

PHILIPPINE MANUFACTURING CO., PETITIONER, VS. HONORABLE CARLOS A. IMPERIAL, JUDGE OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.*G.R. No. 24599. September 15, 1925*

Ponente: STREET, J.

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This is an original petition in this court by which the petitioner, the Philippine Manufacturing Co., seeks relief, under section 513 of the Code of Civil Procedure, from an order entered on June 18, 1925, by the respondent judge, Honorable Carlos A. Imperial, of the Court of First Instance of the City of Manila, in the cadastral proceeding G. L. R. O., cadastral record No. 373, whereby a part of lot 35, block No. 3035, covered by transfer certificate of title No. 3936, is alleged to have been improperly adjudged to the respondents named Cabañgis. Upon the coming in of the petition an order was made for the respondents to appear and show cause, if any there be, why the relief prayed for should not be granted. Upon this the respondent judge appeared in person and answered, admitting for the most part the allegations of the petition but denying the petitioner's title to relief upon the facts stated. The Director of Lands also appeared, through the Acting Attorney-General, and admitted all the paragraphs of the petition, with the exception of the allegation that the petitioner is the owner of the entire lot No. 35 as originally registered, and asserted that the portion of the lot designated as lot No. 39 in the cadastral, belongs to the Government of the Philippine Islands, as a part of the foreshore land. This respondent makes common cause with the petitioner in asking that the decree be opened. The respondents bearing the name Cabañgis appeared by their attorney and demurred on the ground that, upon the facts stated in the petition, the remedy provided in section 513 of the Code of Civil Procedure is not appropriate, inasmuch as the petitioner has an adequate remedy by course of appeal from the order against which relief is sought. So far as concerns the problem now presented the case is in about the same position as if it had been submitted on an answer admitting the material facts.

It appears that on July 20, 1912, one Tomas Cabañgis sold and conveyed to the Manila Refining Co. a parcel of land located on the Manila Bay at the end of Calle Velasquez, in the District of Tondo, Manila. The Manila Refining Co. in turn conveyed this property to the Philippine Manufacturing Co., the present petitioner. Not long thereafter the Philippine Manufacturing Co. submitted a petition to the Court of Land Registration for the registration of said land in its name (case No. 8425). In said proceeding the property mentioned was decreed and adjudicated to the petitioner and a certificate of title, No. 3936, was issued to it for said land.

On February 11, 1922, the respondent Director of Lands instituted a cadastral proceeding in the Court of First Instance of the City of Manila, G. L. R. O., Cad. Rec. No. 373, asking that the ownership be determined and title adjudicated to certain land in the Tondo district of the City of Manila, including therein the land which had, as already stated, been registered in the name of the Philippine Manufacturing Co. For the purposes of the cadastral survey, the land included in the petitioner's title, No. 3936, was subdivided into three lots, namely, Nos. 31, 32, and 35, block 3035.

In said cadastral proceeding the Court of First Instance, in the character of a land court, on January 16, 1928, entered a general default as to all unclaimed lots not already covered by Torrens titles. On June 7, 1923, the same court entered a decree with reference to various lots in the cadastral, but it refrained from making any specific adjudication with reference to said three lots, merely noting that these lots had already been decreed in case No. 8425 and that they appeared in the cadastral plan against the name of the Philippine Manufacturing Co.

With respect to lots Nos. 31 and 32, block 3035, no question has arisen, but with respect to lot No. 35, which is in part the subject of the present controversy, the following facts are to be noted: Said lot, as already indicated, is contiguous with the Manila Bay; and in 1916 the Government raised a question as to whether some of the land included in lot No. 35 had been properly registered in the name of the petitioner,—the Government contending that the portion of said lot referred to was foreshore land and had not been covered by the decree. The petitioner admits that it yielded to this contention of the Government and took a lease from the Government covering the land claimed by the latter as foreshore land. Roughly speaking, the entire lot No. 35 is in the form of a quadrilateral, and the portion claimed by the Government as foreshore land comprises approximately the half lying west of a diagonal line drawn from near the southern corner approximately to the northern corner of the same lot.

It further appears that on September 12, 1923, the chief surveyor of the General Land Registration Office informed the respondent judge that lot No. 35 of the cadastral survey should be subdivided', observing that part thereof had not been decreed in the original registration case No. 8425. Pursuant to this information the respondent judge directed the Director of Lands to cause lot No. 35 to be subdivided so as to form a new and separate lot of the portion which should be found not to have been decreed in the registration case. Accordingly a surveyor of the Bureau of Lands made a new plan, subdividing lot No. 35 so as to form two lots, indicated as lot No. 35 new and lot No. 39. Lot No. 35 new comprises the portion of lot No. 35 awarded to the petitioner without question, while lot No. 39 comprises the portion supposedly not included in the registration decree.

The petitioner, doubtless relying upon its Torrens title, made no claim to any part of the original lot No. 35, in the cadastral proceeding and was at no time given any notice of any of the proceedings taken by the court with reference to the subdividing of said lot, nor of the subsequent action taken by the court with respect thereto, except of the decision presently to be mentioned.

