

# Sections 113 and 513 of Act No. 190 As Applied In Land Cases

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## I. INTRODUCTION

**T**HAT a man may not enrich himself at the expense of another is a fundamental principle well embedded in our system of jurisprudence. With this basic maxim in view, our legislators have enacted various laws which afford substantial remedies to one who has been deprived of his land or interest therein by wrongful registration thereof. Among these remedies are two important ones, viz., reliefs under sections 113 and 513 of the Code of Civil Procedure.

The two sections differ in the following aspects: (1) Section 113 refers to a judgment, order, or other proceeding, while section 513 refers only to a judgment rendered upon default; (2) the former may be availed of within six months, whereas the latter may be availed of within sixty days only; (3) the petition under the first section must be filed within six months from the date when the judgment, order, or proceeding was taken and before the issuance of the final decree, while the petition under the second section must be filed within sixty days after the petitioner first learns of the rendition of the judgment and before the issuance of the final decree, provided that the six-month period has already elapsed; and (4) the petition under section 113 must be filed with the Court of First Instance, whereas the relief under section 513 must

be by an original proceeding before the Supreme Court.

## II. REMEDY UNDER SECTION 113

It has been said that section 113 of the Code of Civil Procedure cannot be invoked in land registration or cadastral proceedings (Fisher, Annotations on the Code of Civil Procedure, 3rd Ed., p. 71) in view of a decision of the Supreme Court that the remedy by motion provided for in that section cannot be successfully invoked in the Court of First Instance for the purpose of obtaining relief from a final decree adjudicating title. (*Caballes v. Director of Lands and the Court of First Instance of Laguna*, 41 Phil. 357).

This view, however, is erroneous. In a subsequent ruling (*Larrobis v. Wislizenus and Smith, Bell & Co.*, 42 Phil. 401), the power of the Court of First Instance, in the exercise of its discretion, to set aside an interlocutory default order in a land registration case and to permit a person, for good cause shown, to come in and make opposition, was upheld. The time within which this may be done was not limited to the thirty-day period allowed for the making of an application for new trial. Thus, in granting the motion of February 18, 1920, to set aside the default order of December 22, 1919, after the lapse of 58 days, the Supreme Court, through Mr. Justice Street, explained: "But it is supposed that the decision of this court in *Caballes v. Director of Lands and*

the Court of First Instance of Laguna, 41 Phil. 357 has limited the exercise of the power of setting aside a default order in land registration cases to the situation where the motion to this end is filed within 30 days after the default order is entered. The decision referred to was not intended to have this effect. The judgment from which relief was sought in that case was a decree which had been entered upon default, and said decree was so framed as to constitute a final adjudication of title." The reason for this is that the particular conditions under which relief can be obtained from a final decree in registration proceedings are specified in section 38 of Act No. 496, as amended, and that provision is incompatible with the application of the section under consideration in respect to final decrees.

Obviously, the court failed in its attempt to explain satisfactorily the Caballes decision. While it is true that a "decision" may be regarded as a "decree," yet the judgment from which relief was sought in the Caballes case could not have been a final decree of registration as described in section 40 of Act No. 496. The final decree is prepared by the Chief of the General Land Registration Office, not by the Judge of the Court of First Instance. (Section 21, Act No. 2347; see also *de los Reyes v. de Villa*, 48 Phil. 227).

It should be noted that the Larobis case established the doctrine that section 113 of the Code of Civil Procedure may be invoked even after the lapse of 30 days from the entry of an *interlocutory default order*. Whether or not relief may be granted after the *judgment* becomes final remains to be seen.

The question appears to have been answered by the Supreme Court in a still later decision (*Phil. Mfg. Co. v. Imperial*, 47 Phil. 810). It was decided that relief may be granted only at any time before the order or judgment complained of has become final. In support of its decision, the Supreme Court again cited the Caballes case where "we held that the remedy by motion under section 113 of the Code of Civil Procedure cannot be invoked in a Court of First Instance for the purpose of obtaining relief from a decree adjudicating title in a land registration or cadastral proceeding after the decree has become final, i.e., *final in the sense that the time for appeal has passed* and the court has lost jurisdiction over the matter," the reason being that the full six-month period given in said section "cannot be allowed to extend the power of the court in land cases beyond the natural period of its jurisdiction." (Italics supplied). This ruling practically limited the period to 30 days in utter disregard of section 113 itself which grants a maximum period of six months.

A more recent decision (*Elviña v. Filamor and Domingo*, 56 Phil. 305) clarifies the vague import of all previous rulings heretofore mentioned. In a clear language, the Supreme Court ruled that "an order of default and the decision wherein said order is included, entered in a registration proceeding may be set aside even after thirty days from its promulgation, by reason of fraud, surprise, or excusable negligence, if a motion is filed to that effect within six months from the date of the decision, under section 113 of the Code of Civil Procedure, and before the Chief of the General Land Registration Office issues the decree of

registration in pursuance of the order to that end." It may safely be said that this doctrine practically modifies prior decisions on the subject.

