

ANTONIA ESPINA, PETITIONER, VS. CATALINA COLINA AND BENITO NATIVIDAD, EX-JUDGE OF FIRST INSTANCE OF CEBU, RESPONDENTS.*G.R. No. L-1493. April 21, 1948*

Ponente: PERFECTO, J.

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Petitioner prays for the annulment of a decree declaring Catalina Colina the owner of lot No. 2611 of the Hacienda de Mandawe, alleging that petitioner is the owner of said lot as attested by original certificate of title No. 34386, having bought it from the Seminario de San Carlos de Cebu, which executed the deed of sale through Bishop Juan P. Gorordo.

It is alleged that after the decree declaring petitioner the owner of the lot in question had become final, respondent Catalina Colina filed on January 6, 1940, a motion for reopening of the record and prayed that the lot in question be adjudicated to her; that the decree in favor of petitioner was issued on February 27, 1934, and the corresponding original certificate of title was issued on April 3, 1939; that Catalina Colina herself had recognized the Seminario de San Carlos de Cebu as the original owner of the lot by having applied to said seminario the right to purchase the lot; that the Seminario de San Carlos has never been notified of the proceedings for reopening, and that the respondent judge declared respondent the owner of the lot in question but without revoking or annulling the certificate of title No. 34386.

Attached to the petition are the owner's duplicate of the original certificate of title No. 34386 in the name of petitioner Antonia Espina, as owner of the lot in question No. 2611, with a *lis pendens* notice at the back about the reopening and review of the record on the lot in question, and a deed of sale executed by J. P. Gorordo, Bishop of Cebu on December 18, 1933, in favor of petitioner Antonia Espina.

Respondent Catalina Colina answered alleging that petitioner acquired original certificate of title No. 34386 by means of fraud and that the true and absolute owner of lot No. 2611 is Catalina Colina, pursuant to the decision of the Court of Appeals in C.A. No. 7116, entitled *Seminario de San Carlos of Cebu vs. Catalina Colina*, petitioner-appellant and Antonia Espina, respondent-appellee, promulgated on April 25, 1941, which decision has become final; that pursuant to said decision, Judge Benito Natividad rendered a decision on September 2, 1941, which has also become final; that the decision adjudicating lot No. 2611 to petitioner has not yet become final as respondent Colina has not been notified of said decision; that respondent Colina admits the fact that she filed a motion for reopening on January 6, 1940; that on February 27, 1934, a decision was rendered decreeing that title on the lot in question be issued in favor of Catalina Colina; that on March 23, 1935, the decision was amended in the sense that title be issued in favor of Antonia Espina, as prayed by the latter on July 9, 1935; that on April 5, 1939, title was issued in favor of Antonia Espina; that on January 6, 1940, Catalina Colina prayed for revision of the decree alleging that it was issued without her knowledge or consent, she being the true and absolute owner of the lot; that Catalina Colina filed an opposition to the application of the Seminario de San Carlos and, through

amicable settlement she paid an amount to the Seminario de San Carlos to expedite the registration of lot No. 2611; that Antonia Espina, knowing that the lot has always been in the possession of Catalina Colina, purchased said lot from the Seminario de San Carlos; that Judge Natividad has revoked the decree and nullified the certificate of title No. 34386.

From the documents attached to the answer of Catalina Colina, it appears in a decision rendered by the Court of Appeals in C.A. No. 7116, in a litigation between petitioner Antonia Espina and respondent Catalina Colina over lot No. 2611, that the decree obtained by Antonia Espina was obtained through fraud, for which reason, it was ordered annulled and the case was remanded to the Court of First Instance of Cebu to receive evidence as to Colina's and Espina's respective claims as to the ownership of the lot in question, and that, accordingly, after evidence had been presented by both parties, the Court of First Instance of Cebu, presided over by Judge Natividad, rendered on September 2, 1941, a decision declaring Catalina Colina the owner of the lot in question. The decision became final, no appeal having been taken against it.

Under the above facts, the petition filed with this Court is absolutely without any merit. If petitioner Antonia Espina was not satisfied with the decision of Judge Natividad, under the law, her remedy was to appeal.

In deciding this case, we regret to state that petitioner, in filing the petition has adopted the procedure of concealing important relevant facts in a way that induced this Court to give due course to the petition.

If petitioner had alleged to this Court, as it was her duty, the facts disclosed by respondents, supported by undisputed evidentiary documentary evidence, this Court would have dismissed the petition from the very beginning. The time we devoted to this case could have been devoted to consider meritorious cases.

The petition is dismissed and petitioner shall pay the costs.

Feria, Pablo, and Bengzon, JJ., concur.

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