

**PILAR ANTIPORDA, AND HER HUSBAND JUAN ARADA, PETITIONERS,
VS. EMILIO MAPA, JUDGE OF FIRST INSTANCE OF PASIG, RIZAL,
CLEMENTE ANTIPORDA, TOMAS ANTIPORDA AND JUAN
ANTIPORDA, RESPO...**

G.R. No. 34118. October 28, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

This is a petition for a writ of certiorari to set aside an order for the reopening of a final decree in a land registration case under section 38 of Act No. 496.

On July 17,1928, the respondent judge ordered the registration of three parcels of land in favor of the herein petitioner, Pilar Antiporda. On October 27, 1928, final decree of the registration was issued in the name of the aforesaid judge by the chief of the General Land Registration Office in his capacity as ex-officio chief clerk of court in land registration matters. On November 9, 1929, Clemente, Tomas, and Juan Antiporda, relations of Pilar Antiporda, filed a petition for review of the decree on the ground that Pilar Antiporda obtained the registration by fraud, well knowing that she was not the only heir and successor of the property in question and that she deliberately, fraudulently, willfully, and maliciously excluded the rest of her coheirs, Juan and Tomas Antiporda, from the original application of registration, contrary to the understanding previously had between them.

On March 31,1930, the respondent judge, upon the aforementioned petition for revision, issued an order setting aside the decision and the decree rendered and issued in said land registration case on July 17, 1928, and October 27, 1928, respectively, in regard to lots Nos. 1 and 2 and likewise set aside his order of general default with respect to Juan, Tomas, and Clemente Antiporda. Thereupon Pilar Antiporda and her husband, Juan Arada, filed the present petition in this court setting forth the facts hereinbefore stated, and contending that the respondent judge exceeded his jurisdiction in reopening the final decree in the aforesaid land registration case, inasmuch as the application for review was made more than one year after the issuance and entry of said decree.

The respondents insist that as the decree was not inscribed in the office of the register of deeds of the Province of Rizal until November 21, 1928, the filing of the petition for review on November 9, 1929, was made within the year allowed by section 38 of the Land Registration Act for the reopening of the final decree on the ground of fraud.

It is very evident that the respondents confuse the entry of the final decree with its inscription in the office of the register of deeds, and though the matter is fully discussed in the case of *De los Reyes vs. De Villa* (48 Phil., 227),

we shall nevertheless present a brief synopsis of the salient points of the present case.

The decree mentioned in section 38 of the Land Registration Act is described in section 40 of said Act and is usually referred to as the "final decree." The chief of the General Land Registration Office is ex-officio chief clerk of court in matters related to registration of land (sec. 176, Administrative Code). After the decision of the court granting an application for the registration of land, has become final, the presiding judge will immediately forward a copy of the decision to the chief of the General Land Registration Office (sec. 21 of Act No. 2347) accompanied by an order directing the preparation and issuance of the final decree. The decree is thereupon prepared by the chief surveyor in accordance with the provisions of section 40 of the Land Registration Act (sec. 177, Administrative Code). After the decree is prepared, it is signed by the chief of the General Land Registration Office in the name of the judge who decided the case in favor of the applicant, and the decree is then entered and filed in the General Land Registration Office and there remains. The chief of that office thereupon forwards a certified copy of the final decree, under the seal of the court, to the register of deeds of the province or city in which the property is situate (sec. 21, Act No. 2347; sec. 41 of Land Registration Act) and upon receiving the copy it is then the duty of the register of deeds to issue the certificate of title on payment of the corresponding fees.

That the "entry of the decree" as expressed in section 38 of the Land Registration Act means the entry in the office of the chief of the General Land Registration Office in his capacity as chief clerk cannot be disputed, if there is any doubt on that point, it is sufficient to examine the first two clauses of section 41 of the Land Registration Act which read as follows:

"Immediately upon the entry of the decree of registration the clerk shall send a certified copy thereof, under the seal of the court, to the register of deeds for the province, or provinces, or city in which the land lies, and the register of deeds shall transcribe the decree in a book to be called the 'Registration Book/ in which a leaf, or leaves, in consecutive order, shall be devoted exclusively to each title. The entry made by the register of deeds in this book in each case shall be the original certificate of title, and shall be signed by him and sealed with the seal of the court."

As may be seen there is a marked distinction between the entry of the decree and the entry of the certificate of title; the entry of the decree is made by the chief clerk of the land registration and the entry of the certificate of title is made by the register of deeds. The former entry is the one referred to in section 38 of the Land Registration Act and the entry of the certificate of title is not there mentioned.

The aforesaid petition for a review of the registration of the land in question was presented one year and thirteen days after the entry of the final decree, and it is obvious that it was presented too late.

As a second defense, the respondents argue that the petitioners have an adequate remedy by appeal and that consequently certiorari is not the proper remedy. This argument is based on our decision in the case of Villados vs. San Pedro (49 Phil., 596), but on consideration it is evident that that case is not in point. There the petition for the review of a final decree was presented in time. The case was reopened, and the respondents filed a petition in this court for a writ of certiorari, alleging that the respondent judge had exceeded his jurisdiction in granting the petition for a review. In deciding the petition for certiorari, this court said:

"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."

In the present case, the petition for a review was filed too late and it would, of course, be useless to proceed with a new trial of the case. In such circumstances, a writ of certiorari is properly applied.

The petition is granted and the order of the respondent judge dated March 31, 1930, is hereby declared null and void, and the decision of July 17, 1928, as well as the final decree issued on October 27, 1928, is declared valid and in force. Without costs. So ordered.

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

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