

JUANA MELOCOTONES, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF TARLAC AND SINFOROSA SAPAD, RESPONDENTS.

G. R. No. 37318. September 08, 1932

Ponente: BUTTE, J.

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BUTTE, J.:

This petition for a writ of certiorari involves the right of registration to lot No. 1729 in the municipality of Gerona, Province of Tarlac. It appears that the Court of First Instance of Tarlac, on January 30, 1926 in cadastral case No. 22, rendered a judgment which is in part as follows:

"Lote 1729.-Este lote esta reclamado por Francisco Daliva, de una parte, y de otra, por las hermanas Sinforosa y Toribia de apellido Sapad. La vista de este lote fue senalada para anteayer 28 del actual y las reclamantes Sinforosa y Toribia no comparecieron. Fue transferida la vista para ayer y tampoco las reclamantes comparecieron y se transfirio para hoy con la advertencia al hermano de dichas reclamantes llamado Donato Sapad de que deben comparecer las mencionadas reclamantes por si o mediante abogado en este dia, de otro modo el lote 1729 seria visto ex parte. Llamado a vista hoy dicho lote 1729, no comparecieron las hermanas Sinforosa y Toribia de apellido Sapad, por lo que se ordeno la practica de las pruebas de Francisco Daliva.

"Se ha probado que Francisco Daliva se halla en posesion del lote 1729 hace 40 anos en concepto de dueño; que lo adquirio por herencia de su difunto padre Eustaquio Daliva, que sus hermanos ya han recibido sus respectivas participaciones en la herencia dejada por Eustaquio Daliva.

"En su virtud, con desestimacion de la reclamacion de las reclamantes Sinforosa y Toribia de apellido Sapad, se ordena el registro e inscripcion del lote 1729 a favor de Francisco Daliva, de 61 anos de edad, casado con Juana Melocotones, como bienes suyos privativos.

"Asi se ordena."

On February 23, 1926, Francisco Daliva died intestate leaving his widow Juana Melocotones who is the petitioner.

On September 13, 1926, before notification of said decision had been sent to the parties, the respondent Sinforosa Sapad presented a motion for new trial under the provisions of section 113 of the Code of Civil Procedure. In said motion Sinforosa Sapad claimed to be the exclusive owner of said lot by virtue of a nuptial gift from her father Gregorio Sapad and asserted adverse possession for more than twenty years. This motion was supported by affidavits of Sinforosa Sapad and her father Gregorio Sapad. The notification of said motion was mailed by the attorney for Sinforosa Sapad by registered mail to Francisco Davila (sic), Gerona, Tarlac.

On September 29, 1926, the court granted the motion for new: trial and set aside the judgment of January 30, 1926. One of the reasons recited for granting the motion was the failure of Francisco Daliva to oppose the motion.

On October 23, 1926, Juana Melocotones filed a verified motion for reconsideration in which she informed the court that she is the widow of Francisco Daliva who died intestate on February 23, 1926; that she had no notice of

the motion for new trial filed by Sinforosa Sapad; that the order of September 29, 1926 granting new trial is null and void for want of jurisdiction to make it. She asked that said order be set aside and the judgment of January 30, 1926, be declared in full force and effect. On November 2, 1926, the motion for reconsideration was denied "for lack of merit."

It is impossible for us to believe that Sinforosa Sapad did not know on September 13, 1926 that Francisco Daliva had died in February previous as both parties seem to be occupying neighboring houses in Gerona, Tarlac. Moreover, the registered letter containing the copy of the motion for new trial was not correctly addressed.

The next step in the proceeding occurred on January 10, 1929, when notice of a new trial of the title to lot No. 1729, set for January 18, 1929, was sent by the clerk of the court to the following persons: Teotimo Duque, Tarlac, Tarlac; Isidoro Difontoran, Gerona, Tarlac; Francisco Daliva, Gerona, Tarlac; Daniel Estacio, Gerona, Tarlac; Sinforosa Sapad, Gerona, Tarlac. It is to be noted that Francisco Daliva was dead and the records in this case then showed this fact.

On February 27, 1929, the Court of First Instance granted a decision decreeing lot No. 1729 to Sinforosa Sapad. The decision begins as follows:

"Por incomparecencia de Juana Melocotones en el dia y hora designados para la vista de este asunto se autorizo a la reclamante Sinforosa Sapad para practicar sus pruebas, etc."

On March 27, 1929, a motion for reconsideration was filed by R. P. Sarandi, attorney for the heirs of Francisco Daliva, alleging that they had no notice of the hearing set for January 18, 1929. On April 8, 1929, said motion was overruled because it was not verified.

It does not appear that the petitioner took any action thereafter until August 5, 1931, when Attorney Daniel V. Estacio for the heirs of Francisco Daliva filed a motion asking the court to set aside the decision of February 27, 1929, and declaring the decision of January 30, 1926, to be in full force and effect. On October 28, 1931, the motion of August 5, 1931 was overruled.

On December 19, 1931, Attorney Victoriano Valle, on behalf of the widow and heirs of Francisco Daliva, filed a motion for reconsideration of the court's, order of October 28, 1931, on the ground that the court had no jurisdiction to set aside the judgment of January 30, 1926, which decreed the registration and inscription of lot No. 1729 in favor of Francisco Daliva and that hence the decision of February 27, 1929, was null and void. The motion asked the court to reinstate the decision of January 30, 1926, and order the cancellation of the decree and title issued to said lot in favor of Sinforosa Sapad under the decision of February 27, 1929. On January 5, 1932, the court overruled the last mentioned motion.

On April 7, 1932, the present petition for writ of certiorari was filed in this court by Juana Melocotones praying that this court render judgment declaring the second decision above referred to, dated February 27, 1929, in favor of Sinforosa Sapad and the decree and title issued thereunder to be null and void, and the first decision dated January 30, 1926, in favor of Francisco Daliva to be in full force and effect.

It appears from the foregoing narration that both of said judgments were obtained ex parte and the conduct of the parties toward each other has been ungenerous, to put it mildly. We can only deplore that each party has pressed her strategic advantage and prevented the court from rendering a judgment after full hearing of the merits of their respective claims. Each party comes before us insisting upon her rights under a judgment obtained by default against the other.

After the action of the court setting aside the judgment of January 30, 1926, became final on November 2, 1926, the petitioner took no step to obtain a review of said action in this court, and after the second judgment of

February 27, 1929 became final on April 8, 1929, when the motion of the petitioner for reconsideration was overruled, the petitioner took no step for the review in this court of the second judgment until she filed her petition for writ of certiorari on April 7, 1932.

It is clear that the petitioner has been guilty of laches in applying for this writ and the statutory period within which she might have appealed has elapsed. Writ denied with costs de officio. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

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