

**BRIGIDO AFALLA AND MARTINA PINAROC, PETITIONERS, VS.
MARIANO ROSAURO, LEONORA GALLARDO AND DOMINGO
GALLARDO, RESPONDENTS.***G. R. No. 42315. September 19, 1934*

Ponente: IMPERIAL, J.

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This is a petition for a writ of certiorari filed by the petitioners to set aside and annul the order entered by the respondent judge on January 27, 1934, in cadastral case No. 21, which likewise set aside the decision rendered in the same case on May 31, 1932.

On said date of May 31, 1932, the court rendered a partial decision in cadastral case No. 21 of the Province of Nueva Vizcaya, G. L. R. O. Record No. 1115, adjudicating lots Nos. 460 and 469 to the petitioner-spouses Brigido Afalla and Martina Pinaroc. No final decree or certificate of title to said lots was issued. On January 24, 1934, having been informed that the lots had been adjudicated by decision to the petitioners, the respondents Domingo Gallardo and Leonora Gallardo filed a motion praying the court to resolve their motion filed on May 18, 1932. In said motion of May 18, 1932, the respondents alleged that the lots, which were really contested lots, had been heard as uncontested; that through inadvertence they had failed to file their answers and that the respondents were the true owners thereof, having inherited them from their grandmother Maria Mendaros, who, in turn, had obtained homestead patent No. 2214 therefor, for which reason they applied for a new trial praying that thereafter said lots be adjudicated to them. The motion was impugned by the herein petitioners who alleged that the motion of May 18, 1932 had never been filed nor was it attached to the record. After the trial at which counsel for both parties were heard, the court entered the order dated January 27, 1934, the annulment of which is sought in this petition, setting aside the decision rendered on May 31, 1932, and again setting the case for rehearing.

The order in question does not contain the reasons for granting the rehearing but in his answer, the respondent judge states that he had favorably acted upon the motion because the herein respondents had proven that they had really filed the motion of May 18, 1932, but was mislaid and later disappeared, which accounts for the fact that it is not attached to the record. In passing, it is timely to state that the court's conviction was supported by the fact that the herein respondents had presented a certified copy of the notarial register proving that the affidavit in support of the motion of May 18, 1932, had actually been sworn to on said date.

The petitioners contend that the court exceeded its jurisdiction and sane discretion in entering the order of January 27, 1934, setting aside or annulling the decision dated May 31, 1932, on the ground that said decision, not having been appealed from and due to the lapse of time, became final and irrevocable.

This court is of the opinion that the petitioner's contention is unfounded. The fact that said decision was rendered in a cadastral case wherein the proceedings are exactly the same as those which are followed in an ordinary registration case, should not be ignored. The decision rendered in cases of this nature is merely the commencement of the final decree which confers an irrevocable title. As long as the final decree is not issued by

the Chief of the General Land Registration" Office in accordance with the law, and the period of one year fixed for the review thereof has not elapsed, the title is not finally adjudicated and the decision therein rendered continues to be under the control and sound discretion of the court rendering it. Such is the ruling laid down in the case of *De los Reyes vs. De Villa* (48 Phil., 227), which was later reiterated in that of *Roman Catholic Bishop of Cebu vs. Philippine Railway Co. and Reynes* (49 Phil., 546). In the former case, this court held:

"The decision upon which the decree of registration is based, is, under the present practice, nothing but a statement of the facts of the case and the law applicable thereto, together with an order for the eventual preparation, issuance and entry of the decree. In other words, in relation to the land registration cases in which the registration is granted, our trial courts now follow the old equity practice in England and the United States, with the exception that the decree is prepared by the chief clerk of land registration instead of by counsel, and that it is signed by said chief clerk in the name of the judge instead of by the judge himself. After its preparation and signing, the decree is immediately entered by copy in volumes eventually bound and kept in the General Land Registration Office. Then, and not until then, does the final and complete decree of registration becomes a matter of record.

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"The decree of registration has its origin in the decision ordering its issuance and entry, and inasmuch as it relates back to the rendition of that decision, it may readily be conceded that had section 38 provided that the petition for review might be presented within a year from the rendition of the decree, the situation would perhaps have been different. But here we are only concerned with the date of the entry and under the old equity practice, which is followed in land registration cases, there is a wide difference between the rendition of a decision or order directing the issuance of a decree and the entry of such decree. The fact that most of the Courts of First Instance have deviated from the old practice in ordinary civil cases, and that in such cases the filing of the decision of the court is generally considered equivalent to the entry of the judgment, has nothing to do with cases such as the present; here both practical considerations and the law compel a different procedure.

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"Summarizing our conclusions hereinbefore stated, we hold that in a land registration case where the application for registration is granted, there can be only one decree of registration; that the petition for a review of such decree must be presented within one year from its entry; that the final form and contents of the decree of registration is prescribed by section 40 of the Land Registration Act and that it cannot be formally entered until it has been prepared as therein provided; that such a decree has its inception in the decision of the court ordering its issuance and entry and is a judicial and not an administrative decree; that in the absence of evidence to the contrary, the date noted on such decree as the date of its issuance and entry must be taken to be the true date of such entry; and that the time for presenting a petition of review begins to run from that date."

Taking into consideration, therefore, that the decision of May 31, 1932, did not finally and irrevocably adjudicate the title to the lots and that the herein respondents could still file a petition for a review within one year from the issuance of the final decree, which has not yet been issued, it is held that the respondent judge neither lacked jurisdiction nor exceeded it in setting aside said decision and in granting the reopening of the case, thereby giving the parties ample opportunity to prove their alleged rights.

Furthermore, the case presents another legal aspect. It appears that according to the documents recently presented at the oral argument by the attorney for the petitioners, lots Nos. 460 and 469 were covered by certificate of title No. R-1262 which had been issued in the name of Maria Mendaros prior to the promulgation of the decision adjudicating them to the herein petitioners. According to said decision, the herein petitioners were declared owners of the lots through possession and occupation thereof for many years, that is, by reason of having acquired them through prescription. Such being the case, it is obvious that the court lacked jurisdiction to render said

decision on the ground that referred to lots already covered by a certificate of title issued in the name of another person; and neither could the herein petitioners validly acquire them through prescription nor the court annul or cancel the certificate of title thereto except upon petition of the person to whom it had been issued or any of his legal successors. (Pamintuan vs. San Agustin, 43 Phil., 558; and Government of the United States vs. Judge of First Instance of Pampanga and Manila Railroad Co., 49 Phil., 495.)

Wherefore, the relief prayed for is denied, with costs against the petitioners. So ordered.

Malcolm, Villas-Real, Butte, and Goddard, JJ., concur.

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