# CIRILO ACEJAS, PETITIONER, VS. ANDRES C. CRUZ, AND THE COURT OF FIRST INSTANCE OF ZAMBOANGA, RESPONDENTS.

*G.R. No. 22740. September 10, 1924*

Ponente: OSTRAND, J.

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**OSTRAND, J.:**

This is a petition for relief under section 513 of the Code of Civil Procedure from a judgment in cadastral case No. 4 of the Province of Zamboanga, awarding lot No. 2750 of said case to the respondent Andres C. Cruz, the petitioner alleging that through a misunderstanding in examining the cadastral plans he did not observe that the lot was a part of lot No. 2751 decreed in his favor in the same case and that he therefore failed to assert his claim to said lot No. 2750 at the trial of the case.

Section 513 of the Code of Civil Procedure reads as follows:

"When a judgment is rendered by a Court of First Instance upon default, and a party thereto is unjustly deprived of a hearing by fraud, accident, mistake, or excusable negligence, and the Court of First Instance which rendered the judgment has finally adjourned so that no adequate remedy exists in that court, the party so deprived of a hearing may present his petition to the Supreme Court within sixty days after he first learns of the rendition of such judgment, and not thereafter, setting forth the facts and praying to have such judgment set aside. The court shall summarily on notice to both parties hear such petition, upon oral or written testimony as it shall direct, and the judgment shall be set aside and a trial upon the merits granted, upon such terms as may be just, if the facts set forth in the complaint are found to be true, otherwise the complaint shall be dismissed with costs."

It appears from the record that the lot in question was indicated on the cadastral plans as land in dispute between the petitioner and the respondent Cruz; that the petitioner appeared at the hearing of the case and expressly relinquished his claim to the lot; and that he received notice of the judgment awarding the land to the respondent Cruz on March 19, 1924, nearly four months before the petition for relief was filed in this court. It is clear that the judgment for which the relief is sought is not a judgment by default and that, moreover, the petition has not been presented within the period prescribed in section 513. Either one of these circumstances is sufficient to defeat the present action.

The petition is dismissed with costs against the petitioner.

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

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