

REAL MONASTERIO DE SANTA CLARA, APPLICANT AND RESPONDENT, VS. PANFILO VILLAMAR ET AL., RESPONDENTS AND PETITIONERS.

G.R. No. 11399, February 02, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is a petition to compel the Court of Land Registration to sign and approve a bill of exceptions duly prepared and offered for approval by the respondents in that court.

The facts are:

The Court of Land Registration ordered the registration, in favor of the applicant, of title to certain land in a proceeding in which there were 28 respondents, petitioners here, who claimed to own the lands described in their respective answers to the application. Appeals were taken by the 28 respondents. The Supreme Court held that the appeals were well taken and ordered the exclusion from the decree of registration of the lands claimed by the respondents. The case was returned with instruction to make a new survey and plan of applicant's lands, after excluding those of the respondents, and to decree the registration of the title to the lands remaining after such exclusion. The land court carried out the instructions of this court. A new plan was made, duly approved after notice to the respondents, and the decree of registration entered.

The petitioners in this case now desire to appeal from that decree asserting, as the ground of the appeal, the fact that they were not given an opportunity to determine whether the new plan was correct or not, and, accordingly, whether, by its lines, it gave them all the land which this court gave them on the appeal.

We have no doubt about the right to appeal from a decree entered in the manner and under the circumstances described. Certainly, if the new plan took from the respondents, or any one of them, any part of the land given them by the Supreme Court, they would be prejudiced in a way which would permit an appeal to this court. (*Cuyugan and Lim Tuico vs. Sy Quia*, 24 Phil. Rep., 567.) But the petitioners do not now contend that they have suffered such an injury. They contend simply that they have not had an opportunity to be heard on that subject. By their own admissions it appears that they were given from the month of March to November to present to the Land Court any grievance which they might have against the new plan, and that they did not take advantage of that opportunity. They offer various excuses why they did not appear at the time or times set by the court for the purpose of giving them an opportunity to offer objections to the new plan; but none of those reasons furnish a ground for declaring that the court abused its discretion in proceeding to the entry of the final decree without their presence. The case is, in effect, one of default either in appearance or in failure to defend and the rules laid down by this court with respect to defaults must apply here. It is clear that the only relief which could be afforded on the appeal prayed for would be to send the case back to the Land Court to give the applicants another opportunity to do what they have already had an opportunity to do. In other words, the appeal would decide nothing but the right of the appellants to have the land surveyed, or to examine the new plan, or do any other thing necessary to

determine whether they would be injured by a decree based on the new plan. In other words, the appeal, if favorable to the appellants, would do nothing more, in effect, than open a default and give them an opportunity to defend themselves.

The question that is presented, therefore, is Will this court reverse a decree based on a default or failure to defend, when no abuse of discretion or error of law has been shown? The question must be answered in the negative. While section 499 [Code Civ. Pro.] requires a court to sign and approve a bill of exceptions, it will not be compelled to do so when it appears from the petitioners' own showing, that the judgment appealed from must be affirmed. Litigation will not be continued when it appears from the showing of the party desiring it that the continuance of the litigation cannot benefit him. Moreover, the petitioners have not shown that, if given the opportunity, they could present a meritorious claim or defense. No error in the new plan is shown or alleged; and it is nowhere claimed that a reversal of the decree would benefit them in any degree. Without such a showing we will not, generally speaking, open a default. (Coombs vs. Santos, 24 Phil. Rep., 446.)

The petition for the writ is dismissed. So ordered.

Arellano, C. J., Torres, Trent, and Araullo, JJ., concur.

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