# PRESIDENTIAL DECREE NO. 1529

## AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES

**WHEREAS, there is a need to update the Land Registration Act and to codify the various laws relative to registration of property, in order to facilitate effective implementation of said laws;**

**WHEREAS, to strengthen the Torrens system, it is deemed necessary to adopt safeguards to prevent anomalous titling of real property, and to streamline and simplify registration proceedings and the issuance of certificates of title;**

**WHEREAS, the decrees promulgated relative to the registration of certificates of land transfer and emancipation patents issued pursuant to Presidential Decree No. 27 to hasten the implementation of the land reform program of the country form an integral part of the property registration laws;**

**NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following:**

## CHAPTER I

## GENERAL PROVISIONS

**SECTION 1.** ***Title of Decree.*** **— This Decree shall be known as the PROPERTY REGISTRATION DECREE.**

**SEC. 2.** ***Nature of registration proceedings; jurisdiction of courts.*** **— Judicial proceedings for the registration of lands throughout the Philippines shall be *in rem* and shall be based on the generally accepted principles underlying the Torrens system.**

**Courts of First Instance[1] shall have exclusive jurisdiction over all applications for original registration of title to lands, including improvements and interests therein, and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions. The court through its clerk of court shall furnish the Land Registration Commission[2] with two certified copies of all pleadings, exhibits, orders, and decisions filed or issued in applications or petitions for land registration, with the exception of stenographic notes, within five days from the filing or issuance thereof.**

## 01. Concept of *jura regalia*.

Generally, under the concept of *jura regalia*, private title to land must be traced to some grant, express or implied, from the Spanish Crown or its successors, the American Colonial government, and thereafter, the Philippine Republic. The belief that the Spanish Crown is the origin of all land titles in the Philippines has persisted because title to land must emanate from some source for it cannot issue forth from nowhere. In its broad sense, the term "*jura regalia*" refers to royal rights, or those rights which the King has by virtue of his prerogatives. In Spanish law, it refers to a right which the sovereign has over anything in which a subject has a right of property or *propriedad*. These were rights enjoyed during feudal times by the King as the sovereign.

The theory of the feudal system was that title to all lands was originally held by the King, and while the use of lands was granted out to others who were permitted to hold them under certain conditions, the King theoretically retained the title. By fiction of law, the King was regarded as the original proprietor of all lands, and the true and only source of title, and from him all lands were held. The theory of *jura regalia* was therefore nothing more than a natural fruit of conquest.[3]

The capacity of the State to own or acquire property is the State's power of *dominium*. This was the foundation for the early Spanish

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[1]Should read Regional Trial Courts.

[2]Should read Land Registration Authority.

[3]Cruz v. Secretary of Environment and Natural Resources, GR No. 135385, Dec. 6, 2000, 347 SCRA 128, per Justice Kapunan.

decrees embracing the feudal theory of *jura regalia*. The *"Regalian Doctrine"* or *jura regalia* is a Western legal concept that was first introduced by the Spaniards into the country through the Laws of the Indies and the Royal Cedulas.

The Philippines passed to Spain by virtue of "discovery" and conquest. Consequently, all lands became the exclusive patrimony and dominion of the Spanish Crown. The Spanish government took charge of distributing the lands by issuing royal grants and concessions to Spaniards, both military and civilian. Private land titles could only be acquired from the government either by purchase or by the various modes of land grant from the Crown.

The Laws of the Indies were followed by the *Ley Hipotecaria*, or the Mortgage Law of 1893. The Spanish Mortgage Law provided for the systematic registration of titles and deeds as well as possessory claims. The law sought to register and tax lands pursuant to the Royal Decree of 1880. The Royal Decree of 1894, or the *"Maura Law,"* was partly an amendment of the Mortgage Law as well as the Laws of the Indies, as already amended by previous orders and decrees. This was the last Spanish land law promulgated in the Philippines. It required the "adjustment" or registration of all agricultural lands, otherwise the lands shall revert to the state. Four years later, by the Treaty of Paris of December 10, 1898, Spain ceded to the government of the United States all rights, interests and claims over the national territory of the Philippine Islands.[4]

**02. The Regalian doctrine is enshrined in the present and previous Constitutions.**

The 1987 Constitution, like the 1935 and 1973 Constitutions, embodies the principle of State ownership of lands and all other natural resources in Section 2 of Article XII on "National Economy and Patrimony," to wit:

> "SEC. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The

[4]Cruz v. Secretary of Environment and Natural Resources, *supra,* per Justice Puno.

> exploration, development and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant."

The principle had its roots in the 1935 Constitution which expressed the overwhelming sentiment in the Convention in favor of the principle of State ownership of natural resources and the adoption of the Regalian doctrine as articulated in Section 1 of Article XIII on "Conservation and Utilization of Natural Resources" as follows:

> "SEC. 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all-forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant."

Thus, after expressly declaring that all lands of the public domain, waters, minerals, all forces of energy and other natural

resources belonged to the State, the Commonwealth absolutely prohibited the alienation of these natural resources. Their disposition, exploitation, development and utilization were further restricted only to Filipino citizens and entities that were 60 percent Filipino-owned.

The 1973 Constitution reiterated the *Regalian* doctrine in Section 8, Article XIV on the "National Economy and the Patrimony of the Nation," to wit:

> "SEC. 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant."

The present Constitution provides that, except for agricultural lands of the public domain which alone may be alienated, forest or timber, and mineral lands, as well as all other natural resources must remain with the State, the exploration, development and utilization of which shall be subject to its full control and supervision albeit allowing it to enter into co-production, joint venture or production-sharing agreements, or into agreements with foreign-owned corporations involving technical or financial assistance for large-scale exploration, development and utilization.[5]

### 03. The doctrine does not negate "native title."

In *Cruz* v. *Secretary of Environment and Natural Resources*,[6] petitioners challenged the constitutionality of RA No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA), on the ground that it amounts to an unlawful deprivation of the State's

[5]Secs. 2 and 3, Art. XII.
[6]*Supra*.

ownership over lands of the public domain and all other natural resources therein, by recognizing the right of ownership of Indigenous Cultural Communities or Indigenous Peoples (ICCs/IPs) to their ancestral domains and ancestral lands on the basis of native title. After due deliberation on the petition, the Supreme Court voted as follows: seven (7) Justices voted to dismiss the petition while seven (7) others voted to grant the petition. As the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, after redeliberation, the voting remained the same. Accordingly, pursuant to Section 7, Rule 56 of the Rules of Court, the petition was dismissed, and the validity of the law, deemed upheld.

Justice Kapunan, voting to dismiss the petition, stated that the Regalian theory does not negate native title to lands held in private ownership since time immemorial, adverting to the landmark case of *Cariño* v. *Insular Government,*[7] where the United States Supreme Court, through Justice Holmes, declared:

> "It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land."

The above ruling institutionalized the recognition of the existence of native title to land, or ownership of land by Filipinos by virtue of possession under a claim of ownership since time immemorial and independent of any grant from the Spanish Crown, as an exception to the theory of *jura regalia*.

Describing the IPRA as a novel piece of legislation, Justice Puno stated that *Cariño* firmly established a concept of private land title that existed irrespective of any royal grant from the State and was based on the strong mandate extended to the Islands via the Philippine Bill of 1902 that "No law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." The IPRA recognizes the existence of ICCs/IPs as a distinct sector in Philippine society. It grants these people the

[7]212 U.S., 449; 53 Law Ed., 594.

ownership and possession of their ancestral domains and ancestral lands, and defines the extent of these lands and domains. The ownership given is the indigenous concept of ownership under customary law which traces its origin to native title.

On the other hand, Justice Vitug would grant the petition, saying that *Cariño* cannot override the collective will of the people expressed in the Constitution. It is in them that sovereignty resides and from them that all government authority emanates. It is not then for a court ruling or any piece of legislation to be conformed to by the fundamental law, but it is for the former to adapt to the latter, and it is the sovereign act that must, between them, stand inviolate.

Justice Panganiban was more forthright when he stated that all Filipinos, whether indigenous or not, are subject to the Constitution, and that no one is exempt from its all-encompassing provisions.

**04. Background of the Torrens system of registration.**

The boldest effort to grapple with the problem of simplification of title to land was made by Mr. (afterwards Sir Robert) Torrens, a layman, in South Australia in 1857. In the Torrens system, title by registration takes the place of "title by deeds" of the system under the "general" law. A sale of land, for example, is effected by a registered transfer, upon which a certificate of title is issued. The certificate is guaranteed by statute, and, with certain exceptions, constitutes indefeasible title to the land mentioned therein. Under the old system the same sale would be effected by a conveyance, depending for its validity, apart from intrinsic flaws, on the correctness of a long series of prior deeds, wills, etc. The object of the Torrens system then is to do away with the delay, uncertainty, and expense of the old conveyancing system.

By "Torrens" systems generally are meant those systems of registration of transactions with interest in land whose declared object is, under governmental authority, to establish and certify to the ownership of an absolute and indefeasible title to realty, and to simplify its transfer.[8]

Grants of public land were brought under the operation of the Torrens system under Act No. 496, or the Land Registration Act of

[8]Grey Alba v. De la Cruz, GR No. L-5246, Sept. 16, 1910, 17 SCRA 49.

1903. Enacted by the Philippine Commission, said Act placed all public and private lands in the Philippines under the Torrens system. The law is said to be almost a verbatim copy of the Massachusetts Land Registration Act of 1898, which, in turn, followed the principles and procedure of the Torrens system of registration formulated by Sir Robert Torrens who patterned it after the Merchant Shipping Acts in South Australia. The Torrens system requires that the government issue an official certificate of title attesting to the fact that the person named is the owner of the property described therein, subject to such liens and encumbrances as thereon noted or the law warrants or reserves. The certificate of title is indefeasible and imprescriptible and all claims to the parcel of land are quieted upon issuance of said certificate. This system highly facilitates land conveyance and negotiation.[9]

Otherwise stated, the dominant principle of the Torrens system of land registration is that the titles registered thereunder are indefeasible or as nearly so as it is possible to make them. This principle is recognized to the fullest extent in our registration laws,[10] the Land Registration Act, and now the 1978 Property Registration Decree which codifies all laws relative to registration of lands.

The validity of some of the provisions of the statutes adopting the Torrens system has been upheld by the courts of the United States.[11]

## 05. Purpose of the Torrens system.

The real purpose of the Torrens system of registration, as expressed in *Legarda* v. *Saleeby*,[12] a 1915 decision, is to quiet title to land; to put a stop forever to any question of the legality of the title, except claims which were noted at the time of registration, in the certificate, or which may arise subsequent thereto. That being the purpose of the law, once a title is registered the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the *"mirador de su casa,"* to avoid the possibility of losing

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[9]Cruz v. Secretary of Environment and Natural Resources, *supra*, per Justice Puno.

[10]Sotto v. Sotto, GR No. L-17768, Sept. 1, 1922, 4 Phil. 688.

[11]Grey Alba v. De la Cruz, GR No. L-5246, 17 Phil. 49.

[12]GR No. 8936, Oct. 2, 1915, 31 Phil. 590, 31 Phil. 590; see also Ching v. Court of Appeals, GR No. 59731, Jan. 11, 1990, 181 SCRA 9; National Grains Authority v. Intermediate Appellate Court, GR No. L-68741, Jan. 28, 1988, 157 SCRA 388.

his land. While the proceeding is judicial, it involves more in its consequences than does an ordinary action. All the world are parties, including the government. After the registration is complete and final and there exists no fraud, there are no innocent third parties who may claim an interest. The rights of all the world are foreclosed by the decree of registration. The certificate of registration accumulates in one document a precise and correct statement of the exact status of the fee held by its owner. The certificate, in the absence of fraud, is the evidence of title and shows exactly the real interest of its owner. The title once registered, with very few exceptions, should not thereafter be impugned, altered, changed, modified, enlarged, or diminished, except in some direct proceeding permitted by law.

Put a little differently, the Torrens system aims to decree land titles that shall be final, irrevocable, and indisputable,[13] and to relieve the land of the burden of known as well as unknown claims. If there exists known and just claims against the title of the applicant for the registration of his land under the Torrens systems, he gains nothing in effect by his registration, except in the simplicity of subsequent transfers of his title. The registration either relieves the land of all known as well as unknown claims absolutely, or it compels the claimants to come into court and to make there a record, so that thereafter there may be no uncertainty concerning either the character or the extent of such claims.[14]

**06. Registration is not a mode of acquiring ownership.**

Registration does not vest title. It is merely evidence of such title over a particular property. Our land registration laws do not give the holder any better title than what he actually has.[15] Registration is not a mode of acquiring ownership but is merely a procedure to establish evidence of title over realty. It has been held that where petitioners' registration of their deed of sale was done in bad faith, it is as if no registration was made at all insofar as private respondent is concerned. Conversely, actual knowledge of petitioners of the sale to private respondent amounted to registration thereof.[16]

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[13]Government of the Philippine Islands v. Abural, GR No. 14167, Aug. 14, 1919, 39 Phil. 996.

[14]Roxas v. Enriquez, GR No. 8539, Dec. 24, 1914, 29 Phil. 31.

[15]Solid State Multi-Products Corporation v. Court of Appeals, GR No. 83383, May 6, 1991, 196 SCRA 630.

[16]Guzman v. Court of Appeals, GR No. L-46935, Dec. 21, 1987, 156 SCRA 701.

Knowledge of a prior transfer of a registered property by a subsequent purchaser makes him a purchaser in bad faith and his knowledge of such transfer vitiates his title acquired by virtue of the latter instrument of conveyance with creates no right as against the first purchaser.[17]

Registration of land under Act No. 496 or PD No. 1529 does not vest in the registrant private or public ownership of the land. Registration is not a mode of acquiring ownership but is merely evidence of ownership previously conferred by any of the recognized modes of acquiring ownership. Registration does not give the registrant a better right than what the registrant had prior to the registration. The registration of lands of the public domain under the Torrens system, by itself, cannot convert public lands into private lands.[18]

**07. Advantages of the Torrens system.**

Sir Robert Torrens summarized the benefits of the system of registration of titles, to wit:

(a) It has substituted security for insecurity;

(b) It has reduced the cost of conveyances from pounds to shillings, and the time occupied from months to days;

(c) It has exchanged brevity and clearness for obscurity and verbiage;

(d) It has so simplified ordinary dealings that he who has mastered the 'three R's' can transact his own conveyancing;

(e) It affords protection against fraud;

(f) It has restored to their just value many estates, held under good holding titles, but depreciated in consequence of some blur or technical defect, and has barred the reoccurrence of any similar faults.[19]

Worth reiterating is that the main purpose of the Torrens system is to avoid possible conflicts of title to real estate and to facilitate transactions relative thereto by giving the public the right to rely

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[17]Cruz v. Cabana, GR No. 56232, June 22, 1984, 129 SCRA 656.

[18]Chavez v. Public Estates Authority, GR No. 133250, July 9, 2002, 384 SCRA 152.

[19]Grey Alba v. De la Cruz, *supra*, citing Sheldon on Land Registration.

upon the face of a Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that should impel a reasonably cautious man to make such further inquiry. Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate. The effect of such an outright cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance as to whether the title has been regularly or irregularly issued by the court. Every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property.[20]

**08. A view of past and present legislation on land registration.**

The State has the power and right to provide a procedure for the adjudication of title to real estate. It has control over the real property within its limits. The conditions of ownership of real estate within the State is subject to its rules, concerning the holding, transfer, liability to obligations, private or public, and the modes of establishing title thereto, and for the purpose of determining these questions, the State may provide any reasonable rules or procedure. The State possesses not only the right to determine how title to real estate may be acquired and proved, but it is also within its legislative capacity to establish the method of procedure.[21]

The case of *Oh Cho* v. *Director of Lands*,[22] decided in 1946, reiterated that all lands that were not acquired from the government, either by purchase or by grant, under the laws, orders and decrees promulgated by the Spanish Government in the Philippines, or by possessory information under the Mortgage Law *(Sec. 19, Act No. 496)*,[23] belong to the public domain. Significantly, *Oh Cho* reiterated

[20]Traders Royal Bank v. Court of Appeals, GR No. 114299, Sept. 24, 1999, 315 SCRA 190.

[21]Legarda v. Saleeby, *supra*.

[22]GR No. 482321, Aug. 31, 1946, 75 Phil. 890.

[23]Sec. 19 [third], Act No. 496, provides that application for registration of title may be made by the person or persons claiming, singly or collectively, to own or hold any land under a possessory information title, acquired under the provisions of the Mortgage Law.

the exception to the rule enunciated in *Cariño,* which is any land that has been in the possession of an occupant and of his predecessors-in-interest since time immemorial, as to which such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest.

It then becomes important to look at previous and current legislation governing acquisition of private lands or lands of the public domain leading to their registration under the Torrens system.

### (1) The Public Land Act (CA No. 141)

In 1903, the United States colonial government, through the Philippine Commission, passed Act No. 926, the first Public Land Act. The Act was passed in pursuance of the provisions of the Philippine Bill of 1902. The law governed the disposition of lands of the public domain. It prescribed rules and regulations for the homesteading, selling, and leasing of portions of the public domain of the Philippine Islands, and prescribed the terms and conditions to enable persons to perfect their titles to public lands in the Islands. It also provided for the "issuance of patents to certain native settlers upon public lands," for the establishment of townsites and sale of lots therein, for the completion of imperfect titles, and for the cancellation or confirmation of Spanish concessions and grants in the Islands. In short, the Public Land Act operated on the assumption that title to public lands in the Philippine Islands remained in the government; and that the government's title to public land sprung from the Treaty of Paris and other subsequent treaties between Spain and the United States. The term "public land" referred to all lands of the public domain whose title still remained in the government and are thrown open to private appropriation and settlement, and excluded the patrimonial property of the government and the friar lands.

Act No. 926 was superseded in 1919 by Act No. 2874, the second Public Land Act. This new law was passed under the Jones Law. It was more comprehensive in scope but limited the exploitation of agricultural lands to Filipinos and Americans and citizens of other countries which gave Filipinos the same privileges. After the passage of the 1935 Constitution, Act No. 2874 was amended in 1936 by CA No. 141, the present Public Land Act, which is essentially the same as Act No. 2874. The main difference between the two relates to the

transitory provisions on the rights of American citizens and corporations during the Commonwealth period at par with Filipino citizens and corporations.[24]

CA No. 141, approved November 7, 1936, applies to lands of the public domain which have been declared open to disposition or concession and officially delimited and classified. It contains provisions on the different modes of government grant, *e.g.*, homesteads,[25] sale,[26] free patents (administrative legalization),[27] and reservations for public and semi-public purpose.[28] Under Section 103 of PD No. 1529, or the Property Registration Decree, it is provided that whenever public land is alienated, granted or conveyed to any person by the government, the same shall be brought forthwith under the operation of the Decree. The corresponding patent or instrument of conveyance shall be filed with the Register of Deeds of the province or city were the land lies and registered, whereupon a certificate of title shall be entered as in other cases of registered land, and owner's duplicate issued to the grantee. A certificate of title issued pursuant to a public land patent has the same validity and efficacy as a certificate of title issued through ordinary registration proceedings.

The Public Land Act has a chapter on judicial confirmation of imperfect or incomplete titles based on acquisitive prescription. Section 48(b), Chapter VIII, declares who may apply for judicial confirmation of imperfect or incomplete titles, to wit:

> "SEC. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Regional Trial Court of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Property Registration Decree, to wit:
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> (b) Those who by themselves or through their predecessors in interest have been in open, continuous,

[24]Cruz v. Secretary of Environment and Natural Resources, *supra*, per Justice Puno.

[25]Chapter IV, CA No. 141.

[26]Chapter V, *ibid.*

[27]Chapter VII, *ibid.*

[28]Chapter XII, *ibid.*

exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of ownership, since June 12, 1945." *(As amended by PD No. 1073, dated Jan. 25, 1977)*

Section 51 of the Act provides that applications for judicial confirmation of imperfect of incomplete titles shall be subject to the same procedure as established under the Property Registration Decree, except that notice of all such applications, together with the plan of the land claimed, shall be immediately forwarded to the Director of Lands who may appear as a party in such cases.

### (2) The Land Registration Act (Act No. 496)

The original Land Registration Act (Act No. 496) was approved on November 6, 1902, but became effective on January 1, 1903. It established the Torrens system of registration in the country.[29] It created a court called the "Court of Land Registration" which had exclusive jurisdiction over all applications for registration, with power to hear and determine all questions arising upon such applications. The sole purpose of the Legislature in its creation was to bring the land titles in the Philippines under one comprehensive and harmonious system, the cardinal features of which are indefeasibility of title and the intervention of the State as a prerequisite to the creation and transfer of titles and interests, with the resultant increase in the use of land as a business asset by reason of the greater certainty and security of title. It does not create a title nor vest one. It simply confirms a title already created and already vested, rendering it forever indefeasible. The office of the court is solely to

[29]Sotto v. Sotto, GR No. L-17768, Sept. 1, 1922, 43 Phil. 688.

register title. The effects and results of that registration are determined by the statute. It determines, "adjudicates" says the title, whether or not, upon the facts presented, the petitioner is entitled to have an indefeasible title. If he is, it is given to him; if not, he is driven from court by a dismissal of the petition with the resultant loss of jurisdiction over the whole proceeding. This is its sole function to confirm and register. It is, therefore, a court with jurisdiction over a particular subject matter, which subject matter is to be dealt with to a special end. While the power of the court over its subject matter is plenary, it is so only for certain clearly specified purposes and to effectuate only clearly specified ends.

Before the creation of the Court of Land Registration, the jurisdiction to determine the nature, quality, and extent of land titles, the rival claims of contending parties, and the legality and effect thereof was vested in the Courts of First Instance. By the passage of Act No. 496, two things occurred worthy of note: *first*, a court of limited jurisdiction, with special subject matter, and with only one purpose, was created, and *second*, by reason thereof, courts, theretofore of general, original, and exclusive jurisdiction, were shorn of some of their attributes; in other words, their powers were restricted.[30] After land has been finally registered, the Court of Land Registration ceased to have jurisdiction. The only authority remaining in the court was that conferred by Section 112 of Act No. 496.[31]

Judicial proceedings for the registration of lands under the Act are *in rem* and based on the generally accepted principles underlying the Torrens system.[32] The decrees operate directly on the land and the buildings and improvements thereon, and vest and establish title thereto.[33]

The final decrees are always regarded as indefeasible and could not be reopened except under the circumstances and in the manner mentioned in Section 38 of the Act, to wit:

> "If the court after hearing finds that the applicant has title as stated in his application, and proper for registration, a decree of confirmation and registration shall

[30]City of Manila v. Lack, GR No. 5987, April 7, 1911, 19 Phil. 324.
[31]Cuyugan v. Sy Quia, GR No. 7857, March 27, 1913, 24 Phil. 567.
[32]Sec. 2, *ibid*.
[33]Sec. 2, Act No. 496.

> be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description 'To all whom it may concern.' Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest. x x x"

Act No. 496 provides for an Assurance Fund to pay for the loss or damage sustained by any person who, without negligence on his part, is wrongfully deprived of any land or interest therein on account of the bringing of the same under the Act or registration of any other persons as owner of the land.

### (3) The Cadastral Act (Act No. 2259)

The cadastral system of registration took effect with the enactment on February 11, 1913 of Act No. 2259.[34] When, in the opinion of the President, the public interest requires that title to any lands be settled and adjudicated, he shall order the Director of Lands to make a survey thereof, with notice to all persons claiming an interest therein. Thereafter, the Director of Lands, represented by the Solicitor General, shall institute registration proceedings by filing a petition in the proper court against the holders, claimants, possessors or occupants of such lands, stating that the public interest requires that the titles to such lands be settled and adjudicated.[35] Notice of the filing of the petition is published twice in successive issues of the Official Gazette.[36] All conflicting interests shall be adjudicated by the court and decree awarded to the person entitled to the lands or parts thereof. The decree shall be the basis for the

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[34]Sec. 1, Act No. 2259.
[35]Sec. 5, *ibid.*
[36]Sec. 7, *ibid.*

issuance of the certificate of title which shall have the same effect as a certificate of title granted under the Property Registration Decree.

Like ordinary registration proceedings, a cadastral proceeding is *in rem,* hence, binding generally upon the whole world, inclusive of persons not parties thereto, and particularly upon those who had actually taken part in the proceeding and their successors in interest by title subsequent to the commencement of the action.[37]

The provisions of the Cadastral Act have been substantially incorporated in the Property Registration Decree, particularly in Sections 35 to 38 thereof, under the title: Cadastral Registration Proceedings. Section 53 of the Public Land Act also refers to cadastral proceedings, but all cadastral proceedings may well be considered as governed by the aforesaid sections of the Property Registration Decree.

### (4) The Property Registration Decree (PD No. 1529)

On June 11, 1978, PD No. 1529, otherwise known as the "Property Registration Decree," was approved. The Decree was issued in order to update the Land Registration Act and to codify the various laws relative to registration of property and to facilitate effective implementation of said laws. As expressed in *Director of Lands* v. *Santiago*,[38] the Decree "supersedes all other laws relative to registration of property." Regional Trial Courts of the city or province where the land lies exercise jurisdiction over applications for registration and all subsequent proceedings relative thereto, subject to judicial review.

PD No. 1529 has substantially incorporated the substantive and procedural requirements of its precursor, the Land Registration Act of 1902. But it has expanded its coverage to include judicial confirmation of imperfect or incomplete titles in its Section 14(1),[39] cadastral registration proceedings in Sections 35 to 38, voluntary proceedings in Sections 51 to 68, involuntary proceedings in Sections 69 to 77, certificates of land transfer and emancipation patents issued pursuant to PD No. 27 in Sections 104 to 106, and reconstitution of lost or destroyed original Torrens titles in Section 110.

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[37]Barroga v. Albano, GR No. L-43445, Jan. 20, 1988, 157 SCRA 131.
[38]GR No. L41278, April 15, 1988, 160 SCRA 186.
[39]Similar to Sec. 48(b) of the Public Land Act.

Judicial proceedings under the Property Registration Decree, like the old Land Registration Act, are *in rem*, and are based on the generally accepted principles underlying the Torrens system.[40] Jurisdiction over the *res* is acquired by giving the public notice of initial hearing by means of: (a) publication, (b) mailing and (c) notice.[41] The Decree has created the Land Registration Commission, now renamed Land Registration Authority, under the Department of Justice, as the central repository of records relative to original registration, including subdivision and consolidation plans of titled lands.[42]

Section 14, pars. (1) to (4) of PD No. 1529 enumerates the persons who may apply for registration, and the conditions necessary for registration, to wit:

> "(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law."

The application for registration shall be filed with the Regional Trial Court of the province or city where the land is situated.[43] The court shall issue an order setting the date and hour of initial hearing, and the public shall be given notice thereof by means of publication, mailing and posting.[44] Any person claiming an interest in the land may appear and file an opposition, stating all his objections to the application.[45] The case shall be heard and all conflicting claims of

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[40]Sec. 2, PD No. 1529.
[41]Sec. 23, *ibid.*
[42]Secs. 4 and 6(c), *ibid.*
[43]Sec. 17, PD No. 1529.
[44]Sec. 23, *ibid.*
[45]Sec. 25, *ibid.*

ownership shall be determined by the court.[46] Once the judgment becomes final, the court shall issue an order for the issuance of a decree and the corresponding certificate of title in favor of the person adjudged as entitled to registration.[47] Thereupon, the Land Registration Authority (LRA) shall prepare the corresponding decree of registration as well as the original and duplicate certificate of title which shall be sent to the Register of Deeds of the city or province where the land lies for registration.[48]

The decree of registration binds the land and quiets title thereto, subject only to such exceptions or liens as may be provided by law.[49] A certificate of title shall not be subject to collateral attack, nor shall it be altered, modified, or cancelled except in a direct proceeding in accordance with law.[50] Every registered owner receiving a certificate of title, and every subsequent purchaser for value and in good faith, shall hold the same free from all encumbrances except those noted in sad certificate and any subsisting encumbrances enumerated in the law.[51] An Assurance Fund is provided for the loss, damage or deprivation of any interest sustained by any person, without negligence on his part, as a consequence of the bringing of the land under the operation of the Torrens system.[52] The Decree likewise contains a provision governing petitions and actions after original registration.[53]

### 09. Registration under the Torrens system is a proceeding *in rem*.

The main principle of registration is to make registered titles indefeasible. Upon the presentation in court of an application for the registration of the title to lands, the theory under the Torrens system is that all occupants, adjoining owners, adverse claimants, and other interested persons are notified of the proceedings, and have a right to appear in opposition to such application. In other words, the proceeding is against the whole world. This system was evidently

[46]Sec. 29, *ibid.*
[47]Sec. 30, *ibid.*
[48]Sec. 39, *ibid.*
[49]Sec. 39, *ibid.*
[50]Sec. 48, *ibid.*
[51]Sec. 44, *ibid.*
[52]Sec. 95, *ibid.*
[53]Sec. 108, *ibid.*

considered by the Legislature to be a public project when it passed Act No. 496 and later, PD No. 1529. The interest of the community at large was considered to be preferred to that of private individuals.[54]

Section 2, PD No. 1529, expressly states that judicial proceedings for the registration of lands shall be *in rem* and shall be based on the generally accepted principles underlying the Torrens system.

A proceeding is *in rem* when the object of the action is to bar indifferently all who might be minded to make an objection of any sort against the right sought to be established, and if anyone in the world has a right to be heard on the strength of alleging facts which, if true, show an inconsistent interest. But if the technical object of the suit is to establish a claim against some particular person, with a judgment which generally, in theory at least, binds his body, or to bar some individual claim or objection, so that only certain persons are entitled to be heard in defense, then the action is *in personam*.[55] Applying the *in rem* character of land registration proceedings, it was declared in *Grey Alba* v. *De la Cruz*:[56]

> "(A) proceeding *in rem* dealing with a tangible *res* may be instituted and carried to judgment without personal service upon claimants within the State or notice by name to those outside of it, and not encounter any provision of either constitution. Jurisdiction is secured by the power of the court over the *res*. As we have said, such a proceeding would be impossible, were this not so, for it hardly would do to make a distinction between the constitutional rights of claimants who were known and those who were not known to the plaintiff, when the proceeding is to bar all."

The principle was reiterated in *Moscoso* v. *Court of Appeals*,[57] thus:

> "The proceedings for the registration of title to land under the Torrens system is an action *in rem*, not *in personam*, hence, personal notice to all claimants of the

[54]Grey Alba v. De la Cruz, *supra*.
[55]*Ibid*.
[56]*Supra*.
[57]GR No. L-46439, April 24, 1984, 128 SCRA 719.

> *res* is not necessary to give the court jurisdiction to deal with and dispose of the *res*, and neither may lack of such personal notice vitiate or invalidate the decree or title issued in a registration proceeding, for the State, as sovereign over the land situated within it, may provide for the adjudication of title in a proceeding *in rem* or in the nature of a proceeding *in rem*, which shall be binding upon all persons, known or unknown."

The *in rem* character of the proceeding is perhaps best appreciated by citing a paragraph in *Roxas* v. *Enriquez*[58] which recounts the history of the rule: "This rule was first established in admiralty proceedings. It was established out of the very necessities of the case. The owner of a ship, for instance, lived in London. His ship was found in the most distant ports of the earth. Its operation necessarily required supplies, such as men, coal, and food. The very nature of its business necessitated the making of contracts. The continuance of its voyage depended upon its capacity to make contracts and to get credit. It might also, perchance, cause damage to other craft, in like conditions. To be able to secure all such necessities, to satisfy all possible obligations, to continue its voyage and its business on the high seas, merchants and courts came to regard the 'ship' as a person, with whom or with which they were dealing, and not its real owner. Consequently there came into existence this action *in rem*. For the purpose of carrying into effect the broader purposes of the Torrens land law, it has been universally considered that the action should be considered as one *in rem*."

## 10. Regional Trial Courts have exclusive jurisdiction over land registration cases.

The jurisdiction of the Regional Trial Courts over matters involving the registration of lands and lands registered under the Torrens system is conferred by Section 2 of PD No. 1529, while jurisdiction over petitions for amendments of certificates of title is provided for by Section 108 of the Decree.[59]

Section 2 provides that "Courts of First Instance (now Regional Trial Courts) shall have exclusive jurisdiction over all applications

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[58]GR No. 8539, Dec. 24, 1914, 29 Phil. 31.

[59]Rudolf Lietz Holdings v. Registry of Deeds of Parañaque City, GR No. 133240, Nov. 15, 2000, 344 SCRA 680.

for original registration of titles to lands, including improvements and interest therein and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions." Before the enactment of PD No. 1529, and as ruled in a long line of decisions dealing with proceedings under Section 112 of the Land Registration Act (Act No. 496), summary reliefs, such as an action to compel the surrender of owner's duplicate certificate of title to the Register of Deeds, could only be filed with the Regional Trial Court, sitting as a land registration court, if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes contentious and controversial which should be threshed out in an ordinary action or in the case where the incident property belonged.[60]

### (1) Jurisdiction in civil cases involving title to property

Pursuant to Section 19(2) of BP Blg. 129, as amended, Regional Trial Courts shall exercise exclusive original jurisdiction in all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property exceeds P20,000.00, or for civil actions in Metropolitan Manila, where such value exceeds P50,000.00, except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

It bears reiterating that what determines jurisdiction are the allegations in the complaint and the reliefs prayed for. Where the ultimate objective of the plaintiff is to obtain title to property, it should be filed in the proper court having jurisdiction over the assessed value of the property.[61] An action for reconveyance or for the annulment of a deed of sale and partition is one involving the title to or interest in property. Thus, in an action for reconveyance, the complaint should allege the *assessed value* of the property to determine what court has jurisdiction. But if the complaint simply alleges the "market value" of the property as, say, P15,000.00, it is the inferior court, not the Regional Trial Court, which has jurisdiction over the case.[62]

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[60]Fojas v. Grey, GR No. L-29613, Sept. 18, 1984, 132 SCRA 76.
[61]Huguete v. Embudo, GR No. 149554, July 1, 2003, 405 SCRA 273.
[62]Barangay Piapi v. Talip, GR No. 138248, Sept. 7, 2005.

### (2) Distinction between the court's general and limited jurisdiction eliminated

Section 2 has eliminated the distinction between the general jurisdiction vested in the regional trial court and the limited jurisdiction conferred upon it by the former law when acting merely as a land registration or cadastral court. Aimed at avoiding multiplicity of suits, the change has simplified registration proceedings by conferring upon Regional Trial Courts the authority to act not only on applications for original registration but also over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions.[63] In other words, the court is no longer fettered by its former limited jurisdiction. It is now authorized to hear and decide not only non-controversial cases but even the contentious and substantial issues which were beyond its competence before.[64] As held in *Junio* v. *De los Santos*:[65]

> "Although the grounds relied upon by petitioner for cancellation of the adverse claim were unmeritorious, it behooved the lower Court to have conducted a speedy hearing upon the question of validity of the adverse claim pursuant to the second paragraph of Section 110 of the Land Registration Act, reading x x x.
>
> In fact, the lower Court, instead of confining itself to the propriety of the registration of the adverse claim should already have decided the controversy between the parties on the merits thereof. Doctrinal jurisprudence holds that the Court of First Instance (now the Regional Trial Court), as a Land Registration Court, can hear cases otherwise litigable only in ordinary civil actions, since the Courts of First Instance are at the same time, Courts of general jurisdiction and could entertain and dispose of the validity or invalidity of respondent's adverse claim, with a view to determining whether petitioner is entitled or not to the relief that he seeks. That doctrine is based on expediency."

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[63]Concepcion v. Concepcion, GR No. 147928, Jan. 11, 2005, 448 SCRA 31; Ligon v. Court of Appeals, GR No. 107751, June 1, 1995, 244 SCRA 693.

[64]Averia v. Caguioa, GR No. L-65129, Dec. 29, 1986, 146 SCRA 459.

[65]GR No. L-35744, Sept. 28, 1984, 128 SCRA 705.

Similarly, it was held in *Arceo* v. *Court of Appeals*[66] that under Section 2 of the Property Registration Decree, the jurisdiction of the Regional Trial Court, sitting as a land registration court, is no longer as circumscribed as it was under Act No. 496, the former land registration law. The Decree has eliminated the distinction between the general jurisdiction vested in the Regional Trial Court and the limited jurisdiction conferred upon it by the former law when acting merely as a cadastral court. The amendment was aimed at avoiding multiplicity of suits and the change has simplified registration proceedings by conferring upon trial courts the authority to act not only on applications for original registration but also over all petitions filed after original registration of title, with power to hear and determine all questions arising from such applications or petitions. Where the issue, say, of ownership, is ineluctably tied up with the question of right of registration, the cadastral court commits no error in assuming jurisdiction over it, as, for instance, where both parties rely on their respective exhibits to defeat one another's claims over the parcels sought to be registered, in which case, registration would not be possible or would be unduly prolonged unless the court first decided it.

In any event, whether a particular matter should be resolved by the Regional Trial Court in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is in reality not a jurisdictional question. It is in essence a procedural question involving a mode of practice which may be waived.[67]

### (3) Delegated jurisdiction of inferior courts in cadastral and land registration cases

As amended by RA No. 7691, approved March 25, 1994, Section 34 of BP Blg. 129, known as the Judiciary Reorganization Act of 1980, grants Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts the delegated jurisdiction to hear and determine cadastral or land registration cases in the following instances:

(a) Where the lot sought to be registered is not the subject of controversy or opposition; or

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[66]GR No. 81401, May 18, 1990, 185 SCRA 489.
[67]Moscoso v. Court of Appeals, *supra*.

(b) Where the lot is contested but the value thereof does not exceed P100,000.00, such value to be ascertained by the affidavit of the claimant or by the agreement of the respective claimants, if there be more than one, or from the corresponding tax declaration of the real property.

The decisions of said courts shall be appealable in the same manner as decisions of the Regional Trial Courts.

### (4) SC Administrative Circular No. 6-93-A

On November 15, 1995, the Supreme Court issued Administrative Circular No. 6-93-A, providing that:

1. Cadastral or land registration cases filed before the effectivity of this Administrative Circular but where hearing has not yet commenced shall be transferred by the Executive Judge of the Regional Trial Court having jurisdiction over the cases to the Executive Judge of the appropriate Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court for the required raffle among the branches of the Court under his administrative supervision; and

2. Cadastral or land registration cases pending in the Regional Trial Courts where trial had already been commenced as of the date of the effectivity of the Administrative Circular shall remain with said courts. However, by agreement of the parties, these cases may be transferred to the appropriate Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Courts.

### (5) Registration court is not divested of its jurisdiction by administrative act for the issuance of patent

It has been held that a land registration court which has validly acquired jurisdiction over a parcel of land for registration of title cannot be divested of said jurisdiction by a subsequent administrative act consisting in the issuance by the Director of Lands of a homestead patent covering the same parcel of land. As held in *De los Angeles* v. *Santos,*[68] the Director of Lands' jurisdiction, administrative super-

[68]GR No. L-19615, Dec. 24, 1964, 12 SCRA 622.

vision and executive control extend only to lands of the public domain and not to lands already of private ownership. Accordingly, a homestead patent issued over land not of the public domain is a nullity, devoid of force and effect against the owner.

In *De los Angeles*, the applicants for registration contended that as of the date they filed their application for registration, they were already "owners *pro-indiviso* and in fee simple of the aforesaid land." If applicants were to successfully prove this averment, and thereby show their alleged registrable title to the land, it could only result in the finding that when the homestead patent was issued over Lot No. 11, said lot was no longer public. The land registration court, in that event, would have to order a decree of title issued in applicants' favor and declare the homestead patent a nullity which vested no title in the patentee as against the real owners. Since the existence or non-existence of applicants' registrable title to Lot 11 is decisive of the validity or nullity of the homestead patent, the court *a quo's* jurisdiction in the land registration proceedings could not have been divested by the homestead patent's issuance. "Proceedings for land registration are *in rem*, whereas proceedings for acquisition of homestead patent are not. A homestead patent, therefore, does not finally dispose of the public or private character of the land as far as courts acting upon proceedings *in rem* are concerned." Consequently, the Court held that applicants should be given opportunity to prove their registrable title to Lot 11 in the registration case.

**SEC. 3. *Status of other pre-existing land registration system.* — The system of registration under the Spanish Mortgage Law is hereby discontinued and all lands recorded under said system which are not yet covered by Torrens title shall be considered as unregistered lands.**

**Hereafter, all instruments affecting lands originally registered under the Spanish Mortgage Law may be recorded under Section 113 of this Decree, until the land shall have been brought under the operation of the Torrens system.**

**The books of registration for unregistered lands provided under Section 194 of the Revised Administrative Code, as amended by Act No. 3344, shall continue to remain in force; *Provided*, That all instruments dealing with unregistered lands shall henceforth be registered under Section 113 of this Decree.**

**01. Registration under the Spanish Mortgage Law discontinued.**

On February 16, 1976, PD No. 892 was issued decreeing the discontinuance of the system of registration under the Spanish Mortgage Law and the use of Spanish titles as evidence in land registration proceedings. The Decree provides:

> "SEC. 1. The system of registration under the Spanish Mortgage Law is discontinued, and all lands recorded under said system which are not yet covered by Torrens title shall be considered as unregistered lands.
>
> All holders of Spanish titles or grants should apply for registration of their lands under Act No. 496, otherwise known as the Land Registration Act, within six (6) months from the effectivity of this decree. Thereafter, Spanish titles cannot be used as evidence of land ownership in any registration proceedings under the Torrens system.
>
> Hereafter, all instruments affecting lands originally registered under the Spanish Mortgage Law may be recorded under Section 194 of the Revised Administrative Code, as amended by Act No. 3344.
>
> SEC. 2. All laws, executive orders, administrative orders, rules and regulations inconsistent with the foregoing provisions are hereby repealed or accordingly modified."

It became necessary to discontinue the system of registration under the Spanish Mortgage Law since recording under this system was practically *nil* and has become obsolete. Even so, it may be useful to recall that the registration of instruments affecting unregistered land was previously governed by Section 194 of the Administrative Code. Section 194 was amended by Act No. 2837 and later by Act No. 3344. Rights acquired under the system were not absolute as they must yield to better rights.

Section 3 of PD No. 1529 reiterates the discontinuance of the system of registration under the Spanish Mortgage Law. It also provides that the books of registration for unregistered lands under Section 194 of the Revised Administrative Code, as amended by Act No. 3344, shall continue to be in force, but all instruments dealing with unregistered lands shall henceforth be registered under Section 113 of the Decree which reads:

"SEC. 113. *Recording of instruments relating to unregistered lands*. — No deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies.

(a) The Register of Deeds for each province or city shall keep a Primary Entry Book and a Registration Book. The Primary Entry Book shall contain, among other particulars, the entry number, the names of the parties, the nature of the document, the date, hour and minute it was presented and received. The recording of the deed and other instruments relating to unregistered lands shall be effected by way of annotation on the space provided therefor in the Registration Book, after the same shall have been entered in the Primary Entry Book.

(b) If, on the face of the instrument, it appears that it is sufficient in law, the Register of Deeds shall forthwith record the instrument in the manner provided herein. In case the Register of Deeds refuses its admission to record, said official shall advise the party in interest in writing of the ground or grounds for his refusal, and the latter may appeal the matter to the Commissioner of Land Registration in accordance with the provisions of Section 117 of this Decree. It shall be understood that any recording made under this section shall be without prejudice to a third party with a better right.

(c) After recording on the Record Book, the Register of Deeds shall endorse, among other things, upon the original of the recorded instruments, the file number and the date as well as the hour and minute when the document was received for recording as shown in the Primary Entry Book, returning to the registrant or person in interest the duplicate of the instrument, with appropriate annotation, certifying that he has recorded the instrument after reserving one copy thereof to be furnished the provincial or city assessor as required by existing law.

(d) Tax sale, attachment and levy, notice of *lis pendens*, adverse claim and other instruments in the

nature of involuntary dealings with respect to unregistered lands, if made in the form sufficient in law, shall likewise be admissible to record under this section.

(e) For the services to be rendered by the Register of Deeds under this section, he shall collect the same amount of fees prescribed for similar services for the registration of deeds or instruments concerning registered lands."

Significantly, any recording under the section "shall be without prejudice to a third party with a better right."[69]

The inscription under Act No. 3344 of a transaction relating to unregistered land was held not effective for purposes of Article 1544 of the Civil Code, the law on double sale of the same property. The registration should be made in the property registry[70] to be binding upon third persons.[71] However, in one case, it was held that where the owner of a parcel of unregistered land sold it to two different parties, assuming that both sales are valid, the vendee whose deed of sale was first registered under the provisions of Act No. 3344 would have a better right.[72]

A title duly registered during the Spanish regime under the system of registration then in vogue must yield to a title to the same lands duly registered under Act No. 496. Under the provisions of said Act, "every decree of registration shall bind the land, and quiet title thereto," and "shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof." The title having been registered by proper decree, it was good, after it became final, as to everybody, and cannot be attacked by any person claiming the same land under title anterior to the decree of registration.[73]

## 02. Spanish titles no longer used as evidence of land ownership.

Spanish titles are quite dissimilar to administrative and judicial titles under the present system. Although evidences of ownership,

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[69]Sec. 113(b), PD No. 1529.

[70]See Secs. 50 and 51, Act No. 496, now Secs. 51 and 52, PD No. 1529.

[71]Soriano v. Magali, GR No. L-15133, July 31, 1953, 118 Phil. 505; Rivera v. Moran, GR No. 24568, March 2, 1926, 48 Phil. 836.

[72]Espiritu v. Valerio, GR No. L-18018, Dec. 26, 1963, 119 Phil. 69.

[73]Manila Railroad Co. v. Rodriguez, GR No. 9440, Jan. 27, 1915, 29 Phil. 336.

these Spanish titles may be lost through prescription. They are, therefore, neither indefeasible nor imprescriptible.[74]

By express provision of PD No. 892, dated February 16, 1976, Spanish titles may no longer be used as evidence of land ownership in all registration proceedings.[74a] The reason for this is the proliferation of dubious Spanish titles which have raised conflicting claims of ownership and tended to destabilize the Torrens system of registration. Specifically, the Decree noted that fraudulent sales, transfers, and other forms of conveyances of large tracts of public and private lands to unsuspecting and unwary buyers appear to have been perpetrated by unscrupulous persons claiming ownership under Spanish titles or grants of dubious origin, and that these fraudulent transactions have often resulted in conflicting claims and litigations between legitimate title holders, *bona fide* occupants or applicants of public lands, on the one hand, and the holders of, or persons claiming rights under, the said Spanish titles or grants, on the other, thus creating confusion and instability in property ownership and threatening the peace and order conditions in the areas affected.

The foundation for the early Spanish decrees on land grants embraced the feudal theory of *jura regalia*. Consequently, all lands of any kind, technically speaking, were under the exclusive dominion of the Spanish crown. The Spanish government distributed lands by issuing royal grants and concessions to settlers and other people in various forms. Such forms included the following: (a) the *"titulo real"* or royal grant; (b) the *"concession especial"* or special grant; (c) the *"composicion con el estado"* title or adjustment title; (d) the *"titulo de compra"* or title by purchase; (e) the *"informacion possessoria"* or possessory information title; and (f) the *"titulo gratuito"* or a gratuitous title.[75] However, as already pointed out, Spanish titles are no longer efficacious as proof of ownership in land registration proceedings.

### (1) The case of *Titulo de Propriedad No. 4136*; declared of doubtful validity in *Director of Forestry* v. *Muñoz*

In *Director of Forestry* v. *Muñoz*,[76] a purported Spanish title, *Titulo de Propriedad No. 4136,* was the high point of controversy in

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[74]Director of Forestry v. Muñoz, GR No. L-24796, June 28, 1968, 23 SCRA 1183.

[74a]Evangelista v. Santiago, GR No. 157447, April 29, 2005.

[75]Director of Lands v. Buyco, GR No. 91189, Nov. 27, 1992, 216 SCRA 78; Director of Forestry v. Muñoz, *supra*.

[76]GR No. L-24796, June 28, 1968, 23 SCRA 1183.

a land claim involving several hectares of land. In this case, private respondent, Pinagcamaligan Indo-Agro Development Corporation, Inc. (PIADECO), claimed to be the owner of some 72,000 hectares of land located in the municipalities of Angat, Norzagaray and San Jose del Monte, province of Bulacan, and in Antipolo and Montalban, province of Rizal. To buttress its claim, PIADECO relied on *Titulo de Propriedad No. 4136* dated April 28, 1894 as incontrovertible evidence of its ownership. The Supreme Court was unswayed and declared, through Justice Sanchez, that the *Titulo* is at the very least of doubtful validity, thus:

> "But an important moiety here is the deeply disturbing intertwine of two undisputed facts. *First*. The title embraces land 'located in the Provinces of Bulacan, Rizal, Quezon, and Quezon City.' *Second*. The title was signed only by the provincial officials of Bulacan, and inscribed only in the Land Registry of Bulacan. Why? The situation, indeed, cries desperately for a plausible answer.
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> To be underscored at this point is the well-embedded principle that private ownership of land must be proved not only through the genuineness of title but also with a clear identity of the land claimed. This Court ruled in a case involving a Spanish title acquired by purchase that the land must be concretely measured per hectare or per *quiñon*, not in mass *(cuerpos ciertos)*. The fact that the Royal Decree of August 31, 1888 used 30 hectares as a basis for classifying lands strongly suggests that the land applied for must be measured per hectare.
>
> Here, no definite area seems to have been mentioned in the title. In PIADECO's 'Rejoinder to Opposition' dated April 28, 1964 filed in Civil Case 3035-M, it specified the area covered by its *Titulo de Propiedad* as 74,000 hectares. In its 'Opposition' of May 13, 1964 in the same case, it described the land as containing 72,000 hectares. Which is which? This but accentuates the nebulous identity of PIADECO's land. PIADECO's ownership thereof then equally suffers from vagueness, fatal at least in these proceedings.
>
> PIADECO asserts that Don Mariano San Pedro y Esteban, the original owner appearing on the title, acquired his rights over the property by prescription

under Articles 4 and 5 of the Royal Decree of June 25, 1880, the basic decree that authorized adjustment of lands. By this decree, applications for adjustment — showing the location, boundaries *and area of land applied for* — were to be filed with the *Direccion General de Administración Civil*, which then ordered the classification and survey of the land with the assistance of the interested party or his legal representative.

The Royal Decree of June 25, 1880 also fixed the period for filing applications for adjustment at one year from the date of the publication of the decree in the *Gaceta de Manila* on September 10, 1880, extended for another year by the Royal Order of July 15, 1881. If Don Mariano sought adjustment within the time prescribed, as he should have, then, seriously to be considered here are the Royal Orders of November 25, 1880 and of October 26, 1881, which limited adjustment to 1,000 hectares of arid lands, 500 hectares of land with trees and 100 hectares of irrigable lands. And, at the risk of repetition, it should be stated again that PIADECO's *Titulo* is held out to embrace 72,000 or 74,000 hectares of land.

But if more were needed, we have the Maura Law (Royal Decree of February 13, 1894), published in the *Gaceta de Manila* on April 17, 1894. That decree required a second petition for adjustment within six months from publication, for those who had not yet secured their titles at the time of the publication of the law. Said law also abolished the provincial boards for the adjustment of lands established by Royal Decree of December 26, 1884, and confirmed by Royal Decree of August 31, 1888, which boards were directed to deliver to their successors, the provincial boards established by Decree of Municipal Organization issued on May 19, 1893, all records and documents which they may hold in their possession.

Doubt on PIADECO's title here supervenes when we come to consider that that title was either dated April 29 or April 25, 1894, *twelve or eight days after the publication of the Maura Law*.

Let us now take a look, as near as the record allows, at how PIADECO exactly acquired its rights under the

*Titulo*. The original owner appearing thereon was Don Mariano San Pedro y Esteban. From PIADECO's *explanation — not its evidence —* we cull the following: On December 3, 1894, Don Mariano mortgaged the land under *pacto de retro*, redeemable within 10 years, for P8,000.00 to one Don Ignacio Conrado. This transaction was said to have been registered or inscribed on December 4, 1894. Don Mariano failed to redeem within the stipulated period. When Don Ignacio died, his daughter, Maria Socorro Conrado, his only heir, adjudicated the land to herself. At about the same time, PIADECO was organized. *Its certificate of registration was issued by the Securities and Exchange Commission on June 27, 1962*. Later, Maria Socorro, heir of Don Ignacio, became a shareholder of PIADECO when she conveyed the land to PIADECO's treasurer and an incorporator, Trinidad B. Estrada, in consideration of a certain amount of PIADECO shares. Thereafter, Trinidad B. Estrada assigned the land to PIADECO. Then came to the scene a certain Fabian Castillo, appearing as sole heir of Don Mariano, the original owner of the land. Castillo also executed an affidavit of adjudication to himself over the same land, and then sold the same to PIADECO. Consideration therefor was paid partially by PIADECO, *pending* the registration of the land under Act 496.

The question may well be asked: Why was full payment of the consideration to Fabian Castillo made to depend on the registration of the land under the Torrens system, if PIADECO was sure of the validity of *Titulo de Propiedad No. 4136*? This, and other factors herein pointed out, cast great clouds of doubt that hang most conspicuously over PIADECO's title."

The case of *Director of Forestry* v. *Muñoz* would soon be the core of subsequent decisions declaring the infamous *Titulo de Propriedad No. 4136* as a forgery foisted upon the courts and bereft of any validity and efficacy as evidence of ownership.

### (2) The *Titulo* and the "fantastic" claim of the Mariano San Pedro heirs

The most "fantastic land claim" in the history of the Philippines, according to the Supreme Court in *Intestate Estate of Don Mariano*

*San Pedro* v. *Court of Appeals*,[77] is the claim of the heirs of the late Don Mariano San Pedro y Esteban to a vast tract of land with a total land area of approximately 173,000 hectares or "214,047 *quinones*," on the basis of a Spanish title, entitled "*Titulo de Propriedad No. 4136*" dated April 25, 1894. The claim, according to the San Pedro heirs, covers lands in the provinces of Nueva Ecija, Bulacan, Rizal, Laguna and Quezon, and such Metro Manila cities as Quezon City, Caloocan City, Pasay City, City of Pasig and City of Manila, thus affecting in general lands extending from Malolos, Bulacan to the City Hall of Quezon City and the land area between Dingalan Bay in the north and Tayabas Bay in the south.

The case started as a petition for letters of administration over the intestate estate of the late Mariano San Pedro y Esteban filed on December 29, 1971 with the defunct Court of First Instance of Bulacan, Baliuag, Bulacan. The petition docketed as Sp. Proc. No. 312-B was initiated by Engracio San Pedro and Justino Z. Benito who sought to be appointed as administrator and co-administrator of the estate, respectively. The estate is supposedly covered by the *Titulo*, a Spanish adjustment title *(composicion con el estado)*, issued in the name of Mariano San Pedro y Esteban. On March 2, 1972, then Presiding Judge Juan F. Echiverri issued an order appointing Engracio San Pedro as Administrator of the subject estate.

On August 30, 1976, a motion for intervention and opposition to the petition was filed by the Republic of the Philippines, through the Office of the Solicitor General,[78] alleging, *inter alia*:

> "4. That under Presidential Decree No. 892, dated February 16, 1976, Spanish titles like the TITULO is absolutely inadmissible and ineffective as proof of ownership in court proceedings, except where the holder thereof applies for land registration under Act No. 496, which is not true in the proceedings at bar;
>
> 5. That no less than the Supreme Court had declared TITULO DE PROPIEDAD NO. 4136 as invalid;
>
> 6. That, moreover, the late Don Mariano San Pedro y Esteban and/or his supposed heirs have lost whatever rights of ownership they might have had to the so-called

[77]GR No. 103727, Dec. 1, 1996, 265 SCRA 733.

[78]Assistant Solicitor General Santiago M. Kapunan and Solicitor Oswaldo D. Agcaoili assisted Solicitor General Estelito P. Mendoza.

Estate on the ground of inaction, laches and/or prescription;

7. That, accordingly, there is no estate or property to be administered for purposes of inventory, settlement or distribution in accordance with law, and all the inventories so far submitted, insofar as they embraced lands within the TITULO, are deemed ineffective and cannot be legally considered; and

8. That the Republic of the Philippines has a legal interest in the land subject matter of the petition considering that, except such portions thereof (as) had been already the subject of valid adjudication or disposition in accordance with law, the same belong in State ownership."

On February 16, 1977, Republic's opposition was dismissed by order of Judge Benigno Puno for alleged "lack of jurisdiction over the legal issues raised." On March 9, 1977, Republic filed a motion for reconsideration.

On April 25, 1978, the lower court then presided over by Judge Agustin C. Bagasao, rendered a 52-page decision, declaring the *Titulo* valid and existing, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered:

(a) Declaring the existence, genuineness and authenticity of Titulo de Propriedad No. 4136 of the Registry of Deeds of Bulacan, issued on April 29, 1984, in the name of the deceased Don Mariano San Pedro y Esteban, covering a total area of approximately 214,047 quiniones or 173,000 hectares, situated in the Provinces of Bulacan, Rizal, Quezon, Quezon City and Caloocan City;

(b) Declaring Engracio San Pedro, Candido Gener, Santiago Gener, Rosa Pantaleon, Vicente Pantaleon, Eleuterio Pantaleon, Trinidad San Pedro, Rodrigo San Pedro, Ricardo Nicolas, and Teresa Nicolas, as the true and lawful heirs of the deceased Don Mariano Sao Pedro y Esteban and entitled to inherit the intestate estate left by the said deceased, consisting of the above-mentioned tract of private land covered and described by said above-mentioned Titulo de Propriedad No. 4136 of the Registry of Deeds of Bulacan, excluding therefrom: (a) all lands

which have already been legally and validly titled under the Torrens System, by private persons, or the Republic of the Philippines, or any of its instrumentalities or agencies; (b) all lands declared by the government as reservations for public use and purposes; (c) all lands belonging to the public domain; and, (d) all portions thereof which had been sold, quitclaimed and/or previously excluded by the Administrator and duly approved by a final order of the Court, except those which may hereafter be set aside, after due consideration on a case to case basis, of various motions to set aside the said Court order which approved the said sales, quitclaims, and/or exclusions;

(c) The designation of Atty. Justino Z. Benito as co-administrator, is hereby revoked to take effect immediately, to obviate any confusion in the administration of the Estate, and to fix the responsibilities of administration to the co-heir Administrator, Engracio San Pedro, whose appointment as such is hereby confirmed. The said co-administrator Justino Z. Benito is hereby ordered to render his final accounting of his co-administration of the Estate, within thirty (30) days from receipt of copy hereof;

The Co-Heir-Administrator, Engracio San Pedro is hereby ordered to amass, collate, consolidate and take possession of all the net estate of the deceased Don Marino San Pedro y Esteban, as well as all other sets and credits lawfully belonging to the estate and/or to take appropriate legal action to recover the same in the proper Courts of Justice, government offices or any appropriate forum; and to pay all taxes or charges due from the estate to the Government, and all indebtedness of the estate, and thereafter, to submit a project of partition of the estate among the lawful heirs as herein recognized and declared. x x x"

On May 17, 1978, Republic moved for a reconsideration of the above decision. After hearings were conducted on Republic's motion, Judge Oscar Fernandez issued an order dated November 17, 1978 which set aside Judge Bagasao's decision dated April 25, 1978 by declaring *Titulo de Propriedad No. 4136* as null and void and of no legal force and effect, thus, excluding all lands covered by the supposed *Titulo* from the inventory of the estate of the late Mariano San Pedro y Esteban. The dispositive portion of the order reads:

"WHEREFORE, this Court so orders that:

1) The Decision dated April 25, 1978 is reconsidered and set aside.

2) *Titulo de Propriedad No. 4136* is declared null and void and of no legal force and effect and that therefore no rights could be derived therefrom.

3) All orders approving the sales, conveyances, donations or any other transactions involving the lands covered by *Titulo de Propriedad No. 4136* are declared invalidated, void and of no force and effect.

4) All lands covered by *Titulo de Propriedad No. 4136* are excluded from the inventory of the estate of the late Mariano San Pedro y Esteban.

5) The heirs, agents, privies or anyone acting for and in behalf of the estate of the late Mariano San Pedro y Esteban are enjoined from representing or exercising any acts of possession or ownership or from disposing in any manner portions of all the lands covered by *Titulo de Propriedad No. 4136* and to immediately vacate the same.

6) Engracio San Pedro and Justino Benito as co-administrators shall submit in Court within twenty days their final accounting and inventory of all real and personal properties of the estate which had come into their possession or knowledge under oath.

7) This case is hereby re-opened, to allow movants-intervenors to continue with the presentation of their evidence in order to rest their case.

The consideration and approval of the administrator's final accounting and inventory of the presentation of movants-intervenors' evidence as well as the consideration of all other incident are hereby set on December 22, 1978 at 8:30 a.m."

Petitioners (San Pedro heirs) appealed to the Court of Appeals, but their appeal was dismissed. The appellate court ruled that petitioners failed to controvert Republic's claim that *Titulo de Propriedad No. 4136* is invalid on the following grounds: (a) non-production of the original of the subject title; (b) inadmissibility of the photostat copies of the supposed title; and (c) non-registration of the subject

Spanish title under Act No. 496 (Land Registration Act) as required by PD No. 892 (Discontinuance of the Spanish Mortgage System of Registration and of the Use of Spanish Titles as Evidence in Land Registration Proceedings). Petitioners filed a motion for reconsi-deration but this was denied. The case reached the Supreme Court.

Petitioners contended that the lower court had no jurisdiction as an "intestate court" to resolve the question of title or ownership raised by the Republic in the intestate proceedings of the estate of Mariano San Pedro y Esteban. The Supreme Court, through Justice Hermosisima, disagreed, holding that:

> "A probate court's jurisdiction is not limited to the determination of who the heirs are and what shares are due them as regards the estate of a deceased person. Neither is it confined to the issue of the validity of wills. We held in the case of *Maningat* v. *Castillo*, that 'the main function of a probate court is to settle and liquidate the estates of deceased persons either summarily or through the process of administration.' Thus, its function necessarily includes the *examination of the properties, rights and credits of the deceased so as to rule on whether or not the inventory of the estate properly included them for purposes of distribution of the net assets of the estate of the deceased to the lawful heirs*."

As to petitioners' claim that Judge Fernandez acted improperly in granting Republic's motion for reconsideration since he did not personally hear the intestate case, the Court ruled that a newly appointed judge who did not try the case can decide the same as long as the record and the evidence are all available to him and that the same were taken into consideration and thoroughly studied.

The core issue was whether or not the lower court committed reversible error in excluding from the inventory of the estate of the deceased Mariano San Pedro y Esteban all lands covered by *Titulo de Propriedad No. 4136* primarily on the ground that the said title is null and void and of no legal force and effect. Juxtaposed with this issue is the question of whether or not the *Titulo* may be recognized as evidence to prove ownership of Mariano San Pedro and his heirs over the lands covered thereby. The Court ruled categorically that PD No. 92 has outlawed Spanish titles, like the *Titulo*, as evidence of ownership, thus —

> "It is settled that by virtue of Presidential Decree No. 892 which took effect on February 16, 1976, the system of

registration under the Spanish Mortgage Law was abolished and all holders of Spanish titles or grants should cause their lands covered thereby to be registered under the Land Registration Act within six (6) months from the date of effectivity of the said Decree or until August 16, 1976. Otherwise, non-compliance therewith will result in a re-classification of their lands. Spanish titles can no longer be countenanced as indubitable evidence of land ownership."

The Court further stated:

"In the case of *Director of Lands* v. *Heirs of Isabel Tesalona, et al*., we took cognizance of this Decree and thus held that caution and care must be exercised in the acceptance and admission of Spanish titles taking into account the numerous fake titles that have been discovered after their supposed reconstitution subsequent to World War II.

In both cases, petitioners-heirs did not adduce evidence to show that *Titulo de Propriedad 4136* was brought under the operation of P.D. No. 892 despite their allegation that they did so on August 13, 1976. Time and again we have held that a mere allegation is not evidence and the party who alleges a fact has the burden of proving it. Proof of compliance with P.D. No. 892 should be the Certificate of Title covering the land registered.

In the petition for letters of administration, it was a glaring error on the part of Judge Bagasao who rendered the reconsidered Decision dated April 25, 1978 to have declared the existence, genuineness and authenticity of *Titulo de Propriedad No. 4136* in the name of the deceased Mariano San Pedro y Esteban despite the effectivity of P.D. No. 892. Judge Fernandez, in setting aside Judge Bagasao's decision, emphasized that *Titulo de Propriedad No. 4136*, under P.D. No. 892, is inadmissible and ineffective as evidence of private ownership in the special proceedings case. x x x

This Court can only surmise that the reason for the non-registration of the *Titulo* under the Torrens system is the lack of the necessary documents to be presented in order to comply with the provisions of P.D. No. 892. We do

not discount the possibility that the Spanish title in question is not genuine, especially since its genuineness and due execution have not been proven. In both cases, the petitioners heirs were not able to present the original of *Titulo de Propriedad No. 4136* nor a genuine copy thereof. In the special proceedings case, the petitioners-heirs failed to produce the *Titulo* despite a subpoena *duces tecum* (Exh. "Q-RP") to produce it as requested by the Republic from the then administrators of the subject intestate estate, Engracio San Pedro and Justino Benito, and the other interested parties. As an alternative to prove their claim of the subject intestate estate, the petitioners referred to a document known as 'hypoteca' (the Spanish term is 'hipoteca') allegedly appended to the *Titulo*. However, the said hypoteca was neither properly identified nor presented as evidence. Likewise, in the action for recovery of possession and/or reconveyance with damages, the petitioners-heirs did not submit the *Titulo* as part of their evidence. Instead, only an alleged illegible copy of the *Titulo* was presented. (Exhs. "C-9" to "C-19").

x x x x x x x x x

In upholding the genuineness and authenticity of *Titulo de Propriedad No. 4136*, Judge Bagasao, in his decision, relied on: (1) the testimony of the NBI expert, Mr. Segundo Tabayoyong, pertaining to a report dated January 28, 1963 denominated as 'Questioned Documents Report No. 230-163'; (2) a photostat copy of the original of the Titulo duly certified by the then Clerk of Court of the defunct Court of First Instance of Manila; and (3) the hipoteca registered in the Register of Deeds of Bulacan on December 4, 1894.

Judge Fernandez, in his November 1978 Order which set aside Judge Bagasao's April 1978 decision correctly clarified that the NBI report aforementioned was limited to the genuineness of the two signatures of Alejandro Garcia and Mariano Lopez Delgado appearing on the last page of the *Titulo*, not the *Titulo* itself. When asked by the counsel of the petitioners-heirs to admit the existence and due execution of the *Titulo*, the handling Solicitor testified:

x x x x x x x x x

ATTY. BRINGAS:

With the testimony of this witness, I would like to call the distinguished counsel for the government whether he admits that there is actually a titulo propiedad 4136.

COURT:

Would you comment on that Solicitor Agcaoili?

ATTY. AGCAOILI:

We are precisely impugning the *titulo* and I think the question of counsel is already answered by witness. The parties have not yet established the due existence of the *titulo*.

x x x x x x x x x

The issue, whether *Titulo de Propriedad No. 4136* is valid or not, must now be laid to rest. The *Titulo* cannot be relied upon by the petitioners-heirs or their privies as evidence of ownership. In the petition for letters of administration the inventory submitted before the probate court consisted solely of lands covered by the *Titulo*. Hence, there can be no 'net estate' to speak of after the *Titulo's* exclusion from the intestate proceedings of the estate of the late Mariano San Pedro."

It is withal of the essence of the judicial function that at some point, litigation must end. Hence, after the procedures and processes for lawsuits have been undertaken, and the modes of review set by law have been exhausted, or terminated, no further ventilation of the same subject matter is allowed. To be sure, there may be, on the part of the losing parties, continuing disagreement with the verdict, and the conclusions therein embodied. This is of no moment, indeed, it is to be expected; but, it is not their will, but the court's, which must prevail; and, to repeat, public policy demands that at some definite time, the issues must be laid to rest and the court's dispositions thereon accorded absolute finality.[79]

[79]In re Joaquin T. Borromeo, Adm. Matter No. 93-7-696-0, Feb. 21, 1995, 241 SCRA 405.

As well put by the court: "It is, therefore, to the best interest of the people and the Government that we render judgment herein writing *finis* to these controversies by laying to rest the issue of validity of the basis of the estate's claim of ownership over this vast expanse of real property." Thus, *Titulo de Properiedad No. 4136* has hopefully been cast into the abyss of oblivion and so too is the "fantastic" claim of the San Pedro heirs to the huge estate supposedly covered by it.

**03. Registration of instruments affecting titled lands under Act No. 3344 ineffective against third persons.**

In the case of *Aznar Brothers Realty Co*. v. *Aying*,[80] it was held that registration of instruments must be done in the proper registry in order to bind the land. Where property registered under the Torrens system is sold but the sale is registered not under the Property Registration Decree but under Act No. 3344, the sale is considered not registered and effective for purposes of Article 1544 of the Civil Code on double sales.

In *Naawan Community Rural Bank* v. *Court of Appeals*,[81] the Court upheld the right of a party who had registered the sale of land under the Property Registration Decree, as opposed to another who had registered a deed of final conveyance under Act No. 3344. In that case, the "priority in time" principle was not applied, because the land was already covered by the Torrens system at the time the conveyance was registered under said Act.

Under Act No. 3344, registration of instruments affecting unregistered lands is "without prejudice to a third party with a better right." The phrase has been held to mean that the mere registration of a sale in one's favor does not give him any right over the land if the vendor was not anymore the owner of the land having previously sold the same to somebody else even if the earlier sale was unrecorded.

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[80]GR No. 144773, May 16, 2005; see also Abrigo v. De Vera, GR No. 154409, June 21, 2004, 432 SCRA 544.

[81]GR No. 128573, Jan. 13, 2003, 395 SCRA 43.

## CHAPTER II

## THE LAND REGISTRATION COMMISSION AND ITS REGISTRIES OF DEEDS

**SEC. 4.** ***Land Registration Commission.*** **— In order to have a more efficient execution of the laws relative to the registration of lands, geared to the massive and accelerated land reform and social justice program of the government, there is created a commission to be known as the Land Registration Commission under the executive supervision of the Department of Justice.**

**SEC. 5.** ***Officials and employees of the Commission.*** **— The Land Registration Commission shall have a chief and an assistant chief to be known, respectively, as the Commissioner and the Deputy Commissioner of Land Registration who shall be appointed by the President. The Commissioner shall be duly qualified member of the Philippine Bar with at least ten years of practice in the legal profession, and shall have the same rank, compensation and privileges as those of a Judge of the Court of First Instance. The Deputy Commissioner, who shall possess the same qualifications as those required of the Commissioner, shall receive compensation which shall be three thousand pesos per annum less than that of the Commissioner. He shall act as Commissioner of Land Registration during the absence or disability of the Commissioner and when there is a vacancy in the position until another person shall have been designated or appointed in accordance with law. The Deputy Commissioner shall also perform such other functions as the Commissioner may assign to him.**

**They shall be assisted by such number of division chiefs as may be necessary in the interest of the functioning of the Commission, by a Special Assistant to the Commissioner, and by a Chief Geodetic Engineer who shall each receive compensation at the rate of three thousand four hundred pesos per annum less than that of the Deputy Commissioner.**

**All other officials and employees of the Land Registration Commission including those of the Registries of Deeds whose salaries are not herein provided, shall receive salaries corresponding to the minimum of their respective upgraded ranges as provided under paragraph 3.1 of Budget Circular No. 273, plus sixty per centum thereof across the board, notwithstanding the maximum salary allowed for their respective civil service eligibilities.**

**The salaries of officials and employees provided in this Decree shall be without prejudice to such benefits and adjustments as may from time to time be granted by the President or by the legislature to government employees.**

**All officials and employees of the Commission except Registers of Deeds shall be appointed by the Secretary of Justice upon recommendation of the Commissioner of Land Registration.**

**SEC. 6.** ***General Functions.*** **—**

**(1) The Commissioner of Land Registration shall have the following functions:**

**(a) Issue decrees of registration pursuant to final judgments of the courts in land registration proceedings and cause the issuance by the Registers of Deeds of the corresponding certificates of title;**

**(b) Exercise supervision and control over all Registers of Deeds and other personnel of the Commission;**

**(c) Resolve cases elevated *en consulta* by, or on appeal from decision of, Registers of Deeds;**

**(d) Exercise executive supervision over all clerks of court and personnel of the Courts of First Instance throughout the Philippines with respect to the discharge of their duties and functions in relation to the registration of lands;**

**(e) Implement all orders, decisions, and decrees promulgated relative to the registration of lands and issue, subject to the approval of the Secretary of Justice, all needful rules and regulations therefor;**

**(f) Verify and approve subdivision, consolidation, and consolidation-subdivision survey plans of properties titled under Act No. 496 except those covered by P.D. No. 957.**

**(2) The Land Registration Commission shall have the following functions:**

**(a) Extend speedy and effective assistance to the Department of Agrarian Reform, the Land Bank, and other agencies in the implementation of the land reform program of the government;**

**(b) Extend assistance to courts in ordinary and cadastral land registration proceedings;**

**(c) Be the central repository of records relative to original registration of lands titled under the Torrens system, including subdivision and consolidation plans of titled lands.**

## 01. The Land Registration Authority.

The Land Registration Commission has been renamed Land Registration Authority (LRA) pursuant to Section 28, Chapter 9, Title III, of EO No. 292, known as the Administrative Code of 1987. It is headed by an Administrator who shall be assisted by two (2) Deputy Administrators, all of whom shall be appointed by the President upon the recommendation of the Secretary of Justice. All other officials of the LRA, except Registers of Deeds, shall be appointed by the Secretary of Justice upon recommendation of the Administrator.

### (1) Functions of the Authority

The Land Registration Authority shall have the following functions:

(a) Extend speedy and effective assistance to the Department of Agrarian Reform, the Land Bank, and other agencies in the implementation of the land reform program of the government;

(b) Extend assistance to courts in ordinary and cadastral land registration proceedings;

(c) Be the central repository of records relative to original registration of lands titled under the Torrens system, including subdivision and consolidation plans of titled lands.[1]

[1]Sec. 6(2), PD No. 1529.

**(2) Functions of the Administrator**

The LRA Administrator shall have the following functions:

(a) Issue decrees of registration pursuant to final judgments of the courts in land registration proceedings and cause the issuance by the Registers of Deeds of the corresponding certificates of title;

(b) Exercise supervision and control over all Registers of Deeds and other personnel of the Commission;

(c) Resolve cases elevated *en consulta* by, or on appeal from decision of, Registers of Deeds;

(d) Exercise executive supervision over all clerks of court and personnel of the Courts of First Instance throughout the Philippines with respect to the discharge of their duties and functions in relation to the registration of lands;

(e) Implement all orders, decisions, and decrees promulgated relative to the registration of lands and issue, subject to the approval of the Secretary of Justice, all needful rules and regulations therefor;

(f) Verify and approve subdivision, consolidation, and consolidation-subdivision survey plans of properties titled under Act No. 496 except those covered by PD No. 957.[2]

**02. LRA Administrator, an executive officer with judicial rank.**

While Section 5 states that the "Commissioner x x x shall have the same rank, compensation and privileges as those of a Judge of the Court of First Instance" (Associate Justice of a collegiate appellate court, per EO No. 649, dated Feb. 9, 1981),[3] his functions are plainly executive and subject to the President's power of supervision and control. He can be investigated and removed only by the President and not by the Supreme Court which is not charged with the administrative function of supervisory control over executive officials. Thus did the Supreme Court rule in *Noblejas* v. *Teehankee*[4] where petitioner, then the LRC Commissioner, sought to restrain the Secre-

[2]Sec. 6(1), *ibid*.

[3]Sec. 4, EO No. 649 dated Feb. 9, 1981 states that the Administrator shall have the same qualifications, rank and salary as those of an Associate Justice of a collegiate appellate court.

[4]GR No. L-28790, April 29, 1968, 23 SCRA 405.

tary of Justice from investigating him for allegedly "approving or recommending approval of subdivision, consolidation and consolidation-subdivision plans covering areas greatly in excess of the areas covered by the original titles" and to declare inoperative his suspension by the Executive Secretary pending investigation. Petitioner claimed that as he enjoyed the rank, privileges, emoluments and compensation of a Judge of the Court of First Instance, he could only be suspended and investigated in the same manner as a Judge of the Court of First Instance, and, therefore, the papers relative to his case should be submitted to the Supreme Court for action thereon.

In rejecting the contention, then Acting Chief Justice J.B.L. Reyes, speaking for the Supreme Court, stated that petitioner was not a "judge" or a member of the judiciary. But the more fundamental objection to the stand of petitioner is that, if the Legislature had really intended to include in the general grant of "privileges" or "rank and privileges of Judges of the Court of First Instance" the right to be investigated by the Supreme Court, and to be suspended or removed only upon recommendation of that Court, then such grant of privileges would be unconstitutional since it would violate the fundamental doctrine of separation of powers by charging the Court with the administrative function of supervisory control over executive officials, and simultaneously reducing *pro tanto* the control of the Chief Executive over such officials.

As to petitioner's claim that he is endowed with judicial functions pursuant to his authority to resolve *consultas* under Section 4 of RA No. 1151 (now Section 117, PD No. 1529), the Court said that serious doubt may well be entertained as to whether the resolution of a *consulta* is a judicial function, as contrasted with administrative process. By specific provision of the section, the decision of the Land Registration Commissioner "shall be conclusive and binding upon all Registers of Deeds" alone, and not upon other parties. This limitation in effect identifies the resolutions of the Land Registration Commissioner with those of any other bureau director, whose resolutions or orders bind his subordinates alone. That the Commissioner's resolutions are appealable does not prove that they are not administrative: any bureau director's ruling is likewise appealable to the corresponding department head. But even granting that the resolution of *consultas* should constitute a judicial (or more properly quasi-judicial) function, the same is but a minimal portion of his administrative or executive functions and merely incidental to the latter.

**03. Duty of LRA to issue decree not compellable by *mandamus*.**

While the duty of the LRA officials to issue the decree is purely ministerial, it is ministerial only in the sense that they act under the orders of the court and the decree must be in conformity with the decision of the court and with the data found in the record, as to which they have no discretion on the matter. However, if they are in doubt upon any point in relation to the preparation and issuance of the decree, it is their duty to refer the matter to the court. They act, in this respect, as officials of the court and not as administrative officials, and their act is the act of the court.[5] They are specifically called upon to "extend assistance to courts in ordinary and cadastral land registration proceedings."[6]

Thus, where the Administrator files his report as an officer of the court precisely to inform the latter that the LRA cannot comply with the order to issue a decree because the subject lot sought to be registered was discovered to have been already decreed and titled in the name of another, the LRA, under the circumstances, is not legally obligated to follow the court's order for the issuance of the decree.[7] The issuance of a decree of registration is part of the judicial function of courts and is not compellable by *mandamus* because it involves the exercise of discretion.[8]

The duty of land registration officials to render reports is not limited to the period before the court's decision becomes final, but may extend even after its finality but not beyond the lapse of one (1) year from the entry of the decree.[9]

**04. The LRA has no authority to represent the government in registration proceedings.**

Under the Administrative Code of 1987, the Solicitor General, as counsel for the government, shall represent the government "in all land registration and related proceedings."[10] PD No. 1529,

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[5]Gomez v. Court of Appeals, GR No. 77770, Dec. 15, 1988, 168 SCRA 503; De los Reyes v. De Villa, GR No. 23514, Nov. 12, 1928, 48 Phil. 227.

[6]Sec. 6(2), par. (b), PD No. 1529.

[7]Ramos v. Rodriguez, GR No. 94033, May 29, 1995, 244 SCRA 418.

[8]Laburada v. Land Registration Authority, GR No. 101387, March 11, 1998, 287 SCRA 333.

[9]Gomez v. Court of Appeals, *supra*.

[10]See also PD No. 478.

specifically Section 6 thereof which enumerates the functions of the LRA, is bereft of any grant of power to the LRA or to the Administrator to make the same representation as the Solicitor General on behalf of the government in land registration proceedings.[11]

**SEC. 7. *Office of the Register of Deeds.* — There shall be at least one Register of Deeds for each province and one for each city. Every Registry with a yearly average collection of more than sixty thousand pesos during the last three years shall have one Deputy Register of Deeds, and every Registry with a yearly average collection of more than three hundred thousand pesos during the last three years, shall have one Deputy Register of Deeds and one second Deputy Register of Deeds.**

**The Secretary of Justice shall define the official station and territorial jurisdiction of each Registry upon the recommendation of the Commissioner of Land Registration, with the end in view of making every registry easily accessible to the people of the neighboring municipalities.**

**The province or city shall furnish a suitable space or building for the office of the Register of Deeds until such time as the same could be furnished out of national funds.**

### 01. The Registry of Property.

The registration of instruments affecting registered land must be done in the proper registry, in order to affect and bind the land and, thus, operate as constructive notice to the world.[12] This is in full accord with Section 51 of PD No. 1529 which provides that no deed, mortgage, lease or other voluntary instrument — except a will — purporting to convey or affect registered land shall take effect as a conveyance or bind the land until its registration. Thus, if the sale is not registered, it is binding only between the seller and the buyer but it does not affect innocent third persons.[13]

The Civil Code, in Article 708, has provided for the establishment of a Registry of Property which has for its object the inscription or annotation of acts and contracts relating to the ownership and

[11]Ramos v. Rodriguez, GR No. 94033, May 29, 1995, 241 SCRA 340.
[12]Aznar Brothers Realty Co. v. Aying, GR No. 144773, May 16, 2005.
[13]Abrigo v. De Vera, GR No. 154409, June 21, 2004, 432 SCRA 544.

other rights over immovable property. PD No. 1529 has codified all laws relative to the registration of property and provides for the registration of lands under the Torrens system a well as the recording of transactions affecting unregistered lands,[14] including chattel mortgages of personal property.[15]

Registration means the entry of instruments or deeds in a book or public registry. To register means to enter in a register; to record formally and distinctly; to enroll; to enter in a list.

> "Registration in general, as the law uses the word, means any entry made in the books of the Registry, including both registration in its ordinary and strict sense, and cancellation, annotation, and even the marginal notes. In its strict acceptation, it is the entry made in the Registry which records solemnly and permanently the right of ownership and other real rights."[16]

Registration in the public registry is notice to all the world. All persons are charged with the knowledge of what it contains. All persons dealing with the land so recorded, or any portion of it, must be charged with notice of whatever it contains. The purchaser is charged with notice of every fact shown by the record and is presumed to know every fact which the record discloses. When a conveyance has been properly recorded, such record is constructive notice of its contents and all interests, legal and equitable, included therein.[17]

Section 51 of PD No. 1529 provides that "no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration. The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies."

Thus, where a piece of property is first sold to a person who only secures a receipt for the document evidencing the sale from the

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[14]Sec. 3 in relation to Sec. 113, PD No. 1529.
[15]Secs. 114 and 115, *ibid*.
[16]Po Sun Tun v. Price, GR No. 31346, Dec. 28, 1929, 54 Phil. 192.
[17]Legarda v. Saleeby, GR No. 8936, Oct. 2, 1915, 31 Phil. 590.

office of the Register of Deeds, and where the piece of property is later sold to another person who records his document in the Registry of Deeds as provided by law, and secures a Torrens title, the property belongs to the latter person.[18]

Between two buyers of the same immovable property registered under the Torrens system, the law gives ownership priority to: (1) the first registrant in good faith; (2) then, the first possessor in good faith; and (3) finally, the buyer who in good faith presents the oldest title. This rule, however, does not apply if the property is not registered under the Torrens system.[19]

**02. Effect of registration.**

Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds of the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.[20]

**SEC. 8. *Appointment of Registers of Deeds and their Deputies and other subordinate personnel; salaries.* — Registers of Deeds shall be appointed by the President of the Philippines upon recommendation of the Secretary of Justice. Deputy Registers of Deeds and all other subordinate personnel of the Registries of Deeds shall be appointed by the Secretary of Justice upon the recommendation of the Commissioner of Land Registration.**

**The salaries of Registers of Deeds and their Deputies shall be at the following rates:**

**(1) *First Class Registries* — The salaries of Registers of Deeds in first class Registries shall be three thousand four hundred pesos per annum less than that of the Deputy Commissioner.**

**(2) *Second Class Registries* — The salaries of Registers of Deeds in second class Registries shall be three thousand four hundred pesos per annum less than those of Registers of Deeds in first class Registries.**

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[18]Po Sun Tun v. Price, *supra*.
[19]Abrigo v. De Vera, *supra*.
[20]Sec. 52, PD No. 1529.

**(3) *Third Class Registries* — The salaries of Registers of Deeds in third class Registries shall be three thousand four hundred pesos per annum less than those of Registers of Deeds in second class Registries.**

**(4) The salaries of Deputy Registers of Deeds and Second Deputy Registers of Deeds shall be three thousand four hundred pesos per annum less than those of their corresponding Registers of Deeds and Deputy Registers of Deeds, respectively.**

**The Secretary of Justice, upon recommendation of the Commissioner of Land Registration, shall cause the reclassification of Registries based either on work load or the class of province/ city, whichever will result in a higher classification, for purposes of salary adjustments in accordance with the rates hereinabove provided.**

**SEC. 9. *Qualifications of Registers of Deeds and Deputy Registers of Deeds.* — No person shall be appointed Register of Deeds unless he has been admitted to the practice of law in the Philippines and shall have been actually engaged in such practice for at least three years or has been employed for a like period in any branch of government the functions of which include the registration of property.**

**The Deputy Register of Deeds shall be a member of the Philippine Bar. *Provided, however,* That no Register of Deeds or Deputy Register of Deeds holding office as such upon the passage of this Decree shall by reason hereof, be removed from office or be demoted to a lower category or scale of salary except for cause and upon compliance with due process as provided for by law.**

**SEC. 10. *General functions of Registers of Deeds.* — The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.**

**It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. If the instrument is not registrable, he shall forthwith deny registration thereof and inform the presentor of such denial**

**in writing, stating the ground or reason therefor, and advising him of his right to appeal by *consulta* in accordance with Section 117 of this Decree.**

**01. Office of the Register of Deeds.**

There shall be at least one Register of Deeds for each province and one for each city. The Secretary of Justice shall define the official station and territorial jurisdiction of each Registry upon the recommendation of the LRA Administrator, with the end in view of making every Registry easily accessible to the people of the neighboring municipalities.[21]

Registers of Deeds shall be appointed by the President upon recommendation of the Secretary of Justice. Deputy Registers of Deeds and all other subordinate personnel of the Registries of Deeds shall be appointed by the Secretary of Justice upon the recommendation of the LRA Administrator.[22] Both the Register of Deeds and Deputy Register of Deeds must be members of the Bar.

It was held in *National Land Titles and Deeds* v. *Civil Service Commission*[23] that EO No. 649, dated February 9, 1981, which reorganized the Land Registration Commission, is a valid reorganization measure. With the issuance of the implementing order, all positions in the then LRC were deemed non-existent. In this case, respondent was holding the position of Deputy Register of Deeds but was separated from office because she was not a member of the Bar, the qualification prescribed for the position. The Court explained that abolition of a position does not involve removal since removal implies that the post subsists and that one is merely separated therefrom. After abolition, there is in law no occupant and no tenure to speak of. Hence, it was ruled that respondent, not being a member of the Bar, cannot be reinstated to her former position.

The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.[24] The existence of a certificate of title in the Registry supports the authenticity of the title.[25]

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[21]Sec. 7, PD No. 1529.

[22]Sec. 8, *ibid*.

[23]GR No. 84301, April 7, 1993, 221 SCRA 145.

[24]Sec. 10, PD No. 1529.

[25]Republic v. Court of Appeals and Bayona, GR No. 101115, Aug. 22, 2002, 387 SCRA 549.

**02. Duty of Register of Deeds to register, ministerial.**

Registration is a mere ministerial act by which a deed, contract or instrument is sought to be inscribed in the records of the office of the Register of Deeds and annotated at the back of the certificate of the title covering the land subject of the deed, contract or instrument.[26]

Section 10 states that "(i)t shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. If the instrument is not registrable, he shall forthwith deny registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefore, and advising him of his right to appeal by *consulta* in accordance with Section 117 of this Decree."

It has been held that the function of a Register of Deeds with reference to the registration of deeds encumbrances, instruments and the like is ministerial in nature.[27] He may not validly refuse to register a deed of sale presented to him for registration. Whether a document is valid or not is not for the Register of Deeds to determine; this function belongs properly to a court of competent jurisdiction. The law on registration does not require that only valid instruments shall be registered. If the purpose of registration is merely to give notice, then questions regarding the effect or invalidity of instruments are expected to be decided after, not before, registration. It must follow as a necessary consequence that registration must first be allowed, and the validity or effect thereof litigated afterwards.[28]

**(1) Doubtful questions shall be submitted to LRA Administrator for resolution**

A Register of Deeds is precluded from exercising his personal judgment and discretion when confronted with the problem of

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[26]Agricultural Credit Cooperative Association v. Yusay, GR No. L-13313, April 28, 1960, 107 Phil. 791.

[27]Baranda v. Gustilo, GR No. 81153, Sept. 26, 1988, 165 SCRA 757.

[28]Gurbax Singh Pabla and Co. v. Reyes, GR No. L-3970, Oct. 29, 1952, 92 Phil. 182.

whether to register a deed or instrument on the ground that it is invalid. When in doubt, all that he is supposed to do is to submit and certify the question to the LRA Administrator who shall, after notice and hearing, enter an order prescribing the step to be taken on the doubtful question.[29] Corollarily, where any party in interest does not agree with the action taken by the Register of Deeds with reference to any instrument submitted to him for registration, the question shall be submitted to the LRA Administrator who shall thereafter "enter an order prescribing the step to be taken or memorandum to be made," which shall be "conclusive and binding upon all Registers of Deeds." This administrative remedy must be resorted to by the interested party before he can have recourse to the courts.[30]

Whether the document is invalid, frivolous or intended to harass, is not the duty of Register of Deeds to decide, but a court of competent jurisdiction."[31] The question of whether or not a conveyance was made to defraud creditors of the transferor should better be left for determination by the proper court. There is as much danger in giving this authority to the Register of Deeds without judicial intervention.[32] And although there may be some matters in which the Register of Deeds has quasi-judicial power, a suit to quiet title or to ascertain and determine an interest in real property is a matter exclusively within the jurisdiction of the courts.[33]

### (2) Notice to Register of Deeds

When a writ of preliminary injunction in a cadastral proceeding is dissolved, the obstacle to the registration of a deed of sale is removed, but it is no authority for the court to issue an order for registration of said deed without notice to the Register of Deeds or to the adverse party, where the dismissal of the cadastral case is not yet final. It is one thing for the Register of Deeds, in the exercise of his ministerial duties under the law, to register an instrument which in his opinion is registrable, and quite another thing for the court

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[29]Sec. 117, PD No. 1529; Almirol v. Register of Deeds of Agusan, GR No. L-22486, March 20, 1968, 22 SCRA 1152.

[30]*Ibid*.

[31]Gabriel v. Register of Deeds of Rizal, GR No. L-17956, Sept. 30, 1963, 9 SCRA 136.

[32]*In re* Vicente J. Francisco, GR No. 45192, April 10, 1939, 67 Phil. 222.

[33]Smith, Bell & Co. v. Register of Deeds of Leyte, GR No. 24736, Jan. 29, 1926, 48 Phil. 656.

itself to order the registration. The former does not contemplate notice to and hearing of interested parties such as are required in a judicial proceeding nor carry with it the solemnity and legal consequences of a court judgment.[34]

### (3) When Register of Deeds may refuse registration

While the duty of the Register of Deeds to register instruments dealing with registered property is ministerial, there are instances when he may be justified in denying registration, to wit:

1. When there are several copies of the title (co-owner's duplicate) but only one is presented with the instrument to be registered.

Where there are several copies of the same title in existence, it is easy to see how their integrity may be adversely affected if an encumbrance, or an outright conveyance, is annotated on one copy and not on the others. The law itself refers to every copy authorized to be issued as a duplicate of the original, which means that both must contain identical entries of the transactions, particularly voluntary ones, affecting the land covered by the title. If this were not so, if different copies were permitted to carry differing annotations, the whole system of Torrens registration would cease to be reliable.

2. When the property is presumed to be conjugal but the instrument of conveyance bears the signature of only one spouse.

In a donation, for instance, where the deed is signed by only one of the spouses, such deed bears on its face an infirmity which justifies the denial of its registration, namely, the fact that the donor is donating more than his one-half share in the property.

3. When there is a pending case in court where the character of the land and validity of the conveyance are in issue.

In such a case, the matter of registration may well await the outcome of that case, and in the meantime the rights of the interested parties could be protected by filing the proper notices of *lis pendens*.[35]

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[34]Ledesma v. Villaseñor, GR No. L-18725, March 31, 1965, 13 SCRA 494.

[35]Balbin v. Register of Deeds of Ilocos Sur, GR No. L-20611, May 8, 1969, 28 SCRA 12.

**SEC. 11.** ***Discharge of duties of Register of Deeds in case of vacancy, etc. —***

**(1) Until a regular Register of Deeds shall have been appointed for a province or city, or in case of vacancy in the office, or upon the occasion of the absence, illness, suspension, or inability of the Register of Deeds to discharge his duties, said duties shall be performed by the following officials, in the order in which they are mentioned below, unless the Secretary of Justice designates another official to act temporarily in his place:**

**(a) For the province or city where there is a Deputy Register of Deeds, by said Deputy Register of Deeds, or by the second Deputy Register of Deeds, should there be one;**

**(b) For the province or city where there is no Deputy or second Deputy Register of Deeds, by the Provincial or City Fiscal, or any Assistant Fiscal designated by the Provincial or City Fiscal.**

**(2) In case of absence, disability or suspension of the Register of Deeds without pay, or in case of vacancy in the position, the Secretary of Justice may, in his discretion, authorize the payment of an additional compensation to the official acting as Register of Deeds, such additional compensation together with his actual salary not to exceed the salary authorized for the position thus filled by him.**

**(3) In case of a newly-created province or city and pending establishment of a Registry of Deeds and the appointment of a regular Register of Deeds for the new province or city, the Register of Deeds of the mother province or city shall be the *ex-officio* Register of Deeds for said new province or city.**

**SEC. 12.** ***Owner's Index; reports.*** **— There shall be prepared in every Registry an index system which shall contain the names of all registered owners alphabetically arranged. For this purpose, an index card which shall be prepared in the name of each registered owner which shall contain a list of all lands registered in his name.**

**The Register of Deeds shall submit to the Land Registration Commission within ten days after the month to which they pertain his monthly reports on collections and accomplishments. He shall also submit to the Commission at the end of December of each year, an annual inventory of all titles and instruments in his Registry.**

**SEC. 13. *Chief Geodetic Engineer.* — There shall be a Chief Geodetic Engineer in the Land Registration Commission who shall be the technical adviser of the Commission on all matters involving surveys and shall be responsible to him for all plats, plans and works requiring the services of a geodetic engineer in said office.**

**He shall perform such other functions as may, from time to time, be assigned to him by the Commissioner.**

**01. Only the Lands Management Bureau has authority to approve original survey plans for registration purposes.**

Pursuant to PD No. 239, dated July 9, 1973, the authority of the Land Registration Authority (formerly Land Registration Commission) to approve original survey plans has been withdrawn. The authority to approve survey plans intended for original registration purposes used to be exercised jointly by the Land Registration Commission (LRC) and the Bureau of Lands (now Lands Management Bureau). The reason for the grant of such authority to the LRC was to facilitate expropriation by the government of big landed estates intended for distribution and resale at cost to tenant-farmers under the Agricultural Land Reform Code. However, under PD No. 27, dated October 21, 1972, there is no more necessity for the government to expropriate big landed estates as the tenant tillers of rice and corn lands have already been declared as owners of the lands they till. The grant of authority to the LRC to approve original survey plans has resulted in wasteful overlapping or duplication of functions, not to mention the deterioration of surveying standards and confusion in land survey records. There was therefore a need to centralize in one agency, the Lands Management Bureau (LMB), the function of verifying and approving original survey plans for all purposes in order to assure compliance with established standards and minimize irregularities in the execution of land surveys. PD No. 239 provides:

> "SEC. 1. Paragraph 3, Section 34-A, of Republic Act No. 3844, as inserted by Section 6 of Republic Act No. 6389, is hereby repealed insofar as it grants the Land Registration Commission the power to approve survey plans of lands intended for original registration purposes.
>
> SEC. 2. The Land Registration Commissioner shall within thirty (30) days from the date hereof turn over all survey returns submitted to his Office to the Bureau of Lands for verification and appropriate action in accordance

with Section 1858 of the Revised Administrative Code and the rules and regulations promulgated hereunder; and furnish the latter Office with copies of all plans that it had already approved as of the date of issuance of this Decree for re-verification and appropriate action in accordance with law and regulations.

SEC. 3. If the land covered by any survey approved by the Land Registration Commission has already been approved by court for registration purposes under Act 496 or under Section 48 of Commonwealth Act No. 141, as amended, otherwise known as the Public Land Act, no decision shall be rendered thereon until the Director of Lands shall have submitted his report and recommendation thereon.

SEC. 4. Any law or regulation that is contrary to or inconsistent herewith is hereby repealed or amended accordingly.

SEC. 5. This Decree shall take effect immediately."

# CHAPTER III

# ORIGINAL REGISTRATION

## I. ORDINARY REGISTRATION PROCEEDINGS

### A. APPLICATIONS

**SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:**

**(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.**

**(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.**

**(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.**

**(4) Those who have acquired ownership of land in any other manner provided for by law.**

**Where the land is owned in common, all the co-owners shall file the application jointly.**

**Where the land has been sold under *pacto de retro*, the vendor *a retro* may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee *a retro*, the latter shall be substituted for the applicant and may continue the proceedings.**

**A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust.**

**01. Purpose of the Torrens system of registration.**

The prime purpose of the Torrens system of registration is to decree land titles that shall be final, irrevocable, and undisputable. Incontestability is the goal. As expressed in Section 31 of the Property Registration Decree (PD No. 1529), "(t)he decree of registration shall bind the land and," and "shall be conclusive upon and against all persons, including the National Government and all the branches thereof." Further, as stated in Section 32, "(t)he decree shall not be reopened or revised by reason of absence, minority, or other disability of any person affected thereby, nor by any proceeding in court for reversing judgments, subject, however, to the right of any person deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud to file in the proper Regional Trial Court a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration."[1]

The Torrens system was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.[2] The law aims "to ascertain once and for all the absolute title over a given landed property; to make, so far as it is possible, a certificate of title issued by the court to the owner of the land absolute proof of such title; to quiet title to the land and to put a stop forever to a question of legality to a title; and to decree that land title to be final, irrevocable and indisputable."[3] As stressed in *Legarda* v. *Saleeby*,[4] a 1915 decision:

> "The real purpose of that system is to quiet title to land; to put a stop forever to any question of the legality of the title, except claims which were noted at the time of registration, in the certificate, or which may arise subsequent thereto. That being the purpose of the law, it would

[1]Benin v. Tuason, GR No. L-26127, June 28, 1974, 57 SCRA 532.
[2]Republic v. Umali, GR No. 80687, April 10, 1989, 171 SCRA 642.
[3]Zuñiga v. Court of Appeals, GR No. L-19776, Jan. 28, 1980, 95 SCRA 940.
[4]GR No. 8936, Oct. 2, 1915, 31 Phil. 590.

> seem that once a title is registered the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the *'mirador de su casa,'* to avoid the possibility of losing his land."

The title, once registered, is notice to the world. All persons must take notice. No one can plead ignorance of the registration.

**02. Registration only confirms existing title.**

Cast somewhat differently, the primary purpose of the Torrens system is the registration of title which the applicant has and to relieve his land of unknown liens or claims, just or unjust, against it. The Torrens system of land registration is a system for the registration of title to land only, and not a system established for the acquisition of land. It is not intended that lands may be acquired by said system of registration. It is intended only that the title, which the petitioner has, shall be registered and thereby cleared of all liens and burdens of whatsoever character, except those which shall be noted in the order of registration and in the certificate issued. If there exist known and just claims against the title of the applicant, he gains nothing in effect by his registration, except in the simplicity of subsequent transfers of his title. The registration either relieves the land of all known as well as unknown claims, absolutely, or it compels the claimants to come into court and to make there a record, so that thereafter there may be no uncertainty concerning either the character or the extent of such claims.[5]

Registration does not vest or give title to the land, but merely confirms and thereafter protects the title already possessed by the owner, making it imprescriptible by occupation of third parties. The registration does not give the owner any better title than he has. He does not obtain title by virtue of the certificate. He secures his certificate by virtue of the fact that he has a fee simple title.[6] But to obtain the protection of the Torrens system, the land must be placed under the operation of the registration laws wherein certain judicial procedures have been provided.[7]

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[5]Roxas v. Enriquez, GR No. 8539, Dec. 24, 1914, 29 Phil. 31.

[6]Legarda v. Saleeby, *supra*; Republic v. Court of Appeals and Del Rio, GR No. L-43105, Aug. 31, 1984.

[7]Grande v. Court of Appeals, GR No. L-17652, June 30, 1962, 5 SCRA 524.

"Registration" means any entry made in the books of the registry, including both registration in its ordinary and strict sense, and cancellation, annotation, and even marginal notes. In its strict acceptation, it is the entry made in the registry which *records* solemnly and permanently the right of ownership and other real rights.[8]

**03. Laws governing land registration.**

The State has control over the real property within its limits. The conditions of ownership of real estate within the State, whether the owner be a stranger or a citizen, is subject to its rules, concerning the holding, transfer, liability to obligations, private or public, and the modes of establishing title thereto, and for the purpose of determining these questions, the State may provide any reasonable rules or procedure. The State possesses not only the right to determine how title to real estate may be acquired and proved, but it is also within its legislative capacity to establish the method of procedure.[9]

The primary sources of legislation governing the registration of private lands and lands of the public domain are:

(a) CA No. 141, or the Public Land Act, approved on November 7, 1936, but which became effective on December 1, 1936.

(b) PD No. 1529, or the Property Registration Decree, issued on June 11, 1978.

(c) Act No. 2259, or the Cadastral Act, enacted on February 11, 1913.

(d) RA No. 8371, or the Indigenous Peoples Rights Act, approved on October 29, 1997.

**(1) Public Land Act (CA No. 141)**

The Public Land Act governs the judicial confirmation of imperfect or incomplete titles on the basis of possession and occupation of alienable portions of the public domain in the manner and for the length of time required by law. The relevant provisions are Sections 47 to 57, Chapter VIII of the Act.

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[8]Cheng v. Genato, GR No. 129760, Dec. 29, 1998, 300 SCRA 722.
[9]Roxas v. Enriquez, *supra*.

### (2) Property Registration Decree (PD No. 1529)

The Property Registration Decree is a codification of all laws relative to registration of property, and "supersedes all other laws relative to registration of property."[10] It has substantially incorporated the provisions of Act No. 496, or the Land Registration Act. Section 14, paragraphs (1) to (4), enumerates the persons who may apply for registration and the conditions therefor.

### (3) Cadastral Act (Act No. 2259)

The Cadastral Act is an offspring of the system of registration under the Land Registration Act. It aims to serve public interests by requiring that "the title to any lands be titled and adjudicated." It may be noted, however, that salient provisions in the Cadastral Act have now been carried over in the present Property Registration Decree, particularly in Sections 35 to 38 of the Decree.

### (4) Indigenous Peoples Rights Act (RA No. 8371)

The Indigenous Peoples Rights Act (IPRA), approved October 29, 1997, recognizes the rights of ownership and possession of indigenous cultural communities or indigenous peoples (ICCs/IPs) to their ancestral domains and ancestral lands on the basis of *native title*, and defines the extent of these lands and domains. For purposes of registration, the IPRA expressly converts ancestral lands into public agricultural lands, and individual members of cultural communities, with respect to their individually-owned ancestral lands, shall have the option to secure title to their ancestral lands under the provisions of the Public Land Act or the Property Registration Decree. This option is limited to *ancestral lands* only, not domains, and such lands must be individually, not communally, owned.

## 04. Proceedings are judicial and *in rem*.

Proceedings under the aforesaid systems of registration are judicial and *in rem*. Hence, a land registration court's decision ordering the confirmation and the registration of title being the result of a proceeding *in rem*, binds the whole world.[11]

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[10]Director of Lands v. Santiago, GR No. L-41278, April 15, 1988, 160 SCRA 186.

[11]Talusan v. Tayag, GR No. 133698, April 4, 2001, 356 SCRA 263.

It should be noted that while registration under the Public Land Act, Property Registration Decree and Indigenous Peoples Rights Act is voluntary, which means that it is the person claiming ownership who initiates the action, registration under the Cadastral Act is compulsory as it is the government itself which initiates the petition.

## (A) *JUDICIAL CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLES*

As a rule, no title or right to, or equity in, any lands of the public domain may be acquired by prescription or by adverse possession or occupancy except as expressly provided by law.[1] The Public Land Act (CA No. 141) recognizes the concept of ownership under the civil law. This ownership is based on adverse possession and the right of acquisition is governed by Chapter VIII on judicial confirmation of imperfect or incomplete titles.

The applicant must prove that (a) the land is alienable public land and (b) his possession and occupation must be in the manner and for the period prescribed by law, or since June 12, 1945.[2] Registration under the Act presumes that the land was originally public agricultural land but because of adverse possession since June 12, 1945 (thirty years prior to the filing of the application under RA No. 1942), the land has become private.

### 01. Applicable provisions; amendments.

#### (1) Sec. 48, PLA, original provision

The original provision of Section 48 of the Public Land Act (CA No. 141) read:

> "SEC. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issu-

[1]Sec. 57, CA No. 141.

[2]Republic v. Court of Appeals and Lapiña, GR No. 108998, Aug. 24, 1994, 235 SCRA 567.

ance of a certificate of title therefor, under the Land Registration Act, to wit:

(a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted and prosecuted the proceedings in connection therewith, but have, with or without default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter."

**(2) RA No. 1942 has shortened period of possession to thirty years**

On June 22, 1957, RA No. 1942 was enacted amending subsection (b) by shortening the period of possession to "at least thirty years immediately preceding the filing of the application," thus:

"(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter."

### (3) RA No. 3872 has added a new section recognizing rights of cultural minorities

On June 18, 1964, RA No. 3872 was enacted adding a new subsection to Section 48 of the Public Land Act which reads:

> "(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a *bona fide* claim of ownership for at least 30 years shall be entitled to the rights granted in sub-section (b) hereof."

### (4) PD No. 1073 has reverted period of possession to June 12, 1945

On January 25, 1977, PD No. 1073 was issued: (a) extending the period for the filing of applications for judicial confirmation of imperfect and incomplete titles to December 31, 1987; (b) limiting the area of the land applied for to 144 hectares; (c) repealing Section 48(b) on judicial confirmation of incomplete titles to public land based on unperfected Spanish grants; and (d) amending Sections 48(b) and (c) in the sense that these provisions shall apply only to *alienable and disposable* (A and D) *lands* of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or through his predecessors-in-interest, under a *bona fide* claim of acquisition of ownership, since *June 12, 1945*. Section 4 of PD No. 1073 reads:

> "SEC. 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a *bona fide* claim of acquisition of ownership, since June 12, 1945."

### (5) RA No. 9176 has extended period of filing to December 31, 2020

On November 13, 2002, RA No. 9176 was enacted: (a) extending the period to file an application for judicial confirmation of

imperfect or incomplete titles to December 31, 2020; (b) further limiting the area applied for to 12 hectares; and (c) providing that all pending applications filed before the effectivity of the amendatory Act shall be treated as having been filed in accordance with the provisions thereof.

In *Director of Lands* v. *Danao*,[3] respondent Ida Danao filed on January 8, 1969 an application for the registration of a parcel of land with the prayer that "in case the land may not be registered as private land, she requests that her imperfect or incomplete title to the property be confirmed in the names of the heirs of Francisco P. Danao." The Director of Lands opposed the application contending that the land sought to be registered is a foreshore land forming part of the public domain and cannot be the subject of private ownership. After hearing, the court *a quo* rendered its decision on October 23, 1969 decreeing the registration of the property in the name of the heirs of Francisco P. Danao. On appeal, the Director of Lands argued that respondent court did not have jurisdiction to entertain the application for registration since it was filed after December 31, 1968, the deadline set in RA No. 2061 for filing of applications for judicial confirmation of imperfect or incomplete titles to land. The Supreme Court disagreed, holding that the period fixed by Section 47 of the Public Land Act, as amended, is not jurisdictional but is more of a time limitation. As such, it is a defense or objection which should have been set up either in a motion to dismiss or in an answer. Inasmuch as the Director of Lands had never pleaded the statute of limitations, the defense was deemed waived. In any event, the Court ruled:

> "But even bearing in mind that prescription does not run against the State (Art. 1108[4], Civil Code) and that the rights of the State may not be waived by mistakes of officers entrusted with the exercise of such rights (Lewin vs. Galang, 109 Phil. 1041 [1960]), yet, the intendment of the lawmaker to accord as much leeway as possible to applicants for judicial confirmation of imperfect or incomplete titles is evident from the statutory history of Section 47 of the Public Land Act. In the original text, the time limitation was not to extend beyond December 31, 1938. An amendment introduced by Commonwealth Act 292, Section 2, approved on June 9, 1938, extended the

[3]GR No. L-31749, Feb. 21, 1980, 96 SCRA 161.

expiry date to December 31, 1941. Subsequently, Section 1 of Republic Act No. 107, approved on June 2, 1947, further extended the time limit to December 31, 1957. Republic Act No. 2061, approved on June 13, 1958, again prolonged the period to December 31, 1968. Still later, by virtue of Republic Act No. 6236, approved on June 19, 1971, the time prescribed was extended to December 31, 1976. Again, only quite recently, on January 25, 1977, PD No. 1073 lengthened the cut-off date to December 31, 1987.

Considering the obvious intent of the law as shown by the several extensions granted, it should be held that the extension granted by RA No. 6236 up to December 31, 1967 retroacted to and covered the application filed by private respondent on January 8, 1969, or during the intervening period from January 1, 1969 up to December 31, 1976."

**02. Present text of Sec. 48, PLA, as amended.**

After a series of amendments, Section 48 now reads:

"SEC. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Regional Trial Court of the province or city where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Property Registration Decree, to wit:

x x x x x x x x x

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of alienable and disposable agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest

> have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable agricultural lands of the public domain, under a *bona fide* claim of ownership since June 12, 1945, shall be entitled to the rights granted in sub-section (b) hereof."

Relatedly, the date "June 12, 1945" is reiterated in Section 14 (1) of PD No. 1529, otherwise known as the Property Registration Decree, thus:

> "SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since *June 12, 1945, or earlier*."

It is worth noting that there is no substantial distinction between Section 48(b) of the Public Land Act and Section 14(1) of the Property Registration Decree.

Section 48(b) and (c) of the Public Land Act applies exclusively to agricultural lands of the public domain.[4] The law, as presently phrased, requires that possession of alienable and disposable lands of the public domain must be from June 12, 1945 or earlier, for the same to be acquired through judicial confirmation of imperfect title.[5] With respect to possession and occupation, the law employs the phrase "those by themselves or through his predecessor-in-interest." Thus, it matters not whether the applicant has been in possession of the subject property for only a day so long as the period and/or legal requirements for confirmation of title has been complied with by his predecessors-in-interest, since the said period is tacked to his possession.[6]

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[4]Director of Lands v. Santiago, GR No. L-41278, April 15, 1988, 160 SCRA 186.

[5]Republic v. Doldol, GR No. 132963, Sept. 10, 1998, 295 SCRA 359; Republic v. Herbieto, GR No. 156117, May 26, 2005.

[6]Republic v. Court of Appeals and Lapiña, *supra*; Susi v. Razon, GR No. 24066, Dec. 9, 1925, 48 Phil. 424.

**03. Requisites for availment of Chapter VIII.**

Considering the present state of the law, the following conditions must concur in order that the benefits of Chapter VIII of the Public Land Act on confirmation of imperfect or incomplete titles may be availed of:

(a) the applicant must be a Filipino citizen;

(b) he must have, by himself or through his predecessors-in-interest, possessed and occupied an alienable and disposable agricultural portion of the public domain;

(c) such possession and occupation must have been open, continuous, exclusive, notorious and in the concept of owner, since June 12, 1945; and

(d) the application must be filed with the proper court.

