

**TIMOTEO RUBLICO AND JULIANA MADRAZO,
PETITIONERS-APPELLANTS, VS. FAUSTO ORELLANA,
RESPONDENT-APPELLEE.**

G.R. No. L-26582. November 28, 1969

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Appeal from an order of dismissal of a petition for annulment of a judgment and/or review of a decree of registration of two cadastral lots alleged-ly procured through fraud.

On 13 July 1957, the herein respondent-appellee, Fausto Orellana, filed his answer in Cadastral Case No. IL-N-2, L. R. C. Record No. N-211 for Lots Nos. 1664 and 1665, with the Court of First Instance of Lanao, claiming ownership thereof and praying that the said lots be adjudged and decreed in his favor. The herein petitioners-appellants, Timoteo Rublico and Juliana Madrazo, did not file any answer. After an order of general default was entered, the court commissioned its clerk of court to receive the evidence of claimants for non-contested lots. Lots 1664 and 1665 were non-contested (Exhibits "G"), so the clerk of court received the evidence for the sole claimant, herein respondent-appellee Fausto Orellana.

On 20 November 1964, the court a quo approved the report and recommendation of the clerk of court and rendered judgment adjudicating Lots 1664 and 1665 in favor of respondent-appellee Orellana.

On 19 July 1965, petitioners-appellants filed with the said cadastral court a petition to annul the judgment and/or review the decree of registration, alleging ownership of the lots adjudicated to the respondent; that respondent, "by means of fraud, made the court to believe that he is the owner" and that said judgment "was secured by means of fraud" (Record on Appeal, pages 3-4).

Respondent Orellana filed a motion to dismiss the petition and the court, on 23 September 1965, sustained the motion, holding that petitioners-appellants had no personality to file their petition because they did not file an answer and were declared in default and that they should have first secured the lifting of the order of general default, with respect to themselves, before they filed their petition for review.

Petitioners-appellants interposed the present appeal.

The pertinent portion of Section 38 provides, as follows:

" 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 judgments or decrees: subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registra-tion obtained by fraud to file in the competent Court of First Instance a petition for review with-in one year after entry of the decree provided no innocent purchaser for value has acquired an interest. "

It will be noted that the essential requisites or elements for the allowance of the reopening or review of a decree

are: (a) that the petitioner has a real or dominical right; (b) that he has been deprived thereof; (c) through fraud; (d) that the petition is filed within one year from the issuance of the decree; and (e) that the property has not as yet been transferred to an innocent purchaser (Ponce, *The Phils. Torrens System*, page 208). It will also be noted from the provision that "any person" may file the petition, provided the other requisites are present; and that the provision does not require that the petitioner be an original claimant who had filed an answer. And reasonably so, because fraud might intervene precisely to prevent a person from filing an answer. Thus, a party deprived of an estate in land was accorded relief where the fraud consisted in deliberate failure to notify the party entitled to notice (*Salva vs. Salvador*, 18 Phil. 193), or in inducing him not to oppose an application (*Reyes vs. City of Manila*, 38 Phil. 350), or in misrepresentation to the true owner by an applicant of the identity of the lot, causing the true owner to withdraw his opposition (*Marquiala, et al. vs. Ybañez, et al.*, 92 Phil. 911). Under these rulings, it follows that a petitioner for review under Section 38 of Act 496, as amended, need not be an original claimant in a cadastral proceeding and need not secure the lifting of the order of general default with respect to himself. The aim of the law in giving aggrieved parties, victimized by registration proceedings of their estate in land by means of fraud, the opportunity to review the decree would be defeated if such parties would be limited to those who had filed their opposition to the petition for registration or to first require them to procure the lifting of the order of general default before they could file a petition for review.

The foregoing considerations notwithstanding, We are of the opinion that the order of dismissal is substantially correct, for the reason that the petition for review failed to state facts sufficient to constitute a cause of action, as also contended by the appellees in their motion to dismiss in the court below (Record on Appeal, pages 8 - 9). The petition for review merely alleges that respondent "by means of fraud made this Honorable Court believe that he is the owner of said lots". This is not a sufficient allegation, for it is a mere conclusion of law, and does not aver facts showing in what acts the alleged fraud consisted. Certainly, to make the court believe that the respondent (claimant in the cadastral case) was the owner of the lot concerned is not fraud; at the most, the court might have committed an error in believing the claimant to be the owner, but that would not justify a review of the decree of adjudication and registration. Review of the decree demands a showing of actual (not constructive) fraud (*Government vs. Tombis Triño*, 50 Phil. 717), i.e., actual malice, and there is nothing in the petition to show it.

WHEREFORE, the order of dismissal appealed from is affirmed, without prejudice to the subsequent amendment of the petition according to Rule 16, section 3, within 15 days from finality of this decision. Costs against the appellants.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

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