

MARIA PALISOC ET AL., PETITIONERS, VS. DIEGO LOCSIN, JUDGE OF FIRST INSTANCE OF PANGASINAN, AND MARGARITA MANZON ET AL., RESPONDENTS.*G. R. No. 38095. October 17, 1932*

Ponente: VICKERS, J.

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This is a petition for relief under section 513 of the Code of Civil Procedure. The petitioners seek to have this court set aside, for lack of notice of the trial, the order or decision of the respondent judge of June 6, 1932, whereby the petitioners were declared in default and, after the reproduction of the evidence, the decision of April 8, 1931 adjudicating the two parcels of land in question to the respondents Margarita Manzon et al. was declared in full force and effect.

In the land registration case the petitioners had two attorneys of record, Bernabe Aquino and Alejandro de Guzman.

Notice of the hearing to be held on June 6, 1932 was received by Aquino on May 20, 1932. Notice of the hearing was also sent to De Guzman by registered letter addressed to Dagupan, his postal address of record. This letter was forwarded by the postmaster at Dagupan to De Guzman in Manila on May 24th. It was received in Manila on the same date, and the first notice of the registered letter was sent to De Guzman's office in the Santos Building, Plaza Santa Cruz, Manila, on May 25th; a second notice was sent to the same address on May 27th, and a third notice on May 30th. De Guzman did not send for the registered letter, however, until June 14th, when his agent presented the second notice to the post-office, or twenty-one days after the second notice was sent out.

Neither the petitioners nor their attorneys appeared at the hearing on June 6th.

It is contended that the notice to Aquino was not binding on the petitioners because he had become provincial governor of Pangasinan and withdrawn from the practice of law. There is no merit in that contention. He had not withdrawn his appearance in the land registration case for the present petitioners. No provision of law has been cited which prohibits a member of the bar from continuing to practice law after he has become a provincial governor. If it be true that provincial governors do not practice law while holding office, certainly a clerk of court is not authorized to take judicial notice of that fact.

The record shows that notices of the registered letter were sent by the postmaster in Manila to De Guzman at his new address in ample time to enable him to get the letter and to be present at the hearing, and if he failed to call for the registered letter, that was his own fault, and constitutes no sufficient ground for setting aside the judgment of the trial court.

There is another reason why the relief prayed for should not be granted. It appears that the petitioners promptly filed a motion in the land registration case to have the default and the decision set aside, and that after a hearing thereon the trial court denied the motion.

In the case of Rabajante vs. Moir and Ranees (28 Phil., 161), this court said:

"It is clear that, if the Court of First Instance which rendered the judgment or made the order is still in session, the party aggrieved should present his petition directly to that court. This is precisely what he did. He obtained from that court a reconsideration of the order complained of, presented the facts upon which he based his relief, and the court, after full consideration, found that he had failed to prove the facts necessary to obtain relief and, therefore, denied it. This being the case, the remedy under section 513 is not available. The condition precedent to the right to that remedy, viz., that the court which made the order 'has finally adjourned so that no adequate remedy exists in that court,' is not present. The petitioner could have excepted to the order denying his motion and could have taken his appeal therefrom as provided by law. That was his only remedy."

This ruling was reaffirmed in Riesa vs. Palmaroli (40 Phil., 105), where it was held that the Supreme Court will not entertain a petition filed under section 513 of the Code of Civil Procedure to set aside a judgment and obtain a new trial in a Court of First Instance where the latter court can still grant relief upon the same state of facts under section 113. The jurisdiction of the Supreme Court depends upon the lack of remedy in the Court of First Instance.

For the foregoing reasons, the petition is denied, with the costs against the petitioners.

Avanceña, C. J., Malcolm, Villamor, Ostrcmd, Villa-Real, Abad Santos, Hull, and Butte, JJ., concur.

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