As put by the Supreme Court in *Republic* v. *Alconaba*,[7] the applicant must prove: (a) that the land forms part of the disposable and alienable agricultural lands of the public domain, and (b) that he has been in open, continuous, exclusive and notorious possession thereof, under a *bona fide* claim of ownership, since time immemorial or since June 12, 1945. Only when these conditions are met may the possessor of the land acquire, by operation of law, "a right to a grant, a government grant, without the necessity of a certificate of title being issued."[8]

The Supreme Court would explain, in the case of *Director of Lands* v. *Buyco*,[9] the meaning of *"immemorial"* — which means beyond the reach of memory, beyond human memory, or time out of mind. And when referring to possession, specifically *"immemorial possession,"* it means possession of which no man living has seen the beginning, and the existence of which he has learned from his elders.

**04. Land must be A and D land at the time the application for confirmation is filed.**

Section 48(b) of the Public Land Act (Judicial Confirmation of Imperfect or Incomplete Title) applies exclusively to *alienable and*

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[7]GR No. 155012, April 14, 2004, 427 SCRA 611.

[8]Republic v. Court of Appeals and Ceniza, GR No. 127060, Nov. 19, 2002, 392 SCRA 190.

[9]GR No. 91189, Nov. 27, 1992, 216 SCRA 78.

*disposable agricultural lands* of the public domain. Lands classified as forest or timber lands, mineral lands and lands within national parks are excluded. The right to file the application for registration derives from a *bona fide* claim of ownership going back to June 12, 1945 or earlier, by reason of the claimant's open, continuous, exclusive and notorious possession of alienable and disposable lands of the public domain.

Registration under Section 48(b), as amended, presumes that the land was originally public agricultural land but because of adverse possession since June 12, 1945 (judicial confirmation of imperfect title), the land has become private. Open, adverse, public and continuous possession is sufficient provided the possessor files the proper application. It should be stressed, however, that the adverse possession which may be the basis of a grant of title in confirmation of imperfect title cases applies only to alienable lands of the public domain.

As explained in the recent case of *Republic* v. *Court of Appeals and Naguit,*[10] the phrase "since June 12, 1945" qualifies its antecedent phrase "under a *bona fide* claim of ownership." Generally speaking, qualifying words restrict or modify only the words or phrases to which they are immediately associated, and not those distantly or remotely located. Hence, what the law merely requires is that the property sought to be registered is *"already alienable and disposable at the time the application for registration of title is filed."* In other words, it is not necessary that the land be first classified as alienable and disposable before the applicant's possession under a *bona fide* claim of ownership could start. "If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property."

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[10]GR No. 144057, Jan. 17, 2005, 448 SCRA 442.

**05. Rule different where land is not registrable as when it forms part of the public forest.**

A different rule obtains for lands which are incapable of registration as when they belong to the category of forest or timber, mineral lands and national parks. The reason for this is that, under Section 2, Article XII of the Constitution, only agricultural lands may be the subject of alienation. Thus, in *Palomo* v. *Court of Appeals*,[11] the Court held:

> "There is no question that the lands in the case at bar were not alienable lands of the public domain. As testified by the District Forester, records in the Bureau of Forestry show that the subject lands were never declared as alienable and disposable and subject to private alienation prior to 1913 up to the present. Moreover, as part of the reservation for provincial park purposes, they form part of the forest zone.
>
> It is elementary in the law governing natural resources that forest land cannot be owned by private persons. It is not registrable and possession thereof, no matter how lengthy, cannot convert it into private property, unless such lands are reclassified and considered disposable and alienable."

**06. Only A and D lands may be the subject of disposition.**

Under Section 6 of the Public Land Act, the classification and reclassification of public lands into alienable or disposable lands, forest lands or mineral lands is the prerogative of the Executive Department.[12] The rule on confirmation of imperfect title does not apply unless and until the land classified as, say, forest land is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain.[13] The inclusion in a certificate of title of non-disposable public land, whether such title was issued during the Spanish sovereignty or under the

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[11]GR No. 95608, Jan. 21, 1997, 334 Phil. 357.

[12]Bureau of Forestry v. Court of Appeals, GR No. L-379995, Aug. 31, 1987, 153 SCRA 351.

[13]Bracewell v. Court of Appeals, GR No. 107247, Jan. 25, 2000, 323 SCRA 193.

present Torrens system of registration, nullifies the title.[14] Hence, the applicant must secure a certification from the government that the land applied for by the applicant is alienable and disposable.[15] To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or statute.[16]

As held in *Bracewell* v. *Court of Appeals*,[17] there can be no imperfect title to be confirmed over lands not yet classified as disposable or alienable. In the absence of such classification, the land remains unclassified public land until released therefrom and open to disposition. Indeed, it has been held that the rules on the confirmation of imperfect title do not apply unless and until the land classified as *forest land* is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain.

The case of R*epublic* v. *Court of Appeals and Bernabe*[18] stresses that possession of forest land, prior to its classification as alienable and disposable land, is ineffective since such possession may not be considered as possession in the concept of owner. It is necessary that the land should have been released from the forest zone and reclassified as alienable and disposable agricultural public land for the *entire period* required for confirmation of title under Section 48(b) of the Public Land Act, that is, since June 12, 1945 or prior thereto.

> "Forest lands or areas covered with forests are excluded. They are incapable of registration and their inclusion in a title, whether such title be one issued during the Spanish sovereignty or under the present Torrens system of registration, nullifies the title (Li Seng Giap v. Director of Lands, 55 Phil. 693 [1931]; Director of Lands v. Reyes, 68 SCRA 177 [1975]). Thus, possession of forest lands, however long, cannot ripen into private ownership (Vaño v. Government, 41 Phil. 161 [1920]; Adorable v.

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[14]Director of Lands v. Reyes, GR No. L-27594, Nov. 28, 1975, 68 SCRA 91.

[15]Director of Lands v. Buyco, GR No. 91189, Nov. 27, 1991, 216 SCRA 78.

[16]Republic v. Court of Appeals and Ceniza, GR No. 127060, Nov. 19, 2002, 392 SCRA 190.

[17]*Supra*.

[18]GR No. L-40402, March 16, 1987, 148 SCRA 480.

> Director of Forestry, 107 Phil. 401 [1960]; Director of Forestry v. Muñoz, 23 SCRA 1183 [1968]; Director of Lands v. Abanzado, 65 SCRA 5 [1975]). A parcel of forest land is within the exclusive jurisdiction of the Bureau of Forestry and beyond the power and jurisdiction of the cadastral court to register under the Torrens System (Republic v. Court of Appeals, 89 SCRA 648 [1979]; Republic v. Vera, 120 SCRA 210 [1983]; Director of Lands v. Court of Appeals, 129 SCRA 689 [1984]).
>
> Thus, even if the reopening of the cadastral proceedings was at all possible, private respondents have not qualified for a grant under Sec. 48(b) of Commonwealth Act 141, the facts being that private respondents could only be credited with 1 year, 9 months and 20 days possession and occupation of the lots involved, counted from July 6, 1965, the date when the land area in sitio San Jose, barrio Cabcaban, Mariveles, Bataan, known as Bataan PMD No. 267, which includes the lots claimed by respondents, had been segregated from the forest zone and released by the Bureau of Forestry as an agricultural land for disposition under the Public Land Act. *(Record on Appeal, p. 19).* Consequently, under the above-mentioned jurisprudence, neither private respondents nor their predecessors-in-interest could have possessed the lots for the requisite period of thirty (30) years as disposable agricultural land."

In a case,[19] it was held that the intervening period commencing from the promulgation of Proclamation No. 10 of the Governor-General of the Philippines in 1925 declaring the land in question as part of the U.S. military reservation until 1953 when the land was deemed reverted back to the public domain disturbed private respondents-applicants' possession over the land in question because during this interregnum, no amount of time in whatever nature of possession could have ripened such possession into private ownership, the land having been segregated as part of a military reservation. This circumstance considered, private respondents' claim of open, continuous, exclusive and notorious possession over the land in question should be counted only from 1953. Consequently, where the application for registration was filed in 1965, obviously, the thirty-

[19]Director of Lands v. Court of Appeals and Rodriguez, GR No. 45061, Nov. 20, 1989, 179 SCRA 522.

year requirement[20] had not been met at the time the action for registration was filed and, therefore, it was error on the part of the appellate court to rule that the applicants already possessed a registrable title over the land in question.

### 07. Where applicant has acquired a right to a government grant, application is a mere formality.

When the conditions specified in Section 48(b) of the Public Land Act are complied with, the possessor is deemed to have acquired, by operation of law, a right to a grant, without the necessity of a certificate of title being issued. The land, therefore, ceases to be of the public domain, and beyond the authority of the Director to dispose of. The application for confirmation is a mere formality, the lack of which does not affect the legal sufficiency of the title as would be evidenced by the patent and the Torrens title to be issued upon the strength of said patent.[21] For all legal intents and purposes, the land is segregated from the public domain, because the beneficiary is "conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter." Consequently, said land is beyond the jurisdiction of the Director of Lands to dispose of under the modes of disposition under the Public Land Act.[22]

### 08. Compliance with all requirements for a government grant *ipso jure* converts land to private property.

Where all the requirements for a government grant are complied with, *i.e.*, possession in the manner and for the period required by law, the land *ipso jure* ceases to be public land and becomes private property. Such doctrinal principle has been consistently enunciated in the following cases:

#### (1) *Susi* v. *Razon*

The case of *Susi* v. *Razon*,[23] decided in 1925, involved a parcel land which was the subject of a sale made by the Director of Lands to Angela Razon pursuant to which a certificate of title was issued

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[20]Under RA No. 1942.
[21]Herico v. Dar, GR No. L-23265, Jan. 28, 1980, 95 SCRA 437.
[22]Nagaño v. Court of Appeals, GR No. 123231, Nov. 17, 1997, 282 SCRA 47.
[23]GR No. 24066, Dec. 9, 1925, 48 Phil. 424.

to the latter. Valentin Susi filed a complaint against Razon, praying for judgment: (a) declaring him (Susi) the sole and absolute owner of the land in question; (b) annulling the sale made by the Director of Lands in favor of Razon, on the ground that the land is a private property; and (c) ordering the cancellation of the certificate of title issued to Razon. The Director of Lands maintained that the land formed part of the public domain and, hence, the sale thereof to Razon was valid. However, the trial court rendered judgment declaring Susi entitled to the possession of the land, annulling the sale made by the Director of Lands in favor of Angela Razon, and ordering the cancellation of the certificate of title issued to her. On appeal, the Supreme Court sustained the judgment of the court *a quo*, holding as follows:

> "It clearly appears from the evidence that Valentin Susi has been in possession of the land in question openly, continuously, adversely and publicly, personally and through his predecessors, since the year 1880, that is, for about forty-five years. While the judgment of the Court of First Instance of Pampanga against Angela Razon in the forcible entry case does not affect the Director of Lands, yet it is controlling as to Angela Razon and rebuts her claim that she had been in possession thereof. When on August 15, 1914, Angela Razon applied for the purchase of said land, Valentin Susi had already been in possession thereof personally and through his predecessors for thirty-four years. And if it is taken into account that Nemesio Pinlac had already made said land a fish pond when he sold it on December 18, 1880, it can hardly be estimated when he began to possess and occupy it, the period of time being so long that it is beyond the reach of memory. These being the facts, the doctrine laid down by the Supreme Court of the United States in the case of Cariño vs. Government of the Philippine Islands (212 U.S., 449), is applicable here. In favor of Valentin Susi, there is, moreover, the presumption *juris et de jure* established in paragraph (b) of Section 45 of Act No. 2874, amending Act No. 926, that all the necessary requirements for a grant by the Government were complied with, for he has been in actual and physical possession, personally and through his predecessors, of an agricultural land of the public domain openly, continuously, exclusively and publicly since July 26, 1894, with a right to a certificate of title to said land under the provi-

sions of Chapter VIII of said Act. So that when Angela Razon applied for the grant in her favor, Valentin Susi had already acquired, by operation of law, not only a right to a grant, but a grant of the Government, for it is not necessary that certificate of title should be issued in order that said grant may be sanctioned by the courts, an application therefor is sufficient, under the provisions of Section 47 of Act No. 2874. If by a legal fiction, Valentin Susi had acquired the land in question by a grant of the State, it had already ceased to be of the public domain and had become private property, at least by presumption, of Valentin Susi, beyond the control of the Director of Lands. Consequently, in selling the land in question to Angela Razon, the Director of Lands disposed of a land over which he had no longer any title or control, and the sale thus made was void and of no effect, and Angela Razon did not thereby acquire any right.

The Director of Lands contends that the land in question being of the public domain, the plaintiff-appellee cannot maintain an action to recover possession thereof.

If, as above-stated, the land, the possession of which is in dispute, had already become, by operation of law, private property of the plaintiff, there lacking only the judicial sanction of his title, Valentin Susi has the right to bring an action to recover the possession thereof and hold it."

The case of *Susi* blazed a trail of subsequent cases which developed, affirmed and reaffirmed the doctrine that open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property.

### (2) *Oh Cho* v. *Director of Lands*

The 1946 case of *Oh Cho* v. *Director of Lands*,[24] while expressing the same rule as in *Susi*, went a step further by categorically

[24]GR No. 48321, Aug. 31, 1946, 75 Phil. 890.

recognizing an *exception* to the rule that all lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. That exception "would be any land that should have been in the possession of an occupant and of his predecessors-in-interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest," which principle is in turn rooted in the case of *Cariño* v. *Insular Government*,[25] decided by the US Supreme Court, through Justice Holmes, in 1909. *Cariño* institutionalized the concept of *native title*, or ownership of land by Filipinos by virtue of possession under a claim of ownership *since time immemorial* and independent of any grant from the Spanish Crown, as an exception to the theory of *jura regalia*. As stated in *Cariño:*

> "Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land."

However, in the case of *Oh Cho*, the applicant failed to show that he has title to the lot that may be registered. He failed to show that he or any of his predecessors-in-interest had acquired the lot from the government, either by purchase or by grant, under the laws, orders and decrees promulgated by the Spanish Government in the Philippines, or by possessory information under the Mortgage Law (Sec. 19, Act No. 496). The applicant did not come under the exception, for the earliest possession of the lot by his first predecessor-in-interest began in 1880. Consequently, he was held not entitled to a decree of registration under the provisions of the Public Land Act (CA No. 141). Additionally, he was an alien and therefore disqualified from acquiring lands of the public domain.

### (3) *Mesina* v. *Sonza*

Plaintiff in *Mesina* v. *Sonza*[26] claimed that he was the owner in fee simple of Lot No. 3259, with improvements thereon; that he had

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[25]212 U.S., 449; 53 Law Ed., 594.
[26]GR No. L-14722, May 25, 1960, 108 Phil. 251.

been in actual possession thereof since 1914, publicly, openly, peacefully and against the whole world and that he was the only one who was benefiting from the produce thereof; that in 1953, the Director of Lands, in spite of his knowledge that defendants had not complied with the requirements of CA No. 141, issued a homestead patent in their favor as a consequence of which a certificate of title was issued in their name; that said title was procured by defendants through fraud, deception and misrepresentation since they knew that the lot belonged to the plaintiff; and that the Director of Lands had no authority nor jurisdiction to issue a patent covering said land because it is the private property of plaintiff. For these reasons, plaintiff prayed that said decree and title be cancelled. Defendants filed a motion to dismiss on the ground that plaintiff's action was already barred by the statute of limitations since the complaint was filed only on March 25, 1958, after one year from the issuance of the patent on September 12, 1953 and the corresponding certificate of title. The court granted the motion and dismissed the complaint. The Supreme Court reversed the order of dismissal, stating:

> "In the case of Susi vs. Razon, et al., 48 Phil. 424, it was observed that where all the necessary requirements for a grant by the Government are complied with through actual physical possession openly, continuously, and publicly, with a right to a certificate of title to said land under the provisions of Chapter VIII of Act No. 2874, amending Act No. 926 (carried over as Chapter VIII of Commonwealth Act No. 141), the possessor is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the Government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the courts — an application therefor being sufficient under the provisions of Section 47 of Act No. 2874 (reproduced as Section 50, Commonwealth Act No. 141).
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> "Considering that this case was dismissed by the trial court merely on a motion to dismiss on the ground that plaintiff's action is already barred by the statute of limitations, which apparently is predicated on the theory that a decree of registration can no longer be impugned on the ground of fraud one year after the issuance and entry of the decree, which theory does not apply here

> because the property involved is allegedly private in nature and has ceased to be part of the public domain, we are of the opinion that the trial court erred in dismissing the case outright without giving plaintiff a chance to prove his claim. It would have been more proper for the court to deny the motion on the ground that its object does not appear to be indubitable, rather than to have dismissed it, as was done by the trial court."

**09. Land acquisition by private corporations.**

The doctrine enunciated in *Susi* and subsequent cases became determinative of whether or not a private corporation may apply for the registration of land which it acquired from its predecessor-in-interest who had been in possession thereof in the manner and for the prescribed statutory period as to have entitled him to a confirmation of title.

The 1935 Constitution expressly allowed private juridical entities to acquire alienable lands of the public domain not exceeding 1,024 hectares. The rule became different when the 1973 Constitution provided in Section 11, Article XIV that "no private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area," a provision carried in the present Constitution, except for the area limitation, as expressed in Section 3, Article XII, to wit:

> "Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area."

The rule then is that private corporations or associations are disqualified from acquiring *alienable lands of the public domain*. But jurisprudence has evolved a doctrinal precept, distinctly rooted in *Susi*,[27] among others, that where at the time the corporation acquired the land, its predecessor-in-interest had been in possession and occupation thereof in the manner and for the period prescribed by law as to entitle him to registration in his name, then the proscription against corporations acquiring alienable lands of the public domain

[27]*Supra.*

except through lease does not apply for the land was no longer public land but *private property*.[28]

### (1) A corporation sole is qualified to apply for registration

It was held in *Republic* v. *Intermediate Appellate Court and Roman Catholic Archbishop of Lucena*[29] that a corporation sole is qualified to own and register private agricultural land. "A corporation sole by the nature of its incorporation is vested with the right to purchase and hold real estate and personal property. It need not therefore be treated as an ordinary private corporation because whether or not it be so treated as such, the Constitutional provision involved will, nevertheless, be not applicable."

A corporation sole is a special form of corporation usually associated with the clergy. Conceived and introduced into the common law by sheer necessity, this legal creation which was referred to as "that unhappy freak of English law" was designed to facilitate the exercise of the functions of ownership carried on by the clerics for and on behalf of the church which was regarded as the property owner. A corporation sole consists of one person only, and his successors (who will always be one at a time), in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the king is a sole corporation; so is a bishop, or deans, distinct from their several chapters.[30]

That leaves no room for doubt, said Justice Felix in *Roman Catholic Apostolic Administrator of Davao* v. *Land Registration Commission,*[31] that the bishops or archbishops, as the case may be, as corporations sole are merely administrators of the church properties that come to their possession, and which they hold in trust for the church. It can also be said that while it is true that church properties could be administered by a natural person, problems

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[28]Director of Lands v. Intermediate Appellate Court and Acme Plywood & Veneer Co., Inc., GR No. 73002, Dec. 29, 1986, 146 SCRA 509.

[29]GR No. 75042, Nov. 29, 1988, 168 SCRA 165.

[30]Roman Catholic Apostolic Administrator of Davao v. Land Registration Commission, GR No. L-8451, Dec. 20, 1957, 102 Phil. 596.

[31]*Ibid.*

regarding succession to said properties can not be avoided to arise upon his death. Through this legal fiction, however, church properties acquired by the incumbent of a corporation sole pass, by operation of law, upon his death not to his personal heirs but to his successor in office. It could be seen, therefore, that a corporation sole is created not only to administer the temporalities of the church or religious society where he belongs but also to hold and transmit the same to his successor in said office.

If the ownership or title to the properties does not pass to the administrators, who are the owners of church properties? Justice Felix explained: "Considering that nowhere can We find any provision conferring ownership of church properties on the Pope although he appears to be the supreme administrator or guardian of his flock, nor on the corporations sole or heads of dioceses as they are admittedly mere *administrators* of said properties, ownership of these temporalities logically fall and devolve upon the church, diocese or congregation acquiring the same. Although this question of ownership of ecclesiastical properties has off and on been mentioned in several decisions of this Court yet in no instance was the subject of citizenship of this religious society been passed upon. x x x We must, therefore, declare that although a branch of the Universal Roman Catholic Apostolic Church, every Roman Catholic Church in different countries, if it exercises its mission and is lawfully incorporated in accordance with the laws of the country where it is located, is considered an entity or person with all the rights and privileges granted to such artificial being under the laws of that country, separate and distinct from the personality of the Roman Pontiff or the Holy See, without prejudice to its religious relations with the latter which are governed by the Canon Law or their rules and regulations. x x x Under the circumstances of this case, We might safely state that even before the establishment of the Philippine Commonwealth and of the Republic of the Philippines every corporation sole then organized and registered had by express provision of law the necessary power and qualification to purchase in its name private lands located in the territory in which it exercised its functions or ministry and for which it was created, independently of the nationality of its incumbent unique and single member and head, the bishop of the diocese. It can be also maintained without fear of being gainsaid that the Roman Catholic Apostolic Church in the Philippines *has no nationality* and that the framers of the Constitution, as will be hereunder explained, did not have in mind the religious corporations sole when they provided that 60 *per centum*

of the capital thereof be owned by Filipino citizens. x x x (C)orporations sole in the Philippines are mere administrators of the 'temporalities' or properties titled in their name and for the benefit of the members of their respective religion composed of an overwhelming majority of Filipinos." (Emphasis supplied)

In his concurring opinion, Justice Labrador said that while some writers believe that ownership of ecclesiastical properties resides in the Roman Catholic Pontiff as Head of the Universal Church, the better opinion seems to be that they do belong to the parishes and dioceses as above indicated. While the organization of parishes and dioceses as juridical persons is not expressly provided for under the civil law, the corporation law has set up the fiction known as the "corporation sole" which authorizes it to purchase and hold real estate and personal property for its church, charitable, benevolent, or educational purposes, and may receive bequests or gifts for such purposes. Thus, the temporalities of the church or of a parish or diocese are allowed to be registered in the name of the corporation sole for purposes of administration and in trust for the real owners. But the mere fact that the corporation sole is allowed to acquire and hold real estate or other property does not make him the real owner thereof, as his tenure of church property is merely for the purposes of administration. The bishop is only the legal (technical) owner or trustee, the parish or diocese being the beneficial owner, or *cestui que trust*. The corporation sole is a mere contrivance to enable a church to acquire, own and manage properties belonging to the church. "Hence, the citizenship of the priest forming the corporation sole should be no impediment if the parish or diocese which owns the property is qualified to own and possess the property."

### (2) Purpose of the prohibition

As expressed by the Supreme Court through Justice Carpio in *Chavez* v. *Public Estates Authority*,[32] the constitutional intent, both under the 1973 and 1987 Constitutions, is to transfer ownership of only a limited area of alienable land of the public domain to a qualified individual. This constitutional intent is safeguarded by the provision prohibiting corporations from acquiring alienable lands of the public domain, since the vehicle to circumvent the constitutional intent is removed. The available alienable public lands are gradually

[32]GR No. 133250, July 9, 2002, 384 SCRA 152.

decreasing in the face of an ever-growing population. The most effective way to insure faithful adherence to this constitutional intent is to grant or sell alienable lands of the public domain only to individuals. This, it would seem, is the practical benefit arising from the constitutional ban.

If the constitutional intent is to encourage economic family-size farms, placing the land in the name of a corporation would be more effective in preventing the break-up of farmlands. If the farmland is registered in the name of a corporation, upon the death of the owner, his heirs would inherit shares in the corporation instead of subdivided parcels of the farmland. This would prevent the continuing break-up of farmlands into smaller and smaller plots from one generation to the next.

In actual practice, the constitutional ban strengthens the constitutional limitation on individuals from acquiring more than the allowed area of alienable lands of the public domain. Without the constitutional ban, individuals who already acquired the maximum area of alienable lands of the public domain could easily set up corporations to acquire more alienable public lands. An individual could own as many corporations as his means would allow him. An individual could even hide his ownership of a corporation by putting his nominees as stockholders of the corporation. The corporation is a convenient vehicle to circumvent the constitutional limitation on acquisition by individuals of alienable lands of the public domain.

### *1. Republic* v. *Intermediate Appellate Court and Acme Plywood & Veneer Co., Inc.*

That the *Susi* doctrine has gained a firm foothold in jurisprudence is burnished in the leading case of *Director of Lands* v. *Intermediate Appellate Court and Acme Plywood & Veneer Co., Inc.*,[33] decided by the Supreme Court, through Justice Narvasa, in 1986. In this case, the Director of Lands appealed by *certiorari* from a judgment of the Intermediate Appellate Court affirming a decision of the Court of First Instance of Isabela which ordered registration in favor of Acme Plywood & Veneer Co., Inc. *(Acme)* of five parcels of land measuring 481,390 square meters, more or less, acquired by it from Mariano and Acer Infiel, members of the Dumagat tribe. The regis-

[33]*Supra.*

tration proceedings were for confirmation of title under Section 48 of CA No. 141 *(Public Land Act)*, as amended. The Director of Lands asserted that since the registration proceedings have been commenced only on July 17, 1981, or long after the 1973 Constitution had gone into effect, the latter is the applicable law; and since Section 11 of its Article XIV prohibits private corporations or associations from holding alienable lands of the public domain, except by lease not to exceed 1,000 hectares (a prohibition not found in the 1935 Constitution which was in force in 1962 when *Acme* purchased the lands in question from the Infiels), it was reversible error to decree registration in favor of Acme. The Supreme Court ruled that *Acme*, although a private corporation, was qualified to apply for the judicial confirmation of its title under Section 48(b) of the Public Land Act, as amended, since the property at the time it was purchased by it from the Infiels on October 29, 1962 was already a *private land* to which they had a legally sufficient and transferable title.

> "Nothing can more clearly demonstrate the logical inevitability of considering possession of public land which is of the character and duration prescribed by statute as the equivalent of an express grant from the State than the dictum of the statute itself that the possessor(s) '. . . shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title . . .' No proof being admissible to overcome a conclusive presumption, confirmation proceedings would, in truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would not confer title, but simply recognize a title already vested. The proceedings would not *originally* convert the land from public to private land, but only confirm such a conversion already effected by operation of law from the moment the required period of possession became complete. As was so well put in *Cariño*, '. . . (T)here are indications that registration was expected from all, but none sufficient to show that, for want of it, ownership actually gained would be lost. The effect of the proof, wherever made, was not to confer title, but simply to establish it, as already conferred by the decree, if not by earlier law.'
>
> If it is accepted — as it must be — that the land was already private land to which the Infiels had a legally

sufficient and transferable title on October 29, 1962 when Acme acquired it from said owners, it must also be conceded that Acme had a perfect right to make such acquisition, there being nothing in the 1935 Constitution then in force (or, for that matter, in the 1973 Constitution which came into effect later) prohibiting corporations from acquiring and owning private lands.

Even on the proposition that the land remained technically 'public' land, despite immemorial possession of the Infiels and their ancestors, until title in their favor was actually confirmed in appropriate proceedings under the Public Land Act, there can be no serious question of Acme's right to acquire the land at the time it did, there also being nothing in the 1935 Constitution that might be construed to prohibit corporations from purchasing or acquiring interests in public land to which the vendor had already acquired that type of so-called 'incomplete' or 'imperfect' title. The only limitation then extant was that corporations could not acquire, hold or lease public agricultural lands in excess of 1,024 hectares. The purely accidental circumstance that confirmation proceedings were brought under the aegis of the 1973 Constitution which forbids corporations from owning lands of the public domain cannot defeat a right already vested before that law came into effect, or invalidate transactions then perfectly valid and proper. This Court has already held, in analogous circumstances, that the Constitution cannot impair vested rights.

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The fact, therefore, that the confirmation proceedings were instituted by Acme in its own name must be regarded as simply another accidental circumstance, productive of a defect hardly more than procedural and in nowise affecting the substance and merits of the right of ownership sought to be confirmed in said proceedings, there being no doubt of Acme's entitlement to the land. As it is unquestionable that in the light of the undisputed facts, the Infiels, under either the 1935 or the 1973 Constitution, could have had title in themselves confirmed and registered, only a rigid subservience to the letter of the law would deny the same benefit to their lawful successor-

in-interest by valid conveyance which violates no constitutional mandate."

Significantly, the Supreme Court, in *Acme*, declared that the majority ruling in the earlier case of *Meralco* v. *Castro-Bartolome*[34] — which dismissed the application of Meralco, a juridical person, on the ground that it was not qualified to apply for registration under Section 48(b) of the Public Land Act which allows only Filipino citizens or natural persons to apply for judicial confirmation of imperfect titles to public land — was no longer deemed to be binding precedent. The case of *Meralco*, and similar cases,[35] assumed that the land is still public land and would cease to be public land "only upon the issuance of the certificate of title to any Filipino citizen claiming it under Section 48(b)."

In *Republic* v. *Villanueva*,[36] for instance, the Supreme Court ruled that the Constitution prohibits a corporation sole or a juridical person like the *Iglesia Ni Cristo* to avail of the benefits of Section 48(b) of the Public Land Act which applies only to Filipino citizens or natural persons; that the subject lots are not private lands because possession by the applicant and its predecessors-in-interest has not been since time immemorial; and that land registration proceeding under Section 48(b) of the Public Land Act presupposes that the land is public. The same ruling was applied in *Republic* v. *Court of Appeals and Iglesia ni Cristo*[37] where the Court sustained the stand of the Republic that the INC, as a corporation sole or juridical person which has no nationality, is disqualified to hold alienable lands of the public domain.

But *Acme* has evolved what is now the prevailing jurisprudence on the matter. As elucidated in the concurring opinion of Chief Justice Teehankee (whose vigorous dissenting opinion in *Meralco* v. *Castro-Bartolome* was the basis of the majority opinion in *Acme*), when natural persons have fulfilled the required statutory period of possession, the Public Land Act confers on them a legally sufficient and transferable title to the land, "which are already *private lands*

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[34]114 SCRA 799 (1982).

[35]Republic v. Villanueva, GR No. L-55289, June 29, 1982, 114 SCRA 875; Iglesia ni Cristo v. Hon. Judge, Br. I, CFI of Nueva Ecija, GR No. L-35273, July 25, 1983, 28 Phil. 441; Republic v. Court of Appeals and Iglesia ni Cristo, GR No. L-59447, Dec. 27, 1982.

[36]*Supra*.

[37]*Supra*.

because of *acquisitive prescription*," and which could be validly transferred or sold to private corporations.

### *2. Natividad* v. *Court of Appeals and Republic*

In *Natividad* v. *Court of Appeals and Republic*,[38] the facts are: On January 18, 1982, Tomas Claudio Memorial College, Inc. (TCMC) filed in the Court of First Instance of Rizal an application for registration of title to six (6) parcels of land, situated in Morong, Rizal. On August 16, 1982, the Director of Lands opposed the application on the ground, among others, that the applicant is a private corporation disqualified under the 1973 Constitution to hold alienable land of the public domain. Meantime, on November 19, 1982, TCMC filed a motion for substitution, praying that it be substituted by petitioners Oscar Natividad, Eugenio Pascual and Bartolome Ramos because on November 9, 1982, it sold to them the six parcels of land subject of its application. The motion was granted by the lower court. Accordingly, in lieu of TCMC, the petitioners thereafter adduced evidence in support of the application, showing that the original owners had possessed and cultivated the land as owners for more than 30 years before they were sold to TCMC.

On March 16, 1983, the lower court rendered a decision ordering the registration of the six lots in the names of Natividad, Pascual and Ramos. The Director of Lands appealed to the Court of Appeals alleging that the trial court erred in not holding that the registration of titles of the parcels of land in question in favor of petitioners through substitution was a circumvention of the constitutional prohibition against acquisition by private corporations of alienable lands of the public domain and that, furthermore, petitioners failed to adduce adequate and substantial proof that they and their predecessors-in-interest had been in open, continuous, exclusive and notorious possession in the concept of owners since June 12, 1945 or prior thereto, as required by law.

On August 25, 1988, the Court of Appeals reversed the lower court's decision and denied the application for registration of title in petitioners' names. The case reached the Supreme Court which upheld petitioners' right to registration, stating:

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[38]GR No. 88233, Oct. 4, 1991, 202 SCRA 439.

"The issue raised in the petition for review is whether TCMC, may by itself, or through its vendees, register the titles of the lots in question.

Determinative of this issue is the character of the parcels of land — whether they were still public land or already private when the registration proceedings were commenced. If they were already private lands, the constitutional prohibition against acquisition by a private corporation would not apply (Director of Lands vs. Intermediate Appellate Court and Acme Plywood & Veneer Co., Inc., 146 SCRA 509).

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The thrust of the argument of the Director of Lands is that the sales of the parcels of land to the petitioners were sham transactions intended to circumvent the constitutional prohibition disqualifying a private corporation from acquiring alienable lands of the public domain.

In Susi vs. Razon (48 Phil. 424), this Court ruled that 'open, continuous, adverse and public possession of a land of the public domain from time immemorial by a private individual personally and through his predecessors confers an effective title on said possessor, whereby the land ceases to be public, to become private property.'

In the Acme case, supra, this Court upheld the doctrine that 'open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property.' We said:

x x x x x x x x x

Under the facts of this case and pursuant to the above rulings, the parcels of land in question had already been converted to private ownership through acquisitive prescription by the predecessors-in-interest of TCMC when the latter purchased them in 1979. All that was needed was the confirmation of the titles of the previous owners or predecessors-in-interest of TCMC.

*Being already private land when TCMC bought them in 1979, the prohibition in the 1973 Constitution against corporations acquiring alienable lands of the public domain except through lease (Article XIV, Section 11, 1973 Constitution) did not apply to them for they were no longer alienable lands of the public domain but private property."* (Emphasis supplied)

As to the contention of the Director of Lands that the substitution by petitioners of the corporation (TCMC) is a circumvention of the constitutional prohibition, the Supreme Court stated:

"The Director's contention that a corporation may not apply for confirmation of title under Section 48 of Commonwealth Act 141, the Public Land Act, was disposed of in the Acme case where this Court ruled that the defect in filing the confirmation proceedings in the name of a corporation was simply an 'accidental circumstance, . . . in nowise affecting the substance and merits of the right of ownership sought to be confirmed in said proceedings.' *(Director of Lands vs. IAC and Acme Plywood & Veneer Co., Inc., 146 SCRA 509, 522.) Since the petitioners could have had their respective titles confirmed prior to the sale to TCMC, it was not necessary for the corporation to take the circuitous route of assigning to natural persons its rights to the lots for the purpose of complying, on paper, with the technicality of having natural persons file the applications for confirmation of title to the private lands*." (Emphasis supplied)

**10. Vested rights cannot be impaired by subsequent law.**

What clearly emerges from the catena of cases from *Susi* down to the present bulk of jurisprudence involving registration of property is that vested rights may not be impaired without violating one's right to due process.

A right is vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. It is some right or interest in property which has become fixed and established and is no longer open to doubt or controversy.[39] A State may not impair vested rights by

[39]Balboa v. Farrales, GR No. 27059, Feb. 14, 1928, 51 Phil. 498.

legislative enactment, by the enactment or by the subsequent repeal of a municipal ordinance, or by a change in the constitution of the State, except in a legitimate exercise of the police power. The due process clause prohibits the annihilation of vested rights.[40]

The doctrine of vested rights was articulated in *Acme* when the Supreme Court declared that the purely accidental circumstance that confirmation proceedings were brought under the aegis of a subsequent law which forbids corporations from owning lands of the public domain cannot defeat a right already vested before that law came into effect, or invalidate transactions then perfectly valid and proper. The Court emphatically stated that even the Constitution or subsequent law cannot impair vested rights.

### (1) *Republic* v. *Court of Appeals and Baloy*

In *Republic* v. *Court of Apeals and Baloy*,[41] the Court of Appeals, in its decision dated dated February 3, 1977, reversed that of the registration court and ordered the registration of the land applied for to the heirs of Domingo Baloy. The applicants anchored their claim on the possessory information title of Domingo Baloy which he acquired under the Spanish Mortgage Law, coupled with their continuous, adverse and public possession over the land in question. The Director of Lands appealed to the Supreme Court, alleging that on November 26, 1902, pursuant to the executive order of the President of the U.S., the area was declared within the U.S. naval reservation. Under Act No. 627, as amended, a period was fixed within which persons affected thereby could file their application, that is, within 6 months from July 8, 1905, otherwise "the said lands or interests therein will be conclusively adjudged to be public lands and all claims on the part of private individuals for such lands or interests therein not presented will be forever barred." The Director of Lands contended that since Domingo Baloy failed to file his claim within the prescribed period, the land had become irrevocably public and could not be the subject of registration as private property.

The Supreme Court was unswayed and said that under Section 3 of the Act, private land could be deemed to have become public land only by virtue of a judicial declaration after due notice and

[40]Ayog v. Cusi, GR No. L-46729, Nov. 19, 1982, 118 SCRA 492.
[41]GR No. L-46145, Nov. 26, 1986, 146 SCRA 15.

hearing. Without a judgment or order declaring the land to be public, its private character and the possessory information title over it must be respected. Since no such order had been issued by the Land Registration Court, it necessarily follows that it never became public land through the operation of Act No. 627. To assume otherwise is to deprive applicants of their property without due process of law. Due process requires that the statutes under which it is attempted to deprive a citizen of private property without or against his consent must be strictly complied with, because such statutes are in derogation of general rights.

### (2) *Ayog* v. *Cusi*

The case of *Ayog* v. *Cusi*[42] is about the application of Section 11, Article XIV of the 1973 Constitution, providing that "no private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area."[43] During the effectivity of the 1935 Constitution which expressly allowed private juridical entities to acquire alienable lands of the public domain not exceeding 1,024 hectares, respondent Biñan Development Co., Inc., a private corporation, purchased from the Bureau of Lands a parcel of public agricultural land with an area of 250 hectares and obtained favorable judgment from a civil court to evict the occupants thereof. However, it was only when the 1973 Constitution took effect that the sales patent and the Torrens title of the subject land were issued and the judgment of the lower court became final and executory after its affirmance on appeal. Petitioners brought an action for prohibition when respondent corporation moved for execution of the judgment evicting them from the premises. Petitioners contended that the adoption of the 1973 Constitution disqualifying a private corporation from purchasing public lands was a supervening fact which rendered it legally impossible to execute the lower court's judgment. On review, the Supreme Court, through Justice Aquino, dismissed the petition holding that the prohibition under Section 11, Article XIV of the 1973 Constitution has no retroactive application to the sales application of respondent corpo-

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[42]*Supra*.

[43]Sec. 3, Art. XII of the 1987 Constitution similarly provides that "(p)rivate corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area."

ration because the latter had already acquired a vested right to the land applied for at the time the new Constitution took effect.

The rule then is that where the applicant, before the Constitution took effect, had fully complied with the construction and cultivation requirements and has fully paid the purchase price, he should be deemed to have acquired by purchase the particular tract of land and to him the area limitation in the new Constitution would not apply.

### (3) *Sta. Monica Industrial and Development Corporation* v. *Court of Appeals*

The case of *Sta. Monica Industrial and Development Corporation* v. *Court of Appeals*[44] gives emphatic deference to private rights. The case arose from proceedings initiated by the government to annul a 1912 decision of the land registration court, as well as the decree and title issued to Justo de Perio, and the certificates of title issued to subsequent transferees, including that of petitioner Sta. Monica Industrial and Development Corporation. The government alleged that the decree in LRC No. 6431 was null and void for lack of jurisdiction because the land was inside the U.S. naval reservation and that it was still within the forest zone in 1912, having been released therefrom only in 1961, and hence cannot be the subject of disposition or alienation as private property. Petitioner intervened and filed a motion for preliminary hearing on the affirmative defense of *res judicata*, which the Court of Appeals denied, holding that *res judicata* cannot be invoked as a bar to an action for annulment of judgment on the ground of lack of jurisdiction. The question presented before the Supreme Court is whether or not the Court of Appeals committed reversible error of law in denying petitioner's motion for preliminary hearing on its affirmative defense of *res judicata*. In ordering the dismissal of the government's action for annulment of the judgment of the registration court, the Supreme Court held that the proclamation reserving the area as a naval reservation cannot prejudice the title of Justo de Perio, although still imperfect, which was confirmed in 1912.

> "Act No. 926, known as the Public Land Act, which was enacted into law on October 7, 1903 but which took

[44]GR No. 83290, Sept. 21, 1990, 189 SCRA 762.

effect on July 26, 1904, was the law applicable to De Perio's petition for confirmation of his title to the two (2) parcels of land. It provided:

x x x x x x x x x

'6. All persons who by themselves or their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural public lands, as defined by said act of Congress of July first, nineteen hundred and two, under a *bona fide* claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this Act, except when prevented by war or *force majeure*, shall be conclusively presumed to have performed all the conditions essential to a government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter.'

In other words, a person who had been in open, continuous, exclusive and notorious possession and occupation of public agricultural land for a period of at least ten (10) years prior to July 24, 1904 could petition for the confirmation of his title over the land he had so possessed and occupied.

The land registration court confirmed De Perio's title to the two (2) parcels of land after due notice and hearing. x x x

If the land is agricultural as defined by law, and as confirmed by Judge Ostrand, it could not have been forest land as claimed by public respondent, the subsequent land classification map notwithstanding. This conclusion is supported by the fact that the two (2) parcels of land were in the *Olongapo townsite* and were *bounded by privately-owned land*.

If De Perio had title to the land in 1904, although still imperfect, then it could not have been prejudiced by the proclamation of Governor-General Smith in 1908 which reserved for naval purposes land in Subic, Zambales. Said proclamation recognized the existence of private rights, x x x ."

**11. Title is void where land is inalienable and may be cancelled even in the hands of an innocent purchaser for value.**

It is well-settled that a certificate of title is void when it covers property of public domain classified as forest or timber and mineral lands. Any title issued on non-disposable lots even in the hands of an alleged innocent purchaser for value, shall be cancelled.[45] Where the lower court, in granting titles to the land in dispute, counted the period of possession of private respondents before the same were released as forest lands for disposition, such release is tantamount to qualifying the latter to a grant on said lands while they were still non-disposable. Thus, even assuming that the transferees are innocent purchasers for value, their titles to said lands derived from the titles of private respondents which were not validly issued as they cover lands still a part of the public domain, may be cancelled.[46]

**12. Land declared public land in a previous registration case may be the subject of judicial confirmation.**

In *Zara* v. *Director of Lands*,[47] a parcel of land which had been declared public land in a previous registration proceeding, was again the subject of application by persons claiming an imperfect title thereto on the basis of their continuous and adverse possession for more than thirty years. The trial court, however, dismissed the application on the ground of *res judicata*. But the Supreme Court reversed the order of dismissal, holding:

> "It should be noted that appellants' application is in the alternative: for registration of their title of ownership under Act 496 or for judicial confirmation of their 'imperfect' title or claims based on adverse and continuous possession for at least thirty years. It may be that although they were not actual parties in that previous case the judgment therein is a bar to their claim as owners under the first alternative, since the proceeding was *in rem*, of which they and their predecessor had constructive notice

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[45]Lepanto Consolidated Mining Co. v. Dumyung, GR Nos. L-31666-68, April 30, 1979, 89 SCRA 532.

[46]Republic v. Court of Appeals and Bernabe, GR No. L-40402, March 16, 1987, 148 SCRA 480.

[47]GR No. L-19535, July 10, 1967, 20 SCRA 641.

of publication. Even so this is a defense that properly pertains to the Government, in view of the fact that the judgment declared the land in question to be public land. In any case, appellants' imperfect possessory title was not disturbed or foreclosed by such declaration, for precisely the proceeding contemplated in the aforecited provision of Commonwealth Act 141 presupposes that the land is public. The basis of the decree of judicial confirmation authorized therein is not that the land is already privately owned and hence no longer part of the public domain, but rather that by reason of the claimant's possession for thirty years he is conclusively presumed to have performed all the conditions essential to a Government grant."

### 13. Decision of the cadastral court declaring land as public land does not constitute *res judicata*.

The decision in a cadastral case declaring land as public land does not constitute *res judicata* as to bar even the same claimant from subsequently filing an application for judicial confirmation of his title to the same land, provided he thereafter complies with all the conditions prescribed under Section 48(b) of the Public Land Act. Thus did the Supreme Court rule in *Director of Lands* v. *Court of Appeals and Pastor*:[48]

> "But granting for a moment, that the defense of *res adjudicata* was properly raised by petitioner herein, WE still hold that, factually, there is no prior final judgment at all to speak of. The decision in Cadastral Case No. 41 does not constitute a bar to the application of respondent Manuela Pastor; because a decision in a cadastral proceeding declaring a lot public land is not the final decree contemplated in Sections 38 and 40 of the Land Registration Act.
>
> A judicial declaration that a parcel of land is public, does not preclude even the same applicant from subsequently seeking a judicial confirmation of his title to the same land, provided he thereafter complies with the provisions of Section 48 of Commonwealth Act No. 141, as

[48]GR No. L-47847, July 31, 1981, 106 SCRA 426.

amended, and as long as said public land remains alienable and disposable (now Sections 3 and 4, P.D. No. 1073)."[49]

## 14. Application must conform to the requirements of the Property Registration Decree.

Section 50 of the Public Land Act requires that every person claiming any lands or interest in lands under Chapter VIII must in every case present an application to the Regional Trial Court, praying that the validity of the alleged title or claim be inquired into and that a certificate of title be issued to him under the provisions of the Property Registration Decree (PD No. 1529).

The application shall conform as nearly as may be in its material allegations to the requirements of an application for registration under Section 15 of the Decree.

## 15. Hearing.

Applications for registration shall be heard in the Regional Trial Court in the same manner and shall be subject to the same procedure as established in the Property Registration Decree. Notice of all such applications, together with a plan of the lands claimed, shall be immediately forwarded to the Director of Lands, who may appear as a party in such cases. Prior to the publication for hearing, all of the papers in said case shall be transmitted by the clerk to the Solicitor General or officer acting in his stead, in order that he may, if he deems it advisable for the interests of the government, investigate all of the facts alleged in the application or otherwise brought to his attention.[50]

## 16. Burden of proof rests on applicant.

The burden is on applicant to prove his positive averments and not for the government or the private oppositors to establish a negative proposition insofar as the applicants' specific lots are concerned. He must submit convincing proof of his and his predecessor-in-interest's actual, peaceful and adverse possession in

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[49]See also Director of Lands v. Court of Appeals and Manlapaz, GR No. 45828, June 1, 1992, 209 SCRA 457.

[50]Sec. 51, Public Land Act.

the concept of owner of the lots during the period required by law. This is of utmost significance in view of the basic presumption that lands of whatever classification belong to the State and evidence of a land grant must be "well-nigh incontrovertible."[51]

**17. Order for the issuance of a decree.**

Whenever any judgment of confirmation or other decree of the court shall become final, the clerk of court shall certify that fact to the Director of Lands, with a certified copy of the decree of confirmation or judgment of the court and the plan and technical description of the land.[52]

The final decree of the court shall in every case be the basis for the original certificate of title in favor of the persons entitled to the property under the procedure prescribed in the Property Registration Decree.[53]

## *(B) REGISTRATION UNDER THE PROPERTY REGISTRATION DECREE*

**01. Who may Apply.**

Section 14 of PD No. 1529, the Property Registration Decree, enumerates the persons who may apply for registration, whether personally or through their duly authorized representatives, to wit:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

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[51]Director of Lands v. Court of Appeals and Manlapaz, *supra*.
[52]Sec. 56, Public Land Act.
[53]Secs. 39 to 42, Property Registration Decree.

Where the land is owned in common, all the co-owners shall file the application jointly.

Where the land has been sold under *pacto de retro*, the vendor *a retro* may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee *a retro*, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust.

### (1) Co-owners shall file application jointly

Under Article 493 of the Civil Code, each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. Since a co-owner cannot be considered a true owner of a specific portion until division or partition is effected, he cannot file an application for registration of the whole area without joining the co-owners as applicants.

### (2) Vendee *a retro* may file application in his name

It is to be noted that a sale with *pacto de retro* transfers the legal title to the vendee[1] and the vendee is subrogated to all the rights and actions of the vendor, subject to the latter's right of redemption.[2] Having the legal title to the land, the vendee *a retro* has therefore a registrable title thereto which may be the subject of initial registration. The right to redeem the property retained by the vendor *a retro* should only be noted in the decree and certificate of title that may be issued.

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[1]Alderete v. Amandoron, GR No. L-22588, Nov. 13, 1924, 46 Phil. 488.
[2]Floro v. Granada, GR No. L-1234, April 30, 1949, 83 Phil. 487.

### (3) Corporation sole may purchase and hold real estate

A trustee on behalf of his principal may apply for original registration of any land held in trust by him. A corporation sole is organized and composed of a single individual, the head of any religious society or church, for the *administration* of the temporalities of such religious society or church. A corporation sole, by the nature of its incorporation, is vested with the right to purchase and hold real estate and personal property. It need not therefore be treated as an ordinary private corporation because whether or not it be so treated such, the Constitutional provision prohibiting private corporations from acquiring public agricultural lands will not apply.[3]

A corporation sole or "ordinary" is not the owner of the properties that he may acquire but merely the administrator thereof and holds the same *in trust* for the faithful or members of the society or church for which the corporation is organized. Properties acquired by the incumbent pass, by operation of law, upon his death not to his personal heirs but to his successor in office.[4]

## 02. No material differences between Sec. 14(1) of PD No. 1529 and Sec. 48(b) of CA No. 141

Section 14(1) of the Property Registration Decree (PD No. 1529) is practically a verbatim copy of Section 48(b) of the Public Land Act (CA No. 141), as amended, hence, the discussion on judicial confirmation of imperfect or incomplete titles is applicable to applications for registration under Section 14(1) of the Decree. "Indeed, there are no material differences between Section 14(1) of the Property Registration Decree and Section 48(b) of the Public Land Act, as amended. True, the Public Land Act does refer to 'agricultural lands of the public domain,' while the Property Registration Decree uses the term 'alienable and disposable lands of the public domain.' It must be noted though that the Constitution declares that 'alienable lands of the public domain shall be limited to agricultural lands.' Clearly, the subject lands under Section 48(b) of the Public Land Act

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[3]Republic v. Intermediate Appellate Court and Roman Catholic Bishop of Lucena, GR No. 75042, Nov. 29, 1988, 168 SCRA 165.

[4]Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission, GR No. L-8451, Dec. 20, 1957, 102 Phil. 596.

and Section 14(1) of the Property Registration Decree are of the same type."[5]

Section 14(1) of the Property Registration Decree pertains to original registration through ordinary registration proceedings. Like Section 48(b) of the Public Land Act, the right to file the application for registration derives from a *bona fide* claim of ownership going back to June 12, 1945 or earlier, by reason of the claimant's open, continuous, exclusive and notorious possession of alienable and disposable lands of the public domain in the concept of owner.

The requisites for the filing of an application for registration of title under Section 14(1) are:

(a) that the property in question is alienable and disposable land of the public domain;

(b) that the applicants, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive and notorious possession and occupation; and

(c) that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.[6]

**03. Land must already be A and D at the time of the filing of the application.**

In the case of *Republic* v. *Court of Appeals and Naguit*,[7] the central question for resolution is whether it is necessary under Section 14(1) of the Property. Registration Decree that the subject land be first classified as alienable and disposable before the applicant's possession under a *bona fide* claim of ownership could even start. The Court answered in the negative, holding that Section 14(1) merely requires the property sought to be registered as already alienable and disposable "*at the time the application for registration of title is filed*." The Court, through Justice Tinga, expounded:

> "Petitioner (Republic) suggests an interpretation that the alienable and disposable character of the land should have already been established since June 12, 1945 or

[5]Republic v. Court of Appeals and Naguit, GR No. 144057, Jan. 17, 2005, 448 SCRA 442.

[6]*Ibid.*

[7]*Supra*.

earlier. This is not borne out by the plain meaning of Section 14(1). 'Since June 12, 1945,' as used in the provision, qualifies its antecedent phrase 'under a *bona fide* claim of ownership.' Generally speaking, qualifying words restrict or modify only the words or phrases to which they are immediately associated, and not those distantly or remotely located. *Ad proximum antecedents fiat relation nisi impediatur sentencia*.

Besides, we are mindful of the absurdity that would result if we adopt petitioner's position. Absent a legislative amendment, the rule would be, adopting the OSG's view, that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable. The unreasonableness of the situation would even be aggravated considering that before June 12, 1945, the Philippines was not yet even considered an independent state.

Instead, *the more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed*. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.

This reading aligns conformably with our holding in *Republic* v. *Court of Appeals*. Therein, the Court noted that 'to prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a

presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.' In that case, the subject land had been certified by the DENR as alienable and disposable in 1980, thus the Court concluded that the alienable status of the land, compounded by the established fact that therein respondents had occupied the land even before 1927, sufficed to allow the application for registration of the said property. In the case at bar, even the petitioner admits that the subject property was released and certified as within alienable and disposable zone in 1980 by the DENR." (Emphasis supplied)

The Court, however, stressed that the rule is different with respect to *non-agricultural* lands, like forest lands. There can be no imperfect title to be confirmed over lands not yet classified as disposable or alienable. Indeed, it has been held that the rules on the confirmation of imperfect title do not apply unless and until the land classified as forest land is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain.[8]

The Court, in *Naguit*, further explained:

"A different rule obtains for forest lands, such as those which form part of a reservation for provincial park purposes, the possession of which cannot ripen into ownership. It is elementary in the law governing natural resources that forest land cannot be owned by private persons. As held in *Palomo* v. *Court of Appeals*, forest land is not registrable and possession thereof, no matter how lengthy, cannot convert it into private property, unless such lands are reclassified and considered disposable and alienable. In the case at bar, the property in question was undisputedly classified as disposable and alienable; hence, the ruling in *Palomo* is inapplicable, as correctly held by the Court of Appeals.

It must be noted that the present case was decided by the lower courts on the basis of Section 14(1) of the Property Registration Decree, which pertains to original

[8]GR No. 107427, June 25, 2000, 380 Phil. 156.

registration through ordinary registration proceedings. The right to file the application for registration derives from a *bona fide* claim of ownership going back to June 12, 1945 or earlier, by reason of the claimant's open, continuous, exclusive and notorious possession of alienable and disposable lands of the public domain."

**04. Section 14(2) authorizes acquisition of ownership by prescription.**

Did the enactment of the Property Registration Decree and the amendatory PD No. 1073 preclude the application for registration of alienable lands of the public domain, possession over which commenced only *after* June 12, 1945? It did not, considering Section 14(2) of the Decree which governs and authorizes the application of "those who have acquired ownership of private lands by prescription under the provisions of existing laws." While as a rule, prescription does not run against the State, the exception is where the law itself expressly provides. An example is said Section 14(2) which specifically allows qualified individuals to apply for the registration of property, ownership of which he has acquired by prescription under existing laws.

Prescription is one of the modes of acquiring ownership under the Civil Code. Properties classified as alienable public land may be converted into private property by ordinary prescription of ten years, or extraordinary prescription of thirty years, without need of title or good faith. With such conversion, such property may now fall within the contemplation of "private lands" under Section 14(2), and may be registered even if the possession commenced on a date *later* than June 12, 1945.[9]

**(1) Prescription, generally**

By prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the action laid down by law.[10] All things which are within the commerce of men are susceptible of prescription, unless otherwise provided. Property of the State or any of its subdivisions not patrimonial in character shall

[9]Republic v. Court of Appeals and Naguit, *supra*.
[10]Art. 1106, Civil Code.

not be the object of prescription.[11] Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law.[12]

Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.[13] Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.[14]

The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.[15] For purposes of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.[16]

### (2) Concept of possession for purposes of prescription

Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession. Actual possession of land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property. The general rule is that the possession and cultivation of a portion of a tract under claim of ownership of all is a constructive possession of all, if the remainder is not in the adverse possession of another. Of course, there are a number of qualifications to the rule, one particularly relating to the size of the tract in controversy with reference to the portion actually in possession of the claimant.[17]

To consolidate prescription, the possession must be that of owner, and it must be public, peaceful and uninterrupted. Acts of a

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[11]Art. 1113, *ibid.*
[12]Art. 1117, *ibid.*
[13]Art. 1134, *ibid.*
[14]Art. 1137, *ibid.*
[15]Art. 1127, *ibid.*
[16]Art. 1129, *ibid.*
[17]Ramos v. Director of Lands, GR No. 13298, Nov. 19, 1918, 39 Phil. 175.

possessory character done by virtue of a license or mere tolerance on the part of the real owner are not sufficient.[18]

### (3) Computation of prescription

In the computation of time necessary for prescription, the present possessor may complete the period necessary for prescription by tacking his possession to that of his grantor or predecessor-in-interest. It is presumed that the present possessor who was also the possessor at a previous time, has continued to be in possession during the intervening time, unless there is proof to the contrary.[19]

### (4) Prescription distinguished from laches

Prescription is different from laches. While prescription is concerned with the fact of delay, *laches* is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on a fixed time, laches is not.[20]

## 05. Acquisition of private lands or abandoned river beds by right of accession or accretion.

Section 14(c) refers to acquisition of ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

### (1) Ownership of abandoned river beds by right of accession

Under Article 461 of the Civil Code, river beds which are abandoned through the natural change in the course of the waters *ipso facto* belong to the owners whose lands are occupied by the new course in proportion to the area lost. However, the owners of the lands

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[18]Seminary of San Carlos v. Municipality of Cebu, GR No. L-4641, March 13, 1911, 19 Phil. 32.

[19]Art. 1138, Civil Code.

[20]Lacamen v. Laruan, GR No. L-27088, July 31, 1975, 65 SCRA 605.

adjoining the old bed shall have the right to acquire the same by paying the value thereof, which value shall not exceed the value of the area occupied by the new bed.

To illustrate: A and B each owns land on opposite sides of a river. The river changed its course, passing through the land of C. Who owns the abandoned river bed? C, to compensate him for his loss. Now, suppose that two owners, C and D, lost portions of their lands. Who owns the river bed? C and D, in proportion to the area lost.

The requisites for the application of Article 61 are:

(a) The change must be *sudden* in order that the old river may be identified.

(b) The changing of the course must be more or less permanent, and not temporary overflooding of another's land.

(c) The change of the river must be a *natural one, i.e.*, caused by natural forces (and not by *artificial* means).

(d) There must be definite *abandonment* by the government. (If the government shortly after the change decides and actually takes steps to bring the river to its old bed, Article 461 will not apply for, here, it cannot be said that there was abandonment.)

(e) The river must *continue to exist,* that is, it must not completely dry up or disappear.[21]

### (2) Ownership by right of accretion

Article 457 of the Civil Code provides that to the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters. The law is taken from the Law of Waters of 1866 which provided in Article 84 that "the accretion resulting from the gradual deposit by or sedimentation from the waters belongs to the owners of land bordering on streams, torrents, lakes, and rivers." The article requires the concurrence of three requisites before an accretion is said to have taken place. They are:

(a) That the deposit be gradual and imperceptible;

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[21]Paras, Civil Code of the Philippines, Vol. II, 1994 Ed., 249-250.

(b) That it be made through the effects of the current of the water; and

(c) That the land where accretion takes place is adjacent to the banks of rivers.[22]

In the absence of evidence that the change in the course of the river was sudden or that it occurred through avulsion, the presumption is that the change was gradual and caused by accretion and erosion.[23] Acts of possession exercised over the bordering land are always understood legally to cover that portion added to the property by accretion.[24] The right of the owner of land to additions thereto by accretion has been said to rest in the law of nature, and to be analogous to the right of the owner of a tree to its fruits, and the owner of flocks and herds to their natural increase.[25]

The fact that the accretion to one's land used to pertain to another's estate, which is covered by a Torrens certificate of title, cannot preclude the former from being the owner thereof. Registration does not protect the riparian owner against the diminution of the area of his land through gradual changes in the course of the adjoining stream. Accretions which the banks of rivers may gradually receive from the effect of the current become the property of the owners of the banks. Such accretions are natural incidents to land bordering on running streams and the provisions of the Civil Code in that respect are not affected by the Land Registration Act (now Property Registration Decree).[26]

### *1. Alluvion must be the exclusive work of nature*

The requirement that the deposit should be due to the effects of the current of the river is indispensable. This excludes from Article 457 all deposits caused by human intervention. Alluvion must be the exclusive work of nature. There must be evidence to prove that the addition to the property was made gradually through the effects of the current of the river.

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[22]Republic v. Court of Appeals and Tancinco, GR No. L-61647, Oct. 12, 1984, 132 SCRA 514.

[23]Hodges v. Garcia, GR No. L-12730, Aug. 22, 1960, 109 Phil. 133.

[24]Cortes v. City of Manila, GR No. L-4012, March 25, 1908, 10 Phil. 567.

[25]Agne v. Director of Lands, GR No. 40399, Feb. 6, 1990, 181 SCRA 793.

[26]Hodges v. Garcia, *supra*.

In *Republic* v. *Court of Appeals and Tancinco,*[27] private respondents filed an application for the registration of three lots adjacent to their fishpond property. The lower court rendered a decision granting the application on the finding that said lots are accretions to the respondents' fishponds covered by TCT No. 89709. The decision was affirmed by the Court of Appeals. On a petition for review, the Supreme Court sustained the government's contention that there can be no accretion since private respondents simply transferred their dikes further down the river bed of the river, and so, if there is any accretion at all, it is man-made and artificial and not the result of the gradual and imperceptible sedimentation by the waters of the river. When private respondents transferred their dikes towards the river bed, the dikes were meant for reclamation purposes and not to protect their property from the destructive force of the waters of the river. The lots remained portions of the bed of the river, classified as property of the public dominion under Article 420, par. 1 and Article 502, par. 1 of the Civil Code, and are not open to registration.

A riparian owner then does not acquire the additions to his land caused by special works expressly intended or designed to bring about accretion.[28] Indeed, private persons cannot, by themselves, reclaim land from water bodies belonging to the public domain without proper permission from government authorities. And even if such reclamation had been authorized, the reclaimed land does not automatically belong to the party reclaiming the same as they may still be subject to the terms of the authority earlier granted.[29]

### *2. Reason for the law on accretion*

The reason behind the law giving the riparian owner the right to any land or alluvion deposited by a river is to compensate him for the danger of loss that he suffers because of the location of his land. Rivers are exposed to floods and other evils produced by the destructive force of the waters. If lands bordering on streams are exposed to floods and other damage due to destructive force of the waters, and if by virtue of law they are subject to encumbrances and various kinds of easements, it is only just that such risks or dangers as may prejudice the owners thereof should in some way be compen-

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[27]*Supra*.

[28]Republic v. Court of Appeals and Tancinco, *supra*.

[29]Republic v. Court of Appeals and Del Rio, GR No. L-43105, Aug. 31, 1984, citing Arts. 5 and 18, Law of Waters of 1866.

sated by the right of accretion.[30] Hence, the riparian owner does not acquire the additions to his land caused by special works expressly intended or designed to bring about accretion.

### *3. Accretion does not automatically become registered land*

Under Article 457 of the Civil Code, the registered owner of property is considered the lawful owner of the accretion to his property. But the accretion does not become automatically registered land just because the lot which receives it is covered by a Torrens title thereby making the alluvial property imprescriptible. This is akin to the principle that an unregistered land purchased by the registered owner of the adjoining land does not, by extension, become *ipso facto* registered land. Ownership of a piece of land is one thing, and registration under the Torrens system of that ownership is quite another. Ownership over the accretion received by the land adjoining a river is governed by the Civil Code. Imprescriptibility of registered land is provided in the registration law. Thus, where petitioners never sought the registration of the alluvial property, the increment never became registered property, hence, not subject to the protection of imprescriptibility of registered property under the Torrens system. Consequently, the land may still be acquired through prescription by third persons.[31]

The accretion does not automatically become registered land just because the lot which receives such accretion is covered by a Torrens title. As such, it must also be placed under the operation of the Torrens system.[32]

Where the lot sought to be registered was formed by accretion which it gradually received from the effects of the current of the waters, the title to the lot vested in said applicant under Article 457 of the Civil Code from the time the alluvial deposit was formed. The petition of the riparian owner asking the registration court "to declare him the owner" of the lot is in effect a request for confirmation of the title already vested in him by the law.[33]

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[30]Cortes v. City of Manila, *supra*.

[31]Grande v. Court of Appeals, GR No. L-17652, June 30, 1962, 5 SCRA 524.

[32]Cureg v. Intermediate Appellate Court, GR No. 73465, Sept. 7, 1989, 177 SCRA 313.

[33]Fernandez v. Tanada, GR No. L-31673, June 30, 1971, 39 SCRA 524.

### *4. Alluvial formation along the seashore forms part of the public domain*

It should be noted, however, that alluvial formation along the seashore is part of the public domain and, therefore, not open to acquisition by adverse possession by private persons. It is outside the commerce of man, unless otherwise declared by either the executive or legislative branch of the government. Since the land is foreshore land or property of public dominion, its disposition falls under the exclusive supervision and control of the Bureau of Lands (now Lands Management Bureau).[34] Until a formal declaration on the part of the Government, through the executive department or the legislature, to the effect that land is no longer needed for coast guard service, for public use or for special industries, they continue to be part of the public domain, not available for private appropriation or ownership.[35]

The adjoining registered owner of foreshore land cannot claim ownership thereof by right of accretion. Unless he has filed the appropriate application, like a revocable permit application, with the Lands Management Bureau, he has no right whatsoever in the foreshore land as to be entitled to protection in the courts of justice.[36] A revocable permit application, as its name implies, is a temporary authority to occupy a foreshore land, upon payment of permit fees, and cannot be used to acquire the land in full ownership.

Relatedly, Article 4 of the Spanish Law of Waters of August 3, 1866 provides:

> "ART. 4. Lands added to the shore by accretion and alluvial deposits caused by the action of the sea, form part of the public domain. When they are no longer washed by the waters of the sea, and are not necessary for purposes of public utility, or for the establishment of special industries, or for the coast-guard service, the Government shall declare them to be the property of the owners of the estate adjacent thereto and as an increment thereof."

Pursuant to this provision, all lands thrown up by the sea and formed upon the shore by the action of the water, together with the

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[34]Buyser v. Director of Lands, GR No. L-22763, March 18, 1983, 206 Phil. 13.
[35]Ignacio v. Director of Lands, GR No. L-12958, May 30, 1960, 108 Phil. 335.
[36]Buyser v. Director of Lands, *supra*.

adjacent shore, belong to the national domain and are for public uses. The State shall grant these lands to the adjoining owners only when they are no longer needed for the purposes mentioned therein.[37]

In *Ignacio* v. *Director of Lands*,[38] Faustino Ignacio filed an application for the registration of a parcel of land (mangrove) in barrio Gasac, Navotas, Rizal, with an area of 37,877 square meters. The land was formed by alluvial deposits caused by the action of the Manila Bay which borders Ignacio's titled property. Ignacio claimed that he had occupied the land since 1935, planting it with *api-api* trees, and that his possession thereof had been continuous, adverse and public for a period of twenty years. The Director of Lands opposed the application on the ground that the subject parcel is a foreshore land, covered by the ebb and flow of the tide and, therefore, formed part of the public domain. The trial court dismissed the application. In sustaining the order of dismissal, the Court rejected Ignacio's contention that the land belongs to him as an "accretion" formed by gradual deposit by action of the Manila Bay, since Article 366 of the Civil Code (Art. 457, new Civil Code) cited by him refers to accretion or deposits on the banks of rivers, while the accretion in the present case was caused by action of the Manila Bay. A bay is a part of the sea, being a mere indentation of the same. The Court further held that courts have no authority to declare the land no longer necessary for any public use or purpose as to become disposable and available for private ownership.

> "Article 4 of the Law of Waters of 1866 provides that when a portion of the shore is no longer washed by the waters of the sea and is not necessary for purposes of public utility, or for the establishment of special industries, or for coastguard service, the government shall declare it to be the property of the owners of the estates adjacent thereto and as an increment thereof. We believe that only the executive and possibly the legislative departments have the authority and the power to make the declaration that any land so gained by the sea, is not necessary for purposes of public utility, or for the establishment of special industries, or for coast-guard service. If no such declaration has been made by said departments, the lot in question forms part of the public domain."

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[37]Insular Government v. Aldecoa, GR No. 6098, Aug. 12, 1911, 19 Phil. 505.
[38]*Supra.*

The reason for the pronouncement is that the courts are neither primarily called upon, nor indeed in a position to determine whether any public land is to be used for the purposes specified in Article 4 of the Law of Waters. Consequently, "until a formal declaration on the part of the Government, through the executive department or the Legislature, to the effect that the land in question is no longer needed for coast guard service, for public use or for special industries, they continue to be part of the public domain, not available for private appropriation or ownership." The land is not subject to ordinary prescription as it is outside the sphere of commerce. Thus:

"The occupation or material possession of any land formed upon the shore by accretion, without previous permission from the proper authorities, although the occupant may have held the same as owner for seventeen years and constructed a wharf on the land, is illegal and is a mere detainer, inasmuch as such land is outside of the sphere of commerce; it pertains to the national domain; it is intended for public uses and for the benefit of those who live nearby."[39]

### 06. Acquisition of ownership in any other manner provided for by law.

Section 14(4) refers to acquisition of ownership in any other manner provided for by law, which could either be a statute or executive act.

#### (1) Reservation for a specific public purpose by Presidential proclamation

The privilege of occupying public lands with a view of preemption confers no contractual or vested right in the lands occupied and the authority of the President to withdraw such lands for sale or acquisition by the public, or to reserve them for public use, prior to the divesting by the government of title thereof stands, even though this may defeat the imperfect right of a settler. Lands covered by reservation are not subject to entry, and no lawful settlement on them can be acquired.[40]

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[39]Ignacio v. Director of Lands, *supra*, citing Insular Government v. Aldecoa, *supra*.

[40]Republic v. Doldol, GR No. 132963, Sept. 10, 1998, 285 SCRA 359.

### *1. International Hardwood and Veneer Co.* v. *University of the Philippines*

In *International Hardwood and Veneer Co.* v. *University of the Philippines*,[41] the President issued Proclamation No. 791 withdrawing from sale or settlement, and reserving for the College of Agriculture of the University of the Philippines, a parcel of land of the public domain for its experiment station. The reservation is within the area covered by petitioner's timber license agreement. Meantime, RA No. 3990 established a central experiment station for the use of the UP in connection with its research and extension functions, and the "reserved" area was "ceded and transferred in full ownership to the University of the Philippines subject to any existing concessions, if any."

Petitioner thereafter filed suit to declare UP as without right to supervise the cutting and removal of timber and other forest products in the area covered by its subsisting license agreement, and to collect the corresponding forest charges. UP, however, alleged that as grantee, it has acquired full control of the timber and other resources within the area.

In resolving the case, the Supreme Court ruled that when RA No. 3990 "ceded and transferred (the disputed area) in full ownership" to the UP, the Republic completely removed it from the public domain and made UP the absolute owner thereof.

> "When (RA No. 3990) ceded and transferred the property to UP, the Republic of the Philippines completely removed it from the public domain and, more specifically, in respect to the areas covered by the timber license of petitioner, removed and segregated it from a public forest; it divested itself of its rights and title thereto and relinquished and conveyed the same to the UP; and made the latter the absolute owner thereof, subject only to the existing concession. x x x The proviso regarding existing concessions refers to the timber license of petitioner. All that it means, however, is that the right of petitioner as a timber licensee must not be affected, impaired or diminished; it must be respected. But, insofar as the Republic of the Philippines is concerned, all its rights as

[41]GR No. 521518, Aug. 13, 1991, 200 SCRA 554.

> grantor of the license were effectively assigned, ceded and conveyed to UP as a consequence of the above transfer of full ownership. x x x Having been effectively segregated and removed from the public domain or from a public forest and, in effect, converted into a registered private woodland, the authority and jurisdiction of the Bureau of Forestry over it were likewise terminated. x x x However, (petitioner) has the correlative duty and obligation to pay the forest charges, or royalties, to the new owner, the UP, at the same rate as provided for in the Agreement."

The clear implication is that a land grant having been made by a Presidential proclamation and by legislative act, the grantee may apply for the registration of the land and bring it under the operation of the Torrens system.

### *2. Republic, rep. by the Mindanao Medical Center* v. *Court of Appeals*

In *Republic, rep. by the Mindanao Medical Center* v. *Court of Appeals*,[42] the trial court ordered the registration of Lot No. 1176-B-2 situated in Davao City, which was reserved by a Presidential proclamation for medical site purposes in 1956, in favor of petitioner Mindanao Medical Center. Respondent Alejandro de Jesus questioned the registration on the ground that his father, Eugenio de Jesus, had acquired a vested right over the subject lot by virtue of a sales award earlier issued to him by the Director of Lands. On appeal, the Supreme Court ruled in favor of petitioner. It held that Proclamation No. 350 legally effected a land grant to the Mindanao Medical Center validly sufficient for initial registration under the Land Registration Act (Property Registration Decree). Such grant is constitutive of a "fee simple" title or absolute title in favor of petitioner.

### *3. Republic* v. *Doldol*

On November 2, 1987, the President issued Proclamation No. 180 reserving a parcel of land for the Opol National School. Needing the area which was then occupied by Nicanor Doldol for its intended projects, the school made several demands for him to vacate said

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[42]GR No. L-40912, Sept. 30, 1976, 73 SCRA 146.

portion, but he refused. Consequently, the school filed a complaint against him for *accion possessoria*. The trial court ordered Doldol to vacate. On appeal, the appellate court ruled that Doldol was entitled to the portion in question, having possessed the same for thirty-two years from 1959 up to the time of the filing of the complaint in 1991.

Speaking through Justice Romero, the Supreme Court in *Republic* v. *Doldol*[43] reversed the decision of the appellate court, stating that the law, as presently phrased, requires that possession of lands of the public domain must be from *June 12, 1945 or earlier*, for the same to be acquired through judicial confirmation of imperfect title. Doldol could not have acquired an imperfect title to the disputed lot since his occupation thereof started only in 1959, much later than June 12, 1945. Not having complied with the conditions set by law, Doldol cannot be said to have acquired a right to the land in question as to segregate it the mass of the public domain. Doldol cannot, therefore, assert a right superior to the school, given that the President had reserved the lot for the school. Lands covered by reservation are not subject to entry, and no lawful settlement on them can be acquired.

## *(C) REGISTRATION UNDER THE INDIGENOUS PEOPLES RIGHTS ACT*

### 01. The Indigenous Peoples Rights Act.

On October 29, 1997, RA No. 8371, entitled "An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/ Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes," was enacted. It is simply known as "The Indigenous Peoples Rights Act of 1997" or the IPRA.

The IPRA is a law dealing with a specific group of people, *i.e.*, the Indigenous Cultural Communities (ICCs) or the Indigenous Peoples (IPs). The term "ICCs" is used in the 1987 Constitution while that of "IPs" is the contemporary international language in the International Labor Organization (ILO) Convention 169 and the United Nations (UN) Draft Declaration on the Rights of Indigenous

[43]GR No. 132963, Sept. 10, 1998, 295 SCRA 608.

Peoples.[1] The law allows indigenous peoples to obtain recognition of their right of ownership over ancestral lands and ancestral domains by virtue of *native title*.

### (1) Constitutional provision

The 1987 Constitution mandates the State to protect the rights of indigenous cultural communities to their ancestral lands. Section 5, Article XII of the Constitution provides:

> "SEC. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.
>
> The Congress may provide for the applicability of customary law governing property rights or relations in determining the ownership and extent of ancestral domain."

### (2) Constitutionality of the IPRA

In *Cruz* v. *Secretary of Environment and Natural Resources*,[2] petitioners assailed the constitutionality of the IPRA (RA No. 8371) and its Implementing Rules on the ground that they amount to an unlawful deprivation of the State's ownership over lands of the public domain as well as minerals and other natural resources therein, in violation of the *Regalian* doctrine embodied in Section 2, Article XII of the Constitution. They also contended that, by providing for an all-encompassing definition of "ancestral domains" and "ancestral lands" which might even include private lands found within said areas, the law violates the rights of private landowners. In addition, petitioners questioned the provisions of the IPRA defining the powers and jurisdiction of the National Commission on Indigenous Peoples and making customary law applicable to the settlement of disputes involving ancestral domains and ancestral lands on the ground that these provisions violate the due process clause of the Constitution. Finally, petitioners assailed the validity of Rule VII, Part II, Section

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[1]Cruz v. Secretary of Environment and Natural Resources, GR No. 135385, Dec. 6, 2000, 347 SCRA 128, per Justice Puno.

[2]*Supra*.

1 of the NCIP Administrative Order No. 1, series of 1998, which provides that "the administrative relationship of the NCIP to the Office of the President is characterized as a lateral but autonomous relationship for purposes of policy and program coordination." They contended that said Rule infringes upon the President's power of control over executive departments under Section 17, Article VII of the Constitution.

Seven (7) justices voted to dismiss the petition. Justice Kapunan filed an opinion, which the Chief Justice and Justices Bellosillo, Quisumbing, and Santiago joined, sustaining the validity of the challenged provisions of RA No. 8371. Justice Puno also filed a separate opinion sustaining all challenged provisions of the law with the exception of Section 1, Part II, Rule III of NCIP Administrative Order No. 1, the Rules and Regulations Implementing the IPRA, and Section 57 of the IPRA which, he contends, should be interpreted as dealing with the large-scale exploitation of natural resources and should be read in conjunction with Section 2, Article XII of the 1987 Constitution. On the other hand, Justice Mendoza voted to dismiss the petition solely on the ground that it does not raise a justiciable controversy and petitioners do not have standing to question the constitutionality of RA No. 8371.

Seven (7) other members of the Court voted to grant the petition. Justice Panganiban filed a separate opinion expressing the view that Sections 3(a) and (b), 5, 6, 7(a) and (b), 8, and related provisions of RA No. 8371 are unconstitutional. He reserved judgment on the constitutionality of Sections 58, 59, 65, and 66 of the law which he believes must await the filing of specific cases by those whose rights may have been violated by the law. Justice Vitug also filed a separate opinion expressing the view that Sections 3(a), 7, and 57 law are unconstitutional. Justices Melo, Pardo, Buena, Gonzaga-Reyes, and De Leon Jr. joined the separate opinions of Justices Panganiban and Vitug.

As the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, after redeliberation, the voting remained the same. Accordingly, pursuant to Rule 56, Section 7 of the Rules of Court, the petition was dismissed, and the questioned law was deemed upheld as valid.

In his separate opinion, Justice Puno said that the IPRA is a novel piece of legislation. It grants to ICCs/IPs a distinct kind of ownership over ancestral domains and ancestral lands. He noted that

land titles do not exist in the indigenous peoples' economic and social system. The concept of individual land ownership under the civil law is alien to them. Inherently colonial in origin, our national land laws and governmental policies frown upon indigenous claims to ancestral lands. Communal ownership is looked upon as inferior, if not inexistent. It was to address the centuries-old neglect of the Philippine indigenous peoples that the Tenth Congress of the Philippines passed and approved RA No. 8371, the Indigenous Peoples Rights Act (IPRA) of 1997, which recognizes private ownership peculiarly granted to ICCs/IPs over their ancestral lands and domains on the basis of native title. The IPRA categorically declares ancestral lands and domains held by native title as *never to have been* public land. Domains and lands held under native title are, therefore, indisputably presumed to have never been public lands and are *private*. The concept of native title in the IPRA was taken from the 1909 case of *Cariño* v. *Insular Government*,[3] which firmly established a concept of private land title that existed irrespective of any royal grant from the State.

In *Cariño*, an Igorot by the name of Mateo Cariño applied for registration in his name of an ancestral land located in Benguet. The applicant established that he and his ancestors had lived on the land, had cultivated it, and had used it as far they could remember. He also proved that they had all been recognized as owners, the land having been passed on by inheritance according to native custom. However, neither he nor his ancestors had any document of title from the Spanish Crown. The government opposed the application for registration, invoking the theory of *jura regalia*. On appeal, the United States Supreme Court, through Justice Holmes, held that the applicant was entitled to the registration of his native title to their ancestral land, thus:

> "[E]very presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt."

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[3]41 Phil. 935, 212 U.S. 449, 53 L. Ed. 594.

The Court thus laid down the presumption of a certain title held: (a) as far back as testimony or memory went, and (b) under a claim of private ownership. Land held by this title is presumed to "never have been public land."

Justice Puno stressed that ancestral lands and ancestral domains are not parts of the public domain:

> "Thus, ancestral lands and ancestral domains are not part of the lands of the public domain. They are private and belong to the ICCs/IPs. Section 3 of Article XII on National Economy and Patrimony of the 1987 Constitution classifies lands of the public domain into four categories: (a) agricultural, (b) forest or timber, (c) mineral lands, and (d) national parks. Section 5 of the same Article XII mentions ancestral lands and ancestral domains but it does not classify them under any of the said four categories. To classify them as public lands under any one of the four classes will render the entire IPRA law a nullity. The spirit of the IPRA lies in the distinct concept of ancestral domains and ancestral lands. The IPRA addresses the major problem of the ICCs/IPs which is loss of land. Land and space are of vital concern in terms of sheer survival of the ICCs/IPs."

Sustaining the validity of the IPRA, Justice Kapunan explained that the doctrine enunciated in *Cariño* applies only to lands which have always been considered as private, and not to lands of the public domain, whether alienable or otherwise. A distinction must be made between ownership of land under native title and ownership by acquisitive prescription against the State. Ownership by virtue of native title presupposes that the land has been held by its possessor and his predecessors-in-interest in the concept of an owner since time immemorial. The land is not acquired from the State, that is, Spain or its successors-in-interest, the United States and the Philippine Government. There has been no transfer of title from the State as the land has been regarded as private in character as far back as memory goes. In contrast, ownership of land by acquisitive prescription against the State involves a conversion of the character of the property from alienable public land to private land, which presupposes a transfer of title from the State to a private person. Since native title assumes that the property covered by it is private land and is deemed never to have been part of the public domain, the Solicitor General's thesis that native title under *Cariño* applies

only to lands of the public domain is erroneous. Consequently, the classification of lands of the public domain into agricultural, forest or timber, mineral lands, and national parks under the Constitution is irrelevant to the application of the *Cariño* doctrine because the *Regalian* doctrine which vests in the State ownership of lands of the public domain does not cover ancestral lands and ancestral domains. Justice Kapunan further observed:

> "Section 5, Article XII of the Constitution expresses the sovereign intent to 'protect the rights of indigenous peoples to their ancestral lands.' In its general and ordinary sense, the term 'right' refers to any legally enforceable claim. It is a power, privilege, faculty or demand inherent in one person and incident upon another. When used in relation to property, 'right' includes any interest in or title to an object, or any just and legal claim to hold, use and enjoy it. Said provision in the Constitution cannot, by any reasonable construction, be interpreted to exclude the protection of the right of ownership over such ancestral lands. For this reason, Congress cannot be said to have exceeded its constitutional mandate and power in enacting the provisions of IPRA, specifically Sections 7(a) and 8, which recognize the right of ownership of the indigenous peoples over ancestral lands.
>
> The second paragraph of Section 5, Article XII also grants Congress the power to 'provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domains.' In light of this provision, does Congress have the power to decide whether ancestral domains shall be private property or part of the public domain? Also, does Congress have the power to determine whether the 'extent' of ancestral domains shall include the natural resources found therein?
>
> It is readily apparent from the constitutional records that the framers of the Constitution did not intend Congress to decide whether ancestral domains shall be public or private property. Rather, they acknowledged that ancestral domains shall be treated as private property, and that customary laws shall merely determine whether such private ownership is by the entire indigenous cultural community, or by individuals, families, or clans within the community."

**02. Definition of terms.**

**(1) Indigenous Cultural Communities/Indigenous Peoples**

It refers to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.[4]

**(2) Ancestral domains**

It refers to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the

[4]Sec. 3(h), RA No. 3871.

home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.[5]

**(3) Ancestral lands**

It refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.[6]

**(4) Native title**

It refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest.[7]

**(5) Time immemorial**

It refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.[8]

**03. Ancestral domains and ancestral lands are private in character.**

The IPRA recognizes the existence of the indigenous cultural communities or indigenous peoples (ICCs/IPs) as a distinct sector in

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[5]Sec. 3(a), *ibid.*
[6]Sec. 3(b), *ibid.*
[7]Sec. 3(l), *ibid.*
[8]Sec. 3(p), *ibid.*

Philippine society. It grants these people the ownership and pos-session of their ancestral domains and ancestral lands, and defines the extent of these lands and domains. The ownership given is the indigenous concept of ownership under customary law which traces its origin to native title.

Under the IPRA, ancestral lands and ancestral domains are not deemed part of the lands of the public domain but are private lands belonging to indigenous cultural communities or indigenous peoples (ICCs/IPs) who have actually occupied, possessed and utilized their territories under claim of ownership since time immemorial. ICCs/IPs may obtain recognition of their right of ownership by virtue of native title. The private character of ancestral lands and domains is further strengthened by the option given to individual ICCs/IPs over their individually-owned ancestral lands.

Justice Puno, in *Cruz* v. *Secretary of Environment and Natural Resources*,[9] explains the private character of ancestral domains and ancestral lands as follows:

> "Native title refers to ICCs/IPs' preconquest rights to lands and domains held under a claim of private ownership as far back as memory reaches. These lands are deemed never to have been public lands and are indisputably presumed to have been held that way since before the Spanish Conquest. The rights of ICCs/IPs to their ancestral domains (which also include ancestral lands) by virtue of native title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.
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> "Like a Torrens title, a CADT is evidence of private ownership of land by native title. Native title, however, is a right of private ownership peculiarly granted to ICCs/IPs over their ancestral lands and domains. The IPRA categorically declares ancestral lands and domains held by native title as never to have been public land. Domains and lands held under native title are, therefore, indis-

[9] *Supra*.

putably presumed to have never been public lands and are private.

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*Thus, ancestral lands and ancestral domains are not part of the lands of the public domain. They are private and belong to the ICCs/IPs. Section 3 of Article XII* on National Economy and Patrimony of the 1987 Constitution classifies lands of the public domain into four categories: (a) agricultural, (b) forest or timber, (c) mineral lands, and (d) national parks. *Section 5* of the same *Article XII* mentions ancestral lands and ancestral domains but it does not classify them under any of the said four categories. *To classify them as public lands under any one of the four classes will render the entire IPRA law a nullity.* The spirit of the IPRA lies in the distinct concept of ancestral domains and ancestral lands. The IPRA addresses the major problem of the ICCs/IPs which is loss of land. Land and space are of vital concern in terms of sheer survival of the ICCs/IPs.

*The 1987 Constitution mandates the State to 'protect the rights of indigenous cultural communities to their ancestral lands' and that 'Congress provide for the applicability of customary laws . . . in determining the ownership and extent of ancestral domain.' It is the recognition of the ICCs/IPs distinct rights of ownership over their ancestral domains and lands that breathes life into this constitutional mandate*."

But while ancestral domains and ancestral lands are considered private in character, it does not necessarily mean that natural resources found therein belong to the ICCs/IPs as private property.

Justice Kapunan, in *Cruz*, opines that the specification of what areas belong to the ancestral domains is important to ensure that no unnecessary encroachment on private properties outside the ancestral domains will result during the delineation process. The mere fact that Section 3(a) defines ancestral domains to include the natural resources found therein does not *ipso facto* convert the character of such natural resources as private property of the indigenous peoples. Similarly, Section 5 in relation to Section 3(a) cannot be construed as a source of ownership rights of indigenous people over the natural resources simply because it recognizes

ancestral domains as their "private but community property." The phrase "private but community property" is merely descriptive of the indigenous peoples' concept of ownership as distinguished from that provided in the Civil Code. In civil law, "ownership" is the "independent and general power of a person over a thing for purposes recognized by law and within the limits established thereby." The civil law concept of ownership has the following attributes: *jus utendi* or the right to receive from the thing that which it produces, *jus abutendi* or the right to consume the thing by its use, *jus disponendi* or the power to alienate, encumber, transform and even destroy that which is owned and *jus vidicandi* or the right to exclude other persons from the possession the thing owned. In contrast, the indigenous peoples' concept of ownership emphasizes the importance of communal or group ownership. By virtue of the communal character of ownership, the property held in common "cannot be sold, disposed or destroyed" because it was meant to benefit the whole indigenous community and not merely the individual member.

**04. Modes of acquisition.**

The rights of the ICCs/IPs to their ancestral domains and ancestral lands may be acquired in two modes: (a) by native title over both ancestral lands and domains; or (b) by Torrens title under the Public Land Act and the Land Registration Act (now Property Registration Decree) with respect to *ancestral lands* only. Pertinent provisions read:

> "SEC. 11. *Recognition of Ancestral Domain Rights.* — The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.
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> "SEC. 12. *Option to Secure Certificate of Title Under Commonwealth Act 141, as amended, or the Land Registration Act 496.* — Individual members of cultural communities, with respect to their individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner

> since time immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496 (now Property Registration Decree).
>
> For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.
>
> The option granted under this section shall be exercised within twenty (20) years from the approval of this Act."

Ancestral lands that are owned by individual members of ICCs/IPs who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than 30 years, which claims are uncontested by the members of the same ICCs/IPs, may be registered under CA No. 141, otherwise known as the Public Land Act, or Act No. 496, the Land Registration Act (now PD No. 1529, the Property Registration Decree). For purposes of registration, the individually-owned ancestral lands are classified as alienable and disposable agricultural lands of the public domain, provided, they are agricultural in character and are actually used for agricultural, residential, pasture and tree farming purposes. These lands shall be classified as public agricultural lands regardless of whether they have a slope of 18% or more.

The classification of ancestral land as public agricultural land is in compliance with the requirements of the Public Land Act and the Property Registration Decree. CA No. 141 deals specifically with lands of the public domain. Its provisions apply to those lands "declared open to disposition or concession" . . . "which have not been reserved for public or quasi-public purposes, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law . . . or which, having been reserved or appropriated, have ceased to be so." PD No. 1529 allows registration

only of private lands and public agricultural lands. Since ancestral domains and ancestral lands are private, if the ICC/IP wants to avail of the benefits of CA No. 141 and PD No. 1529, the IPRA itself *converts* his ancestral land, regardless of whether the land has a slope of eighteen percent (18%) or over, *from private to public agricultural land* for proper disposition. The option to register land must be exercised within twenty (20) years from October 29, 1997, the date of approval of the IPRA.

Section 8 of the IPRA governs the rights of ICCs/IPs to ancestral lands. Unlike ownership over the ancestral domains, said section includes the right to transfer land or property rights to members of the same group, subject to customary laws and traditions. This is in keeping with the option given to ICCs/IPs to secure a Torrens title over the ancestral lands, but not to domains.

### (1) Delineation and recognition of ancestral domains

Self-delineation shall be the guiding principle in the identification and delineation of ancestral domains. The Sworn Statement of the Elders as to the scope of the territories and agreements/pacts made with neighboring ICCs/IPs, if any, will be essential to the determination of these traditional territories. The government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto.[10] The official delineation of ancestral domain boundaries including census of all community members therein, shall be immediately undertaken by the Ancestral Domains Office (ADO) upon filing of the application by the ICCs/IPs concerned.[11] Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners.[12] On the basis of investigation and the findings of fact based thereon, the ADO shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein.[13]

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[10]Sec. 51, RA No. 8371.
[11]Sec. 52(c), *ibid.*
[12]Sec. 52(d), *ibid.*
[13]Sec. 52(e), *ibid.*

A copy of each document, including a translation in the native language of the ICCs/IPs concerned shall be posted in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP, and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen days from date of such publication. However, in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute. The mere posting shall be deemed sufficient if both newspaper and radio station are not available.[14]

Within fifteen (15) days from publication, and of the inspection process, the ADO shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the ADO shall require the submission of additional evidence. The ADO shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the ADO shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In cases where there are conflicting claims among ICCs/IPs on the boundaries of ancestral domain claims, the ADO shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Section 62 of the IPRA.[15]

ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all those identified in the census.[16] The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated.[17]

### (2) Identification, delineation and certification of ancestral lands

The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be

[14]Sec. 52(g), *ibid*.
[15]Sec. 52(h), *ibid*.
[16]Sec. 52(j), *ibid*.
[17]Sec. 52(k), *ibid*.

left to the ICCs/IPs concerned to decide in accordance with customs and traditions.[18] Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the ADO. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively.[19] Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Section 52(d) of the IPRA, including tax declarations and proofs of payment of taxes.[20]

Upon receipt of the applications for delineation and recognition of ancestral land claims, the ADO shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication. In areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute. The mere posting shall be deemed sufficient if both newspapers and radio station are not available.[21]

Fifteen (15) days after such publication, the ADO shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The ADO shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the ADO shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the National Commission on Indigenous Peoples (NCIP). In case of

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[18]Sec. 53(a), *ibid*.
[19]Sec. 53(b), *ibid*.
[20]Sec. 53(c), *ibid*.
[21]Sec. 53(e), *ibid*.

conflicting claims among individuals or indigenous corporate claimants, the ADO shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Section 62 of the IPRA. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines.[22]

The ADO shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate the report submitted. If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands.[23]

The ADO may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.[24]

**05. Resolution of conflicts.**

In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which can not be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains. If the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions. Any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of the Act may be brought by a petition for review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

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[22]Sec. 53(f), *ibid.*
[23]Sec. 53(g), *ibid.*
[24]Sec. 54, *ibid.*

**06. Ancestral Domains Office.**

One of the offices under the NCIP is the Ancestral Domains Office (ADO). The ADO shall be responsible for the identification, delineation and recognition of ancestral lands/domains. It shall also be responsible for the management of ancestral lands/domains in accordance with a master plan as well as the implementation of the ancestral domain rights of the ICCs/IPs as provided in Chapter III of the IPRA. It shall also issue, upon the free and prior informed consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs or their ancestral domains and to assist the ICCs/IPs in protecting the territorial integrity of all ancestral domains. It shall likewise perform such other functions as the NCIP may deem appropriate and necessary.[25]

**07. National Commission on Indigenous Peoples.**

To carry out the policies of the IPRA, the law created the National Commission on Indigenous Peoples (NCIP). The NCIP is the primary government agency which is responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs.[26] The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.[27]

The NCIP shall be an independent agency under the Office of the President and shall be composed of seven (7) Commissioners belonging to ICCs/IPs appointed by the President. The seven (7) Commissioners shall be appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras; Region II; the rest of Luzon; Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas;

Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao. At least two (2) of the seven (7) Commissioners shall be women.[28]

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[25]Sec. 46(a), *ibid*.
[26]Sec. 3(k), *ibid*.
[27]Sec. 39, *ibid*.
[28]Sec. 40, *ibid*.

The NCIP has been granted administrative, quasi-legislative and quasi-judicial powers to carry out its mandate. The diverse nature of the NCIP's functions renders it impossible to place said agency entirely under the control of only one branch of government and this, apparently, is the reason for its characterization by Congress as an independent agency. That Congress did not intend to place the NCIP under the control of the President in all instances is evident in the IPRA itself, which provides that the decisions of the NCIP in the exercise of its quasi-judicial functions shall be appealable to the Court of Appeals.[29]

**08. Option to secure certificate of title under the Public Land Act or the Property Registration Decree.**

Individual members of cultural communities, with respect to their individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than thirty (30) years immediately preceding the approval of the Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the provisions of CA No. 141, as amended (Public Land Act), or PD No. 1529 (Property Registration Decree). The option granted shall be exercised within twenty (20) years from the approval of the Act on December 29, 1997.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are classified as alienable and disposable agricultural lands under the Act.[30]

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[29]Cruz v. Secretary of Environment and Natural Resources, *supra*, per Justice Kapunan.

[30]Sec. 12, RA No. 8371.

## *(D) FORM AND CONTENTS, DEALINGS WITH LAND*

**SEC. 15. *Form and contents*. — The application for land registration shall be in writing, signed by the applicant or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oaths for the province or city where the application was actually signed. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. The application shall contain a description of the land and shall state the citizenship and civil status of the applicant, whether single or married, and, if married, the name of the wife or husband, and, if the marriage has been legally dissolved, when and how the marriage relation terminated. It shall also state the full names and addresses of all occupants of the land and those of the adjoining owners, if known, and, if not known, it shall state the extent of the search made to find them.**

**The application, shall, in form, be substantially as follows:**

**REPUBLIC OF THE PHILIPPINES**
**REGIONAL TRIAL COURT OF _____**

**The undersigned, _____**
**_____**
**hereby applies (or apply) to have the land hereinafter described brought under the operation of the Property Registration Decree, and to have the title thereto registered and confirmed:**

**AND DECLARE . . . . .**

**1. That the applicants/s is/are the owners of the land (by virtue of inheritance or deed of sale or conveyance and/or possession in accordance with Section 14 of said Decree), together with the building and improvements thereon, with the exception of the following: _____**
**_____**
**which is/are the property of _____**
**residing at _____ The said land, consisting of _____ parcel/s is/are situated, bounded and described as shown on the plan and technical descriptions attached hereto and made a part hereof, with the following exception: _____**
**_____.**

**2. That said land at the last assessment for taxation was assessed at P ____, Philippine currency, and the buildings and other improvements at P _____, Philippine currency.**

**3. That to the best of my/our knowledge and belief, there is no mortgage or encumbrance of any kind whatsoever affecting said land, nor any other person having any interest therein, legal or equitable, or in possession, other than as follows: _____ _____.**

**4. That the applicant/s has/have acquired said land in the following manner: _____ .**

**(Note: Refer to Sec. 14 of said Decree. State also whether the property is conjugal, paraphernal or exclusive property of the applicant/s)**

**5. That said land is occupied by the following person: _____ .**

**6. That the names in full and addresses, as far as known to the undersigned, of the owners of all adjoining properties, of the persons mentioned in paragraphs 3 and 5, and of the persons shown on the plan as claimants, are as follows: _____ _____ .**

**7. That the applicant/s is/are single or married to _____ (Note: if marriage has been legally dissolved, state when and how the marriage relation terminated.) _____ .**

**8. That the applicant's/s' full name, age, citizenship, residence, and postal address/es is/are as follows: _____ _____ .**

**9. That (Note: If the land included in the application is bounded by a public or private way or road, there should be stated in this paragraph whether or not the applicant claims any and what land within the limits of the way or road and whether the applicant desires to have the line of the way or road determined.) _____ _____ .**

**10. That the following documents are attached hereto and made a part hereof: _____ _____ .**

**Signed at _____ this _____ day of _____, in the year twenty hundred and _____.**

**_____**
**Applicant**

**_____**
**(Post Office Address)**

**REPUBLIC OF THE PHILIPPINES**
**PROVINCE (OR CITY) OF _____**

**On this _____ day of _____, 20 _____ personally appeared before me the above-named _____ _____ known to me to be the person/s who executed the foregoing application and made oath that the statements therein are true of his/their knowledge, information and belief.**

**The Community Tax Certificate/s _____ of the applicant/s _____ was/were exhibited to me being No. _____ issued at _____ dated _____, 20_____.**

**_____**
**(Notary Public, or other Officer authorized to administer oaths)**

**PTR NO. _____**

**01. Form and contents of the application for registration.**

Section 15 requires that the application for land registration shall be in writing, signed by the applicant or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oaths for the province or city where the application was actually signed. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. It shall provide information on the following:

(a) Full description of the land as evidenced by a survey plan duly approved by the Director of Lands, surveyor's certificate, and technical description;

(b) Citizenship and civil status of the applicant, whether single or married, and, if married, the name of the wife or husband, and, if the marriage has been legally dissolved, when and how the marriage relation terminated;

(c) Full names and addresses of all occupants of the land and those of the adjoining owners, if known, and, if not known, it shall state the extent of the search made to find them;

(d) Assessed value of the land and the buildings and improvements thereon;

(e) Whether or not there are mortgages or encumbrances of any kind whatsoever affecting the land, or any other person having any interest therein, legal or equitable, or in possession, thereof;

(f) The manner by which the applicant has acquired the land (refer to Section 14, PD No. 1529);

(g) Whether or not the property is conjugal, paraphernal or exclusive property of the applicant;

(h) Names of all occupants of the land, if any;

(i) Original muniments of title and other related documents supporting applicant's claim of ownership; and

(j) If the land is bounded by a public or private way or road, whether or not the applicant claims any and what portion of the land within the limits of the way or road, and whether the applicant desires to have the line of the way or road determined.

Pursuant to the Manual of Instructions to be Observed by Clerks of Court of Regional Trial Courts in Ordinary and Cadastral Land Registration Cases issued by the Land Registration Authority on February 20, 1991, the application for registration shall be filed in the following form:

"(a) That the application shall be in accordance with the form prescribed in Section 15 of P.D. No. 1529 and should state the full name of the applicant, his civil status, citizenship, residence and postal address, and if a minor, his age. If the applicant is married, the application should state the name of his spouse and whether the property applied for registration is conjugal or exclusive property of the applicant. If the marriage has been legally dissolved, when and how the marriage relation terminated. The application should also

state the names and addresses of all occupants of the land and those of the adjoining owners, if known and if not known, it shall state the extent of the search made to find them.

(b) That the application be subscribed by the applicant or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oaths for the province or city where the application was actually signed. Should there be more than one applicant, the application shall be signed and sworn to by and in behalf of each.

(c) That the application and its accompanying papers be filed in triplicate which shall be distributed as follows: the original for the Clerk of Court, the duplicate for the Land Registration Authority, and the triplicate for the Solicitor General.

(d) That prior to the filing of the application, the applicant has furnished the Director of Lands (now, the Regional Executive Director of the Department of Environment and Natural Resources), with a copy of the application and its annexes. (Sec. 17, P.D. no. 1529)."

The application shall be accompanied by the following documents:

"(a) The original plan in tracing cloth or Diazo Polyester film duly approved by the Regional Technical Director, Land Management Service of the DENR, a certified copy of the same by the Clerk of Court shall be attached to the duplicate records and forwarded to the Land Registration Authority. Where in lieu thereof, a true copy of the original plan in tracing cloth or Diazo Polyester film is submitted, the Clerk of Court shall see to it that the same is properly attested and duly certified correct by the Regional Technical Director concerned or the official authorized should sign the plan for the regional Technical Director. All bearings, distances and the technical descriptions of the land appearing on the plan must be legible. Such true copy shall be retained by the court concerned and a copy thereof duly certified as a faithful reproduction by the Clerk of Court shall be forwarded to the Land Registration Authority. (As amended by LRA Circular No. 06-2000 dated March 8, 2000)

(b) The white or blue print copies of the plan.

(c) The original and two copies of the technical descriptions certified by the Regional Technical Director or the official so autho-

rized and not merely signed by the Geodetic Engineer who prepared the plan.

(d) The original and two copies of the Geodetic Engineer's certificate or, in lieu thereof, a certification from the Regional Tech-nical Director as to its non-availability.

(e) A certificate in triplicate of the Provincial, City or Municipal Assessor of the assessed value of the land at its last assessment for taxation or, in the absence thereof, that of the next preceding year. In case the land has not been assessed, an affidavit in triplicate (Judicial Form No. 81) of the market value of the land signed by three disinterested witnesses.

(f) All original muniments of title of the applicant which prove his ownership of the land. This requirement is not mandatory as long as the documents can be produced before the court during the hearing whenever required or necessary."

It will be noted that, under LRA Circular 05-2000, the original tracing cloth plan is no longer forwarded to the Land Registration Authority; only a certified copy thereof need be forward. This has obviated problems especially of applicants for registration in remote provinces or cities where they would need to go to the Land Registration Authority to retrieve the tracing cloth plan for submission as evidence during the trial or to cause the production thereof by the said office via a subpoena *duces tecum* issued by the court for the same purpose. The original tracing cloth plan is now simply attached to the original record and retained by the court where it may then be marked and formally offered in evidence during the proceedings.

**SEC. 16. *Non-resident applicant.* — If the applicant is not a resident of the Philippines, he shall file with his application an instrument in due form appointing an agent or representative residing in the Philippines, giving his full name and postal address, and shall therein agree that the service of any legal process in the proceedings under or growing out of the application made upon his agent or representative shall be of the same legal effect as if made upon the applicant within the Philippines. If the agent or representative dies, or leaves the Philippines, the applicant shall forthwith make another appointment for the substitute, and, if he fails to do so, the court may dismiss the application.**

**01. Non-resident applicant may be represented by an Attorney-in-Fact.**

Where the applicant is not a resident of the Philippines, he shall file his application through a duly authorized representative or attorney-in-fact, whose authority as such shall accompany the application. Service of all papers and other legal processes shall be made upon said representative or attorney-in-fact with the same effect as if made upon the applicant himself.

**SEC. 17. *What and where to file*. —The application for land registration shall be filed with the Regional Trial Court of the province or city where the land is situated. The applicant shall file together with the application all original muniments of titles or copies thereof and a survey plan of the land approved by the Lands Management Bureau.**

**The clerk of court shall not accept any application unless it is shown that the applicant has furnished the Director of Lands with a copy of the application and all annexes.**

**01. Application for land registration to be filed with the Regional Trial Court.**

As provided in Section 2, Regional Trial Courts "shall have exclusive jurisdiction over all applications for original registration of title to lands, including improvements and interests therein, and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions." Said courts have now the authority to act not only on applications for original registration, but also on all petitions filed after the original registration of title. Coupled with this authority is the power to hear and determine all questions arising upon such applications or petitions. Especially where the issue of ownership is ineluctably tied up with the question of registration, the land registration court has primary and plenary jurisdiction.[1]

Inferior courts (Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts) may be assigned to handle original registration cases in the

[1]Talusan v. Tayag, GR No. 133698, April 4, 2001, 356 SCRA 263.

instances provided by RA No. 7691 dated March 25, 1994, amending Section 34 of BP Blg. 129, to wit:

(a) Where the lot is not the subject of controversy or opposition; or

(b) Where the lot is contested but the value thereof does not exceed P100,000.00.

The assignment of cases is governed by SC Administrative Circular No. 6-93-A, dated November 15, 1995.

Appeals from decisions of inferior courts in land registration cases are taken to the Court of Appeals.

**02. Court having territorial jurisdiction over the land should take cognizance of the case.**

In the case of *Lopez* v. *De Castro*,[2] two applications for registration of the same parcel of land were filed twelve years apart in different branches of the same Court of First Instance. A certificate of title was issued in one case (Tagaytay case) while the earlier case (Cavite case) was still pending appeal. The applicants (petitioners) in the Cavite case went to the Supreme Court. They asserted that the decision of the Cavite court ordering the issuance of a decree of registration in their favor, while promulgated subsequent to the issuance of the certificate of title in the names of the second applicants before the Tagaytay court, should be given preference. Which court properly has jurisdiction over the application for registration? In a decision written by Justice Ynares-Santiago, the Court ruled against petitioners:

> "In all cases where the authority to proceed is conferred by a statute and the manner of obtaining jurisdiction is mandatory, the same must be strictly complied with, or the proceedings will be utterly void.
>
> When petitioners applied for the registration of Lot No. 1 before the CFI in Cavite City in 1956, the governing law then as regards the matter of jurisdiction was the Judiciary Act of 1948 or Republic Act No. 296. Section 52 of that law providing for the permanent stations of dis-

[2]GR No. 110259, Feb. 3, 2000, 324 SCRA 591.

trict judges or judges of Courts of First Instance stated that for the Seventh Judicial District that included the province of Cavite, there would be two judges in Cavite City. The law did not create other branches of the CFI in the province of Cavite outside of the City of Cavite.

It was on June 22, 1963 when Republic Act No. 3749 took effect that a CFI branch in Tagaytay City was set up. That amendment to Republic Act No. 296 provided that four judges would preside 'over the Courts of First Instance of the Province of Cavite and the Cities of Cavite, Tagaytay and Trece Martires' who would be 'judges of the first, second, third and fourth branches' of that court. Because the rule has always been that the court having territorial jurisdiction over the property should take cognizance of its registration, upon the creation of the Tagaytay City branch, petitioners' application for registration should have been transferred to that court inasmuch as the property involved is located in that city.

It appears, however, that the Cavite City branch remained the venue of petitioners' application for registration, apparently on account of the following provision of Rep. Act No. 3749:

> 'SEC. 6. Wherever an additional branch or branches of the Court of First Instance is or are established in this Act in the same place where there is an existing court or courts of first instance, all cases already filed in the latter court or courts shall be heard, tried and decided by such latter court or courts.'

Notably, the law is not clear on whether or not the phrase 'in the same place' refers to the judicial district/province or the place where a branch of the court is stationed. Hence, considering the general rule that once a court acquires jurisdiction over a case it remains with that court until its full termination, the phrase 'in the same place' should be interpreted as referring to the province of Cavite. The Cavite City branch of the CFI of Cavite thus correctly retained jurisdiction over the application for registration because there was no jurisdictional question involved in the proceedings in Land Registration Case No. 299. What was in question was whether the Cavite City

branch of the Cavite CFI was the proper venue for said case upon the creation of the Tagaytay City branch. As this Court once said:

x x x x x x x x x

Venue is procedural, not jurisdictional, and hence may be waived. It is meant to provide convenience to the parties, rather than restrict their access to the courts as it relates to the place of trial. Thus, the last paragraph of Section 51 of Rep. Act No. 296 provided that in land registration cases, the Secretary of Justice, who was then tasked with the administration and supervision of all courts, may transfer land registration courts 'to any other place more convenient to the parties.' This implied that Land Registration Case No. 299 could be retained in the Cavite City branch of the CFI if it would be convenient to the applicants who had been used to transacting business with that branch; the case did not have to be transferred to Tagaytay City. x x x

A proceeding *in rem*, such as land registration proceedings, requires constructive seizure of the land as against all persons, including the state, who have rights to or interests in the property. Constructive seizure of the land for registration is effected through publication of the application for registration and service of notice to affected parties. Consequently, when private respondents filed their own application for registration of the same parcel of land, strictly speaking, the Tagaytay City branch could no longer entertain the application for registration as the *res* involved had been constructively seized by the Cavite City branch of the same court. In hindsight, this complication of two applications for registration having been filed for one and the same tract of land could have been avoided had Land Registration Case No. 299 been transferred to the Tagaytay City branch of the same court where it rightfully belonged, upon the effectivity of Rep. Act No. 3947.

Be that as it may, the Court is not persuaded that the registration proceedings instituted by private respondents should be nullified by reason of the fact that the Cavite City branch of the same court was already pro-

ceeding with another registration case for the same piece of land.

In land registration proceedings, all interested parties are obliged to take care of their interests and to zealously pursue their objective of registration on account of the rule that whoever first acquires title to a piece of land shall prevail. To illustrate, where more than one certificate of title is issued over the land, the person holding a prior certificate is entitled to the land as against a person who relies on a subsequent certificate. It should be stressed that said rule refers to the *date of the certificate of title* and not to the *date of filing of the application for registration of title*. Hence, even though an applicant precedes another, he may not be deemed to have priority of right to register title. As such, while his application is being processed, an applicant is duty-bound to observe vigilance and to take care that his right or interest is duly protected.

Petitioners failed to exercise the due diligence required of them as applicants for land registration. In the same way that publication of their application for registration was supposed to have rendered private respondents on constructive notice of such application, the publication of notice in the land registration proceedings initiated by private respondents had the same effect of notice upon petitioners. Petitioners were thus presumed to have been notified of the land registration proceedings filed by private respondents in the Tagaytay City branch of the Cavite CFI thereby providing them with the opportunity to file an opposition thereto.

x x x x x x x x x

Even granting that petitioners did not really have actual knowledge of private respondents' application for registration, yet after discovering that the land was already registered in the name of private respondents, petitioners should have immediately sought recourse in law to protect their rights. As it turned out, they let almost seven (7) years to pass from such discovery before they acted to revive what already was a dormant judgment. x x x They neglected or omitted to assert a right within a

reasonable time, warranting the presumption that they either had abandoned or declined to assert it. In short, they were guilty of laches."

**03. Application must be accompanied by a survey plan and applicant's muniments of title.**

It is required that the application for registration must be accompanied by a survey plan of the land duly approved by the Director of Lands, together with the claimant's muniments of title to prove ownership. No plan or survey may be admitted in land registration proceedings until approved by the Director of Lands.[3]

In *Director of Lands* v. *Reyes*,[4] the Supreme Court declared that the submission of the tracing cloth plan is a statutory requirement of mandatory character. The plan and the technical description of the land must be duly approved by the Director of Lands, otherwise the same have no probative value. One of the distinguishing marks of the Torrens system is the absolute certainty of the identity of a registered land. Consequently, the primary purpose of the aforesaid requirement is to fix the exact or definite identity of the land as shown in the plan and technical descriptions. Hence, the applicant is not relieved of his duty of submitting the original tracing cloth of the survey plan of the land duly approved by the Director of Lands.

