

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF NUEVA ECIJA, THE CHIEF OF THE GENERAL LAND REGISTRATION OFFICE, THE REGISTRAR OF DEEDS O...*G. R. No. 26092. October 04, 1926*

Ponente: OSTRAND, J.

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This is a petition for a writ of certiorari, the petitioner praying that the orders, decrees and certificates of title issued by the respondent court in regard to lot No. 1442 in cadastral case No. 3 of the Province of Nueva Ecija be declared null and void.

The lot in question is situated in the town of Cabanatuan, Nueva Ecija, and embraces an area of 4,453 square meters. It appears from the record that prior to December 4, 1914, Gregorio Crisostomo, the parish priest of Cabanatuan, was the owner of the entire lot. On that date he executed a deed of sale in favor of the spouses Esteban del Rosario and Natividad Tiangco for a portion of the lot, measuring 1,435 square meters. Subsequently, proceedings in the aforesaid cadastral case No. 3 were instituted and it seems that, by agreement between the parties, Father Crisostomo presented a claim to all of lot No. 1442 apparently with the understanding that a conveyance to Esteban del Rosario of the portion purchased by him would be subsequently made. On December 29, 1916, decision was rendered in the cadastral case adjudicating the lot in question, to Father Crisostomo but no final decree was entered until several years afterwards.

On February 15, 1918, Father Crisostomo executed his last will and testament devising all of his lands situated in the Province of Nueva Ecija to the Government of the Philippine Islands for certain benevolent purposes. He died shortly afterwards and on July 22, 1918, Esteban del Rosario and his wife Natividad Tiangco filed a motion in the cadastral case asking that the adjudication of lot No. 1442 be reviewed on the ground that the lot had been conveyed to them by Father Crisostomo prior to the institution of the cadastral proceedings. The motion was duly set down for hearing and notice thereof given the administrator of the estate of the deceased. At the hearing the Government was represented by the Attorney-General's Office and upon an examination of the deed executed December 4, 1914, the representative of that office withdrew all opposition. The motion was granted by order dated November 2, 1918, and in June 1920, a certificate of title for the land was issued in favor of the conjugal partnership of Esteban del Rosario and Natividad Tiangco.

Distribution of the estate of Father Gregorio Crisostomo was made by an order dated October 25, 1921, and on December 3, 1923, the Government represented by special attorney Villanueva filed a petition with the respondent court asking that the order of November 2, 1918, directing the issuance of the final decree in the name of Esteban del Rosario and Natividad Tiangco be set aside. The petition was denied by an order dated December 28, 1923, on the ground that the decision in the cadastral case as to lot No. 1442 was final and could not then be corrected or amended. No further action seems to have been taken until the present petition was filed in June,

1926.

In this petition the Attorney-General on behalf of the petitioner alleges most of the facts above stated and maintains that the order of November 2, 1918, amounted to an amendment of the decision of December 29, 1916, in the cadastral case, and that the Court of First Instance exceeded its jurisdiction in issuing such an order long after said decision became final. The respondents Esteban del Rosario and Natividad Tiangco contend that the land description in the deed of December 4, 1914, is incorrect and that they as a matter of fact purchased all of lot No. 1442 from Father Crisostomo; that therefore the order of November 2, 1918, was not erroneous; that the Government, through its proper representatives having renounced its opposition to said order, waived its claim to any interest in the property and cannot now assert that claim; and that not having appealed from the order and not having brought the present action until eight years after the issuance of the said order, it is guilty of laches and is not entitled to equitable relief.

In our opinion the respondent court did not exceed its jurisdiction in issuing the order of November 2, 1918, directing the General Land Registration Office to issue and enter the final decree in favor of the conjugal partnership of Esteban del Rosario and Natividad Tiangco. The motion upon which the order was issued, set forth facts which if true show fraud on the part of the person to whom the land was originally adjudicated, and were sufficient to justify a review of the decree under section 38 of the Land Registration Act. No final decree had been entered in the case and the motion was therefore presented in time (*Rivera vs. Moran*, 48 Phil., 836). Though the interested parties had notice of the motion, no opposition was offered and while the ruling of the court on the motion may have been erroneous, it was nevertheless clearly within the jurisdiction of the court, and a writ of certiorari to correct that error will therefore not lie.

The evidence now before us indicates that the respondents Esteban del Rosario and Natividad Tiangco were only entitled to a portion of lot No. 1442 and that in claiming, and taking title to, the entire lot they were guilty of constructive fraud. If this be a fact, the remedy would seem to be an action to compel the conveyance to the Government" of the portion of the lot wrongfully held by the said respondents. An action for damages may also lie in such cases, but in the present instance that action is probably barred by the statute of limitations. (Section 55, Act No. 496; *Macapinlac vs. Gutierrez Repide*, 43 Phil., 770; *Roman Catholic Bishop of Nueva Caceres vs. Municipality of Tabaco*, 46 Phil., 271.)

The petition for a writ of certiorari is denied without costs. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, and Romualdez, JJ., concur.

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