

AGAPITA VILLADOS, MATEO GROSPE, JUAN GROSPE, SILVESTRE GROSPE AND ANSELMO GROSPE, PETITIONERS, VS. EGMIDIO SAN PEDRO, JUAN SAN PEDRO AND THE COURT OF FIRST INSTANCE OF NUEVA ECI...*G. R. No. 26323. November 12, 1926*

Ponente: OSTRAND, J.

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This is a petition for a writ of certiorari, the petitioners alleging that the respondent court exceeded its jurisdiction in granting a petition for the review of a judgment in cadastral case No. 6 of the Province of Nueva Ecija, adjudicating to said petitioners lot No. 419 of that case.

It appears from the record that in the year 1908, the respondents San Pedro filed applications for homesteads on certain portions of the lot mentioned. In 1910, the petitioners Grospe instituted proceedings in case No. 7579 of the now defunct Court of Land Registration for the registration of the land in their names, and in the month of April, 1912, a decree was entered in their favor, the corresponding certificate of title being issued on the 29th of the same month. The herein respondents San Pedro filed a petition for review under section 38 of the Land Registration Act, alleging that the petitioners in the registration case had with fraudulent intent failed to state in the petition that Egmidio and Juan San Pedro were occupants of the land in question, and that, as a consequence, no notification of the proceedings had been received by them. The petition for review was granted by a decision of the Supreme Court promulgated March 18, 1915,[1] the case being remanded to the court below for a new trial. Before a new trial was had, the survey for the aforesaid case No. 6 was initiated and the parties agreed to have their claims adjudicated in the cadastral case.

At the hearing of the case the herein respondents San Pedro failed to present their claims to the land in question and did not appear. The herein petitioners did appear and filed their answer, and on July 10, 1918, a decision was rendered ordering the registration of the land in their favor.

On January 3, 1920, Egmidio and Juan San Pedro filed a motion for review of that part of the decision in the cadastral case, which related to lot No. 419, alleging that they had "received no notice of the hearing of said case; that they were not served with copies of the herein petitioners' answer or claim, and received no notice of the decision of the court.

On January 31, 1920, the petition for a review was granted, the order to that effect reading as follows:

"In the next to the last page of proceeding No. 7579 of the abolished Court of Land Registration, there is an agreement dated May 22, 1917, which reads as follows:

" 'Come now the parties through their respective counsel, and by mutual agreement pray the court for the continuance of the case which is set for hearing on the 31st instant, and for a hearing of this case as a part of the cadastral proceeding of Talavera"

"The land in question, which was included in cadastral proceeding No. 6 of the municipality of Talavera as lot No. 419 was surveyed. Trial was held in regard to said lot without any notice having been given to the opponents in proceeding No. 7579, pursuant to the foregoing agreement. Evidence was, therefore, introduced by the applicants Anselmo Grospe et al., the opponents not having been able to introduce their evidence in cadastral proceeding No. 6, and decision was rendered on July 1, 1918, adjudicating lot No. 419 to Agapita Villados and Anselmo Grospe and the latter's brothers. No final decree has been entered up to this time.

"The opponents in that proceeding (7579) now come to the court, alleging fraud and applying for a revision in this proceeding.

"The court is of the opinion that fraud was really committed by the applicants in proceeding No. 7579, not having notified the opponents of the date of the trial and not having mentioned, in their claim filed in the cadastral proceeding, the fact that the land claimed by them was also claimed by the said opponents; and, therefore, it is ordered that a revision be made of the proceeding as to lot No. 419 and that the case be reopened."

No further action was taken neither by the court nor by the parties until over four years later, when the herein respondents, on June 18, 1924, filed a motion in the Court of First Instance praying that the order above quoted be set aside on the ground that the petition for a review had been presented after the expiration of a year from the date of the decision or order for registration, and that, therefore, the court was without jurisdiction to grant the petition; that, moreover, upon the authority of the decision in the case of Ruiz vs. Lacsamana (32 Phil., 650), the failure to personally notify the respondents of the hearing of the cadastral case was not fraud and did not constitute sufficient ground for granting the review. On October 16, 1924, another motion was filed in which the petitioners reiterated the allegations of the motion of June 18, with the additional allegation that the respondents did not claim title to the land, and that, therefore, the Director of Lands was the real party in interest; that said Director of Lands had been duly notified, and that he appeared in the cadastral case. Both motions were denied in an order dated November 5, 1924.

The present action was not brought until July 31, 1926. The petitioners allege most of the facts hereinbefore stated and contend that the petition for the review of the decision of July 10, 1918, was presented on January 3, 1920, more than one year after the promulgation of said decision, and that, therefore, under the provisions of section 38 of the Land Registration Act, the court had no jurisdiction to entertain said petition. It is further contended that no sufficient grounds were shown for the granting of the petition for review, and that, consequently, the order of January 31, 1920, granting the review was contrary to law, null and void.

The respondents, in their answer, do not specifically deny the allegations of the petition, but argue that the petition for the review of the decision of July 10, 1918, was presented in time inasmuch as no final decree had been entered and that, in any event, the herein petitioners having failed to appeal from the order granting the review, that order has become final and its validity cannot now be questioned.

The questions at issue may be disposed of in very few words. In the case of Rivera vs. Moran (48 Phil, 836), this court held that a petition for a review under section 38 of the Land Registration Act may be presented at any time after the rendition of the judgment or decision of registration and before the expiration of one year from the entry of the final decree. The respondents' petition for review was therefore presented in time. As to the effect of the failure of the herein petitioners to appeal from the order granting the review, it is to be noted that the order was not a final determination of the title to the land and that, while an appeal from it might possibly have been admitted, the better practice was undoubtedly to except to the order and await the final determination of the controversy before bringing the matter up to this court on appeal. The petitioners having taken due exception, there is nothing to prevent them from raising the question of the illegality of the order for review on appeal from a

possibly adverse decision rendered upon the termination of the new trial ordered by the court below. Such appeal being an adequate remedy and the petitioners not having lost their right thereto, certiorari will not lie.

The petition in the present case is therefore denied with the costs against the petitioners. So ordered.

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

[1] G.R. No. 8812, Grospe vs. San Pedro and San Pedro, not reported.

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