The Land Registration Authority has no authority to approve original survey plans nor to check the correctness thereof. Under PD No. 239, dated July 9, 1973, only the Lands Management Bureau may now verify and approve survey plans for original registration purposes. If, for any reason, the original tracing cloth plan was forwarded to the Land Registration Authority, the applicant should retrieve the same and submit it in evidence.[5] The allegation that the approved survey plan is nowhere to be found is an important jurisdictional fact that must be ventilated before the trial court.[6]

The clerk of court shall not accept any application unless it is shown that the applicant has furnished the Director of Lands with a copy of the application and all annexes.[7] This again is a recognition

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[3]University of the Philippines v. Rosario, GR No. 136965, March 28, 2001, 355 SCRA 591.

[4]GR No. L-27594, Nov. 28, 1975, 68 SCRA 177.

[5]*Ibid.*

[6]University of the Philippines v. Rosario, *supra*.

of the concept of *jura regalia* where all lands and all other natural resources are owned by the State,[8] and a recognition as well of the exclusive authority of the Director of Lands in the administration, management, survey and disposition of lands of the public domain.[9]

**SEC. 18. *Application covering two or more parcels*. — An application may include two or more parcels of land belonging to the applicant/s provided they are situated within the same province or city. The court may at any time order an application to be amended by striking out one or more of the parcels or by a severance of the application.**

**SEC. 19. *Amendments*. — Amendments to the application including joinder, substitution, or discontinuance as to parties may be allowed by the court at any stage of the proceedings upon just and reasonable terms.**

**Amendments which shall consist in a substantial change in the boundaries or an increase in area of the land applied for or which involve the inclusion of an additional land shall be subject to the same requirements of publication and notice as in an original application.**

**01. A single application may be filed for two or more parcels.**

A single application may be filed for two or more parcels of land belonging to the same applicant provided that they are situated in the *same* province or city.[9a] The court may at any time order the splitting or striking out of one or more parcels, or allow amendments to the application, including joinder, substitution or discontinuance as to parties upon such terms as may be just and reasonable.

Where during the pendency of an application for registration, the applicant sold the property to another under *pacto de retro*, but owing to the lapse of the redemption period, ownership became consolidated in the vendee, the latter as the new and lawful owner is entitled to be subrogated in place of the applicant and may continue the proceedings in the case and finally obtain title as owner.[10]

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[7]Sec. 17, PD No. 1529.
[8]Sec. 2, Art. XII, Constitution.
[9]Secs. 3 and 4, CA No. 141, as amended.
[9a]Republic v. Herbieto, GR No. 156117, May 21, 2005.
[10]Ortiz v. Ortiz, GR No. 8105, Dec. 17, 1913, 26 Phil. 280.

**02. Amendment of boundaries or area.**

Where the amendment consists in a substantial change in the boundaries or increase in area of the land or involve the inclusion of additional area, the amendment shall be subject to the same requirements of publication and notice as in the case of an original application.[11]

It is not permissible to make amendments or alterations in the description of the land after its publication in the newspapers and after the registration of the property has been decreed, without the publication of new notifications and advertisements making known to everyone the said alterations and amendments. Otherwise, the law would be infringed with respect to the publicity which characterizes the procedure, and third parties who have not had an opportunity to present their claims, might be seriously affected in their rights, through failure of opportune notice.[12] An order of the court, in a land registration proceeding, amending an official plan so as to include land not previously included therein, is a nullity as against a person who is not a party and who has no notice of the proceeding, unless publication is effected anew.[13] Publication is one of the essential bases of the jurisdiction of the court in land registration and cadastral cases, and additional territory cannot be included by amendment of the plan without new publication.[14]

If new survey plans when presented do not conform to the plans earlier presented and shall affect the rights of any persons who have not heretofore been heard, then notice shall be given them and an opportunity to present whatever opposition they may have to the registration of the land included in the new plans.[15]

The need of a new publication where additional area is included in the application is stressed in *Benin* v. *Tuason*,[16] thus:

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[11]Sec. 19, PD No. 1529.

[12]Escueta v. Director of Lands, GR No. 5720, Aug. 20, 1910, 16 Phil. 482.

[13]Juan v. Luis, GR No. 24701, Aug. 25, 1926, 49 Phil. 252.

[14]Philippine Manufacturing Co. v. Imperial, GR No. 24908, March 31, 1926, 49 Phil. 122.

[15]Aguillon v. Director of Lands, GR No. L-5448, Dec. 16, 1910, 17 Phil. 506.

[16]GR No. L-26127, June 28, 1974, 57 SCRA 531, citing Philippine Manufacturing Co. v. Imperial, GR No. 24908, 49 Phil. 122; Juan v. Luis, GR No. 24701, Aug. 25, 1926, 49 Phil. 252; Bank of the P.I. v. Acuña, GR No. 36890, Dec. 21, 1933, 59 Phil. 183; Lichauco v. Herederos de Corpus, GR No. 39512, June 29, 1934, 60 Phil. 211; Director of Lands v. Benitez, GR No. L-21368, March 31, 1966, 16 SCRA 557.

"The settled rule, further, is that once the registration court had acquired jurisdiction over a certain parcel, or parcels, of land in the registration proceedings in virtue of the publication of the application, that jurisdiction attaches to the land or lands mentioned and described in the application. If it is later shown that the decree of registration had included land or lands not included in the original application as published, then the registration proceedings and the decree of registration must be declared null and void insofar — *but only insofar* — as the land not included in the publication is concerned. This is so, because the court did not acquire jurisdiction over the land not included in the publication the publication being the basis of the jurisdiction of the court. But the proceedings and the decree of registration, relating to the lands that were included in the publication, are valid. Thus, if it is shown that a certificate of title had been issued covering lands where the registration court had no jurisdiction, the certificate of title is null and void *insofar as it concerns the land or lands over which the registration court had not acquired jurisdiction*."

In another case,[17] it was reiterated that only where the original survey plan is amended during the registration proceedings, by the addition of land not previously included in the original plan, should publication be made in order to confer jurisdiction on the court to order the registration of the area added after the publication of the original plan. Conversely, if the amendment does not involve an addition, but on the contrary, a reduction of the original area that was published, no new publication is required.

**SEC. 20. *When land applied for borders on road.* — If the application describes the land as bounded by a public or private way or road, it shall state whether or not the applicant claims any and what portion of the land within the limits of the way or road, and whether the applicant desires to have the line of the way or road determined.**

**SEC. 21. *Requirement of additional facts and papers; ocular inspection.* — The court may require facts to be stated in the ap-**

[17]Republic v. Court of Appeals and Ribaya, GR No. 113549, July 5, 1996, 258 SCRA 223.

**plication in addition to those prescribed by this Decree not inconsistent therewith and may require the filing of any additional papers. It may also conduct an ocular inspection, if necessary.**

### 01. Additional facts may be required to be stated in the application.

In assessing the merits of the application for registration, the court is not limited to considering only the facts stated in the application. It may require the applicant to present additional facts, and corroborative evidence, as may be relevant to assist it in its final determination and resolution of the case.

**SEC. 22. *Dealings with land pending original registration*. — After the filing of the application and before the issuance of the decree of registration, the land therein described may still be the subject of dealings in whole or in part, in which case the interested party shall present to the court the pertinent instruments together with a subdivision plan approved by the Director of Lands in case of transfer of portions thereof, and the court, after notice to the parties, shall order such land registered subject to the conveyance or encumbrance created by said instruments, or order that the decree of registration be issued in the name of the person to whom the property has been conveyed by said instruments.**

### 01. Dealings with the land while its registration is pending.

Section 22 allows land subject of registration to be dealt with after the filing of the application and before the issuance of decree. The land may be sold or otherwise encumbered, but whatever may be the nature of the transaction, the interested party should submit to the court the pertinent instruments evidencing the transaction to be considered in the final adjudication of the case. The applicant or the parties to the transaction may file the corresponding motion or manifestation, indicating the relief desired. In case of transfer of a portion of the land, the corresponding subdivision plan, approved by the Director of Lands, should also be presented. Upon notice to the parties, the court shall: (a) order the land registered subject to the conveyance or encumbrance created by such instruments, or (b) order that the decree of registration be issued in the name of the person to whom the property has been conveyed.

It should be noted that the adjudication of land in a land registration or cadastral proceeding does not become final, in the sense of incontrovertibility, until after one year from the entry of the final decree prepared by the Land Registration Authority. As long as the final decree has not been entered, and the one-year period has not elapsed from such entry, the title is not deemed finally adjudicated and the decision in the registration proceeding continues to be under the control of the court.[18] Hence, transactions affecting the property pending registration should be made known to the court for appropriate consideration.

Section 22 should be differentiated from Section 19 which refers to amendments to the application by joinder, substitution or discontinuance of the parties. On the other hand, Section 108 involves amendments *after* entry of the certificate of title. Section 22 does not require amendment of the application, it being sufficient that the court, by motion or other appropriate pleading, be presented with the instruments evidencing the transaction, and the approved subdivision plan where a portion of the land is conveyed to another.

The application of Section 22 is illustrated in the case of *Mendoza* v. *Court of Appeals*,[19] arising from the following facts:

Petitioner filed an application for the registration of two parcels of land, with a residential house thereon, situated in Sta. Maria, Bulacan. During the pendency of the case, petitioner sold said parcels to respondents, subject to the vendors' usufructuary rights. The instrument of sale was presented to the court. The court rendered a decision ordering the registration of the two parcels of land in the names of the respondents. The corresponding decree and title were issued to them. Thereafter, petitioner filed an urgent motion for reconsideration praying that the decision and decree be set aside and the title cancelled, on the ground that respondents (vendees) had failed to pay the purchase price of the lands. The registration court set aside its decision. It held that it did not have jurisdiction to order registration in the names of respondents who were not parties to the application for registration. The court ordered registration in the name of petitioner. Respondents went to the Court of Appeals which reversed the order of the trial court. In the Supreme Court, peti-

[18]Gomez v. Court of Appeals, GR No. L-77770, Dec. 15, 1988, 168 SCRA 503.
[19]GR No. L-36637, July 14, 1978, 84 SCRA 67.

tioner argued that that the registration court could not legally order the registration of the land in the names of the vendees-respondents since they were neither the applicants nor the oppositors in the registration case. The Court disagreed, holding as follows:

> "Petitioner overlooks Section 29 of the Land Registration Act *(Section 23, Property Registration Decree)* which expressly authorizes the registration of the land subject matter of a registration proceeding in the name of the buyer or of the person to whom the land has been conveyed by an instrument executed during the interval of time between the filing of the application for registration and the issuance of the decree of title, thus —
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> It is clear from the above-quoted provision that the law expressly allows the land, subject matter of an application for registration, to be 'dealt with', i.e., to be disposed of or encumbered during the interval of time between the filing of the application and the issuance of the decree of title, and to have the instruments embodying such disposition or encumbrance presented to the registration court by the 'interested party' for the court to either 'order such land registered subject to the encumbrance created by said instruments, or order the decree of registration issued in the name of the buyer or of the person to whom the property has been conveyed by said instruments.' The law does not require that the application for registration be amended by substituting the 'buyer' or the 'person to whom the property has been conveyed' for the applicant. Neither does it require that the 'buyer' or the 'person to whom the property has been conveyed' be a party to the case. He may thus be a total stranger to the land registration proceedings. The only requirements of the law are: (1) that the instrument be presented to the court by the interested party together with a motion that the same be considered in relation with the application; and (2) that prior notice be given to the parties to the case. And the peculiar facts and circumstances obtaining in this case show that these requirements have been complied with."

In *Lopez* v. *Enriquez*,[20] it was held that a motion to lift order of general default and motion under Section 22 may not be filed after the finality of the judgment in the registration case.

## B. PUBLICATION, OPPOSITION AND DEFAULT

**SEC. 23. *Notice of initial hearing, publication, etc.* — The court shall, within five days from filing of the application, issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order.**

**The public shall be given notice of the initial hearing of the application for land registration by means of: (1) publication; (2) mailing; and (3) posting.**

**1. By publication. —**

**Upon receipt of the order of the court setting the time for initial hearing, the Land Registration Administrator shall cause a notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: *Provided, however,* That the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land involved including the adjoining owners so far as known, and "to all whom it may concern." Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted.**

**2. By mailing. —**

**(a) *Mailing of notice to persons named in the application.* — The Land Registration Administrator shall also, within seven days after publication of said notice in the Official Gazette, as hereinbefore provided, cause a copy of the notice of initial hearing to be mailed to every person named in the notice whose address is known.**

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[20]GR No. 146262, Jan. 21, 2005, 449 SCRA 173.

**(b)** ***Mailing of notice to the Secretary of Public Works and Highways, the Provincial Governor and the Mayor.*** **— If the applicant requests to have the line of a public way or road determined, the Land Registration Administrator shall cause a copy of said notice of initial hearing to be mailed to the Secretary of Public Works and Highways, to the Provincial Governor, and to the Mayor of the municipality or city, as the case may be, in which the land lies.**

**(c)** ***Mailing of notice to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Public Works and Highways, the Director of Forest Development, the Director of Mines and the Director of Fisheries and Aquatic Resources.*** **— If the land borders on a river, navigable stream or shore, or on an arm of the sea where a river or harbor line has been established, or on a lake, or if it otherwise appears from the application or the proceedings that a tenant-farmer or the national government may have a claim adverse to that of the applicant, notice of the initial hearing shall be given in the same manner to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Mines and/or the Director of Fisheries and Aquatic Resources, as may be appropriate.**

**3. By posting. —**

**The Land Registration Administrator shall also cause a duly attested copy of the notice of initial hearing to be posted by the sheriff of the province or city, as the case may be, or by his deputy, in a conspicuous place on each parcel of land included in the application and also in a conspicuous place on the bulletin board of the municipal building of the municipality or city in which the land or portion thereof is situated, fourteen days at least before the date of initial hearing.**

**The court may also cause notice to be served to such other persons and in such manner as it may deem proper.**

**The notice of initial hearing shall, in form, be substantially as follows:**

**(Caption and Title)**

**NOTICE OF INITIAL HEARING**

**To (here insert the names of all persons appearing to have an interest and the adjoining owners so far as known, and to all whom it may concern):**

**An application (or petition) having been filed in the above-entitled case by (full name and address) praying for the registration and confirmation (or for the settlement and adjudication, in case of petition in cadastral proceedings) of title to the following described lands:**

**(Insert description)**

**You are hereby served this notice to appear before this Court at its session to be held at _____ on the _____ day of _____, 19 _____, at _____ o'clock in the _____ then and there to present such claims as you may have to said lands or any portion thereof, and to submit evidence in support of such claim; and unless you appear at said Court at the time and place aforesaid, your default will be recorded and the title to the lands will be adjudicated and determined in accordance with law and the evidence before the Court, and thereafter you will forever be barred from contesting said application (or petition) or any decree entered thereon.**

**Witness, the Hon. _____ Judge of the Regional Trial Copurt Instance of _____ this _____ day of _____, in the year 20_____.**

**Attest:**

**Administrator, Land Registration Authority**

### 01. Notice of initial hearing.

Section 23 directs that the court, within five days from the filing of the application, shall issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order. The public shall be given notice of the initial hearing by means of: (a) publication, (b) mailing, and (c) posting. The requirement of giving notice by all three modes is *mandatory*.[1]

The duty and the power to set the hearing date lies with the land registration court. After an applicant has filed his application,

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[1]Director of Lands v. Court of Appeals and Abistado, GR No. 102858, July 28, 1997, 27 SCRA 276.

the law requires the issuance of a court order setting the initial hearing date. The notice of initial hearing is a court document. The notice of initial hearing is signed by the judge and copy of the notice is mailed by the clerk of court to the LRA. This involves a process to which the party applicant absolutely has no participation. This principle is illustrated in the case of *Republic* v. *Manna Properties, Inc.*,[2] thus:

> "Petitioner contends that PD No. 1529 sets a 90-day maximum period between the court order setting the initial hearing date and the hearing itself. Petitioner points out that in this case, the trial court issued the order setting the date of the initial hearing on 15 March 1995, but the trial court set the hearing date itself on 18 July 1995. Considering that there are 125 days in between the two dates, petitioner argues that the trial court exceeded the 90-day period set by PD 1529. Thus, petitioner concludes 'the applicant [Manna Properties] failed to comply with the jurisdictional requirements for original registration.'
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> The facts reveal that Manna Properties was not at fault why the hearing date was set beyond the 90-day maximum period. The records show that the Docket Division of the LRA repeatedly requested the trial court to reset the initial hearing date because of printing problems with the National Printing Office, which could affect the timely publication of the notice of hearing in the Official Gazette. Indeed, nothing in the records indicates that Manna Properties failed to perform the acts required of it by law. We have held that 'a party to an action has no control over the Administrator or the Clerk of Court acting as a land court; he has no right to meddle unduly with the business of such official in the performance of his duties.' A party cannot intervene in matters within the exclusive power of the trial court. No fault is attributable to such party if the trial court errs on matters within its sole power. It is unfair to punish an applicant for an act or omission over which the applicant has neither responsibility nor control, especially if the applicant has complied with all the requirements of the law."

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[2]GR No. 146527, Jan. 31, 2005, 450 SCRA 247.

## (1) Publication

The procedure prescribed by Act No. 496, now PD No. 1529, and which is followed for the substantiation in the land court of an application for registration is that denominated in law *in rem*, or one against all persons who may allege any right to the land sought to be registered, and the decree of the court granting it constitutes a valid and effective title, not only against the owners of the adjacent properties who appeared at the trial, but also against all whom may have an interest in the land. The publicity which permeates the whole system established for the registration of real property requires that the application for registration be accompanied by a plan of the land, together with its description, and that all the owners of the adjacent properties and all other persons who may have an interest in the realty shall be notified, which notifications with a description of the property concerned in the application, shall be published in the Official Gazette and in a newspaper of general circulation.[3]

### *1. Purpose of publication*

The purpose of publication is two-fold:

(a) To confer jurisdiction upon the court over the *res*, and

(b) To apprise the whole world of the pending registration case so that they may assert their rights or interests in the land, if any, and oppose the application, if so minded.

A land registration is a proceeding *in rem*, and the proceeding requires constructive seizure of the land as against all persons, including the State, who have rights to or interests in the property. An *in rem* proceeding is validated essentially through publication. This being so, the process must strictly be complied with. Otherwise, persons who may be interested or whose rights may be adversely affected would be barred from contesting an application which they had no knowledge of. As has been ruled, a party as an owner seeking the inscription of realty in the land registration court must prove by satisfactory and conclusive evidence not only his ownership thereof but the identity of the same, for he is in the same situation as one who institutes an action for recovery of realty. He must prove his title against the whole world. This task, which rests upon the

[3]Escueta v. Director of Lands, GR No. 5720, Aug. 20, 1910, 16 Phil. 482; Sec. 23, PD No. 1529.

applicant, can best be achieved when all persons concerned — nay, "the whole world" — who have rights to or interests; in the subject property are notified and effectively invited to come to court and show cause why the application should not be granted. The elementary norms of due process require that before the claimed property is taken from concerned parties and registered in the name of the applicant, said parties must be given notice and opportunity to oppose.[4]

Constructive seizure of the land for registration is effected through publication of the application for registration and service of notice to affected parties.[5]

### *2. Publication of notice of initial hearing*

Section 23(1) provides that upon receipt of the order of the court setting the case for initial hearing, the Land Registration Administrator shall cause the notice to be published once in the Official Gazette and once in a newspaper of general circulation; however, the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. The notice shall be addressed to all persons appearing to have an interest in the land, including the adjoining owners if known, and "To All Whom It May Concern." The notice shall require all persons concerned to appear in court on the date and time indicated and to show cause why the application shall not be granted.

### *3. Publication in a newspaper is necessary to accord with due process requirement*

In *Roxas* v. *Court of Appeals*,[6] it was held that while publication of the notice in the Official Gazette is sufficient to confer jurisdiction upon the court, publication in a newspaper of general circulation remains an indispensable procedural requirement. Couched in mandatory terms, it is a component of procedural due process and aimed at giving "as wide publicity as possible" so that all persons having an adverse interest in the land subject of the registration proceedings may be notified thereof. Although jurisdiction of the court is not affected, the fact that publication was not made in a newspaper

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[4]Director of Lands v. Court of Appeals and Abistado, *supra.*
[5]Lopez v. De Castro, GR No. 112905, Feb. 3, 2000, 324 SCRA 591.
[6]Roxas v. Court of Appeals, GR No. 118436, March 21, 1997, 63 SCRA 302.

of general circulation is material and relevant in assessing the applicant's right or title to the land.

Similarly, in *Director of Lands* v. *Court of Appeals and Abistado*,[7] the Court ruled that Section 23 of PD No. 1529 indeed clearly provides that publication in the Official Gazette suffices to confer jurisdiction upon the land registration court. However, absent any publication of the notice of initial hearing in a newspaper of general circulation, the land registration court cannot validly confirm and register the title of the applicants. This is impelled by the demands of statutory construction and the due process rationale behind the publication requirement. A land registration proceeding is a proceeding *in rem* and is validated essentially through publication. The rationale behind the newspaper publication is due process and the reality that the Official Gazette is not as widely read and circulated as newspapers and is oftentimes delayed in its circulation. The registration court has no authority to dispense with such mandatory requirement. For non-compliance with the requirement of publication, the application may be dismissed, without prejudice to reapplication in the future, after all the legal requisites shall have been duly complied with.[7a]

### *4. Publication in the Official Gazette does not dispense with the requirement of notice by mailing and posting*

In *Republic* v. *Marasigan*,[8] it was held that the proviso in Section 23 that "the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court" was never meant to dispense with the requirement of notice by mailing and by posting. What it simply means is that insofar as publication is concerned, there is sufficient compliance if the notice is published in the Official Gazette, although the law mandates that it be published "once in the Official Gazette and once in a newspaper of general circulation in the Philippines." However, publication in the latter alone would not suffice. This is to accord primacy to the official publication. That such proviso was never meant to dispense with the other modes of giving notice, which remain mandatory and jurisdictional, is obvious from Section 23 itself which stresses in detail the requirements of mailing of notices to all persons named in the petition who, per

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[7] *Supra*.
[7a] See also Republic v. Herbieto, GR No. 156117, May 26, 2005.
[8] GR No. 85515, June 6, 1991, 198 SCRA 219.

Section 15, include owners of adjoining properties, and occupants of the land.

### *5. Lack of personal notice does not vitiate the proceedings*

The case of *Roxas* v. *Enriquez*[9] has discussed at some length the nature of a registration proceeding as *in rem* and not *in personam* and the implications of this principle on the need of personal notice to claimants. The Supreme Court declared that a proceeding *in rem*, dealing with a tangible *res*, may be instituted and carried to judgment, without personal service upon the claimants, for jurisdiction is secured by the power of the court over the *res*. Such a proceeding would be impossible were this not so, for it would hardly do to make a distinction between the constitutional rights of the claimants who were known and those who were not known, when the proceeding is to bar all. The requirement that personal notice shall be a prerequisite to the validity of registration would absolutely prohibit the foreclosure of unknown claims, for the reason that personal notice could never be given to "unknown claimants." The great difficulty in land titles arises from the existence of possible unknown claimants. Known claimants can be dealt with. They furnish no valid impediment, in fact, to the transfer of title. Courts have held that in actions *in rem*; personal notice to owners of a *res* is not necessary to give the courts jurisdiction to deal with and to dispose of the *res*. The State, as sovereign over the land situated within it, may provide for the adjudication of title in a proceeding *in rem* or in the nature of a proceeding *in rem*, which shall be binding upon all persons, known or unknown.

It seems clear then that lack of personal notice will not vitiate the proceedings. In this connection, it may be needful to point out that pursuant to Section 23, on the matter of notice, "(t)he court *may* also cause notice to be served to such persons and in such manner as it may deem proper." Evidently, personal notice is not necessary unless required by the court.

It should also be noted that in *Adez Realty, Inc.* v. *Court of Appeals*,[10] a case involving reconstitution of title, it was ruled as follows:

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[9]GR No. 8539, Dec. 24, 1914, 29 Phil. 31.
[10]GR No. 100643, Aug. 14, 1992, 212 SCRA 625.

"(A)s early as 1910, in *Grey Alba* v. *De la Cruz*, We already ruled that land registration proceedings are proceedings *in rem*, not *in personam*, and therefore it is not necessary to give personal notice to the owners or claimants of the land sought to be registered, in order to vest the courts with power or authority over the *res*. Thus, while it may be true that no notice was sent by registered mail to petitioner when the judicial reconstitution of title was sought, such failure, however, did not amount to a jurisdictional defect. In *Register of Deeds of Malabon* v. *RTC, Malabon, Metro Manila, Br. 170*, We said that '[t]he purpose of the publication of the notice of the petition for reconstitution in the Official Gazette is to apprise the whole world that such a petition has been filed and that whoever is minded to oppose it for good cause may do so within thirty (30) days before the date set by the court for hearing the petition. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.' Thus, notice of hearing by proper publication in the Official Gazette is sufficient to clothe the court with jurisdiction, and the mere fact that a person purporting to have a legitimate claim in the property did not receive personal notice is not sufficient ground to invalidate the proceedings."

### *6. Purpose of notice by all three modes*

The purpose of the law in requiring the giving of notice by all three modes is to strengthen the Torrens system through safeguards to prevent anomalous titling of real property. Judicial notice may be taken of the fact that only very few have access to or could read the Official Gazette, which comes out in few copies only per issue. If publication in the Official Gazette of the notice of hearing would be sufficient to confer jurisdiction upon the court, owners of both unregistered and registered lands may someday painfully find out that others have already certificates of title to their lands because scheming parties had successfully caused their registration, or secured reconstituted certificates of title thereto and sold the same to third parties.[11]

[11] *Ibid.*

In *Director of Lands* v. *Court of Appeals and Abistado,*[12] the petition for original registration of title over a parcel of land under PD No. 1529 was dismissed by the land registration court for want of jurisdiction for failure to comply with the provision requiring publication of the notice of initial hearing in a newspaper of general circulation. The notice was only published in the Official Gazette. The Court of Appeals reversed the dismissal of the case and ordered the registration of the title in the name of the private respondent. It ruled that although the requirement of publication in the Official Gazette and in a newspaper of general circulation is couched in mandatory terms, it cannot be gainsaid that the law also mandates with equal force that publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court, and that, in any event, the other requirements of giving personal notice by mailing and posting at the site and other conspicuous places were all complied with. On a petition for review, the Supreme Court ruled that while Section 23 of the Decree indeed provides that publication in the Official Gazette suffices to confer jurisdiction upon the land registration court, there is still need of publication in a newspaper of general circulation to comply with the requirements of due process. In the language of Justice Panganiban:

> "It should be noted further that land registration is a proceeding *in rem*. Being *in rem*, such proceeding requires constructive seizure of the land as against all persons, including the state, who have rights to or interests in the property. An *in rem* proceeding is validated essentially through publication. This being so, the process must strictly be complied with. Otherwise, persons who may be interested or whose rights may be adversely affected would be barred from contesting an application which they had no knowledge of. As has been ruled, a party as an owner seeking the inscription of realty in the land registration court must prove by satisfactory and conclusive evidence not only his ownership thereof but the identity of the same, for he is in the same situation as one who institutes an action for recovery of realty. He must prove his title against the whole world. This task, which rests upon the applicant, can best be achieved when all persons concerned — nay, 'the whole world' — who have

[12]GR No. 102858, July 28, 1997, 276 SCRA 276.

rights to or interests in the subject property are notified and effectively invited to come to court and show cause why the application should not be granted. The elementary norms of due process require that before the claimed property is taken from concerned parties and registered in the name of the applicant, said parties must be given notice and opportunity to oppose.

It may be asked why publication in a newspaper of general circulation should be deemed mandatory when the law already requires notice by publication in the Official Gazette as well as by mailing and posting, all of which have already been complied with in the case at hand. The reason is due process and the reality that the Official Gazette is not as widely read and circulated as newspapers and is oftentimes delayed in its circulation, such that the notices published therein may not reach the interested parties on time, if at all. Additionally, such parties may not be owners of neighboring properties, and may in fact not own any other real estate. In sum, the all-encompassing *in rem* nature of land registration cases, the consequences of default orders issued against the whole world and the objective of disseminating the notice in as wide a manner as possible demand a mandatory construction of the requirements for publication, mailing and posting."

### *7. New publication necessary to include additional area*

As elsewhere stated, publication is one of the essential bases of the jurisdiction of the court in land registration and cadastral cases. Before a survey can be amended so as to include land in which no publication has been made, new publication is necessary — a step essential to the protection of persons interested in the property which is intended to be included. Where no publication has ever been made except the initial publication, and this did not include the additional area, the registration court had no jurisdiction over said area and its adjudication to the applicant is a nullity.[13]

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[13]Philippine Manufacturing Co. v. Imperial, GR No. 24908, March 31, 1926, 49 Phil. 122.

Under Section 19 of PD No. 1529, the registration court may allow an amendment of the application, including joinder, substitution, or discontinuance as to parties at any stage of the proceedings upon just and reasonable terms. And under Section 18, the court may at any time order an application to be amended by striking out one or more parcels or by severance of the application.

As stated in *Benin* v. *Tuason*,[14] the amendment may be made in the application or in the survey plan, or in both, since the application and the survey plan go together. If the amendment consists in the inclusion in the application for registration of an area or parcel of land not previously included in the original application, as published, a new publication of the amended application must be made. The purpose of the new publication is to give notice to all persons concerned regarding the amended application. Without a new publication the registration court can not acquire jurisdiction over the area or parcel of land that is added to the area covered by the original application, and the decision of the registration court would be a nullity insofar as the decision concerns the newly included land. The reason is because without a new publication, the law is infringed with respect to the publicity that is required in registration proceedings, and third parties who have not had the opportunity to present their claim might be prejudiced in their rights because of failure of notice. But if the amendment consists in the exclusion of a portion of the area covered by the original application and the original plan as previously published, a new publication is not necessary. In the latter case, the jurisdiction of the court over the remaining area is not affected by the failure of a new publication.

The right of the land registration court to correct an error of closure is authorized by law, provided such correction does not include land not included in the original petition.[15]

### *8. Effect of non- or defective publication*

In all cases where the authority of the courts to proceed is conferred by a statute and when the manner of obtaining jurisdiction is mandatory and must strictly be complied with, or the proceedings will be utterly void.[16] Thus, where there is no publication of the notice

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[14]GR No. L-26127, June 28, 1974, 57 SCRA 531.

[15]Roxas v. Enriquez, *supra*.

[16]Caltex v. Court of Industrial Relations, GR No. L-28472, April 30, 1968, 23 SCRA 492.

of initial hearing, the decision of the land registration court is void. The requirement of publication is one of the essential bases of the jurisdiction of the registration court; it is a jurisdictional requisite. Land registration is a proceeding *in rem* and jurisdiction *in rem* cannot be acquired unless there be constructive seizure of the land through publication and service of notice.[17] Indeed, a mere defect of publication deprives the court of jurisdiction.[18] And when the court *a quo* lacks jurisdiction to take cognizance of a case, the same lacks authority over the whole case and all its aspects.[19]

### (2) Mailing

In addition to publication, it is also required that the notice of hearing be mailed to the persons and officials mentioned in the law. This requirement is mandatory.

#### *1. Mailing to persons named in the application*

Within seven days after publication in the Official Gazette of the notice of initial hearing, the LRA Administrator shall cause a copy of the notice to be mailed to every person named in the notice whose address is known. This requirement is mandatory.[20]

Where records as that reflected in the official records of the City Assessor indicate that there are no improvements whatsoever on the property in question, thus signifying that the property is unoccupied, notice to petitioners would have been impossible.[21]

#### *2. Mailing to the Secretary of Public (Works) and Highways, Governor and Mayor*

If the applicant requests to have the line of a public way or road determined, the notice shall also be mailed to the Secretary of Public Works and Highways, Provincial Governor and Mayor of the

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[17]Republic v. Court of Appeals and Ribaya, GR No. 113549, July 5, 1996, 258 SCRA 223.

[18]Po v. Republic, GR No. L-27443, July 19, 1971, 40 SCRA 37.

[19]Development Bank of the Philippines Employees Union v. Perez, GR No. L-22584, May 30, 1972, 45 SCRA 179.

[20]Sec. 23(2)(a), PD No. 1529.

[21]Calalang v. Register of Deeds, GR No. 76265, March 11, 1994, 231 SCRA 88 (on a motion for reconsideration).

municipality or city in which the land is situated. If the land borders on a river, navigable stream or shore, an arm of the sea, or lake, or if it otherwise appears that a tenant-farmer or the national government may have a claim adverse to that of the applicant, the notice shall also be mailed to the Secretary of Agrarian Reform, the Solicitor General, Director of Lands, Director of Public Works and Communications, Director of Forest Development, Director of Mines and Geo-Sciences and Director of Fisheries and Aquatic Resources as may be appropriate.[22]

### *3. Mailing to the Secretary of Agrarian Reform, Solicitor General, Director of Lands, Etc.*

If the land borders on a river, navigable stream or shore, or an arm of the sea, or if it otherwise appears that a tenant-farmer, or the national government, may have a claim adverse to the applicant, notice shall be given in the same manner to the Secretary of Agrarian Reform, Solicitor General, Director of Lands, Director of Mines and Geo-Sciences, Director of Fisheries and Aquatic Resources, as may be appropriate.[23]

### *4. Role of the Solicitor General*

In practice, the Solicitor General is always furnished with a copy of the notice of initial hearing. The reason for this is that under the Administrative Code of 1987, the Solicitor General is bound to "[r]epresent the Government in all land registration and related proceedings." No other officer, including the Administrator of the Land Registration Authority, can exercise such function.[24] It is also the practice in the Office of the Solicitor General (OSG) to deputize lawyers in government offices involved in land matters or provincial or city prosecutors to represent the government in the handling of such proceedings. These deputized officers are always under the direction and control of the Solicitor General himself. Only notices of court proceedings and related processes actually served upon the Solicitor General are binding on his office.

PD No. 478, the *Magna Carta* of the OSG, which took effect on June 4, 1974, provides:

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[22]Sec. 23(2)(b), PD No. 1529.
[23]Sec. 23(2)(c), *ibid.*
[24]Ramos v. Rodriguez, GR No. 94033, May 29, 1995, 244 SCRA 418.

"SEC. 1. *Functions and Organization*. — (1) The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

x x x x x x x x x

(e) Represent the Government in all land registration and related proceedings. Institute actions for the reversion to the Government of lands of the public domain and improvements thereon as well as lands held in violation of the Constitution.

x x x x x x x x x

(g) Deputize, whenever in the opinion of the Solicitor General the public interest requires, any provincial or city fiscal to assist him in the performance of any function or discharge of any duty incumbent upon him, within the jurisdiction of the aforesaid provincial or city fiscal. When so deputized, the fiscal shall be under the control and supervision of the Solicitor General with regard to the conduct of the proceedings assigned to the fiscal, and he may be required to render reports or furnish information regarding the assignment."

The Solicitor General, therefore, has "control and supervision" over the special attorney or prosecutor who has been deputized to appear for him. The special attorney or prosecutor is no more than the "surrogate" of the Solicitor General in any particular proceeding. As the principal counsel, the Solicitor General is entitled to be furnished copies of all court orders, notices, and decisions. His appearance therein is premised on his authority to protect the interest of the government and not that of any particular government official or agency.[25]

[25]Director of Lands v. Medina, GR No. L-41968, Feb. 15, 1995, 241 SCRA 340.

In *Republic* v. *Court of Appeals and Bernabe*,[26] the Supreme Court, applying the principle of agency, ruled that the service of the questioned decision on the Provincial Fiscal (Prosecutor) must necessarily be service on the Solicitor General, and added that technical transgressions relative to the filing and service may be brushed aside when the adverse party (the Director of Lands or Director of Forestry) is aware of the matter which his adversary would want the court to act upon. Once it appears that the party is already informed by one means or another of what he is to be notified, the required service becomes an empty gesture and strict observance thereof is considered waived.

It will be observed that later decisions of the Supreme Court tended to be more strict in the matter of giving notice to the Solicitor General. In *Republic* v. *Court of Appeals and Maxino*,[27] it was held that the Solicitor General is the only legal counsel of the government in land registration cases and as such, he alone may withdraw the government's appeal with binding effect on the latter. He is entitled to be furnished copies of all court orders, notices and decisions and the reglementary period for appeal should be reckoned from the time the Office of the Solicitor General is apprised of the decision or order of the court and not from the time the special counsel or the prosecutor was served therewith. Unless the Solicitor General is furnished with copies of court orders, notices and decisions, the same have no binding effect on the government.[28]

### (3) Posting

The third mode of giving notice is by posting. Within fourteen days before the initial hearing, the LRA Administrator shall cause a duly attested copy of the notice to be posted by the sheriff in a conspicuous place on the land applied for and also in a conspicuous place on the bulletin board of the municipality or city in which the land is situated. This requirement is also mandatory.

**SEC. 24. *Proof of publication and notice*. — The certification of the Commissioner of Land Registration and of the sheriff concerned to the effect that the notice of initial hearing, as required**

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[26]GR No. L-40402, March 16, 1987, 148 SCRA 480, 148 SCRA 480.
[27]GR No. L-56077, Feb. 25, 1985, 135 SCRA 156.
[28]Republic v. Court of Appeals and Bernabe, *supra*.

**by law, has been complied with shall be filed in the case before the date of initial hearing, and shall be conclusive proof of such fact.**

### 01. Certification of LRA and Sheriff as to publication, mailing and posting conclusive.

Implicit from Section 24 is that the certification by the LRA Administrator as to the fact of publication and mailing, and that of the sheriff as to posting, as required by law, are conclusive.

**SEC. 25. *Opposition to application in ordinary proceedings*. — Any person claiming an interest, whether named in the notice or not, may appear and file an opposition on or before the date of initial hearing, or within such further time as may be allowed by the court. The opposition shall state all the objections to the application and shall set forth the interest claimed by the party filing the same and apply for the remedy desired, and shall be signed and sworn to by him or by some other duly authorized person.**

**If the opposition or the adverse claim of any person covers only a portion of the lot and said portion is not properly delimited on the plan attached to the application, or in case of undivided co-ownership, conflicting claims of ownership or possession, or overlapping of boundaries, the court may require the parties to submit a subdivision plan duly approved by the Director of Lands.**

### 01. Requisites for opposing application.

Any person, whether named in the notice or not, may appear and file an opposition on or before the date of initial hearing, or within such time as may be allowed by the court, provided he has an interest in the property applied for. The opposition shall state his objections to the application, set forth the nature of his interest, and indicate the relief desired. The opposition shall be signed and sworn to by him or by his duly authorized representative. For an opposition then to be considered, the following requisites must concur:

(a) The oppositor must have an interest in the land applied for;

(b) He should state the grounds for his objection as well as the nature of his claimed interest;

(c) He should indicate the desired relief; and

(d) The opposition should be signed and sworn to by him or by his duly authorized representative.

It has been held, however, that unverified oppositions in land registration proceedings are nevertheless sufficient to confer standing in court to oppositors who may be allowed to verify their oppositions later on, especially where said defect is deemed waived by the applicants' failure to invoke said requirement seasonably.[29] Also, the written appearance with opposition presented by petitioner in a case was considered valid and sufficient to give him a legal standing in court and entitle him to notice, as a matter of right. It was a substantial compliance with the law that required a formal answer.[30]

**02. Nature of interest to support opposition.**

In order that an application for registration of the title may be objected to, the opposition must be based on the right of dominion or some other real right opposed to the adjudication or recognition of the ownership of the applicant, whether it be limited or absolute.[31] In other words, to give a person a legal standing to object to the application for registration, "he must make some claim to the property."[32] The circumstance that an opponent in a land registration proceeding cannot show title in himself does not discapacitate him from opposing registration of the property in the name of the applicant. Nor is it even material for the opponent to have the legal character necessary to enable him to maintain a registration proceeding in his own name and behalf. All that is necessary to enable one to exert the faculty of opposition is that he should appear to have an interest in the property.[33]

"It is immaterial," said the Supreme Court in *De Castro* v. *Marcos*,[34] "whether this interest is in the character of legal owner or is of a purely equitable nature as where he is the beneficiary in a trust."

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[29]Miller v. Director of Lands, GR No. L-16761, Oct. 31, 1964, 12 SCRA 292.

[30]Nicolas v. Director of Lands, GR No. L-19147, Dec. 28, 1963, 9 SCRA 934.

[31]Roxas v. Cuevas, GR No. L-3637, Aug. 31, 1907, 8 Phil. 469.

[32]Soriano v. Cortes, GR No. L-3628, Aug. 30, 1907, 8 Phil. 459.

[33]Roman Catholic Archbishop of Manila v. Barrios of Sto. Cristo, GR No. 12981, Nov. 6, 1918, 39 Phil. 1.

[34]GR No. L-26093, Jan. 27, 1969, 26 SCRA 644.

All claims of third persons to the property must be asserted in the registration proceedings. If any claim to a portion thereof is upheld, that portion is segregated from the property applied for, and is not included in the decree of registration and certificate of title subsequently issued to the applicant. If it is included, the claim is deemed adversely resolved with finality, subject only to a petition for review of the decree within one year from its issuance on the ground of fraud. It is obvious that a mere claim cannot defeat a registered title. A "claim" merely noted on the survey plan cannot prevail over the actual decree of registration as reproduced in the certificate. The rule also is that the owner of buildings and improvements should claim them during the proceedings for registration and the fact of ownership, if upheld by the court, must be noted on the face of the certificate.[35]

### 03. Failure to file opposition, effect of.

Where no answer in writing or any opposition is made to an application for registration of property, all the allegations contained in the application shall be held as confessed by reason of the absence of denial on the part of the opponent. A person who has not challenged an application for registration of land even if the appeal afterwards interposed is based on the right of dominion over the same land, cannot allege damage or error against the judgment ordering the registration inasmuch as he did not allege or pretend to have any right to such land.[36] In the same manner, it has been held that a claimant having failed to present his answer or objection to the registration of a parcel of land under the Torrens system or to question the validity of such registration within a period of one year after the certificate of title had been issued, is deemed to have forever lost his right in said land even granting that he had any right therein.[37]

#### (1) Persons who may file opposition

The following persons are deemed to have that "interest" or "equitable title" necessary to give them legal standing as oppositors:

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[35]Fernandez v. Aboratigue, GR No. L-25313, Dec. 28, 1970, 36 SCRA 476.

[36]Esconde v. Barlongay, GR No. L-67583, July 31, 1987, 152 SCRA 603; Cabañas v. Director of Lands, GR No. L-4205, March 16, 1908, 10 Phil. 393.

[37]De los Reyes v. Paterno, GR No. 10580, March 27, 1916, 34 Phil. 420.

(a) A homesteader who has not yet been issued his title but has fulfilled all the conditions required by law for the issuance of patent;

(b) A purchaser of friar land who is deemed to have an equitable title to the land even before the issuance of the patent;

(c) An awardee in a sales application who, by virtue of the award, is authorized to take possession of the land to enable him to comply with the requirements for the issuance of patent;[38]

(d) A person claiming to be in possession of the land and has applied with the Lands Management Bureau for its purchase.

### (2) Private persons may not file opposition for the government

In order that an application for registration of the title of ownership may be objected to, the opposition must be based on the right of dominion or some other real right opposed to the adjudication or recognition of the ownership of the petitioner, whether it be limited or absolute; and if none such rights of the respondent have been injured by the judgment, he can not have, on his part, the right to oppose the application, much less appeal from the judgment. A private person may not oppose an application for registration on behalf of the government on the ground that the land belongs to the government.[39]

In one case,[40] the dismissal by the registration court of petitioners' opposition was sustained by the Supreme Court for lack of personality to oppose the registration independently of that of the national government after receiving evidence that petitioners were mere sales applicants in the Bureau of Lands (now Lands Management Bureau) and that they had been warned that they should not enter nor improve the land object of their sales applications prior to the approval thereof by the land authorities, and in fact paragraph 6 of their sales applications explicitly provided that the same conveyed no right to occupy the land prior to their approval.

Similarly, a foreshore lessee has no personality as oppositor since his right is predicated upon the property in question being part

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[38]De Castro v. Marcos, GR No. L-26093, Jan. 27, 1969, 26 SCRA 644.
[39]Roxas v. Cuevas, GR No. L-3637, Aug. 31, 1907, 8 Phil. 469.
[40]Fernandez v. Tañada, GR No. L-31673, June 30, 1971, 39 SCRA 662.

of the public domain and, hence, completely subordinate to the interest of the government. In such case, it is incumbent upon the duly authorized representatives of the government to represent its interests as well as private claims intrinsically dependent upon it. It is settled that the interests of the government cannot be represented by private persons.[41]

**04. Opposition by the government.**

The government, acting through the Office of the Solicitor General, is invariably represented by the Director of Lands or Director of Forestry as public oppositor in all land registration and related proceedings. Pursuant to the *Regalian* doctrine, all lands of the public domain and all other natural resources are owned by the State,[42] hence, it is the burden of the applicant (or private oppositor) to overthrow the presumption that the land is public land by "well-nigh incontrovertible proof" and that he is entitled to registration under the law. Corollarily, in controversies involving the disposition of public agricultural lands, the burden of overthrowing the presumption of State ownership lies upon the private claimant.[43]

As pointed out, only the Solicitor General, as the lawyer of the government, can bring or defend actions on behalf of the Republic of the Philippines and, therefore, actions filed in the name of the Republic, or its government agencies, if not initiated by the Solicitor General, will be summarily dismissed. Conversely, all actions filed against the government must be defended by the Solicitor General. In practice, because of the numerous activities of government requiring the services of the Office of the Solicitor General, more so in land registration and cadastral cases which is nationwide in scope, it has become necessary to deputize provincial or city prosecutors and special attorneys from the different government offices to assist said office in the discharge of its important functions. Even so, the Solicitor General has full control of the conduct of the proceedings. Important pleadings have to be signed by the Solicitor General himself, or at least by the handling Assistant Solicitor General, usually assisted by a Solicitor or Associate Solicitor.

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[41]Leyva v. Jandoc, GR No. L-16965, Feb. 28, 1962, 4 SCRA 595.

[42]Sec. 2, Art. XII, Constitution.

[43]Republic v. Register of Deeds of Quezon, GR No. 73974, May 31, 1995, 244 SCRA 537.

**(1) Absence of opposition by the government does not justify outright registration**

The State has control over the real property within its limits. The conditions of ownership of real estate is subject to its rules, concerning the holding, transfer, liability to obligations, private or public, and the modes of establishing title thereto, and for the purpose of determining these questions, it may provide any reasonable rules or procedure. The State possesses not only the right to determine how title to real estate may be acquired and proved, but it is also within its legislative capacity to establish the method of procedure.[44]

To argue that the initiation of an application for registration of land under the Torrens system is proof that the land is of private ownership, not pertaining to the public domain, is to beg the question. It is precisely the character of the land as private which the applicant has the obligation of establishing. For there can be no doubt of the intendment of the law that every applicant must show a proper title for registration; indeed, even in the absence of any adverse claim, the applicant is not assured of a favorable decree by the land registration court if he fails to establish a proper title for official recognition. A compromise agreement entered into by the parties, where neither has adduced any competent evidence of their ownership over the land, even with the assent of the Director of Lands and Director of Forest Development, could not supply the absence of evidence of title required in registration cases.[45]

Notwithstanding the absence of opposition from the government, the applicant in land registration cases is not relieved of the burden of proving the imperfect right or title sought to be confirmed.[46] He is not necessarily entitled to have the land registered under the Torrens system, 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. Courts are not justified in registering property under the Torrens system, simply because there is no opposition offered. Courts may, even in the absence of any opposition, deny the registration of the land under the Torrens system, upon the ground that the facts presented did not show that the petitioner

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[44]Roxas v. Enriquez, GR No. 8539, Dec. 24, 1914, 29 Phil. 31.

[45]Republic v. Sayo, GR No. 60413, Oct. 31, 1990, 191 SCRA 71.

[46]Director, Lands Management Bureau v. Court of Appeals, GR No. 112567, Feb. 7, 2000, 324 SCRA 757.

is the owner, in fee simple, of the land which he is attempting to have registered.[47]

To iterate, the failure of the Director of Lands, in representation of the government, to oppose the application for registration for which he was declared in default will not justify the court in adjudicating the land applied for as private property. The court has to receive evidence to determine whether or not the applicant, or private oppo-sitor if claiming affirmative relief, has discharged the burden of establishing his ownership of the land. Otherwise, the court has no alternative but to dismiss the application, thus maintaining the status of the land as public land.

### (2) Failure to appear on the day of initial hearing is not a ground for default where opposition or answer had been filed

In *Director of Lands* v. *Santiago*,[48] it was held that where an opposition or answer, which is based on substantial grounds, has been formally filed, it is improper for the court to declare the oppositor in default simply because he failed to appear on the day set for the initial healing. The pertinent provision of law which states: "If no person appears and answers within the time allowed, the court may at once upon motion of the applicant, no reason to the contrary appearing, order a general default to be recorded . . . "cannot be interpreted to mean that the court can just disregard the answer before it, which had long been filed, for such an interpretation would be nothing less than illogical, unwarranted, and unjust. Had the law intended that failure of the oppositor to appear on the date of the initial hearing would be a ground for default despite his having filed an answer, it would have been so stated in unmistakable terms, considering the serious consequences of an order of default.

### (3) Government may appeal despite failure of agency to file opposition

In *Republic* v. *Court of Appeals and Arquillo*,[49] it was held that the failure of the government agency concerned to file an opposition to the application for registration or to appeal from the adverse

[47]Director of Lands v. Agustin, GR No. 16179, Oct. 6, 1921, 42 Phil. 227.
[48]GR No. L-41278, April 15, 1988, 160 SCRA 186.
[49]*Supra.*

decision of the registration court is not fatal. The reason for this is that the government is usually not estopped by the mistake or error of its officials or agents.

**05. Motion to dismiss proper in a registration proceeding.**

The Property Registration Decree does not provide for a pleading similar or corresponding to a motion to dismiss. Rule 132 of the Rules of Court, however, allows the application of the Rules in land registration proceedings in a suppletory character or whenever practicable and convenient.

The opposition in a registration case partakes of the nature of an answer with a counterclaim. In ordinary civil cases, the counterclaim would be considered a complaint, this time with the original defendant becoming the plaintiff. The original plaintiff, who becomes defendant in the counterclaim, may either then answer the counterclaim or be declared in default, or may file a motion to dismiss the same.

Thus, in *Valisno* v. *Plan*,[50] the Supreme Court sustained the applicant's motion to dismiss the opposition when it appeared that the property sought to be registered had been previously litigated between the applicant and the oppositor in a civil case for recovery of possession, resulting in a judgment favorable to the applicant. It was held that while the complaint in the first action is captioned for recovery of possession, the allegations and the prayer for relief therein raise the issue of ownership. In effect, it is in the nature of an *accion reinvidicatoria*. The second case is for registration of title. Consequently, between the two cases there is identity of causes of action because in *accion reinvidicatoria*, possession is sought on the basis of ownership and the same is true in registration cases. Registration of title in one's name is based on ownership. It does not matter that the first case was decided by a court of general jurisdiction, while the second case is being heard by one of a limited jurisdiction, such as a registration court, It is enough that the court which decided the first case on the merits had validly acquired jurisdiction over the subject matter and the parties. That both courts should have equal jurisdiction is not a requisite of *res judicata*.

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[50]GR No. L-55152, Aug. 19, 1986, 143 SCRA 502.

### 06. Submission of subdivision plan.

The registration court may require the submission by the parties of a subdivision plan, duly approved by the Director of Lands, in the following instances:

(a) If the opposition or adverse claim covers only a portion of the lot applied for which is not delimited on the plan accompanying the application;

(b) In case of undivided co-ownership, conflicting claims of ownership or possession, or overlapping of boundaries.

**SEC. 26. *Order of default; effect.* — If no person appears and answers within the time allowed, the court shall, upon motion of the applicant, no reason to the contrary appearing, order a default to be recorded and require the applicant to present evidence. By the description in the notice "To all Whom It May Concern," all the world are made parties defendant and shall be concluded by the default order.**

**Where an appearance has been entered and an answer filed, a default order shall be entered against persons who did not appear and answer.**

### 01. Order of default, when entered.

If no person appears and answers within the time allowed, the court shall, upon motion of the application, order a default to be entered and require the applicant to present evidence. By description in the notice "To All Whom It May Concern," all the world are made parties defendant and shall be concluded y the default order. This is commonly referred to as the *order of general default* and is addressed to the whole world.

When an appearance has been entered and answer filed, a default order shall be entered against persons who did not appear and answer. This is the *order of special default* which is directed only against those who did not enter their appearance and file answer.

When the court issues an order of default, it is presumed to have regularly performed its task in accordance with law especially with regard to notice requirements. Compliance with the requirements of notice and publication has the effect of notifying all persons interested in the proceedings.[51]

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[51]Lopez v. De Castro, *supra*.

When no answer in writing or any opposition is made to an application for the registration of a property, all the allegations contained in the application shall be held as confessed by reason of the absence thereof. A person who has not challenged an application for registration, even if the appeal afterwards interposed is based on the right of dominion over the same land, can not allege damage or error against the judgment ordering the registration, inasmuch as he did not allege or pretend to have any right to such land, and no right has been infringed by an error which should be corrected by the appeal.[52] But a declaration of default is not a guarantee that the application for registration will be granted. It is still the burden of the applicant to prove that he is entitled to registration by "well-nigh incontrovertible proof."

**02. Motion to lift order of general default.**

An order of general default is interlocutory in character, subject to the control of the court, and may be modified or amended as the court may deem proper at any time prior to the rendition of the final judgment. The interests of substantial justice and the speedy determination of the controversy should be the guiding principle of the trial court in lifting an order of general default to allow a party to file an opposition to the application.[53]

The power of the court, 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 cannot be questioned.[54] But the motion to lift the order of general default should be filed before entry of final judgment. Thus, where the land registration court granted the application for registration of title on May 31, 1966 and issued a certificate of finality on March 8, 1991, petitioners' filing of their motion to lift the order of default on July 16, 1997 was out of time and the order of default could not be set aside.[55]

A motion to set aside the order of default filed prior to the rendition of the judgment on the merits should be considered with liberality since it is presented promptly and without unnecessary

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[52]Cabañas v. Director of Lands, GR No. L-4205, March 16, 1908, 10 Phil. 393.
[53]Lee v. Punzalan, GR No. L-50236, Aug. 29, 1980, 99 SCRA 567.
[54]Larrobis v. Wislezenus, GR No. 18015, Nov. 28, 1921, 42 Phil. 401.
[55]Lopez v. Enriquez, GR No. 146262, Jan. 21, 2005, 449 SCRA 173.

delay and not much inconvenience may be caused either to the court or to the adverse party.[56] However, where the court revoked the order of default issued in a cadastral proceeding five years after the default order had been entered, and permitted private claimant to file his answer and later ordered the registration of the lots in his name, it was held that the order setting aside the order of default, and the proceedings adjudicating the lots as private property, are null and void and should be set aside.[57]

**03. Effect of order of default.**

An order of default issued in a land registration case, a proceed-ing *in rem*, is binding "against the whole world," with the exception only of the parties who had appeared and filed pleadings in the registration case. All parties could and should have taken part in the case to assert and prove their rights over the property subject thereof. The fact that they did not cannot operate to exclude them from the binding effects of the *in rem* judgment rendered in the proceedings.[58]

A party declared in default loses his standing in court. As a result of his loss of standing, a party in default cannot appear in court, adduce evidence, be heard, or be entitled to notice. A party in default cannot even appeal from the judgment rendered by the court, unless he files a motion to set aside the order of default under the grounds provided in Section 3(b), Rule 9 of the 1997 Rules of Civil Procedure, to wit:

> "(b) *Relief from order of default*. — A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice."

One should be careful, however, to distinguish between movants as mere interested parties under Section 22 of PD No. 1529 which reads —

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[56]Akut v. Court of Appeals, GR No. L-45472, Aug. 30, 1982, 201 Phil. 680.
[57]Director of Lands v. Santamaria, GR No. 20151, March 6, 1923, 44 Phil. 594
[58]Cachero v. Marzan, GR No. 53768, May 6, 1991, 196 SCRA 601.

> "SEC. 22. *Dealings with land pending original registration*. — After the filing of the application and before the issuance of the decree of registration, the land therein described may still be the subject of dealings in whole or in part, in which case the interested party shall present to the court the pertinent instruments together with a subdivision plan approved by the Director of Lands in case of transfer of portions thereof, and the court, after notice to the parties, shall order such land registered subject to the conveyance or encumbrance created by said instruments, or order that the decree of registration be issued in the name of the person to whom the property has been conveyed by said instruments."

and movants as intervenors-oppositors in the land registration proceedings. It is only in the latter case that a motion to lift the order of general default is required.[59]

**04. Government not estopped by the mistake or error of its agents.**

Where the Director of Lands did not oppose the application consequent to which an order of general default was issued by the court, it was held that said order should not prejudice the government under the well known and settled rule that the Republic, or its government, is usually not estoppel by mistake or error on the part of its officials or agents.[60]

A declaration of default against the Director of Lands was held to be invalid where, at the time the order was made, he had already entered his appearance and filed his opposition or answer. Courts should be liberal in setting aside a default judgment.[61]

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[59]Lopez v. Enriquez, *supra*.

[60]Republic v. Aquino, GR No. L-33983, Jan. 27, 1983, 205 Phil. 141; Republic v. Court of Appeals and Arquillo, *supra*.

[61]Director of Lands v. Santiago, GR No. L-41278, April 15, 1988, 160 SCRA 186.

## C. HEARING, JUDGMENT AND DECREE OF REGISTRATION

**SEC. 27. *Speedy hearing; reference to a referee.* — The trial court shall see to it that all registration proceedings are disposed of within ninety days from the date the case is submitted for decision.**

**The court, if it deems necessary, may refer the case or any part thereof to a referee who shall hear the parties and their evidence, and the referee shall submit his report thereon to the court within fifteen days after the termination of such hearing. Hearing before a referee may be held at any convenient place within the province or city as may be fixed by him and after reasonable notice thereof shall have been served the parties concerned. The court may render judgment in accordance with the report as though the facts have been found by the judge himself: *Provided, however,* That the court may in its discretion accept the report, or set it aside in whole or in part, or order the case to be recommitted for further proceedings.**

### 01. Proof required in registration proceedings, generally.

In order that land may be registered under the Torrens system, the applicant must show, even though there is no opposition to his application, that he is the absolute owner, in fee simple, of such land. In other words, the burden is upon him to show that he is the real and absolute owner, in fee simple, of such land. On the other hand, no public land can be acquired by private persons without any grant, express or implied, from the government. The term "public land" is uniformly used to describe so much of the national domain under the legislative power of the Congress as has not been subjected to private right or devoted to public use.[1] Indeed, the possession of public agricultural land, however long the period may have extended, never confers title thereto upon the possessor. The reason for this is because the statute of limitations with regard to public agricultural land does not operate against the State, unless the occupant can prove possession and occupation of the same under claim of ownership for the required number of years to constitute a grant

[1]Montano v. Insular Government, GR No. 3714, Jan. 26, 1909, 12 Phil. 572; Lee Hong Hok v. David, GR No. L-30389, Dec. 27, 1972, 48 SCRA 372; Gordula v. Court of Appeals, GR No. 127296, Jan. 22, 1998, 284 SCRA 617.

from the State. The possession and occupation must not only be under a *bona fide* claim of ownership but must also be open, continuous, exclusive and notorious to give rise to a presumptive grant from the State.[2]

It is therefore important to consider basic principles to substantiate a claim of private ownership over property leading to its registration under the Torrens system. The applicant must comply with the substantive and procedural requirements of the law.

## 02. Requisite steps in bringing land under the Torrens system.

In order that land may be brought under the operation of the Torrens system, the following steps should be observed;

1. Survey of land by the Lands Management Bureau or a duly licensed private surveyor;[3]

2. Filing of application for registration by the applicant;

3. Setting of the date for the initial hearing of the application by the court;

4. Transmittal of the application and the date of initial hearing together with all the documents or other evidences attached thereto by the Clerk of Court to the Land Registration Authority;

5. Publication of the notice of the filing of the application and date and place of the hearing in the Official Gazette and in a newspaper of general circulation;

6. Service of notice upon contiguous owners, occupants and those known to have interests in the property by the sheriff;

7. Filing of answer to the application by any person whether named in the notice or not;

8. Hearing of the case by the court;

9. Promulgation of judgment by the court;

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[2]Province of Camarines Sur v. Director of Lands, GR No. 43361, Aug. 21, 1937, 64 Phil. 600; Padilla v. Reyes, GR No. 37435, Nov. 28, 1934, 60 Phil. 967.

[3]Only the Director of Lands may approve survey plans for original registration purposes. See Sec. 17, PD No. 1529; PD No. 239, dated July 6, 1973; University of the Philippines v. Rosario, GR No. 136965, March 28, 2001, 355 SCRA 591.

10. Issuance of an order for the issuance of a decree declaring the decision final and instructing the Land Registration Authority to issue the decree of confirmation and registration;

11. Entry of the decree of registration in the Land Registration Authority;[4]

12. Sending of copy of the decree of registration to the corresponding Register of Deeds; and

13. Transcription of the decree of registration in the registration book and the issuance of the owner's duplicate original certificate of title to the applicant by the Register of Deeds, upon payment of the prescribed fees.[5]

Failure to comply with the foregoing requirements will justify the court in denying the application for registration.

## I. CITIZENSHIP REQUIREMENT

### 01. The *Krivenko* doctrine: aliens disqualified from acquiring public and private lands.

The landmark case of *Krivenko* v. *Register of Deeds*[1] settled the issue as to who are qualified (and disqualified) to own public as well as private lands in the Philippines. Following a long discourse maintaining that the "public agricultural lands" mentioned in Section 1, Article XIII of the 1935 Constitution, include residential, commercial and industrial lands, the Court stated:

> "Under section 1 of Article XIII [now Sec. 2, Art. XII] of the Constitution, 'natural resources, with the exception of public agricultural land, shall not be alienated,' and with respect to public agricultural lands, their alienation is limited to Filipino citizens. But this constitutional purpose conserving agricultural resources in the hands of Filipino citizens may easily be defeated by the Filipino citizens

[4]Director of Lands v. Roman Catholic Archbishop of Manila, GR No. 14869, Oct. 27, 1920, 41 Phil. 120.

[5]Republic v. Abrille, GR No. L-39248, May 7, 1976, 71 SCRA 57; Republic v. Alon, GR No. 83804, July 18, 1991, 199 SCRA 396.

[1]GR No. L-630, Nov. 15, 1947, 79 Phil. 461.

themselves who may alienate their agricultural lands in favor of aliens. It is partly to prevent this result that section 5 is included in Article XIII, and it reads as follows:

'Sec. 5. Save in cases of hereditary succession, no private agricultural land will be transferred or assigned except to individuals, corporations or associations qualified to acquire or hold lands of the public domain in the Philippines.'

This constitutional provision closes the only remaining avenue through which agricultural resources may leak into aliens' hands. It would certainly be futile to prohibit the alienation of public agricultural lands to aliens if, after all, they may be freely so alienated upon their becoming private agricultural lands in the hands of Filipino citizens. Undoubtedly, as above indicated, Section 5 [now Sec. 7] is intended to insure the policy of nationalization contained in Section 1 [now Sec. 2]. Both sections must, therefore, be read together for they have the same purpose and the same subject matter. It must be noticed that the persons against whom the prohibition is directed in Section 5 [now Sec. 7] are the very same persons who under Section 1 [now Sec. 2] are disqualified 'to acquire or hold lands of the public domain in the Philippines.' And the subject matter of both sections is the same, namely, the non-transferability of 'agricultural land' to aliens. . ."

The *Krivenko* ruling was reiterated in *Ong Ching Po* v. *Court of Appeals*[2] which involves a sale of land to a Chinese citizen. The Court said:

"The capacity to acquire private land is made dependent upon the capacity to acquire or hold lands of the public domain. Private land may be transferred or conveyed only to individuals or entities 'qualified to acquire lands of the public domain' (II Bernas, The Constitution of the Philippines 439-440 [1988 Ed.]).

The 1935 Constitution reserved the right to participate in the 'disposition, exploitation, development and utilization' of all 'lands of the public domain and other

[2]GR No. 113472, Dec. 20, 1994, 239 SCRA 341.

> natural resources of the Philippines' for Filipino citizens or corporations at least sixty percent of the capital of which was owned by Filipinos. Aliens, whether individuals or corporations, have been disqualified from acquiring public lands; hence, they have also been disqualified from acquiring private lands."

In fine, non-Filipinos cannot acquire or hold title to private lands or to lands of the public domain, except only by way of legal succession.[3]

**02. Acquisition of agricultural lands of the public domain limited to Filipino citizens.**

Under the 1987 Constitution, all lands of the public domain, waters and all other natural resources are owned by the State, and with respect to agricultural lands, their alienation is limited to Filipino citizens.[4] The constitutional purpose is to establish a permanent fundamental policy of conserving agricultural resources in the hands of Filipinos and this purpose is made more emphatic by the provision that "save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations or associations qualified to acquire or hold lands of the public domain."[5] A natural-born citizen of the Philippines who has lost his citizenship may be a transferee of private lands, subject to limitations provided by law.[6]

The constitutional intent is strongly reflected by an Act of the then National Assembly passed soon after the 1935 Constitution was approved — CA No. 141, otherwise known as the Public Land Act — pertinent provisions of which read:

> "SEC. 122. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated, or transferred, except to persons, corporations, associations, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefor by their charters.

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[3]Halili v. Court of Appeals, GR No. 113539, March 12, 1998, 287 SCRA 465.
[4]Sec. 2, Art. XII, Constitution.
[5]Sec. 7, *ibid.*
[6]Sec. 8, *ibid.*

Except in cases of hereditary succession, no land or any portion thereof originally acquired under the free patent, homestead, or individual sale provisions of this Act, or any permanent improvement on such land, shall be transferred or assigned to any individual, nor shall such land or any permanent improvement thereon be leased to such individual, when the area of said land, added to that of his own, shall exceed one hundred and forty-four hectares.[7] Any transfer, assignment, or lease made in violation hereof shall be null and void.

SEC. 123. No land originally acquired in any manner under the provisions of any previous Act, ordinance, royal order, royal decree, or any other provision of law formerly in force in the Philippines with regard to public lands, *terrenos baldios y realengos*, or lands of any other denomination that were actually or presumptively of the public domain, or by royal grant or in any other form, nor any permanent improvement on such land, shall be encumbered, alienated, or conveyed, except to persons, corporations or associations who may acquire land of the public domain under this Act or to corporate bodies organized in the Philippines whose charters authorize them to do so: *Provided, however*, That this prohibition shall not be applicable to the conveyance or acquisition by reason of hereditary succession duly acknowledged and legalized by competent courts: *Provided, further*, That in the event of the ownership of the lands and improvements mentioned in this section and in the last preceding section being transferred by judicial decree to persons, corporations or associations not legally capacitated to acquire the same under the provisions of this Act, such persons, corporations, or associations shall be obliged to alienate said lands or improvements to others so capacitated within the precise period of five years; otherwise, such property shall revert to the Government."

It should be noted, in this connection, that under the 1987 Constitution, private corporations may not hold alienable lands of the public domain except by lease.[8]

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[7]Now 12 hectares under the 1987 Constitution.
[8]Sec. 3, Art. XII, Constitution.

On the basis of their capacity "to acquire or hold lands of the public domain," the following may acquire private lands: (a) Filipino citizens; (b) Filipino corporations and associations as defined in Section 2, Article XII of the Constitution; and, by exception, (c) aliens, but only by hereditary succession; and (d) a natural-born citizen of the Philippines who has lost his citizenship under the terms of Section 8. Filipino citizens can both "acquire" or otherwise "hold" lands of the public domain. Filipino corporations cannot acquire lands of the public domain but they can "hold" such lands by modes other than acquisition, such as lease.[9]

More specifically, private corporations may lease alienable lands of the public domain for a period not exceeding 25 years, renewable for not more than 25 years, and not to exceed 1,000 hectares. Citizens of the Philippines may lease not more than 500 hectares, or acquire not more than 12 hectares thereof by purchase, homestead or grant.

The exploration, development and utilization (EDU) of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens.[10] More specifically, given the inadequacy of Filipino capital and technology in *large-scale* EDU activities, the State may secure the help of foreign companies in all relevant matters — especially financial and technical assistance — provided that, at all times, the State maintains its right of full control.[11]

**03. Qualification is determined as of the time the right to own property is acquired.**

The time to determine whether a person acquiring land is qualified is the time the right to own it is acquired and not the time to register ownership.[12] Thus, a naturalized Canadian citizen who, while still a Filipino citizen, acquired land from a vendor who had complied with the requirements of registration under the Public Land

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[9]Bernas, The 1987 Philippine Constitution, A Reviewer Primer, 2002 Ed., 515.
[10]Sec. 3, Art. XII, Constitution
[11]La Bugal-B'Laan Tribal Association, Inc. v. Ramos, GR No. 127882, Dec. 1, 2004, 445 SCRA 1.
[12]Director of Lands v. Intermediate Appellate Court and Acme, GR No. 73002, Dec. 29, 1986, 146 SCRA 509.

Act prior to the purchase, can validly register his title to the land, as held in *Republic* v. *Court of Appeals and Lapiña*.[13] In this case, respondents, who were natural born Filipino citizens, bought the lots in question from one Cristela Dazo Belen on June 10, 1978. On February 5, 1987, respondents filed an application for the registration for said lots. This time, however, they were no longer Filipino citizens since they had in the meantime become naturalized Canadian citizens. The government opposed the application. After trial, the court *a quo* rendered a decision confirming private respondents' title to the lots which the appellate court affirmed. The government went to the Supreme Court, arguing that respondents have not acquired proprietary rights over the lots before they acquired Canadian citizenship. Citing *Republic* v. *Villanueva*,[14] it maintained that even privately owned unregistered lands are presumed to be public lands under the principle that land of whatever classification belong to the State under the *Regalian* doctrine. Thus, before the issuance of the certificate of title, the occupant is not in the juridical sense the true owner of the land since it still pertains to the State. It is only when the court adjudicates the land to the applicant for confirmation of title would the land become privately owned land, for in the same proceeding, the court may declare it public land, depending on the evidence.

The Supreme Court, through Justice Bidin, disagreed. It held that the case of *Republic* v. *Villanueva* was already abandoned in the 1986 case of *Director of Lands* v. *Intermediate Appellate Court*[15] which ruled "that open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property." The Court observed that, in the case at bar, respondents bought the lots from Cristela Dazo Belen who had been in possession thereof in the concept of owner for the prescribed period for the acquisition of title under the Public Land Act (Sec. 48[b]) and who, by virtue thereof, acquired an imperfect title thereto.

The Court held further that even if the spouses were already Canadian citizens at the time they applied for registration, the lots were already private lands and no longer formed part of the public

[13]GR No. 108998, Aug. 24, 1994, 235 SCRA 567.
[14]GR No. 55289, June 29, 1982, 114 SCRA 875.
[15]GR No. 73002, Dec. 29, 1986, 146 SCRA 509.

domain. They were already private in character at the time of the purchase since respondents' predecessors-in-interest had been in open, continuous and exclusive possession and occupation thereof under claim of ownership prior to June 12, 1945 or since 1937. Moreover, the law provides that a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of a private land under the terms prescribed by law.[16] Said the Court:

> "It is undisputed that private respondents, as vendees of a private land, were natural born citizens of the Philippines. For the purpose of transfer and/or acquisition of a parcel of residential land, it is not significant whether private respondents are no longer Filipino citizens at the time they purchased or registered the parcels of land in question. What is important is that private respondents were formerly natural-born citizens of the Philippines, and as transferees of a private land, they could apply for registration in accordance with the mandate of Section 8, Article XII of the Constitution. Considering that private respondents were able to prove the requisite period and character of possession of their predecessors-in-interest over the subject lots, their application for registration of title must perforce be approved."

This case should be differentiated from the case of *Direcor of Lands* v. *Buyco*[17] where the applicants were likewise natural-born Filipino citizens who later became naturalized American citizens. Their application was denied registration, not simply because they were already American citizens at the time they filed the application, but because they failed to prove that their predecessor-in-interest had possessed the property in such manner as to segregate or remove the same from the mass of the public domain. They had acquired no vested right, consisting of an imperfect title, over the property before they lost their Philippine citizenship. In fact, the entire property is a pasture land which is not alienable under the Constitution.

**04. Aliens may lease private land.**

While aliens are disqualified from acquiring lands of the public domain, they may however lease private land. A lease to an alien for

[16]Sec. 8, Art. XII, Constitution.
[17]GR No. 91189, Nov. 27, 1992, 216 SCRA 78.

a reasonable period is valid. So is an option giving an alien the right to buy real property on condition that he is granted Philippine citizenship. Aliens are not completely excluded by the Constitution from the use of lands for residential purposes. Since their residence in the Philippines is temporary, they may be granted temporary rights such as a lease contract which is not forbidden by the Constitution. Should they desire to remain here forever and share our fortune and misfortune, Filipino citizenship is not impossible to acquire. But if an alien is given not only a lease of, but also an option to buy, a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land *(jus possidendi, jus utendi, jus fruendi,* and *jus abutendi)* — rights, the sum of which make up ownership. It is just as if today the possession is transferred, tomorrow the use, the next day the disposition, and so on, until ultimately all the rights of which ownership is made up are consolidated in an alien.[18]

**05. A corporation sole may acquire and register private agricultural land.**

In the case of *Roman Catholic Apostolic Administrator of Davao, Inc*. v. *Land Registration Commission*,[19] it was held that a corporation sole, which consists of one person only, is vested with the right to purchase and hold real estate and to register the same in trust for the faithful or members of the religious society or church for which the corporation was organized. It is not treated as an ordinary private corporation because whether or not it be so treated, the constitutional proscription against private corporations acquiring public agricultural lands will not apply. The reason for this is that a corporation sole "has no nationality" and the framers of the Constitution did not have in mind the religious corporation sole when they provided that 60 *per centum* of the capital thereof be owned by Filipino citizens. A corporation sole or "ordinary" is not the owner of the properties that he may acquire but merely the administrator thereof. The properties

[18]Llantino v. Co Liong Chong, GR No. 29663, Aug. 20, 1990, 188 SCRA 592; Philippine Banking Corporation v. Lui She, GR No. L-17587, Sept. 12, 1967, 21 SCRA 52; Krivenko v. Register of Deeds, *supra*.

[19]GR No. L-8451, Dec. 20, 1957, 102 Phil. 596.

pass, upon his death, not to his personal heirs but to his successor in office.[20]

The Roman Catholic Church, although a branch of the Universal Roman Catholic Apostolic Church, is considered an entity or person with all the rights and privileges granted to a corporation sole, separate and distinct from the personality of the Roman Pontiff or the Holy See.[21]

**06. Donation in favor of a religious corporation controlled by non-Filipinos non-registrable.**

May the Register of Deeds validly refuse to register a deed of donation of a residential land executed by a Filipino in favor of the unregistered religious organization, "Ung Siu Si Temple," operating through three trustees all of Chinese nationality? Resolving the issue, the Supreme Court, in *Register of Deeds of Rizal* v. *Ung Sui Si Temple*,[22] ruled that in view of the absolute terms of Section 5, Title XIII, of the (1935) Constitution (now Sec. 8, Art. XII, 1987 Constitution) that "(s)ave in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations or associations qualified to acquire or hold lands of the public domain in the Philippines," the Constitution makes no exception in favor of religious associations. To permit religious associations controlled by non-Filipinos to acquire agricultural lands would be to drive the opening wedge to revive alien religious landholdings in the country. As to the contention that the disqualification is violative of the freedom of religion guaranteed by the Constitution, the Court stated that it has not been shown that land tenure is indispensable to the free exercise and enjoyment of religious profession or worship, or that one may not worship the Deity according to the dictates of his own conscience unless upon land held in fee simple. The Court further held that —

> "The fact that the appellant religious organization has no capital stock does not suffice to escape the Constitutional inhibition, since it is admitted that its

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[20]See also Republic v. Intermediate Appellate Court and Roman Catholic Bishop of Lucena, GR No. 75042, Nov. 29, 1988, 168 SCRA 165.

[21]Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission, *supra*.

[22]GR No. L-6776, May 21, 1955, 97 Phil. 58.

members are of foreign nationality. The purpose of the sixty per centum requirement is obviously to ensure that corporation or associations allowed to acquired agricultural land or to exploit natural resources shall be controlled by Filipinos; and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of Filipino citizens."

The case of *Ung Siu Si Temple* is distinguishable from *Roman Catholic Apostolic Adminstrator of Davao, Inc.* because the former is not a corporation sole but a corporation aggregate, *i.e.*, an unregistered organization operating through three trustees, all of Chinese nationality. On the other hand, the R*oman Catholic Administrator of Davao, Inc.*, which is likewise a non-stock corporation, is a registered corporation sole, evidently of no nationality and registered mainly to administer the temporalities and manage the properties belonging to the faithful of the church residing in Davao.

**07. Land acquired by an American citizen in 1945 can be registered under the Ordinance appended to the 1935 Constitution.**

In *Moss* v. *Director of Lands*,[23] the trial court denied the application for registration of Eugene Moss on the ground that, being an American citizen or an alien, he is disqualified to acquire lands under Section 5, Article XIII of the 1935 Constitution. The Supreme Court, on appeal, reversed, holding that while aliens are disqualified to acquire lands under the 1935 Constitution, the Ordinance appended thereto on November 10, 1939 provided that until the final withdrawal of the United States sovereignty over the Philippines, citizens and corporations of the of the United States could enjoy all the same civil rights as Philippine citizens. The Ordinance was made a part of the 1935 Constitution as directed in Section 2 of the Tydings-McDuffie Law or the Independence Law.

The proclamation of Philippine independence on July 4, 1946 did not impair Moss' proprietary rights over the said land because the 1935 Constitution provides that upon the proclamation of Philippine independence "all existing property rights of citizens or corporations of the United States shall be acknowledged, respected,

[23]GR No. L-27170, Nov. 22, 1977, 80 SCRA 269.

and safeguarded to the same extent as property rights of citizens of the Philippines" (Sec. 1[1], Article XVII). This constitutional provision is implemented in Article VI of the Treaty of General Relations entered into between the Republic of the Philippines and the United States on July 4, 1946.

**08. Land sold to an alien which is now in the hands of a Filipino may no longer be annulled.**

The sale of a residential land to an alien which is now in the hands of a naturalized Filipino citizen may no longer be annulled as held in *De Castro* v. *Tan*.[24] In this case, petitioner sold a residential lot to a Chinese, Tan Tai, in 1938. Tan Tai died leaving behind respondents, his widow and children. Before his death, one of his sons, Joaquin, became a naturalized Filipino. Six years after Tan Tai's death, or in 1962, his heirs executed an extra-judicial settlement of estate with sale, whereby the disputed lot in its entirety was allotted to Joaquin. On July 15, 1968, petitioner commenced suit against the heirs of Tan Tai for annulment of the sale for alleged violation of the 1935 Constitution prohibiting the sale of land to aliens. Respondents moved to dismiss the complaint on grounds of: (a) lack of cause of action, the plaintiff being in *pari delicto* with the vendee, and the land being already owned by a Philippine citizen; (b) laches; and (c) acquisitive prescription. The court *a quo* dismissed the complaint, sustaining the first two grounds.

On a petition for review, the Court sustained the order of dismissal, holding that, independently of the doctrine of *pari delicto*, the petitioner cannot have the sale annulled and recover the lot she herself has sold. While the vendee was an alien at the time of the sale, the land had since become the property of respondent Joaquin Teng, a naturalized Filipino citizen, who is constitutionally qualified to own land. There would be no more public policy to be served in allowing petitioner to recover the land as it is already in the hands of a qualified person. Laches also militates against petitioner's cause. She sold the disputed lot in 1938. She instituted the action to annul the sale only on July 15, 1968. Petitioner had slept on her rights. By her long inaction or inexcusable neglect, she should be held barred from asserting her claim to the property.

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[24]GR No. L-31956, April 30, 1984, 129 SCRA 85.

The chief question presented in *Republic* v. *Intermediate Appellate Court and Gonzalves*[25] concerns the validity of a conveyance of residential land to an alien prior to his acquisition of Filipino citizenship by naturalization. The Republic's theory is that the conveyances to Chua Kim were made while he was still an alien, *i.e.*, prior to his taking oath as a naturalized Philippine citizen on January 7, 1977, or at a time when he was disqualified to acquire ownership of land in the Philippines pursuant to Section 5, Article XIII of the 1935 Constitution (Sec. 14, Art. XIV of the 1973 Constitution). It is not disputed, however, that the lands in dispute were adjudicated by a competent court to the spouses Gaspar and spouses Marquez in fee simple, and that the latter had afterwards conveyed said lands to Gregorio Reyes Uy Un, Chua Kim's adopting parent, by deeds executed in due form on December 27, 1934 and December 30, 1934, respectively. Plainly, the conveyances were made before the 1935 Constitution went into effect, *i.e.*, at a time when there was no prohibition against acquisition of private agricultural lands by aliens. Gregorio Reyes Uy Un therefore acquired good title to the lands purchased by him, and his ownership was not at all affected either: (1) by the principle subsequently enunciated in the 1935 Constitution that aliens were incapacitated to acquire lands in the country, since that constitutional principle has no retrospective application,[26] or (2) by his and his successor's omission to procure the registration of the property prior to the coming into effect of the Constitution.[27]

Be this as it may, it was held that the acquisition by Chua Kim of Philippine citizenship should foreclose any further debate regarding the title to the property in controversy, in line with the Court's rulings relative to persons similarly situated.

In *Barsobia* v. *Cuenco*,[28] for instance, it was ruled as follows:

> "The litigated property is now in the hands of a naturalized Filipino. It is no longer owned by a disqualified vendee. Respondent, as a naturalized citizen, was constitutionally qualified to own the subject property. There would be no more public policy to be served in

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[25]GR No. 74170, July 18, 1989, 175 SCRA 398.

[26]Tejido v. Zamacoma, GR No. L-63048, Aug. 7, 1985, 138 SCRA 78; Parco v. Haw Pia, GR No. L-22478, May 30, 1972, 45 SCRA 164; Falcasantos v. Haw Suy Ching, GR No. L-4229, May 29, 1952, 91 Phil. 456.

[27]Parco v. Haw Pia, *supra*.

[28]GR No. L-33048, April 16, 1982, 199 Phil. 26.

allowing petitioner Epifania to recover the land as it is already in the hands of a qualified person."

Similarly, *Vasquez* v. *Li Seng Giap*[29] stated:

> "Appellant argues that if at the time of the conveyance of the real property the appellee was incapable of holding title to such real estate, the contract of sale was null or void and may be annulled, and his subsequent naturalization as a Filipino citizen cannot retroact to the date of the conveyance to make it lawful and valid. However, if the ban on aliens from acquiring not only agricultural but also urban lands, as construed by this Court in the Krivenko case, is to preserve the nation's lands for future generations of Filipinos, that aim or purpose would not be thwarted but achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization. The title to the parcel of land of the vendee, a naturalized Filipino citizen, being valid, that of the domestic corporation to which the parcel of land has been transferred must also be valid, 96.67 percent of its capital stock being owned by Filipinos."

**09. Can a Filipino vendor recover land sold to an alien?**

The question was answered in the negative in *Rellosa* v. *Gaw Chee Hun*[30] because the Filipino vendor was in *pari delicto* with the alien vendee. The Court cited *Cabauatan* v. *Uy Hoo*[31] where it made the following pronouncement:

> "(E)ven if the plaintiffs can still invoke the Constitution, or the doctrine in the Krivenko case, to set aside the sale in question, they are now prevented from doing so if their purpose is to recover the lands that they have voluntarily parted with, because of their guilty knowledge that what they were doing was in violation of the Constitution. They can not escape this conclusion because they are presumed to know the law. x x x

[29]GR No. L-3676, Jan. 31, 1955, 96 Phil. 447.
[30]GR No. L-1411, Sept. 29, 1953, 93 Phil. 827.
[31]GR No. L-2207, Jan. 23, 1951, 88 Phil. 103.

> As this Court well said: 'A party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out. The law will not aid either party to an illegal agreement; it leaves the parties where it finds them.' The rule is expressed in the maxims: '*Ex dolo malo non oritur actio,*' and *'In pari delicto potior est conditio defendentis*.'"

However, *Rellosa* was reversed by *Philippines Banking Corporation* v. *Lui She*[32] where the Court declared:

> "Taken singly, the contracts show nothing that is necessarily illegal, but considered collectively, they reveal an insidious pattern to subvert by indirection what the Constitution directly prohibits. To be sure, a lease to an alien for a reasonable period is valid. So is an option giving an alien the right to buy real property on condition that he is granted Philippine citizenship. As this Court said in *Krivenko* v. *Register of Deeds*:
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> '[A]liens are not completely excluded by the Constitution from the use of lands for residential purposes. Since their residence in the Philippines is *temporary, they may be granted temporary rights such as a lease contract which is not forbidden by the Constitution*. Should they desire to remain here forever and share our fortunes and misfortunes, Filipino citizenship is not impossible to acquire.'
>
> But if an alien is given not only a lease of, but also an option to buy, a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land *(jus possidendi*, *jus utendi*, *jus fruendi* and *jus abutendi)* but also of the right to dispose of it *(jus disponendi)* — rights the sum total of which make up ownership. It is just as if today the possession is transferred, tomorrow, the use, the next day, the disposition, and so on, until ultimately all the rights of which ownership is made up are consolidated in as alien. And

[32]GR No. L-17587, Sept. 12, 1967, 21 SCRA 52.

> yet this is just exactly what the parties in this case did within this pace of one year, with the result that Justina Santos' ownership of her property was reduced to a hollow concept. If this can be done, then the Constitutional ban against alien landholding in the Philippines, as announced in *Krivenko* v. *Register of Deeds*, is indeed in grave peril."

But it does not follow that because the parties are in *pari delicto*, they will be left where they are, without relief. The Court gave two reasons why the *pari delicto* rule may not be applied: (1) the original parties who were guilty of a violation of the fundamental charter have died and have since been substituted by their administrators to whom it would be unjust to impute their guilt, and (2) as an exception to the rule on *pari delicto*, "(w)hen the agreement is not illegal *per se* but is merely prohibited and the prohibition by law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered." Evidently, the Court was referring to the public policy of preserving lands for Filipinos. Hence, in the case of sale to aliens, *Lui She* does not exclude the possibility of barring recovery by the Filipino vendor where the buyer has acquired Philippine citizenship or where the land has come to the hands of a qualified transferee in good faith.[33]

**10. Area limitation that may be acquired by a natural-born citizen under Sec. 8, Art. XII.**

Section 8, Article XII of the Constitution provides:

> "SEC. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law."

Pursuant to Section 10 of RA No. 7042, as amended by RA No. 8179 dated March 28, 1996, implementing Section 8, Article XII of the Constitution, it is provided that any natural born citizen who has the legal capacity to enter into a contract under Philippine laws may be a transferee of a private land up to a maximum area of five thousand (5,000) square meters in the case of urban land, or three (3) hectares in the case of rural land to be used by him for business

[33]Bernas, The 1987 Philippine Constitution, A Reviewer-Primer, 2002 Ed., 518.

or other purposes. In the case of married couples, one of them may avail of the privilege herein granted. But if both shall avail of the same, the total area acquired shall not exceed the maximum herein fixed.

In case the transferee already owns urban or rural land for business or other purposes, he shall still be entitled to be a transferee of additional urban or rural land for business or other purposes which, when added to those already owned by him, shall not exceed the maximum areas herein authorized.

## II. CLASSIFICATION OF PUBLIC LANDS

### 01. Classification of public lands is an executive prerogative.

The classification of public lands is an exclusive prerogative of the executive department of the government and not of the courts. In the absence of such classification, the land remains as unclassified land until it is released therefrom and rendered open to disposition.[1] This should be so under the time-honored constitutional precepts. This is also in consonance with the Regalian doctrine that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony. The recommendation of the District Forester for release of subject property from the unclassified region is not the ultimate word on the matter. And the fact that the land classification map showing subject property to be within the unclassified region is not presented in evidence will not operate against the State considering the well-settled rule that the State cannot be estopped by the omission, mistake or error of its officials or agents.

#### (1) Only A and D lands may be the subject of disposition

Only alienable lands of the public domain may be the subject of disposition. The pertinent provisions of the Public Land Act *(CA No. 141, as amended)* read:

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[1]Sec. 8, CA No. 141, as amended; Yngson v. Secretary of Agriculture and Natural Resources, GR No. L-36847, July 20, 1983, 123 SCRA 441; Republic v. Court of Appeals and Alpuerto, GR No. L-45202, Sept. 11, 1980, 99 SCRA 742.

"SEC. 2. The provisions of this Act shall apply to the lands of the public domain; but timber and mineral lands shall be governed by special laws and nothing in this Act provided shall be understood or construed to change or modify the administration and disposition of the lands commonly called 'friar lands' and those which, being privately owned, have reverted to or become the property of the Republic of the Philippines, which administration and disposition shall be governed by the laws at present in force or which may hereafter be enacted."

"SEC. 6. The President, upon the recommendation of the Secretary of Environment and Natural Resources, shall from time to time classify the lands of the public domain into —

(a) Alienable or disposable,

(b) Timber, and

(c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition."

"SEC. 9. For the purpose of their administration and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

(a) Agricultural;

(b) Residential, commercial, industrial, or for similar productive purposes;

(c) Educational, charitable, or other similar purposes; and

(d) Reservations for town-sites and for public and quasi-public uses.

The President, upon recommendation by the Secretary of Environment and Natural Resources, shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another."

> "SEC. 10. The words 'alienation,' 'disposition,' or 'concession,' as used in this Act, shall mean any of the methods authorized by this Act for the acquisition, lease, use, or benefit of the lands of the public domain other than timber or mineral lands."

Before the government could alienate or dispose of lands of the public domain, the President must first officially classify these lands as alienable or disposable, and then declare them open to disposition or concession. There must be no law reserving these lands for public or quasi-public uses.[2]

As provided for under Section 6 of CA No. 141, which was lifted from Act No. 2874, the classification or reclassification of public lands into alienable or disposable, mineral or forest lands is a prerogative of the executive department of the government and not of the courts.[3] As stressed in *Director of Lands* v. *Court of Appeals and Bisnar*:[4]

> "It bears emphasizing that a positive act of the government is needed to declassify land which is classified as forest and to convert it into alienable or disposable land for agricultural or other purposes (Republic vs. Animas, 56 SCRA 499). Unless and until the land classified as forest is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply (Amunategui vs. Director of Forestry, 126 SCRA 69; Director of Lands vs. Court of Appeals, 129 SCRA 689; Director of Lands vs. Court of Appeals, 133 SCRA 701; Republic vs. Court of Appeals, 148 SCRA 480; Vallarta vs. Intermediate Appellate Court, 151 SCRA 679)."

### (2) "Public lands" and "government land" distinguished

In *Montano* v. *Insular Government*,[5] it was held that the phrase "*public lands*" is equivalent to "*public domain*," and does not by any means include all lands of government ownership, but only so much

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[2]Chavez v. Public Estates Authority, GR No. 133250, July 9, 2002, 384 SCRA 152.

[3]Bureau of Forestry v. Court of Appeals and Gallo, GR No. L-37995, Aug. 31, 1987, 153 SCRA 351.

[4]GR No. 83609, Oct. 26, 1989, 178 SCRA 708.

[5]GR No. 3714, Jan. 26, 1909, 12 Phil. 572.

of said lands as are thrown open to private appropriation and settlement by homestead and other like general laws. Accordingly, *"government land"* and *"public land"* are not synonymous terms; the first includes not only the second, but also other lands of the government already reserved or devoted to public use or subject to private right. In other words, the government owns real estate which is part of the "public lands" and other real estate which is not a part thereof.

### (3) Cadastral survey of a municipality

While a municipality has been cadastrally surveyed, it does not follow that all lands comprised therein are automatically released as alienable. A survey made in a cadastral proceeding merely identifies each lot preparatory to a judicial proceeding for adjudication of title to any of the lands upon claim of interested parties. Besides, if land is within the jurisdiction of the Bureau of Forest Development, it would be beyond the jurisdiction of the cadastral court to register it under the Torrens system. Where the subject property is still unclassified, whatever possession applicants may have had, and, however long, cannot ripen into private ownership.[6] Indeed, until timber or forest lands are released as disposable and alienable, the government, through the appropriate agencies, has no authority to lease, grant, sell, or otherwise dispose of these lands for homesteads, sales patents, leases for grazing or other purposes, fishpond leases, and other modes of utilization.[7]

The adverse possession which may be the basis of a grant of title in confirmation of imperfect title cases applies only to alienable lands of the public domain.[8]

## 02. Burden of proof.

It is a standing presumption that land pertains to the State, and any person seeking to establish ownership over land must

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[6]Director of Lands v. Court of Appeals and Valeriano, GR No. 58867, June 22, 1984, 129 SCRA 689; Adorable v. Director of Lands, GR No. L-13663, March 25, 1960, 107 Phil. 401; Director of Forestry v. Muñoz, GR No. L-24796, June 28, 1968, 23 SCRA 1184; Director of Lands v. Abanzado, GR No. L-28184, July 5, 1975, 65 SCRA 5; Republic v. Court of Appeals and Lastimado, GR No. L-39473, April 30, 1979, 89 SCRA 648.

[7]Yngson v. Secretary of Agriculture and Natural Resources, *supra*.

[8]Palomo v. Court of Appeals, GR No. 95608, Jan. 21, 1997, 266 SCRA 392.

conclusively show that he is the owner.[9] "The State as a *persona* in law is the juridical entity, which is the source of any asserted right to ownership in land under the basic doctrine embodied in the 1935 Constitution as well as the present charter. It is charged moreover with the conservation of such patrimony. There is need therefore of the most rigorous scrutiny before private claims to portions thereof are judicially accorded recognition, especially so where the matter is sought to be raked up anew after almost fifty years. Such primordial consideration, not the apparent carelessness, much less the acquiescence of public officials, is the controlling norm. Nor is there anything unjust in such an approach as the alleged deprivation of a private right without justification by the government is not remediless, where there is persuasive proof." Where there is a showing that the lands sought to be registered are part of the public domain, the applicant has the burden to prove that the lands he claims to have possessed as owner are alienable and disposable. He must prove his positive averments, not for the government or the private oppositors to establish a negative proposition insofar as said lands are concerned.[10]

On the other hand, where there is sufficient evidence on record which shows that the parcel of land applied for is alienable and disposable and has been in the possession of the applicants and their predecessors-in-interest since time immemorial, it becomes the duty of the government to demonstrate that the land is indeed not alienable but is forest land. As expounded in *Republic* v. *Court of Appeals and Arquillo*:[11]

> "If in this instance, we give judicial sanction to a private claim, let it be noted that the Government, in the long run of cases, has its remedy. Forest reserves of public lands can be established as provided by law. When the claim of the citizen and the claim of the Government as to a particular piece of property collide, if the Government desires to demonstrate that the land is in reality a forest, the Director of Forestry should submit to the court convincing proof that the land is not more valuable for agricultural than for forest purposes. Great consideration, it may be stated, should and undoubtedly will be, paid by the courts to the opinion of the technical expert who speaks

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[9]Director of Forestry v. Muñoz, GR No. L-24796, June 28, 1968, 23 SCRA 1183.

[10]Gutierrez Hermanos v. Court of Appeals, GR No. 54472, Sept. 28, 1989, 178 SCRA 37.

[11]GR No. 62572, Feb. 15, 1990, 182 SCRA 290.

with authority on forestry matters. *But a mere formal opposition on the part of the Attorney-General for the Director of Forestry, unsupported by satisfactory evidence, will not stop the courts from giving title to the claimant* (Ramos v. Director of Lands, 39 Phil. 175, 186-187 [1918]; Republic, et al. v. Hon. CA, et al., G.R. L-46048, November 29, 1988; emphasis supplied).

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Granting in *gratia argumenti* that the land sought to be registered in fact lies within in Northern Ilocos Norte Forest Reserve, private respondents' rights cannot be prejudiced. '. . . While the Government has the right to classify portions of public land, the primary right of a private individual who possessed and cultivated the land in good faith much prior to such classification must be recognized and should not be prejudiced by after-events which could not have been anticipated. Thus, we have held that the Government, in the first instance may, by reservation, decide for itself what portions of public land shall be considered forestry land, *unless* private interests have intervened before such reservation is made.' (Ankron v. Government of the Philippine Islands, 40 Phil. 10, 16 [1919], cited in Republic, et al. v. Hon. CA, et al., G.R. L-46048, November 29, 1988)."

Indeed, as held in *Ramos* v. *Director of Lands*,[12] a 1918 decision, the presumption should be, in lieu of contrary proof, that land is agricultural in nature. One very apparent reason is that it is for the good of the Philippine Islands to have the large public domain come under private ownership. That land is presumed agricultural is also stressed in *Ankron* v. *Government of the Philippines*,[13] thus:

"x x x The mere fact that a tract of land has trees upon it or has mineral within it is not of itself sufficient to declare that one is forestry land and the other, mineral land. There must be some proof of the extent and present or future value of the forestry and of the minerals. While, as we have just said, many definitions have been given for 'agriculture,' 'forestry,' and 'mineral' lands, and that in

[12]GR No. 13298, Nov. 19, 1918, 39 Phil. 175.
[13]GR No. 14213, Aug. 23, 1919, 40 Phil. 10.

> each case it is a question of fact, we think it is safe to say that in order to be forestry or mineral land the *proof must show that it is more valuable for the forestry or the mineral* which it contains than it is for agricultural purposes. (Sec. 7, Act No. 1148.) *It is not sufficient to show that there exists some trees upon the land or that it bears some mineral.* Land may be classified as forestry or mineral today, and, by reason of the exhaustion of the timber or mineral, be classified as agricultural land tomorrow. And vice-versa, by reason of the rapid growth of timber or the discovery of valuable minerals, lands classified as agricultural today may be differently classified tomorrow. Each case must be decided upon the proof in that particular case, having regard for its present or future value for one or the other purposes. We believe, however, considering the fact that it is a matter of public knowledge that a majority of the lands in the Philippine Islands are agricultural lands, that the courts have a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands until the contrary is shown."

Interestingly, while the aforecited case of *Republic* v. *Court of Appeals and Arquillo* (citing *Ramos* v. *Director of Lands*) states that "(w)hen the claim of the citizen and the claim of the Government as to a particular piece of property collide, if the Government desires to demonstrate that the land is in reality a forest, the Director of Forestry should submit to the court convincing proof that the land is not more valuable for agricultural than for forest purposes," the Court, in *Director of Lands* v. *Funtilar*,[14] said that it is the burden of the applicant to overcome the presumption that the land forms part of the public domain, thus:

> "It was rather sweeping for the appellate court to rule that after an applicant files his application for registration, the burden shifts totally to the government to prove that the land forms part of the unclassified forest zone. The ruling in *Heirs of Amunategui* v. *Director of Forestry*,[15] governs applications for confirmation of imperfect title. *The applicant shoulders the burden of overcoming the presumption that the land sought to be registered forms part of the public domain*." (Emphasis supplied.)

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[14]GR No. L-68533, May 23, 1986, 142 SCRA 57.
[15]GR No. L-27873, Nov. 29, 1983, 126 SCRA 69.

## III. NON-REGISTRABLE PROPERTIES

### 01. Property of public dominion.

Upon the Spanish conquest of the Philippines, ownership of all "lands, territories and possessions" in the Philippines passed to the Spanish Crown. The King, as the sovereign ruler and representative of the people, acquired and owned all lands and territories in the Philippines except those he disposed of by grant or sale to private individuals. The 1935, 1973 and 1987 Constitutions adopted the *Regalian* doctrine substituting, however, the State, in lieu of the King, as the owner of all lands and waters of the public domain. The *Regalian* doctrine is the foundation of the time-honored principle of land ownership that "all lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain." Article 420 of the Civil Code of 1950 incorporated the *Regalian* doctrine. Upon the Spanish conquest of the Philippines, ownership of all "lands, territories and possessions" in the Philippines passed to the Spanish Crown. The King, as the sovereign ruler and representative of the people, acquired and owned all lands and territories in the Philippines except those he disposed of by grant or sale to private individuals.

Property is either of *public dominion* or of *private ownership*.[1] The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads and others of similar character;

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.[2]

#### (1) Land intended for public use or service not available for private appropriation

The above-mentioned properties are parts of the public domain intended for public use or public service, are outside the commerce of men and, therefore, not subject to private appropriation.[3] If a

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[1]Art. 419, Civil Code.
[2]Art. 420, *ibid*.
[3]Martinez v. Court of Appeals, GR No. L-31271, April 29, 1974, 56 SCRA 647.

person obtains title under the Torrens system which includes lands which cannot be registered under the Torrens system, he does not by virtue of said title become the owner of the land illegally included therein.[4]

All other property of the State, which is not of the character mentioned above, is patrimonial property.[5] Property of public dominion, when no longer needed for public use or for public service, shall form part of the patrimonial property of the State.[6]

### (2) The Roppongi property

Section 8 of CA No. 141 provides that "only those lands shall be declared open to disposition or concession which have been officially delimited and classified." The President has the authority to classify inalienable lands of the public domain into alienable or disposable lands of the public domain, pursuant to Section 6 of CA No. 141. In *Laurel* v. *Garcia*,[7] the executive department attempted to sell the Roppongi property in Tokyo, Japan, which was acquired by the Philippine government for use as the Chancery of the Philippine Embassy. Although the Chancery had transferred to another location thirteen years earlier, the Court still ruled that, under Article 422 of the Civil Code, property of public dominion retains such character until formally declared otherwise. The Court elucidated:

> "The fact that the Roppongi site has not been used for a long time for actual Embassy service does not automatically convert it to patrimonial property. Any such conversion happens only if the property is withdrawn from public use (Cebu Oxygen and Acetylene Co. v. Bercilles, 66 SCRA 481 [1975]). *A property continues to be part of the public domain, not available for private appropriation or ownership 'until there is a formal declaration on the part of the government to withdraw it from being such*.' (Ignacio v. Director of Lands, 108 Phil. 335 [1960])." (Emphasis supplied)

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[4]Ledesma v. Municipality of Antipolo, GR No. 26337, Dec. 17, 1926, 49 Phil. 769.

[5]Art. 421, *ibid*.

[6]Art. 422, *ibid*.

[7]GR No. 92013, July 25, 1990, 17 SCRA 797.

### (3) Patrimonial property

Property of the public dominion refers to things held by the State by Regalian right. They are things *res publicae* in nature, hence, incapable of private appropriation. Thus, under the present Constitution, "[w]ith the exception of agricultural lands, all other natural resources shall not be alienated." Patrimonial property, on the other hand, refers to property that is open to disposition by the government, or otherwise property pertaining to the national domain, or public lands.[8]

The property of provinces, cities, and municipalities is divided into property for public use and patrimonial property.[9] Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, and municipalities. All other property possessed by any of them is patrimonial and shall be governed by the Civil Code, without prejudice to the provisions of special laws.[10]

Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.[11]

### (4) Land may be alienated when declared no longer needed for public use or service

The Civil Code of 1950 readopted substantially the definition of property of public dominion found in the Civil Code of 1889. The government must formally declare that the property of public dominion is no longer needed for public use or public service, before the same could be classified as patrimonial property of the State. In the case of government reclaimed and marshy lands of the public domain, the declaration of their being disposable, as well as the manner of their disposition, is governed by the applicable provisions of CA No. 141 or the Public Land Act.

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[8]Republic v. Alagad, GR No. 66807, Jan. 26, 1989, 169 SCRA 466.
[9]Art. 423, Civil Code.
[10]Art. 424, *ibid*.
[11]Art. 425, *ibid*.

Under Section 2, Article XII of the 1987 Constitution, foreshore and submerged areas are part of the "lands of the public domain, waters . . . and other natural resources" and consequently "owned by the State." As such, foreshore and submerged areas "shall not be alienated," unless they are classified as "agricultural lands" of the public domain. The mere reclamation of these areas does not convert these inalienable natural resources of the State into alienable or disposable lands of the public domain. There must be a law or presidential proclamation officially classifying these reclaimed lands as alienable or disposable and open to disposition or concession. Moreover, these reclaimed lands cannot be classified as alienable or disposable if the law has reserved them for some public or quasi-public use.

Like the Civil Code of 1889, the Civil Code of 1950 includes as property of public dominion those properties of the State which, without being for public use, are intended for public service or the "development of the national wealth." Thus, government reclaimed and marshy lands of the State, even if not employed for public use or public service, if developed to enhance the national wealth, are classified as property of public dominion.[12]

**(5) Ownership of waters**

PD No. 1067 dated December 13, 1976 established the "Water Code of the Philippines." It repealed Articles 502 to 518 of the Civil Code on "Waters."

The following belong to the State:

(1) Rivers and their natural beds;

(2) Continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves;

(3) Natural lakes and lagoons;

(4) All other categories of surface waters such as water flowing over lands, water from rainfall whether natural, or artificial, and water from agriculture runoff, seepage and drainage;

(5) Atmospheric water;

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[12]Chavez v. Public Estates Authority, GR No. 133250, July 9, 2002, 384 SCRA 152.

(6) Subterranean or ground waters; and,

(7) Seawater.[13]

The following waters found on private lands belong to the State:

(1) Continuous or intermittent waters rising on such lands;

(2) Lakes and lagoons naturally occurring on such lands;

(3) Rain water falling on such lands;

(4) Subterranean or ground waters; and

(5) Water in swamps and marshes.[14]

### (6) A and D lands held by government entities under Sec. 60, CA No. 141

The registration of lands of the public domain under the Torrens system, by itself, cannot convert public lands into private lands. Jurisprudence holding that upon the grant of the patent or issuance of the certificate of title the alienable land of the public domain automatically becomes private land *cannot apply to government units and entities*.[15]

For example, the transfer of the Freedom Islands to the Public Estates Authority (PEA) was made subject to the provisions of CA No. 141 as expressly stated in Special Patent No. 3517 issued to PEA by the President. Section 60 of CA No. 141 prohibits, "except when authorized by Congress," the sale of alienable lands of the public domain that are transferred to government units or entities. Section 60 of CA No. 141 constitutes, under Section 44 of PD No. 1529, a "statutory lien affecting title" of the registered land even if not annotated on the certificate of title. In other words, alienable lands of the public domain held by government entitles under Section 60 of CA No. 141 remain *public lands* because they cannot be alienated or encumbered unless Congress passes a law authorizing their disposition. Congress, however, cannot authorize the sale to private corporations of reclaimed alienable lands of the public domain because of the constitutional ban. Only individuals can benefit from such law.

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[13]Art. 5, PD No. 1067.
[14]Art. 6, *ibid.*
[15]Chavez v. Public Estates Authority, *supra.*

The grant of legislative authority to sell public lands in accordance with Section 60 of CA No. 141 does not automatically convert alienable lands of the public domain into private or patrimonial lands. The alienable lands of the public domain must be transferred to qualified private parties, or to government entities not tasked to dispose of public lands, before these lands can become private or patrimonial lands.[16]

### (7) Lands titled in the name of government entities form part of the public domain

The Revised Administrative Code of 1987 recognizes that lands of the public domain may be registered under the Torrens system. Section 48, Chapter 12, Book I of the Code states —

> "SEC. 48. *Official Authorized to Convey Real Property*. — Whenever real property of the government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following:
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> x x x x x x x x x
>
> (2) For property belonging to the Republic of the Philippines, but titled in the name of any political subdivision or of any corporate agency or instrumentality, by the executive head of the agency or instrumentality."

Thus, *private property* purchased by the national government for expansion of a public wharf may be titled in the name of a government corporation regulating port operations in the country. Private property purchased by the national government for expansion of an airport may also be titled in the name of the government agency tasked to administer the airport. Private property donated to a municipality for use as a town plaza or public school site may likewise be titled in the name of the municipality. All these properties, however, become properties of the *public domain*, although, if already registered under Act No. 496 or PD No. 1529, they remain registered land. There is no requirement or provision in any existing law for the de-registration of land from the Torrens system.

Private lands taken by the government for public use under its own power of eminent domain become unquestionably part of the

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[16] *Ibid.*

*public domain*. Nevertheless, Section 85 of PD No. 1529 authorizes the Register of Deeds to issue in the name of the national government new certificates of title covering such expropriated lands. Consequently, lands registered under Act No. 496 or PD No. 1529 are not exclusively private or patrimonial lands. Lands of the public domain may also be registered pursuant to existing laws.[17]

**02. Forest lands.**

The lexicographers define "forest" as "a large tract of land covered with a natural growth of trees and underbrush; a large wood." The authorities say that the word "forest" has a significant, not an insignificant meaning, and that it does not embrace land only partly woodland. It is a tract of land covered with trees, usually of considerable extent. The foresters say that no legal definition of "forest" is practicable or useful. B.H. Baden-Powell, in his work on Forest Law of India, states as follows: "Every definition of a forest that can be framed for legal purposes will be found either to exclude some cases to which the law ought to apply, or on the other hand, to include some with which the law ought not to interfere. It may be necessary, for example, to take under the law a tract of perfectly barren land which at present has neither trees brushwood, nor grass on it, but which in the course of time it is hoped will be 'reboise'; but any definition wide enough to take in all such lands, would also take in much that was not wanted. On the other hand, the definition, if framed with reference to tree-growth, might (and indeed would be almost sure to) include a garden, shrubbery orchard, or vineyard, which it was not designed to deal with."[18]

If the land forms part of the public forest, possession thereof, however long, cannot convert it into private property as it is within the exclusive jurisdiction of the Bureau of Forest Development and beyond the power and jurisdiction of the registration court.[19]

Accordingly, it has been held:

> "(P)ossession of forest lands, however long, cannot ripen into private ownership (Vaño vs. Government, 41

[17]Chavez v. Public Estates Authority, *supra*.

[18]Ramos v. Director of Lands, GR No. 13298, Nov. 19, 1918, 39 Phil. 175.

[19]Republic v. Court of Appeals and Lastimado, GR No. L-39473, April 30, 1979, 89 SCRA 648; Director of Lands v. Abanzado, GR No. L-21814, July 15, 1975, 65 SCRA 5.

Phil. 161 [1920]; Adorable vs. Director of Forestry, 107 Phil. 401 [1960]). A parcel of forest land is within the exclusive jurisdiction of the Bureau of Forestry and beyond the power and jurisdiction of the cadastral court to register under the Torrens System (Republic vs. Court of Appeals, 89 SCRA 648; Republic vs. Vera, 120 SCRA 210 [1983]; Director of Lands vs. Court of Appeals, 129 SCRA 689 [1984])."[20]

"It is elementary in the law governing the disposition of lands of the public domain that until timber or forest lands are released as disposable and alienable neither the Bureau of Lands nor the Bureau of Fisheries has authority to lease, grant, sell, or otherwise dispose of these lands for homesteads, sales patents, leases for grazing or other purposes, fishpond leases, and other modes of utilization. (Mapa v. Insular Government, 10 Phil. 175; Ankron v. Government of the Philippine Islands, 40 Phil. 10; Vda. de Alfafara v. Mapa, 95 Phil. 125; Director of Forestry v. Muñoz, 23 SCRA 1184)."[21]

"It is elementary in the law governing natural resources that forest land cannot be owned by private persons. It is not registrable. The adverse possession which can be the basis of a grant of title in confirmation of imperfect title cases cannot commence until after forest land has been declared alienable and disposable. Possession of forest land, no matter how long cannot convert it into private property. (Adorable, et al. v. Directory of Forestry, 107 Phil. 401; Heirs of Jose Amunategui v. Director of Forestry, 126 SCRA 69; Republic of the Philippines v. Court of Appeals, 89 SCRA 648). If somehow forest land happens to have been included in a Torrens Title, the title is null and void insofar as that forest land is concerned. (Director of Lands v. Reyes, 68 SCRA 177; Li Seng Giap y Cia v. Director of Lands, 55 Phil. 693; Director of Forestry v. Muñoz, 23 SCRA 1183; Republic v. Court of Appeals, 121 Phil. 681)."[22]

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[20]Director of Lands v. Court of Appeals and Bisnar, GR No. 83609, Oct. 26, 1989, 178 SCRA 708.

[21]Yngson v. Secretary of Agriculture, GR No. L-36847, July 20, 1983, 123 SCRA 441.

[22]Vallarta v. Intermediate Appellate Court, GR No. 74957, June 30, 1987, 151 SCRA 79.

