

**THE GOVERNMENT OP THE PHILIPPINE ISLANDS, PETITIONER, VS.
THE JUDGE OF THE COURT OF FIRST INSTANCE OF OCCIDENTAL
NEGROS AND ROSARIO FRANCO AND HER HUSBAND MIGUEL
TAMBANILLO, ET ...**

G. R. No. 37852. November 10, 1932

Ponente: BUTTE, J.

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BUTTE, J.:

On May 14, 1925, the Court of First Instance of Occidental Negros, in cadastral case No. 26 (G. L. R. O. Record No. 214) of Manapla, after a general declaration of default, entered the following decree:

"Lot No. 46 is declared public land subject to homestead application No. 16864 of Anselmo Lagarto. This lot was also claimed by Vicente Franco but he renounced his claim to the same in open court."

Certificate of title No. 2541 was issued to Anselmo Lagarto on August 2, 1926, under said homestead patent.

More than six years later, on July 10, 1931, a different judge, on the petition of Vicente Franco and without notice to Anselmo Lagarto, changed said decree of May 14, 1925, to read as follows:

"Lot No. 46.—This lot is declared to be the private property of the claimant Vicente Franco, 80 years of age, Filipino, resident in the municipality of Manapla, Occidental Negros."

The decree of July 10, 1931, was based on the hypothesis that the decree of May 14, 1925, contained a clerical error and that the court had jurisdiction to correct said error in the manner aforesaid. To hold that the decree of July 10, 1931, effects only the correction of a clerical error in the decree of May 14, 1925, requires a greater stretch of the imagination than is permissible in a court of justice. Said decree of July 10, 1931, and all proceedings thereunder must be set aside and held for naught and certificate of title No. 30095 to lot No. 46, issued to Vicente Franco, cancelled with costs in this instance against the individual respondents. So ordered.

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

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