

44 Phil. 74

[G. R. No. 19584. November 20, 1922]

**DALMACIO YUSI, LUCAS YUSI, EMITERIO AQUINO AND FRANCISCO AQUINO,
PETITIONERS, VS. HONORABLE GUILLERMO B. GUEVARA AND MARIANO
CARREON, RESPONDENTS.**

D E C I S I O N

OSTRAND, J.:

This is a petition for a writ of mandamus ordering the respondent judge to re-open cadastral case No. 8 of the Province of Pampanga in so far as it relates to lots Nos. 2334, 2335, 2336, and 2337, or, in lieu thereof, to certify to this court a certain bill of exceptions presented in said case by the petitioners.

It appears from the record that on February 4, 1919, the Court of First Instance of Pampanga rendered a decision adjudicating said lots to Dalmacio Yusi, Lucas Yusi, Emitterio Aquino, Francisco Aquino and Mariano Carreon, which decision was confirmed by the Supreme Court in a decision dated October 3, 1921.^[1]

On April 5, 1922, the herein petitioners Dalmacio Yusi, Lucas Yusi, Emitterio Aquino and Francisco Aquino filed a petition for review under section 38 of the Land Registration Act alleging that Mariano Carreon had by fraud succeeded in having himself adjudged part owner of the lots in question. Without receiving evidence, Judge Cayo Alzona on April 7, 1922, denied the petition on the ground that the petitioners had enjoyed ample opportunity to present their evidence of fraud at the hearing of the cadastral case and were not entitled to another opportunity to present such evidence. The petitioners were notified of this order on April 12th and on the same day they filed a motion to be permitted to present evidence in support of their petition for review. On April 20th this motion was denied and the defendants notified on the 24th of the same month. They immediately filed an exception to the ruling of the court together with a motion for a new trial which was denied on May 29, 1922. The order denying the motion was excepted to on June 7th and intention to appeal announced. A bill of exceptions was presented on June 16th and on July 7, 1922, Judge

Guevara, of the same court, issued the following order:

“Siendo firme y definitivo el fallo de este Juzgado en lo que respecta a los lotes arriba numerados, y no siendo una apelacion mediante la via ordinaria de una pieza de excepciones el recurso viable para la representacion de Mariano Carreon contra el auto de este Juzgado de fecha de abril de 1922, no ha lugar a la admision y aprobacion de la pieza de excepciones presentada.”

The petitioners filed a motion for reconsideration of the order quoted, which was denied by the court on July 27th.

The respondent judge was clearly in error in declining to receive and certify the bill of exceptions presented by the petitioners; an appeal to this court by bill of exceptions lies from an order denying a petition for review under section 38 of the Land Registration Act and the bill of exceptions here in question was presented within the time prescribed by law. The appeal may be of little merit, but that is a question for this court to decide.

The petition is granted and the respondent judge of the Court of First Instance is hereby ordered to certify the bill of exceptions here in question and to cause the same to be transmitted to this court. The respondent Mariano Carreon will pay the costs of this proceeding. So ordered.

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

^[1]Yusi vs. Carreon, R. G. No. 16343, not reported.