Where the controversial area is within a timberland block or classification of the municipality and certified to by the Director of Forestry as within an area needed for forest purposes, it cannot be the subject of registration proceedings since it forms part of the inalienable portion of the public domain. There is then no need for the Director of Forestry to submit to the court convincing proofs that the land in dispute is not more valuable for agriculture than for forest purposes, as there was no question of whether the land is forest land or not.[23]

### (1) Conservation of natural resources

In *Ramos* v. *Director of Lands*,[24] Justice Malcolm aptly stated: "Indubitably, there should be conservation of the natural resources of the Philippines. The prodigality of the spendthrift who squanders his substance for the pleasure of the fleeting moment must be restrained for the less spectacular but surer policy which protects Nature's wealth for future generations. x x x On the other hand, the presumption should be, in lieu of contrary proof, that land is agricultural in nature. One very apparent reason is that it is for the good of the Philippine Islands to have the large public domain come under private ownership. Such is the natural attitude of the sagacious citizen. x x x If in this instance, we give judicial sanction to a private claim, let it be noted that the Government, in the long run of cases, has its remedy. Forest reserves of public land can be established as provided by law. When the claim of the citizen and the claim of the Government as to a particular piece of property collide, if the Government desires to demonstrate that the land is in reality a forest, the Director of Forestry should submit to the court convincing proof that the land is not more valuable for agricultural than for forest purposes. Great consideration, it may be stated, should, and undoubtedly will be, paid by the courts to the opinion of the technical expert who speaks with authority on forestry matters. But a mere formal opposition on the part of the Attorney-General for the Director of Forestry, unsupported by satisfactory evidence will not stop the courts from giving title to the claimant."

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[23]Bureau of Forestry v. Court of Appeals and Gallo, GR No. L-37995, Aug. 31, 1987, 153 SCRA 351.

[24]GR No. 13298, Nov. 19, 1918, 39 Phil. 175.

The need to preserve and protect forests is articulated in *Director of Forestry* v. *Muñoz*,[25] through Justice Sanchez, *viz*.:

> "Many have written much, and many more have spoken, and quite often, about the pressing need for forest preservation, conservation, protection, development and reforestation. Not without justification. For, forests constitute a vital segment of any country's natural resources. It is of common knowledge by now that absence of the necessary green cover on our lands produces a number of adverse or ill effects of serious proportions. Without the trees, watersheds dry up; rivers and lakes which they supply are emptied of their contents. The fish disappear. Denuded areas become dust bowls. As waterfalls cease to function, so will hydroelectric plants. With the rains, the fertile topsoil is washed away; geological erosion results. With erosion come the dreaded floods that wreak havoc and destruction to property — crops, livestock, houses and highways — not to mention precious human lives. Indeed, the foregoing observations should be written down in a lumberman's decalogue.
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> Because of the importance of forests to the nation, the State's police power has been wielded to regulate the use and occupancy of forest and forest reserves."

### (2) Classification of land is descriptive of its legal nature, not what it actually looks like

Pursuant to Section 2, Article XII of the Constitution which states that "alienable lands of the public domain shall be limited to agricultural lands," the land must first be released from its classification as forest land and reclassified as agricultural land in accordance with the certification issued by the Director of Forestry as provided for by Section 1827 of the Revised Administrative Code. This is because the classification of public lands is an exclusive prerogative of the executive department of the government and not of the courts. Moreover, a positive act of the government is needed to declassify a forest land into alienable or disposable land for agricultural or other purposes.

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[25]GR No. L-24796, June 28, 1968, 23 SCRA 1183.

In *Amunategui* v. *Director of Forestry*,[26] the Court, though Justice Gutierrez, debunked the argument that sine the disputed land "is not thickly forested" and, in any event, it has been in the actual possession of many persons for many years, it was already "private land" which is better adapted and more valuable for agricultural than for forest purposes and not required by the public interests to be kept under forest classification. The Court ratiocinated:

> "A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by *kaingin* cultivators or other farmers. 'Forest lands' do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, *nipa* palms, and other trees growing in brackish or sea water may also be classified as forest land. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. Unless and until the land classified as 'forest' is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply."

Similarly, it was held in *Ankron* v. *Government of the Philippine Islands*[27] that:

> "The mere fact that a tract of land has trees upon it or has mineral within it is not of itself sufficient to declare that one is forestry land and the other, mineral land. There must be some proof of the extent and present or future value of the forestry and of the minerals. While, as we have just said, many definitions have been given for 'agriculture,' 'forestry,' and 'mineral' lands, and that in each case it is a question of fact, we think it is safe to say that in order to be forestry or mineral land the proof must show that it is more valuable for the forestry or the mineral which it contains than it is for agricultural purposes. (Sec. 7, Act No. 1148.) It is not sufficient to show that there exists

[26]GR No. L-27873, Nov. 29, 1983, 126 SCRA 69.
[27]GR No. 14213, Aug. 23, 1919, 40 Phil. 10.

> some trees upon the land or that it bears some mineral. Land may be classified as forestry or mineral today, and, by reason of the exhaustion of the timber or mineral, be classified as agricultural land tomorrow. And vice-versa, by reason of the rapid growth of timber or the discovery of valuable minerals, lands classified as agricultural today may be differently classified tomorrow. Each case must be decided upon the proof in that particular case, having regard for its present or future value for one or the other purposes."

Also, the fact that the contested parcels of land have long been denuded and actually contains rich limestone deposits does not in any way affect its classification as forest land.[28]

Whether a particular land is more valuable for forestry purposes than for agricultural purposes, or vice versa, is a question of fact and must be established during the trial of the case. Whether the particular land is agricultural, forestry, or mineral is a question to be settled in each particular case unless the Bureau of Forestry has, under the authority conferred upon it, prior to the intervention of private interest, set aside for forestry or mineral purposes the particular land in question.[29]

### (3) Sec. 48(b), CA No. 141, applies only to A and D lands

Section 48(b) of the Public Land Act (CA No. 141, as amended) on confirmation of imperfect titles applies exclusively to alienable and disposable (A and D) lands of the public domain.[30] Forest lands are excluded. "In confirmation of imperfect title cases, the applicant shoulders the burden of proving that he meets the requirements of Section 48, CA No. 141, as amended by RA No. 1942. He must overcome the presumption that the land he is applying for is part of the public domain but that he has an interest therein sufficient to warrant registration in his name because of an imperfect title such as those derived from old Spanish grants or that he has had continuous, open and notorious possession and occupation of agricultural

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[28]Director of Lands v. Aquino, GR No. 31688, Dec. 17, 1990, 192 SCRA 296.

[29]Government of the Philippine Islands v. Abella, GR No. 25010, Oct. 27, 1926, 49 Phil. 491.

[30]Palomo v. Court of Appeals, GR No. 95608, Jan. 21, 1997, 266 SCRA 392.

lands of the public domain under a *bona fide* claim of acquisition of ownership for at least thirty (30) years preceding the filing of his application (since June 12, 1945 under PD No. 1073)."[31]

**03. Watersheds.**

As a matter of general policy, the Constitution expressly mandates the conservation and proper utilization of natural resources, which includes the country's watershed. Watersheds in the Philippines had been subjected to rampant abusive treatment due to various unscientific and destructive land use practices. Once lush watersheds were wantonly deforested due to uncontrolled timber cutting by licensed concessionaries and illegal loggers. This is one reason why the grant of timber licenses usually includes a proviso that the "terms and conditions of this license are subject to change at the discretion of the Director of (Forest Development), and that this license may be made to expire at an earlier date, when public interests so require."

In *Tan* v. *Director of Forestry*,[32] the Supreme Court reiterated the basic policy of conserving the national patrimony, as exemplified by the government's withdrawal from entry, sale or settlement of forest reserves for watershed, soil protection and timber production purposes. The Court said that "(a) timber license is not a contract, within the purview of the due process clause; it is only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare."

**04. Mangrove swamps.**

It is now settled that mangrove swamps or *manglares* are forestal and not alienable agricultural land.[33] In the early case of *Montano* v. *Insular Government*,[34] mangrove swamps or *manglares* were defined by the Court as:

> ". . . mud flats, alternately washed and exposed by the tide, in which grows various kindred plants which will

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[31]Amunategui v. Director of Forestry, GR No. L-27873, Nov. 29, 1983, 126 SCRA 69.

[32]GR No. L-24548, Oct. 27, 1983, 125 SCRA 302.

[33]Director of Forestry v. Villareal, GR No. L-32266, Feb. 27, 1989, 170 SCRA 598.

[34]GR No. 3714, Jan. 26, 1909, 12 Phil. 572.

> not live except when watered by the sea, extending their roots deep into the mud and casting their seeds, which also germinate there. These constitute the mangrove flats of the tropics, which exist naturally, but which are also, to some extent cultivated by man for the sake of the combustible wood of the mangrove and like trees as well as for the useful nipa palm propagated thereon. Although these flats are literally tidal lands, yet we are of the opinion that they cannot be so regarded in the sense in which that term is used in the cases cited or in general American jurisprudence. The waters flowing over them are not available for purpose of navigation, and they may be disposed of without impairment of the public interest in what remains.
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> Under this uncertain and somewhat unsatisfactory condition of the law, the custom had grown of converting *manglares* and nipa lands into fisheries which became a common feature of settlement along the coast and at the same time of the change of sovereignty constituted one of the most productive industries of the Islands, the abrogation of which would destroy vested interests and prove a public disaster."

Mangrove swamps were thus considered agricultural lands and so susceptible of private ownership.

Subsequently, the Philippine Legislature categorically declared, despite the above-cited case, that mangrove swamps form part of the public forests of this country. The Administrative Code of 1917, which became effective on October 1 of that year, provided:

> "SEC. 1820. *Words and phrase defined*. — For the purpose of this chapter, 'public forest' includes, except as otherwise specially indicated, all unreserved public land, including nipa and mangrove swamps, and all forest reserves of whatever character."

Then came the definitive pronouncement in *Yngson* v. *Secretary of Agriculture and Natural Resources*,[35] promulgated in 1983, "that

[35]GR No. L-36847, July 20, 1983, 151 SCRA 88; see also Vallarta v. Intermediate Appellate Court, GR No. 74957, June 30, 1987, 151 SCRA 679.

the Bureau of Fisheries has no jurisdiction to dispose of swamplands or mangrove lands forming part of the public domain while such lands are still classified as forest lands."

This was reaffirmed in *Director of Forestry* v. *Villareal*[36] where the Court, through Justice Cruz, categorically declared that mangrove swamps form part of the public forests and, therefore, not subject to disposition, thus:

> "Mangrove swamps or *manglares* should be understood as comprised within the public forests of the Philippines as defined in the aforecited Section 1820 of the Administrative Code of 1917. The legislature having so determined, we have no authority to ignore or modify its decision, and in effect veto it, in the exercise of our own discretion. The statutory definition remains unchanged to date x x x . We repeat our statement in the *Amunategui* case that the classification of mangrove swamps as forest lands is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. That determination having been made and no cogent argument having been raised to annul it, we have no duty as judges but to apply it. And so we shall.
>
> Our previous description of the term in question as pertaining to our agricultural lands should be understood as covering only those lands over which ownership had already vested before the Administrative Code of 1917 became effective. Such lands could not be retroactively legislated as forest lands because this would be violative of a duly acquired property right protected by the due process clause.
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> It is reiterated for emphasis that, conformably to the legislative definition embodied in Section 1820 of the Revised Administrative Code of 1917, which remains unamended up to now, mangrove swamps or manglares form part of the public forests of the Philippines. As such, they are not alienable under the Constitution and may not be the subject of private ownership until and unless they

[36]*Supra.*

are first released as forest land and classified as alienable agricultural land."

**05. Mineral lands.**

Mining claims and rights and other matters concerning minerals and mineral lands are governed by special laws.[37] Mineral land means any area where mineral resources are found. Mineral resources, on the other hand, means any concentration of mineral/rocks with potential economic value.[38] The ownership of mineral resources is provided in RA No. 7942, known as the Philippine Mining Act of 1995, *viz*.:

> "SEC. 4. *Ownership of Mineral Resources*. — Mineral resources are owned by the State and the exploration, development, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.
>
> The State shall recognize and protect the rights of the indigenous cultural communities to their ancestral lands as provided for by the Constitution."

**(1) Philippine Mining Act provisions on FTAA valid**

In a resolution dated December 1, 2004, the Supreme Court in *La Bugal-B'laan Association* v. *Ramos*[39] reversed its decision dated January 4, 2002 and declared RA No. 7942 and its Implementing Rules and Regulations contained in DENR Administrative Order No. 9640 valid insofar as they relate to financial and technical assistance agreements (FTAA) referred to in paragraph 4, Section 2, Article XII of the Constitution. The Court, through Justice Panganiban, reiterated that all mineral resources are owned by the State and their exploration, development and utilization must always be subject to the full control and supervision of the State. The mineral wealth and natural resources of the country are meant to benefit not merely a select group of people living in the areas locally affected by mining

[37]Art. 519, Civil Code.
[38]Sec. 4(aj) and (an), DENR Administrative Order No. 95-936, as amended.
[39]GR No. 127882, Dec. 1, 2004, 445 SCRA 1.

activities, but the entire Filipino nation, present and future, to whom the mineral wealth really belong.

### (2) Possession of mineral land does not confer possessory rights

Possession of mineral land, no matter how long, does not confer possessory rights.[40] Thus, a certificate of title is void when it covers property of public domain classified as mineral lands. Any title issued over non-disposable lots, even in the hands of alleged innocent purchaser for value, shall be cancelled.[41]

However, perfection of a mining claim before the 1935 Constitution — which prohibited the alienation of all lands of the public domain except agricultural lands — had the effect of removing the land from the public domain as held in *Atok-Big Wedge Mining Co. v. Court of Appeals*.[42] "By such act, the locators acquired exclusive rights over the land, against even the government, without need of any further act such as the purchase of the land or the obtention of a patent over it. As the land had become the private property of the locators, they had the right to transfer the same, as they did." Consequently, the same land "could not have been transferred to the private respondents by virtue of acquisitive prescription, nor could its use be shared simultaneously by them and the mining companies for agricultural and mineral purposes." The Court, elucidating on the effect of a valid location of a mining claim, further said:

> "The legal effect of a valid location of a mining claim is not only to segregate the area from the public domain, but to grant to the locator the beneficial ownership of the claim and the right to a patent therefor upon compliance with the terms and conditions prescribed by law. Where there is a valid location of mining claim, the area becomes segregated from the public and the property of the locator. When a location of a mining claim is perfected it has the effect of a grant by the (government) of the right of present and exclusive possession, with the right to the exclusive

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[40]Atok-Big Wedge Mining Co. v. Court of Appeals, GR No. 88883, Jan. 18, 1991. 193 SCRA 71.

[41]Lepanto Consolidated Mining Co. v. Dumyung, GR No. L-31666, April 20, 1979, 89 SCRA 532.

[42]*Supra.*

> enjoyment of all the surface ground as well as of all the minerals within the lines of the claim, except as limited by the extra-lateral right of adjoining locators; and this is the locator's right before as well as after the issuance of the patent. While a lode locator acquires a vested right by virtue of his location made in compliance with the mining laws, the fee remains in the government until patent issues."

*Atok* reiterates the doctrine in the 1938 case of *Gold Creek Mining Corporation* v. *Rodriguez*[43] which held that the location and perfection of a mining claim before November 15, 1935, when the Commonwealth government was inaugurated, according to the laws existing at that time, as construed and applied by the Court in *McDaniel* v. *Apacible*,[44] segregated the area from the public domain. "The moment the locator discovered a valuable mineral deposit on the lands located, and perfected his location in accordance with law, the power of the (government) to deprive him of the exclusive right to the possession and enjoyment of the located claim was gone, the lands had become mineral lands and they were exempted from lands that could be granted to any other person. The reservations of public lands cannot be made so as to include prior mineral perfected locations; and, of course, if a valid mining location is made upon public lands afterward included in a reservation, such inclusion or reservation does not affect the validity of the former location. By such location and perfection, the land located is segregated from the public domain even as against the government."

### (3) Ownership of land does not extend to minerals underneath

In *Republic* v. *Court of Appeals and De la Rosa*,[45] Justice Cruz said that the Regalian doctrine reserves to the State all natural wealth that may be found in the bowels of the earth even if the land where the discovery is made be private. The doctrine, as its name implies, is intended for the benefit of the State, not of private persons. The rule simply reserves to the State all minerals that may be found in public and even private land devoted to "agricultural, industrial,

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[43]GR No. 45859, Sept. 28, 1938, 66 Phil. 259.
[44]GR No. 17597, Feb. 7, 1922, 42 Phil. 749.
[45]GR No. L-43938, April 15, 1980, 160 SCRA 228.

commercial, residential or (for) any purpose other than mining." Thus, if a person is the owner of agricultural land in which minerals are discovered, his ownership of such land does not give him the right to extract or utilize the said minerals without the permission of the State to which such minerals belong.

Once minerals are discovered in the land, whatever the use to which it is being devoted at the time, such use may be discontinued by the State to enable it to extract the minerals therein in the exercise of its sovereign prerogative. The land is thus converted to mineral land and may not be used by any private party, including the registered owner thereof, for any other purpose that will impede the mining operations to be undertaken therein. For the loss sustained by such owner, he is of course entitled to just compensation under the Mining Laws or in appropriate expropriation proceedings.[46]

### (4) Land cannot be partly mineral and partly agricultural

The rights over the land are indivisible and that the land itself cannot be half agricultural and half mineral. The classification must be categorical; the land must be either completely mineral or completely agricultural. Land which was originally classified as forest land ceased to be so and became mineral — and completely mineral — once the mining claims were perfected. As long as mining operations were being undertaken thereon, or underneath, it did not cease to be so and become agricultural, even if only partly so, because it was enclosed with a fence and was cultivated by those who were unlawfully occupying the surface.[47]

## 06. National parks.

Land reserved for a national park cannot be registered. For example, the "Tiwi Hot Spring National Park" under the control, management, protection and administration of the defunct Commission of Parks and Wildlife, now a division of the Bureau of Forest Development, is neither susceptible to disposition under the provisions of the Public Land Act *(CA No. 141)* nor registrable under the Property Registration Decree *(PD No. 1529)*. Accordingly, it has

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[46]*Ibid.*
[47]Republic v. Court of Appeals and De la Rosa, *supra*.

been held that where a certificate of title covers a portion of land within the area reserved for park purposes, the title should be annulled with respect to said portion.[48]

**07. Military or naval reservation.**

Land inside a military or naval reservation cannot be the object of registration.[49] Accordingly, the reopening, under RA No. 931,[50] of Civil Registration Case No. 1 establishing the Baguio Townsite Reservation, the decision in which was promulgated as far back as November 13, 1922, thus enabling private respondents to apply for the registration of an area of 74,017 square meters inside the Camp John Hay Leave and Recreation Center, was held to be invalid since a military camp or reservation could not have been the object of cadastral proceedings.[51]

**08. Foreshore lands and reclaimed lands.**

The term "foreshore land" has been invariably defined as "that strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide" or "that part of the land adjacent to the sea which is alternately covered by the ordinary flow of the tides."[52] Foreshore lands and submerged lands (which may be the subject of reclamation) are inalienable unless declared by law to be alienable and disposable portions of the public domain.

It was held that if the parcel registered in the names of respondents were foreshore land, the land registration court could

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[48]Palomo v. Court of Appeals, *supra*.

[49]Republic v. Marcos, GR No. L-32941, July 31, 1973, 52 SCRA 238.

[50]RA No. 931 dated June 20, 1953 provides: "All persons claiming title to parcels of land that have been the object of cadastral proceedings, who at the time of the survey were in actual possession of the same, but for some justifiable reason had been unable to file their claim in the proper court during the time limit established by law, in case such parcels of land, on account of their failure to file such claims, have been, or are about to be declared land of the public domain, by virtue of judicial proceedings instituted within the forty years next preceding the approval of this Act, are hereby granted the right within five years after the date on which this Act shall take effect, to petition for a reopening of the judicial proceedings under the provisions of Act Numbered Twenty-two hundred and fifty-nine, as amended." The law has become inoperative as of June 20, 1958.

[51]Republic v. Marcos, GR No. L-29675, Sept. 30, 1969, 29 SCRA 517.

[52]Republic v. Court of Appeals and Republic Real Estate Corporation, GR Nos. 103882 and 105276, Nov. 25, 1998, 299 SCRA 199.

not have validly awarded title thereto. It would have been without the authority to do so. And the fact that the Bureau of Lands had failed to appeal from the decree of registration could not have validated the court's decision, which was rendered without jurisdiction.[53]

### (1) Development of the law governing foreshore/ reclaimed lands

In *Chavez* v. *Public Estates Authority*,[54] Justice Carpio gives an enlightening historical background of foreshore and reclaimed lands and the development of the law governing such lands.

The Spanish Law of Waters of 1866 was the first statutory law governing the ownership and disposition of reclaimed lands in the Philippines. On May 18, 1907, the Philippine Commission enacted Act No. 1654 which provided for the lease, but not the sale, of reclaimed lands of the government to corporations and individuals. Later, on November 29, 1919, the Philippine Legislature approved Act No. 2874, the Public Land Act, which authorized the lease, but not the sale, of reclaimed lands of the government to corporations and individuals. On November 7, 1936, the National Assembly passed CA No. 141, also known as the Public Land Act, which authorized the lease, but not the sale, of reclaimed lands of the government to corporations and individuals. CA No. 141 continues to this day as the general law governing the classification and disposition of lands of the public domain.

Under the Spanish Law of Waters, the shores, bays, coves, inlets and all waters within the maritime zone of the Spanish territory belonged to the public domain for public use. The Spanish Law of Waters of 1866 allowed the reclamation of the sea under Article 5 which provided as follows:

> "ART. 5. Lands reclaimed from the sea in consequence of works constructed by the State, or by the provinces, pueblos or private persons, with proper permission, shall become the property of the party constructing such works, unless otherwise provided by the terms of the grant of authority."

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[53]Republic v. Alagad, *supra*.
[54]*Supra*.

Under the same law, land reclaimed from the sea belonged to the party undertaking the reclamation, provided the government issued the necessary permit and did not reserve ownership of the reclaimed land to the State.

On May 8, 1907, the Philippine Commission enacted Act No. 1654 which regulated the lease of reclaimed and foreshore lands. Act No. 1654 mandated that the government should retain title to all lands reclaimed by the government. The Act also vested in the government control and disposition of foreshore lands. Private parties could lease lands reclaimed by the government only if these lands were no longer needed for public purpose. Act No. 1654 mandated public bidding in the lease of government reclaimed lands. It made government reclaimed lands *sui generis* in that unlike other public lands which the government could sell to private parties, these reclaimed lands were available only for lease to private parties.

But Act No. 1654 did not repeal Section 5 of the Spanish Law of Waters of 1866. It did not prohibit private parties from reclaiming parts of the sea under Section 5 of the Spanish Law of Waters. Lands reclaimed from the sea by private parties with government permission remained private lands.

On November 29, 1919, the Philippine Legislature enacted Act No. 2874, the Public Land Act. Section 6 of Act No. 2874 authorized the Governor-General to "classify lands of the public domain into . . . alienable or disposable" lands. Section 7 of the Act empowered the Governor-General to "declare what lands are open to disposition or concession." Section 8 limited alienable or disposable lands only to those lands which have been "officially delimited and classified." Section 56 stated that lands "disposable under this title shall be classified" as government reclaimed, foreshore and marshy lands, as well as other lands. All these lands, however, must be suitable for residential, commercial, industrial or other productive non-agricultural purposes. These provisions vested upon the Governor-General the power to classify inalienable lands of the public domain into disposable lands of the public domain. These provisions also empowered the Governor-General to classify further such disposable lands of the public domain into government reclaimed, foreshore or marshy lands of the public domain, as well as other non-agricultural lands. Section 58 categorically mandated that disposable lands of the public domain classified as government reclaimed, foreshore and marshy lands "shall be disposed of to private parties by lease only and not otherwise." The Governor-General, before allowing the lease

of these lands to private parties, must formally declare that the lands were "not necessary for the public service."

Act No. 2874 reiterated the State policy to lease and not to sell government reclaimed, foreshore and marshy lands of the public domain, a policy first enunciated in 1907 in Act No. 1654. Government reclaimed, foreshore and marshy lands remained *sui generis*, as the only alienable or disposable lands of the public domain that the government could not sell to private parties.

On November 7, 1936, the National Assembly approved CA No. 141, also known as the Public Land Act, which compiled the then existing laws on lands of the public domain. CA No. 141, as amended, remains to this day the existing general law governing the classification and disposition of lands of the public domain other than timber and mineral lands.

Section 6 of CA No. 141 empowers the President to classify lands of the public domain into "alienable or disposable" lands of the public domain, which prior to such classification are inalienable and outside the commerce of man. Section 7 authorizes the President to "declare what lands are open to disposition or concession." Section 8 states that the government can declare open for disposition or concession only lands that are "officially delimited and classified." Thus, before the government could alienate or dispose of lands of the public domain, the President must first officially classify these lands as alienable or disposable, and then declare them open to disposition or concession. There must be no law reserving these lands for public or quasi-public uses.

Section 61 of CA No. 141 readopted, after the effectivity of the 1935 Constitution, Section 58 of Act No. 2874 prohibiting the sale of government reclaimed, foreshore and marshy disposable lands of the public domain. All these lands are intended for residential, commercial, industrial or other non-agricultural purposes. As before, Section 61 allowed only the lease of such lands to private parties. The government could sell to private parties only those lands falling under Section 59(d) of CA No. 141, or those lands for non-agricultural purposes not classified as government reclaimed, foreshore and marshy disposable lands of the public domain. Foreshore lands, however, became inalienable under the 1935 Constitution which only allowed the lease of these lands to qualified private parties.

Section 58 of CA No. 141 expressly states that disposable lands of the public domain intended for residential, commercial, industrial

or other productive purposes other than agricultural "shall be disposed of under the provisions of this chapter and not otherwise." Under Section 10 of the Act, the term "disposition" includes lease of the land. Any disposition of government reclaimed, foreshore and marshy disposable lands for non-agricultural purposes must comply with Chapter IX, Title III of CA No. 141, unless a subsequent law amended or repealed these provisions.

**(2) State policy**

In his concurring opinion in the case of *Republic* v. *Court of Appeals and Republic Real Estate Corporation*,[55] Justice Puno summarized succinctly the law on the disposition of foreshore lands as follows:

> "Foreshore lands are lands of public dominion intended for public use. So too are lands reclaimed by the government by dredging, filling, or other means. Act 1654 mandated that the control and disposition of the foreshore and lands under water remained in the national government. Said law allowed only the 'leasing' of reclaimed land. The Public Land Acts of 1919 and 1936 also declared that the foreshore and lands reclaimed by the government were to be 'disposed of to private parties by lease only and not otherwise.' Before leasing, however, the Governor-General, upon recommendation of the Secretary of Agriculture and Natural Resources, had first to determine that the land reclaimed was not necessary for the public service. This requisite must have been met before the land could be disposed of. But even then, the foreshore and lands under water were not to be alienated and sold to private parties. The disposition of the reclaimed land was only by lease. The land remained property of the State."

The State policy prohibiting the sale to private parties of government reclaimed, foreshore and marshy alienable lands of the public domain, first implemented in 1907, was thus reaffirmed in CA No. 141 after the 1935 Constitution took effect. The prohibition on the sale of foreshore lands, however, became a constitutional edict

[55] *Supra.*

under the 1935 Constitution. Foreshore lands became inalienable as natural resources of the State, unless reclaimed by the government and classified as agricultural lands of the public domain, in which case they would fall under the classification of government reclaimed lands.

After the effectivity of the 1935 Constitution, government reclaimed and marshy disposable lands of the public domain continued to be only leased and not sold to private parties. These lands remained *sui generis*, as the only alienable or disposable lands of the public domain the government could not sell to private parties.

### (3) Congressional authority

Since then and until now, the only way the government can sell to private parties government reclaimed and marshy disposable lands of the public domain is for the legislature to pass a law authorizing such sale. CA No. 141 does not authorize the President to reclassify government reclaimed and marshy lands into other non-agricultural lands under Section 59(d). Lands classified under Section 59(d) ☐ or those *not included* in the classification of (a) reclaimed lands, (b) foreshore lands, and (c) marshy lands — are the *only* alienable or disposable lands for non-agricultural purposes that the government could *sell* to private parties. Pursuant to Section 61, the lands comprised in classes (a), (b) and (c) shall be disposed of to private parties by *lease* only and not otherwise.

Section 60 of CA No. 141 expressly requires congressional authority before lands under Section 59, which the government previously transferred to government units or entities, could be sold to private parties. The congressional authority required in Section 60 of the Act mirrors the legislative authority required in Section 56 of Act No. 2874. One reason for the congressional authority is that Section 60 of CA No. 141 exempts government units and entities from the maximum area of public lands that could be acquired from the State. These government units and entities should not just turn around and sell these lands to private parties in violation of constitutional or statutory limitations. Otherwise, the transfer of lands for non-agricultural purposes to government units and entities could be used to circumvent constitutional limitations on ownership of alienable or disposable lands of the public domain. In the same manner, such transfers could also be used to evade the statutory prohibition in CA No. 141 on the sale of government reclaimed and

marshy lands of the public domain to private parties. Section 60 of CA No. 141 constitutes by operation of law a lien on these lands.[56]

### (4) Land invaded by the sea is foreshore land and belongs to the State

The registration of a foreshore land is void and the land should therefore be returned to the public domain as held in *Republic* v. *Court of Appeals and Morato*,[57] *viz*.:

> "When the sea moved towards the estate and the tide invaded it, the invaded property became foreshore land and passed to the realm of the public domain. In fact, the Court in *Government* vs. *Cabañgis* annulled the registration of land subject of cadastral proceedings when the parcel subsequently became foreshore land. In another case, the Court voided the registration decree of a trial court and held that said court had no jurisdiction to award foreshore land to any private person or entity. The subject land in this case, being foreshore land, should therefore be returned to the public domain."

### (5) Submerged areas

Submerged areas form part of the public domain, and in that state, are inalienable and outside the commerce of man. Until reclaimed from the sea, these submerged areas are, under the Constitution, "waters . . . owned by the State," forming part of the public domain and consequently inalienable. Only when actually reclaimed from the sea can these submerged areas be classified as public agricultural lands, which under the Constitution are the only natural resources that the State may alienate. Once reclaimed and transformed into public agricultural lands, the government may then officially classify these lands as alienable or disposable lands open to disposition. Thereafter, the government may declare these lands no longer needed for public service. Only then can these reclaimed lands be considered alienable or disposable lands of the public domain and within the commerce of man.[58]

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[56]Chavez v. Public Estates Authority, *supra*.
[57]GR No. 100709, Nov. 14, 1997, 281 SCRA 639.
[58]Chavez v. Public Estates Authority, *supra*.

**(6) Laws governing reclamation**

RA No. 1899 approved June 22, 1957 authorized the reclamation of foreshore lands by chartered cities and municipalities. Pertinent provisions read:

> "SEC. 1. Authority is hereby granted to all municipalities, and chartered cities to undertake and carry out at their own expense the reclamation by dredging, filling, or other means, of any foreshore lands bordering them, and to establish, provide, construct, maintain and repair proper and adequate docking and harbor facilities as such municipalities and chartered cities may determine in consultation with the Secretary of Finance and the Secretary of Public Works and Communications.
>
> SEC. 2. Any and all lands reclaimed, as herein provided, shall be the property of the respective municipalities or chartered cities: Provided, however, That the new foreshore along the reclaimed areas shall continue to be the property of the National Government.
>
> x x x x x x x x x
>
> SEC. 4. All lands reclaimed as herein provided, except such as may be necessary for wharves, piers and embankments, roads, parks and other public improvements, may be sold or leased under such rules and regulations as the municipality or chartered city may prescribe. All proceeds derived from such sale or lease, and all berthing and other fees and such other earnings as the municipality or chartered city shall derive from the use of the port facilities and improvements contemplated under this Act, shall be credited to a special fund which shall accrue in the first instance to the sinking fund hereafter provided. Any balance thereof in excess of periodic sinking fund requirements shall be available for other permanent public improvements of the municipality or chartered city."

On January 11, 1973, PD No. 3-A was issued revoking all laws authorizing the reclamation of areas under water, whether foreshore or inland, and revested solely in the national government the power to reclaim lands. Section 1 of PD No. 3-A provides:

> "The provisions of any law to the contrary notwithstanding, the reclamation of areas under water, whether

> foreshore or inland, shall be limited to the National Government or any person authorized by it under a proper contract."

PD No. 3-A repealed Section 5 of the Spanish Law of Waters of 1866 because reclamation of areas under water could now be undertaken only by the national government or by a person contracted by the national government.

### (7) The Public Estates Authority

On February 4, 1977, President Marcos issued PD No. 1084 creating the Public Estates Authority (PEA), renamed Philippine Reclamation Authority pursuant to EO No. 380, dated October 26, 2004. PD No. 1084 authorizes PEA to reclaim both foreshore and submerged areas of the public domain. *Foreshore areas* are those covered and uncovered by the ebb and flow of the tide. *Submerged areas* are those permanently under water regardless of the ebb and flow of the tide. Foreshore and submerged areas indisputably belong to the public domain and are inalienable unless reclaimed, classified as alienable lands open to disposition, and further declared no longer needed for public service.

EO No. 525, issued on February 14, 1979, designated PEA as the national government's implementing arm to undertake "all reclamation projects of the government," which "shall be undertaken by the PEA or through a proper contract executed by it with any person or entity." Under such contract, a private party receives compensation for reclamation services rendered to PEA. Payment to the contractor may be in cash, or in kind consisting of portions of the reclaimed land, subject to the constitutional ban on private corporations from acquiring alienable lands of the public domain. The reclaimed land can be used as payment in kind only if the reclaimed land is first classified as alienable or disposable land open to disposition, and then declared no longer needed for public service.

PD No. 1084 expressly empowers PEA "to hold lands of the public domain" even "in excess of the area permitted to private corporations by statute." Thus, PEA can hold title to private lands, as well as title to lands of the public domain.

The classification of PEA's reclaimed foreshore and submerged lands into alienable or disposable lands open to disposition is necessary because PEA is tasked under its charter to undertake

public services that require the use of lands of the public domain. Thus, part of the reclaimed foreshore and submerged lands held by the PEA would actually be needed for public use or service since many of the functions imposed on PEA by its charter constitute essential public services.

Moreover, Section 1 of EO No. 525 provides that PEA "shall be primarily responsible for integrating, directing, and coordinating all reclamation projects and on behalf of the National Government." Under EO No. 525, in relation to PD No. 3-A and PD No. 1084, PEA became the primary implementing agency of the national government to reclaim foreshore and submerged lands of the public domain. EO No. 525 recognizes PEA as the entity "to undertake the reclamation of lands and ensure their maximum utilization in promoting public welfare and interests." Since large portions of these reclaimed lands would obviously be needed for public service, there must be a formal declaration segregating reclaimed lands no longer needed for public service from those still needed for public service.

Section 3 of EO No. 525, by declaring that all lands reclaimed by PEA "shall belong to or be owned by the PEA," could not automatically operate to classify inalienable lands into alienable or disposable lands of the public domain. Otherwise, reclaimed foreshore and submerged lands of the public domains would automatically become alienable once reclaimed by PEA, whether or not classified as alienable or disposable.

Under Section 2, Article XII of the 1987 Constitution, the foreshore and submerged areas of Manila Bay are part of the "lands of the public domain, waters . . . and other natural resources" and consequently "owned by the State." As such, foreshore and submerged areas "shall not be alienated," unless they are classified as "agricultural lands" of the public domain. The mere reclamation of these areas by PEA does not convert these inalienable natural resources of the State into alienable or disposable lands of the public domain. There must be a law or presidential proclamation officially classifying these reclaimed lands as alienable or disposable and open to disposition or concession. Moreover, these reclaimed lands cannot be classified as alienable or disposable if the law has reserved them for some public or quasi-public use.

The mere physical act of reclamation by PEA of foreshore or submerged areas does not make the reclaimed lands alienable or disposable lands of the public domain, much less patrimonial lands

of PEA. Likewise, the mere transfer by the national government of lands of the public domain to PEA does not make the lands alienable or disposable lands of the public domain, much less patrimonial lands of PEA.

Absent two official acts — a classification that these lands are alienable or disposable and open to disposition and a declaration that these lands are not needed for public service, lands reclaimed by PEA remain inalienable lands of the public domain. Only such an official classification and formal declaration can convert reclaimed lands into alienable or disposable lands of the public domain, open to disposition under the Constitution, Title I and Title III of CA No. 141 and other applicable laws.

In order that PEA may sell its reclaimed foreshore and submerged alienable lands of the public domain, there must be legislative authority empowering PEA to sell these lands. This legislative authority is necessary in view of Section 60 of CA No. 141, which states:

> "SEC. 60. x x x.; but the land so granted, donated or transferred to a province, municipality, or branch or subdivision of the Government shall not be alienated, encumbered or otherwise disposed of in a manner affecting its title, except when authorized by Congress; x x x."

Without such legislative authority, PEA could not sell but only lease its reclaimed foreshore and submerged alienable lands of the public domain. Nevertheless, any legislative authority granted to PEA to sell its reclaimed alienable lands of the public domain would be subject to the constitutional ban on private corporations from acquiring alienable lands of the public domain. Hence, such legislative authority could only benefit private individuals.

There is no express authority under either PD No. 1085 or EO No. 525 for PEA to sell its reclaimed lands. PD No. 1085 merely transferred "ownership and administration" of lands reclaimed from Manila Bay to PEA, while EO No. 525 declared that lands reclaimed by PEA "shall belong to or be owned by PEA." EO No. 525 expressly states that PEA should dispose of its reclaimed lands in accordance with the provisions of PD No. 1084, PEA's charter.

PEA may sell its alienable or disposable lands of the public domain to private individuals since, with the legislative authority, there is no longer any statutory prohibition against such sales and

the constitutional ban does not apply to individuals. PEA, however, *cannot sell* any of its alienable or disposable lands of the public domain to *private corporations* since Section 3, Article XII of the 1987 Constitution expressly prohibits such sales. The legislative authority benefits only individuals. Private corporations remain barred from acquiring any kind of alienable land of the public domain, including government reclaimed lands.

The constitutional ban on private corporations from acquiring alienable lands of the public domain does not apply to PEA since it is a fully owned government corporation. The constitutional ban applies only to "private corporations and associations."[59]

**09. Lakes.**

Areas forming part of the Laguna de Bay, which is a lake, are neither agricultural nor disposable lands of the public domain. Any title issued over non-disposable lots, even in the hands of an alleged innocent purchaser for value, shall be cancelled. Thus, in *Republic* v. *Reyes*,[60] it was held that the free patents and certificates of title issued to the applicants covering portions of the lake, due to misrepresentations and false reports, should be cancelled. Any false statement in an application for public land shall *ipso facto* produce the cancellation of the title granted. Possession of non-disposable land does not divest the land of its public character.

**(1) Laguna de Bay**

Section 41(11) of RA No. 4850, otherwise known as Laguna Lake Development Authority Act of 1996, defines the Laguna de Bay as that area covered by the lake water when it is at the average annual maximum lake level of elevation 12.50 meters, as referred to a datum 10.00 meters below mean lower low water (M.L.L.W.). Lands located at and below such elevation are *public lands* which form part of the bed of said lake. The Laguna Lake Region means the Laguna Lake area proper comprising the provinces of Rizal and Laguna and the cities of San Pablo, Manila, Pasay, Quezon and Caloocan.

It is the policy of the law to promote, and accelerate the development and balanced growth of the Laguna Lake area and the sur-

[59]Chavez v. Public Estates Authority, *supra*.
[60]GR No. L-30263, Oct. 30, 1987, 155 SCRA 313.

rounding provinces, cities and towns within the context of the national and regional plans and policies for social and economic development and to carry out the development of the Laguna Lake region with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration and pollution. For the purpose of carrying out and effecting the declared policy, the Laguna Lake Development Authority (Authority) was organized and vested with powers and functions defined in Section 4 of the law, among which is:

> "(i) To reclaim or cause to be reclaimed portions of the lake or undertake reclamation projects and/or acquire such bodies of land from the lake which may be necessary to accomplish the aims and purposes of the Authority subject to the approval of the NEDA Board: Provided, That the land so reclaimed shall be the property of the Authority and title thereto shall be vested in the Authority: Provided, further, That the resulting lake shore shall continue to be owned by the national government."

The Authority has *exclusive* jurisdiction to issue permits for the use of the lake waters for any projects or activities in or affecting the said lake, including navigation, construction, and operation of fishpens, fish enclosures, fish corrals and the like, and to impose necessary safeguards for lake quality control and management and to collect necessary fees for said activities and projects. The charter of the Authority which embodies a valid exercise of police power prevails over the Local Government Code of 1991 on matters affecting Laguna de Bay.[61]

### (2) Area beyond the natural bed of the Laguna de Bay may be registered

The extent of a lake bed is defined in Article 74 of the Law of Waters of 1866, as follows: "The natural bed or basin of lakes, ponds, or pools, is the ground covered by their waters when at their highest ordinary depth." The phrase "highest ordinary depth" in the above definition has been interpreted in the case of *Government of P.I.* v.

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[61]Laguna Lake Development Authority v. Court of Appeals, GR No. 120865, Dec. 7, 1995, 251 SCRA 42.

*Colegio de San Jose*[62] to be the highest depth of the waters of Laguna de Bay during the dry season, such depth being the "regular, common, natural, which occurs always or most of the time during the year."

In *Republic* v. *Court of Appeals and Del Rio*,[63] the Director of Lands interposed an opposition to private respondent's application for registration, contending that a portion of the land in question is covered with the waters of the Laguna de Bay four to five months a year and is, therefore, a part of the lake bed of Laguna de Bay, or is at least a foreshore land, which brings it within the enumeration of lands of the public domain in Article 502 of the Civil Code. The Supreme Court, through Justice Cuevas, ruled that the land is not part of the lake bed since it is not covered by the waters of the lake at their "highest ordinary depth" and, hence, it is registrable as private property.

> "Laguna de Bay is a lake. While the waters of a lake are also subject to the same gravitational forces that cause the formation of tides in seas and oceans, this phenomenon is not a regular daily occurrence in the case of lakes. Thus, the alternation of high tides and low tides, which is an ordinary occurrence, could hardly account for the rise in the water level of the Laguna de Bay as observed four to five months a year during the rainy season. Rather, it is the rains which bring about the inundation of a portion of the land in question. Since the rise in the water level which causes the submersion of the land occurs during a shorter period (four to five months a year) than the level of the water at which the land is completely dry, the latter should be considered as the 'highest ordinary depth' of Laguna de Bay. Therefore, the land sought to be registered is not part of the bed or basin of Laguna de Bay. Neither can it be considered as foreshore land."

In the earlier case of *Government of P.I. v. Colegio de San Jose*,[64] it was held that the two parcels of land in litigation do not form part of the bed of Laguna de Bay, and, consequently, do not belong to the public domain but to the claimant Colegio de San Jose as a part of the *Hacienda de San Pedro Tunasan* owned by it. The Supreme Court said: "(1) That the natural bed or basin of Laguna de Bay is the

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[62]GR No. 30829, Aug. 28, 1929, 53 Phil. 423.
[63]GR No. L-43105, Aug. 31, 1984, 131 SCRA 532.
[64]*Supra*.

ground covered by its waters at their highest ordinary depth during the dry season, that is, during the months of December, January, February, March, April, May, June, July and August; (2) that the highest depth reached by said waters during the rainy season, or during the months of September, October and November, is extraordinary; (3) that the two parcels of land in litigation form an integral part of the *Hacienda de San Pedro Tunasan* belonging to the claimant Colegio de San Jose; (4) that said two parcels of land, being accidentally inundated by the waters of Laguna de Bay continue to be the property of the claimant Colegio de San Jose (Art. 77, Law of Waters of August 3, 1866); (5) that even supposing that the said two parcels of land have been formed by accession or deposits of sediment by the waters of said Laguna de Bay, they still belong to the said claimant Colegio de San Jose, as owner of the land of the *Hacienda de San Pedro Tunasan*, bordering on said Laguna de Bay (Art. 84, Law of Waters of August 3, 1866); (6) that the provisions of the Law of Waters regulating the ownership and use of the waters of the sea are not applicable to the ownership and use of lakes, which are governed by special provisions."

**10. Navigable rivers.**

Navigable rivers cannot be appropriated and registered under the Torrens system. If the land forms part of the bed of a navigable stream, creek or river, the decree and title in the name of the applicants would not give them any right or title to it.[65] A river or branch thereof is not capable of private appropriation or acquisition by prescription.[66] A land registration court has no jurisdiction over non-registerable properties, such as public navigable rivers which are parts of the public domain, and cannot validly adjudge the registration of title thereof in favor of a private applicant.[67] Thus, it was held in a case that the registration decree was properly voided by the lower court where it appeared that the decree covered portions of the bed or foreshore of the Las Piñas river which are incapable of registration.[68]

The ruling that a purchaser of a registered property cannot go beyond the record to make inquiries as to the legality of the title of

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[65]Republic v. Sioson, GR No. L-13687, Nov. 29, 1963, 9 SCRA 533.

[66]Palanca v. Commonwealth of the Philippines, GR No. 46373, Jan. 29, 1940, 69 Phil. 449; Mangaldan v. Manaoag, GR No. 11627, Aug. 10, 1918, 38 Phil. 455.

[67]Martinez v. Court of Appeals, GR No. L-31271, April 29, 1974, 56 SCRA 647.

[68]Republic v. Lozada, GR No. L-43852, May 31, 1979, 90 SCRA 502.

the registered owner, but may rely on the registry to determine if there is no lien or encumbrances over the same, cannot be availed of as against the law and the accepted principle that rivers are parts of the public domain for public use and not capable of private appropriation or acquisition by prescription.[69]

In *Mateo* v. *Moreno*,[70] it was held that ownership of a navigable stream may not be acquired under a free patent and the issuance of the corresponding certificate of title does not change its public character. It is noteworthy that RA No. 2056 authorizes removal of unauthorized dikes or obstructions on public navigable streams as "public nuisances or as prohibited constructions," because the bed of navigable streams is public property, and ownership thereof is not acquirable by adverse possession.[71]

**11. Creeks.**

A *creek*, defined as a recess or arm extending from a river and participating in the ebb and flow of the sea, is a property belonging to the public domain which is not susceptible to private appropriation and acquisitive prescription, and as a public water, it cannot be registered under the Torrens system in the name of any individual.[72] The construction of irrigation dikes on a creek which prevents the water from flowing, or converts it into a fishpond, does not alter or change the nature of the creek as a property of the public domain.[73]

**12. Reservations for public and semi-public purposes.**

The power of the President to reserve by executive proclamation lands of the public domain for public or quasi-public purposes is recognized by law.

Section 83 of CA No. 141, otherwise known as the Public Land Act, provides:

> "SEC. 83. Upon recommendation of the Secretary of Environment and Natural Resources, the President may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Re-

[69]*Ibid.*
[70]GR No. L-21024, July 28, 1969, 28 SCRA 796.
[71]Lovina v. Moreno, GR No. L-17821, Nov. 29, 1963, 9 SCRA 557.
[72]Mercado v. Reyes, GR No. 45768, Dec. 23, 1937, 65 Phil. 247.
[73]Mangaldan v. Manaoag, *supra*.

> public of the Philippines or of any of its branches, or of the inhabitants thereof, in accordance with regulations prescribed for this purpose, or for quasi-public uses or purposes when the public interest requires it, including reservations for highways, rights of way for railroads, hydraulic power sites, irrigation systems, communal pastures or *leguas communales*, public parks, public quarries, public fishponds, workingmen's village and other improvements for the public benefit."

Section 14, Chapter 4, Book III of EO No. 292, otherwise known as Administrative Code of 1987, also provides:

> "SEC. 14. *Power to Reserve Lands of the Public and Private Domain of the Government*. — (1) The President shall have the power to reserve for settlement or public use, and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation.
>
> (2) He shall also have the power to reserve from sale or other disposition and for specific public uses or purposes, any land belonging to the private domain of the Government, or any of the Friar lands, the use of which is not otherwise directed by law, and thereafter such land shall be used for the purposes specified by such proclamation until otherwise provided by law."

It is to be noted that by express provision of Section 88 of CA No. 141, "(t)he tract or tracts of land reserved under the provisions of section eighty-three shall be non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable under the provisions of this Act or by proclamation of the President." Similarly, Section 14 of EO No. 292 above-quoted states that "the reserved land shall remain subject to the specific public purpose indicated until otherwise provided by law or proclamation."

In *Republic, rep. by the Mindanao Medical Center* v. *Court of Appeals*,[74] the President issued an executive proclamation reserving

[74]GR No. L-40912, Sept. 30, 1976, 73 SCRA 146.

a portion of the public domain for medical center site purposes under the administration of the Director of Hospital in Davao City. Respondent claimed that a portion of the area covered by the proclamation was the subject of a sales patent granted to his father and, hence, the proclamation is inoperative insofar as said portion is concerned. The Supreme Court disagreed, stating:

> "Lands covered by reservation are not subject to entry, and no lawful settlement on them can be acquired. The claims of persons who have settled on, occupied, and improved a parcel of public land which is later included in a reservation are considered worthy of protection and are usually respected, but where the President, as authorized by law, issues a proclamation reserving certain lands, and warning all persons to depart therefrom, this terminates any rights previously acquired in such lands by a person who has settled thereon in order to obtain a preferential right of purchase. And patents for lands which have been previously granted, reserved from sale, or appropriated, are void."

While the President may classify and reserve any disposable land of the government for a specific public purpose or service, he may release the land from the reservation at any time pursuant to Section 9 of the Public Land Act which states that the President, upon recommendation of the Secretary of Environment and Natural Resources, "shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another."[75]

## IV. SPECIFIC EVIDENCE OF OWNERSHIP

### 01. Proof of ownership, generally.

Under the Regalian doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Hence, all applicants in land registration proceedings have the burden of overcoming the presumption that the land thus sought to be registered forms part of the public domain. Unless the applicant

[75]Republic v. Octobre, GR No. L-18867, April 30, 1966, 123 SCRA 698.

succeeds in showing by clear and convincing evidence that the property involved was acquired by him or his ancestors by any means for the proper acquisition of public lands, the property must be held to be part of the public domain.[1] The applicant must present competent and persuasive proof to substantiate his claim; he may not rely on general statements, or mere conclusions of law other than factual evidence of possession and title. The mere initiation of an application for registration of land under the Torrens system is not proof that the land is of private ownership, and not pertaining to the public domain. It is precisely the character of the land as private which the applicant has the obligation of establishing. For there can be no doubt of the intendment of the Land Registration Act (Act No. 496), the Property Registration Decree (PD No. 1529), or the Public Land Act (specifically, Section 48[b], CA No. 141) that every applicant must show a proper title for registration; indeed, even in the absence of any adverse claim, the applicant is not assured of a favorable decree by the land registration court if he fails to establish a proper title for official recognition.[2]

Under the concept of *jura regalia*, the State is the source of any asserted right to ownership of land. This is premised on the basic doctrine that all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Any applicant for confirmation of imperfect title bears the burden of proving that he is qualified to have the land titled in his name. Although Section 48 of CA No. 141 gives rise to a right that is only subject to formal recognition, it is still incumbent upon any claimant to first prove open, continuous and adverse possession for the requisite period of time. It is only when the applicant complies with this condition that he may invoke the rights given by CA No. 141.[3]

An applicant for registration is not necessarily entitled to have the land registered in his name simply because no one appears to oppose his title and to oppose the registration of the land. He must show, even in the absence of opposition, to the satisfaction of the court, that he is the absolute owner, in fee simple.[4] Where the applicant seeks the registration of title pursuant to the provisions of

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[1]Note that Spanish titles are no longer admissible as evidence of ownership pursuant to PD No. 892 dated Feb. 16, 1976.

[2]Republic v. Sayo, GR No. 60413, Oct. 31, 1990, 191 SCRA 71.

[3]Republic v. Manna Properties, Inc., GR No. 146527, Jan. 31, 2005, 450 SCRA 247.

[4]Laragan v. Court of Appeals, GR No. L-47644, Aug. 21, 1987, 152 SCRA 172.

Section 48(b) of the Public Land Act, the presumption always is that the land pertains to the State, and the applicant, or whoever claims an interest in the land, by virtue of an imperfect title, must show open, continuous, exclusive and notorious possession and occupation under a *bona fide* claim of ownership for the required number of years.[5]

**02. Land must be classified as A and D land.**

Alienable lands of the public domain, or those available for alienation or disposition, are part of the patrimonial properties of the State. They are State properties available for private ownership except that their appropriation is qualified by Sections 2 and 3 of Article XII of the Constitution and the public land laws. Before lands of the public domain are declared available for private acquisition, or while they remain intended for public use or for public service or for the development of national wealth, they would partake of properties of public dominion just like mines before their concessions are granted, in which case, they cannot be alienated or leased or otherwise be the object of contracts. In contrast, patrimonial properties may be bought or sold or in any manner utilized with the same effect as properties owned by private persons. Lands of the private domain, being patrimonial properties, are valid objects of contracts generally unfettered by the terms and conditions set forth in Sections 2 and 3 of Article XII of the Constitution, which refer only to lands of the public domain, nor by statutes for the settlement, prescription or sale of public lands.[6]

Adherence to the *Regalian* doctrine subjects all agricultural, timber, and mineral lands to the dominion of the State. Thus, before any land may be declassified from the forest group and converted into alienable or disposable land for agricultural or other purposes, there must be a positive act from the government. Even rules on the confirmation of imperfect titles do not apply unless and until the land classified as forest land is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain.[7]

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[5]*Ibid.*

[6]Chavez v. Public Estates Authority, GR No. 133250, May 6, 2003, 403 SCRA 1, per Justice Bellosillo.

[7]Sunbeam Convenience Foods, Inc. v. Court of Appeals, GR No. 50464, Jan 29, 1990, 181 SCRA 443; Director of Lands v. Court of Appeals and Bisnar, GR No. 83609, Oct. 26, 1989, 178 SCRA 708.

In the absence of classification, the land remains as unclassified land until it is released therefrom and rendered open to disposition. This is also in consonance with the *Regalian* doctrine that all lands of the public domain belong to the State and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony. The classification of public lands is an exclusive prerogative of the executive department and not of the courts.[8]

### (1) Sec. 48(b), CA No. 141, is premised on prior classification of land as A and D

In *Director of Lands* v. *Intermediate Appellate Court and Espartinez*,[9] the Court reiterated that Section 48(b) of CA No. 141 is premised on the prior classification of the land involved as a disposable agricultural land. Anyone who applies for confirmation of imperfect title under this provision has, under the ruling in *Heirs of Amunategui* v. *Director of Forestry*,[10] the burden of overcoming the presumption that the land sought to be registered forms part of the public domain. Although the application of said ruling should be on a case to case basis with the end in view of enhancing the very reasons behind the enactment of land registration laws, as stated in *Director of Lands* v. *Funtilar*,[11] where the area sought to be registered is around 23 hectares larger than that indicated on the survey plan from which applicant's claim of ownership sprung, the ruling in *Amunategui* must be given strict application. Since the applicant failed to present any proof that the land in question has been classified as and forms part of the disposable public domain, whatever possession he might have had, and however long, cannot ripen into private ownership, and his failure to adduce clear and convincing evidence of his claim over the land has given rise to the presumption that the land is still part of the public domain.

Lands that fall under Section 48 of CA No. 141 are effectively segregated from the public domain by virtue of acquisitive prescription. Open, exclusive and undisputed possession of alienable public land for the period prescribed by CA No. 141 *ipso jure* converts

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[8]Director of Lands v. Court of Appeals and Valeriano, GR No. 58867, June 22, 1984, 133 SCRA 701.

[9]GR No. 70825, March 11, 1991, 195 SCRA 38.

[10]GR No. L-30035, Nov. 29, 1983, 126 SCRA 69.

[11]GR No. L-68533, May 23, 1986, 142 SCRA 57.

such land into private land. Judicial confirmation in such cases is only a formality that merely confirms the earlier conversion of the land into private land, the conversion having occurred in law from the moment the required period of possession became complete.

Under CA No. 141, the reckoning point is June 12, 1945. With respect to a private corporation, if its predecessors-in-interest have been in possession of the land in question since this date, or earlier, then it may rightfully apply for confirmation of title to the land. Following the ruling in *Director of Lands* v. *Intermediate Appellate Court and Acme,*[12] a private corporation, may apply for judicial confirmation of the land without need of a separate confirmation proceeding for its predecessors-in-interest first.[13]

**(2) Classification of a*gricultural* public land as A and D reckoned at the time of filing of application for registration**

In *Republic* v. *Court of Appeals and Naguit*,[14] the Supreme Court, through Justice Tinga, clarified that under Section 48(b) of the Public Land Act (which is similar to Section 14[1] of the Property Registration Decree), it is merely required that the property sought to be registered, which must be *agricultural land* need be classified as alienable and disposable (A and D) only "*at the time the application for registration of title is filed*." "A different rule obtains for forest lands, such as those which form part of a reservation for provincial park purposes the possession of which cannot ripen into ownership. It is elementary in the law governing natural resources that forest land cannot be owned by private persons. As held in *Palomo* v. *Court of Appeals*, forestland is not registrable and possession thereof, no matter how lengthy, cannot convert it into private property, unless such lands are reclassified and considered disposable and alienable. In the case at bar, the property in question was undisputedly classified as disposable and alienable; hence, the ruling in Palomo is inapplicable, as correctly held by the Court of Appeals." The Court explained:

> "Petitioner suggests an interpretation that the alienable and disposable character of the land should have already been established since June 12, 1945 or earlier. This

[12]GR No. 73002, Dec. 29, 1986, 230 Phil. 590.
[13]Republic v. Manna Properties, Inc., *supra*.
[14]GR No. 144057, Jan. 17, 2005, 448 SCRA 442.

is not borne out by the plain meaning of Section 14(1). 'Since June 12, 1945,' as used in the provision, qualifies its antecedent phrase 'under a *bona fide* claim of ownership.' Generally speaking, qualifying words restrict or modify only the words or phrases to which they are immediately associated, and not those distantly or remotely located. *Ad proximum antecedents fiat relation nisi impediatur sentencia*.

Besides, we are mindful of the absurdity that would result if we adopt petitioner's position. Absent a legislative amendment, the rule would be, adopting the OSG's view, that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable. The unreasonableness of the situation would even be aggravated considering that before June 12, 1945, the Philippines was not yet even considered an independent state.

Instead, the more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property."

### (3) Regalian doctrine should be applied with due regard to the provisions on social justice

The *Regalian* doctrine which forms the basis of our land laws and, in fact, all laws governing natural resources is a revered and

long standing principle. It must, however, be applied together with the constitutional provisions on social justice and land reform and must be interpreted in a way as to avoid manifest unfairness and injustice.

As stressed by Justice Gutierrez in *Director of Lands* v. *Funtilar*,[15] every application for a concession of public land has to be viewed in the light of its peculiar circumstances. A strict application of the case of *Heirs of Amunategui* v. *Director of Forestry (supra)* ruling is warranted whenever a portion of the public domain is in danger of ruthless exploitation, fraudulent titling, or other questionable practices. But when an application appears to enhance the very reasons behind the enactment of Act No. 496 (Land Registration Act), PD No. 1529 (Property Registration Decree) and CA No. 141 (Public Land Act), then their provisions should not be made to stand in the way of their own implementation. "The land sought to be registered was declared alienable and disposable 33 years ago. It is not forest land. It has been possessed and cultivated by the applicants and their predecessors for at least three generations. The attempts of humble people to have disposable lands they have been tilling for generations titled in their names should not only be viewed with an understanding attitude but should, as a matter of policy, be encouraged."

**(4) Evidence deemed sufficient to establish classification of land as A and D land**

The following may be considered sufficient to establish the classification of land as alienable and disposable land for purposes of original registration:

1. Certification of the Bureau of Forest Development that the land has been released as alienable and disposable land.

2. Land Classification Map showing that the land lies within the alienable and disposable portion of the public domain.

3. Executive proclamation withdrawing from a reservation a specific area and declaring the same open for entry, sale or other mode of disposition.

4. Legislative act or executive proclamation reserving a portion of the public domain for public or quasi-public use, which amounts to a transfer of ownership to the grantee.

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[15]*Supra.*

In *International Hardwood and Veneer Co.* v. *University of the Philippines*,[16] for example, it was held that when the government ceded and transferred the property to UP, the Republic of the Philippines completely removed it from the public domain and, more specifically, in respect to the areas covered by the timber license of petitioner, removed and segregated it from a public forest; it divested itself of its rights and title thereto and relinquished and conveyed the same to the UP; and made the latter the absolute owner thereof, subject only to the existing concession. The proviso regarding existing concessions refers to the timber license of petitioner. All that it means, however, is that the right of petitioner as a timber licensee must not be affected, impaired or diminished; it must be respected.

5. The report of a land inspector of the Bureau of Lands that the subject land was found inside an "agricultural zone" and is suitable for rice cultivation "is binding on the courts inasmuch as it is the exclusive prerogative of the Executive Department of the Government to classify public lands. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like."[17]

### (5) Evidence deemed insufficient to show classification and release of land as A and D

The following are not considered sufficient to show the prior classification and release of the land as A and D land:

1. The mere recommendation of the District Forester for release of subject property from the unclassified region does not amount to a classification that the land is already classified as A and D land.[18]

2. The conversion of subject property into a fishpond by the applicants, or the alleged titling of properties around it does not automatically convert the property as A and D land. Applicants' remedy lies in the release of the property from its present classification.[19]

3. The existence of a survey plan of mangrove swamps approved by the Director of Lands does not have the effect of convert-

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[16]GR No. 521518, Aug. 13, 1991, 200 SCRA 554.
[17]Republic v. De Porkan, GR No. L-66866, June 18, 1987, 151 SCRA 88.
[18]Director of Lands v. Court of Appeals and Valeriano, *supra*.
[19]*Ibid*.

ing the mangrove swamps, as forest land, into agricultural land. Such approval is ineffectual because it is the Director of Forest Development who has the authority to determine whether forest land is more valuable for agricultural rather than forestry uses, as a basis for its declaration as agricultural land and release for private ownership.[20]

4. The cadastral survey of a municipality does not render all lands comprised therein automatically released as alienable. A survey made in a cadastral proceeding merely identifies each lot preparatory to a judicial proceeding for adjudication of title to any of the lands upon claim of interested parties.[21]

5. Certifications made by minor functionaries who have no authority whatever in the classification of public lands, and worse, not even connected with the Bureau of Forest Development, like the City Development Coordinator who certified that the subject land was within the commercial-residential zone of Ozamis, or the Register of Deeds who certified that the lots near and surrounding the subject land had already been registered in favor of private persons, are not sufficient to change the nature of the property. Said certifications can not dispense with the needed proclamation from the President making the land alienable to private persons or the certification by the Director of Forest Development that the land has been classified as A and D land.[22]

In *Republic* v. *Bacus,*[23] the Court reiterated the rule that the classification of lands is an exclusive prerogative of the executive branch and not of the courts. In the words of Justice Cruz:

> "The fact is that from the legal standpoint, the area is still considered forest land, not having been declassified as such by the proper authorities. We are bound by this fact and cannot change it. The solution to the private respondent's problem may be effected by administrative action or by an enactment of the legislature, but not by this Court.
>
> Even with the best of motives, the courts of justice have no right to encroach on the prerogatives of the legislative and executive officials as long as it has not been

[20]Director of Forestry v. Villareal, *supra*.
[21]*Ibid*.
[22]Republic v. Bacus, GR No. 73261, Aug. 11, 1989, 176 SCRA 376.
[23]*Ibid*.

shown that they have acted without or in excess of jurisdiction or with grave abuse of discretion. Judicial intervention, and much less usurpation, cannot be the panacea for every legal problem hopefully brought to us for resolution. Under the doctrine of separation of powers, the courts can only apply the law and have no authority to enact or execute them. The last two functions belong to the political departments of the government and cannot be arrogated by the judiciary."

**03. Survey plan.**

As required by Section 17 of PD No. 1529, the application for registration must be accompanied by a survey plan of the land duly approved by the Director of Lands (now Regional Technical Director, Lands Management Bureau), together with the applicant's muniments of title. No plan or survey may be admitted in land registration proceedings until approved by the Director of Lands.[24] But errors in the plans and reproduced in the certificate of title do not annul the decree of registration since it is not the plan but the land itself which is registered.[24a]

Only the Lands Management Bureau may now verify and approve survey plans for original registration purposes pursuant to PD No. 239, dated July 9, 1973. The Land Registration Authority (LRA) has no authority to approve original survey plans nor to check the correctness thereof. If, for any reason, the original tracing cloth plan was forwarded to the Land Registration Authority, the applicant should retrieve the same and submit it in evidence. The allegation that the approved survey plan is nowhere to be found is an important jurisdictional fact that must be ventilated before the trial court.[25]

In a case,[26] it was held that a survey plan not approved by the Director Lands is "not of much value" for registration purposes. The LRA has no authority to approve survey plans for original registration purposes.

In connection with land surveys, it is the inescapable duty of surveyors to find out by themselves who are the occupants and bound-

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[24]University of the Philippines v. Rosario, GR No. 136965, March 28, 2001, 355 SCRA

[24a]Angeles v. Samia, GR No. 44493, Nov. 3, 1938, 66 Phil. 444.

[25]*Ibid.*

[26]Republic v. Vera, GR No. L-35778, Jan. 27, 1983, 205 Phil. 164.

ary owners of any land being surveyed by them for purposes of registration.[27]

Pertinent provisions of the Revised Administrative Code govern-ing private land surveys read:

> "SEC. 1858. *Private land surveys*. — The Bureau of Lands may, upon application therefor, make private land surveys, for which a reasonable charge shall be made.
>
> Private land surveys may also be made by private land surveyors, duly qualified as hereinafter provided; but no plan of such survey, whether it be original or subdivision, shall be admitted in land registration proceedings until approved by the Director of Lands.
>
> SEC. 1859. *Procedure incident to making of survey notice to adjoining owners*. — The surveyors employed to make surveys for registration purposes, or to prepare maps and plats of property in connection therewith, shall give due notice in advance to the adjoining owners, whose addresses are known, of the date and hour when they should present themselves on the property for the purpose of making such objections to the boundaries of the properties to be surveyed as they consider necessary for the protection of their rights.
>
> Surveyors shall report all objections made by adjoining property owners, and occupants or claimants of any portion of the lands at the time of the survey and demarcation, giving a proper description of the boundaries claimed by such owners, occupants, or claimants.
>
> SEC. 1860. *Demarcation of boundaries*. — Surveyors shall define the boundaries of the lands, surveyed for registration purposes, by means of monuments placed thereon and shall indicate on the maps or plats the respective boundaries as designated, both by the applicant for the survey and adverse claimants of adjoining properties; but the work of survey and demarcation of the boundaries of the lands as occupied by the said applicant need not be suspended because of the presentation of any complaint or objection."

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[27]Francisco v. Court of Appeals, GR No. L-35787, April 11, 1980, 94 SCRA 22.

**(1) Submission of tracing cloth plan**

One of the distinguishing marks of the Torrens system is the absolute certainty of the identity of a registered land. Consequently, the primary purpose of the requirement that the land must be first surveyed is to fix the exact or definite identity of the land as shown in the plan and technical descriptions. In *Director of Lands* v. *Reyes*,[28] the Supreme Court declared that the submission of the tracing cloth plan is a statutory requirement of *mandatory* character.

> "To begin with, the original tracing cloth plan of the land applied for, which must be approved by the Director of Lands, was not submitted in evidence. The submission of such plan is a statutory requirement of mandatory character. Unless a plan and its technical description are duly approved by the Director of Lands, the same are not of much value.
>
> It is true that blueprints of two survey plans were presented before the trial court (both marked Exhibit 'D'). The first blueprint copy of a plan of land as surveyed for Maria Padilla (Exhibit 'D', p. 4, Exhibits of Applicant), was not formally offered in evidence. The second plan of the land, as surveyed for Parañaque Investment and Development Corporation (also marked as Exhibit 'D', p. 3, Exhibits of Applicant) was submitted by the said applicant, but it lacks the approval of the Director of Lands.
>
> Of course, the applicant attempts to justify the non-submission of the original tracing cloth plan by claiming that the same must be with the Land Registration Commission which checked or verified the survey plan and the technical descriptions thereof. It is not the function of the LRC to check the original survey plan as it has no authority to approve original survey plans. If, for any reason, the original tracing cloth plan was forwarded there, the applicant may easily retrieve the same therefrom and submit the same in evidence. This was not done."

But in *Republic* v. *Court of Appeals and Infante-Tayag*,[29] the application for registration was denied because the tracing cloth plan

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[28]GR No.L-27594, Nov. 28, 1975, 68 SCRA 177.
[29]GR No. L-61462, July 31, 1984, 131 SCRA 140.

was not submitted in evidence. It was detached from the application, then forwarded to, and kept by the Land Registration Commission, without having been retrieved for purposes of evidence.

The need of going to the Land Registration Authority to retrieve the tracing cloth plan for purposes of presenting the same as evidence in court may now be considered obviated by LRA Circular No. 05-2000, dated March 8, 2000, which requires that what need be forwarded to the Land Registration Authority is only a certified copy of the tracing cloth or Diazo polyester film as approved by the Regional Technical Director. The original of said plan which is to accompany the application for original registration shall be filed and retained by the court.

### (2) Probative value of blue print or white print copy of the plan

In *Republic* v. *Intermediate Appellate Court and Rodriguez*,[30] petitioner assailed the decision of the lower court confirming applicant's title to the subject lands on the basis of mere blue print copies of the survey plans thereof, and thus were not indubitably identified. The Supreme Court however observed that "it is not entirely correct for the petitioner to say that (applicant) merely presented the blue print copies of their tracing cloth plan because she in fact attached the original thereof in the application for registration as Annex 'A' and is deemed part thereof. Such assertion was confirmed by the Intermediate Appellate Court which ruled that although the blue print copies of the plan were the only ones offered in evidence, the original tracing cloth plan was available to the Court for comparison and consideration. Furthermore, the lands applied for are covered by public land surveys that bear the approval and certification of the Director of Lands aside from the amplification of applicant's documentary exhibits by the testimonies of two witnesses as to the areas, location and boundaries thereof." The Court said that there is no analogy of the facts in the present case with that of *Director of Lands* v. *Reyes*,[31] which required the submission of the tracing cloth plan. In the latter case, the subject of registration were vast tracts of uncultivated, mountainous and thickly forested lands admittedly within the military reservation of Fort Magsaysay. More-

[30]GR No. 70594, Oct. 10, 1986, 144 SCRA 705.
[31]*Supra*.

over, there was no conclusive evidence showing that the original tracing cloth plan was ever submitted by the applicants. On the contrary, of the two blue prints of two survey plans supposedly presented by the applicants, one was not formally offered in evidence while the other, although submitted, lacked the approval of the Director of Lands.

In *Director of Lands* v. *Court of Appeals and Iglesia ni Cristo*,[32] the Court considered the submission of a white print copy of the plan as sufficient to identify the land, thus:

> "We affirm. No reversible error was committed by the appellate court in ruling that Exhibit 'O', the true certified copy of the white paper plan, was sufficient for the purpose of identifying the land in question. Exhibit 'O' was found by the appellate court to reflect the land as surveyed by a geodetic engineer. It bore the approval of the Land Registration Commission, and was re-verified and approved by the Bureau of Lands on April 25, 1974 pursuant to the provisions of P.D. No. 239 withdrawing from the Land Registration Commission the authority to approve original survey plans. It contained the following material data: the barrio [poblacion], municipality [Amadeo] and province [Cavite] where the subject land is located, it area of 379 square meters, the land as plotted, its technical descriptions and its natural boundaries. Exhibit 'O' was further supported by the Technical Descriptions 4 signed by a geodetic surveyor and attested by the Land Registration Commission. In fine, Exhibit 'O' contained all the details and information necessary for a proper and definite identification of the land sought to be registered, thereby serving the purpose for which the original tracing cloth plan is required. *The fact therefore that the original survey plan was recorded on white paper instead of a tracing cloth should not detract from the probative value thereof.*" (Emphasis supplied)

The Court was more categorical in *Director of Lands* v. *Intermediate Appellate Court and Espartinez*[33] when it stated that "the presentation of the tracing cloth plan required x x x *may now be*

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[32]GR No. L-56613, March 14, 1988, 158 SCRA 586.
[33]GR No. 70825, March 11, 1991, 195 SCRA 98.

*dispensed with* where there is a survey plan the correctness of which had not been overcome by clear, strong and convincing evidence." However, the tracing cloth plan assumes great importance where there is a discrepancy between the area of the land described on the survey plan and the area claimed by the applicant.

In *Espartinez*, Justice Melencio-Herrera, in a separate opinion, expressed the view that the survey plan of the land and the technical description thereof, based on an old cadastral survey, satisfy the technical requirement of the tracing cloth plan, which is to identify with certainty the land applied for, and should therefore be admissible as correctly delineating the metes and bounds of the subject property. "After all, the Technical Description (Exh. 'N') was certified correct, on 7 January 1971, for the Director of Lands by Amando A. Salvador, Chief, Surveys Division, and by Diosdado C. Dizon, Officer-in-Charge, Technical Standard Section of the Bureau of Lands. The Survey Plan (Exh. 'M') in turn, was prepared on 27 October 1971, checked by Alberto H. Lingayo, Chief Surveyor of the Land Registration Commission, and certified to by Dionicio Noblejas, Geodetic Engineer of the same office, as correct and platted in accordance with the original field notes and computations of the Bureau of Lands, with the data of said field notes obtained from actual measurements."

In *Republic* v. *Court of Appeals and Chavez*,[34] the Court disagreed with the contention of the government that the subject land was not sufficiently identified since what was submitted by the applicant was not the original tracing cloth plan but only the blueprint copy thereof. It held that while the best evidence to identify a piece of land for registration purposes was the original tracing cloth plan from the Bureau of Lands, blueprint copies and other evidence could also provide sufficient identification. The Court quoted with approval the findings of the Court of Appeals that "In the present case, there was considerable compliance with the requirement of the law as the subject property was sufficiently identified with the presentation of blueprint copy of Plan AS-06000002 (San Pedro v. Director of Lands, CA-G.R. No. 65332-R, May 28, 1981). It should be noted in this connection that the Bureau of Lands has certified to the correctness of the blueprint copy of the plan including the technical description that go with it. Hence, we cannot ignore the fact, absent in the Reyes case, that applicant has provided ample evidence to establish the identity of the subject property."

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[34]GR No. L-62680, Nov. 9, 1988, 167 SCRA 150.

### (3) What defines a piece of land is not the area but the boundaries thereof

It is well-settled that what defines a piece of titled property is not the numerical data indicated as the area of the land, calculated with more or less certainty mentioned in the technical description, but the boundaries or "metes and bounds" of the property as enclosing it and showing its limits.[35]

> "This Court has held that in cases of conflict between areas and boundaries, it is the latter which should prevail. What really defines a piece of ground is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits (Erico v. Chigas, 98 SCRA 575, July 16, 1980). In a contract of sale of land in a mass, it is well established that the specific boundaries stated in the contract must control over any statement with respect to the area contained within its boundaries. It is not of vital consequence that a deed or contract of sale of land should disclose the area with mathematical accuracy. It is sufficient if its extent is objectively indicated with sufficient precision to enable one to identify it. An error as to the superficial area is immaterial. (Loyola v. Bartolome, 39 Phil. 544, January 24, 1919 reiterated in Erico v. Chigas, supra)."[36]

### (4) Natural boundaries must be certain

In order that natural boundaries of land may be accepted for the purpose of varying the extent of the land, whether subject of a deed of conveyance or application for registration, the evidence as to such natural boundaries must be clear and convincing. In identifying a particular piece of land, its boundaries and not the area are the main factors to be considered, but this only holds true when the boundaries given are sufficiently certain and the identity of the land proved by the boundaries clearly indicates that an erroneous state-

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[35]Republic v. Court of Appeals and Santos, GR No. 116111, Jan. 21, 1999, 301 SCRA 366; Balantakbo v. Court of Appeals, GR No. 108515, Oct. 16, 1995, 249 SCRA 323; Erico v. Chigas, GR No. L-28064, July 16, 1980, 98 SCRA 575.

[36]Dichoso v. Court of Appeals, GR No. 55613, Dec. 10, 1990, 192 SCRA 169.

ment concerning the area can be disregarded or ignored.[37] When the land sought to be registered is almost seven times as much as that described in the deed, the great difference as to area should be properly explained and the identity of the property should be proven in a satisfactory manner.[38]

While there are authorities that uphold the proposition that in identifying a particular piece of land its boundaries and not the area are the main factors to be considered, this only holds true when the boundaries given are sufficiently certain and the identity of the land proved by the boundaries clearly indicates that an erroneous statement concerning the area can be disregarded or ignored. Otherwise, the area stated in the document should be followed.[39]

Thus, in a case where a petitioner claimed in his application to be entitled to the registration of a parcel of land whose area after the survey turned out to be 626 hectares while the grant given to him only mentions 92 hectares, the court rejected the claim after laying down the following principle: "While the proposition of law laid down by the court below may be true to the effect that natural boundaries will prevail over area, yet when the land sought to be registered is almost seven times as much as that described in the deed, *the evidence as to natural boundaries must be very clear and convincing before that rule can be applied*." Plaintiffs' contention was, therefore, properly rejected by the Court of Appeals it appearing that it is only on the north and south sides of the property in question where the natural boundaries are identical because on the east and west there are no natural boundaries but only the names of adjoining owners who were not shown not to own other properties adjoining those of Esteban de Villa. The discrepancy in the measurement of the two pieces of land is so great that there could hardly be any room to suppose that a 30-hectare land area might have been wrongly or inaccurately estimated to be only 1,200 sq.m.[40]

### (5) Differences of boundaries in tax declarations

In *Director of Lands* v. *Funtilar*,[41] the petitioners cited differences in the description of the land boundaries, as well as in the

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[37]Paterno v. Salud, GR No. L-15620, Sept. 30, 1963, 9 SCRA 81.
[38]Carabot v. Court of Appeals, GR No. L-50622, Nov. 10, 1986, 145 SCRA 368.
[39]Paterno v. Salud, *supra*.
[40]*Ibid*.
[41]GR No. L-68533, May 23, 1986, 142 SCRA 57.

land area stated in the tax declarations submitted in evidence by applicants-respondents. They alleged that these do not refer to one and the same property. Justice Gutierrez rejected the claim, stating:

> "x x x Such differences are not uncommon as early tax declarations are, more often than not, based on approximation or estimation rather than on computation. More so, if the land as in this case was merely inherited from a predecessor and was still held in common. Differences in boundaries described in required municipal forms may also occur with changes in boundary owners, changes of names of certain places, a certain natural boundary being known by more than one name or by plain error. Neither was it uncommon then to designate the nearest, most visible natural landmarks such as mountains, creeks, rivers, etc. to describe the location or situation of the boundaries of properties in the absence of knowledge of technical methods of measuring or determining boundaries with accuracy, especially where as in this case, the same were made merely by humble farm people. Certain discrepancies, if logically explained later, do not make doubtful, the identification of the property as made, understood and accepted by the parties to the case."

**04. Possession and occupation.**

An applicant for confirmation of imperfect or incomplete title must show open, continuous, exclusive, and notorious possession and occupation of the property in question, under a *bona fide* claim of acquisition or ownership, since June 12, 1945.[42]

Possession, to constitute the foundation of a prescriptive right, must be possession under a claim of title or it must be adverse.[43] Acts of a possessory character performed by one who holds the property by mere tolerance of the owner are clearly not in the concept of an owner, and such possessory acts, no matter how long continued, do not start the period of prescription running.[44]

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[42]Sec. 48(b), CA No. 141; Sec. 14(1), PD No. 1529.

[43]Cuaycong v. Benedicto, GR No. 9989, March 13, 1918, 37 Phil. 781.

[44]Ordoñez v. Court of Appeals, GR No. 84046, July 30, 1990, 188 SCRA 109; Cuaycong v. Benedicto, *supra*.

Article 538 of the Civil Code provides:

> "ART. Possession as a fact cannot be recognized at the same time in two different personalities except in the cases of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessors, the one longer in possession; if the dates of the possession are the same, the one who presents a title; and if all these conditions are equal, the thing shall be placed in judicial deposit pending determination of its possession or ownership through proper proceedings."

In case of conflict or dispute regarding possession, the rule of preference is as follows:

1. The present possessor shall be preferred;

2. If there are two possessors, the one longer in possession;

3. If the dates of the possession are the same, the one who presents a title; and

4. If both possessors have titles, the court shall determine the rightful possessor and owner of the land.

In a case,[45] it was ruled that from the viewpoint of acquisitive prescription, petitioners have acquired title to the nine lots in question by virtue of possession in concept of an owner. This conclusion is bolstered by the issuance to them either of free patents or homestead patents and the corresponding original certificates of title in their names, and which public land patents must have been issued after the land authorities had found out, after proper investigation, that petitioners were in actual possession of the nine lots in question. The Court said that "If petitioners were in actual possession of the nine lots, then the heirs of Ladao and the Medalla spouses were never in actual possession of the said lots. If the Medalla spouses were not in actual possession of the nine lots, the alleged possessory information would not justify the registration of the said nine lots in the names of the Medallas. x x x A possessory information alone, without a showing of actual, public and adverse possession of the land under claim of ownership, for a sufficient period of time, in accordance with the law, is ineffective as a mode of acquiring title under

[45]Balbin v. Medalla, GR No. L-46410, Oct. 30, 1981, 108 SCRA 666.

Act No. 496. Although converted into a title of absolute owner-ship, an *informacion posesoria* may still be lost by prescription."

### (1) Requisites for filing of application

There are three requisites for the filing of an application for registration of title under Section 14(1) of the Property Registration Decree:

1. That the property in question is alienable and disposable land of the public domain;

2. That the applicants, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive and notorious possession and occupation, and;

3. That such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.[46]

No public land can be acquired by private persons without any grant, express or implied, from government. A grant is conclusively presumed by law when the claimant, by himself or through his predecessors-in-interest, has occupied the land openly, continuously, exclusively, and under a claim of title since June 12, 1945 or prior thereto. The possessor is deemed to have acquired, by operation of law, a right to a grant, without the necessity of a certificate of title being issued. The application for confirmation of title would then be a mere formality.[47] Put a little differently, open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property. The doctrine upon which this rule is based is that all lands that were not acquired from the government, either by purchase or by grant, belong to the public domain.[48]

Thus, where it was clearly proven that respondent corporation's predecessors-in-interest have been in continuous and uninterrupted possession of the properties for more than thirty years before they were acquired by said corporation, said properties were automatically segregated from the mass of public domain, hence, the constitutional

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[46]Republic v. Court of Appeals and Naguit, *supra*.
[47]Herico v. Dar, GR No. L-23265, Jan. 28, 1980, 95 SCRA 437.
[48]Republic v. Lee, GR No. 64818, May 13, 1991, 197 SCRA 1320.

provision prohibiting private corporations from acquiring public agricultural lands does not apply.[49]

### (2) Possession raises a question of fact

The issue of whether the applicant has presented sufficient proof of the required possession, under a *bona fide* claim of ownership, raises a question of fact. It invites an evaluation of the evidentiary record. Generally, the Supreme Court may not re-evaluate the evidence and substitute its judgment for that of the trial and appellate courts. The Supreme Court is not a trier of facts. Matters of proof and evidence are beyond its power under Rule 45 of the Rules of Court, except in the presence of some meritorious circumstances.[50]

The recognized exceptions to the rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts. (5) when the findings of facts are conflicting; (6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which if properly considered, would justify a different conclusion.[51]

### (3) Mere casual cultivation is not possession under claim of ownership

In *Republic* v. *Vera*,[52] the Supreme Court, through Justice De Castro, stated:

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[49]Director of Lands v. Bengzon, GR No. L-54045, July 28, 1987, 152 SCRA 369.

[50]Republic v. Manna Properties, Inc., *supra*.

[51]Tyson's Super Concrete, Inc. v. Court of Appeals, GR No. 140081, June 23, 2005.

[52]GR No. L-35778, Jan. 27, 1983, 205 Phil. 164.

> "A mere casual cultivation of portions of the land by the claimant does not constitute possession under claim of ownership. In that sense, possession is not exclusive and notorious so as to give rise to a presumptive grant from the State. The possession of public land however long the period thereof may have extended, never confers title thereto upon the possessor because the statute of limitations with regard to public land does not operate against the State, unless the occupant can prove possession and occupation of the same under claim of ownership for the required number of years to constitute a grant from the State."

In the same vein, mere casual cultivation of portions of the land and the raising thereon of cattle do not constitute possession under claim of ownership. While grazing livestock over land is of course to be considered with other acts of dominion to show possession, the mere occupancy of land by grazing livestock upon it, without substantial enclosures or other permanent improvements, is not sufficient to support a claim of title thru acquisitive prescription.[53]

Where the record discloses sufficient proof that the applicant and his predecessors-in-interest have been in possession of and materially occupied the land without interruption, cultivating certain parts thereof and using others for the pasture of animals, keeping them fenced in for the purpose of preserving the trees, shrubs, and bamboo growing thereon, the registration of the land is warranted. The law does not require that the entire land be cultivated, but that it be in open, continuous, exclusive, and notorious possession under a *bona fide* claim of ownership for the required period.[54]

### (4) Evidence on overt acts of possession

Overt acts of possession may consist in introducing valuable improvements on the property, like fruit-bearing trees, fencing the area, constructing a residential house thereon, and declaring the same for taxation purposes. Evidence to be admissible must, however, be credible, substantial and satisfactory. In *Republic* v. *Intermediate Appellate Court and Leyco*,[55] the Court held that applicants failed to

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[53]Director of Lands v. Reyes, GR No. L-27594, Nov. 28, 1975, 68 SCRA 177.
[54]Sandoval v. Insular Government, GR No. 4206, Feb. 1, 1909, 12 Phil. 648.
[55]GR No. L-67399, Nov. 19, 1985, 140 SCRA 98.

establish conclusively that they and their predecessor-in-interest were in continuous possession and occupancy of the lots in question under *bona fide* claim of ownership. Their alleged possession of Lots 1 and 2 of Psu-133612 (consisting of 138.5413 hectares) from 1962 up to the filing of their application for registration in 1976 — about 14 years only — does not constitute possession under claim of ownership so as to entitle them to a State grant under Section 48(b) of the Public Land Act. The tax declarations presented as evidence are not by themselves conclusive proof of their alleged possession under claim of ownership. The earliest tax declaration is dated 1927 while the others are recent tax declarations. The Court did not accord weight and significance to the testimonies of applicants' alleged overseers and hired tenants "because it is only natural for the overseers and hired tenants to testify as they did in respondent applicants' favor as they stand to benefit from a decision favorable to their supposed landlords and benefactors." The Court further observed:

> "But even granting that the witnesses presented by herein respondent applicants were indeed *bona fide* overseers and tenants or workers of the land in question, it appears rather strange why only about 3,000 coconut trees and some fruit trees were planted (2,000 coconut trees on Lot 1 which is 119 hectares, and 1,000 coconut trees on Lot 2 which is 19 hectares) on the vast tract of land subject of the instant petition. In a practical and scientific way of planting, a one-hectare land can be planted to about 144 coconut trees. In the instant case, if the hired tenants and workers of respondent applicants managed to plant only 3,000 coconut trees, it could only mean that about only 25 hectares out of the 138 hectares claimed by herein respondent applicants were cleared, cultivated and planted to coconut trees and fruit trees. Once planted, a coconut is left to grow and need not be tended or watched. This is not what the law considers as possession under claim of ownership. On the contrary, it merely showed casual or occasional cultivation of portions of the land in question. In short, possession is not exclusive nor notorious, much less continuous, so as to give rise to a presumptive grant from the government."

In dismissing the application for registration, the Court said: "This is a clear case of land-grabbing of over 100 hectares of land, which could be divided among the landless and the poor to defuse

the seething unrest among the under-privileged. At this point in time in our country's history, land-grabbing by the powerful, moneyed and influential absentee claimants should not be tolerated nor condoned if only to avoid fanning further the fires of discontent, dissidence or subversion which menacingly threaten the very survival of our nation."

### (5) Tenuous, unreliable and hearsay evidence of possession

In *Republic* v. *Court of Appeals and Miguel*,[56] the Court granted the government's motion for leave to file the petition for review under Rule 45 of the Rules of Court, although concededly late, "because of the considerable area and value of the property involved." The case arose from an application for registration under the Torrens system of the land in dispute, which is claimed by the government. The Court found the evidence of the applicant "tenuous," "unreliable" and "hearsay" and declared the land part of the public domain.

> "Even assuming the existence of the possessory information title and its subsequent loss, we find the proof of the second condition, *i.e.,* possession for twenty years, to be rather tenuous. Boni's testimony regarding the title having been found to be unreliable, his declarations concerning the possession of the land by the petitioner's predecessors-in-interest must also be received with suspicion. Cariño himself stated he came to know the land only in 1933 and so whatever he said of the possession thereof before that year must necessarily be hearsay. Miguel testified that he had an overseer over the whole tract of 250 hectares but Aurelio Bagapuro was not replaced when he died in 1967, which suggests that no one took over the care of the land after that year, assuming that one man alone could handle the task before. There is also evidence that the property was densely forested and sparsely cultivated, with the coconut trees barely 5 to 8 years old, negating the claim of possession dating back to the Spanish era. Miguel insisted he had tenants on the land but none of them came to support his testimony and some of them even filed oppositions to his application for

[56]GR No. L-60487, May 21, 1988, 161 SCRA 368.

registration. No less importantly, Cariño started paying taxes on the land only in 1954 and until 1957, when Miguel took over, but there is no evidence that taxes had been paid before 1954. Finally, the land was declared alienable and disposable only in 1955, which means it could not have been acquired by private title before that year unless ownership had earlier been perfected under the Spanish Mortgage Law and was subsequently recognized as a vested right in the Constitution of 1935."

In *Republic* v. *Court of Appeals and Chavez*,[57] the Court found applicant's evidence "insufficient." Thus:

"The Court feels that the evidence presented on this requirement is not sufficient.

The private respondent can trace his own possession of the land only to 1961, when he claims he (along with his brothers and sister) purchased the same from their father. Assuming the purchase to be true, he would have possessed the property only for 15 years at the time he applied for its registration in 1976. However, he would tack it to that of his predecessors' possession, but there is not enough evidence of this except his own unsupported declarations. The applicant must present specific acts of ownership to substantiate the claim and cannot just offer general statements which are mere conclusions of law than factual evidence of possession.

The private respondent showed that he had been paying taxes on the land only from 1972 and up to 1977. There was no showing of tax payments made on the same land before 1972 by his predecessors-in-interest although they are supposed to have been in possession thereof 'since time immemorial.'

Although he declared in 1977 that he had planted one thousand mango and five thousand coconut trees on the land, he added that they were not yet productive. It takes only ten years for mango trees and five years for coconut trees to begin bearing fruit, which can only mean that they had been planted in less than these numbers of

[57]GR No. L-62680, Nov. 9, 1988, 167 SCRA 150.

years, or not earlier than 1967. This weakens his claim of possession which under P.D. Nos. 1073 and 1529, amending Section 48(b) of the Public Land Act, must commence not later than June 12, 1945.

Furthermore, if it is true that his predecessors-in-interest were in possession 'since time immemorial,' to use the tired phrase again, why had they not themselves introduced any improvement on the land? And considering that the private respondent had himself declared that there were no tenants on the land, it is also difficult to conceive how he could by himself alone have possessed such a vast tract of land consisting of more than 181 hectares.

Finally, even assuming that he had really planted those trees, such an act will hardly suffice to prove possession as this would constitute what this Court has called 'a mere casual cultivation' in a parcel of land of this vast area."

### (6) Possession arising from a tax delinquency sale

In the *Director of Lands* v. *Funtilar*,[58] the Court upheld respondents' claim of possession, on the basis of a tax delinquency sale of the property, *viz*. —

"We are satisfied from the evidence that long before her death in 1936, Candida Fernandez already possessed the disputed property. This possession must be tacked to the possession of her heirs, through administrator Vitaliano Aguirre, and later to the possession of the private respondents themselves, who are Candida's grandchildren.

*The fact of possession is bolstered by the forfeiture in 1940 of the land in favor of the government. It would be rather absurd under the circumstances of this case to rule that the government would order the forfeiture of property for nonpayment of real estate taxes if the property is forest land.* It is also reasonable to rule that the heirs of Candida Fernandez redeemed the property because they wanted to keep the land of the deceased in the possession

[58]*Supra*.

of their family, thus continuing prior possession. From 1936 and earlier up to 1972 is more than the required period. As a matter of fact, the applicants' witnesses testified to their personal knowledge of more than 50 years possession." (Emphasis supplied)

### (7) Commencement of possession

It is essential that at the time of the commencement of the requisite period of continuous possession and occupation, the land must have been previously classified as agricultural; otherwise, it is not subject of registration under Section 48(b) of CA No. 141 or Section 14(1) of PD No. 1529. Unless and until land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply. Declassification of forest land is an express and positive act of government. It cannot be presumed, neither should it be ignored or deemed waived. Possession of the land prior to the reclassification of the land as disposable and alienable cannot be credited as part of the required possession for confirmation of imperfect title.[59]

The rule is different with respect to *public agricultural lands*. In the recent case of *Republic* v. *Court of Appeals and Naguit*,[60] the central question for resolution is whether it is necessary under Section 14(1) of the Property Registration Decree (which is similar to Section 48(b) of the Public Land Act on confirmation of imperfect or incomplete title) that the subject land be first classified as alienable and disposable before the applicant's possession under a *bona fide* claim of ownership could even start. The Court, through Justice Tinga, clarified that the law merely requires that the property sought to be registered is already classified as alienable and disposable *at the time the application for registration of title is filed*. "If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable,

[59]Republic v. Bacus, GR No. 73261, Aug. 11, 1989, 176 SCRA 376.
[60]*Supra*.

as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property."

The Court noted that absurdity would result if the rule would be that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable.

The Court further explained that the enactment of the Property Registration Decree and the amendatory PD No. 1073 does not preclude the application for registration of alienable lands of the public domain, possession over which commenced only *after* June 12, 1945, considering Section 14(2) of the Decree which authorizes the application of "those who have acquired ownership of private lands by prescription under the provisions of existing laws."

However, with respect to *forest lands, mineral lands or lands which form part of a reservation for park purposes*, the same cannot be owned by private persons and possession thereof, no matter how lengthy, cannot convert the same into private property, "unless such lands are reclassified and considered disposable and alienable." In other words, the required *bona fide* possession thereof starts to be counted only from the time such lands are (a) reclassified as fit for agricultural purposes and, thereafter, (b) released for disposition as A and D for the *entire period* required by law for confirmation of title, which means since June 12, 1945 or earlier.[61]

**05. Tax declarations; tax receipts.**

Although tax declarations and realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of the possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all

[61]*Ibid.*

other interested parties, but also the intention to contribute needed revenues to the government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.[62]

Tax receipts or declarations of ownership, made for the purpose of taxation, when not supported by other effective proof, are not evidence of the right of possession of realty; but when the party claiming title presents a deed executed and delivered to him by the former owner, the receipts and declarations constitute some proof showing the good faith on the part of the person occupying and restraining possession of the property.[63] Tax receipts may not prevail as proof of "adverse" possession against one who is in actual possession of property, but they constitute at least an *indicia* of possession.[64]

### (1) Failure to pay taxes does not alone constitute abandonment of property

The payment of taxes on property is not alone sufficient evidence of ownership or possession. "The payment of taxes on the land by plaintiff, cutting timber thereon, and keeping off trespassers, do not constitute possession, but (are) merely acts of ownership, tending to show that he claimed to own it." But the plaintiff would not lose his property either because he failed to pay his taxes or because the party from whom he bought it continued by mistake to pay them.[65] Mere failure of the owner to pay the taxes does not warrant a conclusion that there was abandonment of a right to the property. The payment of taxes on property does not alone constitute sufficient evidence of title.[66]

### (2) Irregular payment of taxes; discrepancy in area and boundary owners

In *Republic* v. *Court of Appeals and Infante-Tayag*,[67] the Court declared that the applicant failed to satisfy the requirements for judicial confirmation of her alleged title. The taxes for 31 years, 1946

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[62]Republic v. Court of Appeals and Naguit, *supra*; Lola v. Court of Appeals, GR No. L-46573, Nov. 13, 1986, 145 SCRA 439.

[63]Elumbaring v. Elumbaring, GR No. 4000, Jan. 5, 1909, 12 Phil. 384.

[64]Palomo v. Court of Appeals, GR No. 95608, Jan. 21, 1997, 334 Phil. 357; Ordoñez v. Court of Appeals, GR No. 84046, July 30, 1990, 188 SCRA 109; Evangelista v. Tabayuyong, GR No. L-3361, March 5, 1907, 7 Phil. 607.

[65]Casimiro v. Fernandez, GR No. L-4046, Jan. 13, 1908, 9 Phil. 562.

[66]Reyes v. Sierra, GR No. L-28658, Oct. 18, 1979, 93 SCRA 472; Elumbaring v. Elumbaring, GR No. 4000, Jan. 5, 1909, 12 Phil. 384.

[67]GR No. L-61462, July 31, 1984, 131 SCRA 140.

to 1976, were paid only in 1976, a few months prior to the filing of the application, which is rather irregular for a person claiming to be the legitimate owner of the property. Moreover, the witness who testified on the supposed possession of the applicant does not even know the boundary owners and the area of the land.

Tax declarations are not by themselves conclusive proof of possession under claim of ownership. This is especially true where they reveal a number of discrepancies in the boundaries, variance in the names of adjoining owners, disparity in the actual size of the land and irregular payment of the corresponding taxes which cast serious doubts on the applicants' *bona fide* claim of ownership. The Court in *Republic* v. *Intermediate Appellate Court and Leyco*[68] set aside the lower court's decision granting the application for registration on the basis of the following observations:

> "This anomaly in the listing of adjoining owners in the two aforestated tax declarations over the same parcel of land only reveals the flaw that apparently attended the acquisition of the lots in question by respondent applicants and their predecessor-in-interest.
>
> 2. Under Tax Declaration No. 5321 dated 1941 (Exh. 0-8), respondent applicant's predecessor-in-interest, Fausta de Jesus, declared a parcel of land in her name with an area of 88.0637 hectares.
>
> Later, in 1949, Fausta de Jesus filed Tax Declaration No. 476 (Exh. 0-7) which cancelled Tax Declaration No. 5321 over the same parcel of land. However, under Tax Declaration No. 476, the total area of the land declared was only 85.0637 hectares (84.0637 as erroneously stated in Tax Declaration No. 476).
>
> Again, the foregoing disparity in the size of the land as declared in the two tax declarations is a clear indication that respondent applicants herein and their predecessor-in-interest were uncertain and contradictory as to the exact or actual size of the land they purportedly possessed.
>
> Likewise, it is noteworthy to mention that six years after Fausta de Jesus filed Tax Declaration No. 476 in

[68] *Supra.*

1949, Tax Declaration No. 2779 was filed — cancelling Tax Declaration No. 476 — showing this time a whopping land area of 119.1231 hectares. As to how Fausta de Jesus managed to increase her landholdings in so short a span of time intrigues one no end, considering that from 1949 up to her death in 1962, she listed Manila as her place of residence.

3. Tax Declarations Nos. 3432 (1966), 665 (1966), and 4022 (1958) presented as Exhibits 0-2, 0-3, and 0-4, respectively, show that of the total declared area of 119.1231 hectares, only about 19.1231 hectares were planted to coconuts and the remaining 100.0000 hectares were cogonal or uncultivated lands.

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The record shows that even the taxes due on the litigated lots were not paid regularly. As per certification of the municipal treasurer of Buenavista, Marinduque, it was shown that the taxes due on the land registered in the name of Fausta de Jesus were paid only from 1949 until 1957 — an indication that respondent applicants and their predecessor-in-interest did not pay taxes to the government from 1928 to 1940, and from 1958 until July 6, 1978 when the respondent applicants closed their evidence — a total of 32 years. The respondents applicants presented their evidence on April 19, 1977, October 12, 1977, March 29, 1978 and July 6, 1978."

The Court then concluded: "The unjustifiable award of this vast tract of land — which are cogon lands and therefore pasture lands still forming part of the public domain and released by the Bureau of Lands for disposition — to the respondent, applicants herein, who are undeserving, is tantamount to putting a premium on absentee landlordism."

Section 48(b) of CA No. 141 and Section 14(1) of PD No. 1529 specifically require possession since June 12, 1945 or prior thereto. A tax declaration simply stating that it replaces a previous tax declaration issued in 1945 does not meet this standard. It is unascertainable whether the 1945 tax declaration was issued on, before or after June 12, 1945. Tax declarations are issued any time of the year. A tax declaration issued in 1945 may have been issued in December

1945. Unless the date and month of issuance in 1945 is stated, compliance with the reckoning date in CA No. 141 cannot be established.[69]

**SEC. 28. *Partial judgment.* — In a case where only a portion of the land ubject of registration is contested, the court may render partial judgment provided that a subdivision plan showing the contested and uncontested portions approved by the Director of Lands is previously submitted to said court.**

**SEC. 29. *Judgment confirming title.* — All conflicting claims of ownership and interest in the land subject of the application shall be determined by the court. If the court, after considering the evidence and the reports of the Land Registration Administrator and the Director of Lands, finds that the applicant or the oppositor has sufficient title proper for registration, judgment shall be rendered confirming the title of the applicant, or the oppositor, to the land or portions thereof.**

### 01. Court has broad jurisdiction over all issues.

Section 2 of PD No. 1529 has eliminated the distinction between the general and limited jurisdiction of the registration court. All conflicting claims of ownership and interest in the land, and related issues, submitted to the court with or without the unanimity of the parties, may now be heard and resolved by the court. The procedure is aimed at avoiding multiplicity of suits and the attendant additional expenses of litigation. As it is, a registration court is conferred not only jurisdiction to act on the application for original registration; it also has jurisdiction to act on all subsequent petitions on matters arising after original registration. The court is now authorized to hear and decide not only non-controversial cases but even contentious issues which used to be beyond its competence.[70]

If the court, upon consideration of the evidence, finds that the applicant or oppositor has sufficient proof of title or ownership proper for registration, it shall render judgment confirming the title of the applicant, or oppositor, to the land applied for. An order denying the application for registration does not automatically entitle the oppositor to have the property entered in the registry as belonging

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[69]Republic v. Manna Properties, Inc., *supra*.

[70]Ligon v. Court of Appeals, GR No. 107751, June 1, 1995, 244 SCRA 693; Averia v. Caguioa, GR No. L-65129, Dec. 29, 1986, 146 SCRA 406.

to him. The latter must prove that he himself is the owner of the property that is the subject matter of his opposition.[71]

**02. Reports of LRA Administrator and Director of Lands.**

The above section mandates the LRA Administrator and the Director of Lands to submit to the court all necessary and relevant evidence as well as reports to aid the court in the determination of the case. The reports may include information about the status of the land applied for, its present classification, and whether or not the same had been previously decreed as private property or patented under the provisions of the Public Land Act. The information would immensely help the court in its evaluation of the evidence and viability of the application for registration.

The duty of the aforesaid officials to render reports is not limited to the period before the court's decision becomes final, but may extend even after its finality but not beyond the lapse of one year from the entry of the decree. To dignify the suggestion that the reports should be submitted to the court before the decision becomes final is to be putting pressure upon said officials to beat the reglementary deadline for the finality of the court decision. There are matters which can only be performed by technical men, like verification of surveys which may sometimes call for amendments of the plans, and field verification on the ground which involve inspection by land investigators, a function which can hardly be done by the court.[72]

**03. *Res judicata*.**

The principle of *res judicata* applies to all cases and proceedings, including land registration and cadastral proceedings.[73] Where a judgment on the merits rendered in a former case is final and executory, and was rendered by a court of competent jurisdiction, and that case and the present case case involves the same parties, the same parcels of land and a similarity of causes of action, the present action is barred by a prior judgment. The fact that the grounds on

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[71]Roman Catholic Archbishop of Manila v. Director of Lands, GR No. 11033, Nov. 20, 1916, 35 Phil. 339.

[72]Gomez v. Court of Appeals, GR No. 77770, Dec. 15, 1988, 168 SCRA 503.

[73]Vencilao v. Vano, GR No. L-25660, Feb. 23, 1990, 182 SCRA 491.

which the two cases are predicated are technically at variance is immaterial if in substance they aim at the same objective: the recovery of the title and possession of the same properties.[74]

The requisites of *res judicata* are: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, (a) identity of parties (b) identity of subject matter and (c) identity of cause of action.[75]

A final judgment in an ordinary civil case determining the ownership of a piece of land is *res judicata* in a registration proceeding where the parties and the property are the same as in the former case.[76] The judgment in a case for recovery of property, adjudicating the ownership thereof to one of the parties, is *res judicata* against the defeated party and bars him from applying for the registration of the same land or from opposing the application of the former for the registration of the same land.[77]

But a judgment dismissing an application for registration of land does not constitute *res judicata*, and the unsuccessful applicant, or any person deriving title from him, may file another proceeding for the registration of the same land.[77a]

**SEC. 30. *When judgment becomes final; duty to cause issuance of decree.* — The judgment rendered in a land registration proceedings becomes final upon the expiration of thirty days (now fifteen days) to be counted from the date of receipt of notice of the judgment. An appeal may be taken from the judgment of the court as in ordinary civil cases.**

**After judgment has become final and executory, it shall devolve upon the court to forthwith issue an order in accordance with Section 39 of this Decree to the Administrator for the issuance of the decree of registration and the corresponding certificate of title in favor of the person adjudged entitled to registration.**

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[74]Aring (Bagoba) v. Original, GR No. L-18464, Dec. 29, 1962, 6 SCRA 1021.

[75]Navarro v. Director of Lands, GR No. L-18814, July 31, 1962, 5 SCRA 834.

[76]Menor v. Quintans, GR No. 34474, March 23, 1932, 56 Phil. 657.

[77]Santiago v. Santos, GR No. 31568, March 19, 1930, 54 Phil. 619; Verzosa v. Nicolas, GR No. 9227, Feb. 10, 1915, 29 Phil. 425.

[77a]Henson v. Director of Lands, GR No. L-10812, March 26, 1918, 37 Phil. 912.

**01. Finality of judgment.**

The judgment rendered in a land registration case becomes final upon the expiration of fifteen (15) days, no longer thirty (30) days as provided above, to be counted from the date the party concerned receives notice thereof. Section 39 of BP Blg. 129[78] reads:

> "SEC. 39. *Appeals*. — The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: Provided however, That in habeas corpus cases, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from."

Upon the finality of the judgment, it devolves upon the land registration court to issue an order for the issuance of a decree, and the Land Registration Authority, pursuant to said order, to issue the corresponding decree of registration to the person entitled thereto or his successor-in-interest.[79]

**02. Court retains jurisdiction until after final entry of decree.**

While the judgment of the court becomes final fifteen (15) days from receipt of notice of the judgment, the court nevertheless retains jurisdiction over the case until after the expiration of one (1) year from the issuance of the final decree of registration by the Land Registration Authority, as ruled in *Gomez* v. *Court of Appeals*,[80] thus:

> "It is not disputed that the decision dated 5 August 1981 had become final and executory. Petitioners vigorously maintain that said decision having become final, it may no longer be reopened, reviewed, much less set aside. They anchor this claim on Section 30 of P.D. No. 1529 (Property Registration Decree) which provides that, after judgment has become final and executory, the court shall forthwith issue an order to the Commissioner of Land Registration for the issuance of the decree of registration and certificate of title. Petitioners contend that Section 30

[78]The Judiciary Reorganization Act of 1980.
[79]Marcos v. Banuvar, GR No. L-22110, Sept. 28, 1968, 25 SCRA 316.
[80]GR No. 77770, Dec. 15, 1988, 168 SCRA 503.

should be read in relation to Section 32 of P.D. No. 1529 in that, once the judgment becomes final and executory under Section 30, the decree of registration must issue as a matter of course. This being the law, petitioners assert, when respondent Judge set aside in his decision, dated 25 March 1985, the decision of 5 August 1981 and the order of 6 October 1981 he clearly acted without jurisdiction.

Petitioners' contention is not correct. Unlike ordinary civil actions, the adjudication of land in a cadastral or land registration proceeding does not become final, in the sense of incontrovertibility until after the expiration of one (1) year after the entry of the final decree of registration. This Court, in several decisions, has held that as long as a final decree has not been entered by the Land Registration Com-mission (now LRA) and the period of one (1) year has not elapsed from date of entry of such decree, the title is not finally adjudicated and the decision in the registration proceeding continues to be under the control and sound discretion of the court rendering it."

It is only after the decree of registration, which is actually the copy of the original certificate of title to be thereafter issued by the Register of Deeds, is issued by the LRA that the decision of the court is deemed "final." As long as the final decree is not issued, and the period of one year has not yet elapsed, the decision remains under the control and sound discretion of the court rendering it. The decision may, upon notice and hearing, be still set aside and the land adjudicated to another with better right.[81]

**03. Judgment once final cannot be amended to modify decree.**

The original and fundamental purpose of the Torrens system of registration is to settle finally and for all time the title to land registered. A decree of registration cannot be permanent if the limits of the land therein registered may be changed or the amount of land so registered altered by a subsequent adjudication of said court based upon new evidence tending to show that the evidence introduced on the former hearing was incorrect. A decree entered upon facts which are not true is not itself erroneous. It is a perfectly correct decree

[81]Cayanan v. De los Santos, GR No. L-21150, Dec. 26, 1967, 21 SCRA 1348.

according to the evidence in the case. No other decree could have been entered. A decree which is at variance with the evidence presented to support that decree is an erroneous decree and, within certain limitations, may be corrected to conform to the evidence. The only authority remaining in the registration court after its decree becomes final is that given to it by Section 108 of PD No. 1529.[82]

After the land has been registered, the registration court ceases to have jurisdiction over it for any purpose and it returns to the jurisdiction of the ordinary courts of law for all subsequent purposes.[83] Contests arising over the location of division lines are actions *in personam* and must be tried in the ordinary courts of law and not in the registration court.

**04. Only judgments and processes received by the Solicitor General bind the government.**

The Office of the Solicitor General (OSG), an independent and autonomous office attached to the Department of Justice, is the principal law office of government. It represents the government, its agencies and instrumentalities, officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. It represents the government in all land registration and related proceedings, and institutes actions for reversion to the government of lands of the public domain as well as lands held in violation of the Constitution.[84] In a registration cases, the Notice of Appearance of the Office of the Solicitor is generally couched in the following form:

"NOTICE OF APPEARANCE

The Clerk of Court
Regional Trial Court, Branch I
Laoag City

Greetings:

Please enter the appearance of the Solicitor General as counsel for the Government in the above-entitled case, and cause all notices of hearings, orders, resolutions, de-

[82]Cuyugan v. Sy Quia, GR No. 7857, March 27, 1913, 24 Phil 567.
[83]*Ibid.*
[84]Chapter 12, Title III, EO No. 292 (Administrative Code of 1987).

cisions and other processes to be served upon him at the Office of the Solicitor General, Makati City.

The Provincial Prosecutor (or City Prosecutor) has been authorized to appear in this case and therefore should also be furnished notices of hearings, orders, resolutions, decisions and processes. However, as the Solicitor General retains supervision and control of the representation in this case and has to approve withdrawal of the case, non-appeal, or other actions which appear to compromise the interest of the Government, only notices of orders, resolutions, and decisions served on him will bind the party represented.

Adverse parties are likewise requested to furnish both the Solicitor General and the Provincial or City Prosecutor with copies of their pleadings and motions."

The notice of appearance makes clear that "only notices of orders, resolutions, and decisions served on (the Solicitor General) will bind the party represented (government or office concerned)." Accordingly, court orders and decisions sent to the provincial or city prosecutor or special attorney, acting as agent of the Solicitor General in land registration cases, are not binding until they are actually received by the Solicitor General."[85]

In a land registration case,[86] it appears that although the Solicitor General requested the city fiscal to represent him at the trial court, he nevertheless made his own separate appearance as counsel for the State and indicated in his notice of appearance that "only notices of orders, resolutions and decisions served on him will bind" the government. It was held that the period to perfect appeal shall be counted from the date when the Solicitor General received a copy of the decision because the service of the decision upon the city fiscal did not operate as a service upon the Solicitor General. It is obvious that, strictly speaking, the city fiscal did not directly represent the Government. He was merely a surrogate of the Solicitor General whose office, "as the law office of the Government of the Republic of the Philippines," is the entity that is empowered to "represent the Government in all registration and related proceedings."[87]

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[85]Republic v. Sayo, GR No. 60413, Oct. 31, 1990, 191 SCRA 71; Republic v. Abaya, GR No. L-55854, Feb. 23, 1990, 182 SCRA 524.

[86]Republic v. Polo, GR No. L-49247, March 13, 1979, 89 SCRA 33.

[87]Sec. 1(e), PD No. 478.

**05. Writ of possession.**

A writ of possession is employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment.[88]

In the case of *Serra* v. *Court of Appeals*,[89] the Court enumerated the cases where a writ of possession may be issued: (1) in a land registration proceeding, which is a proceeding *in rem*; (2) in an extra-judicial foreclosure of a realty mortgage; (3) in a judicial foreclosure of mortgage, a *quasi in rem* proceeding, provided that the mortgagor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (4) in execution sales.

