264 Phil. 81

[G.R. No. L-1065. July 22, 1948]

FLAVIANO AZURIN AND ESTANISLAO MACADAEG, PETITIONERS, VS. BERNARDINO QUITORIANO, JUDGE-AT-LARGE, COURT OF FIRST INSTANCE OF ILOCOS NORTE, RAYMUNDO ASUNCION AND LOURDES ASUNCION, RESPONDENTS.

D E C I S I O N

PADILLA, J.:

This is an original petition for a writ of *certiorari* to annul a judgment rendered in cadastral case No. 33, G.L.R.O. cadastral record No. 1179, The Director of Lands' petitioner, *versus* Pancracio Adiarte et al., claimants which confirmed the title to, and decreed the registration of, lots Nos. 17241, 17247, 17258, 17262 and 25092 in said cadastral case, in the name of Lourdes Asuncion and Raymundo Asuncion, one-third undivided share to each, and of Estanislao Macadaeg and Flaviano Azurin, one-sixth undivided share to each—the decree No. 75376 entered on 16 July 1941 in accordance with the judgment, and the original certificate of title No. 24053 issued on 7 June 1946 pursuant to the decree, on the ground that the petitioners, on the one hand, and the respondents surnamed Asuncion, on the other, within the time prescribed by law had filed answers in the cadastral case, the former claiming ownership and title to the aforesaid lots to the exclusion of the latter; that despite said adverse claims filed by the parties on said lots, on 18 February 1941, without notice to the petitioners or their attorney, the cadastral court, presided over by Judge Emilio Rilloraza, heard the evidence of the respondents surnamed Asuncion upon the assurance made to the court by Raymundo Asuncion that the lots were not contested; that the petitioners have not been notified of the judgment rendered in the cadastral case and have learned of said judgment and of the issuance of the Torrens title for said lots on August 1946 only when they went to Laoag; that upon discovery thereof, they filed a petition for the review and annulment of the judgment, but that on 5 September 1946, after hearing, the respondent court denied the petition, as well as the motion for the reconsideration of the order denying it, on the ground that the petition filed on 27 August 1946 was beyond the

period of one year from 16 July 1941, the date of the entry of the decree, within which it may be reviewed.

In their answer, the respondents surnamed Asuncion do not deny the facts pleaded in the petition, but reiterate the opinion of the respondent court, as set forth in the order of 5 September 1946; and plead that there is nothing in the petition to show that the respondent court had acted without or in excess of jurisdiction.

The filing by the petitioners and the respondents surnamed Asuncion of their answers in the cadastral case No. 33, G.L.R.O. cadastral record No. 1179, claiming lots Nos. 17241, 17247, 17258, 17262 and 25092, after previous notice as by law provided, clothed the cadastral court with complete jurisdiction not only over the lots—the subject matter—but also of the parties—the petitioners and the respondents Asuncion. When the cadastral court heard the evidence of the respondents Asuncion upon representation made by Raymundo Asuncion to the cadastral court that the lots claimed by them were uncontested—despite the fact that they were contested and that the petitioners had not been notified of the hearing—such misrepresentation and failure to notify the petitioners did not divest the cadastral court of its jurisdiction to hear and decide the claim on said lots. The misrepresentation would constitute fraud against which there is a remedy provided for by law, but section 38 of Act 496, as amended, requires that the petition for review be filed "within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest." Neither is the failure to notify the parties of the hearing a sufficient ground to review a decree, unless such failure should constitute fraud. Petitioners did not file their petition within one year after entry of the decree, so the remedy to have the decree reviewed on the ground of fraud has been lost to them. If the respondents Asuncion in whose favor the decree had been entered had had nothing to do with the failure to notify the petitioners of the hearing, the blame for such failure may be laid upon the clerk of court or his subordinates. It is in such cases that an action for damages may be brought, as provided for in sections 101 and 102 of Act 496. Besides the remedy afforded the rightful owner of a parcel of land wrongfully registered in the name of another provided for in the last mentioned sections of the Act, when the review of the decree provided for in section 38 of the Act is no longer available on account of the expiration of the period of one year, there still is available to him the equitable remedy to pray the court to compel the person in whose name the parcel of land had been wrongfully registered to reconvey it to him, provided, of course, that the parcel of land had not been transferred to an innocent purchaser for value.

