

**EUSEBIA BROCE Y APURADO ET AL., PETITIONERS AND APPELLEES,
VS. DAMASO APURADO ET AL., OPPONENTS AND APPELLANTS.***G.R. No. 8416. January 27, 1914*

Ponente: TRENT, J.

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Eusebia Broce et al., the petitioners and appellees in the present case, procured a registered title under Act No. 496 to a parcel of land situated in the municipality of San Carlos, Occidental Negros. An appeal from the decision of the Court of Land Registration ordering the inscription of the land in their name was taken by Catalino Broce, and this Supreme Court on March 16, 1911, affirmed the judgment (19 Phil. Rep., 599). On April 24, 1911, Damaso Apurado et al., the present appellants, under the provisions of section 38 of the Land Registration Act, filed a petition for the opening of the decree of registration on the ground of fraud in its procurement. This was the first appearance of these parties in opposition to the registration of the land in the names of the petitioners.

Carlos Apurado was the maternal grandfather of Eusebia Broce et al. and the ascendant of Damaso Apurado et al. It is conceded that Carlos Apurado at one time owned the land in dispute. It is claimed by Eusebia Broce et al. that he sold this land to their father, the son-in-law of Carlos Apurado. It is claimed by Damaso Apurado et al. that he never sold this land to the father of the petitioners, but that he owned it until his death, and that they therefore have a right to participate in the division of it as heirs by force of law. The fraud which they rely upon to secure an annulment of the registration in the names of the petitioners is an alleged agreement whereby Damaso Apurado et al. agreed not to interfere or take part in the registration of the land on the condition that Eusebia Broce et al. should attend to the registration of the land in behalf of all, securing to each the participation to which he was entitled as a legal heir of the deceased Carlos Apurado.

Section 38 of Act No. 496 reads in part as follows:

"Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description 'To all whom it may concern.' Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest herein 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."

The decision of the Court of Land Registration is dated February 25, 1909. This Supreme Court affirmed that decision on March 16, 1911 (*supra*). An application to set it aside was made on April 24, 1911. Under these circumstances the question arises whether the year within which the decree of registration may be set aside for fraud dates from the decision of the Court of Land Registration or from the time the decree may be entered by that court based upon the decision of the Supreme Court, when the case is appealed.

Section 4 of Act No. 1108 repeals section 14 of the Land Registration Act and provides that all of chapter 22 of the Code of Civil Procedure, relating to the procedure of the Supreme Court in the exercise of its appellate jurisdiction shall extend to appeals from the Court of Land Registration, with the exception of appeals in special proceedings (sec. 498), and interest on money judgments accrued during the pendency of actions on appeal (sec. 510), the last two being clearly inapplicable to judgments of courts of land registration. By the same section (sec. 4 of Act No. 1108), sections 514, 515, and 516, providing for the exercise of original jurisdiction of the Supreme Court in certiorari, mandamus, and prohibition, and section 517, providing for the auxiliary writ of preliminary injunction, as applicable to proceedings in the Courts of First Instance, are also expressly extended to Courts of Land Registration.

A detailed examination of the various sections of the Code of Civil Procedure and the adjudicated cases of this Court, wherein they have been applied, establishes beyond question that judgments of the Court of Land Registration must receive the same treatment on appeal as do judgments of the Court of First Instance, with the limitations necessarily imposed by the special character and attributes of the Court of Land Registration. Referring more particularly to the finality of judgments of the Court of Land Registration: This Supreme Court has, on various occasions declared that judgments of the Court of First Instance become final for most purposes only when the prevailing party may have execution thereon as of right; that is, after the time within which an appeal therefrom may be taken. And in a recent case, *De Fiesta vs. Llorente and Manila Railroad Co.* (25 Phil. Rep., 554), the same doctrine was applied to judgments coming from the Court of Land Registration, as appears throughout the opinion in that case, and more particularly from the following quotation:

"The use of the phrase 'as of right' in this connection does not mean merely the time when, under the circumstances of the case, he has a right to have execution; for it is to be presumed that when execution is issued by special order of the court he had a right to have it issued. It means, rather, that he has such a right to have execution issue, that he will not be liable to restore in the event of a reversal on appeal; and this right can only exist when the judgment, so far as it appears from the face of the record, is final as a result of the lapse of the time allowed for appeal."

