

102 Phil. 570

[G. R. No. L-10795. December 17, 1957]

TEOTIMO OCHOTORENA, ET AL., APPLICANTS AND APPELLEES, VS. THE DIRECTOR OF LANDS, ET AL., OPPOSITORS. THE HEIRS OF RAFAEL TUMACLAS, ET AL., PETITIONERS AND APPELLANTS.

D E C I S I O N

CONCEPCION, J.:

This is an appeal taken by the heirs of Rafael Tumaclas, from an order of the Court of First Instance of Zamboanga del Norte.

It appears that on October 7, 1937, one Ana Zason and her children Teotimo, Canuta, Jose, Rosario, Asuncion, Asteria, Pura, Alicia, Ricardo, Felix, Consolacion and Gavino, all surnamed Ochotorenas applied for the registration of thirteen (13) lots, with an aggregate area of 125.9629 hectares, more or less, located in the sitio of Malugas, barrio Katipunan, Zamboanga. Before the trial Ana Zason died, and the case was, continued by his aforesaid children and heirs. The Court of First Instance of Zamboanga issued, on January 16, 1948, an order of general default, except as regards the Director of Lands, Luis, Mamucay, Silvestre Bagatua, Magdaleno Orcia, Basilio Tumaclas, Agapito Gumolon, Doroteo Gumolon, Patrick, Gumisad, Manuel Sagan, and Leon Taguibolos, who had filed their oppositions to said application. At the hearing of the case, the applicants withdrew their claim with respect to Lots Nos. 2 and 8 and a portion of the lot designated in a plan, marked Exhibit D, with the printed words "Agapito Gumolon (not contested)." In due course, said court rendered a decision, dated June 10, 1948, dismissing the aforesaid oppositions and granting the petition for registration of the lots applied for; except as to the above mentioned lots and portion, which had been excluded. In September 1948, the private oppositors and the Director of Lands sought a new trial, which was denied on May 29, 1950. An appeal taken to the Court of Appeals was dismissed for failure to file the necessary brief, and after the aforesaid decision having been thus become final, the corresponding decree was entered and Original Certificate of Title No. 0-54 was issued in favor of the Ochotorenas on

October 27, 1953.

Less than three (3) months later, or on January 19, 1953 the heirs of Rafael Tumaclas filed a petition for review upon the ground that said decree had been obtained through fraud, because prior to the hearing of this case, appellees Teotimo Ochotorena, and one Trining Ochotorena told Rafael Tumaclas (now deceased) and his children not to worry about the lot covered by their free-patent application No. 50895, which had been included in the petition for registration, inasmuch as said lot would be excluded from the petition and no opposition need be filed in connection therewith, and because, accordingly, no such opposition was filed by the Tumaclas and they did not appear at the hearing already referred to.

The Ochotorenas opposed this petition for review which was denied by an order dated April 19, 1954. A reconsideration of such order having been subsequently denied, the Tumacias appealed therefrom to the Court of Appeals, which certified the records to this Court, only questions of law being involved therein.

Appellants maintained that the lower court erred in not declaring" the appellees in default, in violation, allegedly, of Rule 35, section 5, of the Rules of Court, said appellees having filed their answer or opposition to appellants' petition for review over fifteen (15) days after service of copy thereof. There is no merit in this pretense, for said Rule 35 applies to civil "actions", and a land registration case is not an "action", within the purview of the Rules of Court (Rule 2, section 1), and the same—pursuant to Rule 132 thereof—"shall not apply to land registration, cadastral and election cases * * * except by analogy or in a suppletory character and whenever practicable and convenient."

It is next urged that the lower court erred in dismissing appellants' petition for review of the decree of registration, without first giving them an opportunity to introduce evidence in support of their allegations of fraud. This contention is, likewise, untenable. Appellants claim an interest in the subject-matter of this land registration case by virtue merely of the approval by the Department of Agriculture and Commerce of their application for a free- patent to a portion of the land covered by said decree. The Government was, however, duly represented in the registration proceedings. The Director of Lands filed therein an opposition alleging' that the land applied for is part of the public domain. At the hearing of the case, said officer was represented by counsel and tried to prove that a portion of said land, marked in the corresponding plan as Lot No. 4-A, was covered by Free-Patent Application No. 50895 of Rafael Tumaclas, which was

approved by the Director of Lands, whose order to this effect was affirmed in a decision of the then Secretary of Agriculture and Commerce. Copies of the orders of both and of the decision of the latter were marked Exhibits XX, XX-2 to XX-4 and introduced as part of the evidence for the Government. In due course, the lower court rendered judgment declaring that the latter's claim had not been substantiated. Soon thereafter a motion for new trial was filed upon the ground that said decision of the Secretary of Agriculture and Commerce was final and binding upon the courts of justice, which motion was denied by the lower court. It is thus apparent that the decision rendered on June 10, 1948, declaring that the lots, applied for ace, not part of the public domain, but private property of the Ochotorenas, which became final and executory in 1953, is binding and conclusive to the Government. Said decision may not be reviewed upon the ground of fraud, insofar as the Government is concerned, because it is not contended, and it does not appear, that the Government has been the victim of fraud. In other words, as regards the latter, it is now definitely settled that said lots are not public lands.

Upon the other hand, as applicants for a free-patent, appellants' interest in said property is derived from the Government. Inasmuch, however, as the alleged title of the latter was rejected in said decision, which is final and executory, it follows necessarily that appellants' claim is, under the principle of *res adjudicata*, barred by said decision, regardless of the fraudulent representations said to have been made to them by the herein appellees.

Wherefore, the order appealed from is hereby affirmed, with costs against the appellants. It so so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.