed a grave abuse of discretion in reconsideration its order of dismissal and in ignoring

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the 1939 testamentary case and the 1952 Civil Case No. 696 which is the same as the instant 1967 case.

A rudimentary knowledge of substantive law and procedure is sufficient for an ordinary lawyer to conclude upon a causal perusal of the 1967 complaint that it is baseless and unwarranted.

What the plaintiffs seek is the "annulment" of a last will and testament duly probated in 1939 by the lower court itself. The proceeding is coupled with an action to recover the lands adjudicated to the defendants by the same court in 1943 by virtue of the probated will, which action is a resuscitation of the complaint of the same parties that the same court dismissed in 1952.

It is evident from the allegations of the complaint and from defendants' motion to dismiss that plaintiffs' 1967 action is barred by *res judicata* a double-barrelled defense, and by prescription, acquisitive and extinctive, or by what are known in the *jus civile* and the *jus gentium* as *usucapio*, *longi temporis possesio* and *praescriptio* (See *Ramos vs. Ramos*, L-19872, December 3, 1974, 61 SCRA 284).

Our procedural law does not sanction an action for the "annulment" of a will. In order that a will may take effect, it has to be probated, legalized or allowed in the proper testamentary proceeding. The probate of the will is mandatory (Art. 838, Civil Code, sec. 1, Rule 75, formerly sec. 1, Rule 76, Rules of Court; *Guevara vs. Guevara*, 74 Phil. 479; *Guevara vs. Guevara*, 98 Phil. 249).

The testamentary proceeding is a special proceeding for the settlement of the testator's estate. A special proceeding is distinct and different from an ordinary action (Secs. 1 and 2, Rule 2 and sec. 1, Rule 72, Rules of Court).

We say that the defense of *res judicata*, as a ground for the dismissal of plaintiffs' 1967 complaint, is a two-pronged defense because (1) the 1939 and 1943 decrees of probate and distribution in Special Proceeding No. 3171 and (2) the 1952 order of dismissal in Civil Case No. 696 of the lower court constitute bars by former judgment. Rule 39 of the Rules of Court provides:

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"SEC. 49. *Effect of judgments.* — The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

"(a) In case of a judgment or order against a specific thing, or in respect to the probate of a will or the administration of the estate of a deceased person, or in respect to the personal political, or legal condition or status of a particular person or his relationship to another, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate;

"(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating of the same thing and under the same title and in the same capacity;

"(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

The 1939 decree of probate is conclusive as to the due execution or formal validity of the will (Sec. 625, Act 190; Sec. 1, Rule 76, now Sec. 1, Rule 75, Rules of Court; Last par. of Art. 838, Civil Code).

That means that the testator was of sound and disposing mind at the time when he executed the will and was not acting under duress, menace, fraud, or undue influence; that the will was signed by him in the presence of the required number of witnesses, and that the will is genuine and is not a forgery. Accordingly, these facts cannot again be questioned in a subsequent proceeding, not even in a criminal action for the forgery of the will. (3 Moran's Comments on the Rules of Court, 1970 Edition, p. 395; *Manahan vs. Manahan*, 58 Phil, 448).

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After the finality of the allowance of a will, the issue as to the voluntariness of its execution cannot be raised anymore (*Santos vs. De Buenaventura*, L-22797, September 22, 1966, 18 SCRA 47).

In *Austria vs. Ventenilla*, 21 Phil. 180, a "petition for annulment of a will" was not entertained after the decree of probate had become final. That case is summarized as follows:

"*Wills; Probate; Alleged Fraudulent Will; Appeal.* — V. died. His will was admitted to probate without objection. No appeal was taken from said order. It was admitted that due and legal notice had been given to all parties. Fifteen months after the date of said order, a motion was presented in the lower court to have said will declared null and void, for the reason that fraud had been practiced upon the deceased in the making of his will.

"*Held*: That under section 625 of Act No. 190, the only time given parties who are displeased with the order admitting to probate a will, for an appeal is the time given for appeals in ordinary actions; but without deciding whether or not an order admitting a will to probate will be opened for fraud, after the time allowed for an appeal has expired, when no appeal is taken from an order probating a will, the heirs can not, in subsequent litigation in the same proceedings, raise questions relating to its due execution. The probate of a will is conclusive as to its due execution and as to the testamentary capacity of the testator." (See *Austria vs. Heirs of Ventenilla*, 99 Phil. 1069).

