ALANSO PHILLIP, Appellant

v.

MERITE CARL, Appellee

Civil Appeal No. 31

Appellate Division of the High Court

April 16, 1969

Trial Court Opinions-3 T.T.R. 97, *330*

Appeal from judgment ordering specific performance of an agreement for settlement of an earlier dispute. The Appellate Division of the High Court, H. W. Burnett, Associate Justice, held that previous order of dismissal was

in effect a consent judgment and that a consent judgment, being an agreement between the parties, could not be expanded or contracted by the court and that if a consent judgment were to be set aside it must be set aside in its entirety.

1. Judgments-Res Judicata-Consent Judgments

   Though titled "Order of Dismissal", where the order incorporated the then known terms of the settlement, it was equivalent to a consent judgment and was clearly res judicata.

2. Judgments-Relief From Judgment

   Civil Rule 18e, taken from Rule 60(b), Federal Rules of Civil Procedure, is to be liberally construed so that judgments will reflect the true merits of a case.

3. Judgments-Consent Judgments-Modification

   It is a general rule that in a case where a consent judgment may be set aside for cause, it must be set aside in its entirety.

4. Judgments-Consent Judgments-Modification

   A party cannot attack provisions of a consent decree unfavorable to him and successfully contend that those in his favor should be allowed to stand, and the court has no power to make a ruling to this effect.

5. Judgments-Consent Judgments-Generally

   A consent decree represents an agreement by the parties which the court cannot expand or contract.

Counsel for Appellant: CARLES PHILLIP
Counsel for Appellee: YOSTER CARL

Before TURNER and BURNETT, *Associate Justices,* CLIFTON, *Temporary Judge*

BURNETT, *Associate Justice*

This is an appeal from judgment entered in Ponape District Civil Action No. 273, 3 T.T.R. 97, 330, which ordered specific performance of an agreement for settlement of an earlier dispute between the parties and dismissal of Ponape District Civil Action No. 261. While the Order of Dismissal of Civil Action No. 261 incorporated the parties' agreement and stipulation for dismissal, both litigants and the court have compounded confusion in this

action by ignoring the order and proceeding as though the cause were in contract.

Appellant takes no issue with the trial court's findings of fact. He contends, however, that the court erred in construing the action to be one for specific performance, and in not revoking a conveyance of land to Appellee made as a part of the Civil Action No. 261 settlement agreement.

Civil Action No. 261 was called for pre-trial conference on April 8, 1965, before Associate Justice Paul F. Kinnare, at which time the parties submitted a written stipulation setting forth an agreement for settlement and dismissal of the action. The Order of Dismissal, entered April 8, 1965, incorporated the stipulation and further recited:-

> "The ,parties amplified the stipulation by making it clear that defendant Alanso Phillip quitclaims to plaintiff Merite Carl all of his right, title, and interest in the land known as Wounsapw Mwahu, located in Mesisou Section of Madolenimhw Municipality, and plaintiff Merite Carl quitclaims to defendant all her right, title and interest in and to the land known as Ipwal, located in Ipwal Section of Sokehs Municipality."

Nothing appears of record to indicate any effort either to vacate or to modify the Order of Dismissal in that action.

On July 21, 1965, however, the appellant (defendant in Civil Action No. 261) filed a complaint in this action. He made no reference to the earlier case, but recited that defendant-appellee had notified him in writing that he should no longer enter the land Wounsapw Mahu, "which. I have allowed her to own" and, among other things, claimed that she should no longer be allowed to own that land. Appellee thereafter moved to dismiss on the grounds that the stipulation for dismissal of Civil Action No. 261 involved the same land and that the parties were bound thereby.

Hearing on the motion was held before Associate Justice Goss January 12, 1966; both parties were represented by

counsel who agreed that both Civil Action No. 261 and No. 273, 3 T.T.R. 97, 330, concerned the same land. Nothing appears in the Record of Hearing to show that there was any intimation by appellant that the stipulation of the parties did not constitute the entire agreement, and Justice Goss dismissed, holding that the matter was res judicata. This Order of Dismissal was entered January 14, 1966. On May 4 appellant filed a motion for reconsideration, supplemented by affidavit of May 20, and asserted for the first time that the stipulation was coupled with an oral agreement that appellee would support him from the land, and that appellee had violated that agreement.

