

BALTAZAR MORALES, PETITIONER, VS. ISIDRO PAREDES, JUDGE OF FIRST INSTANCE OF PANGASINAN, ET AL., RESPONDENTS.*G.R. No. 34428. December 29, 1930*

Ponente: OSTRAND, J.

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Pedro, Rosendo, and Prudencio Gavino applied for the registration of a parcel of land situated in the poblacion of the municipality of San Quintin, Pangasinan, and on June 23, 1930, the application was granted and a decision to that effect rendered. Baltazar Morales now claims to be the owner of the land, but he was not advised of the registration proceedings and was not informed thereof until the early part of the month of September, 1930. He thereupon filed a motion on September 18 in the Court of First Instance of Pangasinan for the reconsideration of the decision of June 23 and as far as the record shows the motion may still be pending. Without dismissal of the motion mentioned, the movant brought the present action praying that the aforesaid decision be set aside and that a new trial be granted in accordance with section 513 of the Code of Civil Procedure.

The plaintiff has unfortunately mistaken his remedy. Assuming without deciding that the allegations of fraud in his complaint are true, the proper remedy is to petition for a review under section 38 of the Land Registration Act. The plaintiff's contention that such review cannot be had until the final decree has been issued is not in accordance with the view adopted by this court. In the case of *Rivera vs. Moran* (48 Phil, 836), the court said:

"It is conceded that no decree of registration has been entered and section 38 of the Land Registration Act provides that a petition for review of such a decree on the grounds of fraud must be filed 'within one year after entry of the decree.' Giving this provision a literal interpretation, it may at first blush seem that the petition for review cannot be presented until the final decree has been entered. But on further reflection, it is obvious that such could not have been the intention of the Legislature and that what it meant would have been better expressed by stating that such petitions must be presented before the expiration of one year from the entry of the decree. Statutes must be given a reasonable construction and there can be no possible reason for requiring the complaining party to wait until the final decree is entered before urging his claim of fraud. We therefore hold that a petition for review under section 38, *supra*, may be filed at any time after the rendition of the court's decision and before the expiration of one year from the entry of the final decree of registration."

In the case of *Plurad vs. Alcaide*, G. R. Mo. 27545, there is an indication that there can be no review until the final decree has been issued. This indication is only obiter dictum and was not voted upon by the court; the determination of the case rested on other grounds and the dictum was not taken into consideration by the court as a whole. A dictum not necessarily involved in the case, lacks the force of an adjudication and should not ordinarily be regarded as such.

The plaintiff's view of the extent of actions under section 513 of the Code of Civil Procedure is erroneous. This court has no jurisdiction to reopen judgments under that section if other adequate remedies are available, and such remedies are not lacking in the present case.

The case is therefore dismissed with the costs against the plaintiff. So ordered.

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

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