**06. Writ of possession in land registration cases.**

After the registration of a land is decreed in favor of the applicant, the latter, as well as any subsequent purchaser of the property has the right to the title and possession thereof, and to that end he may ask the proper court for the issuance of a writ of possession, provided the same has not been issued before.[90] The judgment confirming the title of the applicant and ordering its registration in his name necessarily carried with it the delivery of possession which is an inherent element of the right of ownership. The issuance of the writ of possession is, therefore, sanctioned by existing laws in this jurisdiction and by the generally accepted principle upon which the administration of justice rests. A writ of possession may be issued not only against the person who has been defeated in a registration case but also against anyone unlawfully and adversely occupying the land or any portion thereof during the land registration proceedings up to the issuance of the final decree.[91]

In *Lucero* v. *Loot*,[92] the Court declared: "We have heretofore held that a writ of possession may be issued not only against the person who has been defeated in a registration case but also against anyone

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[88]Black's Law Dictionary, 6th Ed., 1611.

[89]GR No. 34080, March 22, 1991, 195 SCRA 482; see also Mabale v. Apalisok, GR No. L-46942, Feb. 6, 1979, 88 SCRA 247.

[90]Manlapas v. Llorente, GR No. 23804, Nov. 24, 1926, 48 Phil. 298.

[91]Vencilao v. Vano, GR No. L-25660, Feb. 23, 1990, 182 SCRA 491.

[92]GR No. L-16995, Oct. 28, 1968, 25 SCRA 687.

adversely occupying the land or any portion thereof during the land registration proceedings . . . The issuance of the decree of registration is part of the registration proceedings. In fact, it is supposed to end the said proceedings. Consequently, any person unlawfully and adversely occupying said lot at any time up to the issuance of the final decree, may be subject to judicial ejectment by means of a writ of possession and it is the duty of the registration court to issue said writ when asked for by the successful claimant." The Court further held that "the fact that the petitioners have instituted, more than one year after the decree or registration had been issued, an ordinary action with the Court of First Instance attacking the validity of the decree on the ground of fraud, is not a bar to the issuance of the writ of possession applied for by the registered owners."

If the writ of possession issued in a land registration proceeding implies the delivery of possession of the land to the successful litigant therein, a writ of demolition must, likewise, issue, especially considering that the latter writ is but a complement of the former which, without said writ of demolition, would be ineffective.[93]

**07. Writ will not issue against persons taking possession after issuance of final decree.**

It is settled that when parties against whom a writ of possession is sought entered into possession apparently after the issuance of the final decree, and none of them had been a party in the registration proceedings, the writ of possession will not issue. A person who took possession of the land after final adjudication of the same in registration proceedings cannot be summarily ousted through a writ of possession secured by a mere motion and that regardless of any title or lack of title of persons to hold possession of the land in question, they cannot be ousted without giving them their day in court in proper independent proceedings. Thus, the Court, in *Bernas* v. *Nuevo*[94] held that when other persons have subsequently entered the property, claiming the right of possession, the owner of the registered property or his successors in interest cannot dispossess such persons by merely asking for a writ of possession. The remedy is to resort to the courts of justice and institute a separate action for unlawful entry or detainer or for reinvidicatory action, as the case may

[93]*Supra.*
[94]GR No. L-58438, Jan. 31, 1984, 127 SCRA 399.

be. Only after judgment has been rendered can the prevailing party secure a writ of possession to enforce his right over the disputed lot.

Relatedly, it was held in *Manuel* v. *Rosauro*[95] that when the parties against whom a writ of possession is sought have been in possession of the land for at least ten years, and they entered into possession apparently after the issuance of the final decree, and none of them had been a party in the registration proceedings, the writ of possession will not issue. To the same effect is the holding in *Maglasang* v. *Maceren*[96] that persons who took possession of the land after final adjudication of the same in registration proceedings cannot be summarily ousted through a writ of possession secured by a mere motion, and that regardless of any title or lack of title of said persons to hold possession of the land in question, they cannot be ousted without giving them their day in court in proper independent proceedings.

The cases of *Manuel* and *Maglasang* are widely disparate from the case of *Marcos* v. *Banuvar*.[97] In *Marcos*, petitioners alleged that their possession and occupation of portions of Lot 1 arose prior to or during the registration proceedings. For this reason, it was held that the order granting a writ of possession in favor of Banuvar against the petitioners is proper and justified. The petitioners admittedly took possession and occupation of portions of Lot 1 prior to July 1, 1963 when the decree in question was issued. The fundamental rule is that a writ of possession can be issued not only against the original oppositors in a land registration case and their representatives and successors-in-interest, but also against any person unlawfully and adversely occupying said lot at any time before and up to the issuance of the final decree. This rule is also enunciated in *Demorar* v. *Ibañez*,[98] thus:

> "A writ of possession may be issued not only against the person who has been defeated in a registration case but also against anyone adversely occupying the land or any portion thereof during the land registration proceedings (Pasay Estate Co. vs. Del Rosario, 11 Phil., 391; Manlapas vs. Llorente, 48 Phil., 298). The issuance of the decree of registration is part of the registration proceed-

[95]GR No. 36505, Dec. 19, 1931, 56 Phil. 365.
[96]GR No. L-1917, May 20, 1949, 83 Phil. 637.
[97]GR No. L-22110, Sept. 28, 1968, 25 SCRA 316.
[98]GR No. L-7595, May 21, 1955, 97 Phil. 72.

> ings. In fact, it is supposed to end the said proceedings. Consequently, any person unlawfully and adversely occupying said lot at any time up to the issuance of the final decree, may be subject to judicial ejectment by means of a writ of possession and it is the duty of the registration court to issue said writ when asked for by the successful claimant."

To sum up, the writ of possession will not issue:

(a) When it has already been issued at the instance of the applicant or his successors, who hold transfer certificates of title; and

(b) When the persons against whom it is sought to be used have occupied the premises after the final decree was issued, and have not taken direct part as opponents in the registration proceedings where said final decree was issued.[99]

Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process, for the recovery of the property (Article 433, New Civil Code), not summarily through a motion for the issuance of a writ of possession.[100]

A petition for a writ of mandamus lies to compel the trial court to issue the writ of possession to the party entitled thereto.[101]

**08. Writ does not issue in reconstitution cases.**

While a writ of possession may be issued "not only against the person who has been defeated in a registration case but also against anyone adversely occupying the land or any portion thereof during the proceedings up to the issuance of the decree," it cannot, however, be issued in a petition for reconstitution of an allegedly lost or destroyed certificate of title. Reconstitution does not confirm or adjudicate ownership over the property covered by the reconstituted title as in original land registration proceedings where, in the latter, a writ of possession may be issued to place the applicant-owner in possession.[102]

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[99]Manuel v. Rosauro, *supra*.
[100]Serra v. Court of Appeals, *supra*.
[101]Demorar v. Ibañez, *supra*.
[102]Serra v. Court of Appeals, *supra*.

**09. Consequence of refusal to vacate; contempt.**

In *Vencilao* v. *Vano*,[103] a writ of possession and alias writ of possession were issued by the trial court against the petitioners but they refused to vacate the premises. The trial court declared them in contempt of court. The Supreme Court reversed, holding:

> "The petitioners' contention that they have been in possession of the said land for more than thirty (30) years which began long before the filing of the application for registration and continued in possession after the hearing of the registration case, worked against them. It was a virtual admission of their lack of defense. Thus, the writs of possession were properly issued against them.
>
> However, We do not subscribe to the ruling of the court *a quo* that petitioners are guilty of contempt. Under Section 3(d) of Rule 19, Rules of Court, if the judgment be for the delivery of the possession of real property, the writ of execution must require the sheriff or other officer to whom it must be directed to deliver the possession of the property, describing it, to the party entitled thereto. This means that the sheriff must dispossess or eject the losing party from the premises and deliver the possession thereof to the winning party. If subsequent to such dispossession or ejectment the losing party enters or attempts to enter into or upon the real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession of the person adjudged to be entitled thereto, then and only then may the loser be charged with and punished for contempt (Quizon vs. Philippine National Bank, et al., 85 Phil. 459). According to this section, it is exclusively incumbent upon the sheriff to execute, to carry out the mandates of the judgment in question, and in fact, it was he himself, and he alone, who was ordered by the trial judge who rendered that judgment, to place the respondents in possession of the land. The petitioners in this case had nothing to do with that delivery of possession, and consequently, their refusal to effectuate the writ of possession, is entirely officious and impertinent and therefore could not hinder, and much less prevent, the delivery being made, had the sheriff known how to comply with

[103] *Supra*.

his duty. It was solely due to the latter's fault, and not to the disobedience of the petitioners, that the judg-ment was not duly executed. For that purpose, the sheriff could even have availed himself of the public force, had it been necessary to resort thereto (see United States v. Ramayrat, 22 Phil. 183)."

**SEC. 31. *Decree of registration.* — Every decree of registration issued by the Administrator shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: *Provided, however,* That if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.**

**The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "To all whom it may concern."**

### 01. Duty of the LRA to issue decree ministerial.

Entry in the property registry and the issuance of title presuppose that the applicant is the owner and proprietor of the realty he seeks to register.[104]

The decree of registration is issued in the name of the court by the Administrator, Land Registration Authority, in his capacity as an officer of the court and not as an administrative official merely. It is in this sense that his duty is ministerial as he is acting under the

[104]Roman Catholic Archbishop of Manila v. Director of Lands, *supra*.

orders of the court. The decree must be in conformity with the decision of the court and with the data found in the record, and the Administrator has no discretion on the matter. If he is in doubt upon any point in relation to the preparation and issuance of the decree, it is his duty to refer the matter to the court. He acts as an official of the court and not as an administrative official, and his act is the act of the court.[105] The LRA Administrator is specifically called upon to "extend assistance to courts in ordinary and cadastral land registration proceedings."[106]

As soon as the decree of title has been registered in the office of the Register of Deeds, the property included in said decree shall become registered land, and the certificate shall take effect upon the date of the transcription of the decree. The certificate of title is a true copy of the decree of registration. It is important that the original certificate of title contains the full transcription of the decree of registration. Any defect in the manner of transcribing the technical description should be considered as a formal, and not a substantial, defect.[107]

A land registration proceeding being *in rem*, the decree of registration issued pursuant to the decision binds the land covered by the decree and quiets title thereto, and is conclusive upon and against all persons, including the government and all the branches thereof, whether mentioned by name in the application, notice or citation, or included in the general inscription "To all whom it may concern."[108]

### 02. Decree cannot be issued until after judgment becomes final.

Execution pending appeal is not applicable in land registration proceedings. It is fraught with dangerous consequences. Innocent purchasers may be misled into purchasing real properties upon reliance on a judgment which may be reversed on appeal.

Consequently, a Torrens title issued on the basis of a judgment that is not final, the judgment being on appeal, is a nullity, as it is violative of the explicit provisions of the Property Registration Decree which requires that a decree shall be issued only after the

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[105]De los Reyes v. De Villa, GR No. 23514, Nov. 12, 1925, 48 Phil. 227.
[106]Sec. 6, par. 2(b), PD No. 1529.
[107]Benin v. Tuason, GR No. L-26127, June 28, 1974, 57 SCRA 531.
[108]Sec. 31, PD No. 1529.

decision adjudicating the title becomes final and executory, and it is on the basis of said decree that the Register of Deeds concerned issues the corresponding certificate of title.[109]

**03. Certificate of title becomes indefeasible after one year from the issuance of the decree.**

Under the Torrens System of registration, the Torrens title becomes indefeasible and incontrovertible one year from its final decree. A Torrens title is generally conclusive evidence of the ownership of the land referred to therein. A strong presumption exists that the title was regularly issued and that it is valid. It is incontrovertible as against any *"information possessoria"* or title existing prior to the issuance thereof not annotated on the title.[110]

The real purpose of the Torrens system is to quiet title to land and to stop forever any question as to its legality. Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the *"mirador su casa,"* to avoid the possibility of losing his land. Indeed, an indirect or collateral attack on a Torrens title is not allowed. One exception to this rule is where a person obtains a certificate of title to a land belonging to another and he has full knowledge of the rights of the true owner. He is then considered as guilty of fraud and he may be compelled to transfer the land to the defrauded owner so long as the property has not passed to the hands of an innocent purchaser for value.[111]

The Land Registration Act (now Property Registration Decree) protects only the holders of a title in good faith and does not permit its provisions to be used as a shield for the commission of fraud, or that one should enrich himself at the expense of another. For no amount of legal technicality may serve as a solid foundation for the enjoyment of the fruits of fraud.[111a] Indeed, titles over lands under the Torrens system should be given stability for on it greatly depends the stability of the country's economy. *Interest reipublicae ut sit finis litium*.[111b]

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[109]Director of Lands v. Reyes, GR No. L-27594, Nov. 28, 1975, 68 SCRA 177.

[110]Calalang v. Register of Deeds of Quezon City, GR No. 76265, April 22, 1992, 208 SCRA 215; Ching v. Court of Appeals, GR No. 59731, Jan. 11, 1990, 181 SCRA 9.

[111]National Grains Authority v. Intermediate Appellate Court, GR No. L-68741, Jan. 28, 1988, 157 SCRA 388.

[111a]Republic v. Agunoy, GR No. 155394, Feb. 17, 2005, 451 SCRA 735; Recinto v. Inciong, GR No. L-26083, May 31, 1977, 77 SCRA 196.

[111b]Republic v. Agunoy, GR No. 155394, Feb. 17, 2005, 451 SCRA 735.

## REMEDIES

**SEC. 32. *Review of decree of registration; Innocent purchaser for value*. — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.**

**Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.**

The aggrieved party has a number of remedies to question the validity of the judgment in a registration case. He may avail himself of the remedy of new trial or reconsideration under Rule 37 of the Rules of Court, relief from judgment under Rule 38, or appeal to the Court of Appeals or Supreme Court in the same manner as in ordinary actions pursuant to Section 33 of PD No. 1529.

He also has such other remedies as review of decree under Section 32 of PD No. 1529, reconveyance under Sections 53 and 96, damages under Section 32, claim against the Assurance Fund under Section 95, reversion under Section 101 of CA No. 141, cancellation of title, annulment of judgment under Rule 47, and criminal prosecution under the Revised Penal Code.

**01. New trial or reconsideration.**

Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the causes materially affecting the substantial rights of said party. If the motion for new trial is granted, the judgment is set aside; if the motion for reconsideration is granted, the judgment is merely amended.[1] The period for filing either motion is within the period for taking, not perfecting, an appeal. An appeal may be taken within fifteen (15) days after notice to the appellant of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days after notice of the judgment or final order.[2]

**(1) Grounds**

The grounds are:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order or that decision or final order is contrary to law.[3]

**(2) Contents**

The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of Section 1, Rule 37, shall be supported by affidavits of merits

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[1]Herrera, Remedial Law, Vol. VII, 1997 Ed., 300.
[2]Sec. 2, Rule 40, Rules of Court.
[3]Sec. 1, Rule 37, *ibid*.

which may be rebutted by counter-affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.[4]

No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.[5]

### (3) Affidavits of merit

A motion for new trial grounded on fraud, accident, mistake or excusable negligence should ordinarily be accompanied by two affidavits: one, setting forth the facts and circumstances alleged to constitute such fraud, accident, mistake, or execusable negligence; and the other, an affidavit setting forth the particular facts claimed to constitute the movant's meritorious cause of action or defense. The reason for the first is obvious: it is to enable the court to determine if the movant's claim of fraud, etc. is not mere conclusion but is indeed borne our by the relevant facts. The reason for the second is equally evident as it would be useless, a waste of time, to set aside the judgment and reopen the case to allow the movant to adduce evidence when he has no valid cause of action or meritorious defense.[6]

Affidavits of merit are not necessary if the granting of the motion for new trial is not discretionary with the court's but is demandable as of right, as where the movant has been deprived of his day in court through no fault or negligence on his part because no notice of hearing was furnished him in advance so as to enable him to prepare for trial, or where the attack is on the jurisdiction of the court.

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[4]Sec. 2, *ibid*.
[5]Sec. 2, Rule 40; Sec. 3, Rule 41.
[6]Yap v. Tañada, GR No. L-32917, July 19, 1988, 163 SCRA 464.

### (4) Meaning of fraud, accident, mistake and excusable negligence

*Fraud* to be ground for nullity of a judgment must be *extrinsic* to the litigation.[7] *Extrinsic fraud* refers to any fraudulent act of the successful party in a litigation which is committed outside the trial of a case against the defeated party, or his agents, attorneys or witnesses, whereby said defeated party is prevented from presenting fully and fairly his side of the case. On the other hand, *intrinsic fraud* refers to acts of a party in a litigation during the trial, such as the use of forged instruments or perjured testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case.[8]

In order to set aside a judgment, it must be shown that there was fraud in the procurement thereof, and not merely fraud in the original cause of action, which means that a trick or devise was employed to prevent the adversary from presenting his defense, or to conceal from him the pendency of the action. The fraud must be perpetrated upon the court in rendering the judgment and it must also appear that there is a valid defense to the judgment, otherwise the motion to set aside the judgment will fail.[9] Where the fraud was in the nature of documents allegedly manufactured to make it appear that a party was the rightful heir of the disputed property, the fraud is intrinsic.[10]

Where an alleged aggrieved party prays for the setting aside of a final judgment lawfully entered against him, on the ground of *accident* or surprise, it must appear that there was accident or surprise which ordinary prudence could not have guarded against, and by reason of which the party applying has probably been impaired in his rights.[11] Illness constitutes accident over which a party has no control.[12] Failure to attend trial for lack of advance notice justifies new trial.[13]

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[7]Sterling Investment Corporation v. Ruiz, GR No. L-30694, Oct. 31, 1969, 30 SCRA 318.

[8]Palanca v. American Food Manufacturing Co., GR No. L-22822, Aug. 30, 1968, 24 SCRA 819.

[9]Samonte v. Samonte, GR No. L-40683, June 27, 1975, 64 SCRA 524.

[10]Conde v. Intermediate Appellate Court, GR No. 70443, Sept. 15, 1986, 144 SCRA 144.

[11]Sunico v. Villapando, GR No. 5083, Oct. 25, 1909, 14 Phil. 352.

[12]Castañeda v. Pestaño, GR No. L-7623, April 29, 1955, 96 Phil. 890.

[13]Soloria v. De la Cruz, GR No. L-20783, Jan. 31, 1966, 16 SCRA 114.

*Mistake* is some unintentional act, omission, or error arising from ignorance, surprise, imposition or misplaced confidence. It may arise either from unconsciousness, ignorance, forgetfulness, imposition, or misplaced confidence.[14] Belief that there is no need to appear during the trial because there was already a compromise agreement is a ground for new trial.[15]

Generally, a judgment rendered on a compromise agreement is not subject to appeal, and also immediately executory, the reason being that when the parties agree to settle their differences in order to end a pending litigation, and request the court to render judgment accordingly, there is an implied waiver of their right to appeal from the decision. The exception to the rule is provided where a party to the compromise agreement moves to set it aside on the ground of fraud, mistake or duress, in which event an appeal would exist from the order denying the motion. A mistake, specifically, shall invalidate consent only if it refers to the substance of the thing which is the object of the contract, or to the condition which has principally moved one or both parties to enter into the contract In short, the error must be the causal, not merely incidental, factor that induced the complaining party to enter into the agreement.[16]

*Excusable neglect* means a failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party.[17] The failure of defendant's attorney to file his answer on time may be excused where such failure was due to the fact that the employee who was commissioned to file the answer which he had prepared on time was suddenly taken ill and said attorney was not informed of the failure to file the answer until it was too late.[18] But counsel's alleged failure to note the notice of hearing in his calendar is flimsy, and does not constitute the accident, mistake or excusable negligence contemplated by the Rules of Court.[19]

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[14]Black's Law Dictionary, 6th Ed., 1001.
[15]Salazar v. Salazar, GR No. L-2995, March 27, 1907, 8 Phil. 183.
[16]Periquet v. Reyes, GR No. L-23886, Dec. 29, 1967, 21 SCRA 1503.
[17]Black's Law Dictionary, 6th Ed., 566.
[18]Bustamante v. Alfonso, GR No. L-7778, Dec. 24, 1955, 98 Phil. 158.
[19]Antonio v. Ramos, GR No. L-15124, June 30, 1961, 2 SCRA 731.

**02. Relief from judgment; relief from denial of appeal.**

When a judgment or final order is entered, or any proceedings is thereafter taken against a party in any court through, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.[20]

When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.[21]

A "final" judgment or order (as distinguished from one which has "become final" or "executory" as of right [final and executory]), is one that finally disposes of a case, leaving nothing more to be done by the court in respect thereto. Conversely, an order that does not finally dispose of the case, and does not end the court's task of adjudicating the parties' contention and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the court, is "interlocutory."[22]

**(1) Time for filing petition**

A petition for relief from judgment or from denial of appeal under Sections 1 and 2, Rule 38, must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.[23]

The date of finality of the judgment or final order shall be deemed to be the date of its entry.[24] But relief under Rule 38 may

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[20]Sec. 1, Rule 38.

[21]Sec. 2, *ibid*.

[22]Denso (Phils.), Inc. v. Intermediate Appellate Court, GR No. 75000, Feb. 27, 1987, 148 SCRA 280, citing Investments, Inc. v. Court of Appeals, GR No. 60036, Jan. 27, 1987, 147 SCRA 334.

[23]Sec. 3, Rule 38.

[24]Sec. 2, Rule 36.

not be availed of except when the decision has become final and executory, and only when a new trial is not available.[25]

**(2) Petition for relief and motion for new trial/reconsideration are exclusive of each other**

A party who has filed a timely motion for new trial cannot file a petition for relief after his motion has been denied. These two remedies are exclusive of each other. He should appeal from the judgment and question such denial.[26] Relief will not be granted to a party who seeks to be relieved from the effects of a judgment when the loss of the remedy at law was due to his own negligence, or a mistaken mode of procedure.[27]

**03. Appeal.**

An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by the Rules of Court to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

(b) An order denying a petition for relief or any similar motion seeking relief from judgment;

(c) An interlocutory order;

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice.

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[25]Bernabe v. Court of Appeals, GR No. L-18278, March 30, 1967, 19 SCRA 679.
[26]Feria and Noche, Civil Procedure, Vol. I, 644.
[27]*Ibid.*

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.[28]

**(1) Modes of appeal**

(a) Ordinary appeal. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or the Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) Petition for review. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) Appeal by certiorari. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.[29]

**(2) Period of ordinary appeal**

The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.[30]

Under the latest pronouncement of the Supreme Court *en banc* in *Neypes* v. *Court of Appeals*,[31] in case a motion for new trial or

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[28]Sec. 1, Rule 41.
[29]Sec. 2, Rule 41.
[30]Sec. 3, *ibid*.
[31]GR No. 141524, Sept. 14, 2005.

motion for reconsideration of the decision is filed and the same is denied, the party litigant is given a fresh period of fifteen (15) days from receipt of the final order denying his motion within which to file the notice of appeal. The Court, through Justice Corona, explicated:

> "To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.
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> Henceforth, this 'fresh period rule' shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.
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> To recapitulate, a party litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the 'final order') denying his motion for new trial or motion for reconsideration. Obviously, the new 15-day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3."

### (3) Perfection of appeal

A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time. A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties. In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.[32]

## 04. Review of decree of registration.

Under the Torrens system of registration, the Torrens title becomes indefeasible and incontrovertible one year from the issuance of the final decree and is generally conclusive evidence of the ownership of the land referred to therein.[33] But courts may reopen proceedings already closed by final decision or decree when application for review is filed by the party aggrieved within one year from the issuance of the decree of registration.[34] The one-year period stated in Section 32 of PD No. 1529 within which a petition to reopen and review the decree of registration refers to the decree of registration which is prepared and issued by the Land Registration Authority pursuant to Section 31 of the Decree.[35]

### (1) Date of issuance of patent is equivalent to the decree of registration

The rule on the incontrovertibility and indefeasibility of a Torrens title after one year from entry of the decree of registration is equally applicable to titles acquired through homestead or free patents.[36]

There is no specific provision in the Public Land Act (CA No. 141, as amended) or the Land Registration Act (Act No. 496), now Property Registration Decree (PD No. 1529), fixing the one (1) year period within which the public land patent is open to review on the ground of actual fraud as in Section 38 of the Land Registration Act, now Section 32 of the Property Registration Decree, and clothing a

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[32]Sec. 9, *ibid*.

[33]Calalang v. Register of Deeds, GR No. 76265, March 11, 1994, 231 SCRA 88.

[34]Lopez v. Padilla, GR No. L-27559, May 18, 1972, 45 SCRA 44.

[35]Ramos v. Rodriguez, *supra*.

[36]Iglesia ni Cristo v. CFI of Nueva Ecija, GR No. L-35273, July 25, 1983, 208 Phil. 441.

public land patent certificate of title with indefeasibility. Nevertheless, Section 38 of the Land Registration Act, now Section 32 of the Property Registration Decree was applied by implication by the Court to the patent issued by the Director of Lands duly approved by the Secretary of Natural Resources, under the signature of the President of the Philippines in accordance with law. *The date of issuance of the patent, therefore, corresponds to the date of the issuance of the decree in ordinary registration cases* because the decree finally awards the land applied for registration to the party entitled to it, and the patent issued by the Director of Lands equally and finally grants, awards, and conveys the land applied for to the applicant. This is in consonance with the intent and spirit of the homestead laws, *i.e*., conservation of a family home, and to encourage the settlement, residence and cultivation and improvement of the lands of the public domain. If the title to the land grant in favor of the homesteader would be subjected to inquiry, contest and decision after it has been given by the government thru the process of proceedings in accordance with the Public Land Act, there would arise uncertainty, confusion and suspicion on the government's system of distributing public agricultural lands pursuant to the "Land for the Landless" policy of the State.[37]

Thus, it has been held that the public land certificate of title issued to private respondent attained the status of indefeasibility one (1) year after the issuance of patent on April 15, 1963, hence, no longer open to review on the ground of actual fraud. Consequently, the filing of the protest before the Bureau of Lands against the homestead application of private respondent 12 years thereafter can no longer reopen or revise the public land certificate of title on the ground of actual fraud, especially so where no reasonable and plausible excuse has been shown for such an unusual delay. The law serves those who are vigilant and diligent and not those who sleep when the law requires them to act.[38]

### (2) Requisites

The right of a person deprived of land or of any estate or interest therein by adjudication or confirmation of title obtained by actual fraud is recognized by law as a valid and legal basis for reopen-

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[37]Ybañez v. Intermediate Appellate Court, GR No. 68291, March 6, 1991, 194 SCRA 743.

[38]Ybañez v. Intermediate Appellate Court, *supra*.

ing and revising a decree of registration.[39] One of the remedies available to him is a petition for review. To avail of a petition for review, the following requisites must be satisfied:

(a) The petitioner must have an estate or interest in the land;

(b) He must show actual fraud in the procurement of the decree of registration;

(c) The petition must be filed within one year from the issuance of the decree by the Land Registration Authority; and

(d) The property has not yet passed to an innocent purchaser for value.[40]

A mere claim of ownership is not sufficient to avoid a certificate or title obtained under the Torrens system. An important feature of a certificate of title is its finality. The proceedings whereby such a title is obtained are directed against all persons, known or unknown, whether actually served with notice or not, and includes all who have an interest in the land. If they do not appear and oppose the registration of their own estate or interest in the property in the name of another, judgment is rendered against them by default, and, in the absence of fraud, such judgment is conclusive. If an interest in the land will not by itself operate to vacate a decree of registration, *a fortiori*, fraud is not alone sufficient to do so.[41]

### (3) Grounds for review; fraud must be actual or extrinsic

Only extrinsic or collateral, as distinguished from intrinsic, fraud is a ground for annulling a judgment. Extrinsic fraud refers to any fraudulent act of the successful party in a litigation which is committed outside the trial of a case against the defeated party, or his agents, attorneys or witnesses, whereby said defeated party is prevented from presenting fully and fairly his side of the case. On the other hand, intrinsic fraud refers to acts of a party in a litigation during the trial, such as the use of forged instruments or perjured

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[39]Serna v. Court of Appeals, GR No. 124605, June 18, 1999, 308 SCRA 527.

[40]Walstrom v. Mapa, GR No. 38387, Jan. 29, 1990, 181 SCRA 431; Cruz v. Navarro, GR No. L-27644, Nov. 29, 1973, 54 SCRA 109; Libudan v. Palma Gil, GR No. L-21164, May 17, 1972, 45 SCRA 17.

[41]Broce v. Apurado, GR No. 8416, Jan. 27, 1914, 26 Phil. 581.

testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case.[42]

> "Where the unsuccessful party had been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side — these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing.
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> On the other hand, the doctrine is equally well settled that the court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed."[43]

The fraud that would justify review of a decree of registration must be actual, that is to say, there must have been an intentional concealment or omission of a fact required by law to be stated in the application or a willful statement of a claim against the truth, either of which is calculated to deceive or deprive another of his legal rights.[44] The fraud must likewise be extrinsic. And it is extrinsic when it is employed to deprive a party of his day in court, thereby preventing him from asserting his right to the property registered in the name of the applicant.[45]

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[42]Sterling Investment Corporation v. Ruiz, GR No. L-30694, Oct. 31, 1969; Palanca v. American Food Manufacturing Co., GR No. L-22822, Aug. 30, 1968, 24 SCRA 819.

[43]Palanca v. American Food Manufacturing Co., *supra*.

[44]Nicolas v. Director of Lands, GR No. L-19147, Dec. 28, 1963, 9 SCRA 935; Estiva v. Alvero, GR No. 11887, Jan. 28, 1918, 37 Phil. 498; Grey Alba v. De la Cruz, GR No. 5246, Sept. 16, 1910, 17 Phil. 49.

[45]Frias v. Esquivel, L-17366, July 31, 1962, 5 SCRA 774 (1966); Sterling Investment Corp. v. Ruiz, GR No. L-30694, Oct. 31, 1969, 30 SCRA 318.

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.[46]

### *1. Specific instances of actual or extrinsic fraud*

Fraud may assume different shapes and be committed in as many different ways, for man in his ingenuity and fertile imagination will always contrive new schemes to fool the unwary.[46a]

Relief is granted to a party deprived of his interest in land where the fraud consists in the following acts:

(a) Deliberate misrepresentation that the lots are not contested when in fact they are;

(b) Applying for and obtaining adjudication and registration in the name of a co-owner of land which he knows had not been alloted to him in the partition;

(c) Intentionally concealing facts, and conniving with the land inspector to include in the survey plan the bed of a navigable stream;

(d) Willfully misrepresenting that there are no other claims;

(e) Deliberately failing to notify the party entitled to notice;

(f) Inducing a claimant not to oppose the application for registration;

(g) Misrepresentation by the applicant about the identity of the lot to the true owner causing the latter to withdraw his opposition.[47]

(h) Failure of the applicant to disclose in her application for registration the vital facts that her husband's previous application for a revocable permit and to purchase the lands in question from the Bureau of Lands had been rejected, because the lands were already reserved as a site for school purposes;

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[46]Tongco v. Vianzon, GR No. 27498, Oct. 10, 1927, 50 Phil. 1009.

[46a]Cosmic Lumber Corporation v. Court of Appeals, GR No. 114311, Nov. 1, 29, 1986, 265 SCRA 168; Pael v. Court of Appeals, GR No. 122259, Feb. 10, 2000.

[47]Libudan v. Palma Gil, *supra*.

(i) Deliberate falsehood that the lands were allegedly inherited by the applicant from her parents, which misled the Bureau of Lands into not filling the opposition and thus effectively depriving the Republic of its day in court.[48]

In all these examples, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court.

### *2. Illustrative cases*

In *Cruz* v. *Navarro*,[49] it was held that the intentional omission by the respondent to properly inform the court *a quo* that there were persons (the petitioners) in actual possession and cultivation of the parcels in question, with the result that the court as well as the Land Registration Authority were denied of their authority to require the sending of specific individual notices of the pendency of the application in accordance with Sections 23 and 24 of the Property Registration Decree, constitutes actual fraud. Thus, where the "Notice of Initial Hearing" did not contain a specific mention of the names of the petitioners, but only those of public officials and private individuals who evidently are not interested in the outcome of the application, it behooves the court *a quo* to accord the petitioners a full-blown hearing — to which they are entitled as part of the due process guarantee — at which they could present all available evidence to prove their allegations.[50]

In *Republic* v. *Lozada*,[51] it was held that appellant (and her husband Felix Cristobal) were clearly guilty of fraud: (1) in not disclosing in her application for registration the vital facts that her husband's previous application for a revocable permit and to purchase the lands in question from the Bureau of Lands had been rejected, because the lands were already reserved as a site for school purposes; (2) in thus concealing the fact that the lands were part of the public domain and so known to them; (3) in stating the deliberate falsehood that the lands were allegedly inherited by her from her parents; and (4) in filing the application for registration in her (appellant's) and not in that of her husband or the two of them jointly, thus suppress-

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[48]Republic v. Lozada, GR No. L-43852, May 31, 1979, 90 SCRA 502.
[49]*Supra.*
[50]Cruz v. Navarro, *supra.*
[51]*Supra.*

ing the fact that her husband already had a record in the Bureau of Lands of having filed a rejected application for the same lands, all of which misled the Bureau of Lands into not filing an opposition to her application, and as aptly observed by the lower court "effectively deprived (the Republic) of its day in court."

The Court, through Justice Teehankee, said that the fraud perpetrated by appellant in *Lozada* may well be deemed as "extrinsic or collateral fraud." But even assuming that such fraud could be technically considered as "intrinsic fraud [which] takes the form of 'acts of a party in a litigation during the trial, such as the use of forged instruments or perjured testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case,' it would not alter the result because the mistake and error into which the officials of the Bureau of Lands were misled by such a deliberately false application cannot operate to bar the Republic's timely petition to review since the State cannot be estopped by the mistake or error of its officials and agents."

Niblack, in his Analysis of the Torrens System, speaking of fraud in original registration, said:

> "A mere misdescription of the property or a mistake as to facts, contained in an application to bring land under a foreign act is not sufficient to invalidate a certificate of title issued on the application by the registrar, but if it is evident from all the circumstances that the applicant had knowledge of the facts in the case and willfully misstated them, the certificate may be set aside for fraud. If a certificate was obtained by fraud and false representation, it may be set aside . . . ."

That doctrine, however, presuppposes that the application to have the registration set aside was made within a year or before the land has fallen into the hands of an innocent purchaser.[52]

### (4) Petition must be filed within one year from entry of decree of registration

As long as a final decree not been entered by the Land Registration Authority and the period of one year has not elapsed from the date of entry of such decree, the title is not finally adjudicated and the decision in the registration case continues to be under the

[52]Cui v. Henson, GR No. 28417, Feb. 25, 1928, 51 Phil. 606.

control and sound discretion of the registration court.[53] After the lapse of said period, the decree becomes incontrovertible and no longer subject to reopening or review.

Section 32 provides that a petition for review of the decree of registration may be filed "not later than one year from and after the date of entry of such decree of registration." Giving this provision a literal interpretation, it may at first blush seem that the petition for review cannot be presented until the final decree has been entered. However, it has been ruled that the petition may be filed at any time after the rendition of the court's decision and before the expiration of one year from the entry of the final decree of registration for, as noted in *Rivera* v. *Moran*,[54] there can be no possible reason for requiring the complaining party to wait until the final decree is entered before urging his claim of fraud.

The one-year period stated in Section 32 within which a petition to re-open and review the decree of registration refers to the decree of registration described in Section 31, which decree is prepared and issued by the Land Registration Administrator.[55]

The provision of Section 31 that every decree of registration shall bind the land, quiet title thereto, and be conclusive upon and against all persons, including the national government, and Section 32 that the decree shall not be reopened or revised by reason of absence, minority or other disability or by any proceeding in any court, save only in cases of actual fraud and then only for one year from the entry of the decree, must be understood as referring to final and unappealable decrees of registration. A decision or, as it is sometimes called after entry, a decree of a registration court, does not become final and unappealable until fifteen days after the interested parties have been notified of its entry, and during that period may be set aside by the trial judge on motion for new trial, upon any of the grounds stated in the Rules of Court.[56] An appeal from the decision of the trial court prevents the judgment from becoming final until that decree is affirmed by the judgment of the appellate court.[57]

A petition for a review under Section 32 is a remedy separate and distinct from a motion for a new trial and the right to the rem-

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[53]Gomez v. Court of Appeals, *supra*.

[54]GR No. 24568, March 2, 1926, 48 Phil. 836.

[55]Ramos v. Rodriguez, GR No. 94033, May 29, 1995, 244 SCRA 418.

[56]Roman Catholic Archbishop of Manila v. Sunico, GR No. 11527, Feb. 16, 1917, 36 Phil. 279.

[57]Broce v. Apurado, *supra*.

edy is not affected by the denial of such a motion irrespective of the grounds upon which it may have been presented. Thus, where petitioners acquired their interest in the land before any final decree had been entered, the litigation was therefore in effect still pending and, in these circumstances, they can hardly be considered innocent purchasers in good faith.[58]

Where a petition for review of a decree of registration is filed within the one-year period from entry of the decree, it is error for the court to deny the petition without hearing the evidence in support of the allegation of actual and extrinsic fraud upon which the petition is predicated. The petitioner should be afforded an opportunity to prove such allegation.[59]

### (5) Rule with respect to lands covered by patents

Under Section 103 of PD No. 1529, whenever public land is by the government alienated, granted, or conveyed to any person, the same shall be brought forthwith under the operation of the said decree and shall become registered lands and that the instrument of conveyance in the form of a patent, before its delivery to the grantee, shall be filed with the Register of Deeds for registration, and that once registered therein a certificate of title shall be issued as in other cases of registered land. Once the patent is granted and the corresponding certificate of title is issued, the land ceases to be part of the public domain and becomes private property over which the Director of Lands has neither control nor jurisdiction.[60]

In ordinary registration proceedings involving private lands, courts may reopen proceedings already closed by final decision or decree, only when application for review is filed by the party aggrieved within one year from the issuance of the decree of registration. Assuming that in bringing public land grants under the Property Registration Decree, there is a period of one year for review in cases of fraud, how shall that period of one year be computed? It was held in *Sumail* v. *Judge of the CFI of Cotabato*[61] that for all practical purposes, the date of the issuance of the patent corresponds to the date of the issuance of the decree in ordinary registration cases,

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[58]Rivera v. Moran, GR No. 24568, March 2, 1926, 48 Phil. 863.

[59]Republic v. Sioson, GR No. L-13687, Nov. 29, 1963, 9 SCRA 533.

[60]Sumail v. Judge of the CFI of Cotabato, GR No. L-8278, April 30, 1955, 96 Phil. 496.

[61]*Supra*.

because the decree finally awards the land applied for registration to the party entitled to it, and the patent issued by the Director of Lands equally and finally grants, awards, and conveys the land applied for to the applicant. The purpose and effect of both decree and patent is the same. Thus, where the free patent in question was issued in the name of the applicant on September 26, 1949, while the complaint for the cancellation of the patent and title was filed in court only on July 21, 1952, or almost three years after the issuance of the free patent, it is clear that the trial court no longer had jurisdiction to entertain the complaint.

### (6) When relief may not be granted

Relief on the ground of fraud will not be granted in the following instances:

(a) Where the alleged fraud goes into the merits of the case, is intrinsic and not collateral, and has been controverted and decided;

(b) Where it appears that the fraud consisted in the presentation at the trial of a supposed forged document, or a false and perjured testimony; or in basing the judgment on a fraudulent compromise agreement; or in the alleged fraudulent acts or omissions of the counsel which prevented the petitioner from properly presenting the case.

### (7) Innocent purchaser for value and in good faith

A purchaser in good faith and for value is one who buys property of another, *without* notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same, at the time of such purchase, or *before he has notice* of the claim or interest of some other person in the property. Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another.[62] Good faith is the opposite of fraud and of bad faith, and its non-existence must be established by competent proof.[63] While good faith is presumed, conversely, bad faith must be established by competent proof by the party alleging the same. Sans such proof, the purchasers of property are deemed to

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[62]San Lorenzo Development Corporation v. Court of Appeals, GR No. 124242, Jan. 21, 2005; Fule v. De Legare, GR No. L-17951, Feb. 28, 1963, 7 SCRA 351.

[63]Cui v. Henson, GR No. 28417, Feb. 25, 1928, 51 Phil. 606.

be purchasers in good faith, and their interest in the subject property must not be disturbed. The Property Registration Decree guarantees to every purchaser of registered land in good faith that they can take and hold the same free from any and all prior claims, liens and encumbrances except those set forth on the certificate of title and those expressly mentioned in the decree as having been preserved against it. Otherwise, the efficacy of the conclusiveness of the certificate of title which the Torrens system seeks to insure would be futile and nugatory.[64]

Good faith consists in the possessor's belief that the person from whom he received the thing was the owner of the same and could convey his title. Good faith, while it is always to be presumed in the absence of proof to the contrary, requires a well-founded belief that the person from whom title was received was himself the owner of the land, with the right to convey it. There is good faith where there is an honest intention to abstain from taking any unconscientious advantage from another.[65] The honesty of intention that constitutes good faith implies freedom from knowledge of circumstances that ought to put a prudent person on inquiry. Good faith consists in the belief of the possessors that the persons from whom they received the thing are its rightful owners who could convey their title. Good faith, while always presumed in the absence of proof to the contrary, requires this *well-founded* belief.[66]

One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect

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[64]Sajonas v. Court of Appeals, GR No. 102377, July 5, 1996, 258 SCRA 79.

[65]Duran v. Intermediate Appellate Court, GR No. L-64159, Sept. 10, 1985, 138 SCRA 489.

[66]Domingo v. Reed, GR No. 157701, Dec. 9, 2005.

as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation. Good faith, or the lack of it, is in its last analysis a question of intention; but in ascertaining the intention by which one is actuated on a given occasion, the same is necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined. So it is that "the honesty of intention," "the honest lawful intent," which constitutes good faith implies a "freedom from knowledge and circumstances which ought to put a person on inquiry," and so it is that proof of such knowledge overcomes the presumption of good faith in which the courts always indulge in the absence of proof to the contrary. "Good faith, or the want of it, is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judged of by actual or fancied tokens or signs."[67]

Thus, the presence of anything that excites or arouses suspicion should prompt the vendee to look beyond the vendor's certificate and investigate the title appearing on the face of that certificate. A vendee who does not do so cannot be denominated either as an innocent purchaser for value or as a purchaser in good faith and, hence, does not merit the protection of the law.[68] A purchaser of a property cannot be in good faith where the title thereof shows that it was reconstituted.[68a]

As between two persons both of whom are in good faith and both innocent of any negligence, the law must protect and prefer the lawful holder of registered title over the transferee of a vendor bereft of any transmissible rights.[69] Further if a person happened to obtain property by mistake or to the prejudice of another with or without bad faith, the certificate of title which may have been issued to him under the circumstances may and should be cancelled or corrected.[70]

In *Domingo* v. *Reed*,[71] the deed of sale executed between the Domingo spouses and Lolita Reed clearly stated that what was being sold was her share in the conjugal property. Despite their knowledge of this fact, the couple did not inquire about her authority to

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[67]Leung Yee v. Strong Machinery Co., GR No. L-11658, Feb. 15, 1918, 37 Phil. 644.

[68]Domingo v. Reed, *supra*.

[68a]Premiere Development Bank v. Court of Appeals, GR No. 128122, March 18, 2005.

[69]Baltazar v. Court of Appeals, GR No. 78728, Dec. 8, 1988, 168 SCRA 354.

[70]Solid State Multi-Products Corporation v. Court of Appeals, GR No. 83383, May 6, 1991, 196 SCRA 630.

[71]*Supra*.

sell any portion of the property. According to Alberta Domingo, Lolita told her that the latter had been authorized by her husband Guillermo to sell the property. When they executed the deed of sale, however, Lolita allegedly showed no special power of attorney. Alberta merely relied on the former's verbal claim of having been authorized to sell the property, and that the sale would bind the conjugal partnership. Neither was there any mention in the deed of sale that Lolita had the authority to sell the property. In short, there was no mention of the SPA that she allegedly possessed. Ruling that petitioners were not buyers in good faith, the Court stated:

> "When dealing with registered land, prospective buyers are normally not required by law to inquire further than what appears on the fact of the Torrens certificate of title on file with the Register of Deeds. Equally settled is the principle, however, that purchasers cannot close their eyes to known facts that should put a reasonable person on guard; they cannot subsequently claim to have acted in good faith, in the belief that there was no defect in the vendor's certificate of title. Their mere refusal to face up to that possibility will not make them innocent purchasers for value, if it later becomes apparent that the title was indeed defective, and that they would have discovered the fact, had they acted with the measure of precaution required of a prudent person in a like situation."

### *1. Purchaser charged only with notice of liens noted on the title*

Well settled is the rule that all persons dealing with property covered by a Torrens certificate of title are not required to go beyond what appears on the face of the title. When there is nothing on the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens title upon its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto.[72] A person dealing with registered land is only charged with notice of the burdens on the property which are noted on the face of the register or the certificate of title. To require him to do more is to defeat one of the primary objects of the Torrens system. A *bona fide* purchaser for value of prop-

[72]Centeno v. Court of Appeals, GR No. L-40105, Nov. 11, 1985, 139 SCRA 545.

erty at an auction sale acquires good title as against a prior transferee of the same property if such transfer was unrecorded at the time of the auction sale.[73]

In order that a purchaser may be considered in good faith, it is enough that he examines the latest certificate of title. In line with this principle, he need not go behind this title and scrutinize each and every title that preceded it.[74] In *Tajonera* v. *Court of Appeals*,[75] property registered in the name of Fermin Paz was sold by the city treasurer for delinquent taxes in favor of Aurelio Reyes to whom a new title was issued. Subsequently, Reyes sold the property to Juanita David who in turn sold it to Mariano Tajonera who obtained a new title therefor. Five years after they learned of the tax sale, the heirs of Fermin Paz filed an action to annul the public auction sale for alleged lack of notice to Fermin Paz or his heirs. In upholding the sale, the Court ruled that Tajonera derived his title *clear of any encumbrances and recorded rights of third parties*. Further —

> "The fact that the power to sell at public auction real estate delinquent in the payment of taxes devolved upon the City Assessor and not upon the Treasurer of the City of Manila x x x may no longer be invoked to recover the property from petitioners. To grant the relief prayed for — that is the annulment of the sale and reconveyance of the property to respondents — would be to impair public confidence in the certificate of title, for everyone dealing with property would have to inquire in every instance as to whether the title has been regularly or irregularly issued by the court and this is contrary to the evident purpose of the law. x x x It is worth noting that the private respondents came to know of the sale at public auction of the properties in question in the year 1943; yet, they were first heard to complain about it only on December 21, 1948 (five years after they had admittedly learned of the tax sale and seven years after the actual sale) when the property had already reached the hands of innocent purchasers like Juanita David (Tajonera's predecessor-in-interest) and her vendee, Tajonera.

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[73]Fule v. De Legare, *supra*; Anderson v. Garcia, GR No. 42897, July 27, 1937, 64 Phil. 506.

[74]Tajonera v. Court of Appeals, GR No. L-26677, March 27, 1981, 103 SCRA 467.

[75]*Ibid.*

> It is on this score that the cited case of *Velayo* v. *Ordoveza, et al*., cited by the Court of Appeals, differs from, and loses its applicability to, the case at bar insofar as it would cancel petitioners' title. In said case, the annulment of the auction sale conducted by the City Treasurer of Manila and the confirmation of the rights of the original registered owner therein came at a time when the property sold at public auction for tax delinquency had not yet passed to the hands of an innocent purchaser for value, unlike in the case at bar."

The principle that a purchaser is charged only with notice of burdens on the property which are noted on the face of the certificate of title is also illustrated in the case of *Granados* v. *Monton*.[76] In this case, Angela Trias is the registered owner of the lot in question under TCT No. 1462. Angela Trias sold said lot, first to Mariano Granados (petitioner), and then to Esteban Santiago who, as a purchaser for value and in good faith, registered the sale and obtained TCT No. A-1959 in his name, free from all lines and encumbrances. Thereafter, Santiago sold the same lot to Celedonio Monton (private respondent) who, upon presentation of the deed of sale in his favor, was issued TCT No. 2164 in his name. It appears, however, that Monton, at the time he filed the deed of sale with the Register of Deeds, was informed by Valentin Cabrera, tenant of Mariano Grandados, that the property was under litigation between Granados, on the one hand, and Angela Trias, on the other. The questions raised are, *first*, whether Monton is a buyer in good faith despite his knowledge of the pending litigation, and, *second*, whether he acquired a valid title to the property free from liens and encumbrances. The Court held that Monton acquired a valid title to the property as a purchaser in good faith, thus:

> "Article 433 (now Article 526) of the Civil Code says that 'one who is unaware of any flaw in his title, or mode of acquisition, by which it is invalidated, shall be deemed a possessor in good faith.' But 'one who is aware of such flaw is deemed a possessor in bad faith.' Esteban Santiago, former owner of the land in question, testifying in this case, said that he bought lot No. 1956 in good faith for value, relying upon the transfer certificate of title (Exhibit 1) issued in favor of Angela Trias, which did not have any an-

[76]GR No. L-1698, April 8, 1950, 86 Phil. 42.

notation thereon relative to the previous sale made by her to Mariano Granados, and without knowledge of such transaction. Assuming, therefore, that said lot was sold to different vendees, pursuant to the provisions of the above-quoted article 1473 (now Article 1544), the same became the property of Esteban Santiago. Under section 39 of Act No. 496 (now Section 44 of PD No. 1529), as amended by Act No. 2011, 'every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of time for value in good faith shall hold the same free of all encumbrances except those noted on said certificate, and any of the following encumbrances which may be subsisting, ***.' Inasmuch as there was no 'flaw' in the title of Esteban Santiago, it necessarily follows that Celedonio Monton rightly believed that he could, and did, acquire a, likewise, flawless title from Santiago.

Indeed, as a result of the deed of conveyance (Exhibit 1-A) executed by the latter (Santiago), Monton stepped into the shoes of Santiago, and became entitled to all the defenses available to him, including those arising from the acquisition of the property in good faith and for value. Viewed from the strictly legal angle, Monton can not be held, therefore, to have acted in bad faith, even if he had known of the previous sale made by Angela Trias to Mariano Granados."

### *2. Burden of proof*

As a rule, he who asserts the status of a purchaser in good faith and for value, has the burden of proving such assertion. This *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith, *i.e.*, that everyone is presumed to act in good faith. Where the complaint for recovery of ownership and possession of a parcel of land alleges that some of the defendants bought said land from their co-defendants who had a defective title thereto but does not allege that the purchasers were purchasers in bad faith or with notice of the defect in the title of their vendors, there is a failure to state a cause of action, and the purchaser is presumed to be an innocent purchaser for value and in good faith.[77]

[77]Castillo v. Madrigal, GR No. 62650, June 27, 1991, 198 SCRA 556.

The rule that the purchaser is not required to explore further than what the record in the registry indicates on its face in quest of any hidden defect or inchoate right which may subsequently defeat his right thereto refers only to properties registered under the Torrens system, not to those under Act No. 3344.[78]

### *3. Rule of "caveat emptor"*

One who purchases real property which is in actual possession of others should, at least, make some inquiry concerning the rights of those in possession. The actual possession by people other than the vendor should, at least, put the purchaser upon inquiry. He can scarcely, in the absence of such inquiry, be regarded as a *bona fide* purchaser as against such possession. The rule of *caveat emptor* requires the purchaser to be aware of the supposed title of the vendor and one who buys without checking the vendor's title takes all the risks and losses consequent to such failure.[79]

Thus, where the purchaser did not fight for the possession of the property if it were true that he had a better right to it; that there were circumstances at the time of the sale, and even at the time of registration, which would reasonably require the purchaser to investigate to determine whether defects existed in his vendor's title; and that, instead, he willfully closed his eyes to the possibility of the existence of these flaws — for failure to exercise the measure of precaution which may be required of a prudent man in a like situation, he cannot be called a purchaser in good faith.[80] Also, where the land sold is in the possession of a person other than the vendor, the purchaser must go beyond the certificate of title and make inquiries concerning the rights of the actual possessor, otherwise he cannot invoke the right of a purchaser in good faith and could not have acquired a better right than his predecessor-in-interest.[81]

As the Court explained in *Mathay* v. *Court of Appeals*:[82]

> "Here, petitioners cannot be categorized as purchasers in good faith. Prior to the fencing of subject land,

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[78]Pulido v. Court of Appeals, GR No. 109244, Dec. 29, 1995, 251 SCRA 673.

[79]Dacasin v. Court of Appeals, GR No. L-32723, Oct. 28, 1977, 80 SCRA 89.

[80]Caram v. Laureta, GR No. L-28740, Feb. 24, 1981, 103 SCRA 7.

[81]Roxas v. Court of Appeals & Magueson Management and Development Corporation, GR No. 138660, Feb. 5, 2004, 422 SCRA 101.

[82]GR No. 115788, Sept. 17, 1998, 356 Phil. 870.

> neither they (Mathays) nor their predecessors-in-interest *(Banayo and Pugay)* ever possessed the same. In fact, at the time the said property was sold to petitioners, the private respondents were not only in actual possession of the same but also built their houses thereon, cultivated it and were in full enjoyment of the produce and fruits gathered therefrom. Although it is a recognized principle that a person dealing on a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, it is, of course, expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants, i.e., whether or not the occupants possess the land *en concepto de dueño*, in concept of owner. As is the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would thereby preclude him from claiming or invoking the rights of a 'purchaser in good faith.'"

Thus, where private respondents communicated their objection to the fencing of the area by petitioner as purchaser but they were ignored by petitioner who continued enclosing the premises under controversy in the presence of armed men employed by him, the purchaser cannot claim that he is a purchaser in good faith.[83] Also, where the purchaser herself visited the property but she carefully evaded seeing personally the actual occupant thereof who could have easily enlightened her as to the true owner, such unnatural behavior points more convincingly to the fact that she was aware that her vendor was not its real owner.[84]

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[83]Mathay v. Court of Appeals, *supra*.
[84]Crisostomo v. Court of Appeals, GR No. 91383, May 31, 1991, 197 SCRA 833.

A purchaser of real estate at a tax sale obtains only such title as that held by the taxpayer; the principle of *caveat emptor* applies. Purchasers cannot close their eyes to facts that should have put any reasonable person upon guard, and then claim that they acted in good faith under the belief that there was no defect in the title. If petitioners do not investigate or take precaution despite knowing certain facts, they cannot be considered in good faith. The defense of indefeasibility of a Torrens title does not extend to a transferee who takes the title despite notice of the flaw in it. From a vendor who does not have any title to begin with, no right is passed to a transferee.[85]

### *4. Rule equally applies to mortgagees of real property*

It has been held that the phrase "innocent purchaser for value" in Section 32 of the Property Registration Decree includes an innocent lessee, mortgagee, or other encumbrancer for value.[86]

In *Crisostomo* v. *Court of Appeals*,[87] respondent offered to buy the property of petitioner covered by TCT No. 39286 for the sum of P300,000.00 which amount was agreed upon to be paid from the proceeds of a loan that was to be obtained by said respondent from a bank using petitioner's title as collateral. As payment, respondent issued three (3) postdated checks for said amount. Petitioner accepted the offer and executed a deed of absolute sale in favor of respondent. Thus, TCT No. 39286 was cancelled, and in its place, TCT No. 11835 was issued to respondent. Meantime, petitioner decided to encash the postdated checks but the same were all dishonored and returned to petitioner with the notation "Account Closed." Petitioner demanded the return of her title from respondent, only to find out that the title was now in the possession of Diana Torres as mortgagee. Petitioner was thus compelled to file an action against respondent and Torres to recover the property. The trial court rendered a decision ordering respondent to reconvey the property to petitioner and nullifying the mortgage executed by respondent in favor of Torres. The Court of Appeals modified the judgment by ordering that the mortgage in favor of Torres be noted on the certificate of title which is to be reissued to petitioner after finding that Torres is a mortgagee in good

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[85]Tan v. Bantegui, GR No. 154017, Oct. 24, 2005.
[86]Crisostomo v. Court of Appeals, *supra*.
[87]*Ibid*.

faith. The Supreme Court reversed, holding that Torres is a mortgagee in bad faith, thus:

> "There are strong indications that Atty. Flor Martinez, the lawyer of Diana J. Torres, the mortgagee, knew of the defect of (respondent's) title. x x x While feigning ignorance of the owner of subject property, she admitted later on cross-examination that (petitioner) was the owner from whom (respondent) allegedly bought the property. Even more persuasive is the fact that when Atty. Martinez personally inspected the property x x x she allowed herself to be introduced to (petitioner), who was then actually occupying the house, as a Bank Inspector x x x obviously to convince (petitioner) that the procedure is in accordance with her agreement with (respondent). x x x
>
> Finally, when Torres herself visited the property she carefully evaded seeing (petitioner) personally, the actual occupant thereof, who could have easily enlightened her as to the true owner. Such unnatural behavior points more convincingly to the fact that she was aware that (respondent) was not its real owner. x x x A person dealing with registered land has a right to rely upon the face of the Torrens Certificate of Title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make further inquiries. Even assuming that Torres does not in fact know the circumstances of the sale, she is bound by the knowledge of Atty. Martinez or by the latter's negligence in her haphazard investigation because the negligence of her agents is her own negligence."

A person dealing with a registered land has a right to rely upon the face of the Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make inquiry. A bank is not required, before accepting a mortgage, to make an investigation of the title of the property being given as security. Nevertheless, banks are cautioned to exercise more care and prudence in dealing even with registered lands than private individuals, for their business is one affected with public interest, keeping in trust money belonging to their depositors, which they should guard against loss by not committing

any act of negligence which amounts to lack of good faith. Thus, banks before approving a loan send representatives to the premises of the land offered as collateral and investigate who are the true owners thereof.[88]

### *5. Rule on good faith not absolute; duty of purchaser to investigate*

While it is true that under the Property Registration Decree, deeds of conveyance of property registered under the system, or any interest therein, only take effect as a conveyance to bind the land upon its registration, and that a purchaser is not required to explore further than what the Torrens title, upon its face, indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto, nonetheless, this rule is not absolute. The aforesaid principle admits of an unchallenged exception. In *Sandoval* v. *Court of Appeals,*[89] it was held —

> "that a person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of inquiring further except when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. The presence of anything which excites or arouses suspicion should then prompt to vendee to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith; and hence does not merit the protection of the law."

Thus, while one who buys from the registered owner need not have to look behind the certificate of title, he is, nevertheless, bound by the liens and encumbrances annotated thereon. One who buys without checking the vendor's title takes all the risks and losses con-

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[88]Gonzales v. Intermediate Appellate Court, GR No. L-69622, Jan. 29, 1988, 157 SCRA 587.

[89]GR No. 106657, Aug. 1, 1996, 260 SCRA 283.

sequent to such failure.[90] A person is deemed to have knowledge of a public record, like a prior reconstituted title on file with the Registry of Deeds.[91]

In *Barrios* v. *Court of Appeals*,[92] the Court noted several facts, disclosed by the records, which were reasonably suspicious as to have put respondents upon inquiry as to the alleged rights of the vendor, but which they disregarded, thereby precluding them from invoking the benefits of a purchaser in good faith. *Firstly*, when respondents bought the land from Lamis, the latter could not and did not at any time produce any title or application to said land. Well settled is the rule that:

> "The law protects to a greater degree a purchaser who buys from the registered owner himself. Corollarily, it requires a higher degree of prudence from one who buys from a person who is not the registered owner, altho the land object of the transaction is registered. While one who buys from the registered owner does not have to look behind the certificate of title, one who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land."[93]

If such a degree of prudence is required of a purchaser of registered land from one who shows a certificate of title but who appears not to be the registered owner, more so should the law require the utmost caution from a purchaser of registered land from one who could not show any title nor any evidence of his capacity to transfer the land. Failing to exercise caution of any kind whatsoever, as in the case of respondents, is tantamount to bad faith. *Secondly*, petitioner sent letters to the father of respondents informing him of the true ownership of the aforesaid land. In the normal course of daily life, it is very probable, if not decidedly certain, that sons and father had occasion to talk about the aforesaid letters containing this information. Learning of this information, respondents were required

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[90]Sajonas v. Court of Appeals, *supra*.

[91]De Santos v. Intermediate Appellate Court, GR No. L-69591, Jan. 25, 1988, 157 SCRA 295.

[92]GR No. L-32531, Aug. 3, 1977, 78 SCRA 427.

[93]Revilla v. Galindez, GR No. L-9940, March 30, 1960, 107 Phil. 480.

to exercise prudence in inquiring as to the status of the land they bought. But instead, they did nothing but took possession of the land and started planting sugar cane thereon. *Thirdly*, respondents knew of the case of forcible entry brought by petitioner against respondents' father. Such knowledge was a warning to them that the land they bought is subject to the claim of other parties, but again they continued in their possession of the land and planting thereon. Evidently, respondents were buyers in bad faith.

### *6. A forged deed may be the root of a valid title*

A fraudulent or forged document of sale may become the root of a valid title if the certificate of title has already been transferred from the name of the true owner to the name of the forger or the name indicated by the forger.[94]

Thus, where innocent third persons relying on the correctness of the certificate of title issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate for that would impair public confidence in the certificate of title; otherwise everyone dealing with property registered under the Torrens system would have to inquire in every instance as to whether the title had been regularly or irregularly issued by the court. Indeed, this is contrary to the evident purpose of the law. Every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. Stated differently, an innocent purchaser for value relying on a Torrens title issued is protected. A mortgagee has the right to rely on what appears in the certificate of title and, in the absence of anything to excite suspicion, he is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate.[95]

The doctrine finds illustration in the case of *Duran* v. *Intermediate Appellate Court*.[96] In this case, a mother forged the signature of her daughter in a deed of sale purporting to sell her properties to the mother. The latter obtained titles in her name, and thereafter

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[94]Solivel v. Francisco, GR No. 51450, Feb. 10, 1989, 170 SCRA 218; Duran v. Intermediate Appellate Court, GR No. L-64159, Sept. 10, 1985, 138 SCRA 489.

[95]*Ibid.*

[96]*Supra.*

mortgaged the properties to the private respondents. Upon her failure to redeem the mortgage, the mortgagees foreclosed and purchased the properties at the sheriff's auction sale. The Court ruled that the mortgage was valid with respect to the mortgagees because at the time of its constitution, title to the properties was already in the name of the party who had executed the mortgage (the mother). The case of *Duran* involves a situation where title to the property had already been registered in favor of a person other than the true owner before being conveyed or mortgaged to the party claiming the rights of an innocent transferee.

### *7. Good faith is a question of fact*

The question of whether or not a person is a purchaser in good faith is a factual matter that will generally be not delved into by the Supreme Court, especially when the findings of the trial court on the matter were affirmed by the Court of Appeals. There is a question of fact when the doubt or difference arises as to the truth or the falsity of the statement of facts while a question of law exists when there is doubt or controversy as to what the law is on a certain state of facts.[97]

The Supreme Court is not a trier of facts, and the factual findings of the Court of Appeals are binding and conclusive upon the Court, unless:

(1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture;

(2) the inference made is manifestly mistaken;

(3) there is grave abuse of discretion;

(4) the judgment is based on a misapprehension of facts;

(5) the findings of fact are conflicting;

(6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees;

(7) the findings of fact of the Court of Appeals are contrary to those of the trial court;

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[97]Sigaya v. Mayuga, GR No. 143254, Aug. 18, 2005.

(8) said findings of fact are conclusions without citation of specific evidence on which they are based;

(9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and

(10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[98]

The burden of proving the status of a purchaser in good faith lies upon one who asserts that status and this *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith.[99]

### 8. Rule on double sale of property

Article 1544 of the Civil Code reads:

> "ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith."

To illustrate, between two buyers of the same immovable property registered under the Torrens system, the law gives ownership priority to (1) the first registrant in good faith; (2) then, the first possessor in good faith; and (3) finally, the buyer who in good faith presents the oldest title. This provision, however, does not apply if the property is not registered under the Torrens system.[100]

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[98]Sigaya v. Mayuga, *supra*.
[99]*Ibid*.
[100]Abrigo v. De Vera, GR No. 154409, June 21, 2004, 432 SCRA 544.

### *1. Rule contemplates double sale by a single vendor*

The case of *Consolidated Rural Bank* v. *Court of Appeals*[101] restates the rule as follows: Article 1544 contemplates a case of double or multiple sales by a single vendor. More specifically, it covers a situation where a single vendor sold one and the same immovable property to two or more buyers. It is necessary that the conveyance must have been made by a party who has an existing right in the thing and the power to dispose of it. It cannot be invoked where the two different contracts of sale are made by two different persons, one of them not being the owner of the property sold. And even if the sale was made by the same person, if the second sale was made when such person was no longer the owner of the property, because it had been acquired by the first purchaser in full dominion, the second purchaser cannot acquire any right.

Where respondents derive their right over their respective portions either through inheritance or sale from a particular person while petitioners invoke their right from the sale of the land from another, the law on double sales does not apply.[102]

In a situation where not all the requisites are present which would warrant the application of Article 1544, the principle of *prior tempore, potior jure* or "he who is first in time is preferred in right," should apply. The only essential requisite of this rule is priority in time; in other words, the only one who can invoke this is the first vendee. Undisputedly, he is a purchaser in good faith because at the time he bought the real property, there was still no sale to a second vendee.

Moreover, it is an established principle that no one can give what one does not have — *nemo dat quod non habet*. Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally.

### *2. Rule of "prior est temporae, prior est in jura"*

The case of *Calalang* v. *Register of Deeds of Quezon City*[103] involves a duplication or overlapping of titles issued to different persons over the same land. Applying the rule of *"prior est temporae, prior est in jura*," the Court said:

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[101]GR No. 132161, Jan. 17, 2005, 448 SCRA 347.
[102]Sigaya v. Mayuga, *supra*.
[103]GR No. 76265, March 11, 1994, 231 SCRA 88.

> "The sale of the land to Lucia dela Cruz and the subsequent registration thereof in the Primary Book of the Registry of Deeds, Manila constitutes constructive notice to the whole world. (Heirs of Maria Marasigan v. Intermediate Appellate Court, 152 SCRA 253 [1987]; People v. Reyes, 175 SCRA 597 [1989]).
>
> Since it is the act of registration which transfers ownership of the land sold (Government Service Insurance System v. Court of Appeals, 169 SCRA 244 [1989]), Lot 671 was already owned by Lucia dela Cruz as early as 1943. Amando Clemente's alleged title meanwhile which was issued on August 9, 1951 was very much later. Thus, the petitioners, who merely stepped into the shoes of Amando Clemente cannot claim a better right over said land. "*Prior est temporae, prior est in jura*" (he who is first in time is preferred in right) (Garcia v. Court of Appeals, 95 SCRA 380 [1980]). The fact that Amando Clemente possessed a certificate of title does not necessarily make him the true owner. And not being the owner, he cannot transmit any right to nor transfer any title or interest over the land conveyed (Beaterio del Santisimo Rosario de Molo v. Court of Appeals, 137 SCRA 459 [1985]; Treasurer of the Phil. v. Court of Appeals, 153 SCRA 359 [1987])."

In the same case, the Court noted that the petition for reconstitution of title by Lucia dela Cruz which the court held to be valid was a proceeding *in rem* and as such constitutes constructive notice to the whole world. Under the facts of the case, the title in the name of Lucia dela Cruz (TCT No. RT 58) has become indefeasible and incontrovertible.

But the rule that where two certificates purport to include the same land, the earlier in date prevails, is valid only absent any anomaly or irregularity tainting the process of registration.[103a] Where the inclusion of land in the certificate of prior date is a mistake, the mistake may be rectified by holding the latter of two certificates to be conclusive.[103b] A certificate of title is not conclusive where it is the product of a faulty or fraudulent registration.[103c]

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[103a] Mathay v. Court of Appeals, GR No. 15788, Sept. 17, 1988, 295 SCRA 556.

[103b] Legarda v. Saleeby, GR No. 8936, Oct. 2, 1915, 31 Phil. 590.

[103c] Widows and Orphans Association, Inc. v. Court of Appeals, GR No. 91797, Aug. 28, 1991, 201 SCRA 165.

The principle of *primus tempore, potior jure* (first in time, stronger in right) gains greater significance in case of double sale of immovable property. When the thing sold twice is an immovable, the one who acquires it and first records it in the Registry of Property, both made in good faith, shall be deemed the owner. Verily, the act of registration must be coupled with good faith — that is, the registrant must have no knowledge of the defect or lack of title of his vendor or must not have been aware of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.[104]

The case of *San Lorenzo Development Corporation* v. *Court of Appeals*,[105] per Justice Callejo, illustrates the principle.

> "Admittedly, SLDC registered the sale with the Registry of Deeds after it had acquired knowledge of Babasanta's claim. Babasanta, however, strongly argues that the registration of the sale by SLDC was not sufficient to confer upon the latter any title to the property since the registration was attended by bad faith. Specifically, he points out that at the time SLDC registered the sale on 30 June 1990, there was already a notice of *lis pendens* on the file with the Register of Deeds, the same having been filed one year before on 2 June 1989.
>
> Did the registration of the sale after the annotation of the notice of *lis pendens* obliterate the effects of delivery and possession in good faith which admittedly had occurred prior to SLDC's knowledge of the transaction in favor of Babasanta?
>
> We do not hold so.
>
> It must be stressed that as early as 11 February 1989, the Spouses Lu executed the Option to Buy in favor of SLDC upon receiving P316,160.00 as option money from SLDC. After SLDC had paid more than one half of the agreed purchase price of P1,264,640.00, the Spouses Lu subsequently executed on 3 May 1989 a Deed of Absolute Sale in favor or SLDC. At the time both deeds were executed, SLDC had no knowledge of the prior transaction

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[104]San Lorenzo Development Corporation v. Court of Appeals, GR No. 124242, Jan. 21, 2005, 449 SCRA 99.

[105]*Ibid.*

of the Spouses Lu with Babasanta. Simply stated, from the time of execution of the first deed up to the moment of transfer and delivery of possession of the lands to SLDC, it had acted in good faith and the subsequent annotation of *lis pendens* has no effect at all on the consummated sale between SLDC and the Spouses Lu.

A purchaser in good faith is one who buys property of another without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of the claim or interest of some other person in the property. Following the foregoing definition, we rule that SLDC qualifies as a buyer in good faith since there is no evidence extant in the records that it had knowledge of the prior transaction in favor of Babasanta. At the time of the sale of the property to SLDC, the vendors were still the registered owners of the property and were in fact in possession of the lands. Time and again, this Court has ruled that a person dealing with the owner of registered land is not bound to go beyond the certificate of title as he is charged with notice of burdens on the property which are noted on the face of the register or on the certificate of title. In assailing knowledge of the transaction between him and the Spouses Lu, Babasanta apparently relies on the principle of constructive notice incorporated in Section 52 of the Property Registration Decree (P.D. No. 1529) which reads, thus:

'Sec. 52. *Constructive notice upon registration*. — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed, or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing, or entering.'

However, the constructive notice operates as such by the express wording of Section 52 from the time of the registration of the notice of *lis pendens* which in this case was effected only on 2 June 1989, at which time the sale in favor of SLDC had long been consummated insofar as the obligation of the Spouses Lu to transfer ownership over the property to SLDC is concerned."

In *Cruz* v. *Cabana*,[106] the Court, through Justice Teehankee, said: "It is essential that the buyer of realty must act in good faith in registering his deed of sale to merit the protection of the second paragraph of Article 1544 of the Civil Code. x x x The governing principle here is *primus tempore, potior jure* (first in time, stronger in right). Knowledge gained by the first buyer of the second sale cannot defeat the first buyer's right except only as provided by the Civil Code and that is where the second buyer first registers in good faith the second sale ahead of the first. Such knowledge of the first buyer does not bar her from availing of her rights under the law, among them to register first her purchase as against the second buyer. But *in converso* knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register the second sale, since such knowledge taints his prior registration with bad faith. This is the price exacted by Article 1544 of the Civil Code of the second buyer being able to displace the first buyer; that before the second buyer can obtain priority over the first, he must show that he acted in good faith throughout (*i.e.*, in ignorance of the first sale and of the first buyer's rights) – – from the time of acquisition until the title is transferred to him by registration or failing registration, by delivery of possession. The second buyer must show continuing good faith and innocence or lack of knowledge of the first sale until his contract ripens into full ownership through prior registration as provided by law."

### *3. Rules of preference*

Following Article 1544, in the double sale of an immovable, the rules of preference are:

(a) the first registrant in good faith;

(b) should there be no entry, the first in possession in good faith; and

(c) in the absence thereof, the buyer who presents the oldest title in good faith.

Prior registration of the subject property does not by itself confer ownership or a better right over the property. Article 1544 requires that before the second buyer can obtain priority over the first, he must show that he acted in good faith from the time he acquired the property until the title or possession is transferred to him.[107]

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[106]GR No. 56232, June 22, 1984, 129 SCRA 656.
[107]Consolidated Rural Bank v. Court of Appeals, *supra*.

Who has the superior right to a parcel of land sold to two different buyers at different times by its former owner? Quoting Justice Vitug's Compendium of Civil Law and Jurisprudence, the Supreme Court in *Santiago* v. *Court of Appeals*[108] explained:

> "The governing principle is *primus tempore, potior jure* (first in time, stronger in right). Knowledge by the first buyer of the second sale cannot defeat the first buyer's rights except when the second buyer first registers in good faith the second sale (Olivares vs. Gonzales, 159 SCRA 33). Conversely, knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register, since such knowledge taints his registration with bad faith. (see also Astorga vs. Court of Appeals, G.R. No. 58530, 26 December 1984) In Cruz vs. Cabana, G.R. No. 56232, 22 June 1984, 129 SCRA 656), it was held that it is essential, to merit the protection of Art. 1544, second paragraph, that the second realty buyer must act in good faith in registering his deed of sale (citing Carbonell vs. Court of Appeals, 69 SCRA 99; Crisostomo vs. CA, G.R. 95843, 02 September 1992).
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> x x x x x x x x x
>
> Registration of the second buyer under Act 3344, providing for the registration of all instruments on land neither covered by the Spanish Mortgage Law nor the Torrens System (Act 496), cannot improve his standing since Act 3344 itself expresses that registration thereunder would not prejudice prior rights in good faith (see Carumba vs. Court of Appeals, 31 SCRA 558). Registration, however, by the first buyer under Act 3344 can have the effect of constructive notice to the second buyer that can defeat his right as such buyer in good faith (see Arts. 708-709, Civil Code; see also Revilla vs. Galindez, 107 Phil. 480; Taguba vs. Peralta, 132 SCRA 700) Art. 1544 has been held to be inapplicable to execution sales of unregistered land, since the purchaser merely steps into the shoes of the debtor and acquires the latter's interest as of the time the property is sold (Carumba vs. Court of Appeals, 31 SCRA 558; see also Fabian vs. Smith, Bell & Co., 8 Phil. 496) or when there is only one sale (Remalante vs. Tibe, 158 SCRA 138)."

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[108]GR No. 117014, August 14, 1995, 247 SCRA 336.

Thus, where petitioners, as the first buyers of the disputed land, were the only parties who obtained and took hold of the owner's copy of the Torrens title, took possession of the property, and registered the sale for which they have been issued a certificate of title in their names, all these circumstances and acts can only be indicative of good faith; hence, their title to the land should be upheld and remain undisturbed.

**05. Reconveyance, generally.**

An action for reconveyance is a legal and equitable remedy granted to the rightful owner of land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him. A landowner whose property was wrongfully or erroneously registered under the Torrens system may bring an action, after one year from the issuance of the decree, for the reconveyance of the subject property. Such an action does not aim or purport to re-open the registration proceeding and set aside the decree of registration, but only to show that the person who secured the registration of the questioned property is not the real owner thereof. The action does not seek to set aside the decree but, respecting the decree as incontrovertible and no longer open to review, seeks to transfer or reconvey the land from the registered owner to the rightful owner.[109]

Notwithstanding the irrevocability of the Torrens title already issued in the name of the registered owner, he can still be compelled under the law to *reconvey* the subject property to the rightful owner. The property is deemed to be held in trust for the real owner by the person in whose name it is registered. The Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds title in bad faith. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, in this case the title thereof, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right.[110]

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[109]Esconde v. Barlongay, GR No. L-67583, July 31, 1987, 152 SCRA 603; Director of Lands v. Register of Deeds, GR No. L-4463, March 24, 1953, 92 Phil. 827.

[110]Saludares v. Court of Appeals, GR No. 128254, Jan. 16, 2003, 420 SCRA 51; Amerol v. Bagumbaran, GR No. L-33261, Sept. 30, 1987, 154 SCRA 396.

### (1) Section 96 is the statutory basis of an action for reconveyance

Section 96 of PD No. 1529, after describing the procedure for a person wrongfully deprived of his land or any interest therein as a result of the application and operation of Decree to recover from the Assurance Fund the losses or damages he had sustained, states "that nothing in this Decree shall be construed to deprive the plaintiff of any action which he may have against any person for such loss or damage or deprivation without joining the National Treasurer party defendant." This proviso constitutes sufficient statutory authority, aside from the dictates of equity, under which the remedy of reconveyance may be invoked. A person who succeeds in having a piece of real estate registered in his name is, no doubt, insulated by law from a number of claims and liens. There are, however, a number of instances or causes by which such insulation may be cut loose. The registered owner, for instance, is not rendered immune by the law from the claim that he is not the real owner of the land he had registered in his name. Thus, an action for reconveyance may be filed against the registered owner by the rightful but as yet unregistered owner. However, this remedy cannot always be availed of by an aggrieved claimant, as when the rights of innocent purchasers for value will be affected.[111]

### (2) Nature and purpose of an action for reconveyance

An action for reconveyance is a legal and equitable remedy granted to the rightful owner of land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him.[112] Such action, filed after one year from the issuance of the decree, does not aim or purport to re-open the registration proceeding but only to show that the person who secured the registration of the questioned property is not the real owner thereof.[113] It does not seek to set aside the decree but, respecting it as incontrovertible and no longer open to review, seeks to transfer or reconvey the land from the registered owner to the rightful owner.[114]

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[111]Frias v. Esquivel, GR No. L-24679, Oct. 30, 1976, 67 SCRA 487.

[112]Esconde v. Barlongay, GR No. L-67583, July 31, 1987, 152 SCRA 603.

[113]Rodriguez v. Toreno, GR No. L-29596, Oct. 14, 1977, 79 SCRA 357.

[114]Director of Lands v. Register of Deeds, GR No. L-4463, March 24, 1953, 92 Phil. 827.

A party seeking the reconveyance to him of his land that he claims had been wrongly registered in the name of another person must recognize the validity of the certificate of title of the latter. Reconveyance may only take place if the land that is claimed to be wrongly registered is still registered in the name of the person who procured the wrongful registration. No action for reconveyance can take place as against a third party who had acquired title over the registered property in good faith and for value. And if no reconveyance can be made, the value of the property registered may be demanded only from the person (or persons) who procured the wrongful registration in his name.[115]

### (3) Decree becomes incontrovertible after one year from issuance of decree; remedy of reconveyance

The basic rule is that after the lapse of one (1) year, a decree of registration is no longer open to review or attack although its issuance is attended with actual fraud. This does not mean however that the aggrieved party is without a remedy at law. If the property has not yet passed to an innocent purchaser for value, an action for reconveyance is still available. The decree becomes incontrovertible and can no longer be reviewed after one (1) year from the date of the decree so that the only remedy of the landowner whose property has been wrongfully or erroneously registered in another's name is to bring an ordinary action in court for reconveyance, which is an action in *personam* and is always available as long as the property has not passed to an innocent third party for value. If the property has passed into the hands of an innocent purchaser for value, the remedy is an action for damages.[116]

It is well-settled that a Torrens title cannot be collaterally attacked. The issue on the validity of the title can only be raised in an action expressly instituted for that purpose. A Torrens title can be attacked only for fraud within one year after the date of the issuance of the decree of registration. Such attack must be direct and not by collateral proceeding. The title represented by the certificate cannot be changed, altered, modified, enlarged or diminished in a collateral proceeding. After one year from the date of the decree, the sole remedy of the landowner whose property has been wrongfully or erroneously registered in another's name is not to set aside the

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[115]Benin v. Tuason, GR No. L-26127, June 28, 1974, 57 SCRA 531.
[116]Javier v. Court of Appeals, GR No. 101177, March 28, 1994, 21 SCRA 498.

decree, but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages.[117]

Article 1456 of the New Civil Code provides that a person acquiring property through fraud becomes by operation of law a trustee of an implied trust for the benefit of the real owner of the property. The presence of fraud creates an implied trust in favor of the plaintiffs, giving them the right to seek reconveyance of the property from the defendants.[118]

When a person is a party to a registration proceeding, or, when notified, he does not want to participate and only after the property has been adjudicated to another and the corresponding title has been issued does he file an action for reconveyance, to give due course to the action is to nullify registration proceedings and defeat the purpose of the law.[119]

**(4) Remedy available even before issuance of decree**

It has been held that the petition for reopening of the decree, which may be filed within one (1) year from the issuance of the said decree, is not the exclusive remedy of the aggrieved party and does not bar any other remedy to which he may be entitled. That party who is prejudiced may file an action for the reconveyance of the property of which he had been illegally deprived, even before the issuance of the decree.[120]

**(5) Relevant allegations**

All that must be alleged in the complaint are two facts which, admitting them to be true, would entitle the plaintiff to recover title to the disputed land, namely, (1) that the plaintiff was the owner of the land and, (2) that the defendant had illegally dispossessed him of the same. The body of the pleading or complaint determines the nature of an action, not its title or heading. Thus, where petitioners

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[117]Ybañez v. Intermediate Appellate Court, GR No. 68291, March 6, 1991, 194 SCRA 793; Gonzales v. Intermediate Appellate Court, GR No. L-69622, Jan. 29, 1988, 157 SCRA 587.

[118]Sanjorjo v. Quijano, *supra*.

[119]Vencilao v. Vano, GR No. L-25660, Feb. 23, 1990, 182 SCRA 491.

[120]Municipality of Hagonoy v. Secretary of Agriculture and Natural Resources, GR No. L-27595, Oct. 26, 1976, 73 SCRA 507.

asserted in their complaint that their predecessors-in-interest have long been the absolute and exclusive owners of the lots in question and that they were fraudulently deprived of ownership thereof when the private respondents obtained free patents and certificates of title in their names, these allegations measure up to the requisite statement of facts to constitute an action for reconveyance.[121]

### (6) Reconveyance is an action *in personam*

An action to redeem, or to recover title to or possession of, real property is not an action *in rem* or an action against the whole world, like a land registration proceeding or the probate of a will; it is an action *in personam*, so much so that a judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard. Actions *in personam* and actions *in rem* differ in that the former are directed against specific persons and seek personal judgments, while the latter are directed against the thing or property or status of a person and seek judgments with respect thereto as against the whole world. An action to recover a parcel of land is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing. Being *in personam*, it is important that the court must have jurisdiction over the person of the defendant, otherwise its judgment is null and void.[122]

An action for reconveyance is an action in *personam* available to a person whose property has been wrongfully registered under the Torrens system in another's name. Although the decree is recognized as incontrovertible and no longer open to review, the registered owner is not necessarily held free from liens. As a remedy, an action for reconveyance is filed as an ordinary action in the ordinary courts of justice and not with the land registration court. Reconveyance is always available as long as the property has not passed to an innocent third person for value. A notice of l*is pendens* may thus be annotated on the certificate of title immediately upon the institution of the action in court. The notice of *lis pendens* will avoid transfer to an innocent third person for value and preserve the claim of the real owner.[123]

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[121]Sanjorjo v. Quijano, GR No. 140457, Jan. 19, 2005, 449 SCRA 15.
[122]Ching v. Court of Appeals, GR No. 59731, Jan. 11, 1990, 181 SCRA 9.
[123]Lopez v. Enriquez, GR No. 146262, Jan. 21, 2005, 449 SCRA 173.

### (7) Where to file action

The rule is that Regional Trial Courts have exclusive original jurisdiction in all civil actions which involve the title to or any interest in property where the assessed value thereof exceeds P20,000.00, or in Metropolitan Manila, where such value exceeds P50,000.00. An action for reconveyance is one involving title to property. In a case,[124] plaintiffs filed their complaint for reconveyance with the Regional Trial Court upon the theory that the action is incapable of pecuniary estimation. The Court said that the action involves title to property, hence, plaintiffs should have stated in the complaint the *assessed value* of the property, but since they simply alleged the market value thereof as P15,000.00, it was held that it is the Municipal Court, not the Regional Trial Court, that has jurisdiction over the case.

### (8) Indispensable parties to be impleaded in an action for reconveyance

Owners of property over which reconveyance is asserted are indispensable parties, without whom no relief is available and without whom the court can render no valid judgment. An indispensable party is one without whom the action cannot be finally determined, whose interests in the subject matter of the suit and in the relief sought are so bound up with that of the other parties that his legal presence as a party to the proceeding is an absolute necessity. An action for reconveyance does not lie against innocent purchasers for value.[125]

### (9) Action for reconveyance may be barred by the statute of limitations

Although there are decisions to the contrary,[126] it is settled that an action for reconveyance of real property based upon a constructive or implied trust, resulting from fraud, may be barred by the statute of limitations.[127] The action shall prescribe after ten years, since

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[124]Barangay Piapi v. Talip, GR No. 138248, Sept. 7, 2005.

[125]Acting Registrars of Land Titles and Deeds of Pasay City v. Regional Trial Court of Makati, GR No. 81564, April 26, 1990, 84 SCRA 622.

[126]Jacinto v. Mendoza, GR No. L-12540, Feb. 28, 1959, 105 Phil. 260; Cuison v. Fernandez, GR No. L-11764, Jan. 31, 1959, 105 Phil. 135; Marabiles v. Quito, GR No. L-10408, Oct. 18, 1956, 100 Phil. 64; Sevilla v. De los Angeles, GR No. L-7745, Nov. 18, 1955, 97 Phil. 875.

[127]Gerona v. Guzman, GR No. L-19060, May 29, 1964, 11 SCRA 153.

it is an action based upon an obligation created by law. Said period is counted from the date adverse title to the property is asserted by the possessor thereof. That assertion of adverse title takes place upon the registration and issuance of the corresponding certificate of title for such registration constitutes constructive notice to third persons of the respondent's adverse claim to the property.[128] Registration of a certificate of title constitutes constructive notice to the whole world.[129]

### (10) Prescription of action; illustrative cases

#### *1. Action based on fraud, ten years*

The prescriptive period for the reconveyance of *fraudulently* registered real property is ten years reckoned from the date of the issuance of the certificate of title,[130] or date of registration of the deed.[131] There is fraud where, for instance, the ownership of private respondents over the questioned property was obtained through "false assertions, misrepresentations and deceptive allegations," in which case the prescriptive period "is ten (10) years reckoned from the date of the issuance of the certificate of title."[132]

#### *2. Action based on implied trust, ten years*

Corollarily, action for reconveyance of real property to enforce an *implied trust* shall prescribe after ten years, since it is an action based upon an obligation created by law. Said period is counted from the date adverse title to the property is asserted by the possessor thereof. That assertion of adverse title is said to take place upon the registration and issuance of the corresponding certificate of title for such registration constitutes constructive notice to third persons of the respondent's adverse claim to the property.[133] Reconveyance is available in case of registration of property procured by *fraud* thereby creating a *constructive* trust between the parties.

As explained by Justice Sarmiento in *Amerol* v. *Bagumbaran*,[134] the cases cited by the respondent therein to buttress his position

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[128]Villagonzalo v. Intermediate Appellate Court, GR No. 71110, Nov. 22, 1988, 167 SCRA 535.

[129]Balbin v. Medalla, GR No. L-46410, Oct. 30, 1981, 108 SCRA 666.

[130]Caro v. Court of Appeals, GR No. 76148, Dec. 20, 1989, 180 SCRA 401.

[131]Leyson v. Bontuyan, GR No. 156357, Feb. 18, 2005.

[132]Casipit v. Court of Appeals, GR No. 96829, Dec. 9, 1991, 204 SCRA 684.

[133]Villagonzalo v. Intermediate Appellate Court, GR No. 71110, Nov. 22, 1988, 167 SCRA 535.

[134]*Supra*.

that the action for reconveyance prescribes in four years involved causes of action all accruing prior to the effectivity of the new Civil Code. Before August 30, 1950, the old Code of Civil Procedure *(Act No. 190)* governed prescription. It provided in Section 43 thereof that civil actions other than for the recovery of real property can only be brought within the following period after the right of action accrues: "Within four years: . . . An action for relief on the ground of fraud, but the right of action in such case shall not be deemed to have accrued until the discovery of the fraud." In contrast, under the present Civil Code, just as an implied or constructive trust is an offspring of the law (Art. 1456, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and *vis-a-vis* prescription, Article 1144 of the Civil Code is applicable, *i.e.*, that an action upon an obligation created by law must be brought within ten years from the time the right of action accrues. Consequently —

> "An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years and not otherwise. x x x It must be stressed, at this juncture, that Article 1144 and Article 1456, are new provisions. They have no counterparts in the old Civil Code or in the old Code of Civil Procedure, the latter being then resorted to as legal basis of the four-year prescriptive period for an action for reconveyance of title of real property acquired under false pretenses."[135]

Similarly, the Court ruled in *Sanjorjo* v. *Quijano*:[136]

> "We agree with the ruling of the CA that the Torrens titles issued on the basis of the free patents became as indefeasible as one which was judicially secured upon the expiration of one year from date of issuance of the patent. The order or decision of the DENR granting an application for a free patent can be reviewed only within one year thereafter, on the ground of actual fraud via a petition for review in the Regional Trial Court (RTC) provided that no innocent purchaser for value has acquired the property or any interest thereon. However, an aggrieved party may still file an action for reconveyance based on implied or constructive trust, which prescribes in ten years from

[135]See also Sanjorjo v. Quijano, *supra*.
[136]*Ibid.*

the date of the issuance of the Certificate of Title over the property provided that the property has not been acquired by an innocent purchaser for value.

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The petitioners' action for reconveyance may not be said to have prescribed, for, basing the present action on implied trust, the prescriptive period is ten years. The questioned titles were obtained on August 29, 1988 and November 11, 1988, in OCT Nos. OP-38221 and OP-39847, respectively. The petitioners commenced their action for reconveyance on September 13, 1993. Since the petitioners' cause of action is based on fraud, deemed to have taken place when the certificates of title were issued, the complaint filed on September 13, 1993 is, therefore, well within the prescriptive period."

### *3. Action based on a void contract, imprescriptible*

In *Casipit* v. *Court of Appeals*,[137] the Court declared that an action for reconveyance based on a void contract is imprescriptible. And in *Solid State Multi-Products Corporation* v. *Court of Appeals*,[138] the Court held that in actions for reconveyance of property predicated on the fact that the conveyance complained of was void *ab initio*, a claim of prescription of the action would be unavailing, and being null and void, the subsequent sale of the property and title issued pursuant thereto produced no legal effects whatsoever. *Quod nullum est, nullum producit effectum*.

### *4. Action based on a fictitious deed, imprescriptible*

Relatedly, where action for reconveyance is based on the ground that the certificate of title was obtained by means of a fictitious deed of sale, it is virtually an action for the declaration of its nullity, hence the action does not prescribe as held in *Lacsamana* v. *Court of Appeals*.[139] An action for reconveyance based on a void or inexistent contract, as where for instance there is lack of consent, is imprescriptible.[140]

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[137]*Supra*.

[138]GR No. 83383, May 6, 1991, 196 SCRA 630.

[139]GR No. 121658, March 27, 1988, 288 SCRA 287.

[140]Casipit v. Court of Appeals, *supra*; Castillo v. Madrigal, GR No. 62650, June 27, 1991, 198 SCRA 556; Baranda v. Baranda, GR No. 73275, May 20, 1987, 150 SCRA 59.

### *5. Action to quiet title where plaintiff is in possession, imprescriptible*

An action for reconveyance is actually one to quiet title. An action to quiet title to property in the possession of the plaintiff is imprescriptible. As ruled in *Sapto* v. *Fabiana*:[141]

> "The prevailing rule is that the right of a plaintiff to have his title to land quieted, as against one who is asserting some adverse claim or lien thereon, is not barred while the plaintiff or his grantors remain in actual possession of the land, claiming to be owners thereof, the reason for this rule being that while the owner in fee continues liable to an action, proceeding, or suit upon the adverse claim, he has a continuing right to the aid of a court of equity to ascertain and determine the nature of such claim and its effect on his title, or to assert any superior equity in his favor. He may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. But the rule that the statute of limitations is not available as a defense to an action to remove a cloud from title can only be invoked by a complaint when he is in possession. One who claims property which is in the possession of another must, it seems, invoke his remedy within the statutory period."

In a series of cases, the Court declared that an action for reconveyance based on fraud is imprescriptible where the plaintiff is *in possession* of the property subject of the action. The paramount reason for this exception is based on the theory that registration proceedings could not be used as a shield for fraud. Moreover, to hold otherwise would be to put a premium on land-grabbing and transgressing the broader principle in human relations that no person shall unjustly enrich himself at the expense of another.[142]

In *Caragay-Layno* v. *Court of Appeals*,[143] the Court ruled that an adverse claimant of a registered land who is in possession thereof for a long period of time is not barred from bringing an action for reconveyance which in effect seeks to quiet title to the property

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[141]GR No. L-11285, May 16, 1958, 103 Phil. 683.

[142]Leyson v. Bontuyan, *supra*.

[143]GR No. 52064, Dec. 26, 1984, 133 SCRA 718; see also Solid State Multi-Products Corporation v. Court of Appeals, *supra*.

against a registered owner relying upon a Torrens title which was illegally or wrongfully acquired.

Ordinarily, the ten-year prescriptive period begins to run from the date of registration of the deed or the date of the issuance of the certificate of title over the property. But if the person claiming to be the owner thereof is in actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe.[144]

Similarly, in *Cabrera* v. *Court of Appeals*,[145] the Court, through Justice Torres, stressed that where the plaintiff is in possession of the property, the action for reconveyance is not time-barred, thus:

> "In the case of *Heirs of Jose Olviga* v. *Court of Appeals*,[146] we observed that an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property, but this rule applies only *when plaintiff or the person enforcing the trust is not in possession of the property*, since if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of piece of a land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession.
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> As it is, before the period of prescription may start, it must be shown that: (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of

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[144]Aznar Brothers Realty Co. v. Aying, GR No. 144773, May 16, 2005; Gallar v. Husain, GR No. L-20954, May 29, 1967, 20 SCRA 186.

[145]GR No. 108547, Feb. 3, 1997, 267 SCRA 339.

[146]GR No. 104813, Oct. 21, 1993, 227 SCRA 330.

the *cestui que trust*, (b) such positive acts of repudiation have been made known to the *cestui que trust*, and, (c) the evidence thereon is clear and positive.

In the case at bar, the defendant Felicidad Teokemian, and thereafter, the Cabreras were in actual possession of the property since it was left to Felicidad Teokemian by her father in 1941, which possession had not been interrupted, despite the sale of the two-third portion thereof to the plaintiff in 1950, and the latter's procurement of a Certificate of Title over the subject property in 1957. Until the institution of the present action in 1988, plaintiff, likewise, had not displayed any unequivocal act of repudiation, which could be considered as an assertion of adverse interest from the defendants, which satisfies the above-quoted requisites. Thus, it cannot be argued that the right of reconveyance on the part of the defendants, and its use as defense in the present suit, has been lost by prescription."

The reason for the rule that prescription cannot be invoked in an action for reconveyance, which is in effect an action to quiet title, where plaintiff is in actual lawful possession of the land in question,[147] is explained in *Bucton* v. *Gabar*[148] as follows:

'The prevailing rule is that the right of a plaintiff to have his title to land quieted, as against one who is asserting some adverse claim or lien thereon, is not barred while the plaintiff or his grantors remain in actual possession of the land, claiming to be owners thereof, the reason for this rule being that while the owner in fee continues liable to an action proceeding, or suit upon the adverse claim, he has a continuing right to the aid of a court of equity to ascertain and determine the nature of such claim and its effect on his title, or to assert any superior equity in his favor. He may wait until his possession is disturbed or his title in attacked before taking steps to

[147]Fernandez v. Court of Appeals, GR No. 83141, Sept. 21, 1990, 189 SCRA 780; Caragay-Layno v. Court of Appeals, GR No. L-52064, Dec. 26, 1984, 133 SCRA 718.

[148]GR No. L-36359, Jan. 31, 1974, 55 SCRA 499.

vindicate his right. But the rule that the statute of limitations is not available as a defense to an action to remove a cloud from title can only be invoked by a complainant when he is in possession. One who claims property which is in the possession of another must, it seems, invoke his remedy within the statutory period.' (44 Am. Jur., p. 47)"

### (11) Laches may bar recovery

Where a court of equity finds that the position of the parties has to change that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect.[149] This is the basic principle of laches which may bar recovery for one's neglect or inaction.

The equitable defense of laches requires four elements: (1) conduct on the part of the defendant, or of one under whom her of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

The principle of *laches* which, in effect, is one of *estoppel* because it prevents people who have slept on their rights from prejudicing the rights of third parties who have placed reliance on the inaction of the original patentee and his successors in interest,[150] is illustrated in the following cases:

1. In *Gonzales* v. *Director of Lands*,[151] it was held that the owner of a lot who failed to appear during the cadastral proceedings, as a result of which his land was declared public property, and who brings an action to question the judgment 10 years later, is guilty of

[149]Lucas v. Gamponia, GR No. L-9335, Oct. 31, 1956, 100 Phil. 277.
[150]*Id.*
[151]GR No. 30814, March 5, 1929, 52 Phil. 895.

laches and inexcusable negligence and his action can no longer be maintained.

2. In *Yaptico* v. *Yulo*,[152] the plaintiff did not present his claim against the estate of the deceased wife but did so only four years later against the widower. It was held that he was guilty of laches insofar as the estate of the deceased spouse is concerned because it would be inequitable and unjust to permit him to revive any claims which he may have had, which claims he did not present during the distribution of the estate of the deceased wife.

3. In *Kambal* v. *Director of Lands*,[153] cadastral proceedings for compulsory registration of certain parcels of land in Cotabato were instituted. These proceedings included two lands belonging to the petitioner. Petitioner failed to claim said lands in said proceedings resulting in the cancellation of the titles of petitioner. Petitioner alleges that he came to know by accident of the cancellation of his titles and that he filed a petition for review sixteen years later, which petition is still pending hearing and determination. It was held that no relief can be granted since petitioner is guilty of laches. Said the Supreme Court:

> "The reason for this ruling is obvious: in the cadastral decision mention was made of former certificates issued for the lots in question, which certificates the court directed the register of deeds to cancel, and to issue new ones in lieu thereof. This should have led the petitioner, had he exercised due diligence, to inquire why those former certificates were issued, which in turn would have led him to discover that civil reservation proceedings were had in connection with the lands in question pursuant to Executive Order No. 72, series of 1917. *It has been held that knowledge of facts and circumstances which would put a person of ordinary prudence on inquiry is, in the eye of the law, equivalent to a knowledge of all the facts which would be disclosed on such inquiry; and, therefore, it has likewise been held that one having sufficient knowledge to lead him to a fact is deemed to be conversant therewith and chargeable with laches in failing to act thereon*." (Emphasis supplied)

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[152]GR No. 35876, Feb. 9, 1933, 57 Phil. 818.
[153]GR No. 43757, Oct. 12, 1935, 62 Phil. 293.

4. In *De la Cruz* v. *De la Cruz,*[154] petitioners did not take any steps to question the sale by appellant of the disputed lot to her co-appellant until after a period of 32 years when they filed the action for reconveyance. It was held that by their inaction and neglect their action was converted into a stale demand, especially so as the transaction involved millions of pesos. *Vigilantibus et non dormeintibus jura subveniunt*.

5. In *De la Calzada-Cierras* v. *Court of Appeals*,[155] petitioners' complaint to recover the title and possession of the disputed lot was filed only after 12 years from the registration of the sale to defendant. It was held that since the act of registering the conveyance was a constructive notice to the whole world,[156] the complaint was barred by laches for petitioners' failure and neglect for an unreasonably long time to assert their right to the property.

6. In *Perez* v. *Ong Chua*,[157] the appellants' cause of action to cancel the certificates of title in question accrued from 1930, the year of the recording of the sheriff's deed and the issuance of the certificates of title. Thirty-eight years had thus elapsed before appellants instituted the action on October 14, 1968. The continuous and public assertion of title by the appellees and their predecessor-in-interest during this period of time was more than sufficient to extinguish the appellants' action. The period of extinctive prescription under Chapter III of the Code of Civil Procedure, the law in force at the time, was only ten years. Justice Escolin, the *ponente*, stated:

> "(A)n action to enforce an implied trust may be barred not only by prescription for 10 years but also by laches. Implied trusts and express trusts are distinguishable. An express trust, which is created by the intention of the parties, disables the trustee from acquiring for his own benefit a property committed to his custody or management

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[154]GR No. L-61969, July 28, 1984, 130 SCRA 666, citing Mejia v. Gamponia, GR No. L-9335, Oct. 31, 1956, 100 Phil. 277 and Miguel v. Catalino, GR No. L-23072, Nov. 29, 1968, 26 SCRA 234.

[155]GR No. 95431, Aug. 7, 1992, 212 SCRA 390.

[156]Heirs of Marasigan v. Intermediate Appellate Court, GR No. L-69303, July 23, 1987, 152 SCRA 253.

[157]GR No. L-36850, Sept. 23, 1982, 116 SCRA 732.

— at least while he does not openly repudiate the trust and makes such repudiation known to the beneficiary. Upon the other hand, in a constructive trust, which is exclusively created by law, laches constitutes the bar to an action to enforce the trust, and repudiation is not required, unless there is concealment of the facts giving rise to the trust. Thus, in *Mejia de Lucas* v. *Gampoña*, this Court held that while a person may not acquire title to a registered property through continuing adverse possession in derogation of the title of the original registered owner, nevertheless, such owner or his heirs, by their inaction and neglect over a long period of time, may lose the right to recover the possession of the property and the title thereto from the defendants.

In *Go Chi Gun*, *et al*. v. *Co Cho, et al.*, this Court spelled out the four elements of the equitable defense of laches, to wit: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendants' conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the events relief is accorded to the complainant, or the suit is not held to be barred. x x x

Appellants allowed almost four decades to lapse before taking any remedial action. Because of their passivity and inaction during this entire period, appellees were made to feel secure in their belief that their late father had rightly acquired the lands in question and that no action would be filed against them. They were thus induced to spend time, effort and money in cultivating the land, paying the taxes, and introducing improvements therein. Undoubtedly, they would be prejudiced if the instant action for reconveyance is not barred. It is the established principle in this jurisdiction that inaction and neglect of a party to assert a right can convert what otherwise could be a valid claim into a stale demand."

7. In *Mindanao Development Authority* v. *Court of Appeals*,[158] it was held as follows:

> "But, even granting, *arguendo*, that an express trust had been established, as claimed by the herein petitioner, it would appear that the trustee had repudiated the trust and the petitioner herein, the alleged beneficiary to the trust, did not take any action therein until after the lapse of 23 years. Thus, in its Reply to the Defendant's Answer, filed on June 29, 1969, the herein petitioner admitted that 'after the last war the City Engineer's Office of Davao City made repeated demands on the defendants for the delivery and conveyance to the Commonwealth Government, now the Republic of the Philippines, of the title of land in question, Lot 1846-C, but the defendant ignored and evaded the same.' Considering that the demand was made in behalf of the Commonwealth Government, it is obvious that the said demand was made before July 4, 1946, when the Commonwealth Government was dismantled and the Republic of the Philippines came into being. From 1946 to 1969, when the action for reconveyance was filed with the court, 23 years had passed. For sure, the period for enforcing the rights of the alleged beneficiary over the land in question after the repudiation of the trust by the trustee, had already prescribed."

### (12) Action may be barred by *res judicata*

In a case,[159] it was held that where the Court has specifically ordered the cancellation of the title of petitioners' (officers of the Meycauayan Corporation) predecessor-in-interest (Magueson Corporation), the judgment is binding upon Meycauayan for it simply stepped into the shoes of Magueson. Hence, Meycauayan's defiance of the judgment as shown by its filing of an action for reconveyance, quieting of title and damages involving the same parcels of land, ownership of which the Court already decided with finality in favor of the heirs of Manuel A. Roxas, constitutes indirect contempt under Section 3(d), Rule 71 of the Rules of Civil Procedure. Well-settled is the rule that when a court of competent jurisdiction has tried and

[158]GR No. L-49087, April 5, 1982, 113 SCRA 429.
[159]Roxas v. Court of Appeals, GR No. 138660, Feb. 5, 2004, 422 SCRA 101.

decided a right or fact, so long as the decision remains unreversed, it is conclusive on the parties and those in privity with them. More so where the Supreme Court has already decided the issue since the Court is the final arbiter of all justiciable controversies properly brought before it. This is in accordance with the doctrine of *res judicata* which has the following elements: (1) the former judgment must be final; (2) the court which rendered it had jurisdiction over the subject matter and the parties; (3) the judgment must be on the merits; and (4) there must be between the first and the second actions, identity of parties, subject matter and causes of action. The application of the doctrine of *res judicata* does not require absolute identity of parties but merely substantial identity of parties. There is substantial identity of parties when there is community of interest or privity of interest between a party in the first and a party in the second case even if the first case did not implead the latter. Meycauayan's act of filing a complaint for reconveyance, quieting of title and damages raising the same issues in its petition for intervention, which the Court had already denied, also constitutes forum shopping.

### (13) State not bound by prescription

The right of reversion or reconveyance to the State of public properties fraudulently registered and which are not capable of private appropriation or private acquisition, like navigable rivers which are parts of the public domain, does not prescribe.[160] The judgment of the registration court may be attacked at any time, either directly or collaterally, by the State which is not bound by any prescriptive period provided for by the Statute of Limitations under Article 1108, par. 4, of the Civil Code.[161]

### (14) Reconveyance of land acquired through homestead or free patent

The rule that a homestead patent or a free patent, once registered under the Property Registration Decree, becomes as indefeasible as a Torrens title issued through regular registration proceedings, is only true if the parcel of agricultural land granted by

[160]Republic v. Ruiz, GR No. L-23712, April 29, 1968, 23 SCRA 348; Republic v. Ramos, GR No. L-15484, Jan. 31, 1963, 7 SCRA 47.

[161]Martinez v. Court of Appeals, GR No. L-31271, April 29, 1974, 56 SCRA 647.

the government, after the requirements of the law had been complied with, was a part of the public domain. If it was not but a private land, the patent granted and the Torrens title issued upon the patent or homestead grant are a nullity.

Thus, if the registered owner, be he the patentee or his successor-in-interest, knew that the parcel of land described in the patent and in the Torrens title belonged to another who, together with his predecessors-in-interest, has always been in possession thereof, and if the patentee or his successor-in-interest were never in possession thereof, then the statute barring an action to cancel a Torrens title issued does not apply and the true owner may bring an action to have the ownership or title to the land judicially settled. The court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens title issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff.[162]

### (15) Proof of identity and ownership indispensable

In order to maintain an action to recover ownership of real property, the person who claims that he has a better right to it must prove not only his ownership of the same but he must also satisfactorily prove the identity thereof. Failing to fix the identity of the property he claims, petitioner's action for reconveyance must fail. But, assuming *in gratia argumenti* that the property which petitioner seeks to be reconveyed to him is the same as that covered by the title of respondent, petitioner must prove his ownership of the same. It has been held that the filing by the petitioner of a miscellaneous sales application for the land did not vest title in him over the property where there is no showing that his application was approved by the Lands Management Bureau or that a sales patent over the property was granted to him prior to the issuance of free patent and title in favor of respondent.[163]

### (16) Quieting of title, when proper

Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceedings which is apparently valid or effective but is in truth

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[162]Vital v. Anore, GR No. L-4136, Feb. 29, 1952, 90 Phil. 855.
[163]Javier v. Court of Appeals, GR No. 101177, March 28, 1994.

and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title. An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.[164]

A *cloud on title* is an outstanding claim or encumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect, but can be shown by extrinsic proof to be invalid or inapplicable to the estate in question. The remedy for removing a cloud on title is usually the means of an action to quiet title.[165]

An action to quiet title is proper in the following cases:

1. A person whose purchase of land is evidenced only by a private instrument may bring an action to compel the prior owner or his heirs to execute the corresponding conveyance in a public instrument. This is not an action for specific performance but may be considered as an action to remove the cloud cast on appellee's ownership as a result of appellant's refusal to recognize the sale made by his predecessor. Appellant's argument that the action has prescribed would be correct if they were in possession as the action to quiet title would then be an action for recovery of real property which must be brought within the statutory period of limitation governing such actions.[166]

2. A cloud is deemed to have been on the title of the private respondents where, despite the fact that the title had been transferred to them by the execution of the deed of sale and the delivery of the object of the contract, the petitioners adamantly refused to accept the tender of payment by the private respondents and steadfastly insisted that their obligation to transfer title had been rendered ineffective. Prescription thus cannot be invoked against the private respondents for it is aphoristic that an action to quiet title to property in one's possession is imprescriptible. The rationale for this rule has been stated as follows:

> "The owner of real property who is in possession thereof may wait until his possession is invaded or his title is attacked before taking steps to vindicate his right. A

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[164]Art. 476, Civil Code.
[165]Black's Law Dictionary, 6th Ed., 255.
[166]Gallar v. Husain, GR No. L-20954, May 29, 1967, 20 SCRA 186.

person claiming title to real property, but not in possession thereof, must act affirmatively and within the time provided by the statute. Possession is a continuing right as is the right to defend such possession. So it has been determined that an owner of real property in possession has a continuing right to invoke a court of equity to remove a cloud that is a continuing menace to his title. Such a menace is compared to a continuing nuisance or trespass which is treated as successive nuisances or trespasses, not barred by statute until continued without interruption for a length of time sufficient to affect a change of title as a matter of law."[167]

3. When one is disturbed in any form in his rights over an immovable by unfounded claims of others, he has the right to ask from the competent courts that their respective rights be determined not only to place the things in their proper place, but also to insure that the person with the better right may introduce the improvements he may desire, or use and even to abuse the property as he deems best.[168]

### (17) Trusts, generally

Trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. Trusts are either express or implied. An express trust is created by the direct and positive acts of the parties, by some writing or deed or will or by words evidencing an intention to create a trust. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.

On the other hand, implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties. In turn, implied trusts are either resulting or constructive trusts.

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[167]Pingol v. Court of Appeals, GR No. 102909, Sept. 6, 1993, 226 SCRA 239.
[168]Bautista v. Exconde, GR No. 47168, June 29, 1940, 70 Phil. 398.

Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.[169]

### *1. Prescription arising from implied or constructive trust*

The rule that a trustee cannot acquire by prescription ownership over property entrusted to him until and unless he repudiates the trust, applies to express trusts and resulting implied trusts. However, in constructive implied trusts, prescription may supervene even if the trustee does not repudiate the relationship. Necessarily, repudiation of the said trust is not a condition precedent to the running of the prescriptive period.[170]

The prescriptive period for the action to reconvey the title to real property arising from an implied or constructive trust is ten years, counted from the date of the issuance of the certificate of title over the real property.[171]

Under the Civil Code, just as an implied or constructive trust is an offspring of the law (Art. 1456, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and *vis-a-vis* prescription, Article 1144 of the Civil Code provides:

Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

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[169]Esconde v. Court of Appeals, GR No. 103635, Feb. 1, 1996; O'Laco v. Co Cho Chit, GR No. 58010, March 31, 1993, 220 SCRA 656.

[170]*Ibid.*

[171]Aznar Brothers Realty Co. v. Aying, GR No. 144773, May 16, 2005; Amerol v. Bagumbaran, GR No. L-33261, Sept. 30, 1987, 154 SCRA 396.

(2) Upon an obligation created by law;

(3) Upon a judgment.

