

THE DIRECTOR OF LANDS, PETITIONER; AMANDO JOSON, VICTORIA BALMEO, ANTONIO BUSUEGO AND ROGELIO BUSUEGO, PETITIONERS AND APPELLANTS, VS. TEODORA BUSUEGO, RESPONDENT AND APPELLEE.

G.R. No. L-19090. December 28, 1964

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BARRERA, J.:

Within one year from the issuance of the decree of registration of Lot No. 2497, Gapan Cadastre,[1] in favor of of Teodora Busuego, pursuant to a decision[2] of the Court of First Instance of Nueva Ecija (in Cad. Case No. 53, L.R.C. Cad. Rec. No. 1263), the spouses Amando Joson and Victoria Balmeo filed in the same proceeding, a petition for the setting aside of said decree and the cancellation of the certificate issued thereunder, on the ground that the decision ordering the decree was obtained by Busuego by misrepresenting herself to be the sole owner of the lot when in truth, petitioners, through their predecessor-in-interest, were owners of one-half thereof, having acquired the same by purchase from Teodora's mother, Fausta Busuego. In a separate petition, Antonio and Rogelio Busuego, children of a deceased brother of Teodora, also prayed for the same relief on the allegation that their father was an undivided co-owner (with Teodora) of one-half of Lot 2497, having acquired the same by descent from their father, Severino Busuego.

In her answer to the petition of the Josons, respondent Teodora Busuego claimed that the alleged contract executed by her mother Fausta Busuego, for the sale of the latter's, one-half share in the land, was obtained by petitioner's predecessors-in-interest through fraud and deceit. And, as regard the claim of her nephews, she contended that her brother Roman (Antonio and Rogelio's father) had already received his share of the inheritance and has no more participation in the lot in question.

By order of August 4, 1961, the court dismissed the said petitions for the reason that its jurisdiction as a cadastral court being special and limited, it has no authority to pass upon the issues raised in the pleadings. Hence, the present appeal by the petitioners.

Apparently, the court a quo based its action on the provisions of Section 38 of the Land Registration Act which, in part, reads:

"Sec. 38. x x x

Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgment or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. x x x."

It is not here disputed that the petitions filed with the cadastral court under the original proceeding were for the review and annulment of the decree of registration of Lot No. 2497 of the Gapan cadastre in favor of Teodora

Busuego and/or the cancellation of the original certificate of title issued in her name as a consequence thereof. Likewise, it is admitted that the same were filed within the reglementary period of one year and that the petitioners charged registrant Teodora Busuego of having obtained the decree and certificate of title through actual fraud and misrepresentation. The only question raised by this appeal is, which court should take cognizance of the proceedings, the cadastral court that had issued the decree or the competent Court of First Instance in the exercise of its general jurisdiction.

It may be stated that we find no case squarely ruling on this particular point. The mere mention by the law that the relief afforded by Section 38 of Act 496 may be sought in "the competent Court of First Instance" is no sufficient indication that the petition must be filed in the Court of First Instance, exercising its general jurisdiction, considering the fact that it is also the Court of First Instance that acts on land registration cases. Upon the other hand, it has been held that the adjudication of land in a registration or cadastral case does not become final and incontrovertible until the expiration of one year from entry of the final decree, and that as long as the final decree is not issued and the period of one year within which it may be reviewed has not elapsed, the decision remains under the control and sound discretion of the court rendering the decree, which court after hearing, may even set aside said decision or decree and adjudicate the land to another[3]

"x x x. As long as the final decree is not issued by the Chief of the General Land Registration Office in accordance with the law, and the period of one year fixed for the review thereof has not elapsed, the title is not finally adjudicated and the decision therein rendered continues to be under the control and sound discretion of the court rendering it. Such is the ruling laid down in the case of *De los Reyes vs. De Villa* (48 Phil. 227), which was later reiterated in that of *Roman Catholic Bishop of Cebu vs. Philippine Railway Co. and Reynes* (49 Phil. 546). x x x" (*Afalla, et al. vs. Rosaura*, 60 Phil. 622).

In the present case, as the petitions were filed within one year from the date of the issuance of the decree, pursuant to Section 38 of Act 496, the same are properly cognizable by the court that rendered the decision and granted the said decree.

WHEREFORE, the order of dismissal appealed from is hereby set aside, and the case is remanded to the lower court for further proceedings pursuant to law. No costs.

SO ORDERED.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon. Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

[1] Decree issued April 15, 1961-petition for selling aside was filed May 12, 1961.

[2] Rendered on March 13, 1961.

[3] *Capio vs. Capio*, 94 Phil., 113; 50 Off. Gaz., No. 1, p. 137, and cases cited therein.

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