

**THE DIRECTOR OF LANDS, APPLICANT, VS. ANICETO ABA ET AL.,
CLAIMANTS; MELITONA REGIS AND HER HUSBAND LUCIO RIDAD,
PETITIONERS AND APPELLANTS; JULIO LEDESMA, FELIX
MONTENEGRO, CEN...**

G.R. No. 45648. May 12, 1939

Ponente: MORAN, J.

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MORAN, J.:

In the proceedings instituted by the Director of Lands in the Court of First Instance of Oriental Negros for the cadastral survey of the municipality of Tanjay, an answer was filed by Severa Zerna and her six (6) grandchildren, one of whom being Melitona Regis, now petitioner-appellant. The answer, which was later amended, alleges ownership thru inheritance over lot No. 2377. Similar answers were filed by Felix Montenegro and Guardiano Florin, each of them likewise claiming ownership over the lot in question. On December 18, 1923, upon petition of Felix Montenegro, this lot was subdivided into lots Nos. 5177, 5178-A and 5178-B, the last named having been subsequently converted into lot No. 5330, one-sixth (h) of which is now claimed by the petitioner-appellant. On March 29, 1926, the lower court adjudicated said lot No. 5178-B or No. 5330 to Felix Montenegro for the reason stated in its judgment which in part reads as follows:

"Lote No. 5178-B, con las mejoras existentes en el, a favor de la sociedad conyugal de los esposos Felix Montenegro y Cecilia Gonzalez. Se hace constar que este lote, de terreno, esta sujeto a los mismos gravámenes mencionados en la decision sobre los lotes 3714 y 3715 y otros. (Vease la decision sobre estos lotes en la rag. 42.) El lote original de estos tres ultimos lotes 5177, 5178-A y 5178-B, que era el lote No, 2377, que ha sido subdividido en 2377-A y 2377-B ha sido reclamado en un principio por Felix Montenegro, Guardiano Florin, Severa Zerna y coherederos y Marciana Jabel, por medio de los correspondientes escritos de contestacion, pero estos en corte abierta, han manifestado y declarado expresamente, retirando dichos escritos en favor de los respectivos adjudicatarios ya arriba mencionados, segun consta en el record."

On January 13, 1933, petitioner filed a petition for review on ground of fraud. The alleged fraud consisted in that lot No. 5330, having been claimed by several persons, was classified as contested lot and, therefore, was not to be tried on the date fixed in the notice published in the Official Gazette for the hearing of the cadastral case, but on a separate date to be fixed later by the court with notice upon all the parties claimant; that, for that reason, the petitioner-appellant went back to her residence waiting for the notice of the trial; that, in the meantime, Severa Zerna, induced by Felix Montenegro, entered into a compromise with him, and both, knowing that the herein petitioner-appellant was not present and took no part in the compromise, made it appear to the court that all the other claimants, including the petitioner-appellant herein, have withdrawn their claims, when in fact the petitioner-appellant has never withdrawn her claim nor authorized anybody to withdraw it; that on account of the compromise the lot in question was re-classified as uncontested lot, tried as such and awarded to Felix Montenegro and his wife: and that the petitioner-appellant has never been notified of such trial nor of the judgment rendered. All these facts constituting the alleged fraud are supported by affidavits. The "Central

Azucarera de Bais," the "Compania General de Tabacos de Filipinas," and Julio Ledesma, claiming to be innocent purchasers of portions of the lot in question, filed their respective oppositions. Felix Montenegro filed his too.

The trial court denied the petition; hence this appeal.

It should be noted that when the petition for review of the decision was filed, no decree nor certificate of title had yet been issued in favor of Felix Montenegro nor to any of the supposed innocent purchasers for value. The fundamental question then for determination is whether the petition may be entertained prior to the issuance of the decree. We are of the opinion, and so hold, that this case is controlled by the decision of this court in the case of *Rivera vs. Moran* (48 Phil., 836, 839, 840) as affirmed in the case of *Morales vs. Paredes* (55 Phil., 565), in which we expressed the following view:

"* * * It is conceded that no decree of registration has been entered and section 38 of the Land Registration Act provides that a petition for review of such a decree on the grounds of fraud must be filed 'within' one year after entry of the decree.' Giving this provision a literal interpretation, it may at first blush seem that the petition for review cannot be presented until the final decree has been entered. But on further reflection, it is obvious that such could not have been the intention of the Legislature and that what it meant would have been better expressed by stating that such petitions must be presented before the expiration of one year from the entry of the decree. Statutes must be given a reasonable construction and there can be no possible reason for requiring the complaining party to wait until the final decree is entered before urging his claim of fraud. We therefore hold that a petition for review under section 38, supra, may be filed at any time after the rendition of the court's decision and before the expiration of one year from the entry of the final decree of registration."

In the case of *Government of the Philippine Islands vs. Court of First Instance of Nueva Ecija* (49 Phil., 433), a motion for review of the decision was presented to the trial court about seventeen (17) months after said decision was rendered but before the issuance of the final decree. We there held that, under such circumstances, the motion was presented in time.

There is nothing of consequence in the fact that the lot in question has passed to third parties. Such third parties, having acquired interest in the land before any final decree has been issued, cannot be regarded as innocent purchasers for value within the meaning of section 38 of Act No. 496. (*Rivera vs. Moran*, supra.)

Appellee Julio Ledesma cites part of the decision of this court in the case of *Government of the Philippine Islands vs. Italia* (59 Phil., 712, 714), which reads as follows:

"* * * in the case of *Elviña 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."

It is maintained that this case has abrogated the doctrine we have announced in *Rivera vs. Moran*, supra. The statement above quoted is mere obiter dictum, as can readily be seen from a perusal of the decision, and, as such, it lacks the force of an adjudication. (*Morales vs. Paredes*, supra.)

It is contended that any action which the petitioner-appellant might have to claim any interest in the lot in question has prescribed. She was, however, a minor when her cause of action has accrued. And, according to section 42 of Act No. 190, she may bring such action within three (3) years after her minority is removed. As she was born on March 9, 1901, she became of age on March 9, 1922, and therefore she could bring her action on or before March 9, 1925. Her claim was filed in the cadastral proceedings on January 30, 1924, that is, before her action had prescribed. It is argued that the filing of such claim is not equivalent to a commencement of an action. That claim is equivalent to an application for the registration of real property, and, therefore, may be considered

as an action in rem. (Director of Lands vs. Roman Catholic Archbishop of Manila, 41 Phil., 120; Banco Espanol-Pilipino vs. Palanca, 37 Phil., 921; De los Reyes vs. Razon, 38 Phil., 480; Lopez vs. Director of Lands, 47 Phil., 23; and Lopez Castelo vs. Director of Lands, 48 Phil., 589.)

Petitioner is alleged to be guilty of laches, for she filed her petition about seven (7) years after the rendition of the judgment. But, as alleged and proved by her, she has never been notified of the date of the trial nor of the judgment rendered by the court, and she filed her petition immediately upon discovery of the fraud. Besides, the oppositors cannot now complain of laches, for they themselves are also guilty of laches as they have failed, until now, to secure the issuance of a decree on the lot in question.

Order is reversed with costs against the appellees.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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