An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years reckoned from the issuance of the Torrens title over the property. However, if the person claiming to be then owner of the land is in actual possession thereof, the right to seek reconveyance does not prescribe.[172]

### *2. Illustrative cases*

In *Amerol* v. *Bagumbaran*,[173] the land in question was patented and titled in the name of respondent through false pretenses by fraudulently misrepresenting that he was the occupant and possessor of the land when he was not because it was petitioner who was the actual occupant and prior applicant for a free patent over said land. It was held that the act of respondent created an implied trust in favor of the actual possessor of the said property. Citing Article 1456 of the Civil Code which provides:

> "ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

the Court ruled that notwithstanding the irrevocability of the Torrens title already issued in his name, respondent may still be compelled to reconvey the property to petitioner. For "the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds title in bad faith." Reconveyance does not work to set aside and put under review anew the findings of facts of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, in this case the title thereof, which has been wrongfully or erroneously registered in another person's name to the rightful owner. Petitioner's action for reconveyance, in the nature of a counterclaim interposed in his answer to the complaint for recovery of possession instituted by the respondent, was thus held not to have prescribed. Between August 16, 1955,

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[172]Olviga v. Court of Appeals, GR No. 104813, Oct. 21, 1993, 227 SCRA 330.
[173]*Supra*.

the date of the issuance of the original certificate of title in the name of the respondent, and December 4, 1964 when the period of prescription was interrupted by the filing of the answer *cum* counterclaim, is less than ten years.

In *Aznar Brothers Realty Co*. v. *Aying*,[174] the facts showed that petitioner acquired the entire parcel of land in dispute on the mistaken belief that all the heirs (some of whom are the respondents) had executed the deed of extrajudicial partition with sale in its favor. The case was decided on the basis of Article 1456 above-quoted. The Court, citing *Philippine National Bank* v. *Court of Appeals*,[175] expounded:

> "A deeper analysis of Article 1456 reveals that it is not a trust in the technical sense for in a typical trust, confidence is reposed in one person who is named a trustee for the benefit of another who is called the *cestui que trust*, respecting property which is held by the trustee for the benefit of the *cestui que trust*. A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary."

Since the case presented a *constructive* implied trust, the Court held that the action for reconveyance filed by the respondents who had actual knowledge of the sale to petitioner as far back as 1967 was barred by prescription since they had only up to 1977 to bring the action. But as to the other respondents, they were able to file the action for reconveyance well within the ten-year period reckoned from 1991 when they were told *for the first time* by petitioner to vacate the disputed property on account of the sale to it of said property.

Where the land claimed in defendant's counterclaim was registered in the name of plaintiff's predecessor-in-interest since 1928 and it was only on November 19, 1952, date of defendant's answer, that he sought its reconveyance to him, and there is no proof of irregular-

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[174]GR No. 144773, May 16, 2005.
[175]GR No. 97995, January 21, 1993, 217 SCRA 347.

ity in the issuance of title, nor in the proceedings incident thereto, nor is there any claim that fraud attended the issuance of said title, and the period of one year within which intrinsic fraud can be claimed has long expired, it was held that plaintiff's title became indefeasible under Section 38, Act No. 496, as amended by Act No. 3630.[176]

**06. Action for damages.**

An action for reconveyance is not feasible where the property has already passed into the hands of an innocent purchaser for value. But the interested party is not without a remedy — he can file an action for *damages* against the persons responsible for depriving him of his right or interest in the property.

As earlier stated, a Torrens title can be attacked only for fraud within one year after the date of the issuance of the decree of registration. Such attack must be direct and not by collateral proceeding. The title represented by the certificate cannot be changed, altered, modified, enlarged or diminished in a collateral proceeding. After one year from the date of the decree, the sole remedy of the landowner whose property has been wrongfully or erroneously registered in another's name is not to set aside the decree but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance. However, if the property has passed into the hands of an innocent purchaser for value, the remedy is an action for damages.[177]

When no answer in writing nor any opposition is made to an application for registration of property, all the allegations contained in the application shall be held as confessed by reason of the absence of denial on the part of the opponent. A person who has not challenged an application for registration of land even if the appeal afterwards interposed is based on the right of dominion over the same land, cannot allege damage or error against the judgment ordering the registration inasmuch as he did not allege or pretend to have any right to such land.[178]

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[176]Paterno v. Salud, GR No. L-15620, Sept. 30, 1963, 9 SCRA 81.

[177]Gonzales v. Intermediate Appellate Court, GR No. L-69622, Jan. 29, 1988, 157 SCRA 587.

[178]Esconde v. Barlongay, GR No. L-67583, July 31, 1987, 152 SCRA 603; Cabañas v. Director of Lands, GR No. L-4205, March 16, 1908, 10 Phil. 393.

An action for damages should be brought within ten years from the date of the issuance of the questioned certificate of title pursuant to Article 1144 of the Civil Code.[179]

**07. Action for reversion.**

Reversion connotes restoration of public land fraudulently awarded or disposed of to the mass of the public domain and may again be the subject of disposition in the manner prescribed by law to qualified applicants. It is instituted by the government, through the Solicitor General. But an action for cancellation, not reversion, is proper where private land had been subsequently titled, and the party plaintiff in this case is the prior rightful owner of the property.

The Director of Lands has a continuing authority to conduct investigation, from time to time, to determine whether or not public land has been fraudulently awarded or titled to the end that the corresponding certificate of title be cancelled and the land reverted to the public domain. And the fact that the title sought to be cancelled has, technically speaking, become indefeasible is not a hindrance to said investigation. For the government is not estopped by the error or mistake of its agents, nor barred by prescription.

The Court unanimously stressed in *Piñero* v. *Director of Lands*:[180] "It is to the public interest that one who succeeds in fraudulently acquiring title to a public land should not be allowed to benefit therefrom, and the State should, therefore, have an ever existing authority, thru its duly authorized officers, to inquire into the circumstances surrounding the issuance of any such title, to the end that the Republic, thru the Solicitor General or any other officer who may be authorized by law, may file the corresponding action for the reversion of the land involved to the public domain, subject thereafter to disposal to other qualified persons in accordance with law. In other words, the indefeasibility of a title over land previously public is not a bar to an investigation by the Director of Lands as to how such title has been acquired, if the purpose of such investigation is to determine whether or not fraud had been committed in securing such title in order that the appropriate action for reversion may be filed by the government."[181]

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[179]Castillo v. Madrigal, GR No. 62650, June 27, 1991, 198 SCRA 556.
[180]GR No. L-36507, June 14, 1974, 57 SCRA 386.
[181]Republic v. Lozada, *supra*.

Where the land covered by the homestead application of petitioner was still within the forest zone or under the jurisdiction of the Bureau of Forestry, the Director of Lands had no jurisdiction to dispose of said land under the provisions of the Public Land Act, and the petitioner acquired no right to the land.[182] It follows that "if a person obtains a title under the Public Land Act which includes, by oversight, lands which cannot be registered under the Torrens system, or when the Director of Lands did not have jurisdiction over the same because it is a public forest, the grantee does not, by virtue of the said certificate of title alone, become the owner of the land illegally included."[183]

Thus, where it appeared that 1,976 square meters of the 3,384 square meters covered by TCT No. 3913 fell within a reservation for park purposes, it was held that the title should be annulled but only with respect to the aforesaid area.[184]

### (1) Action for reversion is instituted by the Solicitor General

Under Section 35, Chapter XII, Title III of EO No. 292, the Administrative Code of 1987, it is provided that the Office of the Solicitor General shall represent the government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. Specifically, it shall represent the government in all land registration and related proceedings and institute actions for the reversion to the State of lands of the public domain and improvements thereon and all lands held in violation of the Constitution.

Section 101 of the Public Land Act (CA No. 141, as amended) provides that "all actions for the reversion to the government of lands of the public domain, or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines." Consequently, an applicant for a free patent may not bring such action or any action which would have the effect of cancelling a free patent and

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[182]Alfafara v. Mapa, GR No. L-7042, May 28, 1954, 95 Phil. 125.

[183]Republic v. Court of Appeals and Alpuerto, GR No. L-45202, Sept. 11, 1980; Republic v. Animas, GR No. L-37682, March 29, 1974, 56 SCRA 499; Ledesma v. Municipality of Iloilo, GR No. 26337, Dec. 17, 1926, 49 Phil. 769.

[184]Palomo v. Court of Appeals, GR No. 95608, Jan. 21, 1997, 334 Phil. 357.

the corresponding certificate of title issued on the basis thereof, with the result that the land covered thereby will again form part of the public domain. This is especially true where such party does not claim the land to be his private property. In fact, by his application for a free patent, he formally acknowledges and recognizes the land to be a part of the public domain. Hence, even if the land were declared reverted to the public domain, he does not automatically become owner thereof. He is a mere public land applicant like others who might apply for the same.[185]

An action for reversion is slightly different from escheat proceeding, but in its effects they are the same. They only differ in procedure. Escheat proceedings may be instituted as a consequence of a violation of the Constitution which prohibits transfers of private agricultural lands to aliens, whereas an action for reversion is expressly authorized by the Public Land Act.[186]

### (2) Grounds for reversion

Generally, an action for reversion may be instituted by the government, through the Solicitor General, in all cases where lands of the public domain and the improvements thereon and all lands are held in violation of the Constitution.[187]

Section 24 of the Public land Act (CA No. 141, as amended) provides that "Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State." The provisions referred to state:

> "SEC. 118. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or

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[185]Sumail v. Judge of the CFI of Cotabato, GR No. L-8278, April 30, 1955, 96 Phil. 946.

[186]Rellosa v. Gaw Chee Hun, GR No. L-1411, Sept. 29, 1953, 93 Phil. 827.

[187]Sec. 35, Chapter XII, Title III, EO No. 292.

homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Environment and Natural Resources, which approval shall not be denied except on constitutional and legal grounds. (As amended by CA No. 456, approved June 8, 1939)"

"SEC. 120. Conveyances and encumbrances made by persons belonging to the so-called 'non-Christian tribes,' when proper, shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument of conveyance or encumbrance is written. Conveyances and encumbrances made by illiterate non-Christians or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by the said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration. (As amended by RA No. 3872, approved June 18, 1964)

SEC. 121. Except with the consent of the grantee and the approval of the Secretary of Environment and Natural Resources, and solely for commercial, industrial, educational, religious or charitable purposes or for a right of way, no corporation, association, or partnership may acquire or have any right, title, interest, or property right whatsoever to any land granted under the free patent, homestead or individual sale provisions of this Act or to any permanent improvement on such land.

The provisions of Section 124 of this Act to the contrary notwithstanding, any acquisition of such land, rights thereto or improvements thereon by a corporation, asso-

ciation, or partnership prior to the promulgation of this Decree for the purposes herein stated is deemed valid and binding: *Provided*, That no final decision of reversion of such land to the State has been rendered by a court: *And provided, further,* That such acquisition is approved by the Secretary of Environment and Natural Resources within six (6) months from the effectivity of this Decree. (As amended by CA No. 615 and PD No. 763, promulgated August 6, 1975)

SEC. 122. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated, or transferred, except to persons, corporations, associations, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefor by their charters.

Except in cases of hereditary succession, no land or any portion thereof originally acquired under the free patent, homestead, or individual sale provisions of this Act, or any permanent improvement on such land, shall be transferred or assigned to any individual, nor shall such land or any permanent improvement thereon be leased to such individual, when the area of said land, added to that of his own, shall exceed one hundred and forty-four hectares. Any transfer, assignment, or lease made in violation hereof shall be null and void. (As amended by CA No. 615)

SEC. 123. No land originally acquired in any manner under the provisions of any previous Act, ordinance, royal order, royal decree, or any other provision of law formerly in force in the Philippines with regard to public lands, *terrenos baldios y realengos*, or lands of any other denomination that were actually or presumptively of the public domain, or by royal grant or in any other form, nor any permanent improvement on such land, shall be encumbered, alienated, or conveyed, except to persons, corpo-rations or associations who may acquire land of the public domain under this Act or to corporate bodies organized in the Philippines whose charters authorize them to do so: *Provided*, *however,* That this prohibition shall not be applicable to the conveyance or acquisition by reason of hereditary succession duly acknowledged and legalized by

competent courts; *Provided, further*, That in the event of the ownership of the lands and improvements mentioned in this section and in the last preceding section being transferred by judicial decree to persons, corporations or associations not legally capacitated to acquire the same under the provisions of this Act, such persons, corporations, or improvements shall be obliged to alienate said lands or improvements to others so capacitated within the precise period of five years; otherwise, such property shall revert to the Government."

Parenthetically, under the present Constitution, it should be noted that, with the exception of agricultural lands, all other natural resources shall not be alienated,[188] and that private corporations or associations may not hold alienable lands of the public domain except by lease for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.[189]

### (3) State not barred by *res judicata*

A patent is void at law if the officer who issued the patent had no authority to do so. If a person obtains a title under the Public Land Act which includes, by mistake or oversight, lands which cannot be registered under the Torrens system, or when the Director of Lands did not have jurisdiction over the same because it is public forest, the grantee does not, by virtue of said certificate of title alone, become the owner of the land.[190] The certificate of title issued pursuant to a void patent may be ordered cancelled and the land reverted to the State through an action for reversion filed by the Solicitor General. Similarly, an action for cancellation of title and reversion may be filed by the Solicitor General where the land decreed by the registration court is inalienable as where the same is part of the forest zone. This action cannot be barred by the prior judgment of said court since it had no jurisdiction over the subject matter. And

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[188]Sec. 2, Art. XII.
[189]Sec. 3, *ibid*.
[190]Republic v. De la Cruz, GR No. L-35644, Sept. 30, 1975, 67 SCRA 221.

if there was no such jurisdiction, then the principle of *res judicata* does not apply.[191]

**(4) State not barred by estoppel**

In an action for reversion, it would not do to argue that the subject land being a timberland is urged only belatedly, especially so where the Director of Forest Development was not notified of the proceedings leading to its registration. Under the law, the Director of Forest Development is the official clothed with jurisdiction and authority over the demarcation, protection, management, reproduction, reforestation, occupancy, and use of all forests and forest resources. But even granting that the said official was negligent, the doctrine of estoppel cannot operate against the State. "It is a well-settled rule in our jurisdiction that the Republic or its government is usually not estopped by mistake or error on the part of its officials or agents."[192] Consequently, the State may still seek the cancellation of the title issued pursuant to Section 101 of the Public Land Act. Such title has not become indefeasible, for prescription cannot be invoked against the State.[193]

**08. Cancellation of title.**

In contrast to an action for reversion which is filed by the government, through the Solicitor General, an action for cancellation is initiated by a private property usually in a case where there are two titles issued to different persons for the same lot. When one of the two titles is held to be superior over the other, one should be declared null and void and ordered cancelled. If a party is adjudged to be the owner, pursuant to a valid certificate of title, said party is entitled to the possession of the land covered by the title. The land does not "revert" to the mass of the public domain, as in an action for reversion, but is declared as lawfully belonging to the party whose certificate of title is held superior over the other. The judgment would

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[191]Republic v. Court of Appeals and Alpuerto, *supra*; Municipality of Daet v. Court of Appeals, GR No. L-35861, Oct. 18, 1979, 93 SCRA 503; Mendoza v. Arrieta, GR No. L-32599, June 29, 1979, 91 SCRA 113.

[192]Manila Lodge No. 761 v. Court of Appeals, 73 SCRA 166; Republic v. Marcos, 52 SCRA 238; Luciano v. Estrella, GR No. L-31622, Aug. 31, 1970, 34 SCRA 769; Republic v. Court of Appeals and Arquillo, GR No. 62572, Feb. 19, 1990, 182 SCRA 290.

[193]Republic v. Animas, *supra*.

direct the defeated party to vacate the land in question, and deliver possession thereof to the lawful owner of the land.[194]

The hoary principle in this jurisdiction is that where two certificates of title are issued to different persons covering the same land in whole or in part, the earlier in date must prevail as between the original parties, and in case of successive registration where more than one certificate is issued over the land, the person holding under the prior certificate is entitled to the land as against the person who relies on the second certificate. To illustrate, where OCT No. 14043 upon which the defendants-appellants base their claim of ownership over the land in question was issued on April 1, 1957 on the basis of cadastral proceedings, while OCT No. 1039 upon which plaintiffs-appellees base a similar claim was issued on November 27, 1931 pursuant to a free patent, the latter certificate of title should prevail, and the former should be cancelled. The reason for this is that once a patent granted in accordance with the Public Land Act is registered, the certificate of title issued in virtue of said patent has the force and effect of a Torrens title issued through regular registration proceedings.[195]

**09. Recovery from the Assurance Fund.**

Section 95 of the Property Registration Decree provides:

> "SEC. 95. *Action for compensation from funds.* — A person who, without negligence on his part, sustains loss or damage, or is deprived of land or any estate or interest therein in consequence of the bringing of the land under the operation of the Torrens system of arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damages to be paid out of the Assurance Fund."

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[194]Pajomayo v. Manipon, GR No. L-33676, June 30, 1971, 39 SCRA 676.
[195]*Ibid.*

As explained by the Supreme Court, public policy and public order demand not only that litigations must terminate at some definite point but also that titles over lands under the Torrens system should be given stability for on it greatly depends the stability of the country's economy. *Interest republicae ut sit finis litium*. However, this conclusiveness of judgment in the registration of lands is not absolute. It admits of exception. Public policy also dictates that those unjustly deprived of their rights over real property by reason of the operation of our registration laws be afforded remedies. Thus, the aggrieved party may file a suit for reconveyance of property or a personal action for recovery of damages against the party who registered his property through fraud, or in case of insolvency of the party who procured the registration through fraud, an action against the Treasurer of the Philippines for recovery of damages from the Assurance Fund. Through these remedial proceedings, the law, while holding registered titles indefeasible, allows redress calculated to prevent one from enriching himself at the expense of other. Necessarily, without setting aside the decree of title, the issues raised in the previous registration case are relitigated, for purposes of reconveyance of said title or recovery of damages.[196]

### (1) Requisites for recovery

The requisites for recovery from the Assurance Fund are: (a) that a person sustains loss or damage, or is deprived of any estate or interest in land, (b) on account of the bringing of land under the operation of the Torrens system arising after original registration, (c) through fraud, error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book, (d) without negligence on his part, and (e) is barred or precluded from bringing an action for the recovery of such land or estate or interest therein.

It is necessary that there be no negligence on the part of the party sustaining any loss or damage or being deprived of any land or interest therein by the operation of the Torrens system after original registration. Thus, where plaintiff is solely responsible for the plight in which he finds himself, the Director of Lands and the National Treasurer of the Philippines are exempt from any liability.[197]

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[196]People v. Cainglet, GR No. L-21493, April 29, 1966, 16 SCRA 748.

[197]Development Bank of the Philippines v. Bautista, GR No. L-21362, Nov. 29, 1968, 26 SCRA 366.

### (2) Deprivation of land or interest therein

To afford relief from the Assurance Fund, the plaintiff must have sustained loss or damage or deprived of any estate or interest in the land. In the case of *National Treasurer of the Philippines* v. *Perez*,[198] the Supreme Court denied the claim of private respondent for damages against the Assurance Fund, stating:

> "As the donation is in the nature of a *mortis causa* disposition, the formalities of a will should have been complied with under Article 728 of the Civil Code, otherwise, the donation is void and would produce no effect. x x x The donation in the case at bar was only embodied in a public instrument and was not executed in accordance with the formalities of a will. Therefore, it could not have transferred ownership of the disputed property to the private respondent and its subsequent annotation of adverse claim in Transfer Certificate of Title No. 43710 did not produce any effect whatsoever. Consequently, the private respondent cannot claim the property, especially after the same had been foreclosed and sold at public auction in favor of PBTC. Necessarily therefore, no damages can also be awarded to said respondent from the Assurance Fund since as far as the law is concerned, no donation existed which the Register of Deeds failed to annotate on the new title of the property."

### (3) Requirement of good faith

It is a condition *sine qua non* that the person who brings an action for damages against the Assurance Fund be the registered owner, and, as to holders of transfer certificates of title, that they be innocent purchasers in good faith and for value. Where it appears that when the plaintiff purchased the lands at public auction, it had already direct notice or advice that the property was under litigation and that the title was judicially questioned, plaintiff cannot claim to be an innocent purchaser in good faith in acquiring the property. Not having acquired any right which may be protected in connection with said lands, plaintiff is not entitled to any indemnity for damages from the Assurance Fund.[199]

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[198]GR No. L-61023, Aug. 22, 1984, 131 SCRA 264.
[199]La Urbana v. Bernardo, GR No. 41915, Jan. 8, 1936, 62 Phil. 790.

To obtain a judgment for damages against the Assurance Fund, by reason of the deprivation or loss of registered land, Section 95 requires that the person who claims damages should not have been negligent in acquiring the property or in obtaining the registration thereof in his name. Thus, plaintiff's negligence is manifest where, having knowledge of the pending litigations and notices of *lis pendens* affecting the lands in dispute, it nevertheless proceeded to take the risk of purchasing property in litigation. It must therefore suffer the consequences of its own acts.[200]

## 10. Annulment of judgments or final orders and resolutions.

Rule 47 of the Rules of Court governs the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

### (1) Grounds for annulment

The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.[201]

If the ground for annulment is lack of jurisdiction, another remedy is certiorari under Rule 65, in which case, the Court of Appeals does not have exclusive jurisdiction since the Supreme Court also has such jurisdiction.[202]

### (2) Action by the court

Should the court find no substantial merit in the petition, the same may be dismissed outright with specific reasons for such dismissal.

Should *prima facie* merit be found in the petition, the same shall be given due course and summons shall be served on the respondent.[203]

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[200]*Ibid*.
[201]Sec. 2, Rule 47.
[202]Feria and Noche, Remedial Law, Vol. 2, 220.
[203]Sec. 5, Rule 47.

**(3) Effect of judgment**

A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.[204]

**11. Criminal prosecution.**

The State may criminally prosecute for perjury the party who obtains registration through fraud, such as by stating false assertions in the application for registration, sworn answer required of applicants in cadastral proceedings, or application for public land patent. This is rightly so, for to give immunity from prosecution to those successful in deceiving the registration court or administrative agency would, in effect, be putting a premium on perjury. It is the policy of the law that judicial proceedings and judgments shall be fair and free from fraud, and that litigants and parties be encouraged to tell the truth, and that they be punished if they do not. The prosecution for falsification or perjury is a proceeding *in personam* which inquires into the criminal liability of the accused.

On the matter of disposition of public lands, Section 91 of the Public Land Act provides that "the statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and any false statement therein or omission of facts altering, changing, or modifying the consideration of the facts set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title, or permit granted."

**SEC. 33. *Appeal from judgment, etc.* — The judgment and orders of the court hearing the land registration case are appealable to the Court of Appeals or to the Supreme Court in the same manner as in ordinary actions.**

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[204]Sec. 7, *ibid.*

**01. Modes of appeal to the Court of Appeals or Supreme Court.**

An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by the Rules of Court to be appealable.

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari*. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.[205]

**02. Period of ordinary appeal.**

The appeal to the Court of Appeals shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.[206]

A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented

[205]Sec. 2, Rule 41.
[206]Sec. 3, *ibid.*

at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.

**03. Period to file petition for review on *certiorari*.**

A party desiring to appeal by certiorari from a judgment or final order or resolution of the Regional Trial Court may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.[207]

The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.[208]

**04. Appeal period standardized.**

In the event a motion for reconsideration is filed and the motion is denied, the party litigant has a fresh period of fifteen (15) days from receipt of the order denying the same to file his notice of appeal or petition. As expressed in *Neypes* v. *Court of Appeals*:[209]

> "To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration."

**SEC. 34. *Rules of procedure.* — The Rules of Court shall, insofar as not inconsistent with the provision of this Decree, be applicable to land registration and cadastral cases by analogy or in a suppletory character and whenever practicable and convenient.**

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[207]Sec. 1, Rule 45.
[208]Sec. 2, *ibid*.
[209]GR No. 141524, Sept. 14, 2005.

**01. Applicability of the Rules of Court.**

The Rules of Court is applicable to land registration and cadastral cases (a) by analogy or in a suppletory character and (b) whenever practicable and convenient.[210] The usual rules of practice, procedure, and evidence govern registration proceedings.[211]

A registration court has no jurisdiction to decree again the registration of land already decreed in an earlier land registration case and a second decree for the same land is null and void.[212] In the event of a second registration case involving the same land, the first decreed owner may file a motion to dismiss said case. Section 34 of the Property Registration Decree provides that the Rules of Court, insofar as not inconsistent with the provisions of the Decree, shall be applicable in land registration and cadastral cases by analogy or in a suppletory character and whenever practicable and convenient. As a motion to dismiss is necessary for the expeditious termination of a subsequent registration case involving the same property as in the first, said motion which is a remedy authorized by the Rules of Court can be availed of.[213]

In an action for specific performance with damages, the purchaser may file, as an incident therein, a motion for the issuance of an order from the Regional Trial Court to compel the holder of the duplicate certificates of title to surrender the same to the Register of Deeds.[214]

## II. CADASTRAL REGISTRATION PROCEEDINGS

### A. ORDER FOR SPEEDY SETTLEMENT AND ADJUDICATION; SURVEY; NOTICES

**SEC. 35. *Cadastral Survey preparatory to filing of petition.* —**

**(a) When in the opinion of the President of the Philippines public interest so requires that title to any unregistered lands be**

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[210]Abellera v. Farol, GR No. 48480, July 30, 1943, 74 Phil. 284.

[211]Director of Lands v. Roman Catholic Archbishop of Manila, GR No. 14869, Oct. 27, 1920, 41 Phil. 120.

[212]Duran v. Olivia, GR No. L-16589, Sept. 29, 1961, 3 SCRA 154; Rojas v. City of Tagaytay, GR No. L-13333, Nov. 24, 1959, 106 Phil. 502.

[213]Duran v. Olivia, *supra*.

[214]Ligon v. Court of Appeals, GR No. 107751, June 1, 1995, 244 SCRA 693.

**settled and adjudicated, he may to this end direct and order the Director of Lands to cause to be made a cadastral survey of the lands involved and the plans and technical description thereof prepared in due form.**

**(b) Thereupon, the Director of Lands shall give notice to persons claiming any interest in the lands as well as to the general public, of the day on which such survey will begin, giving as fully and accurately as possible the description of the lands to be surveyed. Such notice shall be published once in the Official Gazette, and a copy of the notice in English or the national language shall be posted in a conspicuous place on the bulletin board of the municipal building of the municipality in which the lands or any portion thereof is situated. A copy of the notice shall also be sent to the mayor of such municipality as well as to the barangay captain and likewise to the Sangguniang Panlalawigan and the Sangguniang Bayan concerned.**

**(c) The Geodetic Engineers or other employees of the Bureau of Lands in charge of the survey shall give notice reasonably in advance of the date on which the survey of any portion of such lands is to begin, which notice shall be posted in the bulletin board of the municipal building of the municipality or barrio in which the lands are situated, and shall mark the boundaries of the lands by monuments set up in proper places thereon. It shall be lawful for such Geodetic Engineers and other employees to enter upon the lands whenever necessary for the purposes of such survey or the placing of monuments.**

**(d) It shall be the duty of every person claiming an interest in the lands to be surveyed, or in any parcel thereof, to communicate with the Geodetic Engineer upon his request therefor all information possessed by such person concerning the boundary lines of any lands to which he claims title or in which he claims any interest.**

**(e) Any person who shall willfully obstruct the making of any survey undertaken by the Bureau of Lands or by a licensed Geodetic Engineer duly authorized to conduct the survey under this Section, or shall maliciously interfere with the placing of any monument or remove such monument, or shall destroy or remove any notice of survey posted on the land pursuant to law, shall be punished by a fine of not more than one thousand pesos or by imprisonment for not more than one year, or both.**

## B. PETITION; LOT NUMBERS

**SEC. 36. *Petition for registration.* — When the lands have been surveyed or plotted, the Director of Lands, represented by the Solicitor General, shall institute original registration proceedings by filing the necessary petition in the Court of First Instance of the place where the land is situated against the holders, claimants, possessors, or occupants of such lands or any part thereof, stating in substance that public interest requires that the title to such lands be settled and adjudicated and praying that such titles be so settled and adjudicated:**

**The petition shall contain a description of the lands and shall be accompanied by a plan thereof, and may contain such other data as may serve to furnish full notice to the occupants of the lands and to all persons who may claim any right or interest therein.**

**Where the land consists of two or more parcels held or occupied by different persons, the plan shall indicate the boundaries or limits of the various parcels as accurately as possible. The parcels shall be known as "lots" and shall on the plan filed in the case be given separate numbers by the Director of Lands, which numbers shall be known as "cadastral lot numbers." The lots situated within each municipality shall, as far as practicable, be numbered consecutively beginning with number "one," and only one series of numbers shall be used for that purpose in each municipality. However in cities or townsites, a designation of the landholdings by blocks and lot numbers may be employed instead of the designation by cadastral lot numbers.**

**The cadastral number of a lot shall not be changed after final decision has been entered decreasing the registration thereof, except by order of court. Future subdivisions of any lot shall be designated by a letter or letters of the alphabet added to the cadastral number of the lot to which the respective subdivisions pertain. The letter with which a subdivision is designated shall be known as its "cadastral letter": *Provided, however,* That the subdivisions of cities or town-sites may be designated by blocks and lot numbers.**

## C. ANSWER

**SEC. 37. *Answer to petition in cadastral proceedings.* — Any claimant in cadastral proceedings, whether named in the notice or not, shall appear before the court by himself or by some other**

**authorized person in his behalf, and shall file an answer on or before the date of initial hearing or within such further time as may be allowed by the court. The answer shall be signed and sworn to by the claimant or by some other authorized person in his behalf, and shall state whether the claimant is married or unmarried, and if married, the name of the spouse and the date of marriage, his nationality, residence and postal address, and shall also contain:**

**(a) The age of the claimant;**

**(b) The cadastral number of the lot or lots claimed, as appearing on the plan filed in the case by the Director of Lands, or the block and lot numbers, as the case may be;**

**(c) The name of the barrio and municipality in which the lots are situated;**

**(d) The names and addresses of the owners of the adjoining lots so far as known to the claimant;**

**(e) If the claimant is in possession of the lots claimed and can show no express grant of the land by the government to him or to his predecessors-in-interest, the answer shall state the length of time he has held such possession and the manner in which it has been acquired, and shall also state the length of time, as far as known, during which the predecessors, if any, held possession;**

**(f) If the claimant is not in possession or occupation of the land, the answer shall fully set forth the interest claimed by him and the time and manner of his acquisition;**

**(g) If the lots have been assessed for taxation, their last assessed value; and**

**(h) The encumbrances, if any, affecting the lots and the names of adverse claimants, as far as known.**

## D. HEARING; JUDGMENT; DECREE

**SEC. 38. *Hearing, Judgment, Decree.* — The trial of the case may occur at any convenient place within the province in which the lands are situated and shall be conducted, and orders for default and confessions entered, in the same manner as in ordinary land registration proceedings and shall be governed by the same rules. All conflicting interests shall be adjudicated by the court and decrees awarded in favor of the persons entitled to the lands or to parts thereof and such decrees shall be the basis for issuance of**

**original certificates of title in favor of said persons and shall have the same effect as certificates of title granted on application for registration of land under ordinary land registration proceedings.**

**01. Nature and purpose of cadastral proceedings.**

Under the cadastral system, pursuant to initiative on the part of the government, titles for all the land within a stated area are adjudicated whether or not the people living within the area desire to have titles issued. The purpose, as stated in Section 35(a), is to serve the public interest by requiring that the titles to any unregistered lands "be settled and adjudicated."[1]

The government initiates a cadastral case, compelling all claimants in a municipality to litigate against one another regarding their respective claims of ownership. By this plan, all the private lands in a town are registered in one single collective proceeding. Thus, the piecemeal and isolated registration of lands, so inadequate in more ways than one, is avoided. The principal aim is to settle as much as possible all disputes over land and to remove all clouds over land titles, as far as practicable, in a community. To attain this purpose, the cadastral court should allow all claimants ample freedom to ventilate whatever right they may assert over real estate, permitting them, in keeping with the law of evidence, to offer proofs in support of their allegations. To countenance the contrary opinion, by suppressing the presentation of evidence in support of claims, would but serve to perpetuate conflicts over land, for such stifled affirmations of ownership will fester like wounds unskillfully treated. No sufficient leeway having been given all claimants to demonstrate the strength and consistency of their alleged rights, the stability of decrees of title is jeopardized.[2]

The object of a cadastral petition is that the title to the various lots embraced in the survey may be settled and adjudicated. It is in the nature of a proceeding *in rem*, promoted by the Director of Lands, somewhat akin to a judicial inquiry and investigation leading to a judicial decree. In one sense, there is no plaintiff and there is no defendant. In another sense, the government is the plaintiff and all

[1]Government of the Philippine Islands v. Abural, GR No. 14167, Aug. 14, 1919, 39 Phil. 996.

[2]Abellera v. Farol, GR No. 48480, July 30, 1943, 74 Phil. 284.

the claimants are defendants. The usual rules of practice, procedure, and evidence govern registration proceedings.[3]

## 02. Procedure leading to the adjudication of property through cadastral proceedings.

Section 35 of the Property Registration Decree provides for the procedure for the settlement and adjudication of unregistered lands through cadastral proceedings as follows:

### *1. Cadastral survey preparatory to filing of petition*

When in the opinion of the President, public interest so requires that title to any unregistered lands be settled and adjudicated, he may direct and order the Director of Lands to cause to be made a cadastral survey of the lands involved. Thereupon, the Director of Lands shall give notice to persons claiming any interest in the lands and to the general public of the day of the survey, such notice to be: (a) published in the Official Gazette, (b) posted in the places indicated, and (c) sent to the municipal mayor, *barangay* captain, *sangguniang panlalawigan* and *sangguniang bayan* concerned.

The geodetic engineers or other employees of the Lands Management Bureau shall give advance notice to survey claimants of the date of the survey of specific portions of the land, to be posted in appropriate places. The geodetic engineers may enter upon the lands subject of the survey and mark the boundaries thereof by the placing of monuments. Every claimant shall indicate to the surveyor the boundary lines of the property over which he claims title or interest.

### *2. Filing of petition for registration*

When the lands have been surveyed or plotted, the Director of Lands, represented by the Solicitor General, shall institute original registration proceedings by filing the necessary petition in the Regional Trial Court of the place where the land is situated against the holders, claimants, possessors, or occupants of such lands or any part thereof, stating that public interest requires that the title to such lands be settled and adjudicated and praying that such titles be so settled and adjudicated.

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[3]Director of Lands v. Roman Catholic Archbishop of Manila, GR No. 14869, Oct. 27, 1920, 41 Phil. 120.

The petition shall contain a description of the lands, accompanied by a plan thereof, and include such other data as to facilitate notice to all occupants and persons having a claim or interest therein.

The parcels shall be known as "lots" and shall on the plan be given "cadastral lot numbers." The cadastral number of a lot shall not be changed after final decision has been entered decreeing the registration thereof, except by order of court. Future subdivisions of any lot shall be designated by a letter or letters of the alphabet added to the cadastral number of the lot to which the respective subdivisions pertain. The subdivisions of cities or town-sites may be designated by blocks and lot numbers.

### *3. Notice of survey and publication*

The Director of Lands shall give notice to persons claiming any interest in the lands as well as to the general public of the day on which the survey will begin, giving an accurate description of the lands to be surveyed. The notice shall be published once in the Official Gazette, and posted in the bulletin board of the municipally. A copy of the notice shall also be sent to the municipal mayor, the *barangay* captain, the *sangguniang panlalawigan* and *sangguniang bayan* concerned.

It shall be lawful for the surveyors to enter upon the lands for the placing of monuments. Every claimant must inform the surveyors of the extent and boundary lines of the particular portion claimed by him.

### *4. Filing of answer*

Any claimant, whether named in the notice or not, shall file an answer on or before the date of initial hearing or within such further time as may be allowed by the court. The answer shall be signed and sworn to by the claimant or by some other authorized person in his behalf, and shall state his status, whether married or unmarried, his nationality and postal address. The answer shall also contain the: (a) age of the claimant; (b) cadastral number of the lot or lots claimed; (c) name of the barrio and municipality in which the lots are situated; (d) names and addresses of the owners of the adjoining lots so far as known to the claimant; (e) if the claimant is in possession of the lots claimed, the length of time he has held such possession and that of his predecessors, and the manner in which it has been acquired; (f) if the claimant is not in possession or occupation of the

land, the interest claimed by him and the time and manner of his acquisition; (g) the last assessed value of the lot/lots; and (h) the encumbrances, if any, affecting the lots and the names of adverse claimants, as far as known.

### *5. Hearing of the petition*

The trial of the case may occur at any convenient place within the province in which the lands are situated and shall be conducted, and orders for default and confessions entered, in the same manner as in ordinary land registration proceedings and shall be governed by the same rules.

### *6. Judgment; when title deemed vested*

All conflicting interests shall be adjudicated by the court and decrees awarded in favor of the persons entitled to the lands or to parts thereof and such decrees shall be the basis for issuance of original certificates of title in favor of the rightful owners which shall have the same effect as certificates of title granted in ordinary land registration proceedings. In the absence of successful claimants, the property is declared public land.[4]

In the absence of fraud, title to land in a cadastral proceeding is vested on the owner, upon the expiration of the period to appeal from the decision or adjudication by the cadastral court, without such appeal being perfected; and from that time the land becomes registered property which cannot be lost by adverse possession. The certificate of title would then be necessary for purposes of effecting registration of subsequent disposition of the land where court proceedings would no longer be necessary.[5]

The rule is different in case of public lands. Under Section 103 of the Property Registration Decree, the property is not considered registered until the final act or the entry in the registration book of the Registry of Deeds had been accomplished.[6]

## 03. Actions taken in a cadastral proceeding.

After trial in a cadastral case, three actions are taken. The *first* adjudicates ownership in favor of one of the claimants. This

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[4]Republic v. Vera, GR No. L-35778, Jan. 27, 1983, 120 SCRA 210.
[5]Merced v. Court of Appeals, GR No. L-17757, May 30, 1962, 5 SCRA 240.
[6]*Ibid.*

constitutes the decision — the judgment — the decree of the court, and speaks in a judicial manner. The *second* action is the declaration by the court that the decree is final and its order for the issuance of the certificates of title by the Administrator of the Land Registration Authority. Such order is made if within fifteen days from the date of receipt of a copy of the decision no appeal is taken from the decision. This again is judicial action, although to a less degree than the first. The *third* and last action devolves upon the Land Registration Authority. This office has been instituted "in order to have a more efficient execution of the laws relative to the registration of lands" and to "issue decrees of registration pursuant to final judgments of the courts in land registration proceedings."[7]

**04. Only "unregistered lands" may be the subject of a cadastral survey.**

Under the old Cadastral Act (Act No. 2259), enacted on February 11, 1913, it was therein provided that "When in the opinion of the Governor General (now the President), the public interests require that the title to *any lands* be settled and adjudicated, he may to this end order the Director of Lands to make a survey and plan thereof." The clear implication is that both public and private lands were to be included in the cadastral survey. Upon the enactment of the Public Land Act *(CA No. 141)* on November 7, 1936, its Section 53 required that the petition for cadastral proceedings be filed "against the *holder, claimant, possessor, or occupant of any land who shall not have voluntarily come in under the provisions of this chapter* (Chapter VIII on Judicial Confirmation of Imperfect or Incomplete Titles) or of the Land Registration Act (now Property Registration Decree) x x x ." The inference is that lands already titled either through judicial confirmation of imperfect or incomplete titles under the Public Land Act or through voluntary registration proceedings under the Land Registration Act are excluded from the survey. The present Property Registration Decree (PD No. 1529, enacted on June 11, 1978, under "II. Cadastral Registration Proceedings," provides in its Section 35 that "When in the opinion of the President of the Philippines public interest so requires that title to any unregistered lands be settled and adjudicated, he may to this end direct and order the Director of Lands to cause to be made a cadastral survey of the lands involved and the plans and technical description thereof prepared in due form."

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[7]Secs. 4 and 6(1)(a), PD No. 1529.

Here, the law would limit the cadastral survey to "any unregistered lands," such that private lands are excluded. This interpretation appears to be reasonable considering that the object of cadastral proceedings is to "settle and adjudicate" to lands. Private lands are obviously not contemplated since ownership thereof had already been finally determined and adjudicated.

**05. Lands already titled cannot be the subject of cadastral proceedings.**

The "settlement and adjudication" of a land title under the Cadastral Act is exactly that provided for in the Land Registration Act (now Property Registration Decree), *i.e*., a proceeding culminating in the issuance of a final decree and a Torrens certificate of title in favor of the owner of the land. Obviously, it could not have been the intention of the Legislature to provide a special proceeding for the settlement and adjudication of titles already settled and adjudicated. It is, indeed, more than doubtful if the Legislature would have the power to enact such a provision had it so desired; the landholder who possesses a settled and adjudicated title of his land cannot be deprived of that title through another settlement and adjudication of a similar character.[8] In other words, land already decreed and registered in an ordinary registration proceeding can not again be subject of adjudication or settlement in a subsequent cadastral proceeding.[9]

Illustrative of the rule is the case of *Addison* v. *Payatas Estate Improvement Co*.[10] where defendants are the owners of a parcel of land described in their OCT No. 333 which was issued through land registration proceedings. Subsequently, in cadastral proceedings, plaintiff claimed to be the owner of a large tract of land, a part of which was claimed to have been included in the title of defendants. Can land which had been duly registered and for which Torrens certificate of title had been issued be given to another in a cadastral proceeding? The Court held that the defendants, as titled owners, cannot be divested of their title by subsequent cadastral proceedings.

A registration court has no jurisdiction to decree again the registration of land already decreed in an earlier land registration

[8]Pamintuan v. San Agustin, GR No. 17043, June 22, 1922, 43 Phil. 558.
[9]Sideco v. Aznar, GR No. L-4831, April 24, 1953, 92 Phil. 952.
[10]GR No. 39095, Sept. 27, 1934, 60 Phil. 673.

case and a second decree for the same land is null and void. This is so because when once decreed by a court of competent jurisdiction, the title to the land thus determined is already *res judicata,* and binding on the whole world, the proceeding being *in rem*. The court has no power in a subsequent proceeding (not based on fraud and within the statutory period) to adjudicate the same title in favor of another person. Furthermore, the registration of the property in the name of the first registered owner in the registration book is a standing notice to the world that said property is already registered in his name. Hence, the latter applicant is chargeable with notice that the land he applied for is already covered by a title so that he has no right whatsoever to apply for it. To declare the later title valid would defeat the very purpose of the Torrens system which is to quiet title to the property and guarantee its indefeasibility. It would undermine the faith and confidence of the people in the efficacy of the registration law.[11]

In a situation as the above, the first decreed owner may file a motion to dismiss the second registration case. Section 34 of the Property Registration Decree provides that the Rules of Court, insofar as not inconsistent with the provisions of the Decree, shall be applicable in land registration and cadastral cases by analogy or in a suppletory character and whenever practicable and convenient. As a motion to dismiss is necessary for the expeditious termination of a subsequent registration case involving the same property as in the first, said motion which is a remedy authorized by the Rules of Court can be availed of.[12]

Relatedly, it has been held that when a homestead patent is registered in accordance with Section 122 of Act No. 496 (now Sec. 103, PD No. 1529) and a certificate of title issued in conformity therewith, the land thus registered cannot again be the subject of registration in a cadastral proceeding without the consent of the owner, and the title issued in the latter proceeding in violation of this principle is null and void and should be cancelled.[13]

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[11]Duran v. Olivia, GR No. L-16589, Sept. 29, 1961, 3 SCRA 154; Rojas v. City of Tagaytay, GR No. L-13333, Nov. 24, 1959, 106 Phil. 502.

[12]Duran v. Olivia, *supra*.

[13]Manalo v. Lukban, GR No. 22424, Sept. 8, 1924, 48 Phil. 973; El Hogar Filipino v. Olviga, GR No. 37434, April 5, 1934, 60 Phil. 17.

**06. Jurisdiction of the cadastral court over previously titled lands.**

In cadastral cases, the jurisdiction of the court over lands already registered is limited to the necessary correction of technical errors in the description of the lands, provided that such corrections do not impair the substantial rights of the registered owner, and that such jurisdiction does not deprive a registered owner of his title.[14] In proper cases and *upon proper application or the consent of the registered owner or owners*, or of the person in whose name the decree is issued, the court may order a change in the names of the owners by inclusion or exclusion of some, or in the rights or participation of each in the land registered.[15] What is prohibited in a cadastral proceeding is the registration of land, already registered in the name of a person, in the name of another, divesting the registered owner of the title already issued in his favor,[16] or the making of such changes in the title as impairs his substantial rights.[17] However, the cadastral court has jurisdiction to determine the priority or relative weight of two or more certificates of title for the same land.[18]

In a case,[19] the land was mortgaged, and while the registered owner was willing to have his co-owner's name inserted, it was held that the insertion thereof would affect the rights of the mortgagee, who had taken the property by way of mortgage as the registered owner's exclusive property. The mortgagee is akin to that of a purchaser under Section 112 of the Land Registration Act (Section 108, Property Registration Decree), and to allow the amendment would be to deprive the mortgagee of his property without due process of law.

It was held, however, that an order entered in a cadastral proceeding, setting aside a judgment of partition in order to recognize and enforce the preferential title of a third person to the land, is not a revision of any decree or judgment upon title.[20]

The jurisdiction of the court even after the issuance of the final decree of registration in a cadastral case, is not exhausted but, on

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[14]Pamintuan v. San Agustin, *supra*.
[15]Sideco v. Aznar, *supra*.
[16]Addison v. Payatas Estate Improvement Co., *supra*.
[17]Pamintuan v. San Agustin, *supra*.
[18]Timbol v. Diaz, GR No. 20159, March 5, 1923, 44 Phil. 587.
[19]Garcia v. Reyes, GR No. 28675, Jan. 26, 1928, 51 Phil. 409.
[20]Manalo v. Lukban, GR No. 22424, Sept. 8, 1924, 48 Phil. 973.

the contrary, subsists as to all incidental questions affecting the registered title to the end that the court's jurisdiction over the same subject matter be not split. This is borne out by the provision of Section 108 of the Property Registration Decree, according to which, after the entry of a certificate of title, or of a memorandum thereon, the registered owner or any interested party may ask the corresponding court to declare the termination of registered real rights or the creation of new real rights.[21]

**07. Cadastral answer may not be thrown out upon a mere motion of adverse claimants**

It was held in case[22] that the court may not, upon motion of adverse claimants, order the cancellation of the claimant's answer and keep the latter from introducing evidence to prove his ownership on the ground of bar by prior judgment. Suppressing the presentation of evidence in support of claims would perpetuate conflicts over land.[23]

But the court has no jurisdiction to decree a lot to one who has put in no claim to it. The written declaration claiming certain described property is the very basis of jurisdiction to render a judgment. If the claim is uncertain or refers to an undefined portion of land, the court has no jurisdiction to make an award. Also, in a cadastral proceeding, a court has no jurisdiction to decree a lot as not contested when it is contested, and to proceed to adjudication without giving the opposing parties an opportunity to be heard.

**08. Amendment of the plan to include additional territory.**

An order of a court in a cadastral case amending the official plan so as to make it include land not previously included therein is a nullity unless new publication is made. Publication is one of the essential bases of the jurisdiction of the court in land registration and cadastral cases, and additional territory cannot be included by amendment of the plan without new publication.[24]

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[21]Government v. Abadinas, GR No. 45324, May 27, 1939, 68 Phil. 254.

[22]Government of the Philippine Islands v. Triño, GR No. 26849, Sept. 21, 1927, 50 Phil. 708.

[23]Abellera v. Farol, *supra*.

[24]Director of Lands v. Benitez, GR No. L-21368, March 31, 1966, 123 Phil. 366; Philippine Manufacturing Co. v. Imperial, GR No. 24599, Sept. 15, 1925, 47 Phil. 810.

**09. When title to land in a cadastral case is vested.**

In a cadastral case, title of ownership on the land is vested upon the owner upon the expiration of the period to appeal from the decision or adjudication by the cadastral court, without such an appeal having been perfected. In other words, upon the promulgation of the order issuance of a decree, the land, for all intents and purposes, had become, from that time, registered property which could not be acquired by adverse possession. The certificate of title would then be necessary for purposes of effecting registration of subsequent disposition of the land where court proceedings would no longer be necessary.[25]

In contrast, a certificate of title based on a patent, even after the expiration of one year from the issuance thereof, is still subject to certain conditions and restrictions. As a matter of fact, in appropriate cases and after prior administrative investigations by the Director of Lands, proper actions may be instituted by said official which may lead to the cancellation of the patent and the title, and the consequent reversion of the land to the government. On the other hand, a certificate of title issued pursuant to cadastral proceedings, after the lapse of one year, becomes incontrovertible. Thus, while with the due registration and issuance of a certificate of title over a land acquired pursuant to the Public Land Act, said property becomes registered in contemplation of the Property Registration Decree, however, in view of its nature and manner of acquisition, such certificate of title, when in conflict with one obtained on the same date through judicial proceedings, must give way to the latter.[26]

The judgment in a cadastral proceeding, including the rendition of the decree, is a judicial act. The judicial decree when final is the basis of the certificate of title. The issuance of the decree by the Land Registration Authority is a ministerial act. The date of the title is unimportant, for the adjudication has already taken place and all that is left to be performed is the mere formulation of the technical description. Hence, as a general rule, registration of title under the cadastral system is final, conclusive and indisputable, after the lapse of the period allowed for an appeal. The prevailing party may then

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[25]De la Merced v. Court of Appeals, GR No. L-17757, May 30, 1962, 5 SCRA 240.

[26]Nieto v. Quines, GR No. L-14634, Sept. 29, 1962 (Resolution on a motion for reconsideration of the decision in the same case dated Jan. 28, 1961).

have execution of the judgment as of right and is entitled to the issuance of a certificate of title. The exception is the special provision providing for fraud.[27]

### 10. New titles may be issued for private lands within the cadastral survey.

In a cadastral survey usually involving a whole municipality, all lands of whatever nature and classification, including private lands, are included. Of course lands which are not agricultural cannot be the subject of adjudication as these are beyond the commerce of men. They will retain their classification as non-alienable lands of the public domain. Private lands within the cadastre which had been previously brought under the Torrens system will not anymore be subject to a new hearing and adjudication by the cadastral court but shall remain private lands. However, it may be necessary to issue new certificates of title to those holding Torrens titles for lands within the cadastral survey, which must cover all of the lands contained in the old ones.[28] But no modification or alteration can be permitted to be made in the Torrens title for the sole purpose of making the area of the land described therein agree with that given in the cadastral survey plan. The new title issued under the cadastral system to a person who already holds a valid Torrens title must include the whole land specified in the latter.[29] A decree entered by the court cannot be considered as permanent if the limits of the land therein registered may be changed or the area thereof altered by a subsequent adjudication by the court.[30]

### 11. Decision declaring land as public land not a bar to a subsequent action for confirmation of title over the same land.

In *Director of Lands* v. *Court of Appeals and Pastor*,[31] the Court, through Justice Makasiar, held that a decision in a cadastral proceeding declaring a lot public land is not the final decree contemplated in Sections 38 and 40 of the Land Registration Act (Sections 29 and

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[27]Government v. Abural, GR No. 14167, Aug. 14, 1919, 39 Phil. 996.
[28]Government v. Caballero, GR No. 10751, March 29, 1916, 34 Phil. 540.
[29]Government v. Arias, GR No. 11419, Jan. 30, 1917, 36 Phil. 194.
[30]Cuyugan v. Sy Quia, GR No. 7857, March 27, 1912, 24 Phil. 567.
[31]GR No. L-47847, July 31, 1981, 106 SCRA 426; see also Director of Lands v. Court of Appeals and Fernandez, GR No. 45061, Nov. 20, 1989, 179 SCRA 522.

31 of the Property Registration Decree). The principle of *res judicata*, even if properly raised, does not apply since, factually, there is no prior final judgment at all to speak of. A judicial declaration that a parcel of land is public does not preclude even the same applicant from subsequently seeking a judicial confirmation of his title to the same land, provided he thereafter complies with the provisions of Section 48 of CA No. 141, as amended, and as long as said public land remains alienable and disposable.

In *Director of Lands* v. *Court of Appeals and Manlapaz*,[32] petitioner advanced the view that it is the intendment of the law that a person who fails to prove his title to a parcel of land which is the object of cadastral proceedings or one who does not file his claim therein is forever barred from doing so in a subsequent proceeding. Judgment in a cadastral proceeding, which is a proceeding *in rem,* constitutes *res judicata* even against a person who did not take part in the proceedings as claimant. This view was however rejected by the Court which reiterated the rule that the decision in a cadastral case declaring the land as public land does not constitute a bar to the application for judicial confirmation of the same claimant over the same provided he thereafter complies with the provisions of Section 48(b) of the Public Land Act, as amended, and as long as said land remains alienable and disposable.

The decisive issue posed in *Mindanao* v. *Director of Lands*[33] is whether the 1949 judgment in a previous cadastral case, denying the application of the claimant and declaring the land in question to be public land, precluded a subsequent application by an alleged possessor for judicial confirmation of title on the basis of the required continuous possession under Section 48(b) of the Public Land Act. The Court ruminated:

> "It should be noted that appellants' application is in the alternative: for registration of their title of ownership under Act 496 or for judicial confirmation of their 'imperfect' title or claims based on adverse and continuous possession for at least thirty years. It may be that although they were not actual parties in that previous case the judgment therein is a bar to their claim as owners under the first alternative, since the proceeding was *in rem*, of

[32]GR No. 45828, June 1, 1992, 209 SCRA 457.
[33]GR No. L-19535, July 10, 1967, 20 SCRA 641.

which they and their predecessor had constructive notice of publication. Even so this is a defense that properly pertains to the Government, in view of the fact that the judgment declared the land in question to be public land. In any case, *appellants' imperfect possessory title was not disturbed or foreclosed by such declaration*, for precisely the proceeding contemplated in the aforecited provision of Commonwealth Act 141 presupposes that the land is public. The basis of the decree of judicial confirmation authorized therein is not that the land is already privately owned and hence no longer part of the public domain, but rather that by reason of the claimant's possession for thirty years he is conclusively presumed to have performed all the conditions essential to a Government grant." (Emphasis supplied)

## 12. Cases where decision of the cadastral court was considered *res judicata*.

The following cases illustrate the view that the decision of the cadastral court constitutes *res judicata*:

1. In *Rodriguez* v. *Toreno*,[34] respondents filed a complaint for ejectment and damages against petitioner, alleging basically that they are *pro-indiviso* registered owners of the land covered by OCT No. 0-15 issued to them in 1950 by virtue of cadastral proceedings initiated in 1922. In his answer, petitioner claimed that respondents had already sold their rights over the land to him as early as 1941 and 1950 either through themselves or their successors in interest, thus making him the rightful and legal owner of the land. The trial court decided for respondents, holding that to entertain petitioner's claim that he had bought the portions of the land before the decree of registration was issued would virtually re-open the cadastral proceeding in contravention of the indefeasibility of Torrens titles. Moreover, petitioner had all the opportunity to have the questioned deeds of sale annotated on the certificate of title in connection with the cadastral case but did not do so. On appeal, the Supreme Court affirmed, holding that even if the contracts executed by respondents and their predecessors over the land in favor of the petitioner were genuine and *bona fide* purchase covenants, the same, however, lost their efficacy upon the rendition of judgment and issuance of the

[34]GR No. L-29596, Oct. 14, 1977, 79 SCRA 357.

decree of registration in favor of respondents. A cadastral case is a judicial proceeding *in rem* which binds the whole world. The final judgment rendered therein is deemed to have settled the status of the land subject thereof, and the purported sales if not noted on the title, like those of the petitioner, are deemed barred under the principle of *res judicata*.

2. In *Abes* v. *Rodil*,[35] the cadastral court adjudicated the lots in question to defendants, and a Torrens title was issued pursuant to the decision. Subsequently, plaintiffs filed a petition for review of the registration decree on the ground of fraud. Upon the evidence submitted, the cadastral court denied the petition on the ground that the plaintiffs failed to overcome the evidence of defendants as claimants-adjudicatees. No appeal was taken from this order. Instead, plaintiffs sued the registered owners and asked for reconveyance upon the same ground of fraud as in their petition for review. Issue: Has *res judicata* set in? The Supreme Court answered in the affirmative:

> "2. The original cadastral proceeding is one *in rem*. There, the whole world, including the present plaintiffs, were drawn in as parties. Of course, the present action is for a reconveyance of the same properties. This label — reconveyance — will not mislead. The form of action may be distinct. But, at bottom, the point or question litigated in the original cadastral case and in the present is the same — ownership. Here, plaintiffs can no longer claim that they are the owners. Neither can they be heard to say that defendants are mere trustees. Because, in the cadastral order denying their petition for review, their adversaries — the defendants — were declared owners in fee simple. And, that order has become final.
>
> The test to determine the existence of *res judicata* is simply this: 'Would the same evidence support and establish both the present and the former cause of action?' Here, the answer is in the affirmative. The evidence both in the cadastral proceedings and in the present reconveyance case, is directed at the question of ownership. x x x The foregoing brings us to the conclusion that the present action for reconveyance will not prosper. Indeed, as we have said in a 1964 decision, 'what are different are the

[35]GR No. L-20996, July 30, 1966, 17 SCRA 832.

grounds upon which the annulment has been sought; but these grounds do not make for distinct causes of action.'"

3. In *Republic* v. *Vera*,[36] private respondents apparently either did not file their answers in the cadastral proceedings or failed to substantiate their claims over the portions they were then occupying. The cadastral court declared the lands in question public lands, and its decision had already become final and conclusive. According to the Court, "Respondents are now barred by prior judgment to assert their rights over the subject land, under the doctrine of *res judicata*. A cadastral proceeding is one *in rem* and binds the whole world. Under this doctrine, parties are precluded from re-litigating the same issues already determined by final judgment."

4. In *Navarro* v. *Director of Lands*,[37] Justice Makalintal, speaking for the Court, declared that *res judicata* barred petitioner's application for registration under Section 48(b) of the Public Land Act, thus:

"It appears that sometime in 1950 the Director of Lands instituted a cadastral proceeding in the Court of First Instance of Manila (G.L.R.C. Cad. Rec. No. 6, G.L.R.O. Cad. Case No. 1) to settle and adjudicate title to the same lots now in litigation. The Republic of the Philippines claimed them as part of the public domain. One Caridad Guillen Cortez filed an answer and was later on substituted by appellant Anacleto P. Navarro, who sought registration of the properties in his name pursuant to the provision of Section 48, paragraph (b), of the Public Land Act. In the decision of the aforesaid Court dated July 17, 1954 his claim was denied and the two lots were declared public lands. The case was appealed to the Court of Appeals, which rendered a decision of affirmance on June 29, 1957 (CA-G.R. No. L-13983-R). Still unsatisfied, Navarro elevated the case to this Court for review by certiorari, but the petition was dismissed 'for being factual and for lack of merit' in a resolution dated September 6, 1957.

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[36]*Supra.*
[37]GR No. L-18814, July 31, 1962, 5 SCRA 384.

The plea of *res judicata* must be upheld. The requisites of this plea are: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, (a) identity of parties (b) identity of subject matter and (c) identity of cause of action. The only controversy here is with respect to the last element, namely, identity of cause of action, the others being concededly present. In the case of *De la Rosa* vs. *Director of Lands, et al.,* G.R. No. L-6311, Feb. 28, 1955; 53 O.G. No. 13, p. 4092 this Court held:

'The parcel of land (Lot No. 4) sought to be registered being the same lot already declared public land in Land Registration Case No. 295, G.L.R.O. No. 30055, where the herein appellant and the Director of Lands were parties and the applicant therein failed to establish title secured from the Spanish Government or possession of the land in accordance with the Public Land Act then in force, the decision in the former case declaring Lot No. 4 as part of the public domain must be deemed *res judicata*.'

The cause of action in both the present case and the former cadastral proceeding is the registration of the two lots in question. The specific issue involved is whether the lots applied for are part of the public domain or have so far been possessed by appellant that he must be deemed to have acquired title thereto which is sufficient for registration in his name. The declaration by final judgment in the cadastral proceeding that they are public lands settled this issue once and for all."

**13. Issuance of writ of possession imprescriptible.**

Relatedly, it was held that where respondent heirs were in possession of the lots in question, unlawfully and adversely, during the cadastral proceedings, they may be judicially evicted by means of a writ of possession, the issuance of which never prescribes. Respondent heirs cannot be said to be strangers since a cadastral proceeding is a proceeding *in rem* and against everybody.[38]

[38]Rodil v. Benedicto, GR No. L-28616, Jan. 22, 1980, 95 SCRA 137.

# CHAPTER IV
# CERTIFICATE OF TITLE

**SEC. 39.** ***Preparation of decree and Certificate of Title.*** **— After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. The original certificate of title shall be a true copy of the decree of registration. The decree of registration shall be signed by the Commissioner, entered and filed in the Land Registration Commission. The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book.**

**01. Issuance of decree of registration and certificate of title.**

Upon the finality of the judgment of the court adjudicating the land as private property, the court shall, within fifteen (15) days from the entry thereof, issue an order directing the LRA Administrator to issue the corresponding decree of registration and certificate of title. The Administrator shall then prepare the decree of registration as well as the original and duplicate of the corresponding certificate of title. The original certificate of title, signed by him, shall be a true copy of the decree of registration, and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the City or province where the land lies.

The certificate of the title is the transcript of the decree of registration made by the Register of Deeds in the registry.[1] It accumulates in one document a precise and correct statement of the exact status of the fee simple title which an owner possesses. The certificate, once issued, is the evidence of the title which the owner has.[2] What appears on the face of the title is controlling on questions of ownership since the certificate of title is an absolute and inde-feasible evidence of ownership of the property in favor of the person whose name appears therein.[3]

But mere possession of a certificate of title is not conclusive as to the holder's true ownership of all the property described therein.[4] If a person obtains title, under the Torrens system, which includes, by mistake or oversight, lands which cannot be registered under the Torrens system, he does not, by virtue of said certificate alone, become the owner of the land illegally included. For instance, the inclusion of public highways in the certificate of title does not give to the holder of such certificate ownership of said public highways.[5]

## 02. Decree binds the land and is conclusive against the whole world.

Pursuant to Section 31 of PD No. 1529, every decree of registration shall bear the date, hour and minute of its entry and shall be signed by the LRA Administrator. It shall also state whether the owner is married or unmarried, and if married, the name of the spouse. If the land is conjugal, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of the disability, and if a minor, his age. It shall also contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and, also, all particular estates, mortgages, easements, liens, attachments, and other encumbrances to which the land or owner's estate is subject. The decree shall bind the land and quiet title thereto, subject only to such liens as may be provided by law. It shall be conclusive upon and against all persons, including the national government and all branches thereof.

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[1]Philippine National Bank v. Tan Ong Zse, GR No. 27991, Dec. 24, 1927, 51 Phil. 317.

[2]Legarda v. Saleeby, GR No. 8936, Oct. 2, 1915, 31 Phil. 590; Evangelista v. Santiago, GR No. 157447, April 29, 2005..

[3]Panganiban v. Dayrit, GR No. 151235, July 28, 2005.

[4]Golloy v. Court of Appeals, GR No. 47491, May 4, 1989, 173 SCRA 26.

[5]Ledesma v. Municipality of Iloilo, GR No. 26337, Dec. 17, 1926, 49 Phil. 769.

As soon as the decree of title has been registered in the office of the Register of Deeds, the property included in said decree shall become registered land, and the certificate shall take effect upon the date of the transcription of the decree. The certificate of title is a true copy of the decree of registration. The original certificate of title must contain the full transcription of the decree of registration. Any defect in the manner of transcribing the technical description should be considered as a formal, and not a substantial, defect.[6]

A land registration proceeding being *in rem*, the decree of registration issued pursuant to the decision binds the land and quiets title thereto, and is conclusive upon and against all persons, including the government and all the branches thereof, whether mentioned by name in the application, notice or citation, or included in the general inscription "To All Whom It May Concern."[7]

To reiterate, the purpose of the Torrens system is to quiet title to land and to stop forever any question as to its legality. Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the "*mirador su casa*," to avoid the possibility of losing his land. A Torrens title is generally a conclusive evidence of the ownership of the land referred to therein. A strong presumption exists that the title was regularly issued and is valid. It is incontrovertible as against any "*information possessoria*" or any interest in the land existing prior to the issuance thereof and which is not annotated on the title.[8]

### 03. Registration does not give any person a better title than what he really has.

Registration under the Torrens system and the issuance of a certificate of title do not give any person a better title than what he really and lawfully has. He secures his certificate by virtue of the fact that he has a fee simple title. If he obtains a certificate of title, by mistake, to more land than he really and in fact owns, the certificate should be corrected. The certificate of title accumulates, in one document, a precise and correct statement of the exact status of the fee simple title, which the owner has. The certificate, once issued, is

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[6]Benin v. Tuason, GR No. L-26127, June 28, 1974, 57 SCRA 531.

[7]Sec. 31, PD No. 1529; Ching v. Court of Appeals, GR No. 59731, Jan. 11, 1990, 181 SCRA 9.

[8]Ching v. Court of Appeals, *supra*; Salamat v. Cruz, GR No. 39272, May 4, 1988, 181 SCRA 36.

the evidence of the title which the owner has. The certificate cannot be altered, changed, modified, enlarged or diminished, except to correct errors, in some direct proceedings permitted by law. The title represented by the certificate can not be changed, altered, modified, enlarged or diminished in a collateral proceeding.[9]

**04. Probative value of a certificate of title.**

A certificate of title serves as an indefeasible title to the property in favor of the person whose name appears therein,[10] and is conclusive as to the identity of the land[10a] and also its location.[10b] The title becomes indefeasible and incontrovertible one year from its final decree. It is generally a conclusive evidence of the ownership of the land referred to therein.[11] A strong presumption exists that the title was validly and regularly issued.[12] The validity of the certificate of title can be threshed out only in a direct proceeding filed for the purpose.[13]

The certificate, or a duly certified copy thereof, shall be received as conclusive evidence of all the matters contained therein, principally, the identity of the land and its registered owner.[14] However, the notations or memoranda on the back of the certificate of title are not admissible as proof of the contents of the documents to which they refer, inasmuch as they do not form part of the contents of the decree of registration. The said notations or memoranda are, at most, proof of the existence of the transactions and judicial orders noted therein, and a notice to the whole world of such facts.[15]

As against an array of proofs consisting of tax declarations and/or tax receipts which are not conclusive evidence of ownership nor proof of the area covered therein, a certificate of title indicates the

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[9]Legarda v. Saleeby, *supra*.

[10]Tan v. Bantegui, GR No. 154027, Oct. 24, 2005.

[10a]Demasiado v. Velasco, GR No. L-27844, May 10, 1976, 71 SCRA 105.

[10b]Odsigue v. Court of Appeals, GR No. 111179, July 4, 1994, 233 SCRA 626.

[11]Calalang v. Register of Deeds of Quezon City, GR No. 76265, April 22, 1992, 231 SCRA 88; Ching v. Court of Appeals, *supra*.

[12]Ching v. Court of Appeals, *supra*; Salamat v. Cruz, *supra*.

[13]Borbajo v. Hidden View Homeowners, Inc., GR No. 152440, Jan. 31, 2005, 450 SCRA 315; Ybañez v. Intermediate Appellate Court, GR No. 68291, March 6, 1991, 194 SCRA 749.

[14]Demasiado v. Velasco, GR No. L-27844, May 10, 1976, 71 SCRA 105.

[15]Philippine National Bank v. Tan Ong Zse, GR No. 27991, Dec. 24, 1927, 51 Phil. 317.

true and legal ownership of the registered owners over the land.[16] A tax declaration cannot defeat a certificate of title issued under the Torrens system.[17]

### (1) Validity and correctness of title is presumed

A person dealing with registered land may safely rely upon the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. The law considers said person as an innocent purchaser for value. An innocent purchaser for value is one who buys the property of another property of another, without notice that some other person has a right or interest in such property and pays the full price for the same, at the time of such purchase or before he has notice of the claims or interest of some other person in the property.[18]

### (2) Title issued pursuant to a public land patent

A certificate of title issued pursuant to a public land patent, like a homestead or free patent, is as indefeasible as a certificate of title issued pursuant to judicial registration proceedings, provided the land covered by said certificate is a disposable public land,[19] and becomes indefeasible and incontrovertible upon the expiration of one year from the date of the issuance thereof.[20] The Director of Lands, being a public officer, has in his favor the presumption of regularity in issuing the patent.[21] If the land is not a public land but a private land, the patent and certificate of title are a nullity.[22] As stated by the Court through Justice Regalado in *Agne* v. *Director of Lands*:[23]

> "The indefeasibility and imprescriptibility of a Torrens title issued pursuant to a patent may be invoked only when the land involved originally formed part of the pub-

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[16]Cureg v. Intermediate Appellate Court, GR No. 73465, Sept. 7, 1989, 177 SCRA 313.

[17]*Ibid*.

[18]Dela Cruz v. Dela Cruz, GR No. 146222, Jan. 15, 2004, 419 SCRA 648.

[19]Ybañez v. Intermediate Appellate Court, *supra*.

[20]Republic v. Carle, GR No. L-12485, July 31, 1959, 105 Phil. 1227.

[21]Iglesia ni Cristo v. CFI of Nueva Ecija, GR No. L-35273, July 25, 1983, 208 Phil. 441.

[22]Vital v. Anore, GR No. L-3136, Feb. 29, 1952, 90 Phil. 855.

[23]GR No. 40399, Feb. 6, 1990, 181 SCRA 793.

lic domain. If it was a private land, the patent and certificate of title issued upon the patent are a nullity.

The rule on the incontrovertibility of a certificate of title upon the expiration of one year, after the entry of the decree, pursuant to the provisions of the Land Registration Act, does not apply where an action for the cancellation of a patent and a certificate of title issued pursuant thereto is instituted on the ground that they are null and void because the Bureau of Lands had no jurisdiction to issue them at all, the land in question having been withdrawn from the public domain prior to the subsequent award of the patent and the grant of a certificate of title to another person. Such an action is different from a review of the decree of title on the ground of fraud.

Although a period of one year has already expired from the time a certificate of title was issued pursuant to a public grant, said title does not become incontrovertible but is null and void if the property covered thereby is originally of private ownership, and an action to annul the same does not prescribe."

**05. Where two or more certificates cover the same land, the earlier in date prevails.**

The general rule is that where two certificates of title are issued to different persons covering the same land in whole or in part, the earlier in date must prevail as between the original parties, and in case of successive registration where more than one certificate is issued over the land, the person holding under the prior certificate is entitled to the land as against the person who relies on the second certificate.[24] In other words, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from, the person who was the holder of the earliest certificate.[25]

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[24]Iglesia ni Cristo v. CFI of Nueva Ecija, GR No. L-35273, July 25, 1983, 208 Phil. 441; Director of Lands v. Court of Appeals and Sta. Maria, GR No. L-45168, Jan. 27, 1981, 102 SCRA 370; Garcia v. Court of Appeals and Lapuz-Gozon, *supra*; Legarda v. Saleeby, *supra*.

[25]Realty Sales Enterprise, Inc. v. Intermediate Appellate Court, GR No. L-67451, Sept. 28, 1987, 154 SCRA 328.

But the rule is applicable only where there is no anomaly or irregularity,[25a] mistake,[25b] or faulty or fraudulent registration tainting the prior title.[25c]

**SEC. 40. *Entry of Original Certificate of Title.* — Upon receipt by the Register of Deeds of the original and duplicate copies of the original certificate of title the same shall be entered in his record book and shall be numbered, dated, signed and sealed by the Register of Deeds with the seal of his office. Said certificate of title shall take effect upon the date of entry thereof. The Register of Deeds shall forthwith send notice by mail to the registered owner that his owner's duplicate is ready for delivery to him upon payment of legal fees.**

### 01. Entry of original certificate of title.

The certificate of title issued for the first time after initial registration proceedings is known as the "Original Certificate of Title." Any subsequent title issued pursuant to any voluntary or involuntary instrument affecting the property covered by the original certificate of title is known as the "Transfer Certificate of Title."

The original certificate of title shall be a true copy of the decree of registration.[26] It shall set forth the full names of all persons whose interests make up the ownership of the land, their civil status, and names of their respective spouses, if married, as well as their citizenship, residence and postal address. If the property belongs to the conjugal partnership, it shall be issued in the names of both spouses.[27] The transfer certificate of title shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which it is found.

Upon receipt by the Register of Deeds of the original and duplicate copy of the certificate of title, he shall enter the same in the record book and shall be numbered, dated, signed and sealed with

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[25a]Mathay v. Court of Appeals, GR No. 15788, Sept. 17, 1988, 295 SCRA 556.

[25b]Legarda v. Saleeby, GR No. 8936, Oct. 3, 1915, 31 Phil. 590.

[25c]Widows and Orphans, Inc. v. Court of Appeals, GR No. 91797, Aug. 28, 1991, 201 SCRA 165.

[26]Sec. 39, PD No. 1529; Benin v. Tuason, *supra*.

[27]Sec. 45, PD No. 1529.

the seal of his office. The certificate of title shall take effect upon the date of entry thereof. The Register of Deeds shall then send notice by mail to the registered owner informing him that his owner's duplicate is ready for delivery.

**SEC. 41. *Owner's duplicate certificate of title.* — The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued.**

**01. Issuance of the owner's duplicate certificate.**

The owner's duplicate certificate of title shall be delivered to the registered owner or his duly authorized representative. If two or more persons are the registered owners, one owner's duplicate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued. The duplicate certificates of title may either be the duplicate original certificate or duplicate transfer certificate. The registered owner may claim his owner's duplicate certificate from the Register of Deeds upon payment of the proper fees.

It has been ruled that the heirs, as co-owners, shall each have the full ownership of his part and the fruits and benefits pertaining to it. An heir may therefore, alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when the personal rights are involved. But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.[28]

[28]Cabrera v. Court of Appeals, GR No. 108547, Feb. 3, 1997, 267 SCRA 339.

A certificate of title could not be nullified or defeated by the issuance forty-three years later to other persons of another title over the same lots due to the failure of the Register of Deeds to cancel the title preceding it.[29]

### (1) Issuance of mortgagee's/lessee's duplicate certificate discontinued

The present rule is that no mortgagee's or lessee's duplicate certificate shall be issued by Registers of Deeds, and those issued prior to the effectivity of PD No. 1529 on June 11, 1978 are deemed cancelled and the holders thereof shall surrender the same to the Register of Deeds concerned.[30]

### (2) Co-owner can only dispose of his aliquot share in the property held in common

The title is the final and conclusive repository of the rights of the new co-owners, and any question regarding the validity of the deed of sale should be considered in conjunction with the title issued pursuant thereto.[31]

But a co-owner may not convey a physical portion of the land owned in common.[32] What a co-owner may dispose of is only his undivided aliquot share, which shall be limited to the portion which may be allotted to him upon the termination of the co-ownership. He has no right to divide the property into parts and then convey one part by metes and bounds.[33]

## 02. Registered owner entitled to possession of the owner's duplicate.

In has been held that the owner of the land in whose favor and in whose name land is registered and inscribed in the certificate of title has preferential right to the possession of the owner's duplicate as against one whose name does not appear in the certificate but

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[29]Garcia v. Court of Appeals and Lapuz-Gozon, GR No. L-48971, Jan. 22, 1980, 95 SCRA 380.

[30]Sec. 60, PD No. 1529.

[31]Mercado v. Liwanag, GR No. L-14429, June 30, 1962, 115 Phil. 469.

[32]Lopez v. Ilustre, GR No. L-14429, June 30, 1962, 5 Phil. 567.

[33]Mercado v. Liwanag, *supra*.

who may have a claim to or right to the possession of the land. In *Reyes* v. *Raval-Reyes*,[34] the Court directed respondent to deliver to petitioners, as registered owners, the owners' duplicate of OCT Nos. 2216 and 8066, holding: "It being undisputed that respondent had already availed of an independent civil action to recover his alleged co-owner's share in the disputed lots by filing a counterclaim for partition in said Civil Case No. 3659, his rights appear to be amply protected, and considering that he may also avail of, to better protect his rights thereto, the provision on notice of *lis pendens* under (the Rules of Court), for the purpose of recording the fact that the lots covered by the titles in question are litigated in said Civil Case No. 3659, we again see no justifiable reason for respondent to retain the custody of the owners' duplicates of certificates of title."

In *Abad* v. *Court of Appeals*,[35] where private respondents contended that they have a better right to the property since they have occupied and are presently in possession of the same, it was held that mere possession cannot defeat the title of a holder of a registered Torrens title to real property. Such title is entitled to respect and great weight until somebody else could show a better right to the property.

**SEC. 42. *Registration Books.* — The original copy of the original certificate of title shall be filed in the Registry of Deeds. The same shall be bound in consecutive order together with similar certificates of title and shall constitute the registration book for titled properties.**

**SEC. 43. *Transfer Certificate of Title.* — The subsequent certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the same land shall be in like form, entitled "Transfer Certificate of Title," and likewise issued in duplicate. The certificate shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found.**

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[34]GR No. L-21703, Aug. 31, 1966, 17 SCRA 1099.
[35]GR No. 84908, Dec. 4, 1989, 179 SCRA 817.

**01. Registration book; contents of transfer certificate of title.**

Upon entry of the original certificate of title, the Register of Deeds shall file the same in a registration book provided for the purpose. The same shall be bound and filed in consecutive order with other certificates of title. The transfer certificate of title which may be issued pursuant to any voluntary or involuntary instrument shall be in like form as the original and titled "Transfer Certificate of Title." The original is kept in the office of the Register of Deeds while the owner's duplicate is delivered to the party concerned. The transfer certificate of title shall indicate the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, number of the original certificate of title, and the volume and page of the registration book in which it is filed.

**SEC. 44. *Statutory liens affecting title.* — Every registered owner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted in said certificate and any of the following encumbrances which may be subsisting, namely:**

***First.* Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrancers of record.**

***Second.* Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone.**

***Third.* Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined.**

***Fourth.* Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform.**

**01. Certificate of title free from liens except those noted thereon.**

Pursuant to Section 44, every registered owner receiving a certificate of title issued pursuant to a decree of registration and every subsequent purchaser of registered land for value and in good faith shall hold the same free from all encumbrances. Excepted are: (a) those noted in the certificate of title, and (b) the encumbrances enumerated in the law. The following may limit the registered owners' absolute title over the property:

(1) Liens, claims or rights existing or arising under the laws or the Constitution which are not by law required to appear of record in the Registry of Deeds;

(2) Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land;

(3) Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof;

(4) Any disposition of the property or limitation on the use thereof by virtue of PD No. 27 or any other law or regulation on agrarian reform;[36]

(5) Rights incident to the relation of husband and wife, and landlord and tenant;

(6) Liability to attachment or levy on execution;

(7) Liability to any lien of any description established by law on the land and the buildings thereon, or on the interest of the owner on such lands and buildings;

(8) Rights incident to the laws of descent or partition between co-owners;

(9) Taking of the property through eminent domain;

(10) Right to relieve the land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy under the laws relative to preferences; and

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[36]Sec. 44, PD No. 1529; Rojas v. City of Tagaytay, GR No. L-13333, Nov. 24, 1959, 106 Phil. 512.

(11) Rights or liabilities created by law and applicable to unregistered land.[37]

Under the aforesaid provision, claims and liens of whatever character, except those mentioned by law as existing, against the land prior to the issuance of certificate of title are cut off by such certificate if not noted thereon, and the certificate so issued binds the whole world, including the government. Thus, if the purchaser is the only party who appears in the deeds and in the titles registered in the property registry, no one except such purchaser may be deemed by law to be the owner of the properties in question. Moreover, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.[38]

### (1) Meaning of lien, encumbrance

A "lien" is a charge on property usually for the payment of some debt or obligation. A "lien" is a qualified right or a proprietary interest, which may be exercised over the property of another. It is a right which the law gives to have a debt satisfied out of a particular thing. It signifies a legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation.

An "encumbrance is a burden upon land, depreciative of its value, such as a lien, easement, or servitude, which, though adverse to the interest of the landowner, does not conflict with his conveyance of the land in fee."

The following are considered encumbrances: A claim, lien, charge, or liability attached to and binding upon real property, *e.g.*, a mortgage, judgment lien, lease, security interest, easement or right of way, accrued and unpaid taxes. A lien is already an existing burden or charge on the property. A notice of *lis pendens*, as the very term connotes, does not establish a "lien" but is only a notice or warning that a claim or possible charge on the property is pending determination by the court.[39]

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[37]Sec. 46, PD No. 1529.

[38]National Grains Authority v. Intermediate Appellate Court, GR No. L-68741, Jan. 28, 1988, 157 SCRA 388.

[39]People v. Regional Trial Court of Manila, GR No. 81541, Oct. 4, 1989, 178 SCRA 299.

### (2) Generally, purchaser need not go behind registry to determine condition of property

As noted, every registered owner receiving a certificate of title and every subsequent purchaser of registered land shall hold the same free from all encumbrances, except those noted and enumerated in the certificate. Thus, a person dealing with registered land is not required to go behind the registry to determine the condition of the property, since such condition is noted on the face of the register or certificate of title. Following this principle, it has consistently been held, as regards registered land, that a purchaser in good faith acquires a good title as against all the transferees thereof whose rights are not recorded in the Registry of Deeds at the time of the sale.[40] It should be noted, however, that a sale of registered property which is recorded, not under the Property Registration Decree but under Act No. 3344, is not considered registered.[41]

Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore farther than what the Torrens title upon its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto. If the rule were otherwise, the efficacy and conclusiveness of the certificate of title which the Torrens system seeks to insure would entirely be futile and nugatory. Thus, the indefeasibility and imprescriptibility of a Torrens title is preserved and maintained and the purposes of the Torrens system of land registration achieved, which is to insure stability in land ownership. Once the title is registered, the owner might rest secure, without the necessity of waiting in the portals of the court, or sitting in the *"mirador de su casa"* to avoid the possibility of losing his land.[42]

Where the certificate of title was in the name of the mortgagor when the land was mortgaged to the bank, the bank, as mortgagee, had the right to rely on what appeared in the certificate and, in the absence of anything to excite suspicion, was under no obligation to look beyond the certificate and investigate the title of the mortgagor. Hence, the subsequent cancellation of the title on the ground that it covered land that was previously the subject of a free patent, cannot

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[40]Abrigo v. De Vera, GR No. 154409, June 21, 2004, 432 SCRA 544.

[41]Aznart Brothers Realty Co. v. Aying, GR No. 144773, May 16, 2005; Abrigo v. De Vera, *supra*.

[42]De la Cruz v. De la Cruz, GR No. L-61969, July 28, 1984, *supra*.

affect the rights of the bank as mortgagee for value and in good faith.[43] Conversely, where petitioners bought the land in question with the knowledge of the existing encumbrances thereon, they cannot invoke the right of purchasers in good faith.[44]

### (3) Purpose of the provision

The general purpose of the Torrens system is to forever foreclose litigation concerning the title to land. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated by the law. The decree of registration shall be conclusive upon all persons, unless fraud is proved within a period of one year after said decree is rendered.[45] Section 44 declares that every owner of registered land shall hold the same free and clear from any and all liens and encumbrances except those noted in the certificate of title and those mentioned and excepted in that section. The purpose is to give to the person registering, and to his transferee for value, an absolutely clean title, one not subject to hidden defects, to undeveloped or inchoate claims, to any sort of restriction, limitation or reduction except those named in the certificate of registration or described in the law. That being the purpose of the statute, the exceptions specified in Section 44 will not be enlarged beyond the actual signification of the words used or extended beyond the limits which the words themselves actually set.[46]

To illustrate: A presents a petition for the registration of certain parcel of land. B opposes the registration of a part of said parcel. This opposition is overruled and all of the parcel of land is decreed to be registered in the name of A. May B thereafter, not having made any claim to buildings and improvements during the proceedings, claim said buildings and improvements as his property, or prevent the decreed owner, A, from removing or destroying the same? The answer must be in the negative. Inasmuch as B did not, during the pendency of application for the registration, assert a claim to the buildings and improvements in order that the same may be noted in the certificate of title to be issued to A, he thereby lost his right thereto. Neither can B argue that since he has occupied the land in

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[43]Penullar v. Philippine National Bank, GR No. L-32762, Jan. 27, 1983, 105 Phil. 127.

[44]Tanchoco v. Aquino, GR No. L-30670, Sept. 15, 1987, 154 SCRA 1.

[45]Sec. 31, PD No. 1529.

[46]De Jesus v. City of Manila, GR No. 9337, Dec. 24, 1914, 29 Phil. 73.

good faith, the benefits of the improvements which he made thereon during his occupation should inure to him. If a person, during the pendency of the registration proceedings, remains silent as to certain rights, interests or claims existing in or upon the land, and then later, by a separate action, have such interests litigated, then the purpose of the Torrens system, which is to forever foreclose litigation with reference to the title to said land, will be defeated.[47]

Section 44 enumerates the only cases which may limit the absolute ownership of the registered owner over the property and excludes all other cases under the principle of *inclusio unius est exclusio alterius*.

**(4) Superior lien in favor of government**

The superior lien in favor of the government on the properties of the delinquent taxpayer, which need not, under Section 44 of PD No. 1529, be noted on the certificate of title to be binding on a subsequent purchaser, is complementary to the following remedies provided for in Section 316 of the Revised Internal Revenue Code: (a) distraint of personal property and interest and rights thereto, and (b) judicial action. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of taxes. The lien in favor of the government is a precautionary measure as the levy upon real property or any right or interest therein may be easily defeated by a transfer or conveyance of the property by the delinquent taxpayer.[48]

**(5) Unpaid real estate taxes**

The second paragraph of Section 44 refers to unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value. It is not necessary to register a tax lien because it is automatically registered, once the tax accrues, pursuant to said section.

It should be noted, however, that the provision speaks of "taxes levied and assessed." It is evident that so-called taxes which have not been assessed or levied against the property and are simply inchoate and undeveloped, or taxes in embryo, cannot be held to be a

[47]Blas v. De la Cruz, GR No. L-12284, Oct. 13, 1917, 37 Phil. 1.
[48]LRC Consulta No. 111, Register of Deeds of Rizal, petitioner, Aug. 31, 1956.

lien or encumbrance upon the land so registered or conveyed or to affect the title thereto. It is the protection of the purchaser which is the dominant note of the statute. Taxes which have never been levied or assessed are far more dangerous to a purchaser than taxes actually assessed and of record, because they are wholly unknown and unascertainable.[49]

### (6) Public highway

The simple possession of a certificate of title, under the Torrens system, does not necessarily make the possessor a true owner of all the property described therein. If a person obtains title, under the Torrens system, which includes, by mistake or oversight, lands which cannot be registered under the Torrens system, he does not, by virtue of said certificate alone, become the owner of the land illegally included. Thus, the inclusion of a public highway in the certificate of title does not give to the holder of such certificate ownership of the highway.[50] While prescription never prevails against a Torrens title, said title could not include a public thoroughfare as was already in existence before the issuance of the title.[51]

Section 44 which subjects the certificate of title to public servitudes which may be subsisting, does not apply, say, in the case of a road constructed subsequent to the acquisition of the land. Thus, in *Digran* v. *Auditor General*,[52] a case involving Lot No. 638 of the Banilad Friar Lands Estate which was sold by the government to Ruperta Cabucos and pursuant to which she was issued TCT No. RT-3918 (T-320), the government, without prior expropriation proceedings, constructed a municipal road passing through said lot. When the heirs of Cabucos sought compensation for the taking of the lot, the government denied payment mainly on the ground that Cabucos' title over Lot No. 638 was subject to the government's reservation for public use, such as rights of way and other public servitudes under Sections 19, 20 and 21 of Act No. 1120 (Friar Lands Act) and Section 39 of Act No. 496 (Land Registration Act). Sustaining the right of the heirs to demand just compensation, the Court ruled that Section 39 of the Land Registration Act (Section 44 of the Property Registration Decree) does not apply to cases where, as in the

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[49]De Jesus v. City of Manila, *supra*.
[50]Ledesma v. Municipality of Iloilo, GR No. 26337, Dec. 17, 1926, 49 Phil. 769.
[51]Garcia v. Auditor General, GR No. L-26888, March 17, 1975, 63 SCRA 138.
[52]GR No. L-21593, April 29, 1966, 16 SCRA 762.

case at bar, the road was constructed *subsequent* to the acquisition of the land. It would be unfair, said the Court, for the government to take back the land without just compensation after selling it and collecting the full price therefor. To do so would abridge the owner's individual right guaranteed by the Constitution to own private property and keep it, free from State appropriation, without due process and without just compensation.

The Court further ruled that Sections 19, 20 and 21 of Act No. 1120 sanction no authority for the government to take private lands covered by said Act for public use without just compensation. Specifically, Section 19 withholds from a purchaser of a friar land exclusive right to any canal, ditch, reservoir, or other irrigation works, or to any water supply upon which such irrigation works are or may be dependent, but this applies only where the servitude was *already existing* at the time of purchase.

### (7) PD No. 27, or the "Tenant Emancipation Decree"

PD No. 27, otherwise known as the "Tenant Emancipation Decree," was anchored upon the fundamental objective of addressing valid and legitimate grievances of land ownership giving rise to violent conflict and social tension in the countryside. To encourage a more productive agricultural base of the country's economy, the decree laid down a system for the purchase by small farmers, long recognized as the backbone of the economy, of the lands they were tilling. Landowners of agricultural lands which were devoted primarily to rice and corn production and exceeded the minimum retention area were thus compelled to sell, through the intercession of the government, their lands to qualified farmers at liberal terms and conditions. The Decree provides:

> "The tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated;
>
> In all cases, the landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it;"

The certificate of land transfer issued pursuant to PD No. 27 provides that the tenant farmer is deemed to be the owner of the agricultural land subject to the conditions that the cost of the por-

tion transferred to him, including the interest, shall be paid in fifteen (15) equal annual amortization, and that he must be a member of a *barrio* association upon organization of such association in his locality.

### (8) RA No. 6657, or the "Comprehensive Agrarian Reform Law"

The Comprehensive Agrarian Reform Program (CARP) is implemented by RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), approved June 10, 1988, and covers, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands, as provided in Proclamation No. 131 and EO No. 229, including other lands of the public domain suitable for agriculture. The law provides for retention limits as follows:

> "SEC. 6. *Retention Limits*. — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: Provided, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the areas originally retained by them thereunder: Provided, further, That original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead."

The constitutionality of RA No. 6657 was upheld in the case of *Association of Small Landowners in the Philippines, Inc.* v. *Secretary of Agrarian Reform*.[53] The Supreme Court, through Justice Cruz,

[53]GR No. 78742, July 14, 1989, 175 SCRA 342.

declared that the law is a valid exercise by the State of the police power and the power of eminent domain. Anent the contention that the law is unconstitutional insofar as it requires the owners of the expropriated properties to accept just compensation therefor in less than money, which is the only medium of payment allowed, the Court held that the law "is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose," but deals with "a *revolutionary* kind of expropriation (which) affects *all* private agricultural lands." "(S)uch a program will involve not mere millions of pesos (but) hundreds of billions of pesos will be needed, far more indeed than the amount of P50 billion initially appropriated, which is already staggering as it is by our present standards."

### (9) Public land patents

Public land patents, when duly registered in the Registry of Deeds, are veritable Torrens titles subject to no encumbrances except those stated therein, plus those specified by the statute.[54]

Sections 122 and 118 of the Public Land Act (CA No. 141, as amended) provide:

> "SEC. 122. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated, or transferred, except to persons, corporations, associations, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefor by their charters."[55]

> "SEC. 118. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant nor shall they become

[54]Dagdag v. Nepomuceno, GR No. L-12691, Feb. 27, 1959, 105 Phil. 216.

[55]Sec. 3, Art. XII of the Constitution provides that "Private corporations or associations may not hold such alienable lands of the public domain except by lease."

> liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.
>
> No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after the issuance of title shall be valid without the approval of the Secretary of Environment and Natural Resources, which approval shall not be denied except on constitutional and legal grounds."

By express provision of Section 118 of the Public Land Act, and in conformity with the policy of the law to preserve the land in the public land applicant and his family, any transfer or alienation of a free patent or homestead within five years from the issuance of the patent is proscribed. Such transfer nullifies said alienation and constitutes a cause for the reversion of the property to the State.

### (10) Other statutory liens

Alienable lands of the public domain "granted, donated, or transferred to a province, municipality, or branch or subdivision of the Government," as provided in Section 60 of CA No. 141, may be registered under the Torrens system pursuant to Section 103 of PD No. 1529. Such registration, however, is expressly subject to the condition in Section 60 that the land "shall not be alienated, encumbered or otherwise disposed of in a manner affecting its title, except when authorized by Congress." This provision refers to government reclaimed, foreshore and marshy lands of the public domain that have been titled but still cannot be alienated or encumbered unless expressly authorized by Congress.

Section 60 of CA No. 141 prohibits, "except when authorized by Congress," the sale of alienable lands of the public domain that are transferred to government units or entities. Section 60 of CA No. 141 constitutes, under Section 44 of PD No. 1529, a "statutory lien affecting title" of the registered land even if not annotated on the certificate of title. Alienable lands of the public domain held by government entities under Section 60 of CA No. 141 remain public lands because they cannot be alienated or encumbered unless Congress passes a law authorizing their disposition. Congress, however, cannot authorize the sale to private corporations of reclaimed alienable lands

of the public domain because of the constitutional ban. Only individuals can benefit from such law. [56]

**SEC. 45. *Statement of personal circumstances in the certificate.* — Every certificate of title shall set forth the full names of all persons whose interests make up the full ownership in the whole land, including their civil status, and the names of their respective spouses, if married, as well as their citizenship, residence and postal address. If the property covered belongs to the conjugal partnership, it shall be issued in the names of both spouses.**

**01. Contents of a certificate of title.**

Every certificate of title shall contain the following entries: (a) full names of all persons whose interest make up the full ownership in the land; (b) civil status; (c) names of their respective spouses, if married; (d) citizenship; and (e) residence and postal address. If the property belongs to the conjugal partnership, the title shall be issued in the names of both spouses.

It should be noted that an original certificate of title, issued in accordance with the decree, merely confirms a pre-existing title. The original certificate of title does not establish the time of acquisition of the property by the registered owner.[57]

**02. All property of the marriage presumed conjugal; exception.**

Article 160 of the Civil Code provides as follows:

> "Art. 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife."

The presumption applies to property acquired during the lifetime of the husband and wife. When the property is registered in the name of a spouse only and there is no showing as to when the property was acquired by said spouse, this is an indication that the

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[56]Chavez v. Public Estates Authority, GR No. 133250, July 9, 2002, 384 SCRA 152.

[57]Ponce de Leon v. Rehabilitation Finance Corporation, GR No. L-24571, Dec. 18, 1970, 36 SCRA 289.

property belongs exclusively to said spouse. And this presumption under Article 160 of the Civil Code cannot prevail when the title is in the name of only one spouse and the rights of innocent third parties are involved.[58]

In *Domingo* v. *Reed*,[59] the Court held that the wife may not bind the conjugal assets without a special authorization from the husband, thus:

> "Lolita Reed argues that, even on the assumption that the SPA was indeed a forgery, she was still justified in effecting a sale without her husband's consent. We are not persuaded. In addition to the fact that her rights over the property were merely inchoate prior to the liquidation of the conjugal partnership, there was absolutely not proof to her allegations that she used the proceeds of the sale to purchase necessities for the maintenance and support of the family. Having failed to establish any of these circumstances, she may not unilaterally bind the conjugal assets."

In *Ponce De Leon* v. *Rehabilitation Finance Corporation*,[60] the Court explained:

> "This provision must be construed in relation to Articles 153 to 159 of the same Code, enumerating the properties acquired . . . during the marriage that constitute the conjugal partnership. Consistently therewith, We have held that 'the party who invokes this presumption must *first prove* that the property in controversy *was acquired during the marriage*. In other words, *proof of acquisition during coverture is a condition sine qua non for the operation of the presumption* in favor of conjugal partnership.' It had, earlier, been declared, that '(t)he presumption under Article 160 of the Civil Code refers to property *acquired during the marriage* . . .' We even added that, there being 'no showing as to when the property in question was acquired . . . *the fact that the title is in the wife's name alone is determinative*.' This is borne out by the fact

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[58]Philippine National Bank v. Court of Appeals, GR No. L-57757, Aug. 31, 1987, 153 SCRA 435.

[59]GR No. 157701, Dec. 9, 2005.

[60]GR No. L-24571, Dec. 18, 1970, 36 SCRA 289.

that, in the previous cases applying said presumption, it was duly established that the property in question therein had been *acquired during coverture*. Such was, also, the situation obtaining in Servidad v. Alejandrino cited in the decision appealed from.

The case at bar is differently situated. The Sorianos have not succeeded in proving that the Parañaque property was acquired 'during the marriage' of their parents. What is more, *there is substantial evidence to the contrary*.

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Needless to say, had the property been acquired by them during coverture, it would have been registered, in the name not of 'Francisco Soriano, married to Tomasa Rodriguez,' but of *the spouses* 'Francisco Soriano and Tomasa Rodriguez.'"

In *Litam* v. *Espiritu*,[61] the Court quoted with approval the following disquisition of the lower court:

"Further strong proofs that the properties in question are the paraphernal properties of Marcosa Rivera, are the very Torrens Titles covering said properties. All the said properties are registered in the name of 'Marcosa Rivera, married to Rafael Litam.' This circumstance indicates that the properties in question belong to the registered owner, Marcosa Rivera, as her paraphernal properties, for *if they were conjugal, the titles covering the same should have been issued in the names of Rafael Litam and Marcosa Rivera*. The words 'married to Rafael Litam' written after the name of Marcosa Rivera, in each of the above mentioned titles are merely descriptive of the civil statue of Marcosa Rivera, the registered owner of the properties covered by said titles."

In *Philippine National Bank* v. *Court of Appeals*,[62] the subject properties when mortgaged to the PNB were registered in the name of Donata Montemayor, widow. Relying on the Torrens certificate of title covering said properties, the mortgage loan applications of

[61]GR No. L-7644, Nov. 27, 1956, 100 Phil. 364.
[62]Philippine National Bank v. Court of Appeals, *supra*.

Donata Montemayor were granted by the PNB and the mortgages were duly constituted and registered in the office of the Register of Deeds. In processing the loan applications, the PNB had the right to rely on what appears in the certificates of title and no more. On its face the properties were owned by Donata Montemayor, a widow. The PNB had no reason to doubt nor question the status of said registered owner and her ownership thereof. Indeed, there are no liens and encumbrances covering the same. The Court, through Justice Gancayco, said:

> "The well-known rule in this jurisdiction is that a person dealing with a registered land has a right to rely upon the face of the Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry.
>
> A Torrens title concludes all controversy over ownership of the land covered by a final degree of registration. Once the title is registered the owner may rest assured without the necessity of stepping into the portals of the court or sitting in the *mirador de su casa* to avoid the possibility of losing his land."

**SEC. 46. *General incidents of registered land.* — Registered land shall be subject to such burdens and incidents as may arise by operation of law. Nothing contained in this decree shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife, landlord and tenant, or from liability to attachment or levy on execution, or from liability to any lien of any description established by law on the land and the buildings thereon, or on the interest of the owner in such land or buildings, or to change the laws of descent, or the rights of partition between co-owners, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy under the laws relative to preferences, or to change or affect in any way other rights or liabilities created by law and applicable to unregistered land, except as otherwise provided in this Decree.**

**01. Registered land subject to burdens or incidents by operation of law.**

Land registered under the Torrens system is, as a rule, not subject to any burden except those noted on the certificate of title. In fact every registered owner and every subsequent purchaser taking a certificate of title in good faith shall hold the same free from all encumbrances excepts those noted thereon and except any of the encumbrances mentioned in Section 44 of PD No. 1529.

What appears on the face of the title is controlling on questions of ownership since the certificate of title is an absolute and indefeasible evidence of ownership of the property in favor of the person whose name appears therein.[63]

However, Section 46 states that nothing contained in the Decree shall be construed as relieving the registered land or the owners thereof from any rights incident to the relation of husband and wife, landlord and tenant, or from liability to attachment, levy on execution, or any lien established by law on the land and the buildings thereon. The land may be taken through eminent domain proceedings, or subjected to liability in bankruptcy and insolvency proceedings.

**SEC. 47. *Registered land not subject to prescription.* — No title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession.**

**01. Registered land cannot be acquired by prescription or adverse possession.**

Prescription and adverse possession can never militate against the right of a registered owner since a title, once registered, cannot be defeated even by adverse, open and notorious possession.[64] Adverse possession of real property for the requisite period confers title as effectually as any paper title, but such a title cannot be acquired against a title registered under the provisions of the Property Registration Decree. The statute of limitations is merely a bar to a right of action and does not operate as a transfer of title at all.[65]

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[63]Panganiban v. Dayrit, GR No. 151235, July 28, 2005.

[64]*Ibid*.

[65]La Corporacion de Padres Agustinos Recoletos v. Crisostomo, GR No. 10031, Dec. 6, 1915, 32 Phil. 427.

In a case,[66] a registered owner of land was deprived of his posses-sion when it was taken over by the city government for road purposes. The owner thereof made demands for the payment of his land, but the Auditor General rejected the claim on the ground of prescription. The Court, however, held that registered lands are not subject to prescription, and that, on grounds of equity, the government should pay for private property which it appropriates for the benefit of the public, regardless of the passing of time.

### (1) Prescription unavailing not only against the registered owner but also his heirs

A property registered under the Torrens system is not subject to prescription. Prescription is unavailing not only against the registered owner but also against his hereditary successors because the latter merely step into the shoes of the decedent by operation of law and are merely the continuation of the personality of their predecessor in interest.[67] The legal heirs of a deceased may file an action arising out of a right belonging to their ancestor, without need of a separate judicial declaration of their status as such, provided there is no pending special proceeding for the settlement of the decedent's estate.[68] If no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession, the right of the registered owner to recover possession of the registered property is equally imprescriptible since possession is a mere consequence of ownership.[69]

In *Eugenio* v. *Perdido*,[70] it was held that as to lands registered under the Torrens system, ten years' adverse possession may not be permitted to defeat the owners' right to possession, which is a necessary incident of ownership, otherwise loss of the land by prescription would be indirectly approved.

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[66]Alfonso v. Pasay City, GR No. L-12754, Jan. 30, 1960, 106 Phil. 1017; Herrera v. Auditor General, GR No. L-10776, Jan. 23, 1958, 102 Phil. 875.

[67]Barcelona v. Barcelona, GR No. L-9014, Oct. 31, 1956, 100 Phil. 251; Guinoo v. Court of Appeals, GR No. L-5541, June 25, 1955, 97 Phil. 235.

[68]Atun v. Nuñez, GR No. L-8018, Oct. 26, 1955, 97 Phil. 762.

[69]*Ibid*.

[70]GR No. L-7083, May 19, 1955, 97 Phil. 41.

### (2) Registration of mortgage does not make action for foreclosure imprescriptible

Section 47 speaks of the title of the "registered owner" and refers to prescription or adverse possession as a mode of acquiring ownership, the whole philosophy of the law being merely to make a Torrens title indefeasible and, surely, not to cause a registered lien or encumbrance such as a mortgage — and the right of action to enforce it — imprescriptible as against the registered owner. The important effect of the registration of a mortgage is obviously to bind third parties.[71]

## 02. Registered owner may be barred from recovering possession through laches.

But even a registered owner of property may be barred from recovering possession of property by virtue of *laches*. Under the Property Registration Decree, no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession. The same is not true with regard to laches.

In *Lucas* v. *Gamponia*,[72] the land there in dispute was acquired by free patent. Later, the patentee deeded the land to another, who held possession thereof until his death. His successor transferred the same land to defendant from whom the plaintiff, a granddaughter of the patentee, sought to recover it after 37 years since the original conveyance. The Court ruled that the action could no longer be maintained on account of laches, thus:

> "Upon a careful consideration of the facts and circumstances, we are constrained to find, however, that while no legal defense to the action lies, an equitable one lies in favor of the defendant and that is, the equitable defense of laches. We hold that the defense of prescription or adverse possession in derogation of the title of the registered owner Domingo Mejia does not lie, but that of the equitable defense of laches. Otherwise, stated, we hold that while defendant may not be considered as having acquired title by virtue of his and his predecessors' long continued possession for 37 years, the original owner's right to

[71]Buhat v. Besana, GR No. L-6746, Aug. 31, 1954, 95 Phil. 721.
[72]Lucas v. Gamponia, GR No. L-9335, Oct. 31, 1956, 100 Phil. 277.

> recover back the possession of the property and the title thereto from the defendant has, by the long period of 37 years and by patentee's inaction and neglect, been converted into a stale demand."[73]

Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. The defense of laches is an equitable one and does not concern itself with the character of the defendant's title, but only with whether or not by reason of plaintiff's long inaction or inexcusable neglect, he should be barred from asserting his claim at all, because to allow him to do so would be inequitable and unjust to defendant. Laches is not concerned merely with lapse of time, unlike prescription. While the latter deals with the fact of delay, laches deals with the effect of unreasonable delay.[74]

The reason upon which the rule is based is not alone the lapse of time during which the neglect to enforce the right has existed, but the changes of conditions which may have arisen during the period in which there has been neglect. In other words, where the court finds that the position of the parties has to change, that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect.[75]

It is the effect of delay in asserting their right of ownership over the property which militates against the registered owner, not merely the fact that he asserted his right to the property too late in the day. The rule is exemplified in *Panganiban* v. *Dayrit*[76] where the Court held that even a registered owner of property may be barred from recovering possession of property by virtue of laches. In this case, petitioners, for forty-five (45) years, did nothing to assert their right of ownership and possession over the subject property.

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[73]See also Cabrera v. Court of Appeals, GR No. 108547, Feb. 3, 1997, 267 SCRA 339.

[74]*Ibid.*

[75]*Ibid.*

[76]GR No. 151235, July 28, 2005.

In the case of *Lola* v. *Court of Appeals*,[77] the Court held that petitioners acquired title to the land owned by respondent by virtue of the equitable principles of laches due to respondent's failure to assert her claim and ownership for thirty-two (32) years. In *Miguel* v. *Catalino*,[78] the Court said that appellant's passivity and inaction for more than thirty-four (34) years justifies the defendant-appellee in setting up the equitable defense of laches.

**(1) Elements of laches**

The elements of laches indicated in *Go Chi Gun*. v. *Co Cho*,[79] and reiterated in the cases of *Lucas* v. *Gamponia*,[80] *Miguel* v. *Catalino*[81] and *Claverias* v. *Quingco*[82] are as follows:

(a) Conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy;

(b) Delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit;

(c) Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and

(d) Injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

**(2) Other illustrative cases of laches**

1. In *Caragay-Layno* v. *Court of Appeals*,[83] for twenty (20) years from the date of registration of title in 1947 up to 1967 when the suit for recovery of possession was instituted, neither the registered owner, up to the time of his death in 1951, nor his successors-in-interest, had taken steps to possess or lay adverse claim to the

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[77]GR No. L-46573, Nov. 13, 1986, 145 SCRA 439.
[78]GR No. L-23072, Nov. 29, 1968, 26 SCRA 234.
[79]GR No. L-5208, Feb. 28, 1955, 96 Phil. 622.
[80]*Supra*.
[81]*Supra*.
[82]GR No. 77744, March 6, 1992, 207 SCRA 66.
[83]GR No. 52064, Dec. 26, 1984, 133 SCRA 178.

disputed portion. They were, therefore, held to be guilty of laches as would effectively derail their cause of action.

2. In *Golloy* v. *Court of Appeals*,[84] petitioner and his predecessor or predecessors had been in continuous possession of the disputed portion in the concept of an owner, for almost fifty (50) years, *i.e.*, from August 15, 1919, when the property was registered in the name of respondent, up to February, 1966 when such possession was disturbed by respondent's causing the placement of two (2) monuments inside his land. It was held that if respondent had any right at all to the overlapped portion, such right has been lost through laches. Although the defense of prescription is unavailing to the petitioners because, admittedly, the title to Lot No. 5517 was still registered in the name of respondent, the petitioners had nonetheless acquired title to it by virtue of the equitable principle of laches.

3. In *De la Calzada-Cierras* v. *Court of Appeals*,[85] petitioners' complaint to recover the title and possession of Lot Bo. 4362 was filed only on July 21, 1981, twelve (12) years after the registration of the sale to Rosendo de la Calzada. The dismissal of the complaint was upheld since petitioners failed and neglected for an unreasonably long time to assert their right to the property in Rosendo's possession. "The principle of laches is a creation of equity. It is applied, not really to penalize neglect or sleeping upon one's right, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation."

4. In *Arradaza* v. *Court of Appeals*,[86] the Court held: "(T)here is evidently a failure or neglect for an unreasonable and unexplained period of time to do what they claimed they were entitled to do, where petitioners failed to institute any action for reconveyance nor did they seek reconveyance until about twenty-five (25) years from the execution of the deed of sale. Such negligence or failure warrants the assumption that the parties claiming to be entitled to assert it, either had abandoned it, or had decided that they were not entitled to assert it and thus, acquiesced in it. x x x More specifically, this Court finds it unbelievable that in the span of more than twenty-seven (27) years, the petitioners would not have taken any step to verify the status of the land of their father which had been in the

[84]GR No. 47491, May 4, 1989, 173 SCRA 26.
[85]GR No. 95431, Aug. 7, 1992, 212 SCRA 390.
[86]GR No. 50422, Feb. 8, 1989, 170 SCRA 12.

possession of private respondents during all that time. x x x The principle of laches is creation of equity. It is applied, not really to penalize neglect or sleeping upon one's right, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation." The Court further held: "On the issue of prescription, this Court has invariably ruled in numerous decisions that an action for recovery of title, or possession of, real property or an interest therein can only be brought within ten (10) years after the cause of action accrues. x x x In the instant case, the cause of action for reconveyance must be deemed to have occurred on October 21, 1947 when the deed of sale in favor of Estelita M. Bangloy who immediately took possession of the land was executed."

5. In *Agne* v. *Director of Lands*,[87] it was held that the long and continued possession of petitioners under a valid claim of title cannot be defeated by the claim of a registered owner whose title is defective from the beginning. Moreover, the failure of private respondents to assert their claim over the disputed property for almost thirty years constitutes laches and bars an action to recover the same. The registered owners' right to recover possession of the property and title thereto from petitioners has, by long inaction or inexcusable neglect, been converted into a stale demand.

**SEC. 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.**

### 01. Distinction between a direct and collateral attack on the title.

An action is deemed an attack on a title when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[88]

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[87]GR No. 40399, Feb. 6, 1990, 181 SCRA 790.

[88]Sarmiento v. Court of Appeals, GR No. 152627, Sept. 16, 2005.

**02. Certificate of title cannot be the subject of collateral attack.**

The certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein. After the expiration of the one (1) year period from the issuance of the decree of registration upon which it is based, it becomes incontrovertible. The settled rule is that a decree of registration and the certificate of title issued pursuant thereto may be attacked on the ground of actual fraud within one (1) year from the date of its entry and such an attack must be direct and not by a collateral proceeding. The validity of the certificate of title in this regard can be threshed out only in an action expressly filed for the purpose.[89]

Section 48 of the Property Registration Decree expressly provides that a certificate of title cannot be subject to collateral attack. It can be altered, modified or cancelled only in a direct proceeding. Under Article 1126 of the Civil Code, prescription of ownership of lands registered under the Decree shall be governed by special laws. Correlatively, Section 47 of the Decree provides that no title to registered land in derogation of that of the registered owner shall be acquired by adverse possession. Consequently, any claim to registered land on the basis of acquisitive prescription is baseless, and proof of possession by the claimant is both immaterial and inconsequential.[90]

A Torrens title cannot be attacked collaterally. The issue on its validity can be raised only in an action expressly instituted for the purpose. The efficacy and integrity of the Torrens system must be protected.[91]

> "Moreover, it is a well-known doctrine that the issue as to whether title was procured by falsification or fraud as advanced by petitioner can only be raised in an action expressly instituted for the purpose. Torrens title can be attacked only for fraud, within one year after the date of the issuance of the decree of registration. Such attack must be direct, and not by a collateral proceeding. The title

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[89]Ybañez v. Intermediate Appellate Court, GR No. 68291, March 6, 1991, 194 SCRA 743.

[90]Natalia Realty Corporation v. Vallez, GR No. 78290, May 23, 1989, 173 SCRA 534.

[91]Cimafranca v. Intermediate Appellate Court, GR No. L-68687, Jan. 31, 1987, 147 SCRA 611; Henderson v. Garrido, GR No. L-4013, Dec. 28, 1951, 90 Phil. 624.

represented by the certificate cannot be changed, altered, modified, enlarged, or diminished in a collateral proceeding."[92]

**03. A "direct attack" on the title may be made in a counterclaim or third-party complaint.**

In *Leyson* v. *Bontuyan*,[93] plaintiffs filed a complaint against defendant for quieting of title and damages. They alleged that upon their return from the United States, they found that the property was occupied and cultivated by the tenants of defendant who could not produce any document evidencing defendant's ownership. In his answer, defendant averred, by way of affirmative defense, that the lots in question were portions of a parcel of land owned by Calixto Gabud which were eventually sold to him through a series of intermediary transfers. He interposed a counterclaim that Gregorio Bontuyan, plaintiffs' predecessor, obtained his title to the property through fraud. Defendant prayed that the complaint be dismissed, that he be declared the owner of the property, and that the title of Bontuyan be cancelled. Plaintiffs countered that defendant's counterclaim constituted a collateral attack on the title of Bontuyan and the titles emanating therefrom. However, the Court, through Justice Callejo, rejected plaintiffs' contention, and declared that an action is a direct attack on a title if its object is to nullify the same, and thus challenge the proceeding pursuant to which the title was issued. A direct attack on a title may be in an original action or in a counterclaim assailing it as void. A counterclaim is considered a new suit and is to be tested by the same rules as if it were an independent action.

