

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT, VS,
DOMINGO ITALIA ET AL., CLAIMANTS AND APPELLANTS. MARIANO
B. BANZON ET AL., CLAIMANTS AND APPELLEES.***G. R. No. 40147. March 16, 1934*

Ponente: DIAZ, J.

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Two months after the promulgation of the judgment rendered by this court affirming that of the Court of First Instance of Bataan, which adjudicated to the Banzon claimants lot No. 26 of Cadastral Record No. 6 (G. L. R.O. Record No. 179) of the municipality of Balanga of the said province, and before the corresponding decree to the said lot could actually be issued to the aforesaid claimants by the General Land Registration Office, in accordance with the order contained in the judgment in question (G. R. No. 35657) [1], the herein claimants-appellants surnamed Italia, filed in the aforesaid court a petition for review of the decree under section 38 of Act No. 496, as amended by section 1 of Act No. 3630, for the purpose of having the judgment in question annulled and set aside on the ground that the aforesaid Banzon claimants, who are the appellees herein, had obtained said decree through fraud. Said petition was opposed by said Banzon appellees who contended that inasmuch as the questions raised therein had already been fully discussed and decided during the hearing of the said case on its merits, they can not now be discussed for the second time on the ground that they already constitute *res judicata*.

After trial, the lower court, in an order dated April 24, 1933, denied the said petition for review of the decree, holding that the same is not well-founded. The claimants-appellants filed a motion for reconsideration of the said order and it was denied by the same court.

The claimants-appellants Italia contend that the only question to decide is whether their petition for review of the decree, which was denied by the lower court, should have been presented in accordance with the provisions of section 113 of the Code of Civil Procedure or with the provisions of section 38 of Act No. 496, as amended by Act No. 3630. They further contend that no other question should be decided in view of the fact that, according to them, the trial court failed to decide their aforesaid petition for review of the decree on its merits.

This court is of the opinion that the question is just the reverse: what should really be decided is whether or not the aforesaid petition for review has any merit.

The record shows that the trial court actually decided the question referred to herein, that is, whether or not the said petition for review of the decree filed by the appellants has any merit. The trial court decided it in the negative and this court entirely agrees with the said decision because it is obvious that the questions and facts discussed in the petition in question are not new. They are the very questions which had already been raised and decided by the lower court as well as by this court when in the corresponding case there was presented for determination the question whether lot No. 26 of Cadastral Record No. 6 of the municipality of Balanga, Bataan, belonged to the herein appellants or to the appellees and to which of the said claimants it should be adjudicated. Both the trial court and this court then held that Exhibit D, which the appellants now claim as they have from the

beginning claimed to be apocryphal, whereby they aim to prove the alleged fraud committed by the appellees, is not really apocryphal but, on the contrary, is genuine and that it had been signed by Mariano Italia and the said appellants' mother named Exequiela Samson.

In fact the appellants' purpose in filing their so-called petition for review of the decree is merely to obtain a new trial in order that the same question, which had already been determined in the decision rendered in the aforesaid case G. R. No. 35657, may again be passed upon, presenting the same evidence which had already been presented and taken into consideration in said case. If such procedure, which is not permitted in this jurisdiction, were followed, there would be no end to litigation.

It having been held, and it cannot otherwise be held, that the appellants' petition for review of the decree has no merit, it necessarily follows that their appeal should be dismissed. Such dismissal naturally makes it unnecessary to decide the principal question raised by the said appellants all the more because in the case of *Elvina vs. Filamor and Domingo* (56 Phil., 305), and in that of *De los Reyes vs. De Villa* (48 Phil., 227), it has already been held that, when the decree of registration has not yet been issued, the proper remedy should be that indicated in said section 113 of Act No. 190, not that indicated in section 38 of Act No. 496.

On the other Hand, the fraud which gives rise to the remedy therein provided is of a different nature. It is that fraud which has not previously been brought to the knowledge of the court and not passed upon by the same after hearing the party who claims to have been aggrieved thereby, not that fraud for the determination of which all the interested parties have had and have been given an opportunity to prove it, as in this case.

Wherefore, the order appealed from is hereby affirmed, with costs against the appellants. So ordered.

Street, Abad Santos, Hull, and Butte, JJ., concur.

[1] *Government of the Philippine Islands vs. Abad*, 57 Phil., 1009.

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