

44 Phil. 179

[ G. R. No. 19735. December 09, 1922 ]

**ALEJANDRO TANEDO, AS GUARDIAN OF THE MINORS PILAR AND PEDRO GERVASIO, AND MARTIN BONDOC, PETITIONERS, VS. THE JUDGE OF THE COURT OF FIRST INSTANCE, THE DIRECTOR OF LANDS, JULIANA GERVASIO, AS JUDICIAL ADMINISTRATRIX OF THE ESTATE OF MARIANO GERVASIO, AND CARMEN CADDI (ALIAS GERVASIO), RESPONDENTS.**

## **D E C I S I O N**

**OSTRAND, J.:**

This is a petition under section 513 of the Code of Civil Procedure to set aside a judgment of the Court of First Instance of the Province of Tarlac in cadastral case No. 9 of that province, declaring each of the respondents, Juliana Gervasio and Carmen Gervasio, the owner of a one-third interest in lot No. 785 of the cadaster of the municipality of Concepcion, province of Tarlac.

The petitioners allege, in substance, that the lot in question originally was the property of one Mariano Gervasio, who died on July 29, 1919, leaving as his only legitimate heirs his daughter Maura, the wife of the petitioner Martin Bondoc, and his grandchildren, the petitioners Pilar and Pedro Gervasio; that upon the death of Mariano Gervasio his daughter Maura was appointed administratrix of his estate; that upon the institution of the cadastral proceedings, Maura filed an answer in said proceedings claiming the said lot No. 785 as the property of the estate of Mariano Gervasio; that before the trial of the cadastral case, the administratrix Maura Gervasio died and that the respondent Juliana Gervasio was thereupon appointed administratrix *de bonis non* of said estate; that the administratrix *de bonis non*, taking advantage of the minority of the petitioners Pilar and Pedro, and notwithstanding the fact that the administration proceedings of the estate of Mariano Gervasio were still pending and that no guardian had been appointed for said minors, obtained from the court an adjudication of said lot No. 785 in favor of herself for a one-third share, in favor of Carmen Gervasio for another one-third share and in favor of Pilar and Pedro Gervasio for a one-sixth share each, all as the alleged heirs of Mariano Gervasio; that Juliana and Carmen

Gervasio are the illegitimate children of Mariano Gervasio and are not entitled to share in the inheritance left by him; and that the decision sought to be set aside was rendered on June 21, 1921, but that no final decree has been issued; and that the petitioners did not receive notice of said decision until the latter part of the month of August, 1922, and within sixty days previously to the filing of this petition.

In answer to an order to show cause why the remedy herein prayed for should not be granted, the Attorney-General disclaims any interest in the subject-matter of the litigation. The other respondents have filed, what they call, a demurrer, but the proceeding being, in most respects, analogous to a petition for a writ of certiorari, the so-called demurrer will, in accordance with the rule laid down in the case of Beech vs. Crossfield (12 Phil., 555), be regarded as an answer and final disposition made of the case without further pleadings.

The respondents citing the case of Herrera vs. Barretto and Joaquin (25 Phil, 245), raise the point that the petitioners have failed to make application to the court below for redress before coming to this court and that, therefore, the petition should be dismissed. In an ordinary certiorari proceeding this point would be well taken, but it is clearly inapplicable to petitions presented under section 513 of the Code of Civil Procedure; that section very evidently contemplates direct recourse to the Supreme Court. Moreover, it is sufficiently shown by the record that the petitioners herein were declared in default in the cadastral case over a year ago; that the order of default had passed beyond the control of the trial court at the time of the filing of the petition; and that an application to that court for a reopening of the case therefore would have been useless.

As to the merits of the petition, the trial court was clearly in error in undertaking to partition lot No. 785 in the cadastral proceedings before the administration of the estate of Mariano Gervasio had been terminated; the lot should have been decreed in favor of the estate and the distribution of the property made in the pending administration proceedings. Jurisdiction over the settlement of the estate having been first taken by the court upon its probate side and the claim to the land in the cadastral case having been presented in the name of the administration of the estate, the court should not have taken jurisdiction over the settlement and distribution of parts of the same estate in a land registration proceeding; and, in any event, the partition should not have been made without the intervention of a guardian or guardian *ad litem* for the minors.

For the reasons stated, so much of the judgment in said cadastral case No. 9 as relates to lot No. 785 is hereby vacated and it is ordered that the said lot be decreed in favor of the estate

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of Mariano Gervasio. The respondents Juliana Gervasio and Carmen Gervasio will jointly and severally pay the costs of this proceeding. So ordered.

*Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.*

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Date created: June 06, 2014