

MARTIN GONZALEZ, APPLICANT AND APPELLEE, VS. SISENANDO TURLA ET AL., OPPOSITORS. SISENANDO TURLA, APPELLANT.*G.R. No. 32598. December 29, 1930*

Ponente: OSTRAND, J.

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In July, 1918, one Martin Gonzalez filed an application for the registration of a large tract of land situated in the municipality of Lubao, Province of Pampanga. Shortly afterwards, Sisenando Turla, the herein appellant, applied for the registration in his favor of a portion embracing 49 hectares of the tract mentioned. Aside from this parcel, Turla also claimed another parcel in the northwestern part of the Gonzalez land, but had not applied for its registration.

The two applications for registration were tried together, and upon the evidence, the Court of First Instance denied the application of Sisenando Turla and ordered the registration of the land in favor of Martin Gonzalez. Turla appealed from, the denial of his application, and upon an examination of the record of the case, the judgment of the court below was set aside as to the parcel described in the appellant's application, and the parcel was registered in favor of Turla in the year 1922.³ In the meantime, one Ponciano Mauricio laid claim to a large portion of the so-called lot No. 2 of the land of Martin Gonzalez, but the Court of First Instance refused to reopen the case. Mauricio thereafter instituted mandamus proceedings in this court, and a writ was issued, and the case was remanded to the court below for the hearing of the opposition of Ponciano Mauricio.^[1] The Court of First Instance again adjudged the land to Gonzalez, and Ponciano Mauricio appealed. Notwithstanding the fact that the unregistered parcel claimed by Turla was a part of lot No. 2, he failed to appeal after the new trial, being under the impression that his former appeal was sufficient.

After lengthy discussions, this court on December 31, 1927, modified the judgment of the court below and ordered the registration of the land in favor of Gonzalez, including the parcel claimed by Turla.^[2]

On January 17, 1928, Turla filed a motion asking that the decision be modified so that the portion of the land in dispute between him and the applicant, Martin Gonzalez, be excepted from the effects of said decision, and that the trial court be ordered to take the necessary steps. This motion was denied, the court being without jurisdiction to order the court below to permit another appeal in the case, and the time for granting such appeal having expired long before.

The final decree for the registration of the aforesaid lot No. 2 was issued in favor of Gonzalez on October 31, 1928, and on July 15, 1929, Sisenando Turla filed a motion in the Court of First Instance praying that the decree be reversed and that he be given opportunity to again present his evidence. The motion was denied, and Turla thereupon appealed to this court.

The appeal is, in our opinion, of no merit. A review of a final decree can only be accomplished under section 38 of the Land Registration Act and must rest on fraud on the part of the person or persons in whose favor the decree has been issued. That is not the case here. As far as the record shows, Gonzalez did not obtain the decree by fraud,

and the court below did not err in denying the review. We may say further that the failure of Sisenando Turla to present his appeal in time, was his own fault; without such appeal this court was not in position to reverse the judgment of the court below as far as Turla was concerned. Moreover, taking into consideration his clearly untrue testimony while a witness for Ponciano Mauricio, this court would hardly have disturbed the conclusions of the trial court notwithstanding an appeal.

The decision of the court below is affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Johns, Romualdez and Villa-Real, JJ., concur.

[1] Turla vs. Gonzalez, G. R. No. 17023, promulgated May 18, 1922, not reported.

[2] 53 Phil., 728.

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