

FRED M. HARDEN, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF TAYABAS AND THE GOVERNMENT OF THE PHILIPPINE ISLANDS (THROUGH THE DIRECTOR OF THE BUREAU OF LANDS), RESPONDENTS.

G.R. No. 20933. December 22, 1923

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition, under section 513 of the Code of Civil Procedure, for relief from a judgment rendered by default in a land registration case.

The petitioner alleges that he was the applicant in land registration case No. 20741 of the Court of First Instance of the Province of Tayabas, in which he applied for registration of a parcel of land situated in the barrio of Bundoc, municipality of Mulanay, Province of Tayabas, in which case the Government of the Philippine Islands was the only party opponent; that at the trial of said case the petitioner presented all his evidence, but, at the request of the Government, the trial was continued over the term to enable the Government to present its evidence; that while said registration case was pending, cadastral proceedings were instituted in regard to the district in which the land in question is situated and that said parcel was designated as lot No. 9 in cadastral case No. 6 of the Province of Tayabas (cadastral record No. 362); that in the meantime the petitioner left the Philippine Islands for America and Europe and was absent from the Philippines until a few months ago; that because of the fact that he was so absent, he did not know or learn of the institution of said cadastral case No. 6 and did not receive or read any notice of the trial of the same; that upon his return on or about April 17, 1923, the petitioner learned that the aforesaid lot No. 9 had been declared public land on the ground that no claimant for the same had appeared at the trial of the cadastral case; that from the record of the said cadastral case No. 6 and in the report submitted to the Court of First Instance of the Province of Tayabas by the chief surveyor of the General Land Registration Office, it appears that the parcel of land designated as lot No. 9, was the same land sought to be registered in land registration case No. 20471.

The petitioner prays that the decision in cadastral case No. 6 be reopened and set aside in regard to lot No. 9, that the order of general default be set aside as to the petitioner Fred M. Harden, and that a date be set for the presentation of evidence with respect to the claim of the petitioner.

The respondent in its answer does not deny the facts alleged in the petition, but maintains that the decision in cadastral case No. 6 which "declared and decreed" lot No. 9 of said case public land, must be regarded as a final decree and that it, therefore, cannot be reopened except on the grounds stated in section 38 of the Land Registration Act.

The question raised by the respondent is discussed at length in the cases of the Government of the Philippine Islands vs. Abural (39 Phil., 996); Caballes vs. Director of Lands and Court of First Instance of Laguna (41 Phil., 357) and Sotto vs. Sotto (43 Phil., 688), in all of which cases this court has arrived at conclusions adverse to the

contention of the respondent. That the decision which the petitioner herein seeks to have set aside is not the kind of final decree described in section 40 of the Land Registration Act, is well shown by the fact that no certificate of title would issue directly upon such a decision without the issuance of a formal decree of confirmation and registration.

The record reveals regrettable carelessness or indifference in the trial of as much of the cadastral case as relates to the land in question. The fact that there was another land registration case pending, in which the petitioner claimed the land, appeared in the record of the cadastral case and in the report of the chief surveyor of the General Land Registration Office; it must have been known to the representatives of the Government and should have been known to the trial court. It may further be noted that the petitioner was probably prevented from obtaining a final decision in the first land registration case by the continuance of the trial at the instance of the representative of the Government. For the Government, in these circumstances, to take advantage of the petitioner's absence seems, to say the least, unfair. The petitioner is clearly entitled to the relief demanded and we feel constrained to say that the zeal displayed by the representatives of the Government in endeavoring to prevent the reopening of the case is, in our opinion, wholly misdirected.

The judgment in cadastral case No. 6 of the Province of Tayabas is hereby reopened in regard to its lot No. 9, the order of general default is set aside as to the said lot, and the Court of First Instance of Tayabas is hereby directed to conduct a new trial of the case, giving both parties opportunity to present their evidence. No costs will be allowed in this instance. So ordered.

Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

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