

TEODORA DE LA CRUZ ET AL., PETITIONERS, VS. MANUEL BLANCO, JUDGE OF FIRST INSTANCE OF ILOCOS NORTE, AND SANTOS QUEVEDO, RESPONDENTS.*G.R. No. 48790. June 08, 1942*

Ponente: MORAN, J.

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On October 31, 1932, Teodora de la Cruz and others, petitioners here, applied in the Court of First Instance of Ilocos Norte for registration of a parcel of land indicated in their plan, Exhibit 1. Santos Quevedo, one of the respondents here, with others, opposed the application claiming that certain parcels belonging to him were included in petitioners' plan. The trial court adjudicated to petitioners the whole land applied for and Santos Quevedo, with others, appealed. On October 31, 1938, the Court of Appeals rendered judgment sustaining, among others, Quevedo's claim and ordering the applicants to present within the time to be fixed by the trial court an amended plan excluding, among others, Quevedo's land. This judgment having become final, the trial court, on several motions of respondent Quevedo for its execution, issued an order directing petitioners to present an amended plan in accordance with the order to that effect of the Court of Appeals. Contending that the parcels adjudged to respondent Quevedo in the decision of the Court of Appeals lie outside the land applied for by them as indicated in their plan Exhibit 1, petitioners resisted respondent's motion for execution of the judgment, and on the insistence of the trial court for the presentation of the amended plan, petitioners instituted an action for certiorari in this Court which was denied. Respondent Quevedo thereupon took again various steps for the execution of the judgment of the Court of Appeals, but petitioners, instead of complying with the orders of the trial court to that end, countered with a petition for revision of the judgment on ground of fraud. The supposed fraud consisted in the alleged manifestation of respondent Quevedo that the parcels claimed by him were included in the land applied for by petitioners when in fact they were not. This petition denied, petitioners filed a record on appeal which the trial court disapproved on the ground that the order sought to be appealed from was merely interlocutory and that the record on appeal failed to include therein certain pertinent proceedings which would indicate the merits of petitioners' position and their repeated attempts to frustrate the judgment of the Court of Appeals. Whereupon, petitioners instituted the present proceeding for mandamus to compel respondent judge to approve and certify their appeal.

This petition should be denied. The appeal which petitioners attempted to interpose from the order of the trial court denying their motion for revision, is manifestly and palpably frivolous. That motion was one of the various steps taken by petitioners to frustrate the final judgment rendered by the Court of Appeals. The question of whether Quevedo's land is within petitioners' plan is already a closed question finally settled by the Court of Appeals. Petitioners wanted to reopen that question in the petition for certiorari they had filed in this Court, and when said petition was denied, they filed their motion for revision on a ground affecting Quevedo's testimony in support of his claim and which had already been passed upon by the Court of Appeals. The motion for revision can have evidently no other purpose than malicious delay, and the appeal taken from the order denying such

motion is frivolous.

Although, as a general rule, an appeal should not be dismissed on a ground which goes to the merits of the cause or to the right of plaintiff or defendant to recover (*Velasco vs. Rosenberg*, 29 Phil., 212-214), yet, in exceptional instances, an appellate court may order the dismissal when the appeal appears to be manifestly and palpably frivolous. (4 C. J. S., p. 1961, section 1358). And where, as in the instant case, the dismissal has been ordered by the trial court, it will not be disturbed in the appellate court if the latter finds the appeal to have been interposed ostensibly for delay. It has been held that a frivolous appeal is one presenting no justiciable question, or one so readily recognizable as devoid of merit on the face of record that there is little, if any, prospect that it can ever succeed. The instant case is one such instance in which the appeal is evidently without merit, taken manifestly for delay.

Petition is denied, with costs against petitioners.

Yulo, C. J., Ozaeta, Paras and Bocobo, JJ., concur.

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