Chief Justice Furber treated the motion as being for relief from judgment under Rule 18e and took evidence upon two issues:-

"1. What were the full terms of the agreement as to the dismissal of Civil Action 261, including oral and written terms and any other terms that should be implied under Ponapean custom?

2. Has there been any breach, or breaches of these terms by either of the parties?"

In summary, the trial court found, on the first issue stated, that there had been an express oral agreement that the written stipulation would not affect use of the lands during the life of appellant and his wife, that appellee would support them, and that both parties acted under mutual mistake in omitting reference to the oral agreement in the stipulation and in their affirmation before Judge Kinnare of their desire to settle on the basis of mutual quitclaims. As to the second issue, he found that appellee had "seriously failed", without cause, to meet her obligations under the support agreement.

Having determined that the stipulation for dismissal of Civil Action No. 261 did not include the entire agreement of the parties, the court set aside the dismissal of the current action as based on a "mistaken concept" of its purpose,

and proceeded to give judgment ordering performance, and carefully defining the manner of performance of the entire agreement, both oral and written.

It may be noted parenthetically, however, that the court's concept of the purpose of this action was determined to be mistaken only after taking some four days of evidence. It certainly was not made clear through any assistance of the parties or of their counsel by any disclosures before Associate Justice Goss in argument on the motion for dismissal.

[1,2] No question has been raised as to the exercise of the trial court's discretion in vacating the dismissal of this action, and we do not question it now. It is important, however, to reaffirm the correctness of the decision to dismiss, on the law and on the record made before the court at that point. Though titled "Order of Dismissal", the order in Civil Action No. 261 incorporated the then known terms of settlement, was equivalent to a consent judgment, and was clearly res judicata. See 2 A.L.R.2d 516. Subject of annotation: Consent judgment as res judicata. The way was open however for appellant to move for relief under our Rule 18e. That rule is taken from Rule 60 (b) ,Federal Rules of Civil Procedure, which, as the courts of the United States have consistently held, is to be liberally construed so that judgments will reflect the true merits of a case. Instead he chose to file an independent action ana to effectively conceal any grounds for relief until after its dismissal.

Appellant contends that the court erred in treating his complaint as being for specific performance, rather than for revocation of his conveyance of Wounsapw Mwahu to appellee. It is his position that the court, having found a serious breach of the support agreement, should have followed the precedent established by Ponape District Civil Action No. 29 (cited by both the trial court and the appel-

lant), 1 T.T.R. 249, and returned the land to him. There is no dispute as to the correctness of the decision in Civil Action No. 29, 1 T.T.R. 249, under the law and Ponapean custom. It has no application to this case. We are not now concerned with a transfer of land in consideration of a promise, and customary duty, to support.

The primary difficulty confronting appellant is that, if it were granted that the theory of the case is what he now contends it to be, the court is clearly without power to grant the relief he requests.

[3-5] The stipulation for dismissal in Civil Action No. 261 was for mutual quitclaims, coupled, as the court has found, with an agreement for support. We must assume there was a legitimate dispute as to the title of the two lands. Appellant received more than just an agreement for support in exchange for the land Wounsapw Mwahu; he received also a quitclaim from appellee of all her right, title and interest in and to the land Ipwal, as well as dismissal of the action against him. Appellant contends, however, that it is only his conveyance to appellee that should be set aside, and studiously avoids any reference to the very real consideration which he received. This he cannot do.

"Sec. 639-Partial Modification, Vacation, etc.-It is a general rule that in a case where a consent judgment may be set aside for cause, it must be set aside in its entirety. Under this rule a party cannot attack provisions of a consent decree unfavorable to him and successfully contend that those in his favor should be allowed to stand, and the court has no power to make a ruling to this effect." 30 Am. Jur., Judgments, § 639.

"A consent decree represents an agreement by the parties which the court cannot expand or contract." *Artvale, Inc. v. Rugby Fabrics Corp.,* 303 F.2d 283, 284 (2nd Cir. 1962)."

See also the annotation at 139 A.L.R. 421, subject: Court's power over a consent judgment and particularly page 443, partial relief against consent judgment or decree.

If we were to order revocation of the conveyance of Wounsapw Mwahu, we would be compelled to set aside the entire agreement, and reinstate Civil Action No. 261, thus making a futile exercise of the efforts of all concerned over the past four and a half years. This we decline to do. The Judgment Order of the trial court does no more than define and require compliance with an agreement freely made by the parties and sanctioned by order of this court. Litigation must, somewhere and sometime, come to an end.

We affirm.