Such being the case, we fail to see how the remedy sought herein by the petitioners may be

granted. To grant it would be to undermine the very foundation and stability of the Torrens system.

Paras, Pablo, Bengzon, Briones, and *Tuason, JJ.*, concur.
Feria, J.: I concur and reserve my right to write a separate opinion.
Paras, J.: I certify, that Chief Justice Moran voted to deny the petition.

D I S S E N T I N G

PERFECTO, *J.,*

Original Torrens certificate of title No. 24053 was issued on June 7, 1946, for five lots in cadastral case No. 33, cadastral record No. 1179, Ilocos Norte, in favor of Lourdes and Raymundo Asuncion, one-third undivided share to each, and of petitioners Estanislao Macadaeg and Flaviano Azurin, one-sixth undivided share to each, in virtue of a decree entered on July 16, 1941. The validity of the judgment of February 18, 1941, upon which the degree was entered is impugned in the petition for a writ of *certiorari* filed with this Court.

Petitioners, on one hand, and Lourdes and Raymundo Asuncion, on the other hand, filed answers in the cadastral case, within the time prescribed by law, each side claiming ownership and title to the five lots to the exclusion of the other. Without notice to petitioners or their attorney, on February 18, 1941, the cadastral court received the evidence of respondents surnamed Asuncion. The Court proceeded with the hearing of the case upon the assurance made by Raymundo Asuncion that the lots were not contested.

Petitioners had not been notified of the judgment and learned about it and the Torrens title issued for said lots only in August, 1946, the day they went to Laoag. On August 27, 1946, after discovery of the *ex parte* proceedings, which were held due to the negligence of the Cadastral Court in failing to take notice of the answers filed by petitioners and to the false and fraudulent manifestations of Raymundo Asuncion to the effect that the ownership of the lots in question was uncontested, petitioners filed a petition for the review and annulment of the judgment. The petition was denied on September 5, 1946, on the ground that it was filed beyond the period of one year from the time of the entry of the decree on July 16, 1941, within which it may be reviewed.

The above facts, pleaded by petitioners, are not denied by respondents Asuncion, who limit themselves to advancing the technical ground that the petition for review was filed beyond the one-year legal period.

There being no dispute that the lots were the object of clear-cut controversy between petitioners, on one side, and the two Asuncions, on the other, the lower court could not proceed to decree the registration of said lots as uncontested lots, as provided for in section 11 of Act No. 2259, as amended by section 1 of Act No. 3080.

When, the date of hearing of a contested lot is set, all the adverse claimants who had filed answers are entitled, as an elemental right, to their day in court. Opportune notice of the hearing is indispensable. Failure to serve the notice divests the court of jurisdiction to hear the case and render judgment therein. Under such a situation, the fundamental guaranty of the due process of law and of the equal protection of the laws is wantonly contravened. *Ex parte* hearing at the back of parties who have entered their appearance in due time would be revolting to the sense of justice of all truly civilized peoples.

The lower court erred in considering the action of petitioners as an ordinary motion to review a decree under section 38 of the Land Registration Act and, therefore, in clamping upon petitioners the straight jacket of the one-year legal period. It should have considered the petition in its true nature as a pleading squarely challenging the jurisdiction of the court and the legality of the judgment rendered in the case. The undisputed general jurisdiction that a court may have over a case can be impaired or lost in important stages of the proceedings, such as when a basic rule of procedure is violated or disregarded or a fundamental provision for the protection of the substantial rights of the parties is ignored. A court, for example, cannot have jurisdiction to decide a case by rendering a decision without the constitutional requirements as to statements of facts and of the law relied upon.