On the other hand, the 1943 decree of adjudication rendered by the trial court in the testate proceeding for the settlement of the estate of Florentino Hitosis, having been rendered in a proceeding *in rem*, is under the above quoted section 49(a), binding upon the whole world (*Manalo vs. Paredes*, 47 Phil. 938; *In re* Estate of Johnson, 39 Phil. 156; *De la Cerna vs. Potot*, 120 Phil. 1361, 1364; *McMaster vs. Hentry Reissmann & Co.*, 68 Phil. 142).

It is not only the 1939 probate proceeding that can be interposed as *res judicata* with respect to private respondents complaint. The 1952 order of dismissal rendered by Judge Mañalac in Civil Case No. 696, a judgment *in personam*, was an adjudication on the merits (Sec. 4, Rule 30, old Rules of Court). It constitutes

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a bar by former judgment under the aforequoted Section 49(b). (*Anticamara vs. Ong*, L-29689, April 14, 1978).

The plaintiffs or private respondents did not even bother to ask for the annulment of the testamentary proceeding and the proceeding in Civil Case No. 696. Obviously, they realized that the final adjudications in those cases have the binding force of *res judicata* and that there is no ground, nor is it timely, to ask for the nullification of the final orders and judgments in those two cases.

It is a fundamental concept in the organization of every jural system, a principle of public policy, that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. *Interest rei publicae ut finis sit litium.* The very object for which the courts were constituted was to put an end to controversies. (*Dy Cay vs. Crossfield and O' Brien*, 38 Phil. 521; *Peñalosa vs. Tuason*, 22 Phil. 303; *De la Cerna vs. Potot, supra*).

After the period for seeking relief from a final order or judgment under Rule 38 of the Rules of Court has expired, a final judgment or order can be set aside only on the grounds of (a) lack of jurisdiction or lack of due process of law or (b) that the judgment was obtained by means of extrinsic or collateral fraud. In the latter case, the period for annulling the judgment is four years from the discovery of the fraud (2 Moran's Comments on the Rules of Court, 1970 Edition, pp. 245-246; *Mauricio vs. Villanueva*, 106 Phil. 1159).

To hurdle over the obstacle of prescription, the trial court, naively adopting the theory of plaintiffs' counsel, held that the action for the recovery of the lands had not prescribed because the rule in article 1410 of the Civil Code, that "the action of defense for the declaration of the inexistence of a *contract* does not prescribe," applies to *wills*.

That ruling is a glaring error Article 1410 cannot possibly apply to last wills and testaments. The trial court and plaintiffs' counsel relied upon the case of *Dingle vs. Guillermo*, 48 O.G. 4410, allegedly decided by this Court, which cited the ruling in

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Tipton vs. Velasco, 6 Phil. 67, that mere lapse of time cannot give efficacy to void contracts, a ruling elevated to the category of a codal provision in Article 1410. The *Dingle* case was decided by the Court of Appeals. Even the trial court did not take pains to verify the misrepresentation of plaintiffs' counsel that the *Dingle* case was decided by this Court. An elementary knowledge of civil law could have alerted the trial court to the egregious error of plaintiffs' counsel in arguing that Article 1410 applies to wills.

WHEREFORE, the lower court's orders of May 3 and June 17, 1968 are reversed and set aside and its order of dismissal dated January 10, 1968 is affirmed. Costs against the private respondents.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, and *Santos, JJ.*, concur.

Concepcion Jr., J., is on leave.

FIRST DIVISION

[G.R. No. L-36821. June 22, 1978]

JOSE P. DIZON, *petitioner, vs.* **ALFREDO G. GABORRO (Substituted by PACITA DE GUZMAN GABORRO as Judicial Administratrix of the Estate of Alfredo G. Gaborro) and the DEVELOPMENT BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; CONTRACTS; REFORMATION; MISTAKE AS A GROUND THEREOF, DISCUSSED.— Mistake