

**BASILIA CLEMENTE AND HER HUSBAND, ANGEL PICHAY,
PETITIONERS, VS. CAYETANO LUKBAN, JUDGE OF FIRST INSTANCE
OF TARLAC, AND FORTUNATO DOMINGO, RESPONDENTS.**

G.R. No. 30190, November 14, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of certiorari, the petitioner, Basilia Clemente, alleging in substance that on July 30, 1924, in cadastral case No. 37 of the Province of Tarlac, the Court of First Instance adjudicated to her lot No. 10642; that by virtue of the judgment, a final decree for the lot was entered on January 8, 1927, and a certificate of title issued to her on the same day; that one year and four months after the entry of the final decree, the respondent Fortunato Domingo filed a motion in said cadastral case for the reopening of the decree in regard to the aforesaid lot No. 10642; that the respondent judge, in a resolution dated June 7, 1928, granted said motion and, setting aside the decision of July 30, 1924, in regard to said lot, ordered a new trial; that upon being informed of said resolution, the petitioner filed a motion in the Court of First Instance asking that the proceedings for the reopening of the case be annulled and set aside on the ground that the motion for a new trial presented by the respondent Fortunato Domingo was filed too late and was barred under the provisions of section 38 of the Land Registration Act, but that the respondent judge persisted in proceeding with the new trial. The petitioner therefore prays that a writ of certiorari issue and that, upon hearing, the resolution of the respondent judge, granting a new trial, be declared null and void and beyond the jurisdiction of the court.

The respondents in their answer allege that the petitioner obtained the decree of the registration of the aforesaid lot No. 10642 through fraud; that the respondent Fortunato Domingo is the real owner of the lot and is in possession thereof; that the petitioner brought an action in ejectment against him in the Court of First Instance of Tarlac and that said action was decided in favor of the respondent Fortunato Domingo and against the petitioner herein; that the petitioner well knew that the lot in question was the property of the respondent Fortunato Domingo and that it had been adjudicated to him prior to the land registration proceedings.

The respondents further allege that Fortunato Domingo in March, 1924, filed a claim for lot No. 10642 in cadastral case No. 37 and that in the month of May of the same year made proof of his ownership of said lot before the deputy clerk, Guillermo Matulac Recio, who had been appointed referee by Judge Mariano Rosauro, the presiding judge in the cadastral case; that later on he found to his surprise that the certificate of title had been issued in favor of the herein petitioner; that upon investigation it was found that his answer or claim, as well as the title documents filed in the aforesaid cadastral case in regard to said lot, had disappeared and that in the memorandum of the judge in regard to the lot, the name of Fortunato Domingo did not appear.

Assuming that the respondents, in their answer, have told the whole truth and nothing but the truth, it is, nevertheless, obvious that the respondent judge exceeded his jurisdiction in reopening the final decree one year and four months after it was entered; section 38 of the Land Registration Act provides that "such decree shall not

be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal herein before provided. But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree."

The proper remedy of the respondent claimant of the land is to bring an action against the herein petitioner for a transfer or conveyance of the title or for damages. (Land Registration Act, sec. 55; *Severino vs. Severino*, 44 Phil., 343; *Jalandoni vs. Carballo*, 48 Phil., 857; *Estrellado and Alcantara vs. Martinez*, 48 Phil, 256.)

The petition is granted, and the proceedings for the reopening of the aforesaid final decree are hereby declared null and void and beyond the jurisdiction of the respondent judge, without prejudice to the right of the respondent claimant to bring an action for a transfer of the title to the land in question or for damages. No costs will be allowed in the present case. So ordered.

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

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