In a case for recovery of possesion based on ownership *(accion reivindicatoria)*, the Court, through Justice Chico-Nazario, reiterated that if the object of the third-party complaint is to nullify the title of the third-party defendant, the third-party complaint constitutes a direct attack on the title because the same is in the nature of an original complaint for cancellation of title. The situation can be likened to a case for recovery of possession wherein the defendant files a counterclaim against the plaintiff attacking the validity of the latter's title. Like a third-party complaint, a counterclaim is con-

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[92]Lagrosa v. Court of Appeals, GR No. 115981, Aug. 12, 1999, 370 Phil. 225.
[93]GR No. 156357, Feb. 18, 2005.

sidered an original complaint, and as such, the attack on the title cannot be considered as a collateral attack.[94]

**(1) Other illustrative cases of collateral and direct attack on the title**

1. The principle is illustrated in the case of *Magay* v. *Estiandan*[95] where plaintiff bought from her mother-in-law a piece of land on which defendant had constructed two houses. After acquiring the property, plaintiff wrote defendant asking him to vacate the premises, but he refused. Plaintiff sued defendant. Defendant questioned the validity of the title of plaintiff's predecessor for having been allegedly acquired under anomalous circumstances. The lower court found for the plaintiff. On appeal, the Supreme Court affirmed the judgment based on the principle that a Torrens title cannot be collaterally attacked.

> "It is well-settled that a Torrens title cannot be collaterally attacked. The issue on the validity of the title can only be raised in an action expressly instituted for that purpose. Even assuming that the land in question is still part of the public domain, then the appellant is not the proper party to institute the reversion of the land but it must be the Solicitor General in the name of the Republic of the Philippines."

2. In *Samonte* v. *Sambilon*,[96] it was held that a homestead patent issued under the Public Land Act and registered in conformity with the provisions of Section 122 of Act No. 496 (Sec. 103, PD No. 1529) becomes irrevocable and enjoys the same privileges as a Torrens title issued under Act No. 496. The decree cannot be collaterally attacked by any person claiming title to, or interest in, the land prior to the registration proceedings.

3. In *Director of Lands* v. *Gan Tan*,[97] the Court ruled that the issue as to whether or not an alien is qualified to acquire land covered by a Torrens title can only be raised in an action expressly instituted for that purpose. A Torrens title as a rule is irrevocable

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[94]Sarmiento v. Court of Appeals, *supra*.
[95]GR No. L-28975, Feb. 27, 1976, 69 SCRA 456.
[96]GR No. L-12964, Feb. 29, 1960, 107 Phil. 198.
[97]GR No. L-2664, May 30, 1951, 89 Phil. 184.

and indefeasible, and should be maintained and respected unless challenged in a direct proceeding.

4. The same principle is reiterated in the recent case of *Borbajo* v. *Hidden View Homeowners, Inc.*[98] In this case, a homeowners association caused the construction of a guardhouse at the entrance of the subdivision and hired the services of a security guard to prevent unauthorized persons and construction vehicles from passing through the subdivision. The measure adversely affected the residents of the subdivision as well as petitioner herself since her delivery trucks and heavy equipment used in the construction of her housing projects had been effectively prevented from passing through the road lots. Thus, petitioner filed an action for damages and injunction, praying that the homeowners association and the members thereof (respondents) be ordered to desist from preventing her delivery trucks and construction workers from passing through the road lots. Respondents argued that the sale of the road lots to petitioner was illegal and contrary to the provisions of PD No. 957 which requires that the road lots in a subdivision development shall be in the name of the developer or owner, anent which petitioner is not. The trial court rendered a decision granting injunction, but the same was reversed by the appellate court. On a petition for review, the Supreme Court upheld the trial court's decision since petitioner appeared to be the titled owner of the roads lots in question. The title is presumed valid and is effective until annulled in a direct proceeding. Justice Callejo, speaking for the Court, said:

> "As a registered co-owner of the road lots, Borbajo is entitled to avail of all the attributes of ownership under the Civil Code — *jus utendi*, *fruendi, abutendi, disponendi et vindicandi*. Article 428 of the New Civil Code is explicit that the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law. A co-owner, such as (petitioner), is entitled to use the property owned in common under Article 486 of the Civil Code. Therefore, respondents cannot close the road lots to prevent (petitioner) from using the same.
>
> The Court of Appeals ruled that the road lots cannot be sold to any person pursuant to P.D. No. 957, as

[98]GR No. 152440, Jan. 31, 2005, 450 SCRA 315.

amended. It also pointed out that fraud is manifest in the acquisition of titles thereto. However, it is a settled rule that a Torrens title cannot be collaterally attacked.

It is a well-known doctrine that the issue as to whether title was procured by falsification or fraud can only be raised in an action expressly instituted for the purpose. A Torrens title can be attacked only for fraud, within one year after the date of the issuance of the decree of registration. Such attack must be direct, and not by a collateral proceeding. The title represented by the certificate cannot be changed, altered, modified, enlarged, or diminished in a collateral proceeding. The certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein.

However, in upholding the efficiency value of the disputed titles for purposes of the present petition, we are not foreclosing any future determination by appropriate forum on the legality of (petitioner's) titles over the road lots. Verily, a separate case for annulment of titles over the road lots is now pending before the court."

5. In *Ybañez* v. *Intermediate Appellate Court*,[99] the facts are: On April 15, 1963, OCT No. P-15353 was issued to private respondent Valentin Ouano on the basis of a homestead patent. On January 4, 1975, respondent's possession was interrupted when petitioners forcibly entered the land. Respondent filed a complaint for recovery of possession. The trial court rendered judgment in his favor and ordered petitioners to vacate. The appellate court affirmed. In dismissing petitioners' petition for review, Justice Fernan said:

"It was erroneous for petitioners to question the Torrens Original Certificate of Title issued to private respondent over Lot No. 986 in Civil Case No. 671, an ordinary civil action for recovery of possession filed by the registered owner of the said lot, by invoking as affirmative defense in their answer the Order of the Bureau of Lands, dated July 19, 1978, issued pursuant to the investigatory power of the Director of Lands under Section 91 of Public Land Law (C.A. 141 as amended). Such a defense partakes of the

[99]*Supra.*

nature of a collateral attack against a certificate of title brought under the operation of the Torrens system of registration pursuant to Section 122 of the Land Regis-tration Act, now Section 103 of P.D. No. 1259. The case law on the matter does not allow a collateral attack on the Torrens certificate of title on the ground of actual fraud. The rule now finds expression in Section 48 of P.D. No. 1529 otherwise known as the Property Registration Decree.

The certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein. After the expiration of the one (1) year period from the issuance of the decree of registration upon which it is based, it becomes incontrovertible. The settled rule is that a decree of registration and the certificate of title issued pursuant thereto may be attacked on the ground of actual fraud within one (1) year from the date of its entry and such an attack must be direct and not by a collateral proceeding. The validity of the certificate of title in this regard can be threshed out only in an action expressly filed for the purpose.

It must be emphasized that a certificate of title issued under an administrative proceeding pursuant to a home-stead patent, as in the instant case, is as indefeasible as a certificate of title issued under a judicial registration proceeding, provided the land covered by said certificate is a disposable public land within the contemplation of the Public Land Law."

**SEC. 49.** ***Splitting, or consolidation of titles.*** **— A registered owner of several distinct parcels of land embraced in and covered by a certificate of title desiring in lieu thereof separate certificates, each containing one or more parcels, may file a written request for that purpose with the Register of Deeds concerned, and the latter, upon the surrender of the owner's duplicate, shall cancel it together with its original and issue in lieu thereof separate certificates as desired. A registered owner of several distinct parcels of land covered by separate certificates of title desiring to have in lieu thereof a single certificate for the whole land, or several certificates for the different parcels thereof, may also file a written request with the Register of Deeds concerned, and the latter, upon the surrender of the owner's duplicates, shall cancel them together with their**

**originals, and issue in lieu thereof one or separate certificates as desired.**

**SEC. 50. *Subdivision and consolidation plans.* — Any owner subdividing a tract of registered land into lots which do not constitute a subdivision project as defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or with the Bureau of Lands a subdivision plan of such land on which all boundaries, streets, passageways and waterways, if any, shall be distinctly and accurately delineated.**

**If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner's duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: *Provided, however,* That the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of the national government, province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated.**

**A registered owner desiring to consolidate several lots into one or more, requiring new technical descriptions, shall file with the Land Registration Commission, a consolidation plan on which shall be shown the lots to be affected, as they were before, and as they will appear after the consolidation. Upon the surrender of the owner's duplicate certificates and the receipt of consolidation plan duty approved by the Commission, the Register of Deeds concerned shall cancel the corresponding certificates of title and issue a new one for the consolidated lots.**

**The Commission may not order or cause any change, modification, or amendment in the contents of any certificate of title, or of any decree or plan, including the technical description therein, covering any real property registered under the Torrens system, nor order the cancellation of the said certificate of title and the issuance of a new one which would result in the enlargement of the area covered by the certificate of title.**

**01. Subdivision of registered land.**

Under this section, any owner desiring to subdivide a tract of registered land into lots shall submit to the Land Registration Authority a subdivision plan of the land duly approved by the Lands Management Bureau, through the Regional Technical Director, or the Administrator of the Land Registration Authority (LRA), together with the approved technical descriptions and the corresponding owner's duplicate certificate of title. The plan shall distinctly and accurately delineate all boundaries, streets, passageways and waterways, if any. The Register of Deeds shall thereupon register the subdivision plan without need of prior court approval and issue a new certificate of title for the land as subdivided.

A registered owner desiring to consolidate several lots into one or more shall file with the LRA a consolidation plan showing the lots affected, with their technical descriptions, and upon surrender of the owner's duplicate certificates and receipt of the plan duly approved by the LRA, the Register of Deeds shall cancel said certificates and issue a new one for the consolidated lots.

It will be seen that the subdivision of the land may be made administratively with the owner submitting a duly approved subdivision plan to the Register of Deeds and requesting him to issue a new certificate of title for the land as subdivided. However, if there is no unanimity among the owners as regards the subdivision, and they deem it expedient to bring the matter to the court, then a new certificate of title shall not be entered until the petition shall have been properly determined by the court pursuant to Section 108 of PD No. 1529 which provides that the court can only have jurisdiction to hear the petition "after notice to all parties in interest."[100] All petitions or motions filed under this section, and all such other petitions or motions filed after original registration, shall be filed and entitled in the original case in which the decree of registration was entered.

Where a registered property is subdivided into smaller lots and a specific lot is conveyed by the owner, the vendee needs only to have the deed of purchase registered and obtain a transfer certificate of title in his name for said lot after presenting to the Register of Deeds the subdivision plan and the vendor's copy of the certificate of title.[101]

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[100]Lagula v. Casimiro, GR No. L-7852, Dec. 17, 1955, 98 Phil. 102.
[101]Rojas v. City of Tagaytay, GR No. L-13333, Nov. 24, 1959, 106 Phil. 512.

**02. Conveyance of only a portion of the land.**

If only a portion of the land described in the certificate of title is conveyed, the Register of Deeds shall not enter any new title in favor of the grantee until after a plan indicating the portions into which the land has been subdivided shall first be presented, together with the technical descriptions thereof. Meantime, the deed of conveyance may be annotated on the owner's certificate of title, which annotation shall serve as notice to third parties as to the fact that a portion of the land has been the subject of conveyance. Upon approval of the plan and technical descriptions of the portions into which the land has been subdivided, the same shall be submitted to the Register of Deeds for annotation on the certificate of title. He shall thereupon partially cancel the grantor's certificate as to the portion affected and issue (a) a new certificate to the grantee covering the specific portion conveyed, and (b) another certificate to the grantor for the remaining portions. But the Register of Deeds, instead of canceling the grantor's title, may simply make a memorandum thereon to the effect that a portion of the land has been conveyed and that the title is deemed cancelled only insofar as that portion is concerned.

**03. Illegal enlargement of area.**

The last paragraph of Section 50 reads:

> "The Commission may not order or cause any change, modification, or amendment in the contents of any certificate of title, or of any decree or plan, including the technical description therein, covering any real property registered under the Torrens system, nor order the cancellation of the said certificate of title and the issuance of a new one which would result in the enlargement of the area covered by the certificate of title."

This provision is directed against attempts to enlarge the area of registered land by a mere subdivision or consolidation survey, a censurable practice which has spawned numerous land claims and conflicts, not to mention the threat it has wrought on the very stability of the Torrens system.

# CHAPTER V

# SUBSEQUENT REGISTRATION

## I. VOLUNTARY DEALINGS WITH REGISTERED LANDS

### GENERAL PROVISIONS

**SEC. 51. *Conveyance and other dealings by registered owner.* — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.**

**The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.**

**01. Formal requirements of contracts involving real property.**

Contracts are obligatory in whatever form they may have been entered into provided all essential requirements for their validty are present.[1] These requisites are: (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; and (c) cause of the obligation which is established.

Pertinent provisions of the Civil Code on Form of Contracts state:

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[1]Tan v. Lim, GR No. 128004, Jan. 25, 1998, 296 SCRA 455.

"ART. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.

ART. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

ART. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by articles 1403, No. 2, and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by articles 1403, No. 2 and 1405."

The contract of sale of real property even if not complete in form, so long as the essential requisites of consent of the contracting parties, object, and cause of the obligation concur and they were clearly established to be present, is valid and effective as between the parties. Under Article 1357 of the Civil Code, its enforceability is recognized

as each contracting party is granted the right to compel the other to execute the proper public instrument so that the valid contract of sale of registered land can be duly registered and can bind third persons.[2]

In a contract of sale, the title passes to the vendee upon the delivery of the thing sold; whereas in a contract to sell, ownership is not transferred upon delivery of the property but upon full payment of the purchase price. In the former, the vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded; whereas in the latter, title is retained by the vendor until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach but an even that prevents the obligation of the vendor to convey title from becoming effective.[3]

### (1) Form is important for validity, convenience and enforceability

As a general rule, form is not important for the validity of a contract provided there is consent, subject matter and cause.[4] But this rule applies only to consensual contracts. An example of a contract requiring a specified form is a donation of real property which must be in a public instrument to be valid. In order that a mortgage may be validly constituted, it is indispensable that the document in which it appears be recorded in the Registry of Deeds.[5] On the other hand, the agreements mentioned in the Statute of Frauds,[6] in order to be enforceable, must be in writing and "subscribed by the party charged," like an agreement for the sale of real property. Article 1358 enumerates the contracts which must appear in a public document for convenience, where registration is necessary only for the benefit of third parties. Thus, the sale of real estate, whether made as a result of private transaction or of foreclosure of execution sale, becomes legally effective against third persons only from the date of its registration.[7]

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[2]Jomoc v. Court of Appeals, GR No. 92871, Aug. 2, 1991, 200 SCRA 74.

[3]Carrascoso v. Court of Appeals, GR No. 123672, Dec. 14, 2005.

[4]Shaffer v. Palma, GR No. L-24115, March 1, 1968, 131 Phil. 22.

[5]Art. 2125, Civil Code; Gatioan v. Gaffud, GR No. L-21953, March 28, 1969, 27 SCRA 706.

[6]Art. 1403(2), Civil Code.

[7]Campillo v. Philippine National Bank, GR No. L-19890, May 21, 1969, 28 SCRA 220.

In *Limketkai Sons Milling, Inc.* v. *Court of Appeals*,[8] it was held:

> "The fact that the deed of sale still had to be signed and notarized does not mean that no contract had already been perfected. A sale of land is valid regardless of the form it may have been entered into (Claudel vs. Court of Appeals, 199 SCRA 113, 119 [1991]). The requisite form under Article 1458 of the Civil Code is merely for greater efficacy or convenience and the failure to comply therewith does not affect the validity and binding effect of the act between the parties (Vitug, Compendium of Civil Law and Jurisprudence, 1993 Revised Edition, p. 552). If the law requires a document or other special form, as in the sale of real property, the contracting parties may compel each other to observe that form, once the contract has been perfected. Their right may be exercised simultaneously with action upon the contract (Article 1359, Civil Code)."

### (2) Delivery as a mode of transmission, real or constructive

Under the civil law, delivery (tradition) as a mode of transmission of ownership may be actual (real tradition) or constructive (constructive tradition). When the sale of real property is made in a public instrument, the execution thereof is equivalent to the delivery of the thing object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. In other words, there is symbolic delivery of the property subject of the sale by the execution of the public instrument, unless from the express terms of the instrument, or by clear inference therefrom, this was not the intention of the parties. Such would be the case, for instance, when a certain date is fixed for the purchaser to take possession of the property subject of the conveyance, or where, in case of sale by installments, it is stipulated that until the last installment is made, the title to the property should remain with the vendor, or when the vendor reserves the right to use and enjoy the property until the gathering of the pending crops, or where the vendor has no control over the thing sold at the moment of the sale, and, therefore, its material delivery could not have been made. The condition that petitioner should first register the deed of sale and secure a new title in the

[8]GR No. 118509, Dec. 1, 1995, 250 SCRA 523.

name of the vendee before the latter shall pay the balance of the purchase price, does not preclude the transmission of ownership.[9]

A contract is perfected by mere consent. More particularly, a contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. This meeting of the minds speaks of the intent of the parties in entering into the contract respecting the subject matter and the consideration thereof. If the words of the contract appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. Even when a document appears on its face to be a sale, the owner of the property may prove that the contract is really a loan with mortgage by raising as an issue the fact that the document does not express the true intent of the parties.[10]

The perfection of a contract of sale should not, however, be confused with its consummation. In relation to the acquisition and transfer of ownership, it should be noted that sale is not a mode, but merely a title. A mode is the legal means by which dominion or ownership is created, transferred or destroyed, but title is only the legal basis by which to affect dominion or ownership. Under Article 712 of the Civil Code, "ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition." Contracts only constitute titles or rights to the transfer or acquisition of ownership, while delivery or tradition is the mode of accomplishing the same. Therefore, sale by itself does not transfer or affect ownership; the most that sale does is to create the obligation to transfer ownership. It is tradition or delivery, as a consequence of sale, that actually transfers ownership.

Explicitly, the law provides that the ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501. The word "delivered" should not be taken restrictively to mean transfer of actual physical possession of the property. The law recognizes two principal modes of delivery, to wit: (1) actual delivery; and (2) legal or constructive delivery.

Actual delivery consists in placing the thing sold in the control and possession of the vendee. Legal or constructive delivery, on the

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[9]Philippine Suburban Development Corporation v. Auditor General, GR No. L-19545, April 18, 1975, 63 SCRA 397.

[10]Lustan v. Court of Appeals, GR No. 111924, Jan. 27, 1997, 266 SCRA 663.

other hand, may be had through any of the following ways: the execution of a public instrument evidencing the sale; symbolical tradition such as the delivery of the keys of the place where the movable sold is being kept; *traditio longa manu* or by mere consent or agreement if the movable sold cannot yet be transferred to the possession of the buyer at the time of the sale; *traditio brevi manu* if the buyer already had possession of the object even before the sale; and *traditio constitutum possessorium*, where the seller remains in possession of the property in a different capacity.[11]

**(3) Actual notice equivalent of registration**

As between the parties to a contract of sale, registration is not necessary to make it valid and effective, for actual notice is equivalent to registration. Section 51 of the Property Registration Decree provides that, even without the act of registration, a deed purporting to convey or affect registered land shall operate as a contract between the parties. The registration is intended to protect the buyer against claims of third persons arising from subsequent alienations by the vendor, and is certainly not necessary to give effect to the deed of sale, as between the parties to the contract.[12]

**02. Act of registration is the operative act to convey or affect registered land.**

It is the registration of contracts dealing with registered property in the corresponding Registry of Deeds that binds or affects third persons. Non-compliance with the formal requirements does not adversely affect the validity of the contract nor the contractual rights and obligations of the parties.

The act of registration is the operative act to convey or affect the land insofar as third persons are concerned. Registration is a mere ministerial act by which a deed, contract or instrument is inscribed in the records of the office of the Register of Deeds and annotated at the back of the certificate of the title covering the land subject of the deed, contract or instrument.[13]

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[11]San Lorenzo Development Corporation v. Court of Appeals, GR No. 124242, Jan. 21, 2005, 449 SCRA 99.

[12]Lustan v. Court of Appeals, *supra*.

[13]Agricultural Credit Cooperative Association v. Yusay, GR No. L-13313, April 28, 1960, 107 Phil. 791.

It is worth noting, however, that the Property Registration Decree only protects the holder in good faith, and cannot be used as a shield for frauds.[14] Thus, where the party has knowledge of a prior existing interest which is unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him. Knowledge of an unregistered sale is equivalent to registration.[15]

### (1) Importance of registration

For a transaction as important as the sale of a registered parcel of land, it may be necessary to keep a record thereof. A verbal agreement of sale cannot be registered. Article 1544 of the Civil Code provides that if the same immovable property is sold to different vendees, "the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property." Section 32 of PD No. 1529 extends the protection given to an innocent purchaser for value to an innocent lessee, mortgagee, or other encumbrancer for value. Thus, where a purchaser files an adverse claim to registered land only *after* the same was already mortgaged to the bank, upon the claim that he bought the property "long before" before the mortgage, the right of the bank to the property is superior to that of the purchaser.[16]

### (2) Registration of document ministerial on the part of the Register of Deeds

The purpose of registering an instrument is to give notice thereof to all persons; it is not intended by the proceedings for registration to seek to destroy or otherwise affect already registered rights over the land, subsisting or existing at the time of the registration. The rights of these parties, who have registered their rights, are not put in issue when an instrument is subsequently presented for registration; nor are its effects on other instruments previously registered put in issue by the procedure of registration.[17]

The law on registration does not require that only valid instruments shall be registered. If the purpose of registration is merely to

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[14]Gustilo v. Maravilla, GR No. 23386, Dec. 12, 1926, 48 Phil. 442.

[15]Fernandez v. Court of Appeals, GR No. 83141, Sept. 21, 1990, 189 SCRA 780.

[16]Unchuan v. Court of Appeals, GR No. 78775, May 31, 1988, 161 SCRA 710.

[17]Gurbax Singh Pabla & Co. v. Reyes, GR No. L-3970, Oct. 29, 1952, 92 Phil. 177.

give notice, then questions regarding the effect or invalidity of instruments are expected to be decided *after*, not *before*, registration. It must follow as a necessary consequence that registration must first be allowed, and validity or effect litigated afterwards.[18]

An instrument which seeks the reformation of an extrajudicial settlement of an estate consisting of registered lands is a voluntary one, and since the duty of the Register of Deeds to enter such instrument in his book is purely ministerial, his refusal to do so is tantamount to an unlawful neglect in the performance of a duty resulting from an office, trust or station, and is a proper instance where mandamus will lie.[19]

**(3) As between the parties, registration is not essential for validity of sale**

As between the parties to a sale, registration is not necessary to make it valid and effective, for actual notice is equivalent to registration. "The purpose of registration is merely to notify the interests of strangers to a given transaction, who may be ignorant thereof, and the non-registration of the deed evidencing said transaction does not relieve the parties thereto of their obligation thereunder." Where no right of innocent third persons is involved, the conveyance between the vendee and his vendors, although not registered, is valid and binding upon the latter as well as upon his heirs. Indeed, no action for the enforcement of the contract is needed, since the delivery of possession of the land sold consummated the sale and transferred title to the purchaser.[20]

**03. Payment of taxes prerequisite to registration.**

RA No. 456, approved June 8, 1950, prohibits the registration of documents affecting real property which is delinquent in the payment of real estate taxes. It provides:

> "SEC. 1. No voluntary document by which real property or on interest therein sold, transferred, assigned, mortgaged or leased shall be registered in the registry of property, unless the real estate taxes levied and actually

[18]Gurbax Singh Pabla & Co. v. Reyes, *supra*.
[19]Dulay v. Merrera, GR No. L-17084, Aug. 30, 1962, 5 SCRA 922.
[20]Sapto v. Fabiana, GR No. L-11285, May 16, 1958, 103 Phil. 683.

due thereon shall have been fully paid. If evidence of such payment is not presented within fifteen days from the date of entry of said document in the primary entry book of the register of deeds, the entry shall be deemed cancelled. A certificate of the provincial, city or municipal treasurer showing that the real property involved is not delinquent in taxes shall be sufficient evidence for the purposes of this Act.

SEC. 2. Every document of transfer or alienation of real property filed with the Register of Deeds shall be accompanied with an extra copy of the same which copy shall be transmitted by said officer to the city or provincial assessor, irrespective of whether said document has been registered or denied registration: *Provided, however*, That the failure to furnish the Register of Deeds with a copy of the document of transfer or alienation referred to in this section shall not invalidate an otherwise valid agreement."

**SEC. 52. *Constructive notice upon registration.* — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.**

### 01. Registration is constructive notice to third persons.

A deed or other voluntary instrument involving registered land shall not take effect as a conveyance or bind the land but shall operate only as a contract between the parties and as evidence of authority of the Register of Deeds to make registration. The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned.[21] It is the act of registration which creates a constructive notice to the whole world and binds third persons.[22] Absent such registration, a conveyance does not affect or bind the land.[23] A person dealing with registered land is merely charged with

[21]Marasigan v. Intermediate Appellate Court, GR No. L-69303, July 23, 1987, 152 SCRA 253; Campillo v. Court of Appeals, GR No. L-56483, May 29, 1984, 129 SCRA 512.

[22]Garcia v. Court of Appeals, GR No. L-48971, Jan. 22, 1980, 95 SCRA 380.

[23]Villaluz v. Neme, GR No. L-14676, Jan. 31, 1968, 7 SCRA 27.

notice of the burdens on the property which are noted on the face of the register or the certificate of title.[24]

When a conveyance has been properly recorded, such record is constructive notice of its contents and all interests, legal and equitable, included therein. Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrefutable. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise, the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.[25]

Accordingly, the sale of property and the subsequent registration thereof in the Primary Book of the Registry of Deeds constitutes constructive notice to the whole world. Since it is the act of registration which transfers ownership of the land sold, it has been held that a supervening claimant cannot claim a better right over land which had been previously registered in the name of another.[26] The maxim *"prior est in tempore, prior est in jure"* (he who is first in time is preferred in right) is followed in registration proceedings.[27]

The purpose of registration is to notify the interests of strangers to a given transaction, who may be ignorant thereof, and the non-registration of the deed evidencing said transaction does not relieve the parties thereto of their obligation thereunder. As between the parties to a sale, registration is not necessary to make it valid and effective, for actual notice is equivalent to registration.[28] Where no right of innocent third persons is involved, the conveyance between the vendee and his vendors, although not registered, is valid and binding upon the latter as well as upon his heirs.[29] Conversely, the

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[24]Campillo v. Court of Appeals, *supra*.
[25]Garcia v. Court of Appeals, *supra*.
[26]Calalang v. Register of Deeds, GR No. 76265, April 22, 1991, 231 SCRA 88.
[27]Garcia v. Court of Appeals, *supra*.
[28]Casica v. Villaseca, GR No. L-9590, April 30, 1957, 101 Phil. 1205.
[29]Sapto v. Fabiana, GR No. L-11285, May 16, 1958, 103 Phil. 683.

sale of registered land becomes legally effective against third persons only from the date of its registration.[30]

In a case,[31] it was held that although the buyer acquired the property in question from the vendors pursuant to a deed of absolute sale on December 18, 1974 or a little over four months before the filing of Civil Case No. 97479, the transaction became effective as against third persons only on July 5, 1977 when it was registered with the Registry of Deeds. The reason for this is that it is the act of registration which creates constructive notice to the whole world pursuant to Section 52 of the Property Registration Decree.

A notice of *lis pendens* serves as a warning to a prospective purchaser or encumbrancer that the particular property is in litigation, and that he should keep his hands off the same, unless he intends to gamble on the results of the litigation. However, the constructive notice operates as such by the express wording of Section 52 only from the time of the registration of the notice of *lis pendens*.[32]

**02. Purchaser is not required to explore further than what title indicates for hidden defects.**

It is basic that a person dealing with registered property need not go beyond, but only has to rely on, the title. He is charged with notice only of such burdens and claims which are annotated on the title, for registration is the operative act that binds the property.[33] Since "the act of registration is the operative act to convey or affect the land insofar as third persons are concerned," it follows that where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore farther than what the Torrens title upon its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto. If the rule were otherwise, the efficacy and conclusiveness of the certificate of title which the Torrens system seeks to insure would entirely be futile and nugatory. The public shall then be denied of its foremost motivation for respecting and observing the Torrens system of registration.

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[30]Campillo v. Philippine National Bank, *supra*.
[31]Marasigan v. Intermediate Appellate Court, *supra*.
[32]San Lorenzo Development Corporation v. Court of Appeals, *supra*.
[33]Unchuan v. Court of Appeals, *supra*.

In the end, the business community stands to be inconvenienced and prejudiced immeasurably.[34]

It must be noted that a Torrens certificate serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein. Moreover, the Torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect an usurper from the true owner. It cannot be a shield for the commission of fraud. It does not permit one to enrich himself at the expense of another.[35]

**03. But a purchaser who has knowledge of defect of his vendor's title cannot claim good faith.**

One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation. Good faith, or the lack of it, is in its last analysis a question of intention. So it is that "the honesty of intention," "the honest lawful intent," which constitutes good faith implies a "freedom from knowledge and circumstances which ought to put a person on inquiry," and so it is that proof of such knowledge overcomes the presumption of good faith in which the courts always indulge in the absence of proof to the contrary. "Good faith, or the want of it, is not a visible, tangible fact that can be seen or touched,

[34]Fule v. De Legare, GR No. L-17951, Feb. 28, 1963, 7 SCRA 351.
[35]Adriano v. Pangilinan, GR No. 137471, Jan. 16, 2002, 373 SCRA 544.

but rather a state or condition of mind which can only be judged of by actual or fancied tokens or signs."[36]

**04. When purchaser should investigate.**

A person dealing with a registered land has a right to rely upon the face of the Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make inquiry.[37] One who purchases real property which is in the actual possession of others should, at least, make some, inquiry concerning the rights of those in possession. The actual possession by others than the vendor should, at least, put the purchaser upon inquiry. He can scarcely, in the absence of such inquiry, be regarded as a *bona fide* purchaser as against such possessors.[38]

In *Francisco* v. *Court of Appeals*,[39] the controversy had its origin in the sale to two different persons of the same property comprising three parcels of land. The first sale, involving two lots, was made by Nicolasa Resurreccion in 1925 to one Agustin Esguerra who, in 1926, sold the same to the spouses Pedro Francisco and Francisca Tolentino. The spouses registered the sale under Act No. 3344, as amended, and declared the property for taxation purposes. Their son, Candido Francisco, continued in possession of the property after his parents' demise. Three years later, Nicolasa Resurreccion executed another deed of sale, this time conveying all the three parcels of land covered by her title in favor of Felisa Afable. Thirty-one years later, Afable sold the property to private respondents, Casimiro Espiritu, et al. The Espiritus thereupon sued Candido Francisco for recovery of title and possession. The controversy boils down to whether or not the Espiritus are buyers in good faith. In upholding the better right of Candido Francisco to the lots in dispute, the Supreme Court, through Justice Narvasa, declared:

> "There is evidence, not disputed, that Candido and his family had been occupying that property at Rizal Avenue for more than thirty years, and that Candido was

[36]Leung Yee v. Strong Machinery Co., GR No. L-11658, Feb. 15, 1918, 37 Phil. 644; see also Gatioan v. Gaffud, GR No. L-21953, March 28, 1969, 27 SCRA 706.

[37]Gonzales v. Intermediate Appellate Court, GR No. L-69622, Jan. 29, 1988, 157 SCRA 587.

[38]Republic v. Court of Appeals and Ramos, GR No. L-42856, Jan. 27, 1981, 102 SCRA 331.

[39]GR No. L-30162, Aug. 31, 1987, 153 SCRA 330.

residing in a house built thereon, and it is not unreasonable to assume that these facts were at least in a general way known to Casimiro Espiritu since he had known Candido for 'quite a long time . . . even before the war.' There is evidence, too, that Casimiro Espiritu, a businessman of no little experience, was one of those who negotiated with Felisa Afable for the purchase of the property; that the letter showed to Casimiro and his sister, Potenciana, the plan of the property. x x x Considered in context, the evidence shows quite persuasively that Casimiro Espiritu knew definitely where his friend of many years, Candido Francisco was residing and that indeed Candido and his family had been living in that place for many, many years, that when he viewed the property then being sold to him and his brothers and sisters by Felisa Afable, he could not but have noticed that Candido's house was in the area, x x x

There were in a word sufficiently strong indications to impel a closer inquiry into the location, boundaries and condition of the two (2) smaller lots embraced in the purchase on the part of Casimiro Espiritu and his covendees. That inquiry is in truth dictated by common sense, expected of a man of ordinary prudence. 'The earth,' it has been said, is 'that universal manuscript open to the eyes of all. When a man proposes to buy or deal with realty his first duty is to read this public manuscript, that is, to look and see who is there upon it, and what are his rights.' x x x

The buyer who could not have failed to know or discover that the land sold to him was in the adverse possession of another, is a buyer in bad faith, such knowledge being equivalent to registration."

The issue in *Santiago* v. *Court of Appeals*[40] is who has the superior right to a parcel of land sold to two different buyers at different times by its former owners. The Court, through Justice Melo, ruled:

"There is no question from the records that petitioners were the first buyers of the disputed lot from Evelyn

[40]GR No. 117014, Aug. 14, 1995, 247 SCRA 336.

Mercado and her brothers and sisters, the original owners. Contrary to the conclusion arrived at by the Court of Appeals, we believe that petitioners' purchase was made in good faith. There is nothing to remotely suggest that the purchase of the lot was characterized by anything other than good faith. Respondent Arevalo was still out of the picture when the meeting of the minds of petitioners and Evelyn Mercado, et al. on the sale took place. It appears that nobody else was interested in the lot at that time. There is furthermore no issue over the fact that petitioners were first to register their purchase of the lot. In fact, the second buyer, herein respondent, has not been able to have his deed of sale registered at all, up to the present time. x x x

The applicable provisions of law is Article 1544 of the Civil Code which reads:

'ARTICLE 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.'

x x x x x x x x x

What appears pivotal to us is the issue of whether petitioners were in good faith both at the time of the acquisition or sale of the property and also at the time of the recording or registration of the same. x x x It is axiomatic that good faith is always presumed. x x x
It bears repeated emphasis that the vendors did not disturb the peaceful possession and full ownership of petitioners over the lot. Not only did petitioners buy the lot ahead of respondent Arevalo but they also took possession of the property and have remained in possession

> up to the present time. They had their deed of sale registered. They now are the title holders of the property. It is inconceivable how a second buyer who never asked to look, much more to take possession of the title of his alleged vendors and who never registered his deed of sale and never entered into possession of the property should be declared owner. The disputed lot was adjacent to another lot which petitioners had previously purchased from the same vendors only two and a half months before they paid the earnest money on the second lot. Obviously, petitioners wanted the two adjacent lots to form one integrated whole.
>
> The records do not show the extent to which respondent Arevalo conducted ocular inspections of the lot subject of the double sale. If he limited himself to an examination of the Torrens title kept by the Register of Deeds, he is guilty of negligence in not asking for the owner's duplicate copy of the said title, which of course could not be given to him as the same had been turned over to petitioners a long time before Arevalo purchased the lot."

Purchasers in bad faith cannot, for want of honest dealing, shelter themselves under the protection of the Property Registration Decree since mere registration is not enough; good faith must concur with registration. Bad faith renders the registration futile.[41]

**05. Sale of property pending litigation.**

Article 1544 of the Civil Code provides that, as regards immovable property, ownership shall belong to the person acquiring it who in good faith first recorded the sale in the Registry of Property. In *Jomoc* v. *Court of Appeals*,[42] it was held that the Lim spouses do not have a better right to the land in dispute since they purchased it with full knowledge of a previous sale to private respondent and without requiring from the vendors-heirs any proof of the prior vendee's revocation of her purchase. When they registered the sale on April 27, 1983 after having been charged with notice of *lis pendens* annotated as early as February 28, 1983 (the same date of their purchase), they did so in bad faith or on the belief that registration may improve their position being subsequent buyers of the same lot.

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[41]Concepcion v. Court of Appeals, GR No. 83208, Feb. 6, 1991, 193 SCRA 586.
[42]GR No. 92871, Aug. 2, 1991, 200 SCRA 74.

Under Article 1544, mere registration is not enough to acquire new title. Good faith must concur.[43]

**06. Rule with respect to banks.**

It has been held that a bank is not required, before accepting a mortgage, to make an investigation of the title of the property being given as security. Banks are cautioned to exercise more care and prudence in dealing even with registered lands than private individuals, for their business is one affected with public interest, keeping in trust money belonging to their depositors, which they should guard against loss by not committing any act of negligence which amounts to lack of good faith by which they would be denied the protective mantle of the land registration statutes, extended only to purchasers for value and in good faith, as well as to mortgagees of the same character and description. It is for this reason that banks, before approving a loan, send representatives to the premises of the land offered as collateral and investigate who are the true owners thereof. Where the bank had exercised the due care demanded of it relative to real estate loans, it will be considered an innocent mortgagee for value.[44]

**07. Estoppel.**

The failure of the purchaser of a parcel of land in execution sale to question on time the entry or annotation made on the back of the certificate of title, to the effect that the sale thereof in his favor was subject to redemption within one year from the registration of said certificate, estops him from claiming that the one-year period of redemption started earlier.[45]

**08. Voluntary and involuntary registration distinguished.**

The earlier ruling that the mere entry of a document in the day or entry book without noting it on the certificate of title is not a sufficient registration[46] has been superseded by the holding in the

[43]Bergado v. Court of Appeals, GR No. 84051, May 19, 1989, 173 SCRA 497.
[44]Gonzales v. Intermediate Appellate Court, *supra*.
[45]Agbulos v. Alberto, GR No. L-17483, July 31, 1962, 5 SCRA 790.
[46]Bass v. De la Rama, GR No. 47662, Sept. 30, 1952, 73 Phil. 682.

later cases of *Levin* v. *Bass*, etc.,[47] where a distinction was made between *voluntary* and *involuntary* registration, such as the registration of an attachment, levy upon execution, notice of *lis pendens*, and the like. In cases of involuntary registration, an entry thereof in the day book is a sufficient notice to all persons even if the owner's duplicate certificate of title is not presented to the Register of Deeds. On the other hand, in case of voluntary registration of documents, an innocent purchaser for value of registered land becomes the registered owner, and, in contemplation of law the holder of a certificate of title, the moment he presents and files a duly notarized and valid deed of sale and the same is entered in the day book and at the same time he surrenders or presents the owner's duplicate certificate of title covering the land sold and pays the registration fees, because what remains to be done lies not within his power to perform. The Register of Deeds is duty bound to perform it.[48]

As held in *Villasor* v. *Camon*,[49] the mere registration by the Register of Deeds in the entry or day book of a document of assignment or a deed of sale, without the presentation of the duplicate certificate of the owner for corresponding annotation of the conveyance, does not have the effect of a conveyance of the property. For the registration of voluntary instrument, it is necessary, not only to register the deed, instrument or assignment, mortgage, or lease in the entry book of the Register of Deeds, but a memorandum thereof shall also be made by him on the owner's duplicate certificate and on its original.

On the other hand, as pointed out in *Philippine National Bank* v. *Javellana*,[50] the fact that the writ of attachment has not been annotated on the back of the owner's duplicate certificate of title is of no moment because such annotation is only necessary in voluntary transactions, but not in an involuntary ones. In *Director of Lands* v. *Reyes*,[51] it was held that in cases of involuntary registration, such as an attachment, levy on execution and *lis pendens*, entry thereof on the day book is a sufficient notice to all persons of such adverse claim, without the same being annotated at the back of the corresponding

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[47]GR No. L-4340, May 28, 1952, 91 Phil. 419.
[48]Garcia v. Court of Appeals, *supra*.
[49]GR No. 8551, June 29, 1951, 89 Phil. 404.
[50]GR No. L-5270, Jan. 28, 1953, 92 Phil. 525.
[51]GR No. L-27594, Feb. 27, 1976, 69 SCRA 415.

certificate of title. The annotation should of course be made, but this is an official duty of the Register of Deeds, which is presumed to have been regularly performed.

**SEC. 53. *Presentation of owner's duplicate upon entry of new certificate.* — No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.**

**The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.**

**In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.**

### 01. Surrender of owner's duplicate certificate.

No voluntary instrument shall be registered by the Register of Deeds unless the owner's duplicate certificate is presented together with such instrument, except in some cases or upon order of the court for cause shown.[52] To affect the land sold, the presentation of the deed of sale and its entry in the day book must be done with the surrender of the owner's duplicate of the certificate of title. Production of the owner's duplicate of the certificate of title is required by Section 53 of PD No. 1529, and only after compliance with this and

[52]Ligon v. Court of Appeals, GR No. 107751, June 6, 1995, 244 SCRA 693.

other requirements shall actual registration retroact to the date of entry in the day book.[53]

Where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds[54] pursuant to Section 107 which reads:

> "SEC. 107. *Surrender of withheld duplicate certificates*. — Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after, hearing, may order the registered owner or any person withholding the duplicate certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate."

The court may thereupon order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender.[55] However, non-production of the owner's duplicate of the certificate of title may not invalidate a vendee's claim of ownership where the subsequent vendees of the same lot cannot be considered in law to be unaware of the prior sale, on account of their relationship with the first vendee, since the validity of a title to a piece of property depends on the buyer's knowledge, actual or constructive, of a prior sale.[56] Actual notice is equivalent to registration. The vendor's heirs

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[53]Pilapil v. Court of Appeals, GR No. 55134, Dec. 4, 1995, 250 SCRA 566.
[54]Sec. 107, PD No. 1529.
[55]*Ibid*.
[56]Pilapil v. Court of Appeals, *supra*.

are his privies. Against them, failure to register will not vitiate or annul the vendee's right of ownership conferred by such unregistered deed of sale.[57]

In *L.P. Leviste & Co.* v. *Noblejas*,[58] respondent Villanueva filed an adverse claim covering the disputed lot, based on an agreement to sell executed in her favor by Garcia Realty. She did not present the owner's duplicate certificate of title, as required by Section 55 of Act No. 496 (Sec. 53, PD No. 1529) nor did she register the agreement to sell as provided in Section 52 thereof. Subsequently, petitioners separately registered notices of attachments covering the disputed lot, issued in separate cases filed against Garcia Realty. Thereafter Garcia Realty consummated the contract of sale over the lot. When Villanueva sought to have the sale registered and title issued in her favor, free from any encumbrance, the Register of Deeds refused unless the attachments on the disputed lot annotated on the title subsequent to Villanueva's adverse claim were carried over. The Register of Deeds also wanted to carry over certain prior adverse claims, which however, did not refer to the disputed lot. The Land Registration Commission *en consulta* decreed the issuance of a new transfer certificate of title on the disputed lot in the name of Villanueva, free of any encumbrance. The Supreme Court set aside the resolution of the Land Registration Commission and held that the remedy provided for in Section 110 of Act 496 (Sec. 70, PD No. 1529), which was resorted to by Villanueva is ineffective for the purpose of protecting her right or interest on the disputed lot. The Court further held:

> "The basis of respondent Villanueva's adverse claim was an agreement to sell executed in her favor by Garcia Realty. An agreement to sell is a voluntary instrument as it is a willful act of the registered owner. As such voluntary instrument, Section 50 of Act No. 496 expressly provides that the act of registration shall be the operative act to convey and affect the land. And Section 55 of the same Act requires the presentation of the owner's duplicate certificate of title for the registration of any deed or voluntary instrument. As the agreement to sell involves an in-

[57]Abuyo v. De Suazo, GR No. L-21202, Oct. 29, 1966, 18 SCRA 600.

[58]GR No. L-28529, April 30, 1979, 89 SCRA 520, cited in Carrascoso v. Court of Appeals, GR No. 123672, Dec. 14, 2005.

terest less than an estate in fee simple, the same should have been registered by filing it with the Register of Deeds who, in turn, makes a brief memorandum thereof upon the original and owner's duplicate certificate of title. The reason for requiring the production of the owner's duplicate certificate in the registration of a voluntary instrument is that, being a willful act of the registered owner, it is to be presumed that he is interested in registering the instrument and would willingly surrender, present or produce his duplicate certificate of title to the Register of Deeds in order to accomplish such registration. However, where the owner refuses to surrender the duplicate certificate for the annotation of the voluntary instrument, the grantee may file with the Register of Deeds a statement setting forth his adverse claim, as provided for in Section 110 of Act No. 496. In such a case, the annotation of the instrument upon the entry book is sufficient to affect the real estate to which it relates, although Section 72 of Act No. 496 imposes upon the Register of Deeds the duty to require the production by the registered owner of his duplicate certificate for the inscription of the adverse claim."

### (1) Issuance of TCT without production of owner's duplicate unwarranted

When land covered by a Torrens title is sold, registration is accomplished only when the owner's duplicate certificate is surrendered to the Register of Deeds for cancellation and a new certificate is issued in accordance with Section 53 of the Property Registration Decree. When the land which is the subject of the sale is thus registered in the name of the purchaser, registration takes effect retroactively as of the date when the deed, or conveyance, was noted in the entry book of the Register of Deeds.[59]

The issuance of a new transfer certificate of title by the Register of Deeds to the purchaser, without the presentation of the owner's duplicate, is unwarranted and confers no right on the purchaser.[60]

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[59]Fidelity and Insurance Co. v. Lizarraga, GR No. 15466, Feb. 18, 1921, 41 Phil. 396.

[60]Philippine National Bank v. Fernandez, GR No. 42109, May 12, 1935, 61 Phil. 448.

**02. Innocent holder for value; good faith.**

It is clear from Section 53 that although an original owner of a registered land may seek the annulment of a transfer thereof on the ground of fraud, such a remedy is "without prejudice, however, to the rights of any innocent holder for value of a certificate of title."[61]

Good faith consists in the possessor's belief that the person from whom he received the thing was the owner of the same and could convey his title.[62] Good faith, while it is always to be presumed in the absence of proof to the contrary, requires a well-founded belief that the person from whom title was received was himself the owner of the land, with the right to convey it.[63] There is good faith where there is an honest intention to abstain from taking any unconscientious advantage from another.[64] Otherwise stated, good faith is the opposite of fraud and it refers to the state of mind which is manifested by the acts of the individual concerned.[65]

The innocent purchaser for value protected by law is one who purchases a titled land by virtue of a deed executed by the registered owner himself, not by a forged deed. Such situation does not obtain where the purchaser has been the victim of impostors pretending to be the registered owners but who are not said owners.[66]

Thus, where innocent third persons relying on the correctness of the certificate of title issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate for that would impair public confidence in the certificate of title; otherwise everyone dealing with property registered under the Torrens system would have to inquire in every instance as to whether the title had been regularly or irregularly issued by the court. Indeed, this is contrary to the evident purpose of the law. Every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. Stated differently, an innocent purchaser for value relying on a Torrens title issued is protected. A mortgagee

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[61]Medina v. Chanco, GR No. L-34947, Sept. 30, 1982, 202 Phil. 515.

[62]Duran v. Intermediate Appellate Court, GR No. L-64159, Sept. 10, 1985, 138 SCRA 489; Arriola v. De la Serna, GR No. 5397, Dec. 17, 1969, 14 Phil. 627.

[63]Santiago v. Cruz, GR No. 6276, March 21, 1911, 19 Phil. 145.

[64]Fule v. De Legare, *supra*.

[65]Duran v. Intermediate Appellate Court, *supra*.

[66]Joaquin v. Madrid, GR No. L-13551, Jan. 30, 1960, 106 Phil. 1060.

has the right to rely on what appears in the certificate of title and, in the absence of anything to excite suspicion, he is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate.[67]

PD No. 1529 extends the protection given to an innocent purchaser for value to an innocent mortgagee.[68]

**03. A forged deed may the basis of a good title in the hands of a *bona fide* purchaser.**

The case of *Blondeau* v. *Nano*[69] enunciates the principle that a forged deed may be the root of a valid title in the hands of a *bona fide* purchaser or mortgagee. Angela Blondeau, relying upon a Torrens title in the name of Agustin Nano, loaned money in all good faith to the latter as mortgagor on the basis of the title standing in his name, only to thereafter discover that Nano had forged the signature of the true owner, Jose Vallejo, which resulted in the issuance of a title in his (Nano's) name. The Supreme Court held that as between two innocent persons, Blondeau and Vallejo, one of whom must suffer the consequence of a breach of trust, Vallejo who made it possible by his act of confidence must bear the loss. The Court explained that the Torrens system permits a forged transfer, when duly entered in registry, to become the root of a valid title in a *bona fide* purchaser. The law erects a safeguard against a forged transfer being registered by the requirement that no transfer shall be registered unless the owner's certificate is produced along with the instrument of transfer. An executed transfer of registered lands placed by the registered owner thereof in the hands of another operates as a representation to a third party that the holder of the transfer is authorized to deal with the lands. The rationale for the rule is —

> ". . . that public policy, expediency, and the need of a statute of repose as to the possession of land, demand such a rule. Likewise, public policy, expediency, and the need of repose and certainly as to land titles demand that the

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[67]Duran v. Intermediate Appellate Court, *supra*.

[68]Sec. 32, PD No. 1529; Unchuan v. Court of Appeals, GR No. 78775, May 31, 1988, 161 SCRA 710.

[69]GR No. 41377, July 26, 1935, 61 Phil. 625; see also De la Cruz v. Fabie, GR No. 8160, Oct. 17, 1916, 35 Phil. 144; El Hogar Filipino v. Olviga, GR No. 37434, April 5, 1934, 60 Phil. 17.

bona fide purchaser of a certificate of title to registered land, who, though he buys on a forged transfer, succeeds in having the land registered in his name, should nevertheless hold an unimpeachable title. There is more natural justice in recognizing his title as being valid that there is in recognizing as valid the title of one who has succeeded in ripening a forged color of title by prescription.

"In the first place, a forger cannot effectuate his forgery in the case of registered land by executing a transfer which can be registered, unless the owner has allowed him, in some way, to get possession of the owner's certificate. The Act has erected in favor of the owner, as a safeguard, against a forged transfer being perpetrated against him, the requirement that no voluntary transfer shall be registered unless the owner's certificate is produced along with the instrument of transfer. Therefore, if the owner has voluntarily or carelessly allowed the forger to come into possession of his owner's certificate he is to be judged according to the maxim, that when one of two innocent persons must suffer by the wrongful act of a third person the loss fall on him who put it into the power of that third person to perpetrate the wrong. Furthermore, even if the forger stole the owner's certificate, the owner is up against no greater hardship than is experienced by one whose money or negotiable paper payable to bearer is stolen and transferred by the thief to an innocent purchaser."

A similar ruling was laid down in *Philippine National Bank* v. *Court of Appeals and Chu Kim Kit*[70] to the effect that "the right or lien of an innocent mortgagee for value upon the land mortgaged must be respected and protected, even if the mortgagor obtained his title through fraud. The remedy of the persons prejudiced is to bring an action for damages against those who caused the fraud, and if the latter are insolvent, an action against the Treasurer of the Philippines may be filed for recovery of damages against the Assurance Fund." The Court cited several previous rulings on the same point, to wit:

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[70]GR No. 43972, July 24, 1990, 187 SCRA 735.

(a) *Fule* v. *De Legare*

In this case,[71] it appears that at the time petitioners purchased the properties from John Legare, he was not yet the registered owner of the same. It was held, however, that this fact alone could not have caused the petitioners to lose their status as innocent purchasers for value, for although the title was in still in the name of respondent Emilia E. De Legare, the certificate of title was already in the possession of her adopted son, John Legare which, under Section 55 of Act No. 496 (Sec. 53, PD No. 1529), operated as a "conclusive authority from the registered owner to the Register of Deeds to enter a new certificate."

> "Although the deed of sale in favor of John W. Legare was fraudulent, the fact remains that he was able to secure a registered title to the house and lot. It was this title which he subsequently conveyed to the herein petitioners. We have indeed ruled that a forged or fraudulent deed is a nullity and conveys no title (Director of Lands vs. Addison, 49 Phil. 19). However, we have also laid down the doctrine that there are instances when such a fraudulent document may become the root of a valid title. One such instance is where the certificate of title was already transferred from the name of the true owner to the forger, and while it remained that way, the land was subsequently sold to an innocent purchaser. For then, the vendee had the right to rely upon what appeared in the certificate (Inquimboy vs. Cruz, G.R. No. L-13953, July 28, 1960)."

(b) *Duran* v. *Intermediate Appellate Court*

In this case,[72] petitioner Circe Duran owned two lots covered by TCT No. 1647 in his name. On May 13, 1963, a deed of sale of the two lots was made in favor of Circe's mother, Fe Duran who, on December 3, 1965, mortgaged the same property to private respondent. When petitioner, who was then in the United States, came to know about the mortgage made by her mother, she informed the Register of Deeds that she had not given her mother any authority to sell or mortgage any of her properties in the Philippines. Meanwhile, for failure of Fe Duran to redeem the mortgage pro-

[71] *Supra.*
[72] *Supra.*

perties, foreclosure proceedings were initiated by private respondent. Petitioner claims that the deed of sale in favor of her mother Fe Duran is a forgery, saying that at the time of its execution in 1963 she was in the United States. Upholding the right of the private respondent as innocent mortgagee, the Supreme Court held:

> "[e]ven on the supposition that the sale was void, the general rule that the direct result of a previous illegal contract cannot be valid (on the theory that the spring cannot rise higher than its source) cannot apply here for We are confronted with the functionings of the Torrens System of Registration. The doctrine to follow is simple enough: a fraudulent or forged document of sale may become the ROOT of a valid title if the certificate of title has already been transferred from the name of the true owner to the name of the forger or the name indicated by the forger."

Moreover, petitioner was held guilty of estoppel by laches in not bringing the case to court within a reasonable period.

(c) *Medina* v. *Chanco*

In this case,[73] private respondents filed a complaint alleging that a certain piece of land, registered under their parent's name, was fraudulently transferred to the name of a certain J.O. Wagner, who sold a part of said property to Leung Yee and Leung Shank. Leung Shank sold a portion of said property to petitioners who were issued a transfer certificate of title over said property. Petitioners filed a motion to dismiss alleging that they were innocent purchasers for value. Respondent judge denied said motion. On appeal, the Supreme Court said that although the law allows an original owner of a registered land to seek the annulment of a transfer thereof on the ground of fraud, such a remedy is without prejudice to the rights of an innocent holder for value. Petitioners were deemed purchasers in good faith if only because: (1) they did not acquire the property in question from Wagner but from the Leungs and this transaction between Wagner and the Leungs took place four years after the alleged fraudulent execution of the transfer in favor of Wagner; (2) the conveyance to petitioners did not take place until after 19 years from the sale to the Leungs by Wagner; and (3) the complaint was filed more than 50 years after the first transaction.

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[73] *Supra*.

**(1) Rule when owner is not at fault**

In *Adriano* v. *Pangilinan*,[74] petitioner entrusted the original owner's copy of his certificate of title to Salvador, a distant relative, for the purpose of securing a mortgage loan. Without petitioner's knowledge and consent, Salvador mortgaged the property covered by the title to respondent Pangilinan. Later, petitioner found an annotation on his title of a supposed mortgage he executed in favor of respondent. Petitioner denied having executed the mortgage and denounced his signature on the deed as a forgery. Petitioner sued respondent for the return of his title but this was ignored. The issue raised on appeal is whether or not respondent is a mortgagee in good faith and for value. The Supreme Court held petitioner to be faultless since he did not mortgage the property himself nor did he authorize Salvador as his agent in procuring the mortgage. A special attorney would have been necessary for the purpose.[75] The Court further said that a mortgage is invalid if the mortgagor is not the owner of the property.[76] Since respondent admitted that he has been in the mortgage business for seven years, he should be deemed at fault for not verifying the identity of the impostor mortgagor. His own negligence was the primary, immediate and overriding reason for his predicament. However, he is not precluded from suing Salvador and her cohorts.

The case should be differentiated from *Blondeau* v. *Nano*[77] and *Philippine National Bank* v. *Court of Appeals and Chu Kim Kit*.[78] Both cases involve individuals who, by their *negligence*, enabled other persons to cause the cancellation of the original certificate of title over the disputed property and the issuance of a new one in their favor. Having obtained titles in their names, they conveyed the subject property to third persons, who, in *Blondeau*, was a *bona fide* purchaser, while in *Philippine National Bank*, was an innocent mortgagee for value. It should be stressed that *in both cases, the seller and the mortgagor were the registered owners of the subject property; whereas in Adriano, the mortgagor was an impostor, not the registered owner.*

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[74]*Supra.*
[75]Art. 1878, Civil Code.
[76]Art. 2085, *id.*
[77]*Supra.*
[78]*Supra.*

In *Joaquin* v. *Madrid*,[79] the spouses Abundio Madrid and Rosalinda Yu, owners of a residential lot in Makati, seeking a building construction loan from the Rehabilitation Finance Corporation (RFC), entrusted their certificate of title to Rosalinda's godmother, Carmencita de Jesus, who had offered to expedite the approval of the loan with the RFC. Later, having obtained a loan from another source, the spouses decided to withdraw the application they had filed with the RFC and asked Carmencita to retrieve their title and return it to them. Carmencita failed to do so. It turned out, however, that through the machinations of Carmencita, the property had been mortgaged to Constancio Joaquin in a deed signed by two persons posing as the owners and that after said deed had been registered, the amount loaned was given to a person who had passed herself off as Rosalinda Yu. Constancio Joaquin admitted that the spouses Madrid and Yu were in fact not the persons who had signed the deed of mortgage. In upholding the rights of the true owners, Madrid and Yu, the Court ruled that in order that the holder of a certificate for value issued by virtue of the registration of a voluntary instrument may be considered a holder in good faith for value, the instrument registered should not be forged. When the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property. The giving of a certificate of title by the owners to another person is not in itself an act of negligence, especially so where it does not appear that the owner has executed any document authorizing the holder of the certificate to execute deeds for and in their behalf. But one who consents to be the mortgagee of said certificate of title without taking sufficient care to see to it that the person who executed the deed of mortgage is the real registered owner of the property is guilty of negligence and must suffer for it.

In *Solivel* v. *Francisco,*[80] at issue is whether or not the buyer of property is deemed a purchaser in good on the basis of a deed of sale executed in the name of the owners by one falsely claiming to be the latter's authorized attorney-in-fact. The trial court found that the power-of-attorney ostensibly empowering Ngoho to sell the Solivels' property was a forgery. Despite this fact, the lower court held that Cagas was an innocent purchaser for value, applying *Blondeau* v.

[79]GR No. L-13551, Jan. 30, 1960, 106 Phil. 1060.
[80]GR No. 51450, Feb. 10, 1989, 170 SCRA 218.

*Nano*[81] where the principle underlying the proviso — that a forged transfer may become the root of a valid title in a *bona fide* purchaser — was invoked to sustain foreclosure of a real estate mortgage under a deed which, though allegedly forged, had nonetheless been duly registered because one of two joint owners had given the other, supposedly the author of the forgery, not only his power-of-attorney but also *possession of the title papers*. In reversing the lower court, the Supreme Court clarified that in *Blondeau*, the registered owner's negligence or acquiescence, if not actual connivance, had made possible the commission of the fraud. The Court cited its ruling in *De Lara* v. *Ayroso*[82] where it annulled a mortgage executed by an impostor who had, without authority, gained possession of the certificate of title thru the owner's daughter and forged said owners' name to the deed of mortgage. In *De Lara,* the title was still in the name of the real owner when the land was mortgaged to the plaintiffs by the impostor. And it is obvious that plaintiffs were defrauded not because they relied upon what appeared in the Torrens certificate of title (there was nothing wrong with the certificate) but because they believed the impostor when he told them that he was the person named as owner in the certificate. It was not incumbent upon plaintiffs to inquire into the ownership of the property and go beyond what was stated on the face of the certificate of title, but it was their duty to ascertain the identity of the man with whom they were dealing, as well as his legal authority to convey. That duty devolves upon all persons buying property of any kind, and one who neglects it does so at his peril. It should be added that the real owner, in *Solivel*, has not entrusted the certificate of title to anybody, an element essential to the application of the principle of equity above cited. The Court also applied the case of *Veloso* v. *La Urbana and Del Mar*,[83] which also voided a mortgage of plaintiff Veloso's property constituted by her brother-in-law, the defendant Del Mar, by using two powers-of-attorney to which he had forged the signatures of said plaintiff and her husband, and which mortgage was later registered with the aid of the certificate of title that had come into Del Mar's possession by unknown means.

**(2) Rule in case of double sale**

Where two or more transfer certificates of title are issued to different persons for the same lots, or subdivisions thereof, due to

[81]*Supra.*
[82]95 Phil. 125.
[83]58 Phil. 681.

the fact that the original title was not cancelled when the first transfer certificates of title were issued to replace the original title, which title prevails? This is the question raised in *Garcia* v. *Court of Appeals*[84] where the Court ruled, *viz*.:

> "There can be no doubt that Lapus was an innocent purchaser for value. He validly transmitted to his successors-in-interest his indefeasible title or ownership over the disputed lots or parcels of land. That title could not be nullified or defeated by the issuance forty-three years later to other persons of another title over the same lots due to the failure of the Register of Deeds to cancel the title preceding the title issued to Lapus. This must be so considering that Lapus and his successors-in-interest remained in possession of the disputed lots and the rival claimants never possessed the same.
>
> The general rule is that in the case of two certificates of title, purporting to include the same land, the earlier in date prevails, whether the land comprised in the latter certificate be wholly, or only in part, comprised in the earlier certificate.
>
> Where two certificates (of title) purport to include the same land, the earlier in date prevails. . . . In successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate issued in respect thereof.
>
> And the rule that in case of double registration the owner of the earlier certificate is the owner of the land applies to the successive vendees of the owners of such certificates. 'The vendee of the earlier certificate would be the owner as against the vendee of the owner of the later certificate.'
>
> It is settled that is this jurisdiction the maxim *prior est in tempore, potior est in jure* (he who is first in time is preferred in right) is followed in land registration matters."

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[84]GR No. L-48971, Jan. 22, 1980, 95 SCRA 380.

### (3) Remedy of aggrieved party

In *Gatioan* v. *Gaffud*,[85] the Court ruled: "We have laid the rule that where two certificates of title are issued to different persons covering the same land in whole or in part, the earlier in date must prevail as between original parties and in case of successive registrations where more than one certificate is issued over the land, the person holding under the prior certificate is entitled to the land as against the person who rely on the second certificate. *The purchaser from the owner of the later certificate and his successors, should resort to his vendor for redress, rather than molest the holder of the first certificate and his successors, who should be permitted to rest secure in their title*."

## 04. Mortgagee in good faith.

In *Llanto* v. *Alzona*,[86] the mortgagors were impostors who pretended as the real owners of the property. In upholding the validity of the mortgage, the Court, through Justice Austria-Martinez, explained the doctrine of mortagee in good faith as follows: "Under Article 2085 of the Civil Code, one of the essential requisites of the contract of mortgage is that the mortgagor should be the absolute owner of the property to be mortgaged; otherwise, the mortgage is considered null and void. However, an exception to this rule is the doctrine of 'mortgagee in good faith.' Under this doctrine, even if the mortgagor is not the owner of the mortgaged property, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy. This principle is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. This is the same rule that underlies the principle of 'innocent purchasers for value' cited by the CA in its decision. The prevailing jurisprudence is that a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor to the property given as security and in the absence of any sign that might arouse suspicion, has no obligation to undertake further investigation. Hence, even if the mortgagor is not the rightful owner of, or does not have a valid title to, the mortgaged property, the mortgagee in good faith is, nonetheless, entitled to protection." The mortgagees in this

[85]GR No. L-21953, March 28, 1969, 27 SCRA 706.
[86]GR No. 150730, Jan. 31, 2005, 450 SCRA 288.

case first conducted a credit investigation, inspected the property and met the persons who represented themselves to be the owners of the property before they entered into the transaction.

In the same case, the Court further held that for persons, more particularly those who are engaged in real estate or financing business, to be considered as mortgagees in good faith, they should take the necessary precaution expected of a prudent man to ascertain the status and condition of the properties offered as collateral and to verify the identity of the persons they transact business with, particularly those who claim to be the registered property owners.

### 05. Rule with respect to banking institutions.

It is a matter of judicial notice that before a bank grants a loan on the security of land, it first undertakes a careful examination of the title of the applicant as well as physical and on-the-spot investigation of the land itself offered as security. If it did not conduct such examination and investigation, it must be held to be guilty of gross negligence in granting the loans, and cannot be considered as a mortgagee in good faith within the contemplation of the law.[87]

**SEC. 54. *Dealings less than ownership, how registered.* — No new certificate shall be entered or issued pursuant to any instrument which does not divest the ownership or title from the owner or from the transferee of the registered owners. All interests in registered land less than ownership shall be registered by filing with the Register of Deeds the instrument which creates or transfers or claims such interests and by a brief memorandum thereof made by the Register of Deeds upon the certificate of title, and signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner.**

### 01. Memorandum of encumbrances.

At the dorsal side of a certificate of title is a memorandum of encumbrances affecting the property. It is here that all interests in registered land less than ownership, like a mere contract to sell for

[87]Gatioan v. Gaffud, *supra*.

example, shall be entered by the Register of Deeds. It is not necessary to issue a new certificate on the basis of an instrument which does not divest the ownership or title from the owner or from the transferee of the registered owner. A brief memorandum of the nature of the instrument entered on the certificate of title, signed by the Register of Deeds, shall serve as notice to third parties of the instrument affecting the property. A similar entry shall be made on the owner's duplicate certificate of title. The cancellation or extinguishments of such interests or rights shall be recorded in the same manner.

**SEC. 55.** ***Grantee's name, nationality, etc., to be stated.*** **— Every deed or other voluntary instrument presented for registration shall contain or have endorsed upon it the full name, nationality, residence and postal address of the grantee or other person acquiring or claiming an interest under such instrument, and every deed shall also state whether the grantee is married or unmarried, and if married, the name in full of the husband or wife. If the grantee is a corporation or association, the instrument must contain a recital to show that such corporation or association is legally qualified to acquire private lands. Any change in the residence or postal address of such person shall be endorsed by the Register of Deeds on the original copy of the corresponding certificate of title, upon receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates.**

**Notices and processes issued in relation to registered land in pursuance of this Decree may be served upon any person in interest by mailing the same to the addresses given, and shall be binding, whether such person resides within or without the Philippines, but the court may, in its discretion, require further or other notice to be given in any case, if in its opinion the interest of justice so requires.**

### 01. Contents of the instrument presented for registration.

This section states what a deed or other voluntary instrument presented to the Register of Deeds for registration shall contain to wit: full name, nationality, status, residence and postal address of the grantee or person acquiring interest under such instrument. If the grantee is a corporation or association, the instrument shall contain a statement whether or not it is legally qualified to acquire private lands. In this connection, private corporations or associations

may not hold alienable lands of the public domain except by lease.[88] Changes in the names, residences and postal addresses of all parties to the instrument shall also be entered on all certificates.

The section further provides that notices and processes affecting the land shall be served upon the person in interest at the address given, which shall be binding whether or not such person is within or outside the Philippines. But the court may, in its discretion, require that service may be made in any other manner when the interest of justice so requires.

**SEC. 56. *Primary Entry Book; fees; certified copies.* — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: *Provided,* That the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration.**

**Every deed or other instrument, whether voluntary or involuntary, so filed with the Register of Deeds shall be numbered and indexed and endorsed with a reference to the proper certificate of title. All records and papers relative to registered land in the office of the Register of Deeds shall be open to the public in the same manner as court records, subject to such reasonable regulations as the Register of Deeds, under the direction of the Commissioner of Land Registration, may prescribe.**

**All deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the Register of Deeds, endorsed with the file number, and copies may be delivered to the person presenting them.**

**Certified copies of all instruments filed and registered may also be obtained from the Register of Deeds upon payment of the prescribed fees.**

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[88]Sec. 3, Art. XII, Constitution.

**01. Primary entry book or day book.**

The primary entry book is a record of all instruments, including copies of writs and processes, affecting registered lands, which are entered by the Register of Deeds in the order of their filing, upon payment of the proper fees. The recording is a preliminary process in registration and shall note the date, hour and minute of receipt of said instruments. An instrument shall be regarded as registered only from the time it is so noted.

Every deed or instrument, whether voluntary or involuntary, shall be numbered and endorsed by the Register of Deeds with proper reference to the certificate of title. All records and papers relative to registered land shall be open for examination by the public, subject to such reasonable regulations as the Register of Deeds may prescribe.

All deeds and voluntary instruments and copies thereof shall be attested and sealed by the Register of Deeds and copies with the corresponding file number shall be delivered to the person presenting them.

**02. Deeds entered in the day book considered registered from the moment they are so noted.**

In an execution sale of real property, the purchaser acquires only such right or interest as the judgment debtor had on the property at the time of the sale. It follows that if at that time the judgment debtor had no more right to or interest in the property because he had already sold it to another, then the purchaser acquires nothing. Thus, where the judgment debtor had already deeded the property and delivered his certificate of title to another, who on the following day presented the deed and certificate of title to the Register of Deeds for registration and paid the corresponding fees, the act of registration operated to convey the property to the buyer.

Section 56 of the Property Registration Decree says that deeds relating to registered land shall, upon payment of the filing fee, be entered in the primary entry book — also called day book — with a notation of the date, hour and minute of reception, and "they shall be regarded as registered from the moment so noted."[89] Applying this provision in the cases of *Levin* v. *Bass* (and others),[90] it was held

[89]Potenciano v. Dineros, GR No. L-7614, May 31, 1955, 97 Phil. 196.
[90]*Supra.*

that "an innocent purchaser for value of registered land becomes the registered owner and in the contemplation of law the holder of a certificate thereof the moment he presents and files a duly notarized and lawful deed of sale and the same is entered on the day book and at the same time he surrenders or presents the owner's duplicate certificate of title to the property sold and pays the full amount of registration fees, because what remains to be done lies not within his power to perform."[91]

**03. Record is constructive notice of its contents.**

May the purchaser of land which has been included in a "second original certificate" ever be regarded as an "innocent purchaser," as against the rights or interest of the owner of the first original certificate, his heirs, assigns, or vendee? The first original certificate is recorded in the public registry. It is never issued until it is recorded. The record is notice to all the world. All persons are charged with the knowledge of what it contains. All persons dealing with the land so recorded, or any portion of it, must be charged with notice of whatever it contains. The purchaser is charged with notice of every fact shown by the record and is presumed to know every fact which the record discloses.

When a conveyance has been properly recorded, such record is constructive notice of its contents and all interests, legal and equitable, included therein. Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains anymore than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.[92]

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[91]Potenciano v. Dineros, *supra*.
[92]Legarda v. Saleeby, GR No. 8936, Oct. 2, 1915, 31 Phil. 590.

In *Garcia* v. *Court of Appeals*,[93] it was held that in case of *voluntary* registration of documents, an innocent purchaser for value of registered land becomes the registered owner, and, in contemplation of law, the holder of a certificate of title the moment he presents and files a duly notarized and valid deed of sale and the same is entered in the day book and *at the same time he surrenders or presents the owner's duplicate certificate of title covering the land sold* and pays the registration fees, because what remains to be done lies not within his power to perform. The Register of Deeds is duty bound to perform it. In case of *involuntary registration*, such as the registration of an attachment, levy upon execution, notice of *lis pendens*, and the like, an entry thereof in the day book is a sufficient notice to all persons even if the owner's duplicate certificate of title is not presented to the Register of Deeds.

### *(A) CONVEYANCES AND TRANSFERS*

**SEC. 57. *Procedure in registration of conveyances.* — An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "cancelled." The deed of conveyance shall be filled and indorsed with the number and the place of registration of the certificate of title of the land conveyed.**

#### 01. Procedure in registering a deed of conveyance.

An owner who desires to convey the land covered by his title to another shall execute the proper deed of conveyance, in proper form, and present the same, together with the owner's duplicate certificate, to the Register of Deeds for entry and registration. The Register of Deeds shall enter in the registration book the fact of conveyance and

[93]GR No. L-48971, Jan. 22, 1980, 95 SCRA 380.

then prepare a new certificate of title in the name of the grantee, the owner's duplicate of which shall be delivered to him The Register of Deeds shall note upon the original and duplicate certificate the: (a) date of the conveyance, (b) volume and page of the registration book in which the new certificate is registered, and (c) a reference by number to the last preceding certificate. The original and owner's duplicate of the grantor's certificate shall be stamped "Cancelled." The deed of conveyance shall be filed with a notation of the number and place of registration of the certificate of title of the land conveyed.

**SEC. 58.** ***Procedure where conveyance involves portion of land.*** **— If a deed or conveyance is for a part only of the land described in a certificate of title, the Register of Deeds shall not enter any transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided and the corresponding technical descriptions shall have been verified and approved pursuant to Section 50 of this Decree. Meanwhile, such deed may only be annotated by way of memorandum upon the grantor's certificate of title, original and duplicate, said memorandum to serve as a notice to third persons of the fact that certain unsegregated portion of the land described therein has been conveyed, and every certificate with such memorandum shall be effectual for the purpose of showing the grantee's title to the portion conveyed to him, pending the actual issuance of the corresponding certificate in his name.**

**Upon the approval of the plan and technical descriptions, the original of the plan, together with a certified copy of the technical descriptions shall be filed with the Register of Deeds for annotation in the corresponding certificate of title and thereupon said officer shall issue a new certificate of title to the grantee for the portion conveyed, and at the same time cancel the grantor's certificate partially with respect only to said portion conveyed, or, if the grantor so desires, his certificate may be cancelled totally and a new one issued to him describing therein the remaining portion:** ***Provided, however*****, That pending approval of said plan, no further registration or annotation of any subsequent deed or other voluntary instrument involving the unsegregated portion conveyed shall be effected by the Register of Deeds, except where such unsegregated portion was purchased from the Government or any of its instrumentalities. If the land has been subdivided into several lots, designated by**

**numbers or letters, the Register of Deeds may, if desired by the grantor, instead of cancelling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said certificate and on its owner's duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is cancelled as to such lot or lots.**

**01. Procedure where only portions of the land are conveyed.**

If only a portion of the land covered by the certificate of title is the subject of conveyance, the Register of Deeds shall not issue any transfer certificate of title to the grantee until a plan of such land showing the portion or portions into which it has been subdivided and the corresponding technical descriptions shall have been verified and approved pursuant to Section 50 of PD No. 1529. However, the deed of conveyance may in the meantime be annotated by way of memorandum on the grantor's certificate of title, which shall serve as a notice to third persons of the fact of conveyance. The effect of such memorandum is to show and recognize the grantee's title to the portion thus conveyed pending actual issuance to him of the corresponding transfer certificate of title.

Upon approval of the plan and the technical descriptions of the specific portions into which the land has been subdivided, the same shall be filed with the office of the Register of Deeds for annotation on the corresponding certificate of title. Thereafter, the Register of Deeds shall issue a new transfer certificate of title to the grantee for the portion conveyed to him upon cancellation of the grantor's certificate as to said portion. But if the grantor so desires, his certificate of title may be cancelled totally and a new one issued to him for the remaining portion of the land. Pending approval of the plan, no further registration or any annotation of any deed or voluntary instrument affecting the unsegregated portion shall be made by the Register of Deeds, except where such portion was purchased from the government or any of its instrumentalities.

If the land has been subdivided into several lots, designated by numbers or letters, the Register of Deeds, if requested by the grantor, may, instead of canceling his certificate of title, simply issue in his name a new certificate of title for the remaining unconveyed lots, enter on said certificate and on the owner's duplicate a memorandum as to the fact of conveyance of a portion of the land, the issuance to

the grantee of a transfer certificate of title for said portion, and the cancellation of the grantor's certificate insofar as said portion is concerned.

**SEC. 59. *Carry over of encumbrances.* — If, at the time of any transfer, subsisting encumbrances or annotations appear in the registration book, they shall be carried over and stated in the new certificate or certificates; except so far as they may be simultaneously released or discharged.**

### 01. Carrying over of encumbrances in the new certificate

Whenever registered land is conveyed, all subsisting encumbrances or annotations appearing in the registration book and noted on the certificate of title shall be carried over and noted on the new certificate of title except where said encumbrances or annotations are simultaneously released or discharged. The purpose is to show that the grantee obtained the land or portion thereof subject to subsisting encumbrances attached to the title of his grantor.

The rule is that between two involuntary documents, the earlier entry prevails. Where, however, the notice of *lis pendens* filed by a claimant, refers to a lot different from that covered by the adverse claim of another, the *lis pendens*, notwithstanding its prior registration, cannot be carried over to the new title to be issued to the adverse claimant.[1]

## *(B) MORTGAGES AND LEASES*

**SEC. 60. *Mortgage or lease of registered land.* — Mortgage and leases shall be registered in the manner provided in Section 54 of this Decree. The owner of registered land may mortgage or lease it by executing the deed in a form sufficient in law. Such deed of mortgage or lease and all instruments which assign, extend, discharge or otherwise deal with the mortgage or lease shall be registered, and shall take effect upon the title only from time of registration.**

**No mortgagee's or lessee's duplicate certificate of title shall hereafter be issued by the Registers of Deeds, and those issued**

[1]L.P. Leviste & Co. v. Noblejas, GR No. L-28529, April 30, 1979, 89 SCRA 520.

**prior to the effectivity of this Decree are hereby deemed cancelled and the holders thereof shall immediately surrender the same to the Register of Deeds concerned.**

## 01. Essence of a mortgage.

The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default of payment. It is a settled rule that in a real estate mortgage when the obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold in view of applying the proceeds to the payment of the obligation. Foreclosure is valid where the debtors are in default in the payment of their obligation.[1]

### (1) Object of mortgage

Only the following property may be the object of mortgage:

(a) Immovables;

(b) Alienable real rights in accordance with the laws imposed upon immovables.

Nevertheless, movables may be the object of a chattel mortgage.

A real mortgage is a contract in which the debtor guarantees to the creditor the fulfillment of a principal obligation, subjecting for the faithful compliance therewith a real property in case of non-fulfillment of said obligation at the time stipulated.[2]

### (2) Requisites of mortgage

Article 2085 of the Civil Code lays down the essential requisites of pledge and mortgage as follows:

1. That they be constituted to secure the fulfillment of a principal obligation;

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[1]China Banking Corporation v. Court of Appeals, GR No. 121158, Dec. 5, 1996, 265 SCRA 327.

[2]Art. 2124, Civil Code.

2. That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

3. That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

**02. Mortgagor must be the owner of the property mortgaged.**

For a person to validly constitute a valid mortgage on real estate, he must be the absolute owner thereof as required by Article 2085 of the Civil Code, otherwise the mortgage is void. A mortgagee has no right to eject the occupants of the property mortgaged. This is so because a mortgage passes no title to the mortgagee. Indeed, by mortgaging a piece of property, a debtor merely subjects it to lien but ownership thereof is not parted with. Thus, a mortgage is regarded as nothing more than a mere lien, encumbrance, or security for a debt, and passes no title or estate to the mortgagee and gives him no right or claim to the possession of the property.[3] The mortgagee does not acquire title to the mortgaged real estate unless and until he purchases the same at public auction and the property is not redeemed within the prescribed period.[4]

Third persons who are not parties to a loan may secure the latter by pledging or mortgaging their own property. So long as valid consent was given, the fact that the loans were solely for the benefit of the borrower would not invalidate the mortgage with respect to petitioner's property. In consenting thereto, even granting that petitioner may not be assuming personal liability for the debt, her property shall nevertheless secure and respond for the performance of the principal obligation.[5]

**03. Characteristics of mortgage.**

Justice Paras cites the following characteristics of a mortgage:

It is a *real right*. A mortgage binds a purchaser who knows of its existence or if the mortgage was registered.

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[3]Lagrosa v. Court of Appeals, GR No. 115981, Aug. 12, 1999, 370 Phil. 225.
[4]*Ibid.*
[5]Lustan v. Court of Appeals, GR No. 111924, Jan. 27, 1997, 266 SCRA 663.

It is an *accessory contract*. If the principal obligation is void, the mortgage is also void. But if a mortgage is void because it was not made by the owner of the property, the principal contract of loan may still be valid.

It is *indivisible*. For example, A and B mortgaged their land to C's favor. While the mortgage debt was pending, A and B partitioned the land between them, and A paid his share of the debt. Is the mortgage on A's share of the land extinguished? No, because the mortgage is indivisible.

It is *inseparable*. The mortgage adheres to the property regardless of who its owner may subsequently be.

It is a *real property.* A mortgage on real property is by *itself* real property also.

It is a *limitation on ownership*. A mortgage encumbers, but does not end ownership, and may thus be foreclosed.[6]

Article 2126 of the Civil Code states that the mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be to the fulfillment of the obligation for whose security it was constituted. This article means that a mortgage is a real right following the property. Therefore, if a mortgagor sells the property, the buyer must respect the mortgage, if registered, or if he knows of its existence. If the creditor in this case forecloses the mortgage, the buyer will not be responsible for the deficiency, if any, for the encumbrance is only on the property itself.

If the mortgagor, without the creditor's consent, transfers the property and the debt to another, the mortgagor would still be personally liable for the attempted novation here would not be valid in view of the lack of consent on the part of the creditor. On the other hand, the mortgage on the property can still be foreclosed in view of the real nature of a mortgage.[7]

Article 2127 of the Civil Code provides that the mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in

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[6]Paras, Civil Code of the Philippines, Vol. V, 1995 Ed., 1043-1045.
[7]*Ibid.*, 1054-1056.

virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or it passes into the hands of a third person.

**04. Mortgage lien is a right *in rem* which follows the property.**

Where the property is the subject of a subsisting mortgage, the order of the court directing the surrender of the title to the Register of Deeds in order that the sale of the property to another can be registered cannot in any way prejudice the rights and interests of the mortgagee since the lien annotated on the title subsists and is carried over to the new transfer certificates of title which may be issued to the vendee. This is so because Article 2126 of the Civil Code directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted. It is inseparable from the property mortgaged as it is a right *in rem* — a lien on the property whoever its owner may be. It subsists notwithstanding a change in ownership; in short, the personality of the owner is disregarded. Thus, all subsequent purchasers must respect the mortgage whether the transfer to them be with or without the consent of the mortgagee, for such mortgage until discharged follows the property.[8]

**05. Equitable mortgage.**

An equitable mortgage is one which, although lacking in some formality, form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge a real property as security for a debt, and contains nothing impossible or contrary to law.

Article 1602 of the Civil Code provides that the contract of sale with right to repurchase shall be presumed to be an equitable mortgage in any of the following cases:

(a) When the price of the sale is unusually inadequate;

(b) When the vendor remains in possession as lessee or otherwise;

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[8]Ligon v. Court of Appeals, GR No. 107751, June 1, 1995, 244 SCRA 693.

(c) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(d) When the purchaser retains for himself a part of the purchase price;

(e) When the vendor binds himself to pay the taxes on the thing sold; and,

(f) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

For a presumption of an equitable mortgage to arise, two requisites must be satisfied, namely: (a) that the parties entered into a contract denominated as a contract of sale, and (b) that their intention was to secure an existing debt by way of mortgage. Under Article 1604 of the Civil Code, a contract purporting to be an absolute sale shall be presumed to be an equitable mortgage should any of the conditions in Article 1602 be present. The existence of any of the circumstances therein, not a concurrence nor an overwhelming number of such circumstances, suffices to give rise to the presumption that the contract is an equitable mortgage.[9]

It has been held that a contract should be construed as a mortgage or a loan instead of a *pacto de retro* sale when its terms are ambiguous or the circumstances surrounding its execution or its performance are incompatible or inconsistent with the theory that it is a sale. Even when a document appears on its face to be a sale with *pacto de retro,* the owner of the property may prove that the contract is really a loan with mortgage by raising as an issue the fact that the document does not express the true intent and agreement of the parties. This principle is applicable even if the purported sale *con pacto de retro* was registered in the name of the transferee and a new certificate of title was issued in the name of the latter.[10]

In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.[11] It has been consistently held that the presence of even one of the circumstances enumerated in Article 1602 of the Civil Code is sufficient to declare

[9]Lustan v. Court of Appeals, *supra*.
[10]Olea v. Court of Appeals, GR No. 109696, Aug. 14, 1995, 247 SCRA 274.
[11]Art. 1603, Civil Code.

a contract of sale with right to repurchase an equitable mortgage. Relatedly, where in a contract of sale with *pacto de retro* the vendor remains in physical possession of the land sold as lessee or otherwise, the contract should be considered an equitable mortgage. The same presumption applies when the vendee was given the right to appropriate the fruits thereof in lieu of receiving interest on the loan.[12]

Article 1602(6), in relation to Article 1604, provides that a contract of sale is presumed to be an equitable mortgage in any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. This is illustrated in the following case:

> "Petitioner had no knowledge that the contract she signed is a deed of sale. The contents of the same were not read nor explained to her so that she may intelligibly formulate in her mind the consequences of her conduct and the nature of the rights she was ceding in favor of Parangan. Petitioner is illiterate and her condition constrained her to merely rely on Parangan's assurance that the contract only evidences her indebtedness to the latter. When one of the contracting parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. Settled is the rule that where a party to a contract is illiterate or cannot read or cannot understand the language in which the contract is written, the burden is on the party interested in enforcing the contract to prove that the terms thereof are fully explained to the former in a language understood by him. To our mind, this burden has not been satisfactorily discharged.
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> The foregoing squares with the sixth instance when a presumption of equitable mortgage prevails. The contract of definite sale, where petitioner purportedly ceded all her rights to the subject lot in favor of Parangan, did not

[12]Olea v. Court of Appeals, *id.*

embody the true intention of the parties. The evidence speaks clearly of the nature of the agreement — it was one executed to secure some loans."[13]

**SEC. 61. *Registration.* — Upon presentation for registration of the deed of mortgage or lease together with the owner's duplicate, the Register of Deeds shall enter upon the original of the certificate of title and also upon the owner's duplicate certificate a memorandum thereof, the date and time of filing and the file number assigned to the deed, and shall sign the said memorandum. He shall also note on the deed the date and time of filing and a reference to the volume and page of the registration book in which it is registered.**

### 01. Recorded mortgage is a right *in rem*.

It is well-settled that a recorded mortgage is a right *in rem*, a lien on the property whoever its owner may be. The recording of the mortgage puts the whole world on constructive notice of its existence and warns everyone who thereafter deals with the property on which it was constituted that he would have to reckon with that encumbrance.[14] A mortgage is but an accessory contract. The consideration of the mortgage is the same consideration of the principal contract without which it cannot exist as an independent contract. A mortgage lien is inseparable from the mortgaged property because it is a right *in rem*. Thus, to substitute the mortgage with a surety bond would convent such lien from a right *in rem* to a right *in personam* which would abridge the rights of the mortgagee under the mortgage contract.[15]

#### (1) Unrecorded mortgage valid and binding upon the parties

Article 2125 of the Civil Code provides that in order that a mortgage may be validly constituted, the document in which it appears must be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties. The persons in whose favor the law establishes a

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[13]Lustan v. Court of Appeals, *supra*.

[14]Limpin v. Intermediate Appellate Court, GR No. 70987, Jan. 30, 1987, 147 SCRA 516.

[15]Ganzon v. Sancho, GR No. L-56450, July 25, 1983, 123 SCRA 713.

mortgage have no other rights than to demand the execution and the recording of the document in which the mortgage is formalized.

A mortgage, whether registered or not, is binding between the parties, registration being necessary only to make the same valid against third persons. In other words, registration only operates as a notice of the mortgage to others, but neither adds to its validity nor convert an invalid mortgage into a valid one between the parties. If the purpose of registration is merely to give notice, the questions regarding the effect or invalidity of instruments are expected to be decided *after*, not *before*, registration. It must follow as a necessary consequence that registration must first be allowed and the validity or effect thereof litigated afterwards.[16]

### (2) Alienation of mortgage credit

Under Article 2128 of the Civil Code, the mortgage credit may be alienated or assigned to a third person, in whole or in part, with the formalities required by law. But even if the alienation is not registered, it would still be valid as between the parties inasmuch as registration is needed only to affect third parties.[17]

## 02. Rights of innocent mortgagee for value.

Where the certificate of title is in the name of the mortgagor when the land is mortgaged, the mortgagee has the right to rely on what appears on the certificate of title. In the absence of anything to excite or arouse suspicion, said mortgagee is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate. Although Article 2085 of the Civil Code provides that absolute ownership of the mortgaged property by the mortgagor is essential, the subsequent declaration of a title as null and void is not a ground for nullifying the mortgage right of a mortgagee in good faith. The rationale for the rule is explained as follows:

> "The main purpose of the Torrens System is to avoid possible conflicts of title to real estate and to facilitate transactions relative thereto by giving the public the right to rely upon the face of a Torrens certificate of title and to

[16]Samanilla v. Cajucom, GR No. L-13683, March 28, 1960, 107 Phil. 432.
[17]Lopez v. Alvarez, GR No. 3428, Oct. 12, 1907, 9 Phil. 28.

> dispense with the need of inquiring further, except when the party concerned had actual knowledge of facts and circumstances that should impel a reasonably cautious man to make such further inquiry. Thus, where innocent third persons relying on the correctness of the certificate thus issued, acquire rights over the property, the court cannot disregard such rights. The lien of the petitioner, an innocent mortgagee for value, must be respected and protected."[18]

The right or lien of an innocent mortgagee for value upon the land mortgaged must be respected and protected, even if the mortgagor obtained his title thereto through fraud. The remedy of the persons prejudiced is to bring an action for damages against those who caused the fraud, and if the latter are insolvent, an action against the Treasurer of the Philippines may be filed for recovery of damages against the Assurance Fund.[19]

### (1) "Innocent purchaser for value" includes innocent lessee or mortgagee

The phrase "innocent purchaser for value" in Section 32 of the Property Registration Decree includes an innocent lessee, mortgagee, or other encumbrancer for value.[20]

A bank is not required, before accepting a mortgage, to make an investigation of the title of the property being given as security. Nevertheless, banks are cautioned to exercise more care and prudence in dealing even with registered lands, than private individuals, for their business is one affected with public interest, keeping in trust money belonging to their depositors, which they should guard against loss by not committing any act of negligence which amounts to lack of good faith. It is for this reason that banks before approving a loan send representatives to the premises of the land offered as collateral and investigate who are the true owners thereof. If the bank had exercised the due care demanded of it relative to real estate loans, it will be considered an innocent mortgagee for value.[21]

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[18]Rural Bank of Sariaya, Inc. v. Yacon, GR No. 78011, July 5, 1989, 175 SCRA 62.

[19]Blanco v. Esquierdo, GR No. L-15182, Dec. 29, 1960, 110 Phil. 494.

[20]Unchuan v. Court of Appeals, GR No. 78775, May 31, 1988, 161 SCRA 710.

[21]Gonzales v. Intermediate Appellate Court, GR No. L-69622, Jan. 29, 1988, 157 SCRA 187.

In *Gonzales* v. *Intermediate Appellate Court*,[22] the Court made the following pronouncement as regards the rights of an innocent mortgagee:

> "When the certificate of title in the name of the Panzo spouses was submitted to private respondent bank for purposes of their loan application, it was free from any lien and encumbrance. The mortgage was duly constituted and registered with the Register of Deeds on May 28, 1971. x x x The certificate of title was in the name of the mortgagors when the land was mortgaged by them to respondent bank. Such being the case, said respondent bank, as mortgagee, had the right to rely on what appeared on the certificate of title and, in the absence of anything to excite suspicion, was under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate.
>
> x x x x x x x x x
>
> The well-known rule in this jurisdiction is that a person dealing with a registered land has a right to rely upon the face of the Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make inquiry. It has also been held that a bank is not required, before accepting a mortgage, to make an investigation of the title of the property being given as security. x x x Respondent bank is no doubt an innocent mortgagee for value but is it a subsequent purchaser in good faith and for value?
>
> It will be remembered that at the time of the purchase of the subject property at the foreclosure sale on August 11, 1973, the notice of *lis pendens* had already been inscribed in the title of the Panzos, subject of the mortgage.
>
> It is true that the notice of *lis pendens* is an announcement to the whole world that a particular real property is in litigation, and serves as a warning that one who acquires an interest over said property does so at his own risk, so

[22] *Ibid.*

that he gambles on the results of the litigation over said property.

However, it has also been held that any subsequent lien or encumbrance annotated at the back of the certificate of title cannot in any way prejudice the mortgage previously registered, and the lots subject thereto pass to the purchaser at the public auction sale free from any lien or encumbrance. Otherwise, the value of the mortgage could be easily destroyed by a subsequent record of an adverse claim, for no one would purchase at a foreclosure sale if bound by the posterior claim.

x x x x x x x x x

A person who takes a mortgage in good faith and for a valuable consideration, the record showing a clear title in the mortgagor will be protected against any equitable titles to the premises or equitable claims on the title, in favor of their persons, of which he had no notice, actual or constructive and that protection extends to a purchaser at a Sheriff's sale under proceedings on the mortgage although such purchaser had notice of the alleged equity.

In the case at bar, it is the respondent bank, the mortgagee itself, which purchased the subject property in the foreclosure sale. Being an innocent mortgagee with a superior lien over that of petitioner, its right to a foreclosure of the property is reserved. The notice of *lis pendens* which antedated the foreclosure and sale at public auction of subject property could not affect the rights of the respondent bank because the foreclosure sale retroacts to the date of registration of the mortgage. Its character of being an innocent mortgagee continues up to the date of actual foreclosure and sale at public auction."

**03. Effect of *lis pendens*.**

A notice of *lis pendens* is an announcement to the whole world that a particular real property is in litigation, and serves as a warning that one who acquires an interest over said property does so at his own risk, so that he gambles on the results of the litigation over said property. However, it has been held that any subsequent lien or encumbrance annotated at the back of the certificate of title cannot

in any way prejudice the mortgage previously registered, and the lots subject thereto pass to the purchaser at the public auction sale free from any lien or encumbrance. Otherwise, the value of the mortgage could be easily destroyed by a subsequent record of an adverse claim, for no one would purchase at a foreclosure sale if bound by the posterior claim.[23]

**04. Effect of a forged deed.**

Although the underlying purpose of the Property Registration Decree is to impart stability and conclusiveness to transactions that have been placed within its operations, still the law dose not permit its provisions to be used as a shield for the commission of fraud. Thus, where the mortgage is admittedly a forgery and the registered owner has not been shown to have been negligent or in connivance with the forger, the mortgage can not be enforced against the owner. Before the principle of equity that "as between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible by his act of confidence must bear the loss" can be applied, it is essential that the fraud was made possible by the owner's act in entrusting the certificate of title to another.[24] A forged power of attorney is without force and effect, and the record of the mortgage constituted by virtue thereof is likewise null and void and could not prejudice the rights of the registered owner.[25]

**05. Unrecorded sale of a prior date vs. recorded mortgage on a later date.**

As between an unrecorded sale of prior date of real property and a recorded mortgage thereof under Act No. 3344 on a later date, which is preferred? In *Reyes* v. *De Leon*,[26] the Supreme Court held that the former is preferred, thus:

> "We also agree with the lower court that between an unrecorded sale of a prior date and a recorded mortgage of a later date the former is preferred to the latter for the reason that if the original owner had parted with his

[23]*Ibid.*
[24]De Lara v. Ayroso, GR No. L-6122, May 31, 1954, 95 Phil. 185.
[25]Veloso v. La Urbana and Del Mar, GR No. 38384, Nov. 3, 1933, 58 Phil. 681.
[26]GR No. L-22331, June 6, 1967.

ownership of the thing sold then he no longer had the ownership and free disposal of that thing so as to be able to mortgage it again. Registration of the mortgage under Act No. 3344 would, in such case, be of no moment since it is understood to be without prejudice to the better right of third parties. Nor would it avail the mortgagee any to assert that he is in actual possession of the property for the execution of the conveyance in a public instrument earlier was equivalent to the delivery of the thing sold to the vendee."

**06. Judicial declaration as to the existence of a lien sufficient.**

It is true that a promise to constitute a mortgage gives rise only to a personal obligation between the contracting parties and creates no real right in the property, but the agreement to constitute the mortgage is lawful and such stipulation can be enforced by the creditor, being in no wise inconsistent with the right to recover the indebtedness. But a court of equity never requires an unnecessary thing as when the rights of the creditor will be adequately protected by declaring that the indebtedness is recognized in the document which constitutes a lien in the nature of a mortgage upon land, it appearing that the registration of the whole has been effected. It is a maxim of jurisprudence that "equity regards that as done which ought to be done," and in obedience to this precept, as between the parties to this record, the property must be considered to be subject to the same lien as if the mortgage which had been agreed to be made had been actually executed.[27]

**07. Rights of the second mortgagee.**

The case of *El Hogar Filipino* v. *Philippine National Bank*[28] involves the correlative rights of El Hogar Filipino, as first mortgagee, and the Philippine National Bank, as second mortgagee, over the same property. It was ruled that by virtue of the mortgage constituted in favor of El Hogar Filipino, and the credit thereof having become demandable, said mortgagee was entitled to have the mortgaged lots

[27]Laplana v. Garchitorena, GR No. 23663, Nov. 17, 1925, 48 Phil. 163.
[28]GR No. 43459, Aug. 11, 1937, 64 Phil. 582.

sold for the payment of its credit. The sale excluded the mortgaged lots from the estate of the debtors. Aside from the rights of repurchase, PNB's only right would be to apply to the payment of its credit the excess of the proceeds of the sale after the payment of the credit of El Hogar Filipino. However, inasmuch as the credit of El Hogar Filipino has absorbed the entire proceeds of the sale, the mortgage in favor of PNB was in fact extinguished because it cannot be enforced beyond the total value of the lots. Consequently, the lots passed to the purchaser free from the mortgage to the PNB.

**08. Effect on mortgage if Torrens title is nullified.**

In *Blanco* v. *Esquierdo*,[29] defendant, claiming in her affidavit to be the widow and only heir of her deceased husband, obtained the cancellation of the latter's certificate of title and caused the issuance in her name of a transfer certificate of title for the entire land. Upon learning this, plaintiffs who were the brothers and sisters of the deceased filed a complaint to annul defendant's title, alleging that the deceased died without any descendant or ascendant except plaintiffs themselves as heirs. Included as party defendant was the Development Bank of the Philippines to which the property was mortgaged by defendant. After trial, the lower court rendered judgment declaring the certificate of title of defendant invalid, and ordering its cancellation and the restoration of the original certificate of title "in the name of the Heirs of Maximiano Blanco, or the issuance of a new transfer certificate of title in the name of said heirs." The court, likewise, ordered the cancellation of the registration of the mortgage deed annotated on the back of the certificate of title. Arguing that it is an innocent mortgagee for valuable consideration and as such fully protected by the law, regardless of whether the title to the land has been secured fraudulently or not by the defendant mortgagor, the bank appealed. The Supreme Court upheld the bank's contention, holding:

> "That the certificate of title issued in the name of Fructuosa Esquierdo is a nullity, the same having been secured thru fraud, is not here in question. The only question for determination is whether the defendant bank is entitled to the protection accorded to "innocent pur-

[29]GR No. L-15182, Dec. 29, 1960, 110 Phil. 494.

chasers for value," which phrase, according to sec. 38 of the Land Registration Law (now Sec. 32 of the Property Registration Decree), includes an innocent mortgagee for value. The question, in our opinion, must be answered in the affirmative.

The trial court, in the decision complained of, made no finding that the defendant mortgagee bank was a party to the fraudulent transfer of the land to Fructuosa Esquierdo. Indeed, there is nothing alleged in the complaint which may implicate said defendant mortgagee in the fraud, or justify a finding that it acted in bad faith. On the other hand, the certificate of title was in the name of the mortgagor Fructuosa Esquierdo when the land was mortgaged by her to the defendant bank. Such being the case, the said defendant bank, as mortgagee, had the right to rely on what appeared in the certificate and, in the absence of anything to excite suspicion, was under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate. Being thus an innocent mortgagee for value, its right or lien upon the land mortgaged must be respected and protected, even if the mortgagor obtained her title thereto thru fraud. The remedy of the persons prejudiced is to bring an action for damages against those causing the fraud, and if the latter are insolvent, an action against the Treasurer of the Philippines may be filed for the recovery of damages against the Assurance Fund."

Where land covered by a Torrens title was mortgaged to the bank to secure a loan, but the title was later on nullified since the same land had been previously titled pursuant a free patent, the mortgage will not be cancelled where it is shown that the bank relied on the validity of the title in the name of the mortgagor and, therefore, acted in good faith. The rationale is explained in *Penullar* v. *Philippine National Bank*,[30] thus:

"Where, however, innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such

[30]GR No. L-32762, Jan. 27, 1983, 120 SCRA 171.

rights and order the total cancellation of the certificate. The effect of such an outright cancellation would be to impair public confidence in the certificates of title, for everyone dealing with property registered under the Torrens System would have to inquire in every instance as to whether the title has been regularly or irregularly issued by the court. And this is contrary to the evident purpose of the law. Section 39 of Act No. 496 provides that every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificates of title for value in good faith, shall hold the same free of all encumbrance except those noted on said certificate. We have heretofore emphasized, and do so now, that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property."

A parallel doctrine is found in *Gonzales* v. *Intermediate Appellate Court*,[31] thus:

> "Where the Torrens title of the land was in the name of the mortgagor and later given as security for a bank loan, the subsequent declaration of said title as null and void is not a ground for nullifying the mortgage right of the bank, which had acted in good faith. Being thus an innocent mortgagee for value, its right or lien upon the land mortgaged must be respected and protected, even if the mortgagors obtained their title thereto thru fraud."

**SEC. 62. *Discharge or cancellation.* — A mortgage or lease on registered land may be discharged or cancelled by means of an instrument executed by the mortgage or lessee in a form sufficient in law, which shall be filed with the Register of Deeds who shall make the appropriate memorandum upon the certificate of title.**

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[31]GR No. L-69622, Jan. 29, 1988, 157 SCRA 587.

**01. Mortgage discharged only upon full payment of indebtedness.**

It is settled that mortgages given to secure future advancements are valid and legal contracts; that the amounts named as consideration in said contract do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered. A mortgage given to secure advancements is a continuing security and is not discharged by repayment of the amount named in the mortgage, until the full amount of the advancements are paid. It is equally settled that where the annotation on the back of a certificate of title about a first mortgage states "that the mortgage secured the payment of a certain sum of money plus interest plus other obligations arising thereunder," there is no necessity for any notation of the later loans on the mortgagors' title.[32]

A stipulation in a contract of mortgage that the ownership of the property would automatically pass to the mortgagee in case no redemption was effected within the stipulated period is void for being a *pactum commissorium* which enables the mortgagee to acquire ownership of the mortgaged property without need of foreclosure.[33]

**02. Rule on redemption liberally construed.**

Although it is required that full payment of the purchase price must be made within the redemption period, the rule on redemption is actually liberally construed in favor of the original owner of the property, as held in *Ysmael* v. *Court of* Appeals.[34] The policy of the law is to aid rather than to defeat him in the exercise of his right of redemption.[35] In fact, the Supreme Court has allowed parties in several cases to perfect their right of redemption even beyond the prescribed period. Thus, in *De los Reyes* v. *Intermediate Appellate Court*,[36] for instance, the amount deposited with the trial court four (4) days after the lapse of the redemption period was considered an affirmation of the earlier timely offer to redeem and, thus, considered a valid payment. And in *Castillo* v. *Nagtalon*[37] and *Bodiongan* v. *Court*

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[32]Mojica v. Court of Appeals, GR No. 94247, Sept. 11, 1991, 201 SCRA 517.
[33]Olea v. Court of Appeals, GR No. 109696, Aug. 14, 1995, 247 SCRA 274.
[34]GR No. 132497, Nov. 16, 1999, 318 SCRA 215.
[35]Sulit v. Court of Appeals, GR No. 119247, Feb. 17, 1997, 268 SCRA 441.
[36]GR No. 74768, Aug. 11, 1989, 176 SCRA 394.
[37]GR No. L-17079, Jan. 29, 1962, 114 Phil. 7.

*of Appeals*,[38] the Supreme Court upheld a redemption made by the judgment debtor or the redemptioner in good faith even if amount paid was less than the redemption price. Where the parties stipulated that the mortgaged property shall also answer for future loans or advancements, the same is valid and binding between the parties as held in *Ajax Marketing & Dvelopment Corporation* v. *Court of Appeals*.[39]

**SEC. 63. *Foreclosure of Mortgage.* — (a) If the mortgage was foreclosed judicially, a certified copy of the final order of the court confirming the sale shall be registered with the Register of Deeds. If no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.**

**Where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by a brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title of the mortgagor.**

**If the property is not redeemed, the final deed of sale executed by the sheriff in favor of the purchaser at a foreclosure sale shall be registered with the Register of Deeds; whereupon the title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.**

**(b) If the mortgage was foreclosed extrajudicially, a certificate of sale executed by the officer who conducted the sale shall be filed with the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.**

**In the event of redemption by the mortgagor, the same rule provided for in the second paragraph of this section shall apply.**

**In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of**

[38]GR No. 114418, Sept. 21, 1995, 248 SCRA 496.
[39]GR No. 118585, Sept. 14, 1995, 248 SCRA 222.

**attorney embodied in the deed of mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled.**

### 01. Concept of foreclosure.

Foreclosure is the process by which a mortgagee acquires an absolute title to the property of which he had previously been only the conditional owner, or upon which he had previously a mere lien or encumbrance.[40] Foreclosure is valid where the debtors are in default in the payment of their obligation.[41]

### 02. Remedies in case of default.

Failure on the part of the mortgagor to settle his obligation gives rise to the mortgagee's right to foreclose the mortgages which is a remedy provided by law. In *Caltex Philippines, Inc*. v. *Intermediate Appellate Court*,[42] the following remedies are indicated:

> "Thus, where a debt is secured by a mortgage and there is a default in payment on the part of the mortgagor, the mortgagee has a choice of one (1) of two (2) remedies, but he cannot have both. The mortgagee may:
>
> 1) foreclose the mortgage; or
>
> 2) file an ordinary action to collect the debt.
>
> When the mortgagee chooses the foreclosure of the mortgage as a remedy, he enforces his lien by the sale on foreclosure of the mortgaged property. The proceeds of the sale will be applied to the satisfaction of the debt. With this remedy, he has a prior lien on the property. In case of a deficiency, the mortgagee has the right to claim for the deficiency resulting from the price obtained in the sale of the real property at public auction and the outstanding obligation at the time of the foreclosure proceedings.

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[40]Benedicto v. Yulo, GR No. 8106, Nov. 26, 1913, 26 Phil. 160.

[41]China Banking Corporation v. Court of Appeals, GR No. 94182, March 28, 1994, 231 SCRA 472.

[42]GR No. 747370, Aug. 25, 1989, 176 SCRA 741.

> On the other hand, if the mortgagee resorts to an action to collect the debt, he thereby waives his mortgage lien. He will have no more priority over the mortgaged property. If the judgment in the action to collect is favorable to him, and it becomes final and executory, he can enforce said judgment by execution. He can even levy execution on the same mortgaged property, but he will not have priority over the latter and there may be other creditors who have better lien on the properties of the mortgagor."

An action to enforce a right arising from a mortgage should be enforced within ten years from the time the right of action accrues, or from default in payment of the loan amortizations. Otherwise, it will be barred by prescription and the mortgage creditor will lose his rights under the mortgage. Foreclosure made beyond the prescriptive period renders the proceedings — the public auction, consolidation of title and issuance of transfer certificate of title to the mortgage creditor or highest bidder at auction — null and void.[43]

### (1) Options of a secured creditor in case of death of the debtor

The rule is that a secured creditor holding a real estate mortgage has three (3) options in case of death of the debtor. These are:

(a) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim;

(b) to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and

(c) to rely on the mortgage exclusively, foreclosing the same at anytime before it is barred by prescription, without right to file a claim for any deficiency.[44]

## 03. Procedure in case of judicial foreclosure of mortgage.

Section 63, PD No. 1529, provides that if the mortgaged property has been the subject of judicial foreclosure, a certified copy of the

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[43]Tambunting v. Sumabat, GR No. 144101, Sept. 16, 2005.

[44]Maglaque v. Planters Development Bank, GR No. 109472, May 18, 1999, 307 SCRA 15.

final order of the court confirming the sale shall be filed and registered with the Register of Deeds. If the mortgagor fails to redeem the property, his certificate of title shall be cancelled and a new certificate shall be issued to the purchaser. However, if the property is redeemed, the mortgagor's certificate of title shall stand uncancelled but the certificate of sale, the order of the court confirming it, and the deed of redemption shall be filed with the Register of Deeds and a brief memorandum thereof noted on the mortgagor's certificate of title. If no redemption is made, the final deed of sale executed by the sheriff in favor of the purchaser shall be registered with the Register of Deeds, whereupon the mortgagor's title shall be cancelled and a new certificate issued to the purchaser.

Rule 68 of the Rules of Court governs the judicial foreclosure of real estate mortgage. Section 3 thereof provides:

> "When the defendant-mortgagor fails to pay the amount of the judgment within the period specified, the court, upon motion, shall order the property to be sold in the manner and under the provisions of Rule 39 and other regulations governing sales of real estate under execution. Such sale shall not affect the rights of persons holding prior encumbrances upon the property or a part thereof, and when confirmed by an order of the court, also upon motion, it shall operate to divest the rights in the property of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law. Upon the finality of the order of confirmation or upon the expiration of the period of redemption when allowed by law, the purchaser at the auction sale or last redemptioner, if any, shall be entitled to the possession of the property unless a third party is actually holding the same adversely to the judgment obligor. The said purchaser or last redemptioner may secure a writ of possession, upon motion, from the court which ordered the foreclosure."[45]

Section 7 of Rule 68 regarding the registration of the order of the court confirming the sale and related procedures is similar to Section 63 of PD No. 1529.

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[45]Sec. 3, Rule 68, Rules of Court.

### (1) Basic rules on judicial foreclosure

The Supreme Court, in *Rural Bank of Oroquieta* v. *Court of Appeals*,[46] laid down the following basic principles on judicial foreclosure of mortgage:

1. Under Section 3, Rule 68 of the Rules of Court, it is the confirmation by the court of the auction sale that would divest the mortgagors of their rights to the mortgaged lot and that would vest such rights in the bank as purchaser at the auction sale.

2. The clause "subject to such rights of redemption as may be allowed by law" found in the last part of Section 3, has no application to a case where the mortgagor did not exercise his right of redemption under Section 78 of the General Banking Law.

3. A foreclosure sale is not complete until it is confirmed, and before said confirmation, the court retains control of the proceedings by exercising a sound discretion in regard to it, either granting or withholding confirmation as the rights and interests of the parties and the ends of justice may require.

4. In order that a foreclosure sale may be validly confirmed by the court, it is necessary that a hearing be given the interested parties, at which they may have an opportunity to show cause why the sale should not be confirmed.

5. The acceptance of a bid at the foreclosure sale confers no title on the purchaser. Until the sale has been validly confirmed by the court, he is nothing more than a preferred bidder. Title vests only when the sale has been validly confirmed by the court.

6. The confirmation retroacts to the date of the sale. A hearing should be held for the confirmation of the sale. The mortgagor should be notified of the hearing. Lack of notice vitiates the confirmation of the sale. The mortgagor may still redeem the mortgaged lot after the rendition of the order confirming the sale which is void for lack of hearing and notice to the mortgagor.

7. Notice and hearing of a motion for confirmation of sale are essential to the validity of the order of confirmation, not only to enable the interested parties to resist the motion but also to inform them of the time when their right of redemption is cut-off.

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[46]GR No. 53466, Nov. 10, 1980, 101 SCRA 5.

8. An order of confirmation, void for lack of notice and hearing, may be set aside anytime.

9. After the foreclosure but before its confirmation, the court may grant the judgment debtor or mortgagor an opportunity to pay the proceeds of the sale and thus refrain from confirming it.

10. If after the foreclosure sale and before the confirmation thereof, the mortgagee, as purchaser at the auction sale, sold the mortgaged property to another person, that subsequent sale does not render the foreclosure sale more effective. That subsequent sale does not prevent the trial court from granting the mortgagor a period within which to redeem the mortgaged lot by paying the judgment debt and the expenses of the sale and costs.

