

[G.R. No. 20151. March 06, 1923]

THE DIRECTOR OF LANDS, AS REPRESENTATIVE OF THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER, VS. HONORABLE FRANCISCO SANTAMARIA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, AND JULIO JAVELLANA, RESPONDENTS.

D E C I S I O N

OSTRAND, J.:

This is a petition for a writ of certiorari. The following facts set forth in the petition are admitted by the respondents.

“That on the 23d day of May, 1916, a decision was rendered in cadastral case No. 1 of the Court of First Instance of Iloilo, G. L. R. O. Cadastral Record No. 1, entitled ‘The Director of Lands, petitioner, vs. Manuel Albayda and others, claimants,’ in which lots Nos. 3462 and 3463 of said cadaster were declared public lands.

“That subsequently on the 24th day of December, 1921, the respondent judge of the Court of First Instance of Iloilo, on petition of the respondent Julio Javellana, revoked the order of general default in said cadastral case in regard to said lots Nos. 3462 and 3463, together with the decision of May 23, 1916, permitting the said respondent Julio Javellana to file his answer or claim in regard to said lots.

“That on the 9th day of October, 1922, the said respondent judge rendered another decision ordering the registration of said lots Nos. 3462 and 3463 in the name of the respondent Julio Javellana.”

It further appears from the record that on November 16, 1922, the

Attorney-General on behalf of the Director of Lands presented a motion in the court below asking that the decision of October 9, 1922, be declared null and void. This motion was denied by an order dated November 18, 1922.

The present petition was filed in this court on January 5, 1923, the petitioner alleging that the court below exceeded its jurisdiction in reopening the order of general default in the cadastral proceedings over five years after it was issued and in setting aside the decision rendered on May 23, 1916, and in ordering the land registered in the name of the respondent Javellana. He therefore asks that the respondent judge be ordered to certify the record of the proceedings to this court; that all proceedings subsequent to May 23, 1916, be declared null and void, and that the respondents pay the costs.

The respondents maintain that both the order of December 24, 1921, reopening the cadastral case, and the decision of October 9, 1922, have become final and cannot now be set aside; and that the petitioner has failed to bring properly to the attention of the court below the alleged error in setting aside the order of default and granting the reopening of the case by the order of December 24, 1921.

That the court below exceeded its jurisdiction in setting aside the order of default and reopening the cadastral case in question over five years after the decision rendered therein had become final is too obvious for argument. (*See Director of Lands vs. Abada*, 41 Phil., 71.) The court having no jurisdiction, the order of December 24, 1921, and the decision of October 9, 1922, were null and void *ab initio* and of no effect whatever; they could therefore not become final in the sense of depriving the petitioner of his right to question their validity.

There is no merit in the contention that the error of the court below was not properly brought to its attention; the Attorney-General's motion of November 16, 1922, brought the matter squarely before the court and was in the nature of a motion for reconsideration. We may say further that the observance of the general rule that this court will not entertain a petition for certiorari until the error complained of has been brought specially to the attention of the court responsible therefor through a motion for reconsideration, may not be insisted upon in a case where the proceeding in which the error occurred is a patent

nullity.

The petition for a writ of certiorari is granted and the aforementioned orders of December 24, 1921, and of November 18, 1922, as well as the decision of October 9, 1922, are hereby declared null and void.

Araullo, C.J.,

Street, Malcolm, Avanceña, Johns, and Romualdez, JJ., concur.

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