It appears, however, that on March 19, 1925, the respondents bearing the name Cabañgis, heirs of Tomas Cabañgis, interposed a claim in the cadastral proceeding with respect to lot No. 39, alleging that they were the owners thereof; and on June 18, 1925, the respondent judge heard the cause on proof submitted by the Cabañgis heirs. As a result of this hearing, the judge found that said heirs had been in possession of said lot No. 39, through themselves and predecessors in interest, for more than forty years, and he accordingly entered judgment awarding said lot to them in equal shares. On June 26, 1925, a copy of this decision was served upon the present petitioner, and on July 17 thereafter the petitioner presented a petition to the respondent judge asking him to set aside his decision of June 18, 1925, in order that the petitioner might come in and make proof of its title to the land. On July 21, 1925, this petition was denied, and the petitioner duly excepted, subsequently tendering a bill of exceptions.

For the further purpose of protecting its rights in the premises the petitioner instituted the present proceeding for relief under section 513 of the Code of Civil Procedure, with the result that the prosecution of the remedy by appeal is dependent upon the outcome of the present proceeding.

Upon the facts above stated the question now to be determined is whether the petitioner has any remedy by which it may procure the order of June 18, 1925, awarding lot No. 39 to the Cabañgis heirs, to be set aside, so that it may

come in and submit proof in support of its alleged title to said lot; and, supposing that it has a remedy, is that remedy to be found in an appeal from the action of the respondent judge on the petition of July 17, 1925, or in the present petition for relief under section 513 of the Code of Civil Procedure?

Our reply to this question is, first, that the case was a proper one for relief in the lower court under section 113 of the Code of Civil Procedure; secondly, that the order of the lower court of July 21, 1925, refusing to set aside the order of June 18, 1925, was an appealable order; and, thirdly, that the present original petition in this court cannot be maintained.

That the situation was such as to justify relief upon motion or petition under section 113 of the Code of Civil Procedure is readily demonstrable. Having in its possession a Torrens certificate of title covering the entire lot No. 35, which included the new lot No. 39, the petitioner was not bound to appear formally as a claimant to said property in the cadastral proceeding. It was the duty of the court to respect that title, of the existence of which the court was fully informed, and no part of said lot should have been adjudicated to another without notification to the petitioner of the hearing. In fact no default has ever been taken against the petitioner with respect to any part of said lot, for all land covered by Torrens titles was expressly reserved from the general default declared by the court on January 16, 1923, and it must be considered that the proceedings taken in this case behind the back of the petitioner were taken against it by surprise and excusable neglect, within the meaning of section 113 of the Code of Civil Procedure.

It will be noted that when the present petitioner interposed its motion of July 17, 1925, asking the lower court to set aside the order which is the subject of complaint, that court still had jurisdiction over the controversy. In *Caballes vs. Director of Lands and Court of First Instance of Laguna* (41 Phil., 357), we held that the remedy by motion under section 113 of the Code of Civil Procedure cannot be invoked in a Court of First Instance for the purpose of obtaining relief from a decree adjudicating title in a land registration or cadastral proceeding after the decree has become final, i. e., final in the sense that the time for appeal has passed and the court has lost jurisdiction over the matter. But as was pointed out in *Larrobis vs. Wislizenus and Smith, Bell & Co.* (42 Phil., 401), there can be no question as to the propriety of a Judge of First Instance giving relief under section 113 in a land case against any order or judgment over which he still retains jurisdiction. The point determined in the first of the two cases above cited was merely that the full six-month period given in section 113 of the Code of Civil Procedure cannot be allowed to extend the power of the court in land cases beyond the natural period of its jurisdiction.

Now it is familiar doctrine in this court that if a Court of First Instance refuses in a proper case to grant relief upon a motion under section 118 of the Code of Civil Procedure, an appeal will lie from such action to this court. The obvious reason is that such a motion is addressed to the original jurisdiction of the court, being always based upon facts not previously the subject of litigation. The right of appeal being clear, it follows that the remedy here sought under section 513 of the Code of Civil Procedure is not available. As was pointed out in the case of *Banco Español-Filipino vs. Palanca* (37 Phil., 921, 948), the proceeding contemplated in section 513 was intended to supplement the remedy provided by section 113; and this court will not entertain a petition under the former section where the aggrieved party has had an opportunity to obtain relief under the last mentioned provision in the Court of First Instance. This consideration is fatal to the maintenance of the present petition.

In the brief for the petitioner reference is made to the case of *Tanedo and Bondoc vs. Judge of First Instance of Tarlac* (44 Phil., 179), where relief was granted under section 513; but an examination of the opinion will show that the existence of the order of default against which relief was there sought was not discovered by the petitioner until long after the Court of First Instance had lost jurisdiction over the matter, and as was said in the opinion of this court, any application to the Court of First Instance for the reopening of the case would have been useless.

Reliance is also placed by the petitioner upon the case of *Director of Lands vs. Santamaria and Javellana* (44 Phil., 594), where this court upon application for the writ of certiorari set aside an order of a Court of First Instance opening a decree over which the court had lost jurisdiction. The court there proceeded upon the ground that the original order had become final and that the order complained of was null and void. That case is not applicable to the situation before us, in which the petition is properly addressed to this court under section 513 of the Code of Civil Procedure, and the jurisdiction of the Court of First Instance to make the order complained of cannot be successfully questioned.

For the reasons stated the demurrer must be sustained, and as the petition suffers from a defect not curable by amendment, an order will be entered dismissing the petition, with costs. So ordered.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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