# MARIA EVANGELISTA, SERVILIANA EVANGELISTA AND HER HUSBAND NEMESIO GALANG, PETITIONERS, VS. THE DIRECTOR OF LANDS AND THE JUDGE OF THE COURT OF FIRST INSTANCE OF PAMPANGA, RESPON...

*G. R. No. 21820. March 26, 1924*

Ponente: OSTRAND, J.

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**OSTRAND, J.:**

This is a petition under section 513 of the Code of Civil Procedure to reopen the land registration proceedings in regard to lots Nos. 3376 and 3377 of cadastral case No. 9 of the Province of Pampanga.

Upon the presentation of the petition in this court, the respondents were ordered to answer (not to demur) and, in compliance with the order, the respondent Judge of the Court of First Instance filed an answer disclaiming any interest in the controversy and declaring his willingness to abide by any decision this court may render in the case. The answer of the Director of Lands is in the form of a demurrer to the petition on the ground that it does not state facts sufficient to constitute a cause of action. In view of the fact that this is a summary proceeding, in some respects analogous to one of certiorari, and that the order requiring the respondents to answer is in the nature of an order to show cause, the so-called demurrer must be regarded as an answer or return admitting the facts stated in the petition. (Beech vs. Crossfield, 12 Phil., 555.)

It appears from the record that the petitioners are the owners of a tract of land divided into two parcels by the provincial road from the town of San Fernando to the town of Mexico, Pampanga; that when the cadastral survey was made each of the two parcels were divided arbitrarily into two lots, the parcel on one side of the road being given the lot-numbers 3375 and 3376 and that on the other side being given the numbers 3377 and 3378. Lots Nos. 3376 and 3377 constitute narrow strips along their respective sides of the road and are evidently formed with a view to the future widening of the roadbed. Lots Nos. 3375 and 3378 embrace by far the greater part of the respective parcels in which they are included.

The petitioners were ignorant of the fact that their parcels had been so divided and, therefore, at the trial of the cadastral case filed only two answers, one for lot No. 3375 and the other for lot No. 3378, taking the description of the lots from their tax declarations and describing lot No. 3375 by boundaries so as to include lot No. 3376, and lot No. 3378 so as to include lot No. 3377. But as one of the answers purported to claim only lot No. 3375 and the other claimed only lot No. 3378, the trial court found that no claims had been filed for lots Nos. 3376 and 3377 and declared them public lands.

The decision in the cadastral case is dated April 19, 1919, and an order of general default was entered on the same date. On November 28,1923, the petitioners accidently discovered that the two lots in question had been regarded as unclaimed and were declared public lands. They immediately filed a motion for a new trial in the cadastral case, but the motion was very properly denied by an order dated December 13, 1923, the trial court reserving to them the right to present a petition to this court under section 513 of the Code of Civil Procedure. This petition

was filed on December 9, 1923, thirty days after the discovery of the error complained of.

On behalf of the respondent Director of Lands, it is vigorously argued that the declaration in the decision in the cadastral case that the lots in controversy are public lands is equivalent to a final decree of confirmation and registration and that, therefore, under the doctrine established in the case of Sotto vs. Sotto (43 Phil., 688), the decision can only be reopened in the manner provided for in section 38 of the Land Registration Act (No. 496) and that, therefore, the proceedings prescribed in section 513 of the Code of Civil Procedure are inapplicable to the present case.

This view is manifestly erroneous. The distinction between a final decree of confirmation and registration and an ordinary judgment or decision, is fully discussed in the Sotto Case in which this court says:

" * * * The final 'decree of confirmation and registration' is separate and distinct from the judgment and cannot be entered until at least thirty days after such judgment has been rendered. The contents of this final decree is thus prescribed by section 40 of the Act:

" 'Every decree of registration shall bear the day of the year, hour, and minute of its entry, and shall be signed by the clerk. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife. If the owner is under disability, it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, and other incumbrances, including rights of husband or wife, if any, to which the land or owner's estate is subject, and may contain any other matter properly to be determined in pursuance of this Act. The decree shall be stated in a convenient form for transcription upon the certificates of title hereinafter mentioned.

"As provided in the last sentence of the section quoted, the decree is transcribed literally upon the certificate of title. Section 38 of the Act provides that it shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees.'

"It can readily be seen that such a decree possesses very special characteristics and that it differs not only in form but also in character from the ordinary judgment."

In case of Harden vs. Court of First Instance of Tayabas and Government of the Philippine Islands, p. 577, ante, we said, in relation to the applicability of section 513 of the Code of Civil Procedure to judgments declaring lands public:

"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 order of general default in cadastral case No. 9 of the Province of Pampanga (G. L. R. O. Record No. 145) is hereby set aside in regard to said lots Nos. 3376 and 3377, the judgment as to the same lots is reopened and the Court of First Instance of Pampanga is directed to conduct a new trial of the title to said lots Nos. 3376 and 3377. The persons to whom the title of the lots may be adjudged will pay the proportionate share of the costs and the expenses of survey without any necessity for a readjustment of the costs and expenses taxed against the other lot


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owners in the case. No costs will be allowed in this instance. So ordered.

Araullo, C. J., Johnson, Malcolm, Avanceña, Johns, and Romualdez, JJ., concur.

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