

VICTORIANO CAPIO, PETITIONER AND APPELLEE, VS. FERNANDO CAPIO, OPPOSITOR AND APPELLANT.

G.R. No. L-5761. December 21, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The Court of First Instance of Mindoro acting as cadastral court and after hearing Cadastral case No. 2, G. L. R. O. Cadastral record No. 216, rendered a decision dated April 29, 1921, adjudicating cadastral lots to those entitled thereto. Lot No. 768 with its improvements was adjudicated to the brothers, Victoriano, Felix and Agustin, all surnamed Capiro, in equal parts.

On January 7, 1947, about twenty-six years later, Victoriano Capiro, one of the three brothers filed in the Mindoro court a petition asking for the reopening of the cadastral case and the setting aside of that part of the decision adjudicating lot No. 768 to him and to his two brothers Felix and Agustin for the reason that according to him, said lot was, during the cadastral hearing, claimed only by himself and by no others, not even by his two brothers; that the lot really belonged to him and his wife exclusively and that the adjudication made by the cadastral court was through an error. After considering said petition as well as the opposition thereto filed by Fernando Capiro, the only heir of petitioner's brother Felix, and inasmuch as the trial court found that the decree for said lot 768 was not issued until November 1, 1949, and also because the oppositor did not deny the allegations of the petition for the reopening of the case, the lower court, according to it, to avoid the miscarriage of justice, ordered the reopening of the case at the same time declaring null and void the decision of April 29, 1921, with respect to lot No. 768. It set the hearing on said lot during the May calendar. All this was contained in the court order dated February 28, 1950.

Oppositor Fernando Capiro filed a motion for reconsideration of the order. Acting upon said motion and the answer thereto filed by Victoriano, the Mindoro court set the said motion for reconsideration for hearing stating that at the hearing evidence may be presented in order to properly establish the issues and also for the parties to support their allegations.

On September 2, 1950, the lower court issued an order which we reproduce below.

"ORDER

"This is a motion for the reconsideration of the order of this court dated February 28, 1950.

"This motion was set for hearing in order to receive any evidence which the parties might present in support of their contentions. The movant did not appear while the oppositor was allowed to present his evidence.

"Considering the motion for reconsideration and the opposition thereto together with the evidence presented by the oppositors, the court finds no justification in reconsidering its order of February 28, 1950 and therefore, denies the same for lack of sufficient merits.

"It is ordered."

The order of February 28, 1950, above referred to is the order declaring null and void the decision of the cadastral court dated April 29, 1921, as regards lot No. 768 and setting said lot for hearing. Later, on October 20, 1950, the trial court finally issued the following order.

"ORDER

"Petition for postponement of the hearing of this case set for the 28th instant is hereby granted. The court, however, believes that there is no necessity of having this case set for hearing anew because the records of this case clearly show that on September 2, 1950, when the motion for reconsideration was called for hearing in order to receive any evidence which the parties might present in support of their contentions, the petitioner did not appear while the oppositor was allowed to present his evidence.

"The Court after considering the motion for reconsideration and the opposition thereto together with the evidence presented by the oppositor, finds no justification in reconsidering its order of February 28, 1950 and therefore denied the same for lack of sufficient merits.

"Wherefore, the order of this court dated September 2, 1950, denying the motion for reconsideration of the order of this court dated February 28, 1950, is hereby affirmed and maintained.

"It is so ordered."

Appellant Fernando Capio is now appealing from this last order of October 20, 1950.

In numerous decisions, some of the latest being *Afallo and Pinaroc vs. Rosauero*, 60 Phil., 622 and *Valmonte vs. Nable*,[*](47 Off. Gaz., 2917), we have held that the adjudication of land in a registration or cadastral case does not become final and incontrovertible until the expiration of one year after the entry of the final decree; 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 set aside the decision or decree and adjudicate the land to another party.

In the present case, at the time the petition for review was filed, the decree had not yet been issued. It is, therefore, clear that the petition was filed well within the period prescribed by law (section 38, Land Registration Act). As to the merits of the petition, it would appear that during the hearing of the motion for reconsideration at which the oppositor did not appear and where petitioner Victoriano presented evidence, Victoriano testified and presented documents to show that this lot No. 768 was previously bought by Pedro Capio, father of the three brothers Victoriano, Felix and Agustin from one Mamerta Atienza who, before the sale had held it for about thirty years; that on April 26, 1920, his father Pedro sold the same land to one Alejandro Dris for P800; that on May 5, 1920, Victoriano Capio purchased from the vendee Dris 3/4 of the land for P600, and on October 29 of the same year Victoriano again bought the remainder from Dris for P350; that Victoriano was the only one who filed his claim in the cadastral proceedings for lot No. 768, and that at the hearing he was the only one who appeared and claimed the land. Furthermore, the petition for reopening of the case filed by Victoriano on January 7, 1947, bears the written conformity of the heirs of his brother Agustin Capio, so that the only one opposing this petition is Fernando Capio, the only heir of his brother Felix Capio.

Finding the order appealed from to be in conformity with law, the same is hereby affirmed with costs against the appellant. We notice however from the order of the trial court of October 20, 1950, which we have reproduced above that it entertained the belief that there was no further need for a hearing as to the ownership of the lot No. 768, because said hearing had already been held and presumably the court was convinced that the lot properly belonged to petitioner Victoriano Capio. The record, however, shows that this hearing was held in connection with the motion for reconsideration. Moreover, said hearing was held in the absence of oppositor Fernando Capio, he perhaps believing that it was not a trial on the merits of the case. The trial court is therefore directed to hold a

regular and formal hearing of the case with notice to both parties where evidence as to the ownership, possession, etc. of the lot and its improvements may be presented and thereafter a decision shall be rendered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[*] 85 Phil., 256.

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