

PEDRO RIVERA AND PAULA TUALLA, PETITIONERS, VS. HONORABLE C. CARBALLO, JUDGE OF FIRST INSTANCE OF NUEVA ECIJA, ET AL., RESPONDENTS.*G. R. No. 26130. November 18, 1926*

Ponente: OSTRAND, J.

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This is a petition for relief under section 513 of the Code of Civil Procedure, the petitioners alleging that, through lack of due notification of the trial of the title to lot No. 2733 in cadastral case No. 9 of the Province of Nueva Ecija, they were deprived of the opportunity to assert their claim to the ownership of said lot, and that, as a consequence thereof, the lot was erroneously adjudicated to the respondents Villaroman and Valino.

It appears from the record that both the petitioners and the aforesaid respondents, in due time, filed claims to the lot in question. The two petitioners were living together as husband and wife, but do not appear to be legally married. The matter came up for trial on October 16, 1925, but only the respondents Villaroman and Valino appeared formally. The petitioner Paula Tualla appeared in regard to another lot on the same day and when lot No. 2733 was called for trial, she explained to the court that the petitioner Pedro Rivera was unable to appear by reason of the fact that it was necessary for him to be present in the municipality of San Jose at the induction of his successor in the office of the municipal councilman. The court did not accept this as a valid excuse for the non-appearance of Rivera, declared him in default, and, upon trial, ordered the registration of the lot in the names of the respondents Villaroman and Valino.

Under section 513, supra, relief from judgments by default cannot be granted if the default is due to inexcusable negligence on the part of the petitioner, and it is plain that the petitioner Rivera was guilty of such negligence in allowing his desire to attend at the festivities incident to the induction into office of the new municipal officers of San Jose to outweigh his duty to be present in the court at the trial of his case. The record is conclusive that he had ample notice of the trial and that he could have been present had he so desired. The negligence of the other petitioner, Paula Tualla, is almost equally inexcusable. She claimed to be the owner of an undivided one-half interest in the land, was present in the court when the case was called, and had full opportunity to assert her claim. That she failed to do so was entirely her own fault.

Another reason for denying the petition is that it was not presented within sixty days after the petitioners first learned of the rendition of the judgment by default. The judgment was rendered on October 16, 1925, and the petition was not filed until June 15, 1926. Paula Tualla knew of the declaration of default on the day it was made and Rivera was informed of it shortly afterwards. Copy of the judgment was sent to Rivera by registered mail and received by him on December 16, 1925, according to the registry receipt, Exhibit Z. In these circumstances, this court has no jurisdiction to set aside the judgment.

The petition is denied with the costs against the petitioners jointly and severally. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Johns, Romualdez, and Villa-Real, JJ., concur.

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