

**SPOUSES RODOLFO YABUT LEE AND LYDIA LISCANO,
APPLICANTS-APPELLEES, VS. FLORENCIO P. PUNZALAN,
OPPOSITOR-APPELLANT.**

G.R. No. 50236. August 29, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

If the trial Court had resorted to the simple expedient of lifting the Order of General Default and allowing oppositor-appellant Florencio P. Punzalan to file his opposition, this case need not have reached this Tribunal at all.

On May 14, 1968, applicants-appellees had filed before the Court of First Instance of Tarlac (Branch III) an application for the registration of two parcels of land (Land Reg. Case No. N-345, LRC Record No. 34956). No opposition having been interposed despite due publication, the trial Court issued an Order of General Default. In due time, the applicants presented their evidence before the Clerk of Court who was duly commissioned to receive the same. The latter submitted his Report to the Court for proper action but due to the transfer of then Presiding Judge Julian E. Lustre to another district, the Application was unacted upon.

On November 26, 1968, appellant Florencio Punzalan filed a "Petition for Reopening and/or Review" on the claim that applicants had committed fraud in not disclosing in their Application that he is the owner of a house standing on the lots applied for, that he has usufructuary rights over said properties, and prayed that the Petition be admitted, the case reopened and a new trial ordered so that he could have his day in Court.

Applicants objected to the Petition for Review by denying all allegations, interposing the defense of prescription, and contending that the Petition filed was not the proper remedy.

On October 6, 1969, the trial Court, presided by Judge Jose C. de Guzman, rendered an Order denying reopening and/or review "for not having been well taken and for lack of merit since "there is nothing to reopen and/or review at the moment."

Punzalan filed his Notice of Appeal announcing his intention to appeal to the Supreme Court, the issues raised being purely legal. However, the trial Court in allowing the appeal, ordered the transmittal of the Record on Appeal to the Court of Appeals.

A Motion to Dismiss filed before said Appellate Court by the applicants on the ground that the Order in question, being interlocutory in character, was not appealable, was denied, with the directive that the matter be reiterated in applicant's Brief.

On February 28, 1979, the Court of Appeals certified the case to this Tribunal, the issues involved being pure questions of law.

Appellant ascribes the following errors to the trial Court:

1. "The lower Court committed a mistake in denying our petition for reopening and/or for review, considering that until now no decision adjudicating the parcels of land in question has been rendered, nor has a final decree of registration issued.
2. "The lower Court committed a mistake in not holding that oppositor-appellant can legally file his petition for reopening and/or for review without first lifting as to him the order of General Default.
3. "The lower Court committed a mistake in not holding that oppositor-appellant has a perfect legal right to file his petition for re-opening and/or for review without first waiting for the promulgation of a decision in this case and without first waiting for the issuance herein of a final decree of registration because had he done so, he would have been accused of being guilty of laches."

The position taken by appellant stems from an obvious misinterpretation of Section 38 of Act 496 which allows

"x x x any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest. x x x x"

The petition for review contemplated in the foregoing provision clearly envisages the issuance of a decree of registration. It presupposes the rendition of a Court's decision. In fact, it has even been held that a petition for review under the aforequoted provision "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".[1] In the case at bar, no judgment has as yet been rendered by the lower Court, and much less has any decree of registration been issued. The filing of a Petition for Reopening and/or Review by appellant, therefore, is decidedly premature. Indeed, in the absence of any decision and/or decree, there is nothing to be reviewed or reopened.

But while appellant had definitely committed an error of procedure, it was evident that his objective was to be given a chance to present evidence to substantiate his allegations of ownership. In fact, he had asked for new trial. The interests of substantial justice and the speedy determination of the controversy, therefore, should have impelled the trial Court to lift the Order of General Default in respect of oppositor-appellant, and once lifted, to have allowed appellant to file an Opposition to the Application. Thereby, appellant could have been afforded the opportunity to present his evidence challenging applicants' right to registration, and perchance, a decision on the merits shall have been already rendered by this time. An Order of General Default is interlocutory in character, subject to the control of the Court, and may be modified or amended as the Court may deem proper at any time prior to the rendition of the final judgment.

And while it may be that the Order denying the Petition for Reopening and/or Review at that stage was strictly speaking an interlocutory Order and, therefore, unappealable, considering the pure question of law involved, we have chosen to treat this case as a special civil action of certiorari so that a just and speedy determination of the controversy between the parties may be achieved.

WHEREFORE, the Order of General Default in Land Registration Case No. N-345; LRC Record No. 34956, in respect of oppositor-appellant Florencio P. Punzalan is hereby set aside, and let this case be remanded to the trial Court for resumption of hearing and rendition of the corresponding judgment.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] Rivera vs. Moran, 48 Phil. 836, 839-840 (1926); Director of Lands vs. Aba, et als., 68 Phil. 85 (1939).

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