

**MARIA ELVIÑA, PETITIONER, VS. ENRIQUE V. FILAMOR, JUDGE OF FIRST INSTANCE OF NUEVA ECIJA, AND POTENCIANA C. DOMINGO, RESPONDENTS.***G. R. No. 36219. November 24, 1931*

Ponente: VILLA-REAL, J.

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This petition for certiorari was filed by Maria Elviña against Enrique V. Filamor, as Judge of the Court of First Instance of Nueva Ecija, and Potenciana C. Domingo, praying for the reasons stated that this court set aside (1) the order of the respondent judge dated July 29, 1931, which vacated the decision rendered on March 16, 1931, declaring Potenciana C. Domingo in default, and adjudicating lots Nos. 1 and 2 of registration proceeding No. 1970, G. L. R. O. Record No. 35645 of the Court of First Instance of Nueva Ecija to the petitioner, Maria Elvina; (2) the order of June 23, 1931, denying the motion for a reconsideration of the aforesaid decision; (3) the order requiring the issuance of the decree of confirmation and registration dated June 23, 1931; and (4) the order of July 15, 1931, denying the motion for reconsideration of said order and ordering the reopening of the case so that the respondent Potenciana C. Domingo might file an answer. The relevant facts necessary to decide the point of law raised on appeal are as follows:

The land involved in this proceeding was already litigated by the petitioner, Maria Elviña and the respondent, Potenciana C. Domingo in civil case No. 3265, which was decided in favor of the latter and in registration proceeding No. 1644, G. L. R. O. Record No. 28563 of the Court of First Instance of Nueva Ecija (Exhibits D, E, and F).

The same land is involved in registration proceeding No. 1934, G. L. R. O. Record No. 35086, which is still pending, Potenciana C. Domingo, the respondent herein, being the applicant, and Maria Elviña, the petitioner herein, the opponent.

On September 13, 1929, the petitioner filed an application for the registration of a parcel of land comprising lots Nos. 1 and 2 of registration proceeding No. 1970, G. L. R. O. Record No. 35645 (Exhibit A-petitioner) which was amended on December 8, 1930 (Exhibit C). That application was set for hearing on March 16, 1931, 8.30 a. m., before the Court of First Instance of Nueva Ecija. After due publication, the case came up for hearing on the date indicated, i. e., March 16, 1931, and there being no opposition to the application, the court entered an order of general default (Exhibit F-petitioner), and corresponding decision, adjudicating said lots and decreeing their registration to the petitioner Maria Elvina (Exhibit G).

On April 23, 1931, or thirty-eight days after that decision was promulgated, Potenciana C. Domingo filed a motion to set it aside on the ground that she had not been given notice of the pendency of said registration case (Exhibit H).

On June 23, 1931, Judge Buenaventura Ocampo, then presiding over the Court of First Instance of Nueva Ecija, denied the motion and ordered the issuance of the final decree of confirmation and registration of the petitioner's title to said land (Exhibits I and J) which up to that time had not been issued.

On July 9, 1931, Potenciana C. Domingo moved for the reconsideration of the said order, dated June 23, 1931, denying her petition to set aside the decision rendered on March 16, 1931, which motion had been denied by the respondent judge on July 15, 1931 (Exhibits K and L).

On July 16, 1931, the respondent Potenciana C. Domingo filed another motion under oath, amended on July 23, 1931, by another, praying the respondent judge to reconsider his orders dated June 23d and July 15, 1931, alleging, among other grounds, besides those set up in the preceding motions, that she was the owner of the land registered in the petitioner's name in registration proceeding No. 1970, G. L. R. O. Record No. 35645 which land had already been litigated by them in civil case No. 3265 and registration proceeding No. 1644, G. L. R. O. Record No. 28563, the case being decided in favor of the respondent, and in registration proceeding No. 1934, G. L. R. O. Record No. 35086, which is still pending; and she there further alleged that she had been in possession of said land for over twenty-five years publicly, peacefully, continuously, and adversely (Exhibits 1 and 2).

On July 29, 1931, the respondent judge granted the respondent's amended motion filed on July 23, 1931, and entered the order now sought to be set aside, revoking the order of general default entered on March 16, 1931 (Exhibit M). The petitioner excepted to this order on August 24, 1931.

The only question to be decided here is whether the respondent judge acted without jurisdiction in issuing the order of July 29, 1931, setting aside the decision of March 16, 1931, which declared a general default and adjudicated to the petitioner Maria Elvina lots Nos. 1 and 2 of registration proceeding No. 1970, G. L. R. O. Record No. 35645 of the Court of First Instance of Nueva Ecija, and ordering their registration in her name.

The decision of March 16, 1931, mentioned heretofore was rendered after the respondent Potenciana C. Domingo had been declared in default, and the various motions which she had filed to set aside that decision and annul the default against her were based upon her not having been personally notified of the pendency of the registration proceeding in the course of which it was rendered, while the petitioner Maria Elvina was aware that she was in possession of the land concerned in that case, and notwithstanding the fact that they had previously litigated the property, when the respondent won the case; the motions had an affidavit of merits attached. Although that decision became final because Potenciana C. Domingo did not appeal from it, she still was entitled to ask to be relieved from it on the ground that fraud had been employed in procuring it, and that it was the result of surprise or excusable negligence, providing she requested such relief within a reasonable time, not exceeding six months from the date of the decision. (*Larrobis vs. Wislizenus and Smith*, Bell & Co., 42 Phil., 401; *Philippine Manufacturing Co. vs. Imperial*, 47 Phil., 810; *Philippine Manufacturing Co. and Government of the Philippine Islands vs. Cabangis*, 49 Phil., 107.)

The decision mentioned above was dated March 16, 1931, and the motions to set it aside were filed within the period of six months thereafter. Although on June 23, 1931, the order for the issuance of the decree of confirmation and registration had already been issued, and as that order was not put into effect and the chief of the General Land Registration Office has not yet issued the proper decree, which would have made the order aforesaid final, section 38 of Act No. 496 is not yet applicable where it provides that the decree of confirmation and registration may be reviewed only within the year following its issuance, and upon the ground of fraud. (*De los Reyes vs. De Villa*, 48 Phil., 227.)

Inasmuch as the decree of registration had not been issued when the motions were filed and the respondent judge entered the order of July 29, 1931, and as the six-month period fixed in section 113 of the Code of Civil Procedure, reckoned from the date of the decision, had not elapsed when Potenciana C. Domingo filed the motions, the respondent judge acted with jurisdiction in entering the order of July 29, 1931.

In view of the foregoing consideration, we are of opinion and so hold that an order of default and the decision

wherein said order is included, entered in a registration proceeding, may be set aside even after thirty days from its promulgation, by reason of fraud, surprise, or excusable negligence, if a motion is filed to that effect within six months from the date of the decision, under section 113 of the Code of Civil Procedure, and before the chief of the General Land Registration Office issues the decree of registration in pursuance of the order to that end.

Wherefore, the petition for the writ of certiorari is hereby denied, with costs against the petitioner. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Imperial, JJ., concur.

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