

[G.R. No. 20989. August 20, 1923]

MAGDALENO RUEDAS, PETITIONER, VS. ADOLPH WISLIZENUS, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, AND THE DIRECTOR OF LANDS, RESPONDENTS.

D E C I S I O N

JOHNSON, J.:

This is an original petition for the writ of certiorari, filed in the Supreme Court on the 3rd day of June, 1923. Its purpose was to have annulled and set aside an order of the respondent judge, dated the 23d day of June, 1923, by virtue of which order a certain opposition presented in a land registration case, and which had been voluntarily withdrawn by the oppositor, was reinstated and a new trial granted after a final decree had been entered ordering the registration of a certain parcel of land, under the Torrens system, in the name of the original petitioner.

The petitioner in said land registration case now alleges that said order reinstating said opposition, under the conditions above described, was illegal, beyond the jurisdiction of the court, and was null and void, and prays that said order be set aside and pronounced to be illegal and of non-effect.

The pertinent facts constituting the foundation of the present petition may be briefly stated as follows:

- (1) That the said Magdaleno Ruedas, the petitioner herein, on the 29th day of November, 1922, filed a petition in the Court of First Instance of the Province of Cebu for the registration, under the Torrens system, of a certain piece or parcel of land. The said petition was known as *Expediente* No. 147 and G. L. R. O. No. 22663;

(2) That on the 29th day of January, 1923, the Attorney-General filed an opposition, on behalf of the Director of Lands, to the registration of said parcel of land upon the ground that the petitioner was not the owner and therefore not entitled to have the same registered under the Torrens system;

(3) That on the 11th day of April, 1923, Luis and Ramon Ortiz presented their opposition to the registration of said parcel of land alleging that they were the owners of the same.

Upon the issue presented by the petition and the said oppositions, the hearing upon the original petition was set for the 11th day of April, 1923. At the opening of the trial the prosecuting attorney of said province, in open court, withdrew the opposition which had been presented by the Attorney-General. The prosecuting attorney based his withdrawal upon a letter which he had received from the forester of district No. 13. The petition to withdraw the opposition was granted by the lower court and the trial continued with the petitioner herein as the petitioner therein and the opposition of Luis and Ramon Ortiz.

On the 21st day of April, 1923, the respondent judge, in a carefully prepared opinion, granted the registration of the said parcel of land and denied the opposition of Luis and Ramon Ortiz, the only oppositors then before the court, and issued a decree for the registration of said land. Notice of the decree was given, and received by the Director of Lands on the 30th day of April, 1923. The Attorney-General received notice of said decree on the 27th day of April, 1923. No opposition whatever to the decree of the court ordering the registration of said land having been presented, the respondent judge, on the 8th day of June, 1923, rendered a final decree ordering the registrar of lands to issue the proper certificates to the petitioner. Later, and on the 20th day of June, 1923, the prosecuting attorney of the Province of Cebu presented a motion in which he asked that the opposition of the Director of Lands be reinstated upon the ground that the same had been withdrawn by mistake. Upon a consideration of said motion, notwithstanding the objection of the petitioner herein, the motion was granted, the opposition of the Director of Lands was reinstated, and a new trial was granted.

The petitioner herein now alleges that the order reinstating the opposition was illegal and beyond the jurisdiction of the court, for the reason that the decree ordering the registration of the land had become *final* before the presentation of said motion.

It will be noted that the Attorney-General and the Director of Lands had received notice of the order decreeing the registration of the land in question on the 27th and 30th of April, 1923, respectively; that the thirty days within which the defeated party in a land registration case might appeal expired on the 30th day of May, 1923. No motion for a new trial having been made and no objection whatever having been presented to the decision of April 21, 1923, and no bill of exceptions having been presented, the decree was final and the lower court was without authority to change or modify the same, except for the purpose of correcting clerical errors.

It follows, therefore, that when the motion of the prosecuting attorney of the Province of Cebu was presented on the 20th day of June, 1923, the lower court was without authority to change or modify the same, except for the reasons given in section 38 of Act No. 496.

The prosecuting attorney now asserts that he received no notice of the decision of the lower court of April 21, 1923. Naturally, the clerk gave him no notice of the decision for the reason that he, himself, in open court, on the 11th day of April, 1923, had retired the opposition presented by the Director of Lands. The Attorney-General, when he filed his opposition, represented the Director of Lands. In other words, the Director of Lands was the oppositor, the Attorney-General represented *him* and the prosecuting attorney represented the Attorney-General. When he, in open court, withdrew the opposition presented by the Attorney-General, he withdrew the opposition presented by the Director of Lands; and, therefore, the Attorney-General and the Director of Lands were no longer in court; they were no longer parties to the litigation; and it must follow, not being parties to the litigation, having voluntarily withdrawn from the case, were not entitled to notice of the decision of the court. So far as the record shows, at that time they had no further interest in the litigation and were not entitled to notice. The lower court, therefore, committed no error in not giving notice. As a matter of fact, however, both the Director of Lands and the Attorney-General were duly notified.

The prosecuting attorney, however, must have received notice of the decision of the lower court, at least, as early as the 20th day of June, 1923, for the reason that on that day he presented his motion for a new trial. In his argument opposing the petition herein, he says that "while the lower court dismissed the opposition of Luis and Ramon Ortiz in his final decision, he did not dismiss the opposition of the Attorney-General." He overlooks, however, the fact that when he presented his motion, in open court, withdrawing his opposition, that the court then and there granted said motion and rendered a judgment against all the world, except the opposition of Luis and Ramon Ortiz.

The prosecuting attorney further asserts in his argument in opposition to the granting of the writ prayed for, that the withdrawal of the opposition of the Government was a withdrawal of the opposition of the Bureau of Forestry only. In the first place, there is nothing in the record to indicate that the Bureau of Forestry had presented any opposition to the registration of the land in question; and, secondly, that, in open court, he "retired the opposition presented by the Attorney-General only."

The prosecuting attorney, in his argument against the granting of the petition herein prayed for, further insists that inasmuch as he was the attorney in the action that notice of the decision should have been sent to him. He overlooks, however, the fact that he was not the attorney of record; that the Attorney-General was the attorney of record for the oppositor, the Director of Lands. The clerk, therefore, was justified, though not required under the facts, in sending the notice of the decision to the Director of Lands and the Attorney-General, the latter being the attorney for the oppositor and the other the oppositor himself.

At the date of the decision the Director of Lands was no longer a party to the action; notice need be sent only to the parties to the action. Our conclusions are, therefore, (a) that at the time the motion of June 20, 1923, was presented for a new trial, the decision of the court was final and non-appealable; and (b) that the lower court exceeded its power and jurisdiction in granting said motion for a new trial. (U. S. vs. Court of First Instance of Manila, 24 Phil., 321 and other cases cited; Roman Catholic Bishop of Tuguegarao vs. Director of Lands, 34 Phil., 623; Estate of Cordova, and Zarate vs. Alabado, 34 Phil., 920; Layda vs. Legazpi,

39 Phil., 83; Bermudez vs. Director of Lands, 36 Phil., 774.)

Therefore, and for the foregoing reasons, the order of the lower court granting a new trial is hereby annulled and set aside, and it is hereby ordered and decreed that the petition for certiorari be granted, and without any finding as to costs, it is so ordered.

*Street, Malcolm, Avanceña, Villamor,
Johns, and Romualdez, JJ., concur.*

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