

**FORTUNATO MARQUIALA, VICTORIA VDA. DE MARQUIALA,
BRIGIDA MARQUIALA, AND VIRGINIA MARQUIALA PATANGAN,
PETITIONERS, VS. HON. FILOMENO YBAÑEZ, JUDGE OF THE COURT
OF FIRST INSTANCE ...**

G. R. No. L-6103. April 17, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for prohibition with preliminary injunction seeking to enjoin the respondent Judge from enforcing and carrying out the writ of possession issued by him on June 26, 1952. The writ of preliminary injunction was granted upon petitioners filing a bond in the amount of P300.

Inocentes Marquiala, predecessor-in-interest of petitioners, purchased a parcel of land known as lot No. 3076 from Sofronio Redulla on October 12, 1925 under a pacto de retro sale, which was later made absolute on January 31, 1937.

When cadastral proceedings were instituted in the municipality of Dipolog, Zamboanga, sometime in 1941, Romualdo Gonzales, predecessor-in-interest of respondents, applied for the registration of the parcel of land bought by him from the same owner, Sofronio Redulla, but in so doing, instead of referring to it as lot No. 3120, which is the land he actually purchased, he erroneously designated it as lot No. 3076.

Sofronio Redulla filed his opposition to this application, but because of the misrepresentation made by Romualdo Gonzales to the effect that the lot he was applying for was the same lot he purchased from him in 1926, Redulla withdrew his opposition.

Inocentes Marquiala did not file his answer to the application because it was his understanding with Sofronio Redulla that the latter would file the same and would secure the corresponding title on said lot in the name of Marquiala.

On August 30, 1941, decision was rendered adjudicating lot No. 3076 to Romualdo Gonzales, but because Inocentes Marquiala was not given any notice of said decision he was not able to file a motion for its reconsideration within the period prescribed by law.

On June 17, 1952, or after a lapse of eleven (11) years from the date of rendition of the judgment, the heirs of Romualdo Gonzales filed a motion for the issuance of a writ of possession in order that they may be placed in possession of the land adjudicated to their deceased father. Petitioners herein filed a written opposition to this motion claiming to be the real owners of the land, but the court overruled their opposition and granted the motion on June 26, 1952. Their motion for reconsideration having been denied, they interposed the present petition for prohibition.

Respondent, in their answer, contend that the decision of the cadastral court dated August 30, 1941 adjudicating to

Romualdo Gonzales lot No. 3076 has long become final and executory and, therefore, the respondent judge did not err, nor abuse his discretion, in ordering the issuance of a writ of possession in favor of respondents.

It appears that Inocentes Marquiala bought the land in question known as lot No. 3076 from Sofronio Redulla on January 31, 1937. This land is situated in the municipality of Polanco, Province of Zamboanga, and has an area of one-half hectare. It is a riceland. It also appears that the land purchased by Romualdo Gonzales from the same owner was known as lot No. 3120, with an area of 527 square meters, and the only improvements thereon consisted of coconuts, mangoes, cacao and lanzones. Lot No. 3076 was originally sold to Inocentes Marquiala in 1925 and since then it remained in his possession, or in that of his heirs, and taxes thereon had been paid up to 1952. Lot No. 3120, on the other hand, was sold to Romualdo Gonzales in 1926 and since then it also remained in his possession, or in that of his heirs and, according to the court, their possession had been for a period of more than fifty years. But when cadastral proceedings were instituted in the Province of Zamboanga, Romualdo Gonzales applied for the registration of the land which he erroneously referred to as lot No. 3076. That a mistake was committed in the designation of the lots is clear from the fact that the evidence, both oral and documentary, adduced by Romualdo Gonzales to establish his title pertained to lot No. 3120 as may be seen from a perusal of the decision of the cadastral court. Indeed, in this decision, the court said:

"The possession of the herein claimant, together with his predecessors-in-interest, has been public, peaceful, continuous, adverse, and in the concept of owner for a period of more than fifty years. The lot is improved to coconuts, mangoes, cacao and lanzones, and taxes have been paid thereon up to 1941." (Appendix D.)

If the heirs of Romualdo Gonzales, who are now the respondents herein, had been in actual possession of the land for so long a time, why now seek for a writ of possession? This lends cogency to the claim that they merely want to take advantage of the mistake committed by the court, through the misrepresentation of Romualdo Gonzales, in adjudicating to him lot No. 3076 instead of lot No. 3120.

The record shows that while the decision of the cadastral court dated August 30, 1941 has already become final, no final decree has so far been issued by the office of the general land registration as required by law. (Act No. 496.) Under section 38 of this Act, any person who has a title to, right, or interest in, the property and who believes that he has been deprived thereof by reason of fraud, may file a petition for review of the decree of registration within a period of one year from the issuance thereof (*Apurado vs. Apurado*, 26 Phil., 581). And in cadastral cases it is the practice to compute this period from the receipt of the notice of adjudication prepared by the general land registration office (*Henson vs. Director of Lands*, 55 Phil., 586). Inasmuch as this adjudication has not so far been made, because no final decree has as yet been issued, petitioners herein can still ask for a review of the decision of the cadastral court on the ground of fraud, and in our opinion, the written opposition interposed by petitioners to the petition for the issuance of the writ of possession, as well as their amended motion for reconsideration dated July 7, 1952, wherein they asked for the setting aside of the original decision setting forth facts constituting fraud, have the effect of a petition for review which should have been entertained to give the herein petitioners an opportunity to prove their title to the property in question. Considering the circumstances unfolded in the present case, justice and equity require that petitioners be given this opportunity in order that the error committed may be corrected.

Petition is hereby granted, with costs against respondent heirs of the late Romualdo Gonzales.

Paras, Feria, Pablo, Bengzon, Montemayor, Reyes and Jugo, JJ., concur.
Tuason, J., concurs in the result.

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