Section 144 of the Code of Civil Procedure does not apply to judgments of the Court of Land Registration. Therefore, an appeal from a judgment of that court of itself and ipso facto stays the execution of the judgment, i. e., the issuance of a title of registration to the petitioner.

There are, furthermore, certain specific provisions of Act No. 496 which definitely provide that the certificate of registration which, of course, concludes the whole matter and is the "execution" of the judgment of registration, shall not be issued until the time for appeal has elapsed.

Section 4 of Act No. 1108 provides: "That no certificates of title shall be issued * * * until after the expiration of the period for perfecting a bill of exceptions for filing."

Section 15 of Act No. 496 provides: "At the end of the proceedings on appeal, the clerk of the appellate court in which final decision was made shall certify to the Court of Land Registration the final decision on the appeal, and the Court of Land Registration shall enter the final decree in the case, in accordance with the certificate of the clerk of the appellate court in which final decision was made."

This furnishes a most convincing argument that an appeal stays the issuance of a certificate of title, which is the sole subject of the action. The quoted proviso of section 4 of Act No. 1108 and section 14 of the original Act, which we have just quoted, taken together, show exactly when the judgment of registration becomes final: when no appeal is taken, it becomes final on the expiration of the time allowed for filing an appeal; and when an appeal has been taken, the judgment of registration becomes final when it is affirmed by a final judgment of this Supreme

Court.

Reverting now to the quoted portion of section 38, it will be noted that the year within which a decree of registration may be attacked on the ground of fraud dates from the entry of the decree. The decree cannot be entered until the judgment becomes final, and an appeal from the decision of the Court of Land Registration prevents the judgment from becoming final until that decree is affirmed by the judgment of this court. In such a case, only when the final judgment of this court is returned to the Court of Land Registration, under the procedure established by section 14, may the decree of registration be entered. Therefore, it is clear that the year within which such a decree may be attacked dates from the entry of the decree based upon the judgment of the Supreme Court. In the present case, this court filed its decision on March 16, 1911. The judgment was entered by the clerk of this court on April 6. As the petition of Apurado et al. asking for a review of the same was presented less than twenty days thereafter, it is clear that they are well within the year allowed for the filing of such a petition.

In order to obtain the benefits of section 38 the applicant (1) must have an estate or interest in the land, and (2) must show fraud in the procurement of the decree of registration. A mere claim of ownership is not sufficient to avoid a certificate or title obtained under the Land Registration Act. An important feature of a certificate of title is its finality. The proceedings whereby such a title is obtained are directed against all persons, known or unknown, whether actually served with notice or not, and includes all who have an interest in the land. If they do not appear and oppose the registration of their own estate or interest in the property in the name of another, judgment is rendered against them by default, and, in the absence of fraud such judgment is conclusive. If an interest in the land will not by itself operate to vacate a decree of registration, a fortiori, fraud is not alone sufficient to do so.

The claim of joint ownership through inheritance by Apurado et al. is met by Broce et al. with Exhibit 5, which is a notarial document of purchase and sale of the land in question, executed by Carlos Apurado in favor of his son-in-law, Gregorio Broce. This document is dated April 3, 1886. According to the statement therein it is signed by Filomeno Apurado at the request of Carlos Apurado because he did not know how to write. There were also some sixteen witnesses. The document was protocolized July 15, 1886. Several objections are made to the acceptance of this instrument as a valid notarial document. The discussion of this question by the trial court leaves nothing to be desired. The instrument in question must be considered as a notarial document. And, as stated by the trial court, even did it not possess the formalities of a notarial document, its efficacy as a private document is unimpaired, and, as such, it is binding between the parties and their privies.

There is nothing like adequate testimony in the record that any promise was ever made by the registered, owners to the Apurados that they would have the land registered as jointly owned by the two families. We can not overlook the fact that these protestants remained silent for nearly five years during which the registration proceedings were pending with the full knowledge, according to their own statements, that the Broce children were seeking to have the land registered. This acquiescence in the proceedings carried on with such publicity and for so long a time by the registered owners in their own names, appears incompatible with an agreement between them and the present petitioners to have the land registered as their joint property. And furthermore it has been clearly proved that Carlos Apurado sold the estate to Gregorio Broce, father of the present registered owners.

For the foregoing reasons, the judgment appealed from, denying the petition seeking a review of the decree of registration, is affirmed; with costs of this instance against the appellants.

Arellano, C. J., Carson, Moreland, and Araullo, JJ., concur.

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