

JOSE RUIZ, APPLICANT AND APPELLANT, VS. FELIPA LACSAMANA, OBJECTOR AND APPELLEE.*G.R. No. 9851. December 24, 1915*

Ponente: MORELAND, J.

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It seems from the record that sometime prior to the 1st of November, 1912, Jose Ruiz petitioned the Court of Land Registration for the registration of the title to certain land described in his petition. No one appeared in opposition thereto and, on November 1, 1912, a decree of registration was entered. About the middle of May, 1913, Felipa Lacsamana, who appears as a respondent in the proceedings which resulted in the decree of registration just mentioned, made a motion to open the decree and to amend the same so that it would show that she had a one-third interest in the land registered by said decree. The court, after a hearing on the motion, set aside its decision of the 5th of September, 1912, on which its decree of the 1st of November, 1912, was issued, opened the decree based thereon, set aside the certificate of title which had been issued to the petitioner Ruiz and dismissed the latter's petition for the registration of the title to said land, at the same time reserving to Felipa Lacsamana the right to petition the land court for registration of her title. An appeal was taken from that decision and is now before us for resolution.

In view of the fact that the contents and nature of the motion made by Felipa Lacsamana are of prime importance in the decision of the question presented by the appeal, we incorporate the material parts thereof: "That it is publicly known and notorious in the municipality of Cavite, Province of Cavite, P. I., that the respondent is the daughter of Alberto Lacsamana, deceased, and a sister of Rosa and Luisa Lacsamana; and that during her residence in said municipality in the year 1911 she had an interview with Jose Ruiz, at which she inquired with respect to the persons who were in possession of the land which had been owned by her deceased parents in their lifetime, which lands were located on Calle Novaliches in said municipality of Cavite.

"That Luisa and Rosa Lacsamana were absent from the Province of Cavite during the months of June and October 1911, when the respondent was in the Province of Cavite, they living at that time in the municipality of Subic, Province of Olongapo.

"That said Rosa and Luisa Lacsamana repeatedly promised the respondent to make a partition of the land which their parents owned at the time of their death, but in spite of such promises the partition has not been made.

"That during the time of the pendency of the proceedings begun by Jose Ruiz for the registration of title to the land in question the respondent lived on one of the sugar haciendas of the municipality of Victoria, Occidental Negros; and that she received no notice of such proceedings.

"That the respondent has received no notice, direct or indirect, from the Court of Land Registration or from any other source relative to the proceedings for registration already referred to."

These are the allegations on which the appellee prayed for a revision of the decree of registration.

We are satisfied that the judgment of the Court of Land Registration must be reversed and the motion to open the decree must be denied. Section 38 of Act No. 496 provides in part: "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 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."

From the parts of section 38 quoted it is too evident for argument that the only ground on which the decree of registration in this case could have been legally opened was that specified in the section, namely, that it had been obtained by fraud. We have held in the case of *De Castro vs. Echarri* (20 Phil. Rep., 23), that, to justify the opening of a decree of registration under section 38, actual fraud on the part of the petitioner or someone in his behalf in obtaining the decree must be alleged and proved. The respondent neither alleged nor proved fraud. The mere fact that she was absent at the time the proceedings in the land court were in progress and for that reason received no notice thereof is not sufficient in itself. It does not bring appellee's case within the purview of the section. Not only is there no fraud proved, but, on the contrary, it appears with fair clearness that the appellant, at the time he instituted registration proceedings, believed in good faith that the appellee had no interest whatever in the land, the appellant having purchased it from the two sisters of the appellee knowing them to have been in possession of the land for many years and to have enjoyed exclusively the rents, issues, and profits thereof without any claim on the part of the appellee of an interest therein. The appellee having neither alleged nor proved fraud, the decree should not have been opened.

The judgment appealed from is reversed and the application of Felipa Lacsamana dismissed.

The judgment of the 5th of September, 1912, declaring Jose Ruiz the owner of the land described in the petition and the decree of the 1st of November, 1912, issued thereon issuing title to him are hereby restored to full force and effect.

The cause is returned to the Court of Land Registration for such proceedings as are necessary to carry this decision into effect. So ordered.

Arellano, C.J., Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

Judgment reversed; case remanded.

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