

**ALFREDO V. DE OCAMPO, APPLICANT AND APPELLANT, VS.
REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLEE.***G.R. No. 19533. October 31, 1963*

Ponente: BAUTISTA ANGELO, J.

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Alfredo V. de Ocampo filed on June 29, 1960 an application for the registration of two parcels of land known respectively as lot No. 817 of the Cadastral Survey of Sagay and Lot No. 2500 of the Cadastral Survey of Escalante, both of Negros Occidental, stating in said application that the Bureau of Public Schools, thru the Division Superintendent of Public Schools, Bacolod City, is claiming said parcels of land.

On December 28, 1960, the court a quo issued an order of general default against the whole world with the exception of the Bureau of Public Schools and one Eugenio Cordero, a mortgagee of the lands, setting the hearing of the petition on January 10, 1961, which was postponed to May 15, 1961.

On May 13, 1961, the court a quo issued an order declaring the Bureau of Public Schools as having waived its claim to the property for its failure to file an answer in the absence of any reasonable excuse, at the same time transferring the hearing to July 6, 1961. The court again *motu proprio* postponed the hearing to August 8, 1961.

On July 27, 1961, the applicant filed a motion to declare the Bureau of Public Schools as having completely abandoned its right to file an opposition and to allow him to present his evidence, but on August 5, 1961, the court a quo issued an order stating in substance as follows: it appearing that the Bureau of Public Schools represented by the Solicitor General has not yet filed its opposition to the petition despite the fact that the hearing was set for August 8, 1961, and the provincial fiscal was required to communicate with the above official to inquire if he is still interested in pressing the claim of the Bureau of Public Schools, postponing again for this purpose the hearing to September 16, 1961, the court warned that if on that date the Solicitor General has not yet filed his opposition, the claim of the Bureau of Public Schools shall be deemed definitely abandoned and the court shall proceed with the hearing of the evidence of the applicant.

On September 7, 1961, the Solicitor General filed the requisite opposition wherein he stated that the lands in question belonged to the Republic of the Philippines by virtue of a legacy made by the late Esteban Jalandoni in favor of the Bureau of Education as evidenced by Transfer Certificate of Title No. 6010. On September 22, 1961, the applicant filed a motion to dismiss the opposition, but it was denied in an order issued on December 18, 1961. This order reads: "Finding the opposition by the Office of the Solicitor General to be meritorious, the order of this Court dated May 13, 1961 is hereby ordered set aside, *motu proprio*, and the hearing of this case is hereby set on January 30, 1962, at 8:30 in the morning."

His motion for reconsideration having been denied, the applicant took steps to appeal from said order. The Solicitor General tried to oppose the appeal thru the Office of the Provincial Fiscal alleging that the order in question was merely interlocutory and is not appealable, but, thru an oversight, the provincial fiscal failed to ask for postponement of the hearing for which reason the opposition of the Solicitor General came late. And so on

February 3, 1962, the court a quo approved the record on appeal, and subsequently denied the motion to dismiss the appeal on the ground that it has already lost jurisdiction over the case.

And on April 13, 1962, the Solicitor General reiterated before this Court his motion to dismiss the appeal on the same ground that the order appealed from is merely interlocutory and not appealable, but this Court deferred action thereon until the case is decided on the merits.

The order subject of the present appeal is quoted hereunder for ready reference:

"Finding the opposition filed by the Office of the Solicitor General to be meritorious, the order of this Court dated May 13, 1961 is hereby ordered set aside, *motu proprio*, and the hearing of this case is hereby set for January 30, 1962, at 8:30 in the morning.'

The order mentioned therein dated May 13, 1961, reads:

"It appearing from the records that on December 28, 1960, which was the initial hearing of this case, the Bureau of Public Schools, represented by the Provincial Fiscal, has not filed an answer to the claim of the petitioner. Following the ruling of the Supreme Court in the case of *Omandan vs. Director of Lands*, 50 Off. Gaz., page 4220, September, 1954, it is to be considered that the Bureau of Public Schools has waived whatever claim over the property and is hereby barred from filing an answer in the absence of any reasonable excuse. (Italic supplied)

As may be seen, both orders are merely interlocutory because they were issued as an incident of the main case. The order of May 13, 1961 was entered into because of the failure of the Bureau of Public Schools to file its answer despite the fact that the case has long been set for hearing for which reason the court barred said Bureau from filing any answer unless a "reasonable excuse" is shown, and acting on the suggestion made by the court a quo that the Solicitor General be inquired as to why he has failed to file his answer in behalf of the government, the Solicitor General lost no time in registering the opposition of the government on September 7, 1961. And on December 18, 1961, the court a quo readily reconsidered its former stand, and admitted the answer of the government. This is the order from which the applicant is now appealing. Verify, this order is merely interlocutory for the same point can still be raised after the case has been decided on the merits.

"An order is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the lower court (*Mejia vs. Alimorong*, 4 Phil. 572; *Insular Government vs. Roman Catholic Bishop of Nueva Segovia*, 17 Phil. 487; *People vs. Macaraig*, 54 Phil. 904). In other words, a final order is that which gives an end to the litigation (*Olsen & Co. vs. Olson*, 48 Phil. 238). The test to ascertain whether an order is interlocutory or final is: does it leave something to be done in the trial court with respect to the merits of the case. If it does, it is interlocutory; if it does not, it is final (*Moran*, *Comments on the Rules of Court*, Vol. 1, 3rd ed. pp. 806-807). A final order is that which disposes of the whole subject-matter or terminates the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined (2 Am. Jur., section 22, pp. 861-862)." (*Reyes vs. De Leon*, G. R. No. L-3720, June 24, 1952)

We find, therefore, no merit in the present appeal. Wherefore, the order appealed from is affirmed. Cost against appellant.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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