Notice to claimants is a basic procedural requirement that cannot be dispensed with without affecting the legal power of the court to decide a case. “In a cadastral proceeding, a court has no jurisdiction to decree a lot to one who has put in no claim to it,” or “to decree a lot as not contested when it is contested, and to proceed to adjudication without giving the opposing parties an opportunity to be heard. That would be violative of the most rudimentary legal principles.” (Government of the Philippines *vs.* Tombis Triño, 50 Phil., 708.) A null and void decree may be so declared and set aside by means of a writ of certiorari (Pamintuan *vs.* San Agustin, 43 Phil., 558; Government of the United States *vs.* Judge of First Instance of Pampanga, 49 Phil., 495).

The alternative remedies offered to petitioners are poor substitutes for the forthright one prayed in the petition. The fraudulent falsehood resorted to by respondent Raymundo Asuncion to cheat petitioners of their elemental rights to notice and to be heard and the dereliction of official duty of the cadastral court, in failing to take-notice of the answers of the petitioners attached to the record of the case, which contributed to the success of the former's scheme, are evils that call, not for retreat and surrender, but for irrefragable resistance and counter-action. There should not be any letup or compromise when the mastery of right and wrong is on the balance. Any concession or complaisance, however insignificant or indirect, is a door to catastrophe.

The judgment in question rendered on February 18, 1941, the decree entered pursuant thereto on July 16, 1941, and the original Torrens certificate of title No. 24053 issued on June 7, 1946, are null and void *ab initio*, and the lower court erred in rendering on September 5, 1946, a decision denying the motion of the petitioners. They are all set aside. The Register of Deeds of Ilocos Norte should be ordered to cancel the certificate, and the cadastral court should be ordered to set anew the hearing on the five lots in question with due notice to all the parties and render judgment in accordance with the evidence and the law.

D I S S E N T I N G

HILADO, *J.,*

Petitioners, no less than respondents, had duly filed their answers claiming the five lots in question in cadastral case No. 33, G.L.R.O. cadastral record No. 1179. After the filing of the answers of both parties there was laid before the court a litigation concerning the ownership of the controverted lots. The constitution, which guarantees due process of law, invested both parties with the fundamental right to be notified and heard in accordance with the established rules of procedure before judgment could be validly rendered. The classic definition of due process given by Daniel Webster in Trustees of Dartmouth College vs. Woodward, 4 Wheaton (U. S.), 518, 4 Law ed., 629, 645, long ago adopted or cited by the United States Supreme Court and other courts of last resort, including this, says :

"* * * By the law of the land is most clearly intended the general law; a law

which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society. Everything which may pass under the form of an enactment, is not, therefore, to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures, in all possible forms, would be the law of the land. Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the legislature. There would be no general permanent law for courts to administer, or for men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law, or to administer the justice of the country. 'Is that the law of the land,' said Mr. Burke, 'upon which, if a man go to Westminster Hall, and ask counsel by what title or tenure he holds his privilege or estate according to the law of the land, he should be told, that the law of the land is not yet known; that no decision or decree has been made in his case; that when a decree shall be passed, he will then know what the law of the land is? Will this be said to be the law of the land, by any lawyer who has a rag of a gown left upon his back, or a wig with one tie upon his head?'"

"AS APPLIED TO JUDICIAL PROCEEDINGS, due process of law means a law which hears before it condemns, which proceeds on inquiry, and renders judgment after trial; law in its regular course of administration through courts of justice; a course of proceeding according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights; a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt, or determining the title to property; an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights; the administration of equal laws according to established rules, not violative of the fundamental principles of private right, by a competent tribunal having jurisdiction of the case and proceeding on notice and hearing. The term under consideration has also been defined to mean a trial, or

> proceedings according to the courses and usage of the common law. This latter definition, however, is entirely too limited, as due process may consist of process prescribed by statute and unknown to the common law; and the term means rather law prescribed and enforced in accordance with certain fundamental principles for the protection of private rights which our system of jurisprudence has always recognized.
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> "B. CONSTITUTIONAL GUARANTY IN GENERAL—
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> 1. Origin and History.—That a person shall not be deprived of life, liberty, or property without an opportunity to be heard in defense of his right is a rule founded on the first principles of natural justice, and is older than written constitution. This rule is the foundation of the constitutional guaranties of due process of law. It was expressed in the provision of Magna Charta which protected every freeman in the enjoyment of these natural rights unless deprived of them 'by the Judgment of his Peers, or the law of the Land', and from this original are derived the guaranties expressed in the various American constitutions." (12 C. J., pp. 1190-1193.)