The grounds for relief are mistake, inadvertence, surprise, and excusable neglect. (See section 113, Act No. 190). Fraud, although not mentioned, may vitiate a judgment, provided it is collateral to the cause of action upon which the judgment sought to be annulled was rendered. (*Domingo and Santos v. David*, G. R. Nos. 45705 and 45707; *Philippine Law Journal*, Vol. XIX, No. 1, p. 36; see also *Elviña v. Filamor and Domingo*, *supra*).

As a condition precedent, the party seeking relief must have exhausted all remedies at law, and the section under discussion may not be invoked by said party if he has had an adequate remedy at law for the purpose of vacating a judgment, order, or other proceeding taken against him through fraud, but has lost it through his own negligence or that of his counsel. (*Echarri and Azores v. Velasco*, 59 Phil. 570).

### III. REMEDY UNDER SECTION 513.

The jurisdiction of the Supreme Court to grant relief under section 513 of the Code of Civil Procedure depends upon the lack of remedy in the Court of First Instance. (*Palisoc v. Locsin*, 57 Phil. 322; *Rabajante v. Moir and Rances*, 28 Phil. 161; *Riera v. Palmaroli*, 40 Phil. 105). Thus, in one case (*Tañedo and Bondoc v. Judge of First Instance of Tarlac*, 44 Phil. 179) relief was granted as the existence of the order of default was discovered by the petitioner long after the Court of First Instance has lost jurisdiction over the matter. On the other

hand, the Supreme Court refused to entertain a petition for relief under section 513 where the Court of First Instance, upon timely application to it, could have granted relief under section 113 for the reason that the proceeding contemplated in the former section was intended merely to supplement the remedy provided by the latter section. (*Phil. Mfg. Co. v. Imperial*, *supra*, citing *Banco Español-Filipino v. Palanca*, 37 Phil. 921, 948).

It is the rule, therefore, that this particular remedy is available within sixty days after the petitioner first learns of the rendition of the judgment against him (see section 513, Act No. 190) and before the issuance of the final decree of registration (*Sotto v. Sotto*, 43 Phil. 688), provided that the six-month period has already elapsed. The grounds for relief are fraud, accident, mistake, and excusable negligence. (See section 513, Act No. 190).

### IV. SUMMARY.

In summation, we shall touch upon the different stages in a land registration case:

1 The application for the registration of a piece of land is filed with the clerk of the Court of First Instance of the province where the land lies; the clerk acts as *ex-officio* deputy in registration cases of the Chief of the General Land Registration Office. If the land is located in Manila, said application should be filed with the latter officer. (Section 19, Act No. 2347; section 20, Act No. 496).

2. In case there is no opposition to the application, an interlocutory default order is issued. (Section 35, Act No. 496; *Merchant v. Del Rosario*, 4 Phil. 316). But the applicant is not necessarily entitled to have the land regis-

tered, simply because no one appears to oppose his title and to oppose the registration of his land. He must show, even though there is no opposition, to the satisfaction of the court, that he is the absolute owner, in fee simple. (Maloles and Malvar v. Director of Lands, 25 Phil. 548; De los Reyes v. Paterno, 34 Phil. 420; Roman Catholic Bishop of Lipa v. Municipality of Taal, 38 Phil. 367; Director of Lands v. Agustin et al., 42 Phil. 227). The power of the Court of First Instance to set aside an interlocutory default order has been upheld (Larrobis v. Wislizenus and Smith, Bell & Co., *supra*); but this may be done only under section 113 of the Code of Civil Procedure.

3 After trial, a judgment by default is rendered in favor of the applicant, in case he has shown, to the satisfaction of the court, that he is the absolute owner. Nevertheless, this default judgment may be set aside under the circumstances mentioned in section 113. Section 513 of the same code is not applicable inasmuch as there is still an adequate remedy at law for the purpose of vacating said judgment. (Phil. Mfg. Co. v. Imperial, *supra*; Echarri and Azores v. Velasco, *supra*).

4 In the absence of any petition for relief, the judgment becomes final thirty days after re-

ceipt by the applicant of a copy of the decision (section 14, Act No. 496, as amended by Act No. 2347), that is, after the expiration of the period within which appeal may be taken. (Broce v. Apurado, 26 Phil. 581; Government v. Abural, 39 Phil. 996). The order of default and the decision wherein said order is included may be set aside even after 30 days from its promulgation, if a motion is filed to that effect within six months from the date of the decision, under section 113, and before the issuance of the final decree. (Elviña v. Filamor and Domingo, *supra*). If after the expiration of the six-month period, the final decree has not yet been issued, then the proper remedy is the one under section 513.

5 In case there is still no petition for relief, the issuance of the final decree of registration is ordered by the court. At this stage of the proceedings, relief may be granted under either section, as the case may be. (See preceding number).

6. The final decree is prepared and issued by the Chief of the General Land Registration Office. Neither section 113 nor section 513 may be invoked now. (Elviña v. Filamor and Domingo, *supra*; Sotto v. Sotto, *supra*). The proper remedy is the one under section 38 of Act No. 496, as amended.

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