

SISENANDO RIVERA, RUPERTA GONZALEZ, JULIAN PANLILIO AND MARIA RIVERA, PETITIONERS, VS. THE HONORABLE MANUEL V. MORAN, AUXILIARY JUDGE OF FIRST INSTANCE OF TARLAC, THE DIRECTOR O...*G. R. No 24568. March 02, 1926*

Ponente: OSTRAND, J.

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This is a petition for a writ of certiorari. The record shows that in cadastral case No. 9 of the Province of Tarlac, the Court of First Instance in a decision dated September 16, 1922, ordered lots Nos. 1199, 1208, 1209, 1210, 1222, 1223, 1224, 1225 and 1230 registered in the names of Estanislao Garcia and Rafael Llorente. Both the provincial fiscal of Tarlac and the Attorney-General, representing the Director of Lands, filed motions for a new trial which were denied. A bill of exceptions was also presented, but was disapproved by the court on the ground that it had not been filed in time.

Subsequently, Rafael Llorente transferred his interest in the lots to Estanislao Garcia who, on March 7, 1923, mortgaged the land to the petitioners herein for the sum of P10,691. The mortgage was inscribed in the unregistered land register on April 10, 1923.

In the meantime, on February 15, 1923, the Attorney- General presented a petition for review under section 38 of the Land Registration Act, alleging that the adjudication of the land to Garcia and Llorente had been obtained by fraud consisting in fraudulent alterations of the stenographic notes taken in the cadastral case.

On April 25, 1923, the Court of First Instance granted the petition for review, set aside the decision of September 16, 1922, and ordered that the case be reopened and reset for a new trial. The case was assigned for trial on June 15, 1923, but on motion of the respondents Garcia and Llorente, without objection to the jurisdiction of the court, the trial was postponed until further notice.

On July 21, 1925, the herein petitioners, Sisenando Rivera, Ruperta Gonzalez, Julian Panlilio and Maria Rivera, filed a motion in the cadastral case alleging among other things that they had accepted the mortgage herein-before mentioned on the strength of the decision of September 16, 1922; that they were the holders of the mortgage as innocent third parties and in good faith; that by reason thereof, the court had no jurisdiction to grant the petition for review under section 38; and they therefore asked that the court declare itself without jurisdiction and desist from proceeding with the retrial of the case. This motion was denied.

On August 1, 1925, the mortgagees filed the present petition in this court alleging that the Court of First Instance was without jurisdiction to reopen the cadastral case for the following reasons:

(a) That no sufficient notice was given of the hearing of the petition for review filed on February 15, 1923, and heard on the 21st of the same month.

(b) That the respondent, the Director of Lands, in his motion for reconsideration of the decision rendered in the cadastral case, alleged fraud on the part of Estanislao Garcia and Rafael Llorente and, therefore, after having failed to appeal from the order denying said motion, the matter is *res judicata* and he is thereby precluded from availing himself of the remedy of a petition for review under article 38 of the Land Registration Act.

(c) That no final decree in the case having been issued, the petition for review was presented prematurely.

(d) That if the decision of September 16, 1922, is to be regarded as a decree, the petitioners herein having acquired their interest in the land subsequent to said decision are innocent parties and that therefore the remedy provided by section 38 is not available.

- As to the first ground stated, the facts are in dispute, but we think it has been shown by a clear preponderance of evidence that the motion and notice of hearing was served upon Mr. Vicente Francisco, the attorney for Garcia and Llorente in the cadastral case; that said attorney refused to accept service on the ground that he had nothing further to do with the case; and that thereupon copies of the motion and notice of the hearing were forwarded by registered mail to Garcia and Llorente, personally, five days before the hearing. As Mr. Francisco was still the attorney of record for Garcia and Llorente in the cadastral case, an offer of service upon him might well in itself be considered a sufficient compliance with the rules of the Court of First Instance. But in addition thereto, it also appears that Garcia and Llorente, the only respondents in the petition for review, appeared generally before the court through their counsel on several occasions without questioning the jurisdiction of the court and thereby impliedly waived their objections to such defects as there might have been in the service of notice. The herein petitioners not being parties in the cadastral case and not having acquired any interest in the land at the time the petition for review was filed, were not legally entitled to notice.

- The second ground upon which the petition is based is also of no substantial merit. The petition for a review under section 38 is a remedy separate and distinct from a motion for a new trial under section 145 of the Code of Civil Procedure, and in our opinion the right to the remedy is not affected by the denial of such a motion irrespective of the grounds upon which it may have been presented.

- The third ground for the present petition is, perhaps, the most important point in the case. It is conceded that no decree of registration has been entered and section 38 of the Land Registration Act provides that a petition for review of such a decree on the grounds of fraud must be filed "within one year after entry of the decree." Giving this provision a literal interpretation, it may at first blush seem that the petition for review cannot be presented until the final decree has been entered. But on further reflection, it is obvious that such could not have been the intention of the Legislature and that what it meant would have been better expressed by stating that such petitions must be presented before the expiration of one year from the entry of the decree. Statutes must be given a reasonable construction and there can be no possible reason for requiring the complaining party to wait until the final decree is entered before urging his claim of fraud. We therefore hold that a petition for review under section 38, *supra*, may be filed at any time after the rendition of the court's decision and before the expiration of one year from the entry of the final decree of registration.

- The contention that the petitioners must be regarded as innocent purchasers for value within the meaning of section 38 cannot be sustained. They acquired their interest in the land before any final decree had been entered; the litigation was therefore in effect still pending and it appears that they were aware of that fact. In these circumstances, they can hardly be considered innocent purchasers in good faith. It is further to be observed that if we were to consider the land as already registered at that time, the petitioners could have acquired no interest valid as against third parties until their title thereto had been duly entered in the Torrens register in the office of the register of deeds; section 50 of the Land Registration Act provides that "the act of registration shall be the

operative act to convey and affect the land." The inscription in the unregistered land register did not materially improve the petitioners' situation; such inscriptions are without prejudice to third parties with a better right (section 194 of the Administrative Code as amended by Act No. 2837).

From what has been said, it follows that the court below did not exceed its jurisdiction in taking cognizance of the petition for review and in reopening the case.

The petition for a writ of certiorari is therefore denied with the costs against the petitioners. So ordered.

Avancena, C. J., Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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