

102 Phil. 1029

[G.R. No. L-11264. February 10, 1958]

DIRECTOR OF LANDS, PETITIONER AND APPELLEE, VS. ALFONSO AGODO, ET AL., CLAIMANTS. DIONISIO CENTINO, CLAIMANT AND APPELLANT.

D E C I S I O N

MONTEMAYOR, J.:

This is an appeal from the order of the Court of First Instance of Samar, dated February 2, 1955, denying the petition for review of a decision of said court in Cadastral Case No. 5, GLRO Record No. 1379, of the same province, regarding Lot No. 2040 of said cadastre. The appeal was originally sent to the Court of Appeals which later, by resolution of July 30, 1956, certified the appeal to us on the ground that it involved only questions of law.

The facts involved are simple and undisputed. In the barrio of Pangdan, Catbalogan, Samar, Dionisio Centino claimed a parcel said to contain about five hectares, bounded by the sea, swampy land—part of the public domain and the Pangdan River. In the same vicinity, one Emeterio Cui also claimed a parcel much bigger in area. The cadastral survey later came around the year 1933 or prior thereto, and included the area in question, designating it as Lot No. 2040. Centino filed his answer with the Cadastral Court for the portion claimed by him; so did Cui. It would appear that the Director of Lands also filed a claim for the portion he believed to be part of the public domain. The case was heard in 1933, and on April 8, 1933, a decision was rendered on said Lot No. 2040, ordering its division into three portions, and indicating how the division should be made—one portion to be designated as Sublot No. 2040-A with its improvements, adjudicated to Dionisio Centino married to Sinforosa Dacanay, Sublot No. 2040-B was declared public

land, and the remaining portion, Sublot No. 2040-C with improvements thereon, adjudicated to Emeterio Cui married to Casilda Gabieta. The decision seems to have been based upon what occurred during the hearing, for it stated that after hearing, Cui withdrew his answer to the portion claimed by Centino, at the same time that the mangrove swamp within the strip bordering the Pangdan River be also segregated and declared public land.

Then on January 6, 1955, for the first time, Centino filed a petition to review the decision on said Lot No. 2040, alleging:

“That in the hearing of claims on Lot No. 2040, Emeterio Cui had recognized the claims of the movant herein as well as that of the Bureau of Lands but the decision rendered is incorrect, confusive and contrary to the evidence and facts, and susceptible of varied interpretations which may prejudice the rights of ownership of the movant herein over the wholeness and substantial portions of his land;

“That Lot No. 2040 has not as yet been subdivided pursuant to the decision rendered thereon, much less have the final decrees thereof been entered up to the present time, as prescribed by Section 38 of Act No. 496;

“That by virtue of the provisions of law just cited, equity and! justice demand that the same decision on Lot No. 2040 be reviewed and proper and corresponding adjudications, consonant with the respective proprietary rights of each and every claimant on same lot, promulgated.”

Alejandro Cui, Jr., in his capacity as judicial administrator of the intestate estate of Alejandro Cui, successor in interest of the deceased Emeterio Cui, opposed the petition for review, claiming that petitions for review in cadastral and registration cases must be based only on actual fraud, and that the allegation of Centino in support of his petition does not or did not constitute fraud. After hearing, the

trial court issued the appealed order denying the petition.

We fully agree with the trial court and counsel for oppositor Alejandro Cui, Jr. When the petition for review was filed in 1955, more than twenty years had passed since the decision was rendered, and naturally, said decision had become final and executory. Centino however claims that he never received notice of the decision and became aware of it only when Civil Case No. 4415 was brought against him on November 10, 1954, to have him ejected from a portion of the lot which he believed was included or should have been included in his claim before the Cadastral Court in 1933. His bare assertion that he was never notified of the decision rendered in 1933 is not enough to successfully controvert the legal presumption that the Cadastral Clerk of Court had duly notified all the cadastral claimants, including Centino, of the decision. Moreover, to refute said presumption, Centino could have introduced evidence to show that the records of said Cadastral Clerk of Court do not show notification of the decision to him, or testimony of said Clerk of Court himself that for one reason or another, Centino was not duly notified.

The claim of Centino that the decision did not conform to the evidence presented during the hearing, that it was confusing and was subject to various interpretations, if true, might be considered judicial error subject to correction by the trial court itself if its attention had been called to it, on time, or on appeal within the time prescribed by law, but surely is not fraud within the meaning of Section 38 of the Land Registration Act, so as to warrant a reopening of the case and a review of the decision now long final. There is every reason to believe, however, that Centino's claim before the Cadastral Court and any evidence submitted by him to support his claim was duly considered by the trial court, as shown by the decision itself, which ordered the segregation from the whole Lot No. 2040 of a strip "fifteen (15) meters wide down the 1st street of the barrio of Pangdan and touching the seashore", with the improvements thereon, and adjudicating the same to him. In his petition for review and in his appeal brief, Centino did not even bother to submit a copy of the decision of Lot No. 2040, which is sought to be reviewed. It remained for the oppositor

Alejandro Cui, Jr. to submit such copy as Annex 1 in his brief.

In view of the foregoing, the appealed order of denial is hereby affirmed. The reason we do not assess costs against appellant is that he had been allowed to appeal as a pauper.

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

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