

PABLO MONTENEGRO, APPLICANT AND APPELLEE, VS. RAMON DIOKNO, OPPOSITOR AND APPELLANT.

G.R. No. 44094. May 26, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Ramon Diokno appeals to this court from an order of the Court of First Instance of Batangas dated May 20, 1935, denying his motion, filed on April 16, 1935, to set aside its decision of March 6, 1935, adjudicating the land in question and decreeing its registration in favor of the applicant, Pablo Montenegro, and to admit his opposition to a portion of said land.

In support of his appeal, the appellant assigns four errors alleged to have been committed by the court a quo in its decision, as follows:

"1. In giving validity to the action of the clerk of court of Batangas who, on February 18, 1935, in the absence of the judge and on his own authority, opened the session of the court and called this case for hearing.

"2. In giving validity to the order of the judge, who at the time was acting and in fact the judge of another court, authorizing the clerk of court of Batangas to receive evidence from the applicant in this case, and to the action of the clerk in receiving such evidence ex parte and behind appellant's back, whose opposition already appeared on the plan of the applicant and whose interest in the case was recognized in the notice published for the hearing of the case which failed to take place.

"3. In declaring a general default and deciding the application on its merits, without any new notice of the hearing of the case or of the date set therefor and without giving notice thereof to the oppositor-appellant.

"4. In denying the petition of the oppositor-appellant dated April 18, 1935."

The main and important question to be decided in this appeal is that raised in the fourth assignment of error, viz., whether or not the lower court erred in denying the sworn petition of Ramon Diokno, the oppositor-appellant, dated April 16, 1935, which reads as follows:

"Comes now Ramon Diokno in the above entitled case and to this Honorable Court respectfully states:

"That on the plan of the applicant is included a piece of land belonging to the movant, indicated on the attached copy of said plan (Exhibit 1) with the letters and numbers A, B, C, 15,12 and 11; that the distance between point A and point 7 is 205.87 meters; between point B and point A, 200.86 meters and between point C and point B, 456.50 meters;

"That, as the plan itself of the applicant reveals, the movant has been an oppositor since the land was surveyed and that it was only due to the surveyor's refusal that the portion belonging to him and erroneously included in the survey was not specified on the applicant's plan.

"That this case was set for hearing on February 18, 1935, but there being no judge in the court on that day, the applicant made the oppositor believe that the hearing would not be held and that the parties would again be

notified, for which reason, the oppositor failed to appear on that day.

"That failing to receive any notice, the movant, on March 16, 1935, entered his appearance in the case and prayed that he be notified when the case would be heard.

"That on this day he discovered that a decision had already been rendered on March 6, 1935 decreeing the registration of the land in favor of the applicant and that on April 6, 1935, applicant's attorney petitioned for the issuance of the decree in spite of the fact that the movant was not given notice of the decision.

"That applicant's land has a length of only 248 varas (205.86 meters) from the border of the lake to the eastern boundary of expositor's land, and this fact is shown on the deed itself of the applicant, which document was not presented in the case.

"That the movant is the owner and has been in possession for many years of the land included in the applicant's plan above mentioned, indicated by points A, B, C, 15, 12 and 11, which fact is well known to the applicant.

"Wherefore, it is respectfully prayed that the decision of March 6, 1935 be set aside and this pleading be considered as movant's opposition to the application; that after due hearing, petitioner's application be denied as to the portion claimed by the movant and that said portion be decreed in his favor. Movant also prays for other just and equitable remedies."

Applicant and appellee opposed the above cited motion for new trial, denying, under oath, having made the oppositor believe that the hearing of the case would not be held on the date originally set therefor.

The absence of the judge presiding over the Court of First Instance of Batangas on the date set in the notices published for the hearing of the case and the presentation of evidence made by the applicant on March 5, 1935, before the clerk of court of Batangas, who was delegated by the judge, without setting the trial anew, undoubtedly confused the oppositor-appellant, who was at a loss what to follow until he discovered that the application had already been decided in favor of the applicant. Without a previous declaration of default made in due form, judgment was rendered on March 6, 1935 decreeing the adjudication and registration of the land in question in favor of the applicant Pablo Montenegro, and on April 16, 1935, or within the six months period fixed by section 113 of the Code of Civil Procedure, the oppositor and appellant Ramon Diokno filed his motion for new trial with the prayer to admit his opposition. All these circumstances constitute sufficient excuse for the negligence of the oppositor to appear and present his opposition on the date originally set for the hearing.

There are present, therefore, the conditions required by section 113 of the Code of Civil Procedure for the setting aside of the appealed judgment, admission of the opposition and holding of a new trial. (Philippine Manufacturing Co. vs. Imperial, 47 Phil., 810; Government of the Philippine Islands vs. Italia, 59 Phil., 712, in which are cited with approval the cases of Elvina vs. Filamor, 56 Phil., 305, and De los Reyes vs. De Villa, 48 Phil., 227.)

In the aforesaid sworn motion filed on April 16, 1935, the oppositor-appellant Ramon Diokno alleges facts which, if proven at the trial, might affect the outcome of the case in favor of the oppositor-appellant's contention.

Wherefore, the appealed judgment is hereby set aside and the case remanded to the court of origin for the admission of the opposition filed by oppositor-appellant Ramon Diokno and for new trial, with the costs against the appellee. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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