

THE PHILIPPINE MANUFACTURING COMPANY AND THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONERS AND APPELLANTS, VS. CONSORCIA CABANGIS ET AL., CLAIMANTS AND APPELLEES.

G.R. Nos. 24663 and 24809. March 30, 1926

Ponente: STREET, J.

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STREET, J.:

These two appeals are prosecuted by the Philippine Manufacturing Company and the Government of the Philippine Islands respectively for the purpose of reversing an order of the Court of First Instance of the City of Manila, dated July 21, 1925, in which the court dismissed the motion and petition of the two appellants whereby they sought to procure the abrogation of a previous decision of the same court, dated June 18, 1925, decreeing the title of lot No. 39 of block No. 3035 in the cadastral proceeding, G. L. R. 0., cadastral record No. 373, to the claimant-appellees bearing the surname Cabangis.

The facts necessary to an intelligent understanding of the two appeals are these: In the year 1912 the Manila Refining Company acquired by purchase from Tomas Cabangis, deceased, a tract of land in the Tondo District, of Manila, situated on a small peninsula between Estero de Vitas and the Manila Bay. Later the Manila Refining Company obtained a Torrens title to the property in case No. 8425 and transferred it to the Philippine Manufacturing Company, its present owner. On February 4, 1922, the Director of Lands, on behalf of the Government of the Philippine Islands, instituted the present cadastral proceeding and asked for a determination and adjudication of certain lands in the Tondo District, including the land which the Philippine Manufacturing Company had acquired as just stated. In the cadastral plan said property appeared as lots Nos. 31, 32, and 35. As to the first two of these lots no question has arisen, but concerning the other (No. 35) the circumstance is to be noted that an error was apparently made in the cadastral plan whereby said lot had been made to include an area about twice as great as had actually been decreed to the predecessor in interest of the Philippine Manufacturing Company in case No. 8425.

This fact having been discovered, the chief surveyor of the Bureau of Lands, in a report dated September 12, 1923, suggested that lot No. 35 of block No. 3035 should be subdivided in such manner that a new lot should be formed of the portion which had not been decreed in case No. 8425.

Upon this recommendation the court issued an order directing the Bureau of Lands to correct the cadastral plan with regard to said lot, so as to form a new lot representing the portion not decreed in case No. 8425. In compliance therewith a new plan was submitted by the Bureau of Lands under date of March 24, 1925, in connection with which it was stated that lot No. 35 as it stood in the original plan of the cadastral had been subdivided into two lots, namely, lot No. 35, containing the territory that had actually been adjudicated in case No. 8425, and lot No. 39, comprising the land erroneously included in original lot No. 35. Upon glancing at the plan showing the result of this treatment it will be seen that lots Nos. 35 and 39 together form a parcel

approximating to a rectangular shape and that lot No. 39 comprises the western or northwestern part of said rectangle and consists of land that has been added by accretion or which has been reclaimed from the sea.

To go back now to an earlier stage of the proceedings, we note that the cadastral case was set for hearing on December 14, 1922. When that date arrived it was found that no person had put in any claim with respect to the ownership of lot No. 35 as it then stood, for which reason the court extended for an additional thirty days the period within which claimants might appear and assert their interests; and the case was again called on January 16.

Upon this occasion an order of general default was entered as to all unclaimed lots not covered by Torrens title. In the meantime the court had entered a partial decision declaring that lots Nos. 31, 32, and 35 had already been decreed in case No. 8425 and that they appeared in the cadastral plan in the name of the Philippine Manufacturing Company. With respect to lots thus previously registered it was ordered that, upon presentation of the existing certificates of title to said lots, the necessary orders of cancellation should be entered and new certificates issued in lieu of the surrendered certificates, showing the same limits as the former certificates but in harmony with the descriptions of the cadastral survey.