In the cadastral case involving the aforementioned lots petitioners were not notified of the hearing despite the fact that they had duly filed their answers and the lots stood contested in the records of the case. The hearing was had in their absence, they having been thus deprived of the opportunity to be heard and to adduce evidence— deprived of their day in court. Neither were they notified even of the judgment against them. Thereafter the decree of registration was issued, as were also the certificates of title in favor of the only parties who had been notified of the hearing.

The following propositions should be unquestionable: (1) That no court has jurisdiction to deprive a litigant of due process of law; (2) that to hear and determine a case without notice to a litigant who has not defaulted is to deprive him of due process of law; (3) that a judgment rendered under such circumstances is null and void *ab initio* for being violative of the Bill of Rights; and (4) that if such judgment is rendered in a cadastral proceeding, any decree of registration and certificate of title issued on the strength and basis of such judgment are likewise void *ab initio.*

The "jurisdiction" spoken of in the books as being complete when the court has jurisdiction of the subject matter and of the parties, means, in my humble interpretation, jurisdiction

acquired and exercised pursuant to the fundamental law and not in violation thereof. For otherwise, the very tribunal bound to protect the citizen from a deprivation of due process of law may become the very one to deprive him thereof. In its very essence "jurisdiction" can not comprise the power to override the constitution. On the contrary, any act, be it of a court of justice or any other department of the government, or of any private party, which offends against an express injunction of the fundamental law is *ab initio* null and void.

In Director of Lands *vs.* Gutierrez David, 50 Phil., 797, 800, 801, 803, wherein the decree which was declared null and void had been issued three years and ten months before the motion to that effect was filed (p. 800 of cited vol.), this Court said *inter alia:*

> "No rule is better established in law and sound jurisprudence than the one which prohibits the deprivation of property without having been given an opportunity to be heard. The registration of land under the Torrens system is no exception to that rule. Unless the provisions of the law providing for the registration of land under the Torrens system have been followed, the decree finally entered for the registration will be null and void as to all persons who have been detrimentally affected by such failure to comply with the mandates of the law. The law providing for the registration of land under the Torrens system expressly provides that a hearing must be given. An opportunity to be heard is as essential under the Land Registration Law as in any other class of actions. The law provides a general method of giving notice to all interested parties, and unless that method of giving notice is followed, the decree issued will be null and void".
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> "From all of the foregoing facts, it is held that the court *a quo* was without jurisdiction or authority to change, alter, modify or amend the decree of the 3d day of August, 1918, and for that reason, and for the further reason that the petitioners have been deprived of their rights without a hearing, which the law guarantees to them, the said decree of July 9, 1923, is hereby declared to be null and void and of no effect; it is further ordered and decreed that the certificate of title issued to the respondents Vicente Lopez and Carmen Gonzalez on the 18th day of December, 1923, be cancelled, and that the decree of August 3, 1918 be declared to be in full force and effect, with costs against the respondents."

Other authorities in support of this dissent are the following:

> * * * No rule is better established, under the due-process-of-law provision of the organic law of the land, than the one which requires notice and an opportunity to be heard before any citizen of the state can be deprived of his rights. That is the rule, whether the action is in personam or in rem, with the exception that in an action in rem substituted service may be had." (Pennoyer *vs.* Neff, 95 U.S., 714; Kilbourn *vs.* Thompson, 103 U.S., 168.)
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> "In the present case, the appellant had no notice whatever of the proceedings by which his lien was nullified, and of course no opportunity to defend his rights until after the issuance of the deed by the city assessor and collector to the appellee, by which the latter obtained a deed 'free from all liens of any kind whatsoever' by virtue of which the appellant was deprived of his rights. We cannot give our assent to a procedure by which citizens of the Philippine Islands may be deprived of their rights without a notice and an opportunity to defend them." (Johnson, *J.*, in Lopez *vs.* Director of Lands, 47 Phil., 23, 32-33.)

I am constrained to vote for the granting of the writ.

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