

**INTESTATE ESTATE OF MARCELINO TONGCO, REPRESENTED BY
JOSEFA TONGCO, ADMINISTRATRIX, PLAINTIFF AND APPELLANT,
VS. ANASTACIA VIANZON, DEFENDANT AND APPELLEE, AND THE
GOVERNMENT OP...**

G. R. Nos. 27498 and 27499. October 10, 1927

Ponente: MALCOLM, J.

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MALCOLM, J.:

In a motion of reconsideration presented in the above entitled cases, counsel for the appellant ask for a modification of the part of the affirmed judgments which orders the issuance of new decrees and certificates of title for lots Nos. 1062,1263, and 491 in the name of Anastacia Vianzon. The motion thus refers exclusively to case No. 27499 inasmuch as the judgment challenged is found only in that case.

The decision in the case principally relied upon, *Salva vs. Salvador* ([1911], 18 Phil., 193), which was an action brought under section 38 of the Land Registration Law, modified the judgment appealed from to the extent that another decree of registration of the property concerned be issued in favor of the opponent Adriana Salvador, for which she may make a separate application. But we know of no instance in which this theory has been given effect in a cadastral case, where there is in effect no application presented on behalf of any party. As an example is the case at bar which discloses claims in a cadastral case filed by the husband to obtain titles to certain properties in the name of the conjugal partnership, but where subsequently, after due hearing, the proof showed the property as belonging to the widow. The shortest distance between the two points is a straight line drawn from decrees obtained through fraud to the issuance of new decrees and certificates of title in the name of the true owner.

Where a person alleges that he has been deprived of land by a decree of registration obtained by fraud in cadastral proceedings and files in court a petition for review within one year after the entry of the decree, and where after trial fraud is established, the court may order the cancellation of the decree and the issuance of a new decree and certificate of title in the name of the petitioner.

The motion of reconsideration is denied.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

[1] The original decision is on page 698, ante.

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