More than two years after general default had been thus entered, and on or about March 19, 1925, the heirs of Tomas Cabangis, deceased, consisting of Consorcia, Elvira, Consuelo, and Tomas Cabangis, interposed an answer in the cadastral proceeding claiming to be the owners of so much of lot No. 35, block No. 3035, as was comprised in the new lot No. 39 in the report of the Bureau of Lands of March 24, 1925. In this answer the Cabangis heirs claimed to have been in possession of said lot as owners thereof for more than ten years subsequent to the death of their father, Tomas Cabangis, sr., and that the latter had been in possession of said lot prior to his death for more than thirty years. Neither the Director of Lands, the Philippine Manufacturing Company, nor the legal representative of either, was notified of the filing of this answer; and on June 18, 1925, the trial court rendered a decision adjudicating lot No. 39 to the Cabangis heirs. Notification of this adjudication was given to the Philippine Manufacturing Company by mail, a copy of the decision having been received by it on June 26, 1925. The Attorney-General, as representative of the Government, was notified of this decision on June 20, 1925. Within thirty days from said notification, each of these parties appeared and filed their respective motion and petition, setting forth the reason for their failure to appear earlier to combat the claim of the Cabangis heirs and asking the court to open the judgment and allow them to present proof in support of their respective claims to said lot No. 39. The claim of the Government to lot No. 39 appears to be based upon the proposition that the land in question is foreshore land, the title to which is in the Government; while the claim of the Philippine Manufacturing Company appears to be based, first, upon an assertion of private ownership: in itself by accretion or reclamation; and, secondly, upon the rights acquired by the company under a lease for a period of ninety-nine years granted by the Government in favor of said company on January 5, 1916.

The trial court having denied said motion and petition, the Philippine Manufacturing Company resorted to this court by petition for relief under section 513 of the Code of Civil Procedure. In that case, however, we held that the remedy of the petitioner, if any, was by appeal and said petition was accordingly here dismissed. (Philippine Manufacturing Co. vs. Imperial, 47 Phil., 810.) Conformably with said decision both the Government of the Philippine Islands and the Philippine Manufacturing Company have prosecuted their appeals to this court in these two cases upon a joint bill of exceptions.

As indicated in our opinion upon the former application for relief (Philippine Manufacturing Co. vs. Imperial, 47 Phil., 810), the case as presented in the lower court was undoubtedly a proper one for relief under section 113 of the Code of Civil Procedure; and the refusal of the court to grant relief upon the motion and petition of the two appellants is subject to review in this court. The facts above stated contain a sufficient explanation of the failure of

the Philippine Manufacturing Company to interpose any claim to the contested lot No. 39, which is found in the fact that the trial court, as early as June 7, 1923, had indicated that lot No. 35, as it then stood in the cadastral plan, had been already decreed in case No. 8425 and appeared in the name of the Philippine Manufacturing Company. That declaration removed the necessity for any formal claim on the part of the Philippine Manufacturing Company to any part of lot No. 35; and of course it was not necessary at any time for the Government to make formal claim to any part of the land covered by the cadastral.

Again, it will be noted that if lot No. 39 be treated as unclaimed land, it was covered by the general default of January 16, 1923, which laid the basis for a declaration of title in the Government, for want of adverse claimant. It may be admitted that, under the circumstances, it was not to be expected that notice of the filing of the answer by the Cabangis heirs would be given to the Philippine Manufacturing Company but when the land was adjudicated to the Cabangis heirs under the circumstances stated, the failure of the Philippine Manufacturing Company to combat the claim was sufficiently explained, and a clear case was made for relief under section 113 of the Code of Civil Procedure. The Government was also entitled to an opportunity to be heard on the Cabañgis claim, and the judgment should have been opened upon its petition also.

The attorneys for the Cabangis heirs, as appellees, direct attention to the fact that the petition interposed by the Attorney-General, asking for the reopening of the case, was not verified. We note, however, that no objection appears to have been made on this ground in the lower court; and if the attorneys for the appellees had designed to take advantage of this defect it should have been done by motion to strike from the files in the trial court. A formal objection to a pleading on the ground of lack of due verification cannot be first made in this court.

It will be borne in mind that the action of a Court of First Instance in passing upon a petition or motion for relief under section 113 of the Code of Civil Procedure is not a matter of strict discretion, as is the action of a court in passing upon an ordinary motion for a new trial under sections 145 et seq., of the Code of Civil Procedure. The motion under section 113 is necessarily always based upon new facts and a party is entitled to relief when facts are shown sufficient to make a case under that section.

It is for this reason that a refusal to grant relief in a proper case under said section is subject to reversal upon appeal.

The point is made in the brief for the appellees that the motion and petition which were interposed in this case by the two appellants were not addressed to the court under section 113 of the Code of Civil Procedure, for the reason that no reference is made to said section in either of the motions. The point is in our opinion without merit, since it is the facts set out in the body of the motion which determines its character.

For the reasons stated the order appealed from will be reversed and the order of June 18, 1925, adjudicating lot No. 39 to the Cabangis heirs will be set aside, with leave to the Government of the Philippine Islands to oppose the claim of the Cabangis heirs and with leave to the Philippine Manufacturing Company to interpose answer in its own behalf. It is so ordered, without express pronouncement as to costs.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Johns, Romualdez, and VillaReal, JJ., concur.

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