

**THE PHILIPPINE MANUFACTURING COMPANY, PETITIONER, VS.
HONORABLE CARLOS A. IMPERIAL ET AL., RESPONDENTS.’***G. R. No 24908. March 26, 1926*

Ponente: STREET, J.

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This is an original petition addressed to this court by the Philippine Manufacturing Company under section 513 of the Code of Civil Procedure whereby relief is sought from an order made by the respondent judge in a cadastral proceeding pending before him adjudicating to the respondents bearing the name of Cabañgis a lot indicated in the amended cadastral plan as lot No. 40, block No. 3035. In his return to the order to show cause, the Director of Lands aligns himself with the petitioner so far as respects the prayer for the annulment of the order complained of and the granting of a hearing, but he claims that the lot in question belongs to the Government. A demurrer was at first submitted in behalf of all the respondents except the Director of Lands, but this was overruled by us and an answer was then interposed for them by their attorney, after which the cause was submitted upon an agreed statement of facts and certain additional proof produced by the parties.

On February 4, 1922, the Director of Lands, on behalf of the Government of the Philippine Islands, instituted a cadastral proceeding in the Court of First Instance of Manila for the purpose of procuring an adjudication of the titles to certain lands in the Tondo District of Manila. (G. L. R. 0. Cad, Record No. 373.) Among the properties covered by the preliminary survey in this cadastral were the lots bearing the numbers 7, 8, 9, 31, 32, 35, and S6, all located on a small peninsula in the Tondo District between Estero Vitas and the Manila Bay. The Philippine Manufacturing Company, by virtue of a registration effected many years ago, holds Torrens certificates of title to lots Nos. 31, 32, and 35. By what appears to have been a mistake in the cadastral plan lot No. 35 was made to include some land not really adjudicated to said company in the former registration proceeding. The peninsula referred to appears to be gaining land on its west side from the sea, and this process, even since the date of the survey upon which the cadastral plan was based, has resulted in the making of a new strip on the west side of said peninsula containing an area of about three hectares. This strip is immediately contiguous to lots Nos. 7, 8, 9, 36, and 35, as the latter was originally laid down in the cadastral plan. As the Philippine Manufacturing Company claims the whole of lot No. 35 it results that the new strip is contiguous to land claimed by said company in the cadastral proceeding.

Upon the initiation of the cadastral proceeding publication was duly made as required by law with respect to all land included in the plan, but of course the new strip was not included therein as it has been made since the survey. The cadastral case was originally set for hearing on December 14, 1922, but the date of the hearing was extended by the court to January 16, 1923, when an order of general default was entered as to all unclaimed lots not covered by Torrens titles. Shortly prior to the last mentioned date the court entered a partial decision declaring that lots Nos. 31, 32, and 35 had already been decreed in case No. 8425 and that these lots appeared in the cadastral plan in the name of the Philippine Manufacturing Company. With respect to lots thus previously registered it was ordered that, upon presentation of the existing certificates of title, the necessary orders of

cancellation should be entered and new certificates issued in lieu of the surrendered certificates showing the same limits as the former certificates but in harmony with the descriptions of the cadastral survey.

On April 17, 1925, the attorneys for the Cabañgis respondents, who will hereafter be referred to as the Cabañgis heirs, filed a petition in the cadastral proceeding in which they asserted ownership to the strip of newly made land lying on the shore of the Manila Bay contiguous to and west of some of the lots already specified. In this petition they informed the court that said land had not been included in the cadastral plan and requested that the cadastral plan be amended so as to make this land appear in the plan, to the end that it might be adjudicated to them. Pursuant to this petition the court ordered the Bureau of Lands to amend the cadastral plan so as to include the strip in question. In compliance with said order the Bureau of Lands amended its plan and added to it the questioned lot, indicated as lot No. 40. The actual survey of this lot had been made at the instance of the Cabañgis heirs, and without any previous notice of the survey to the Philippine Manufacturing Company. No notice of the aforementioned survey or of the inclusion of lot No. 40 in the cadastral plan was published in the Official Gazette. Subsequent to the amendment of the cadastral plan in the manner above stated the respondent judge, on July 16, 1925, adjudicated and decreed lot No. 40 to the Cabañgis heirs. More than thirty days thereafter an attorney for the Philippine Manufacturing Company for the first time learned of the adjudication of this lot to the Cabañgis heirs. As the time for an appeal had passed and the court had lost jurisdiction to change the decree, the present petition was filed for relief in this court.

The claim of the Philippine Manufacturing Company to lot No. 40 appears to be based, first, upon an assertion of private ownership in itself by accretion or reclamation; and, secondly, upon rights acquired by it under a lease granted by the Government. In behalf of the Government it is insisted that the land in question is foreshore land.

Upon consideration of the facts above stated it is quite obvious that the respondent judge had no jurisdiction whatever over lot No. 40 in the cadastral case now pending before him and the adjudication of said lot to the Cabañgis heirs by the decision of July 16, 1925, is a mere nullity.

From the agreed statement it is obvious that no publication has ever been made except the initial publication, and this did not include lot No. 40. Publication of course is, one of the essential bases of the jurisdiction of the court in land registration and cadastral cases, and the attempt that was here made to incorporate lot No. 40 into the cadastral was futile. Before a cadastral survey can be amended so as to include land in which no publication has been made, new publication is necessary,—a step essential to the protection of persons interested in the property which is intended to be included. But even if the order amending the cadastral plan had not been wholly void, the facts above revealed would justify the granting of a new trial by this court under section 513 of the Code of Civil Procedure. However, in view of want of publication, it is only necessary here to pronounce the order of July 16, 1925, void, and a new trial is not called for.

The petition is therefore granted, the order of July 16, 1925, is set aside, and the registration of lot No. 40 in the name of the Cabañgis heirs is abrogated. The owner's duplicate certificate, attached as Exhibit 6 (c) to this proceeding, shall be surrendered to the register of deeds of Manila for filing and the word "cancelled" stamped upon it as well as upon the original certificate in the office of the register. The final decree by virtue of which the certificate of title was issued shall be marked "revoked," both in the General Land Registration Office and in the office of the register of deeds. The costs of this proceeding will be paid by the Cabañgis heirs.

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

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