11. Whatever may have been the old rule by all of the modern authorities, it is the policy of the courts to assist rather than to defeat the right of redemption.

12. After the confirmation of the sale, made after hearing and with due notice to the mortgagor, the latter cannot redeem anymore the mortgaged lot (unless the mortgagee is a banking institution).

13. It is after the confirmation of the sale that the mortgagor loses all interest in the mortgaged property.

### (2) Equity of redemption and right of redemption distinguished

*Equity of redemption* is the right of the mortgagor to redeem the mortgaged property after his default in the performance of the conditions of the mortgage but before the sale of the property or the confirmation of the sale, whereas the *right of redemption* means the right of the mortgagor to repurchase the property even after confirmation of the sale, in cases of foreclosure by banks, within one year from the registration of the sale.[47]

Title to the mortgaged real property does not vest in the purchaser until after the confirmation of the sale, hence, he has, prior to that time, no right to the possession of such property. The confirmation operates to divest the title out of the former owner and to vest it in the purchaser. It is at this time when the rights or title passes,

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[47]Top Rate International Services, Inc. v. Intermediate Appellate Court, GR No. L-67496, July 7, 1986, 142 SCRA 467.

and not before.[48] The confirmation retroacts to the date of the sale. Thus, the rights of the mortgagee and persons holding under him are cut-off by the sale upon confirmation, and with them the equity of redemption.[49]

Under Act No. 3135, as amended, a *right of redemption* is granted to the debtor, his successor-in-interest or any judicial creditor of said debtor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, within a period of one (1) year from the date of the sale. Such redemption is governed by Sections 29, 30 and 31, Rule 39 of the Rules of Court.

In determining whether a person is included within the terms of a redemption statute, the principle is that if one is in privity in title with the mortgagor, and he has such an interest that he would be a loser by the foreclosure, he may redeem. Redemption is proper where made by debtors, grantee, or assignee for the benefit of creditors, or assignee or trustee in insolvency proceedings.[50]

In a real estate mortgage, the mortgagor has an *equity of redemption* exercisable within the period stipulated in the mortgage deed. In case of judicial foreclosure, that equity of redemption subsists after the sale and before it is confirmed by the court. In case of a judicial foreclosure of a mortgage in favor of a banking institution, Section 78 of the General Banking law grants the mortgagor a right of redemption which may be exercised within one (1) year from the sale.

Under Section 3, Rule 68 of the Rules of Court, it is the confirmation by the court of the auction sale that divests the mortgagor of his right to the mortgaged lot and vests such rights in the bank as purchaser at the auction sale.[51]

### (3) Time and manner of redemption

Section 28 of Rule 39 provides as follows:

> "SEC. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed.* —

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[48]Raymundo v. Sunico, GR No. 8241, Sept. 27, 1913, 25 Phil. 365.

[49]Lonzame v. Amores, GR No. 53620, Jan. 31, 1985, 134 SCRA 386.

[50]De Castro v. Intermediate Appellate Court, GR No. 73859, Sept. 26, 1988, 165 SCRA 654.

[51]Rural Bank of Oroquieta v. Court of Appeals, *supra*.

> The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale by paying the purchaser the amount of his purchase, with one *per centum* per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest."

Compared to the old rule which required that redemption should be made "at any time within twelve (12) months after the sale,"[52] Section 28, Rule 39 of the (1997) Rules of Court now provides that the period of redemption shall be "at any time within one (1) year from the date of registration of the certificate of sale," so that the period is now to be understood as composed of 365 days.[53]

### (4) Mortgagor's equity of redemption

What is the mortgagor's equity of redemption in case of judicial foreclosure of a mortgage in favor of a rural bank? This was the issue resolved by the Supreme Court, through Mr. Justice Aquino, in *Rural Bank of Oroquieta* v. *Court of Appeals*,[54] which also set down basic principles on judicial foreclosure of mortgage.

In an action for foreclosure of mortgage, the trial court rendered a decision ordering defendants to pay their loan with plaintiff bank within a period of "not less than ninety (90) days nor more than one hundred (100) days from" the receipt of the decision. For non-payment, the mortgaged lot was sold at auction with the bank as the only bidder. There being no redemption within the one-year period (Sec. 78, General Banking Law), the sheriff issued a final certificate of sale in favor of the bank. Thereupon, the court directed the issuance of a writ of possession. Defendants moved for reconsideration, alleging

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[52]Sec. 30, 1964 Rules of Court.
[53]Ysmael v. Court of Appeals, *supra*.
[54]*Supra*.

that since there was no judicial confirmation of the auction sale, they still have an equity of redemption. The court granted the motion. Meantime, the bank filed a manifestation alleging that it had already sold the lot to another, hence, redemption was no longer possible. Moreover, defendants themselves had filed action against the bank for the annulment of the foreclosure sale which was still pending determination. The court having ruled against the bank, the latter appealed to the Court of Appeals. On motion of defendants, the appeal was dismissed since the order appealed from was interlocutory, there being as yet no judicial confirmation of the foreclosure sale. The Supreme Court sustained the dismissal, holding as follows:

> "The trial court erred in unreservedly allowing (defendants) to redeem the mortgaged lot *without taking into account the supervening fact that the lot is now registered in the name of (a third person)* who is not a party in the foreclosure proceeding and who is entitled to be heard. The trial court should first try and resolve the issues arising out of the lack of judicial confirmation of the foreclosure sale and the subsequent sale of the mortgaged lot to a third person after the expiration of the one-year period for exercising the right of redemption. In the instant case, where the foreclosure sale has not yet been confirmed but the statutory one-year period for redemption expired and the mortgaged lot was sold by the mortgagee (as the only bidder at the auction sale) to a third person, the trial court should give the purchaser a chance to be heard before requiring the mortgagee-bank to accept the redemption price tendered by the mortgagors.
>
> After the execution of a real estate mortgage, the mortgagor has an equity of redemption exercisable within the period stipulated in the mortgage deed. In case of judicial foreclosure, that equity of redemption subsists after the sale and before it is confirmed by the court.
>
> However, in case of a judicial foreclosure of a mortgage in favor of a banking institution, section 78 of the General Banking law grants the mortgagor a right of redemption which may be exercised within one year from the sale."

The Government Service Insurance System is not a bank or banking institution, hence, the mortgage is covered by the general

rule that there is no right of redemption after the judicial foreclosure sale has been confirmed.[55]

**04. Procedure in case of extrajudicial foreclosure.**

If the property has been the subject of extrajudicial foreclosure, the sheriff's certificate of sale shall be filed with the Register of Deeds and a brief memorandum thereof entered on the mortgagor's certificate of title. In case of redemption by the mortgagor, the same procedure as in the case of judicial foreclosure shall be followed. If no redemption is made, the final deed of sale executed by the officer authorized for the purpose, or his certificate of non-redemption, shall be filed with the Register of Deeds who shall thereupon cancel the mortgagor's certificate of title and issue a new title to the purchaser.

**(1) Governing law**

Extrajudicial foreclosure of real estate mortgages is governed by Act No. 3135, as amended by Act No. 4118.

> "SEC. 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power."
>
> "SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act."

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[55]Government Service Insurance System v. Court of First Instance of Iloilo, GR No. 45322, July 5, 1989, 185 SCRA 19.

As provided in Section 1 of the Act, extrajudicial foreclosure sales are proper only when so provided in the real estate mortgage contract. It is the specific duty of the Clerk of Court to examine applications for extrajudicial foreclosure of mortgages whether the attached real estate mortgage contract contained the requisite special power authorizing the mortgagee to extrajudicially foreclose the mortgage in case of non-payment of the mortgage indebtedness.[56]

Section 6 states that in cases of extrajudicial sale, "redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure insofar as these are not inconsistent with the provisions of this Act." Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of the Rules of Court, which in turn were replaced by Sections 29-31 and Section 35 of Rule 39 of the Revised Rules of Court (now sections 27-31 and 33 of the 1997 Rules of Court).[57]

As set forth in its title, Act No. 3135 was promulgated "to regulate the sale of property under special powers inserted in or annexed to real estate mortgages." Section 6 thereof provides that in all cases of "extrajudicial sale . . . made under the special power hereinbefore referred to," the property sold may be redeemed within "one year from and after the date of the sale . . ." Act No. 4118 amended Act No. 3135 by merely adding thereto three (3) new sections.

RA No. 337, otherwise known as "The General Banking Act," is entitled "An Act Regulating Banks and Banking Institutions and for other purposes." Section 78 thereof limits the amount of the loans that may be given by banks and banking or credit institutions to not more than 70% of the appraised value of the property given as security. In the event of foreclosure, the property sold may be redeemed "by paying the amount fixed by the court in the order of execution," or the amount judicially adjudicated to the creditor bank. This provision had the effect of amending Section 6 of Act No. 3135, insofar as the redemption price is concerned, when the mortgagee is a bank or a banking or credit institution, said Section 6 of Act No. 3135 being, in this respect, inconsistent with the above-quoted portion

[56]Casano v. Magat, GR No. P-02-1539, Jan. 24, 2002, 374 SCRA 508.

[57]IFC Service Leasing and Acceptance Corp. v. Nera, GR No. L-21720, Jan. 30, 1967, 19 SCRA 181.

of Section 78 of RA No. 337. In short, where property was sold pursuant to said Act No. 3135, the sum for which it is redeemable shall be governed by RA No. 337 which partakes of the nature of an amendment to Act No. 3135 insofar as mortgages to banks or banking or credit institutions are concerned. At any rate, the conflict between the two laws must be resolved in favor of RA No. 337, both as a special and as the subsequent legislation.[58]

**(2) Personal notice not necessary**

In a case,[59] the Court overruled the contention of respondent that the extrajudicial foreclosure is null and void for failure of petitioner to inform respondent of the foreclosure and the pertinent dates of redemption. What governs is the general rule in Section 3 of Act No. 3135, as amended, which directs the posting of notices of the sale in at least three (3) public places of the municipality where the property is situated, and the publication thereof in a newspaper of general circulation in said municipality.

**(3) Period of redemption**

In a long line of cases, the Court has consistently ruled that the one-year period redemption period should be counted not from the date of foreclosure sale, but from the time the certificate of sale is registered with the Register of Deeds. And under Article 13 of the Civil Code, a year is understood to have three hundred sixty-five (365) days each.[60]

It is only where, by voluntary agreement of the parties, consisting of extensions of the redemption period, followed by commitment by the debtor to pay the redemption price at a fixed date, will the concept of legal redemption be converted into one of conventional redemption.[61]

The period of redemption is not a prescriptive period but a condition precedent provided by laws to restrict the right of the person exercise redemption. Correspondingly, if a person exercising the right of redemption has offered to redeem the property within the period

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[58]Ponce de Leon v. Rehabilitation Finance Corporation, GR No. L-24571, Dec. 18, 1970, 36 SCRA 435.

[59]Philippine National Bank v. International Corporate Bank, *supra*.

[60]Landrito v. Court of Appeals, GR No. 133079, August 9, 2005.

[61]*Ibid*.

fixed, he is considered to have complied with the condition precedent prescribed by law and may thereafter bring an action to enforce redemption. If, on the other hand, the period is allowed to lapse before the right of redemption is exercised, then the action to enforce redemption will not prosper, even if the action is brought within the ordinary prescriptive period. Moreover, the period within which to redeem the property sold at a sheriff's sale is not suspended by the institution of an action to annul the foreclosure sale.[62]

The right of redemption may be transferred or assigned by its owner. In case of redemption of registered land, the period should be reckoned from the date the certificate of sale of the property involved was registered, since it is only from the date of its registration that a certificate of sale takes effect as a conveyance. The purpose of the rule is to notify the delinquent registered owners or third parties interested in the redemption that the property had been sold, and that they have one year from the time of constructive notice by means of registration within which to redeem the property.[63]

Where the parties — the mortgagor and mortgagee — have agreed that the provisions of Act No. 3135, as amended, shall apply, they are bound by that agreement, and the said Act must govern the manner in which the sale and redemption shall be effected.[64]

**(4) Where mortgagee is a bank**

If the mortgagee is a bank or credit institution, RA No. 337, or the General Banking Act, as amended, is applicable. Section 78 provides:

> "SEC. 78. Loans against real estate security shall not exceed seventy percent (70%) of the appraised value of the respective real estate security, plus seventy percent (70%) of the appraised value of insured improvements, and such loans shall not be made unless title to the real estate, free from all encumbrances, shall be in the mortgagor. In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real

[62]*Ibid.*
[63]Gorospe v. Santos, GR No. L-30079, Jan. 30, 1976, 69 SCRA 191.
[64]China Banking Corporation v. Court of Appeals, *supra*.

> property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking, or credit institution, within the purview of this Act, shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. However, the purchaser at the auction sale concerned shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law."

Notably, what is required for redemption is the tender of the amount due under the mortgage deed, plus interest, and not merely the purchase price at the auction sale. The redemption price under the General Banking Act is concededly inconsistent with the terms prescribed by Act No. 3135 and the Rules of Court. Thus, the General Banking Act partakes of the nature of an amendment to Act No. 3135 insofar as the redemption price is concerned.[65]

### (5) Failure to redeem; consolidation of ownership

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.[66]

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[65]Union Bank of the Philippines v. Court of Appeals, GR No. 1314068, June 25, 2001, 359 SCRA 480; Ponce de Leon v. Rehabilitation Finance Corporation, GR No. L-24571, Dec. 18, 1970, 36 SCRA 289.

[66]Philippine National Bank v. Sanao Marketing, GR No. 153951, July 29, 2005.

### (6) Rights of second mortgagee

The case of *El Hogar Filipino* v. *Philippine National Bank*[67] involves the issue of the correlative rights of El Hogar Filipino, as first mortgagee, and the Philippine National Bank, as second mortgagee, covering the same property. The Supreme ruled that by virtue of the mortgage constituted in favor of El Hogar Filipino, and the credit thereof having become demandable, said mortgagee was entitled to have the mortgaged lots sold in order to apply the proceeds to the payment of its credit. The Philippine National Bank, by reason of the second mortgage constituted in its favor which was accepted by it as subordinate to the first mortgage in favor of El Hogar Filipino, cannot oppose such effect. The sale excluded the mortgaged lots from the estate of the debtors and said lots should thereafter be considered extinguished insofar as they secured the payment of the credit of the Philippine National Bank. Aside from the right of repurchase, the Philippine National Bank's only right under the mortgage would be to apply to the payment of its credit the excess of the proceeds of the sale after the payment of that of El Hogar Filipino, such being the effect of the subordination of its mortgage to that of the latter. However, inasmuch as the credit of El Hogar Filipino has absorbed the entire proceeds of the sale, the mortgage in favor of the bank was in fact extinguished with it because it cannot be enforced by said bank beyond the total value of the mortgaged lots. Consequently, the lots passed to the purchaser free from the mortgage in favor of the bank.

### (7) Effect of foreclosure of a prior mortgage on subordinate liens

The rights of a subsequent lien holder over the mortgaged property are inferior to that of the prior mortgagee. A subsequent lien holder acquires only the right of redemption vested in the mortgagor, and his rights are strictly subordinate to the superior lien of the anterior mortgagee. After the foreclosure sale, the remedy of the second mortgagee is limited to the right to redeem by paying off the debt secured by the first mortgage.[68]

The rule is that upon a proper foreclosure of a prior mortgage, all liens subordinate to the mortgage are likewise foreclosed, and

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[67]GR No. 43459, Aug. 11, 1937, 64 Phil. 582.

[68]Philippine National Bank v. International Corporate Bank, GR No. 86679, July 23, 1991, 199 SCRA 508.

the purchaser at public auction held pursuant thereto acquires title free from the subordinate liens. Ordinarily, thereafter the Register of Deeds is authorized to issue the new titles without carrying over the annotation of subordinate liens. The failure of the subsequent attaching creditor to redeem, within the time allowed by Section 6 of Act 3135, the land which was sold extrajudicially to satisfy the first mortgage, gives the purchaser a perfect right to secure the cancellation of the annotation of said creditor's attachment lien on the certificates of title of said land.[69]

### (8) Rules on extrajudicial foreclosure summarized

As set forth in its title, Act No. 3135 was promulgated "to regulate the sale of property under special powers inserted in or annexed to real estate mortgages," Section 6 thereof provides that in all cases of "extrajudicial sale . . . made under the special power hereinbefore referred to," the property sold may be redeemed within "one year from and after the date of the sale . . ." Act No. 4118 amended Act No. 3135 by merely adding thereto three (3) new sections. Upon the other hand, RA No. 337, otherwise known as "The General Banking Act," is entitled "An Act Regulating Banks and Banking Institutions and for other purposes." As already stated, Section 78 thereof limits the amount of the loans that may be given by banks and banking or credit institutions on the basis of the appraised value of the property given as security. It also provides that, in the event of foreclosure of a real estate mortgage to said banks or institutions, the property sold may be redeemed "by paying *the amount fixed by the court in the order of execution,*" or the amount judicially adjudicated to the creditor bank. Thus, where property was sold pursuant to Act No. 3135, the sum for which it is redeemable shall be governed by RA No. 337, *which partakes of the nature of an amendment to Act No. 3135*, insofar as mortgages to banks or banking or credit institutions are concerned.

The Supreme Court, in *De Vera* v. *Agloro*,[70] summarized the rules governing foreclosure under Act No. 3135 as follows:

> "Section 6 of Act No. 3135 provides that the mortgagor or his successor-in-interest may redeem the fore-

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[69]*Ibid.*
[70]GR No. 155673, Jan. 14, 2005, 448 SCRA 203.

> closed property within one (1) year from the registration of the sale with the Register of Deeds. Under Section 7 of the law, if the mortgagor fails to redeem the property, the buyer at public auction may file, with the RTC in the province or place where the property or portion thereof is located, an *ex parte* motion for the issuance of a writ of possession within one (1) year from the registration of the Sheriff's Certificate of Sale, and the court shall grant the said motion upon the petitioner's posting a bond in an amount equivalent to the use of the property for a period of twelve (12) months. On the strength of the writ of possession, the Sheriff is duty-bound to place the buyer at public auction in actual possession of the foreclosed property. After the one-year period, the mortgagor loses all interest over it. The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. Thus, the bond required under Section 7 of Act No. 3135 is no longer needed. The possession of land becomes an absolute right of the purchaser as confirmed owner. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function."

The Court further said that since the proceedings under Act No. 3135 are summary in nature, there is no need for the purchaser to implead the mortgagors as respondents, hence the latter cannot claim denial of due process when the court takes cognizance of the petition for the issuance of a writ of possession without prior service of the petition and of the notice of hearing thereof upon them. Neither is there a need for the court to suspend the proceedings merely and solely because the mortgagors filed a separate complaint for the nullification of the real estate mortgage as well as the sale at public auction and the Sheriff's Certificate of Sale issued in favor of the purchaser. The reasons are:

> "*First*. An *ex parte* petition for the issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a 'judicial process' as contemplated in

Article 433 of the Civil Code. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party 'sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.' It is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act No. 3135, as amended. It is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding where the relief is granted without an opportunity for the person against whom the relief is sought to be heard. No notice is needed to be served upon persons interested in the subject property. Hence, there is no necessity of giving notice to the petitioners since they had already lost all their interests in the property when they failed to redeem the same.

*Second*. As a rule, any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of execution. The right of the purchaser to have possession of the subject property would not be defeated notwithstanding the pendency of a civil case seeking the annulment of the mortgage or of the extrajudicial foreclosure. Indeed, under Section 8 of Act No. 3135, even if the mortgagor files a petition assailing the writ of possession granted to the buyer and the sale at public auction within thirty (30) days from the issuance of a writ of possession in favor of the buyer at public auction of the property, and the court denies the same, the buyer may appeal the order of denial. However, the buyer at public auction remains in possession of the property pending resolution of the appeal. We have consistently ruled that it is the ministerial duty of the court to issue writ of possession in favor of the purchaser in a foreclosure sale. The trial court has no discretion on this matter."

**(9) Consolidation of cases**

The trial court is not mandated to consolidate the petition for the issuance of a writ of possession and the civil case for the annulment of the foreclosure proceedings. The trial court is vested with discretion whether or not to consolidate two or more cases. The

object of consolidation is to avoid multiplicity of suits, guard against oppression or abuse, prevent delays and save the litigants unnecessary acts and expense. Consolidation should be denied when prejudice would result to any of the parties or would cause complications, delay, prejudice, cut off, or restrict the rights of a party. A petition for the issuance of a writ of possession is, strictly speaking, a judicial process and is a non-litigious proceeding; it is summary in nature. In contrast, the civil action to annul the proceedings is adversarial in character. Where the petitioner had already adduced his evidence in the petition for the issuance of the writ, he would certainly be prejudiced if the said petition be consolidated with the civil case.[71]

But in *Active Wood Products Co., Inc*. v. *Court of Appeals*,[72] the Court deemed it proper to consolidate Civil Case No. 6518-M, which was an ordinary civil action, with LRC Case No. P-39-84, which was a petition for the issuance of a writ of possession. The Court held that while a petition for a writ of possession is an *ex parte* proceeding, being made on a presumed right of ownership, when such presumed right of ownership is contested and is made the basis of another action, then the proceedings for writ of possession would also become groundless. The entire case must be litigated and if need be must be consolidated with a related case so as to thresh out thoroughly all related issues.[73]

**05. Writ of possession; issuance ministerial.**

A writ of possession is an order whereby the sheriff is commanded to place a person in possession of real or personal property. The court issuing the writ of possession has control and supervision over its processes.[74] Under Section 7 of Act No. 3135, as amended by Act No. 4118, a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.[75]

The rule is that after the redemption period has expired, the purchaser of the property has the right to be placed in possession

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[71]Vera v. Agloro, *supra*.
[72]GR No. 86603, February 5, 1990, 181 SCRA 774.
[73]Philippine Savings Bank v. Mañalac, GR No. 145441, April 26, 2005.
[74]Silverio v. Filipino Business Consultants, GR No. 143312, Aug. 12, 2005.
[75]Philippine National Bank v. Sanao Marketing Corporation, GR No. 153951, July 29, 2005.

thereof. Accordingly, it is the inescapable duty of the sheriff to enforce the writ of possession, especially where a new title has already been issued in the name of the purchaser. Sections 7 and 8 of Act No. 3135 read:

> "SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.
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> SEC. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Number Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall

> dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal."

Under the foregoing provisions, it is ministerial upon the court to issue a writ of possession in favor of a purchaser, provided that a proper motion has been filed, a bond approved, and no third person is involved.[76] In the words of *Sulit* v. *Court of Appeals*:[77]

> "The governing law thus explicitly authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.
>
> No discretion appears to be left to the court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8, and it cannot be raised as a justification for opposing the issuance of the writ of possession since, under the Act, the proceeding for this is *ex parte*. Such recourse is available to a mortgagee, who effects the extrajudicial foreclosure of the mortgage, even before the expiration of the period of redemption provided by law and the Rules of Court."

In *Philippine National Bank* v. *Sanao Marketing Corporation*,[78] the Court, through Justice Tinga, reiterated that the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that

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[76]Philippine National Bank v. Adil, GR No. L-52823, Nov. 2, 1982, 203 Phil. 492.

[77]GR No. 119247, Feb. 17, 1997, 268 SCRA 441.

[78]*Supra*.

purpose in the corresponding registration or cadastral proceeding in the case of property covered by a Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. A writ of possession may also be issued after consolidation of ownership of the property in the name of the purchaser. The buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.

Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135, as amended by Act No. 4118. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding is *ex parte*.

If only to stress the writ's ministerial character, the Court, in previous cases, disallowed injunction to prohibit its issuance, just as it held that the issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.[79]

**(1) Cases where writ of possession may be issued**

A "writ of possession" may be issued in the following cases:

(a) In a land registration proceeding, a proceeding *in rem*;

(b) In case of extrajudicial foreclosure of a realty mortgage;

(c) In case of judicial foreclosure of mortgage, a proceeding *quasi in rem*, provided that the mortgagor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and

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[79] *Ibid.*

(d) In execution sales.[80]

### (2) Issuance of the writ under the Rules of Court

Once the estate mortgaged is extrajudicially sold, and it is not redeemed within the reglementary period, no separate and independent action is necessary to obtain possession of the property. The purchaser at the public auction only has to file a petition for the issuance of a writ of possession pursuant to Section 33, Rule 39, Rules of Court, which reads:

> "SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* — If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it."

When property sold on execution is registered under the Torrens system, registration is the operative act that gives validity to the transfer, or creates a lien on the land, and a purchaser, on execution sale, is not required to go behind the registry to determine the conditions of the property. Such purchaser acquires such right, title and interest as appear on the certificate of title issued on the property, subject to no liens, encumbrances or burdens that are not noted thereon. The only exception to this rule is where the purchaser had knowledge, prior to or at the time of the levy, of such previous lien or

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[80]Serra v. Court of Appeals, GR No. 34080, March 22, 1991, 195 SCRA 482; Mabale v. Apalisok, GR No. L-46942, Feb. 6, 1979, 88 SCRA 247; Gatchalian v. Arlegui, GR No. L-35615, Feb. 17, 1977, 75 SCRA 234; Philippine National Bank v. Sanao Marketing Corporation, *supra*.

encumbrance. In such case, his knowledge is equivalent to registration and taints his purchase with bad faith. But if knowledge of any lien or encumbrance upon the property is acquired after the levy, the purchaser cannot be said to have acted in bad faith in making the purchase and, therefore, such lien or encumbrance cannot affect his title.[81]

### (3) Rule when third party is in possession or is not privy to the debtor

It should be noted that a third party not privy to the debtor is protected by the law. He may be ejected from the premises only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process. "Where a parcel of land levied on execution is occupied by a party other than the judgment debtor, the proper procedure is for the court to order a hearing to determine the nature of said adverse possession."[82]

Put a little differently, while the rule is that the purchaser in a foreclosure sale of mortgaged property is entitled to a writ of possession and that upon an *ex parte* petition of the purchaser, it is ministerial upon the court to issue such writ of possession in favor of the purchaser, the rule is not an unqualified one.[83] As held in *Glapuno* v. *Gapulotos*,[84] the possession of property is given to a purchaser in extrajudicial foreclosures "unless a third party is actually holding the property adversely to the judgment debtor." Similarly, it was held in *Philippine National Bank* v. *Court of Appeals*[85] as follows:

> "Thus, in *Barican* v. *Intermediate Appellate Court*, we held that the obligation of a court to issue an *ex-parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears

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[81]Hernandez v. Katigbak, GR No. 46840, June 17, 1940, 69 Phil. 744.

[82]Unchuan v. Court of Appeals, *supra*, citing Guevara v. Ramos, GR No. L-24358, March 31, 1971, 38 SCRA 194; Saavedra v. Siari Valley Estates, Inc., GR No. L-12875, Oct. 30, 1959, 106 Phil. 432; Omana v. Gatulayao, GR No. 47969, July 22, 1941, 73 Phil. 66; Gozon v. Dela Rosa, GR No. L-906, Jan. 30, 1947, 77 Phil. 919; Santiago v. Sheriff of Manila, GR No. L-907, Dec. 17, 1946, 77 Phil. 740.

[83]Barican v. Intermediate Appellate Court, GR No. L-79906, June 20, 1988, 162 SCRA 358.

[84]GR No. L-51574, Sept. 30, 1984, 132 SCRA 429.

[85]GR No. 135219, Jan. 17, 2002, 374 SCRA 22.

> that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor. The same principle was inversely applied in a more recent case, where we ruled that a writ of possession may be issued in an extrajudicial foreclosure of real estate mortgage, only if the debtor is in possession and no third party had intervened."

The reason for the rule is that the third party in possession of the property which has been the subject of extrajudicial foreclosure and who is not privy to the mortgage, is entitled to vindicate his rights thereto in an action for that purpose. Thus, the issuance of a writ of possession, without giving such third party the opportunity to be heard on his claim, is tantamount to a deprivation of his property without due process of law.

Notably, Article 433 of the Civil Code protects the actual possessor of a property by providing that "Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property." Under this provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reinvindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.[86]

As in execution sales, proceedings incident to extrajudicial foreclosure of mortgages to resolve the possession of third-party claimants may proceed independently of the action which said claimants may bring to enforce or protect their claim of ownership over the property. Thus, it is not error for the trial court to act upon the petition for the issuance of a writ of possession despite the pendency of the action to quiet title which raises a question of ownership. However, the order of the trial court directing the issuance of a writ of possession cannot prejudice the outcome of said action.[87]

In *Barican* v. *Intermediate Appellate Court*,[88] the issuance of the writ of possession was deferred because a pending action for the

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[86]Philippine National Bank v. Court of Appeals, *supra*.
[87]Unchuan v. Court of Appeals, *supra*.
[88]GR No. 79906, June 20, 1988, 162 SCRA 358.

declaration of ownership over the foreclosed property was made by an adverse claimant who was in possession of the subject property. Clearly, the rights of the third parties, who are plaintiffs in the pending civil case, would be adversely affected with the implemen-tation of the writ.

*Barican* should be distinguished from the case of *Philippine Savings Bank* v. *Mañalac*.[89] In the latter case, the petitioner bank became the absolute owner of the properties subject of the writ of possession after they were foreclosed and titles thereto were consolidated in the name of the bank. The bank sufficiently established its ownership over the parcels of land subject of the writ of possession by presenting in evidence the certificate of sale, affidavit of consolidation of ownership, and copies of new TCTs of the foreclosed properties in the name of the petitioner. Unlike in *Barican*, the ownership of the foreclosed properties were not open to question, the ownership thereof being established by competent evidence. Moreover, the parcels of land subject of the writ of possession were different from those sold by the petitioner bank to its co-defendants. Hence, unlike in *Barican*, the implementation of the writ would not affect the rights of innocent third persons.

**(4) Writ should not issue if the validity of the levy and sale is in issue in another case**

The Supreme Court declared in *Cometa* v. *Intermediate Appellate Court*[90] that a writ of possession should not issue if the validity of the levy and sale of the properties for which said writ is sought is directly put in issue. The Court stated that the validity of the levy and sale is an issue which requires pre-emptive resolution since if the applicants for the writ acquired no interest in the property by virtue of the levy and sale, he is not entitled to possession. In the same case, the Court declared that a writ of possession should not issue when equitable considerations demand its non-issuance under the circumstances.

*Cometa* was affirmed in *Sulit* v. *Court of Appeals*[91] where the Court declared that the rule that issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is merely a ministerial

[89]GR No. 145441, April 26, 2005.
[90]GR No. L-69294, June 30, 1987, 151 SCRA 563.
[91]GR No. 119247, Feb. 17, 1997, 268 SCRA 441.

function is not without exception. In said case, respondent filed a petition for certiorari with the Court of Appeals to question the issuance by the trial court of a writ of possession in favor of petitioner, the purchaser of the property, despite, among other things, the infirmities in the foreclosure proceedings and the latter's failure to pay respondent the difference between the proceeds of the foreclosure sale and the indebtedness. The Court of Appeals granted the petition. The Supreme Court affirmed, stating:

> "However, also by way of an exception, in *Cometa, et al.* vs. *Intermediate Appellate Court*, *et al.* where the properties in question were found to have been sold at an unusually lower price than their true value, that is, properties worth at least P500,000.00 were sold for only P57,396.85, this Court, taking into consideration the factual milieu obtaining therein as well as the peculiar circumstances attendant thereto, decided to withhold the issuance of the writ of possession on the ground that it could work injustice because the petitioner might not be entitled to the same.
>
> "The case at bar is quite the reverse, in the sense that instead of an inadequacy in price, there is due in favor of private respondent, as mortgagor, a surplus from the proceeds of the sale equivalent to approximately 40% of the total mortgage debt, which excess is indisputably a substantial amount. Nevertheless, it is our considered opinion, and we so hold, that equitable considerations demand that a writ of possession should also not issue in this case."
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> The Court explained the rationale for its ruling as follows:
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> "The general rule that mere inadequacy of price is not sufficient to set aside a foreclosure sale is based on the theory that the lesser the price the easier it will be for the owner to effect the redemption. The same thing cannot be said where the amount of the bid is in excess of the total mortgage debt. The reason is that in case the mortgagor decides to exercise his right of redemption. Section 30 of Rule 39 provides that the redemption price should be equivalent to the amount of the purchase price, plus one percent monthly interest up to the time of the

redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate.

Applying this provision to the present case would be highly iniquitous if the amount required for redemption is based on P7,000,000.00, because that would mean exacting payment at a price unjustifiably higher than the real amount of the mortgage obligation. We need not elucidate on the obvious. Simply put, such a construction will undeniably be prejudicial to the substantive rights of private respondent and it could even effectively prevent her from exercising the right of redemption."

## *(C) POWERS OF ATTORNEY; TRUSTS*

**SEC. 64. *Power of attorney.* — Any person may, by power of attorney, convey or otherwise deal with registered land and the same shall be registered with the Register of Deeds of the province or city where the land lies. Any instrument revoking such power of attorney shall be registered in like manner.**

### 01. Agency to sell land.

A "special power of attorney" refers to a clear mandate (express or implied) specifically authorizing the performance of an act, and must therefore be distinguished from an agency couched in general terms.[1]

When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.[2] "Any interest therein" includes usufruct, easement, etc. A void sale is not subject to ratification.[3]

A special power to sell excludes the power to mortgage, and a special power to mortgage does not include the power to sell.[4]

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[1]Strong v. Repide, GR No. 2101, Nov. 15, 1906, 6 Phil. 680.
[2]Art. 1874, Civil Code.
[3]Paras, Civil Code of the Philippines, Vol. V, 1995 Ed., 742.
[4]Art. 1879, Civil Code.

An agency couched in general terms comprises only acts of administration, even if the principal should state that he withholds no power or that the agent may execute such acts as he may consider appropriate, or even though the agency should authorize a general and unlimited management.[5] A special power of attorney is necessary to lease any real property to another person for more than one year.[6] If the lease of real property is for one year or less, the act is one of mere administration.[7]

A special power of attorney is a continuing one and absent a valid revocation duly furnished to the mortgagee, the same continues to have force and effect as against third persons who had no knowledge of such lack of authority.

In a case,[8] it has been held that the special power of attorney executed by petitioner in favor of Parangan duly authorized the latter to represent and act on behalf of the former. Having done so, petitioner clothed Parangan with authority to deal with PNB on her behalf and in the absence of any proof that the bank had knowledge that the last three loans were without the express authority of petitioner, it cannot be prejudiced thereby. As far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority if such is within the terms of the power of attorney as written even if the agent has in fact exceeded the limits of his authority according to the understanding between the principal and the agent.

**02. Special power of attorney executed after sale.**

In *Santiago* v. *Court of Appeals*,[9] the Court stated: "The Court of Appeals would also count against petitioners the circumstance that the deed of sale of July 30, 1979 was executed before the respective special powers of attorney of the other co-owners were executed. The inference of bad faith based the above circumstance is misplaced. None of the co-owners has repudiated the sale, or for that matter, their respective powers of attorney. At that time, as has been herein repeatedly emphasized, respondent Arevalo was yet an ingredient

[5]Art. 1877, *id*.
[6]Art. 1878, *id*.
[7]Paras, *supra*, 754.
[8]Lustan v. Court of Appeals, GR No. 111924, Jan. 27, 1997, 266 SCRA 663.
[9]GR No. 117014, Aug. 14, 1995, 247 SCRA 336.

to be factored into the picture some 3 years hence. There could thus have been no design or intent to defraud him, a completely unknown entity as he was at that time. We believe that petitioners cannot be said to be in bad faith simply because they had the deed of sale executed even if not all the co-owners had executed their respective special powers of attorney. Consider thus the following: (a) petitioners were holding on to and had in their possession the certificate of title of the sellers; (b) petitioners had the sellers' general powers of attorney — which of course were unavailing to transfer ownership over realty; (c) petitioners waited until all the necessary special powers of attorney were obtained before they registered the sale."

**03. Special power of attorney to mortgage.**

The pivotal issue in *Bicol Savings and Loan Association* v. *Court of Appeals*[10] is the validity of the extrajudicial foreclosure sale of the mortgaged property instituted by petitioner bank which, in turn, hinges on whether or not the agent-son exceeded the scope of his authority in agreeing to a stipulation in the mortgage deed that petitioner bank could extrajudicially foreclose the mortgaged property. The Court, through Justice Melencio-Herrera, held:

> "The sale proscribed by a special power to mortgage under Article 1879 is a voluntary and independent contract, and not an auction sale resulting from extra-judicial foreclosure, which is precipitated by the default of a mortgagor. Absent that default, no foreclosure results. The stipulation granting an authority to extrajudicially foreclose a mortgage is an ancillary stipulation supported by the same cause or consideration for the mortgage and forms an essential or inseparable part of that bilateral agreement (Perez v. Philippine National Bank, No. L-21813, July 30, 1966, 17 SCRA 833, 839).
>
> The power to foreclose is not an ordinary agency that contemplates exclusively the representation of the principal by the agent but is primarily an authority conferred upon the mortgagee for the latter's own protection. That power survives the death of the mortgagor (Perez vs. PNB, supra). In fact, the right of the mortgagee

[10]GR No. 85302, March 31, 1989, 171 SCRA 630.

bank to extrajudicially foreclose the mortgage after the death of the mortgagor Juan de Jesus, acting through his attorney-in-fact, Jose de Jesus, did not depend on the authorization in the deed of mortgage executed by the latter. That right existed independently of said stipulation and is clearly recognized in Section 7, Rule 86 of the Rules of Court, which grants to a mortgagee three remedies that can be alternatively pursued in case the mortgagor dies, to wit: (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and (3) to rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription, without right to file a claim for any deficiency. It is this right of extrajudicial foreclosure that petitioner bank had availed of, a right that was expressly upheld in the same case of Perez v. Philippine National Bank (supra), which explicitly reversed the decision in requiring a judicial foreclosure in the same factual situation. The Court in the aforesaid PNB case pointed out that the ruling in the *Pasno* case virtually wiped out the third alternative, which precisely includes extrajudicial foreclosure, a result not warranted by the text of the Rule.

It matters not that the authority to extrajudicially foreclose was granted by an attorney-in-fact and not by the mortgagor personally. The stipulation in that regard, although ancillary, forms an essential part of the mortgage contract and is inseparable therefrom. No creditor will agree to enter into a mortgage contract without that stipulation intended for its protection.

Petitioner bank, therefore, in effecting the extrajudicial foreclosure of the mortgaged property, merely availed of a right conferred by law. The auction sale that followed in the wake of that foreclosure was but a consequence thereof."

**04. Registration of power of attorney.**

Section 64 states that any person may, by power of attorney, convey or otherwise deal with registered land and the same shall be registered with the Register of Deeds of the province or city where

the land lies. Any instrument revoking such power of attorney shall be registered in like manner.

**SEC. 65. *Trusts in registered land.* — If a deed or other instrument is filed in order to transfer registered land in trust, or upon any equitable condition or limitation expressed therein, or to create or declare a trust or other equitable interests in such land without transfer, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate; but only a memorandum thereof shall be entered by the words "in trust," or "upon condition," or other apt words, and by a reference by number to the instrument authorizing or creating the same. A similar memorandum shall be made upon the original instrument creating or declaring the trust or other equitable interest with a reference by number to the certificate of title to which it relates and to the volume and page in the registration book in which it is registered.**

### 01. Trust defined.

A trust is a fiduciary relationship with respect to property which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary or *cestui que trust*."[11]

A trust is the right to the beneficial enjoyment of property, the legal title to which is vested in another. It is a fiduciary relationship concerning property which obliges the person holding it to deal with the property for the benefit of another. The juridical concept of a trust, in a broad sense, arises from, or is the result of, a fiduciary relation between the trustee and the *cestui que trust* as regards certain property — real, personal, funds or money, or choses in action.[12]

The case of *Huang* v. *Court of Appeals*[13] discusses the basic concepts of trust relationship, thus:

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[11]Development Bank of the Philippines v. Commission on Audit, GR No. 144516, Feb. 11, 2004, 422 SCRA 459; Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank, GR No. 137533, Nov. 22, 2002, 392 SCRA 506.

[12]Pacheco v. Arro, GR No. 48090, Feb. 16, 1950, 85 Phil. 505.

[13]GR No. 108525, Sept. 13, 1994, 236 SCRA 420.

"Trust is a fiduciary relationship with respect to property which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary or *cestui que trust*. Trust is either express or implied. Express trust is created by the intention of the trustor or of the parties. Implied trust comes into being by operation of law. The latter kind is either constructive or resulting trust. A constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. The duty to convey the property arises because it was acquired through fraud, duress, undue influence or mistake, or through breach of a fiduciary duty, or through the wrongful disposition of another's property. On the other hand, a resulting trust arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that the person taking or holding the property should have the beneficial interest in the property. It is founded on the presumed intention of the parties, and as a general rule, it arises where, and only where such may be reasonably presumed to be the intention of the parties, as determined from the facts and circumstances existing at the time of the transaction out of which it is sought to be established."

Co-ownership is a form of trust and every co-owner is a trustee for the other. In co-ownership, the relationship of each co-owner to the other co-owners is fiduciary in character and attribute. Whether established by law or by agreement of the co-owners, the property or thing held *pro-indiviso* is impressed with a fiducial nature that each co-owner becomes a trustee for the benefit of his co-owners and may not do any act prejudicial to the interest of his co-owners.[14]

[14]Sotto v. Teves, *supra*.

**02. Trusts are either express or implied.**

A trust is either express or implied. Express trusts are those which the direct and positive acts of the parties create, by some writing or deed, or will, or by words evincing an intention to create a trust.[15] On the other hand —

> "ART. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. x x x ."
>
> "ART. 1453. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated."

Both Articles 1448 and 1453 are examples of resulting trusts.

Implied trusts are either resulting or constructive trusts. "Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obliged in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold."[16]

Express trusts and implied trusts are distinguishable. An express trust, which is created by the intention of the parties, disables the trustee from acquiring for his own benefit a property committed to his custody or management — at least while he does not openly repudiate the trust and makes such repudiation known to the beneficiary. Upon the other hand, in a constructive trust, which is

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[15]Development Bank of the Philippines v. Commission on Audit, *supra*.

[16]Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank, *supra*.

exclusively created by law, laches constitutes the bar to an action to enforce the trust, and repudiation is not required, unless there is concealment of the facts giving rise to the trust. Thus, in *Mejia* v. *Gampoña*,[17] the Court held that while a person may not acquire title to a registered property through continuing adverse possession in derogation of the title of the original registered owner, nevertheless, such owner or his heirs, by their inaction and neglect over a long period of time, may lose the right to recover the possession of the property and the title thereto from the defendants.[18]

The following are the elements of laches:

(a) Conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks remedy;

(b) Delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendants' conduct and having been afforded an opportunity to institute a suit;

(c) Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and

(d) Injury or prejudice to the defendant in the events relief is accorded to the complainant, or the suit is not held to be barred.

In a case,[19] Worcester, after having acquired the property at public auction and having obtained the certificates of title in her name, sold on November 26, 1930 the properties in question to Ong Chua, the appellees' predecessors-in-interest. Appellants allowed almost four decades to lapse before taking any remedial action. Because of their passivity and inaction during this entire period, appellees were made to feel secure in their belief that their late father had rightly acquired the lands in question and that no action would be filed against them. They were thus induced to spend time, effort and money in cultivating the land, paying the taxes, and introducing improvements therein. It was held that the action for reconveyance is barred upon the established principle that inaction and neglect of a party to assert a right can convert what otherwise could be a valid claim into a stale demand.

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[17]GR No. L-9335, Oct. 31, 1956, 100 Phil. 277.
[18]Perez v. Ong Chua, GR No. L-36850, Sept. 23, 1982, 202 Phil. 287.
[19]*Ibid.*

**03. Party acquiring property by mistake considered trustee of an implied trust.**

The case of *Tala Realty Services Corporation* v. *Banco Filipino Savings and Mortgage Bank*[20] illustrates the rule that a party who acquired property by mistake or fraud is considered a trustee of an implied trust. Justice Puno, speaking for the Court, stated:

> "The factual milieu of the instant case clearly shows that both the Bank and Tala participated in the deceptive creation of a trust to circumvent the real estate investment limit under Sections 25(a) and 34 of the General Banking Act. Upholding Tala's right to collect rent for the period during which the Bank was arbitrarily closed would allow Tala to benefit from the illegal 'warehousing agreement.' This would result in the application of the Bank's advance rentals covering the eleventh to the twentieth years of the lease, to the rentals due for the period during which the Bank was arbitrarily closed. With the advance rentals already used up, and the Bank having stopped payment of rent on the thirteenth year of the lease or in April 1994, rentals would be due Tala from the time the Bank stopped paying rent in April 1994 up to the expiration of the lease period. Just as the Bank should not be allowed to benefit from its deceptive 'warehousing agreement,' Tala should also not benefit from the arrangement as it was the Bank's major stockholders that proposed the arrangement and incorporated Tala. Tala committed deception by participating in the 'warehousing agreement,' and committed another deception when it turned the tables on the Bank and denied the arrangement. Allowing Tala to further benefit from the 'warehousing agreement' is unconscionable, to say the least.
>
> The Bank and Tala are in *pari delicto*, thus, no affirmative relief should be given to one against the other. The Bank should not be allowed to dispute the sale of its lands to Tala nor should Tala be allowed to further collect rent from the Bank. The clean hands doctrine will not allow the creation or the use of a juridical relation such as a

[20]*Supra.*

trust to subvert, directly or indirectly, the law. Neither the Bank nor Tala came to court with clean hands; neither will obtain relief from the court as one who seeks equity and justice must come to court with clean hands. By not allowing Tala to collect from the Bank rent for the period during which the latter was arbitrarily closed, both Tala and the Bank will be left where they are, each paying the price for its deception.

In hindsight, the payment of rent on the subject Bulacan property covering the period August 1985 to November 1989 by the Bank's liquidator and the lawyer of the latter was a payment by mistake because as a matter of equity, Tala did not have the right to collect nor did the Bank have the corresponding obligation to pay rent for the period of its arbitrary closure. Tala thus holds in trust for the Bank the erroneous payment made by the Bank's liquidator pursuant to Article 1456 of the New Civil Code, which provides:

'Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.'

Consequently, we rule that the advance rentals paid by the Bank for the period covering the eleventh to the twentieth year of the 20-year lease contract, *i.e.,* from 1992 to 2001, subsist as advance rentals and should not have been applied to the payment of rentals on the Bulacan property for the period covering August 1985 to November 1989 during which the Bank was arbitrarily closed. If at all, Tala should seek remedy for its loss from the Central Bank which caused the Bank's arbitrary closure and not from the Bank which was itself a victim of the arbitrary act of government."

**04. No trust can result in favor of a party who is guilty of fraud or violates public policy.**

There can be no implied trust "where the purchase is made in violation of an existing statute and in evasion of its express provision, (since) no trust can result in favor of the party who is guilty of the

fraud." In *Ramos* v. *Court of Appeals*,[21] Lydia Celestino was a Central Bank employee disqualified from owning a lot through the People's Homesite & Housing Corporation (PHHC) which awarded rights to buy certain parcels of land to employees of the Central Bank. Only those who did not own lots in Quezon City were qualified, but she already owned a residential lot in Quezon City. To circumvent her disqualification, she "purchased" a lot from the PHHC through a qualified Central Bank employee. After Celestino paid the full purchase price of the PHHC-awarded lot, an issue arose regarding the ownership of the property. Celestino filed an action for reconveyance to enforce the resulting trust between her and the qualified Central Bank employee based on Article 1448 of the New Civil Code. The Court, through Justice Davide, ruled that the alleged resulting trust was void, *viz*.:

> "The inevitable conclusion then is that Lydia Celestino, knowing of her disqualification to acquire a lot from the PHHC at the subdivision reserved for qualified Central Bank employees, tried to get one through the backdoor. Otherwise stated, she wanted to get indirectly that which she could not do so directly. Having acted with evident bad faith, she did not come to court with clean hands when she asked for the reconveyance of the property on the basis of a resulting trust under Article 1448 of the Civil Code.
>
> A resulting trust is an 'intent-enforcing' trust, based on a finding by the court that in view of the relationship of the parties their acts express an intent to have a trust, even though they did not use language to that effect. The trust is said to result in law from the acts of the parties. However, if the purpose of the payor of the consideration in having title placed in the name of another was to evade some rule of the common or statute law, the courts will not assist the payor in achieving his improper purpose by enforcing a resulting trust for him in accordance with the 'clean hands' doctrine. The court generally refuses to give aid to claims from rights arising out of an illegal transaction, such as where the payor could not lawfully take title to land in his own name and he used the grantee as a mere dummy to hold for him and enable him to evade the

[21]GR No. 108121, May 10, 1994, 232 SCRA 348.

land laws, *e.g.*, an alien who is ineligible to hold title to land, who pays for it and has the title put in the name of a citizen.

Otherwise stated, as an exception to the law on trusts, '[a] trust or a provision in the terms of a trust is invalid if the enforcement of the trust or provision would be against public policy, even though its performance does not involve the commission of a criminal or tortious act by the trustee.' The parties must necessarily be subject to the same limitations on allowable stipulations in ordinary contracts, *i.e.*, their stipulations must not be contrary to law, morals, good customs, public order, or public policy. What the parties then cannot expressly provide in their contracts for being contrary to law and public policy, they cannot impliedly or implicitly do so in the guise of a resulting trust.

Although the contract should be voided for being contrary to public policy, we deem it equitable to allow the private respondents to recover what they had paid for the land with legal interest thereon commencing from the date of the filing of the complaint in Civil Case No. Q-49272. Thus, she is entitled to the return of the amount she had paid to Herminio in the sum of P3,800.00 and the refund of the installments she had paid to the PHHC (P34.11 monthly for a period of ten years), with legal interest thereon."

**05. No particular form required.**

Under the law on Trusts, it is not necessary that a document expressly states and provides for the express trust, for no particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.[22] An express trust is created by the direct and positive acts evidencing an intention to create a trust. Thus, a motion filed by the heirs of a deceased in the probate proceedings to terminate the same since they had the desire to preserve the properties of the estate in co-ownership, in effect created an express trust among the heirs.[23]

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[22]Art. 1444, Civil Code.
[23]Sotto v. Teves, *supra*.

In *Duyan* v. *Gomez*,[24] Eulogio Duyan and Feliza Duyan are siblings. In his desire to help his sister, Eulogio allowed her to construct a house on the disputed lot sometime in 1968. Petitioners acknowledged the fact that the disputed property was owned by Eulogio and that they were staying in the disputed property solely due to his benevolence. Accordingly, an instrument entitled *Pagpapahayag* was executed by the siblings on May 5, 1974. The instrument provides that in the event that the property will be registered in Feliza's name, she will continue to acknowledge Eulogio as the owner and will never assert ownership over the same, except in accordance with her brother's wishes. On January 25, 1978, Eulogio and his wife, Purisima, executed a deed of absolute sale in favor of petitioners with respect to the disputed lot for the sum of Twenty Thousand Pesos (P20,000.00). Purisima claims that the deed of sale was executed merely to give color of legality to petitioners' stay in the disputed property so that she and her children will not drive them away after they (Purisima and her children) manifested their opposition to Eulogio's decision to let them stay therein. Subsequent to the execution of the deed of sale or on February 10, 1978, another *Pagpapahayag* was executed between Eulogio and Feliza where the latter acknowledged that the lot subject of the deed of sale will eventually be transferred to respondents who are her nephews and nieces and the children of Eulogio.

Notwithstanding the second *Pagpapahayag*, petitioners caused the registration of the deed of sale dated January 25, 1978 with the Register of Deeds. As a consequence, TCT No. 281115 covering the disputed lot was issued on September 22, 1981 in the name of petitioners. On 20 May 1991, respondents filed a suit for reconveyance and cancellation of TCT No. 281115 with damages against petitioners. The complaint was dismissed but on appeal, the Court of Appeals ordered the reconveyance of the property to respondents. Sustaining the appellate court, the Supreme Court, through Justice Austria-Martinez, declared:

> "In express terms, Feliza undertook in the subsequent *Pagpapahayag* to convey the property subject of the fictitious deed of sale to her own nephews and nieces who are the children of her brother Eulogio. x x x Based on the clear provisions of this document, the intent of the siblings to create a trust was manifest with Eulogio as the trustor,

[24]GR No. 144148, March 18, 2005.

Feliza as the trustee and Eulogio's children as the beneficiaries or the *cestui qui trust* of the *res* which was the disputed property.

x x x x x x x x x

However, the trust created was not merely implied as held by the Court of Appeals but belongs to the express kind. Based on the provisions of the Civil Code and jurisprudence, 'Express trusts are those which the direct and positive acts of the parties create, by some writing, deed or will, or words evincing an intention to create a trust.' In this case, the provisions of the *Pagpapahayag* dated 10 February 1978 left no room for doubt. It was clearly intended therein by Eulogio and Feliza that the property subject of the sale will subsequently be placed by the latter in the name of respondents, thus creating a trust relationship over the property in dispute.

Even if the word 'trust' was not expressly used by the signatories to the 10 February 1978 *Pagpapahayag* and the document did not expressly state that a trust was being established by reason thereof, the establishment of an express trust cannot be discounted. Under the Civil Code, 'No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.' x x x The *Pagpapahayag* dated 10 February 1978 having been freely entered into by Eulogio and Feliza, it had the force of law between them. It was therefore incumbent upon Feliza as trustee to comply with the provisions of the instrument and have the subject property registered in the names of her nephews and nieces.

Petitioners' subsequent act of registering the disputed property in their own names and resisting the action for reconveyance later filed by respondents was clearly a betrayal of the provisions of the express trust created by the 10 February 1978 *Pagpapahayag*. By these actions, petitioners not only failed to comply with the provisions of the Pagpapahayag, but actually circumvented them."

**06. Illustrative cases: effect of repudiation.**

A constructive trust arises in the following example: AB provides the money for the purchase of Lot 20 but the corresponding

deed of sale and transfer certificate of title are placed in the name of CD because AB was advised that the subdivision owner prohibited the acquisition of two (2) lots by a single individual. CD became the trustee of Lot 20 and its improvements for the benefit of AB as owner. The pertinent law is Article 1448 of the New Civil Code which provides that there is an implied trust when property is sold and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. A resulting trust arises because of the presumption that he who pays for a thing intends a beneficial interest therein for himself.[25] In this case, the action to compel the trustee (CD) to convey the property registered in his name for the benefit of the *cestui que trust* (AB) does not prescribe. If at all, it is only when the trustee repudiates the trust that the period of prescription commences to run.[26]

In *Mindanao Development Authority* v. *Court of Appeals,*[27] the Court held:

> "That no express trust had been agreed upon by Ang Bansing and Juan Cruz is evident from the fact that Juan Cruz, the supposed beneficiary of the trust, never made any attempt to enforce the alleged trust and require the trustee to transfer the title over Lot 1846-C, in his name. Thus, the records show that the deed of sale, covering Lot 1846-C, was executed by Ang Bansing in favor of Juan Cruz on February 25, 1939. Two years later, or on March 31, 1941, Ang Bansing sold Lot 1846-A to the said Juan Cruz for which TCT No. 1784 was issued in the name of Juan Cruz. Subsequently thereafter, Lot 1848-A, with an area of 9.6508 hectares, and Lot 1846-A and 1848-B-2-D, all subdivided portions of Lot 1846-B, were similarly conveyed to the said Juan Cruz for which TCT No. 2599 and TCT No. 2600, respectively, were issued in the name of Juan Cruz on September 26, 1946. Then, another portion of Lot 1846-B, designated in the subdivision plan as Lot 1848-B-2-B, was sold to Juan Cruz for which TCT No. 184 was issued in his name on November 28, 1948. Despite these numerous transfers of portions of the original 30-hectare parcel of land of Ang Bansing to Juan Cruz and

[25]Huang v. Court of Appeals, *supra*.
[26]*Ibid*.
[27]*Supra*.

the issuance of certificates of title in the name of Juan Cruz, the latter never sought the transfer of the title to Lot 1846-C in his name. For sure, if the parties had agreed that Ang Bansing shall hold the property in trust for Juan Cruz until after the former shall have obtained a certificate of title to the land, the latter would have asked for the reconveyance of the title to him in view of the surety bond executed by him in favor of the Commonwealth Government wherein he warrants his title over the property. The conduct of Juan Cruz is inconsistent with a trust and may well have probative effect against a trust.

But, even granting, *arguendo*, that an express trust had been established, as claimed by the herein petitioner, it would appear that the trustee had repudiated the trust and the petitioner herein, the alleged beneficiary to the trust, did not take any action therein until after the lapse of 23 years. Thus, in its Reply to the Defendant's Answer, filed on June 29, 1969, the herein petitioner admitted that 'after the last war the City Engineer's Office of Davao City made repeated demands on the defendants for the delivery and conveyance to the Commonwealth Government, now the Republic of the Philippines, of the title of land in question, Lot 1846-C, but the defendant ignored and evaded the same.' Considering that the demand was made in behalf of the Commonwealth Government, it is obvious that the said demand was made before July 4, 1946, when the Commonwealth Government was dismantled and the Republic of the Philippines came into being. From 1946 to 1969, when the action for reconveyance was filed with the court, 23 years had passed. For sure, the period for enforcing the rights of the alleged beneficiary over the land in question after the repudiation of the trust by the trustee, had already prescribed."

In *Geronimo* v. *Nava*,[28] it was held that where the trial court declared in a decision that had become final and executory that appellees had the right to redeem the property in question and ordered appellants to make the resale of the property in favor of appellees, there was created a constructive trust, in the sense that

[28]GR No. L-12111, Jan. 31, 1959, 105 Phil. 145.

although appellants had the naked title issued in their names, and which they retained, nevertheless, they were to hold said property in trust for appellees to redeem, subject to the payment of the redemption price. In the latter instance of constructive trust, prescription may apply only where the trustee asserts a right adverse to that of the *cestui que trust*, such as, asserting acts of ownership over the property being held in trust.

In the same case, it was also held that where, pursuant to a decision which had become final and executory, appellants suggested that the tenant of the house pay his rentals to appellees instead of to them, meaning appellees had a right to said rentals; and where appellants even permitted appellees to occupy and take possession and exercise ownership of the house when the tenant should vacate it, it was held that such acts of appellants should be construed as a recognition of the fact that the property, though still in their names, was to be held in trust for the appellees, to be conveyed to the latter upon payment of the repurchase price. Such trust is an express one, not subject to prescription.[29]

**07. Prescriptive period.**

The prescriptive period is ten years from the repudiation of the trust. It is ten years because just as a resulting trust is an offspring of the law, so is the corresponding obligation to convey the property and the title thereto to the true owner. In this context, and *vis-a-vis* prescription, Article 1144 of the New Civil Code, which is the law applicable, provides: "The following actions must be brought within ten years from the time the right of action accrues: (a) Upon a written contract; (b) Upon an obligation created by law; (c) Upon a judgment."[30]

Thus, the reckoning point is repudiation of the trust by the trustee because from that moment his possession becomes adverse. However, before the period of prescription may start, it must be shown that: (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust*; (b) such positive acts of repudiation have been made known to the *cestui que trust*; and (c) the evidence thereon is clear and conclusive. Acts which may be adverse to strangers may not be sufficiently adverse to the *cestui*

[29]Geronimo v. Nava, *supra*.
[30]Aznar Brothers Realty Co. v. Aying, GR No. 144773, May 16, 2005.

*que trust*. A mere silent possession of the trustee unaccompanied by acts amounting to an ouster of the *cestui que trust* cannot be construed as an adverse possession. Mere reception of rents and profits by the trustee, and erecting fences and buildings adapted for the cultivation of the land held in trust, are not equivalent to unequivocal acts of ouster of the *cestui que trust*.[31]

The rule that a trustee cannot acquire by prescription ownership over property entrusted to him until and unless he repudiates the trust, applies to express trusts and resulting implied trusts. However, in constructive implied trusts, prescription may supervene even if the trustee does not repudiate the relationship. Necessarily, repudiation of said trust is not a condition precedent to the running of the prescriptive period.[32]

In *Huang* v. *Court of Appeals*,[33] the Court explained:

> "We agree with the trial court that the action filed by Dolores has not prescribed. Firstly, Ricardo has not performed any unequivocal act of repudiation amounting to an ouster of Dolores. The only acts which may be considered as indicative of his intention not to respect the trust anymore were his leasing the house without the prior knowledge of Dolores; his refusal to carry out the demand of Dolores that he must ask the lessees to vacate the house; and, his refusal to give the necessary papers to Dolores to enable her to get the title from the SSS. Secondly, the foregoing acts are not positive acts of repudiation; and, thirdly, the evidence on such acts is unclear and inconclusive. But even if the foregoing acts were manifest acts of repudiation made known to Dolores, the fact remains that they were done at the earliest only on 15 March 1980 when Ricardo leased Lot 20 and its improvements to Deltron. Dolores' complaint before the trial court was filed on 19 February 1981, or within the 10-year prescriptive period.
>
> Petitioners are of the mistaken notion that the 10-year prescriptive period is counted from the date of issuance of the Torrens certificate of title. This rule applies

[31]Huang v. Court of Appeals, *supra*.
[32]Aznar Brothers Realty Co. v. Aying, *supra*.
[33]*Supra*.

only to the remedy of reconveyance which has its basis on Sec. 53, par. 3, P.D. No. 1529, otherwise known as the Property Registration Decree, and Art. 1456 of the Civil Code. Reconveyance is available in case of registration of property procured by *fraud* thereby creating a *constructive* trust between the parties, a situation which does not obtain in this case."

**SEC. 66. *Trust with power of sale, etc., how expressed.* — If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage or deal with the land in any manner, such power shall be stated in the certificate of title by the words "with power to sell," or "power to mortgage," or by apt words of description in case of other powers. No instrument which transfers, mortgages or in any way deals with registered land in trust shall be registered, unless the enabling power thereto is expressly conferred in the trust instrument, or unless a final judgment or order of a court of competent jurisdiction has construed the instrument in favor of the power, in which case a certified copy of such judgment or order may be registered.**

**01. Trusts, how expressed and registered.**

Section 65 requires that if a deed or other instrument is filed in order to transfer registered land in trust, or upon any equitable condition or limitation expressed therein, or to create or declare a trust or other equitable interests in such land without transfer, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate; but only a memorandum thereof shall be entered by the words "in trust," or "upon condition," or other apt words, and by a reference by number to the instrument authorizing or creating the same. A similar memorandum shall be made upon the original instrument creating or declaring the trust or other equitable interest with a reference by number to the certificate of title to which it relates and to the volume and page in the registration book in which it is registered.

On the other hand, Section 66 states that no instrument which transfers, mortgages or in any way deals with registered land in trust shall be registered, unless the enabling power thereto is expressly conferred in the trust instrument, or unless a final judgment or order of a court of competent jurisdiction has construed the instrument in

favor of the power, in which case a certified copy of such judgment or order may be registered. If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage or deal with the land in any manner, such power shall be stated in the certificate of title by the words "with power to sell," or "power to mortgage," or by apt words of description in case of other powers.

**SEC. 67. *Judicial appointment of new trustee.* — If a new trustee of registered land is appointed by a court of competent jurisdiction, a new certificate may be issued to him upon presentation to the Register of Deeds of a certified copy of the order or judicial appointment and the surrender for cancellation of the duplicate certificate.**

**01. Appointment of trustee.**

A trustee necessary to carry into effect the provisions of a will or written instrument shall be appointed by the Regional Trial Court in which the will was allowed.[34] The executor or administrator or the person appointed as trustee under the will or written instrument shall file the petition for the appointment of a trustee in compliance with the wishes of the testator.[35] Under Article 1445 of the Civil Code, "no trust shall fail because the trustee appointed declines the designation unless the contrary should appear in the instrument creating the trust."

**02. Powers, rights and duties of a new trustee.**

When a trustee under a written instrument declines, resigns, dies or is removed before the objects of the trust are accomplished, and no adequate provision is made in such instrument for supplying the vacancy, the proper Regional Trial Court may, after due notice to all persons interested, appoint a new trustee to act alone or jointly with others, as the case may be. Such new trustee shall have and exercise the same powers, rights and duties as if he had been originally appointed, and the trust estate shall vest in him in like manner as it had vested or would have vested, in the trustee in whose

[34]Sec. 1, Rule 98.
[35]Sec. 1, Rule 76.

place he is substituted; and the court may order such conveyance to be made by the former trustee, as may be necessary or proper to vest the trust estate in the new trustee, either alone or jointly with others.[36]

If a new trustee or registered land is appointed by the court, a new certificate may be issued to him upon presentation to the Register of Deeds of a certified copy of the order or judicial appointment and the surrender for cancellation of the duplicate certificate.[37]

**SEC. 68. *Implied trusts, how established.* — Whoever claims an interest in registered land by reason of any implied or constructive trust shall file for registration with the Register of Deeds a sworn statement thereof containing a description of the land, the name of the registered owner and a reference to the number of the certificate of title. Such claim shall not affect the title of a purchaser for value and in good faith before its registration.**

**01. Registration of claim based on implied trust.**

For the protection of a person claiming an interest in registered land by reason of any implied or constructive trust, he should file with the Register of Deeds a sworn statement: (a) containing the description of the land, (b) the name of the registered owner, and (c) a reference to the number of the certificate of title. Such claim will not affect the right of a purchaser for value and in good faith prior to such registration.

## II. INVOLUNTARY DEALINGS

**SEC. 69. *Attachments.* — An attachment, or a copy of any writ, order or process issued by a court of record, intended to create or preserve any lien, status, right, or attachment upon registered land, shall be filed and registered in the Registry of Deeds for the province or city in which the land lies, and, in addition to the particulars required in such papers for registration, shall contain a reference to the number of the certificate of title to be affected**

[36]Sec. 3, Rule 98.
[37]Sec. 67, PD No. 1529.

**and the registered owner or owners thereof, and also if the attachment, order, process or lien is not claimed on all the land in any certificate of title a description sufficiently accurate for identification of the land or interest intended to be affected. A restraining order, injunction or mandamus issued by the court shall be entered and registered on the certificate of title affected, free of charge.**

### 01. Nature of attachment.

Attachment is the legal process of seizing another's property in accordance with a writ or judicial order for the purpose of securing satisfaction of a judgment yet to be rendered. The writ of attachment is used primarily to seize the debtor's property in order to secure the debt or claim of the creditor in the event that a judgment is rendered.[1]

It has been held that a party who delivers a notice of attachment to the Register of Deeds and pays the corresponding fees has a right to presume that the official would perform his duty properly. In *involuntary registration*, such as an attachment, levy upon execution, *lis pendens* and the like, the *entry thereof in the day book is a sufficient notice* to all persons of such adverse claim. The notice should, of course, be annotated on the back of the corresponding original certificate of title, but this is an official duty of the Register of Deeds which may be presumed to have been regularly performed. As held in *Development Bank of the Philippines* v. *Acting Register of Deeds of Nueva Ecija*,[2] "current doctrine thus seems to be that entry alone produces the effect of registration, whether the transaction entered is a voluntary or involuntary one, so long as the registrant has complied with all that is required of him for purposes of entry and annotation, and nothing more remains to be done but a duty incumbent solely on the register of deeds."[3]

Section 69 states that an attachment or any writ, order or process intended to create or preserve any lien upon registered land shall be filed and registered in the Registry of Deeds and shall contain a reference to the number of the certificate of title to be affected, the registered owner thereof and a description of the land or interest therein.

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[1]Black's Law Dictionary, 6th Ed., 126.
[2]162 SCRA 450 (1988).
[3]Caviles v. Bautista, GR No. 102648, Nov. 24, 1999, 319 SCRA 24.

**02. Grounds upon which attachment may issue.**

Section 1, Rule 57 of the Rules of Court provides that at the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in, among others, the following cases:

(a) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(b) In action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof; and

(c) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

A preliminary attachment may be validly applied for and granted *ex parte* before the defendant is summoned since the phrase "at the commencement of the action" refers to the date of the filing of the complaint and before summons is served on the defendant.[4]

**03. How attachment effected.**

Section 7, Rule 57 provides:

> "SECTION 7. *Attachment of real and personal property; recording thereof.* — Real and personal property shall be attached by the sheriff executing the writ in the following manner:
>
> (a) Real property, or growing crops thereon, or any interest therein, standing upon the record of the registry of deeds of the province in the name of the party against whom attachment is issued, or not appearing at all upon such records, or belonging to the party against whom attachment is issued and held by any other person, or

[4]Feria and Noche, Civil Procedure Annotated, 2001 Ed., 264.

standing on the records of the registry of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, or that such real property and any interest therein held by or standing in the name of such other person are attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his agent if found within the province. Where the property has been brought under the operation of either the Land Registration Act or the Property Registration Decree, the notice shall contain a reference to the number of the certificate of title, the volume and page in the registration book where the certificate is registered, and the registered owner or owners thereof.

The registrar of deeds must index attachments filed under this section in the names of the applicant, the adverse party, or the person by whom the property is held or in whose name it stands in the records. If the attachment is not claimed on the entire area of the land covered by the certificate of title, a description sufficiently accurate for the identification of the land or interest to be affected shall be included in the registration of such attachment."

An attachment levied on real state not duly recorded in the Registry of Property is not an encumbrance on the attached property, nor can such attachment unrecorded in the registry, serve as a ground for decreeing the annulment of the sale of the property, at the request of another creditor.[5]

**04. Registration of attachment, writs and related processes.**

An attachment, or copy of any writ, order or process issued by the court intended to create or preserve any lien, status, right, or attachment upon registered land shall be filed and registered in the Registry of Deeds for the province or city where the land lies, and, in addition to the particulars required in such papers for registration, shall contain a reference to the number of the certificate of title affected and the registered owner or owners thereof, and also, if the

[5]Diez v. Delgado, GR No. L-11732, Jan. 12, 1918, 37 Phil. 389.

attachment, order, process or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for identification of the land or interest intended to be affected. A restraining order, injunction or mandamus issued by the court shall be entered and registered on the certificate of title affected, free of charge.

**05. Knowledge of a prior unregistered interest is equivalent to registration.**

In case of a conflict between a vendee and an attaching creditor, an attaching creditor who registers the order of attachment and the sale of the property to him as the highest bidder acquires a valid title to the property, as against a vendee who had previously bought the same property from the registered owner but who failed to register his deed of sale. This is because registration is the operative act that binds or affects the land insofar as third persons are concerned. It is upon registration that there is notice to the whole world. But where a party has knowledge of a prior existing interest which is unregistered at that time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him. Knowledge of an unregistered sale is equivalent to registration.[6]

**06. Discharge of attachment.**

An attachment may be discharged upon giving a counterbond,[7] or on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient.[8]

By the dissolution of an attachment levied on the defendant's property, through the filing of a bond, the released property becomes free and no longer liable to the results of the proceeding in which it was attached. Consequently, the act of the defendant, whose property has been attached, in mortgaging the released property to a third person, is not a conveyance in fraud of creditors, since the transaction is legal and valid, and since the presumption of fraud established by Article 1387 of the Civil Code does not arise when there is a security in favor of the creditor.[9]

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[6]Ruiz v. Court of Appeals, GR No. 121298, July 31, 2001, 362 SCRA 40.
[7]Sec. 12, Rule 57, Rules of Court.
[8]Sec. 13, *ibid*.
[9]Manila Mercantile Co. v. Flores, GR No. 27552, Sept. 27, 1927, 50 Phil. 759.

**SEC. 70. *Adverse claim.* — Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.**

**The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest: *Provided, however*, That after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.**

**Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered cancelled. If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect.**

### 01. Adverse claim, purpose.

The purpose of annotating the adverse claim on the title of the disputed land is to apprise third persons that there is a controversy over the ownership of the land and to preserve and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute.[10] Such notice is regis-

[10]Arrazola v. Bernas, GR No. L-29740, Nov. 10, 1978, 86 SCRA 279.

tered by filing a sworn statement with the Register of Deeds of the province where the property is located, setting forth the basis of the claimed right together with other data pertinent thereto. The registration of an adverse claim is expressly recognized under Section 70 of PD No. 1529.[11] Where the notice of adverse claim is sufficient in law and drawn up in accordance with existing requirements, it becomes the ministerial duty of the Register of Deeds to register the instrument without unnecessary delay.[12]

While the act of registration is the operative act which conveys or affects the land insofar as third persons are concerned, the subsequent sale of property covered by a certificate of title cannot prevail over an adverse claim, duly sworn to and annotated on the certificate of title previous to the sale. It is true that a deed of conveyance of registered property, or any interest therein, takes effect as a conveyance only upon its registration, and that a purchaser is not required to explore further than what the Torrens title, upon its face, indicates, but this rule is not absolute. Thus, one who buys from the registered owner, without checking the vendor's title, is bound by the liens and encumbrances annotated thereon and takes all the risks and losses consequent to such failure.[13]

Section 70 of PD No. 1529 is divided into two parts: the *first* refers to the petition of the party who claims any part or interest in registered land, arising subsequent to the date of the original registration, for the registration of his adverse claim, which is a ministerial function of the Register of Deeds absent any defect on the face of the instrument, and the *second* refers to the petition filed in court by a party in interest for the cancellation of the adverse claim upon a showing that the same is invalid.[14]

**02. Registration of adverse claim.**

A lease over a parcel of land for a ten-year period, which could not be registered because the owner's duplicate of the title was not surrendered, could be registered as an adverse claim and the owner could be compelled to surrender the owner's duplicate of the title so

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[11]Sajonas v. Court of Appeals, GR No. 102377, July 5, 1996, 258 SCRA 79.

[12]Gabriel v. Register of Deeds, GR No. L-17956, September 30, 1963, 9 SCRA 136.

[13]Sajonas v. Court of Appeals, *supra*.

[14]Gabriel v. Register of Deeds of Rizal, GR No. L-17956, Sept. 30, 1963, 118 Phil. 980.

that the adverse claim could be annotated thereon. If the adverse claim turns out to be invalid, the owner could ask for its cancellation and, if found to be frivolous or vexatious, then costs may be adjudged against the adverse claimant.[15] The claim of a person that she has hereditary rights in the land fraudulently registered in her sister's name, because the land belonged to their mother whose estate is pending settlement in a special proceeding, is registrable as an adverse claim.[16]

Where a guardianship proceeding is pending in court, it is proper to annotate on the title of the land in question the pendency of such a proceeding by means of a notice of *lis pendens* for the purpose of alerting anyone who might wish to buy the land that his purchase might be questioned later on.[17] Since an adverse claim and a notice of *lis pendens* have the same purpose,[18] there would be no need of maintaining the adverse claim.[19] But a notice of levy cannot prevail over the existing adverse claim inscribed in the certificate of title.[20]

The annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Property Registration Decree, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner thereof. However, for the special remedy of adverse claim to be availed of, it must be shown that there is no other provision in the law for registration of the claimant's alleged right in the property. If the basis of the adverse claim is a perfected contract of sale, the procedure is for the registration of the vendee's right on a registered property as prescribed by Section 51, in relation to Section 52, of the Property Registration Decree which requires the production of the owner's duplicate certificate to pave the way for the entry of a new

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[15]Register of Deeds of Manila v. Tinoco, GR No. L-6711, Sept. 20, 1954, 95 Phil. 818.

[16]Gabriel v. Register of Deeds of Rizal, *supra*.

[17]Diaz v. Perez. GR. No. L-12053, May 30, 1958, 103 Phil. 1023.

[18]Arrazola v. Bernas, *supra*.

[19]Villaflor v. Juezan, GR No. 35205, Apr. 17, 1990, 184 SCRA 315.

[20]Section 16, PD No. 1529 states that "the levy on execution shall create a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, *subject to liens or encumbrances then existing*."

certificate in favor of the vendee. The filing of an adverse claim under Section 70 is ineffective for the purpose of protecting the vendee's right since it does not have the effect of a conveyance.[21]

An adverse claim of ownership over a parcel of land registered under the Torrens system based on prescription and adverse possession cannot be registered by the Register of Deeds because under Section 47 of the Property Registration Decree, no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession. Hence, the registration of said adverse claim will serve no useful purpose and cannot validly and legally affect the parcel of land in question.[22]

Although a vendee of a parcel of land may register the deed of sale in his favor as provided for in Section 57 of PD No. 1529, such sale may not be annotated on the vendor's title as an adverse claim.[23] Similarly, an adverse claim of ownership over a registered land based on prescription and adverse possession cannot be registered since, as pointed out, "no title in derogation of the title of the registered owner may be acquired by prescription or adverse possession."[24] On the other hand, the annotation of an adverse claim to forestall the transfer of the property to the vendee cannot be done where the deed of sale in favor of the latter was already registered.[25] And where the claim arose prior and not subsequent to the date of the original registration, the same cannot be entered or registered upon the Torrens certificate of title. The claimant, if he has a valid claim, should bring an action to enforce it.[26]

In order that the special remedy of an adverse claim may be availed of, it must be shown that there is no other provision in the law for registration of the claimant's alleged right or interest in the property. Thus, where the claimant's interest in the property is based on a perfected contract of sale executed in his favor by the lawful owner of the land, the registration of that interest as an adverse claim is improper since the law specifically prescribes the procedure for

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[21]L.P. Leviste & Co. v. Noblejas, GR No. L-28529, April 30, 1979, 89 SCRA 520.

[22]Estella v. Register of Deeds of Rizal, GR No. L-12614, Jan. 29, 1960, 106 Phil. 911.

[23]Register of Deeds of Quezon City v. Nicandro, GR No. L-16648, April 29, 1961, 111 Phil. 989.

[24]Sec. 47, PD No. 1529; Esrtella v. Register of Deeds of Rizal, *supra*.

[25]Dela Cruz v. Dela Cruz, GR No. 146222, Jan. 15, 2004, 419 SCRA 648.

[26]De los Reyes v. De los Reyes, GR No. 49470, June 30, 1952, 91 Phil. 528.

registration of a vendee's right on a registered property and the issuance to him of a new transfer certificate of title, which is that provided in Section 57 of the Property Registration Decree.[27]

**03. Requisites of an adverse claim.**

The following are the formal requisites of an adverse claim:

1. The adverse claimant must state the following in writing:

(a) his alleged right or interest;

(b) how and under whom such alleged right or interest is acquired;

(c) the description of the land in which the right or interest is claimed; and

(d) the number of the certificate of title;

2. The statement must be signed and sworn to before a notary public or other officer authorized to administer oath; and

3. The claimant should state his residence or the place to which all notices may be served upon him.[28]

Non-compliance with the above requisites renders the adverse claim non-registrable and ineffective.[29]

**04. Registration court may determine the validity of adverse claim.**

An adverse claim may be cancelled only after the claim is adjudged invalid or unmeritorious by the court while passing upon a case where the land involved is the subject of the interest or right being secured by the adverse claim. Section 70 does not distinguish between a court sitting as a land registration court and a court of general jurisdiction.[30]

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[27]Register of Deeds of Quezon City v. Nicandro, *supra*.
[28]Lozano v. Ballesteros, GR No. 49470, April 8, 1991, 195 SCRA 681.
[29]*Ibid*.
[30]Government Service Insurance System v. Court of Appeals, GR No. L-56290, Jan. 30, 1995, 240 SCRA 737.

**05. Adverse claim not *ipso facto* cancelled after 30 days; hearing necessary.**

In *Sajonas* v. *Court of Appeals*,[31] the Supreme Court held that while the law states that "(t)he adverse claim shall be effective for a period of thirty days from the date of registration," this provision should not be treated separately, but should be read in relation to the sentence following that "(a)fter the lapse of said period, the annotation of adverse claim *may be cancelled* upon filing of a verified petition therefor by the party in interest." If the rationale of the law is for the adverse claim to *ipso facto* lose force and effect after the lapse of thirty days, then no adverse claim need be cancelled. The law, taken together, simply means that the cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. *A fortiori*, the limitation on the period of effectivity is immaterial in determining the validity or invalidity of an adverse claim which is the principal issue to be decided by the court.

The Register of Deeds cannot unilaterally cancel the adverse claim. There must be a court hearing for the purpose.[32] The reason for this is to afford the adverse claimant an opportunity to be heard, providing a venue where the propriety of his claimed interest can be established or revoked, all for the purpose of determining at least the existence of any encumbrance on the title arising from such adverse claim. This is in line with the provision "that after cancellation, no second adverse claim shall be registered by the same claimant."[33]

**06. Purchaser not bound by any lien not entered in the certificate of title.**

A purchaser who buys land from the registered owner without any adverse claim noted on the title except two cautionary entries under Rule 74 of the Rules of Court, and without any notice of any flaw or defect on the face of said title, is considered an innocent purchaser for value. This is especially true where the purchaser did not simply rely upon the face of the title but also employed the

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[31]*Supra*, reiterated in Equatorial Realty Development, Inc. v. Frogozo, GR No. 128563, March 25, 2004, 426 SCRA 271.

[32]Diaz-Duarte v. Ong, GR No. 130352, Nov. 3, 1998, 298 SCRA 388.

[33]Sajonas v. Court of Appeals, *supra*.

services of counsel who, after verifying the existence of the title with the Registry of Deeds, assured him that everything was in order. A person dealing with registered land may safely rely upon the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property.[34]

**07. Foreclosure sale retroacts to registration of mortgage.**

The settled doctrine is that the effects of a foreclosure sale retroact to the date of registration of the mortgage. Hence, if the adverse claim is registered only after the annotation of the mortgage at the back of the certificate of title, the adverse claim could not effect the rights of the mortgagee; and the fact that the foreclosure of the mortgage and the consequent public auction sale have been effected long after the annotation of the adverse claim is of no moment, because the foreclosure sale retroacts to the date of registration of the mortgage."[35]

**SEC. 71. *Surrender of certificate in involuntary dealings.* — If an attachment or other lien in the nature of involuntary dealing in registered land is registered, and the duplicate certificate is not presented at the time of registration, the Register of Deeds shall, within thirty-six hours thereafter, send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce his duplicate certificate so that a memorandum of the attachment or other lien may be made thereon. If the owner neglects or refuses to comply within a reasonable time, the Register of Deeds shall report the matter to the court, and it shall, after notice, enter an order to the owner, to produce his certificate at a time and place named therein, and may enforce the order by suitable process.**

**01. Court may compel surrender of certificate of title as an incident in the main case.**

Section 71 authorizes the Register of Deeds to require the registered owner to produce the owner's duplicate certificate in order that an attachment or other lien in the nature of involuntary dealing,

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[34]Dela Cruz v. Dela Cruz, *supra*.
[35]Limpin v. Intermediate Appellate Court, *supra*.

like an adverse claim, may be annotated thereon. If the owner neglects or refuses to comply within a reasonable time, he shall report such fact to the proper Regional Trial Court which shall, after notice, direct the owner to produce his certificate at a time and place specified in its order.

In an action for specific performance with damages based on a document of sale, a motion may be filed by the purchaser for the issuance of an order to compel the holder of the duplicate certificates of title to surrender the same to the Register of Deeds. Even while Section 107 of PD No. 1529 speaks of a petition which can be filed by one who wants to compel another to surrender the certificate of title to the Register of Deeds, this does not preclude a party to a pending case to include as incident therein the relief stated under said section, especially if the subject certificate of title to be surrendered is intimately connected with the subject matter of the principal action. This principle is based on expediency and in accordance with the policy against multiplicity of suits.[36]

**02. Mortgage lien follows property mortgaged.**

Any lien annotated on the previous certificates of title which subsists should be incorporated in or carried over to the new transfer certificates of title. This is true even in the case of a real estate mortgage because pursuant to Article 2126 of the Civil Code, the mortgage directly and immediately subjects the property, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted. It is inseparable from the property mortgaged as it is a right *in rem* — a lien on the property whoever its owner may be. It subsists notwithstanding a change in ownership; in short, the personality of the owner is disregarded. Thus, all subsequent purchasers must respect the mortgage whether the transfer to them be with or without the consent of the mortgagee, for such mortgage until discharged follows the property.[37]

**SEC. 72. *Dissolution, etc. of attachments, etc.* — Attachments and liens of every description upon registered land shall be continued, reduced, discharged and dissolved by any method sufficient in law, and to give effect to the continuance, reduction,**

[36]Ligon v. Court of Appeals, GR No. 107751, June 1, 1995, 244 SCRA 693.
[37]Ligon v. Court of Appeals, *supra*.

**discharge or dissolution thereof the certificate or other instrument for that purpose shall be registered with the Register of Deeds.**

**SEC. 73. *Registration of orders of court, etc.* — If an attachment is continued, reduced, dissolved, or otherwise affected by an order, decision or judgment of the court where the action or proceedings in which said attachment was made is pending or by an order of a court having jurisdiction thereof, a certificate of the entry of such order, decision or judgment from the clerk of court or the judge by which such decision, order or judgment has been rendered and under the seal of the court, shall be entitled to be registered upon presentation to the Register of Deeds.**

### 01. Dissolution of attachments or liens and registration thereof.

Where an attachment or any other lien is maintained, or discharged or dissolved by any method provided by law, the certificate or instrument for the purpose shall be registered to give effect thereof. If the attachment or lien is maintained, discharged or dissolved by order of the court, a certificate of the Clerk of Court as to the entry of such order shall also be registered.

### 02. Purpose of registration.

The requirement of registering the order of the court with the Register of Deeds in involuntary dealings affecting registered property is to notify third parties who may be affected in their dealings with respect to such property.[38]

The Register of Deeds may properly deny the inscription of an order of attachment or levy of execution where the title to the property is not in the name of the judgment debtor but of another person, and no evidence has been submitted that he has any interest in the property.[39]

**SEC. 74. *Enforcement of liens on registered land.* — Whenever registered land is sold on execution, or taken or sold for taxes or for any assessment or to enforce a lien of any character, or for any**

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[38]Valenzuela v. Aguilar, GR No. L-18083, May 31, 1963.

[39]Goatauco & Co. v. Register of Deeds, GR No. 39596, March 23, 1934, 59 Phil. 756.

**costs and charges incident to such liens, any execution or copy of execution, any officer's return, or any deed, demand, certificate, or affidavit, or other instrument made in the course of the proceedings to enforce such liens and required by law to be recorded, shall be filed with the Register of Deeds of the province or city where the land lies and registered in the registration book, and a memorandum made upon the proper certificate of title in each case as lien or encumbrance.**

**01. Registration of deeds relating to execution and tax delinquency sales.**

Whenever registered land is sold on execution, or taken or sold for taxes or for any assessment or to enforce a lien of any character, or for any costs and charges incident to such liens, any execution or copy of execution, any officer's return, or any deed, demand, certificate, or affidavit, or other instrument made in the course of the proceedings to enforce such liens and required by law to be recorded, shall be filed with the Register of Deeds of the province or city where the land lies and registered in the registration book, and a memorandum made upon the proper certificate of title in each case as lien or encumbrance.

The following incidents on registered land in the nature of involuntary dealings shall be registered to be effective:

(a) *Continuance, dissolution or discharge of attachments*.

Attachments and liens of every description upon registered land shall be continued, reduced, discharged and dissolved by any method sufficient in law, and to give effect to the continuance, reduction, discharge or dissolution thereof, the certificate or other instrument for that purpose shall be registered with the Register of Deeds.[40]

(b) *Orders or decisions of the court*.

If an attachment is continued, reduced, dissolved, or otherwise affected by an order, decision or judgment of the court where the action or proceedings in which said attachment was made is pending or by an order of a court having jurisdiction thereof, a certificate of the entry of such order, decision or judgment from the clerk of court

[40]Sec. 72, PD No. 1529.

or the judge by which such decision, order or judgment has been rendered and under the seal of the court, shall be entitled to be registered upon presentation to the Register of Deeds.[41]

(c) *Deed of sale, officer's return, order of execution and other instruments.*

Whenever registered land is sold on execution, or taken or sold for taxes or for any assessment or to enforce a lien of any character, or for any costs and charges incident to such liens, any execution or copy of execution, any officer's return, or any deed, demand, certificate, or affidavit, or other instrument made in the course of the proceedings to enforce such liens and required by law to be recorded, shall be filed with the Register of Deeds of the province or city where the land lies and registered in the registration book, and a memorandum made upon the proper certificate of title in each case as lien or encumbrance.[42]

It has been held that a valid levy is essential to the validity of an execution sale, and levy is invalid if the notice of levy of real property is not filed with the office of the Register of Deeds.[43]

### 02. Tax delinquency sale requires personal notice to taxpayer.

Notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the sale. Thus, the holding of a tax sale despite the absence of the requisite notice is tantamount to a violation of delinquent taxpayer's substantial right to due process. Administrative proceedings for the sale of private lands for non-payment of taxes being *in personam*, it is essential that there be actual notice to the delinquent taxpayer, otherwise the sale is null and void although preceded by proper advertisement or publication.[44]

**SEC. 75. *Application for new certificate upon expiration of redemption period.* — Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold**

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[41]Sec. 73, *Ibid*.

[42]Sec. 74, *Ibid*.

[43]Valenzuela v. Aguilar, *supra*; Llenares v. Valdeavella, GR No. L-21572, Oct. 4, 1924, 46 Phil. 358.

[44]Sarmiento v. Court of Appeals, GR No. 152627, Sept. 16, 2005.

**on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.**

**Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.**

### 01. Entry of new certificate.

In case registered land which has been sold on execution for the enforcement of any lien, except a mortgage lien, has not been redeemed within the period allowed by law, the purchaser at such sale or anyone claiming under him may petition the court for the issuance of a new certificate of title to him. But before the entry of such new certificate, the registered owner may pursue all legal and equitable remedies to impeach or annul the proceedings.

**SEC. 76. *Notice of lis pendens.* — No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.**

### 01. Nature and purpose of *lis pendens*.

*Lis pendens* literally means a pending suit. The doctrine of *lis pendens* refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. The purposes of *lis pendens* are (1) to protect the rights of the party causing the registration of the *lis pendens*, and (2) to advise third persons who purchase or contract on the subject property that they do so at their peril and subject to the result of the pending litigation. A notice of *lis pendens*

may involve actions that deal not only with title or possession of a property, but also with the use or occupation of a property. The litigation must directly involve a specific property which is necessarily affected by the judgment.

The notice of *lis pendens* is an announcement to the whole world that a particular real property is in litigation. The inscription serves as a warning that one who acquires an interest over litigated property does so at his own risk, or that he gambles on the result of the litigation over the property.[45] Once a notice of *lis pendens* has been duly registered, any cancellation or issuance of title over the land involved as well as any subsequent transaction affecting the same would have to be subject to the outcome of the suit. In other words, a purchaser who buys registered land with full notice of the fact that it is in litigation between the vendor and a third party stands in the shoes of his vendor and his title is subject to the incidents and result of the pending litigation. The filing of *lis pendens* in effect (a) keeps the subject matter of litigation within the *power of the court* until the entry of the final judgment so as to prevent the defeat of the latter by successive alienations' and (b) binds a purchaser of the land subject of the litigation to the judgment or decree that will be promulgated thereon whether such a purchaser is a *bona fide* purchaser or not; but (c) does not create a non-existent right or lien.[46] By disregarding the inscriptions and pursuing the registration of the sale, a buyer, for instance, assumes the risk of losing the property. He, or his heirs being merely the juridical continuation of his personality, holds the same in trust for the true owner.[47]

The purpose of the rule on *lis pendens* is to keep the subject matter of the litigation within the power of the court until the litigation is over.[48] The doctrine of *lis pendens* is founded upon reason of public policy and necessity, the purpose of which is to keep the subject matter of the litigation within the power of the court until the judgment or the decree shall have been entered; otherwise, by successive alienations pending the litigation, its judgment or decree shall be rendered abortive and impossible of execution.[49]

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[45]Marasigan v. Intermediate Appellate Court, GR No. L-69393, July 23, 1987, 152 SCRA 253.

[46]Carrascoso v. Court of Appeals, GR No. 123672, Dec. 14, 2005.

[47]Portes v. Arcala, GR No. 145264, Aug. 30, 2005.

[48]Blas v. Muñoz-Palma, GR No. L-15689, April 29, 1960, 107 Phil. 1078.

[49]People v. Regional Trial Court of Manila, GR No. 81541, Oct. 4, 1989, 178 SCRA 299.

But a notice of *lis pendens* is not a lien or encumbrance under our civil law. It is a mere cautionary notice to prospective buyers of certain property that said property is under litigation, and that any sale made thereof shall be subject to the result of such litigation. It imposes no obligation on the owner, but on the prospective buyer.[50] Thus, where petitioners bought the land in question with the knowledge of the existing encumbrances thereon, they cannot invoke the right of purchasers in good faith, and they cannot likewise have acquired better rights than those of their predecessors-in-interest.[51]

### (1) Effect of the notice

The filing of a notice of *lis pendens* has a two-fold effect. *First*, it keeps the subject matter of the litigation within the power of the court until the entry of the final judgment to prevent the defeat of the final judgment by successive alienations. *Second*, it binds a purchaser, *bona fide* or not, of the land subject of the litigation to the judgment or decree that the court will promulgate subsequently. However, the filing of a notice of *lis pendens* does not create a right or lien that previously did not exist. Without a notice of *lis pendens*, a third party who acquires the property after relying only on the certificate of title is a purchaser in good faith. Against such third party, the supposed rights of a litigant cannot prevail, because the former is not bound by the property owner's undertakings not annotated in the transfer certificate of title.[52]

But although a notice of *lis pendens* is considered as a general notice to all the world, it is not correct to speak of it as a part of the doctrine of notice; the purchaser *pendente lite* is affected, not by notice, but because the law does not allow litigating parties to give to others, pending the litigation, rights to the property in dispute so as to prejudice the opposite party. The doctrine rests upon public policy, not notice. The purpose of filing a notice of *lis pendens* is to charge strangers with notice of the particular litigation referred to in the notice; and if the notice is effective, a third person who acquires the property affected by the *lis pendens* takes same subject to the eventuality of the litigation. But when the adverse right fails in such litigation, the *lis pendens* loses its efficacy.[53]

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[50]*Ibid.*

[51]Tanchoco v. Aquino, GR No. L-30670, Sept. 15, 1987, 154 SCRA 1.

[52]Lopez v. Enriquez, GR No. 146262, Jan. 21, 2005, 449 SCRA 173; Romero v. Court of Appeals, GR No. 142406, May 16, 2005.

[53]Tirado v. Sevilla, GR No. 84201, Aug. 3, 1990, 188 SCRA 321.

### (2) Notice is only an incident in the main case; merits thereof unaffected

A notice of *lis pendens* — *i.e.*, that real property is involved in an action — is ordinarily recorded without the intervention of the court where the action is pending. The notice is but an incident in an action, an extrajudicial one. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action, and may well be inferior and subordinate to those which may be finally determined and laid down therein.[54]

### (3) Notice need not be annotated on the owner's copy

The annotation of a notice of *lis pendens* at the back of the original copy of the certificate of title on file with the Register of Deeds is sufficient to constitute constructive notice to purchasers or other persons subsequently dealing with the same property. It is not required that said annotation be also inscribed upon the owner's copy because such copy is usually unavailable to the registrant; it is normally in the hands of the adverse party, or perhaps in the hands of a stranger to the suit. The notice of *lis pendens* is an involuntary transaction and its entry in the day book of the Register of Deeds is a sufficient notice to third parties.[55] As held in the cases of *Levin* v. *Bass*, *etc.*,[56] in involuntary registration, such as an attachment, levy on execution, *lis pendens* and the like, entry thereof in the day book is a sufficient notice to all persons of such adverse claim. It is not necessary that the notice of *lis pendens* be annotated at the back of the owner's certificate of title. Such annotation is only necessary in voluntary transactions.[57]

One who deals with property subject of a notice of *lis pendens* cannot invoke the right of a purchaser in good faith — neither can he acquire better rights than those of his predecessor-in-interest.[58]

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[54]Magdalena Homeowners Association, Inc. v. Court of Appeals, GR No. L-60323, April 17, 1990, 184 SCRA 325.

[55]Director of Lands v. Reyes, GR No. L-27594, Nov. 28, 1975, 68 SCRA 177.

[56]GR No. L-4340, May 28, 1952, 91 Phil. 419.

[57]Yu v. Court of Appeals, GR No. 109078, Dec. 26, 1995, 251 SCRA 509.

[58]*Ibid.*

Third persons should not be satisfied with merely examining the owner's copy of the certificate of title. They should examine the original on file with the Register of Deeds for they are all constructively notified of pending litigations involving real property through notices of *lis pendens* annotated therein.[59] A transferee *pendente lite* stands exactly in the shoes of the transferor and is bound by any judgment or decree which may be rendered for or against the latter.[60] Where the notice of *lis pendens* is inscribed long after the title had become indefeasible, the inscription becomes irrelevant.[61]

**02. Notice of *lis pendens*, when appropriate; when not proper.**

A notice of *lis pendens* may involve actions that deal not only with title or possession of a property, but also with the use or occupation of a property. The litigation must directly involve a specific property which is necessarily affected by the judgment. *Lis pendens* is appropriate in the following cases:

1. Action to recover possession of real estate;

2. Action to quiet title thereto;

3. Action to remove clouds thereon;

4. Action for partition; and

5. Any other proceedings of any kind in court directly affecting the title to the land or the use or occupation thereof or the buildings thereon.

On the other hand, the doctrine of *lis pendens* has no application in the following cases:

1. Preliminary attachments;

2. Proceedings for the probate of wills;

3. Levies on execution;

4. Proceedings for administration of estate of deceased persons; and

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[59]*Ibid.*

[60]Roxas v. Court of Appeals, GR No. 138660, Feb. 5, 2004; Santiago Land Development Corporation v. Court of Appeals, GR No. 106194, Jan. 28, 1987, 276 SCRA 674.

[61]Tirado v. Sevilla, *supra*.

5. Proceedings in which the only object is the recovery of a money judgment.[62]

It is important that a specific property is directly involved in the action and necessarily affected by the judgment. Thus, where the object of the suit is the recovery of a money judgment, the rule of *lis pendens* cannot be applied.[63]

### 03. Contents of notice of *lis pendens*.

As decreed by Section 76 of PD No. 1529, a notice of *lis pendens* should contain: (a) a statement of the institution of an action or proceeding; (b) the court where the same is pending; (c) the date of its institution; (d) a reference to the number of the certificate of title of the land; and (e) an adequate description of the land affected and its registered owner.

### 04. Principle of *primus tempore, potior jure*; effect of *lis pendens*.

The principle of *primus tempore, potior jure* (first in time, stronger in right) gains greater significance in case of double sale of immovable property. When the thing sold twice is an immovable, the one who acquires it and first records it in the Registry of Property, both made in good faith, shall be deemed the owner. Verily, the act of registration must be coupled with good faith — that is, the registrant must have no knowledge of the defect or lack of title of his vendor or must not have been aware of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.

In the case of *San Lorenzo Development Corporation* v. *Court of Appeals*,[64] SLDC registered the sale with the Registry of Deeds after it had acquired knowledge of Babasanta's claim. Babasanta, however, argues that the registration of the sale by SLDC was not sufficient to confer upon the latter any title to the property since the registration was attended by bad faith. Specifically, he points out that at the time SLDC registered the sale on June 30, 1990, there was already a notice

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[62]Magdalena Homeowners Association, Inc. v. Court of Appeals, GR No. 60323, April 17, 1990, 184 SCRA 325.

[63]Biglang-awa v. Constantino, GR No. L-9965, Aug. 29, 1960, 109 Phil. 168.

[64]GR No. 124242, Jan. 21, 2005, 449 SCRA 99.

of *lis pendens* on file with the Register of Deeds. Did the registration of the sale after the annotation of the notice obliterate the effects of delivery and possession in good faith which admittedly had occurred prior to SLDC's knowledge of the transaction in favor of Babasanta? The Court said no.

> "It must be stressed that as early as 11 February 1989, the Spouses Lu executed the Option to Buy in favor of SLDC upon receiving P316,160.00 as option money from SLDC. After SLDC had paid more than one half of the agreed purchase price of P1,264,640.00, the Spouses Lu subsequently executed on 3 May 1989 a Deed of Absolute Sale in favor or SLDC. At the time both deeds were executed, SLDC had no knowledge of the prior transaction of the Spouses Lu with Babasanta. Simply stated, from the time of execution of the first deed up to the moment of transfer and delivery of possession of the lands to SLDC, it had acted in good faith and the subsequent annotation of *lis pendens* has no effect at all on the consummated sale between SLDC and the Spouses Lu.
>
> A purchaser in good faith is one who buys property of another without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of the claim or interest of some other person in the property. Following the foregoing definition, we rule that SLDC qualifies as a buyer in good faith since there is no evidence extant in the records that it had knowledge of the prior transaction in favor of Babasanta. At the time of the sale of the property to SLDC, the vendors were still the registered owners of the property and were in fact in possession of the lands. Time and again, this Court has ruled that a person dealing with the owner of registered land is not bound to go beyond the certificate of title as he is charged with notice of burdens on the property which are noted on the face of the register or on the certificate of title. In assailing knowledge of the transaction between him and the Spouses Lu, Babasanta apparently relies on the principle of constructive notice incorporated in Section 52 of the Property Registration Decree (P.D. No. 1529) which reads, thus:
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> 'Sec. 52. C*onstructive notice upon registration*. — Every conveyance, mortgage, lease, lien, attachment, order,

judgment, instrument or entry affecting registered land shall, if registered, filed, or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing, or entering.'

However, the constructive notice operates as such by the express wording of Section 52 from the time of the registration of the notice of *lis pendens* which in this case was effected only on 2 June 1989, at which time the sale in favor of SLDC had long been consummated insofar as the obligation of the Spouses Lu to transfer ownership over the property to SLDC is concerned.

More fundamentally, given the superiority of the right of SLDC to the claim of Babasanta the annotation of the notice of *lis pendens* cannot help Babasanta's position a bit and it is irrelevant to the good or bad faith characterization of SLDC as a purchaser. A notice of *lis pendens*, as the Court held in *Nataño* v. *Esteban*, serves as a warning to a prospective purchaser or incumbrancer that the particular property is in litigation; and that he should keep his hands off the same, unless he intends to gamble on the results of the litigation.

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Assuming *ex gratia argumenti* that SLDC's registration of the sale had been tainted by the prior notice of lis pendens and assuming further for the same nonce that this is a case of double sale, still Babasanta's claim could not prevail over that of SLDC's. In *Abarquez* v. *Court of Appeals*, this Court had the occasion to rule that if a vendee in a double sale registers the sale after he has acquired knowledge of a previous sale, the registration constitutes a registration in bad faith and does not confer upon him any right. If the registration is done in bad faith, it is as if there is no registration at all, and the buyer who has taken possession first of the property in good faith shall be preferred."

**05. Carry over of notice on subsequent titles.**

In case of subsequent sales or transfers, the Register of Deeds is duty bound to carry over the notice of *lis pendens* on all titles to be

issued. Otherwise, if he cancels any notice of *lis pendens* in violation of his duty, he may be held civilly and even criminally liable for any prejudice caused to innocent third persons.[65] Where the notice of *lis pendens* is inscribed long after the title had become indefeasible, the inscription becomes irrelevant.[66]

The act of a Register of Deeds in erasing the notice of *lis pendens*, in plain violation of his duty, constitutes misfeasance in the performance of his duties for which he may be held civilly and even criminally liable for any prejudice caused to innocent third parties, and cannot affect those who are protected by the notice inscribed in the original title.[67]

Where the oppositors in a land registration case caused the notice of *lis pendens* to be duly inscribed in the original certificate of title pending an appeal from the decision granting the registration, such inscription keeps the whole land subject matter of the appeal within the power of the court until the litigation is terminated. Such entry of *lis pendens* cannot be cancelled until the final termination of the litigation, and the notice must be carried over in all titles subsequently issued, which will yield to the ultimate result of the appeal.[68] Transferees of title to land subject of *lis pendens* are bound by the judgment rendered against their predecessors-in-interest.[69]

**SEC. 77. *Cancellation of lis pendens.* — Before final judgment, a notice of *lis pendens* may be cancelled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused the registration thereof.**

**At any time after final judgment in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of *lis pendens* has been**

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[65]Marasigan v. Intermediate Appellate Court, GR No. L-69393, July 23, 1987, 152 SCRA 253.

[66]Tirado v. Sevilla, *id.*

[67]Director of Lands v. Reyes, GR No. L-27594, Nov. 28, 1975, 68 SCRA 177.

[68]*Ibid.*

[69]Selph v. Aguilar, GR No. L-13465, March 29, 1960, 107 Phil. 443.

**registered as provided in the preceding section, the notice of *lis pendens* shall be deemed cancelled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.**

**01. Cancellation of *lis pendens*.**

Ordinarily a notice of *lis pendens* which has been filed in a proper case cannot be cancelled while the action is pending and undetermined, except in cases expressly provided for by statute. But there may be exceptions, and it has been held that a court has the inherent power in the absence of statute to cancel a *lis pendens* in a proper case.

Section 77 provides that the notice of *lis pendens* may be cancelled (a) upon order of the court, or (b) upon action by the Register of Deeds at the instance of the party who caused the registration of the notice.

While the trial court has inherent power to cancel a notice of *lis pendens*, such power is exercised under express provisions of law. As provided for by Section 14, Rule 13 of the 1997 Rules of Civil Procedure, a notice of *lis pendens* may be cancelled on two grounds: (1) if the annotation was for the purpose of molesting the title of the adverse party, or (2) when the annotation is not necessary to protect the title of the party who caused it to be recorded.[70]

A notice of *lis pendens* may be cancelled upon order of the court, "after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded."[71] Thus, where the court found as a fact that the case had been unnecessarily prolonged by repeated amendments of the complaints by the plaintiffs, and that the circumstances on record justified the conclusion that the annotation of the notice of *lis pendens* was intended to molest and harass the defendants, then the notice may be ordered cancelled by the court. The cancellation of such a precautionary notice is a mere incident in the action, and may be ordered by the court having jurisdiction of it at any given time. Its continuance or cancellation — like the

[70]Romero v. Court of Appeals, GR No. 142406, May 16, 2005; Tan v. Lantin, GR No. L-28526, 142 SCRA 423; Sec. 14, Rule 13, Rules of Court.

[71]Sec. 14, Rule 13, Rules of Court; Tan v. Lantin, *supra*.

continuance or removal of a preliminary attachment or injunction — is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof.[72]

In case of appeal, the Court of Appeals has the power to deal with and resolve any incident in connection with the action subject of the appeal, *e.g*., cancellation of the notice of *lis pendens*, even before final judgment.[73]

[72]Magdalena Homeowners Association, Inc. v. Court of Appeals, *supra*.
[73]*Ibid*.

## CHAPTER VI

## REGISTRATION OF JUDGMENTS; ORDERS; PARTITIONS

**SEC. 78.** ***Judgment for Plaintiff.*** **— Whenever in any action to recover possession or ownership of real estate or any interest therein affecting registered land judgment is entered for the plaintiff, such judgment shall be entitled to registration on presentation of a certificate of the entry thereof from the clerk of court where the action is pending to the Register of Deeds for the province or city where the land lies, who shall enter a memorandum upon the certificate of title of the land to which such judgment relates. If the judgment does not apply to all the land described in the certificate of title, the certificate of the clerk of the court where the action is pending and the memorandum entered by the Register of Deeds shall contain a description of the land affected by the judgment.**

**SEC. 79.** ***Judgment adjudicating ownership.*** **— When in any action to recover the ownership of real estate or an interest therein execution has been issued in favor of the plaintiff, the latter shall be entitled to the entry of a new certificate of title and to the cancellation of the original certificate and owner's duplicate of the former registered owner. If the registered owner neglects or refuses within a reasonable time after request of the plaintiff to produce his duplicate certificate in order that the same may be cancelled, the court shall, on application and after notice, enter an order to the owner to produce his certificate at the time and place designated, and may enforce the order by suitable process.**

**SEC. 80.** ***Execution of deed by virtue of judgment.*** **— Every court rendering judgment in favor of the plaintiff affecting registered land shall, upon petition of said plaintiff, order any parties before it to execute for registration any deed or instrument necessary to give effect to the judgment, and shall require the registered owner to deliver his duplicate certificate to the plaintiff or to the Register of Deeds to be cancelled or to have a memorandum annotated upon**

**it. In case the person required to execute any deed or other instrument necessary to give effect to the judgment is absent from the Philippines, or is a minor, or insane, or for any reason not amenable to the process of the court rendering the judgment, said court may appoint a suitable person as trustee to execute such instrument which, when executed, shall be entitled to registration.**

### 01. Registration of judgment.

A judgment for the plaintiff in an action for recovery of possession or ownership affecting registered land shall be entitled to registration upon presentation of a certificate of entry from the clerk of court to the Register of Deeds who shall enter a memorandum upon the certificate of title covering the land subject of the action. If only a portion of the land described in the certificate of title is affected by the judgment, the certificate of the clerk of court shall contain a description of the portion involved. Registration is important in order to apprise third persons of the status of the land affected by the judgment.

When the Register of Deeds is requested to enter a new certificate of title in pursuance of a judgment, and the owner's duplicate certificate of title is not presented for cancellation, the Register of Deeds shall not enter a new certificate but the person claiming to be entitled thereto may apply by petition to the court which, after hearing, may order the registered owner or any person withholding the duplicate to surrender the same, and direct the entry of a new certificate of title upon such surrender.[1]

### 02. Registration of judgment adjudicating ownership.

When in any action for recovery of possession judgment has been entered for the plaintiff, the judgment shall in like manner be registered and the adjudicatee shall be entitled to the issuance of a new certificate of title upon cancellation of the title of the preceding owner. If the owner neglects or refuses to produce his owner's duplicate certificate for cancellation by the Register of Deeds, the court shall, on application and notice, enter an order to the owner to produce said owner's duplicate at the time and place designated and may enforce the order by suitable process.

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[1]Selph v. Aguilar, GR No. L-13465, March 29, 1960, 107 Phil. 443.

**03. Execution of deed pursuant to a judgment.**

In all cases where judgment is rendered by the court affecting registered property or any interest therein, the court shall direct the parties to execute the requisite deed or instrument as may be necessary to give effect to the judgment for registration, and when required by the terms the judgment, direct the registered owner to surrender his owner's duplicate certificate of title for cancellation or entry of the appropriate memorandum thereon. In the event the person required to execute the deed or instrument necessary to give effect to the judgment is absent from the Philippines, or is a minor, or insane, or is not amenable to the process of the court, the court may appoint a suitable person as trustee to execute such deed or instrument which shall be entitled to registration.

The recording of the proper deed or instrument is designed to prevent frauds and permit the public to act with the presumption that the recorded deed or instrument exists and is genuine.

**SEC. 81. *Judgment of partition.* — In proceedings for partition of registered land, after the entry of the final judgment of partition, a copy of such final judgment, certified by the clerk of the court rendering the same, shall be filed and registered; thereupon, if the land is set-off to the owners in severalty, each owner shall be entitled to have his certificate entered showing the share set off to him in severalty, and to receive an owner's duplicate thereof.**

**If the land is ordered by the court to be sold, the purchaser or his assigns shall be entitled to certificate of title entered in his or their favor upon presenting a certified copy of the judgment confirming the sale.**

**In case the land is ordered by the court to be assigned to one of the parties upon payment to the others of the sum ordered by the court, the party to whom the land is thus assigned shall be entitled to have a certificate of title entered in his favor upon presenting a certified copy of the judgment: *Provided, however*, That any new certificate entered in pursuance of partition proceedings, whether by way of set-off or of assignment or of sale, shall contain a reference memorandum to the final judgment of partition, and shall be conclusive as to the title to the same extent and against the same persons as such judgment is made conclusive by the laws applicable thereto: *And provided, further*, That any person holding such certificate of title or a transfer thereof**

**shall have the right to petition the court at any time to cancel the memorandum relating to such judgment or order and the court, after notice and hearing, may grant the petition. Such certificate shall thereafter be conclusive in the same manner and to the same extent as other certificates of title.**

### 01. Partition, generally.

Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong.[2] Both real and personal properties may be the object of partition.[3] Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.[4] Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction.[5]

Every co-heir has a right to demand the division of the estate unless the testator should have expressly forbidden its partition, in which case the period of indivision shall not exceed twenty years as provided in Article 494 of the Civil Code. This power of the testator to prohibit division applies to the legitime.[6] In the partition of the estate, equality shall be observed as far as possible, dividing the property into lots, or assigning to each of the co-heirs things of the same nature, quality and kind.[7] Should a thing be indivisible, or would be much impaired by its being divided, it may be adjudicated to one of the heirs, provided he shall pay the others the excess in cash. Nevertheless, if any of the heirs should demand that the thing be sold at public auction and that strangers be allowed to bid, this must be done.[8]

The titles of acquisition or ownership of each property shall be delivered to the co-heir to whom said property has been adjudicated.[9] When the title comprises two or more pieces of land which have been

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[2]Art. 1079, Civil Code.
[3]Del Val v. Del Val, GR No. 9374, Feb. 16, 1915, 29 Phil. 534.
[4]Art. 1078, Civil Code.
[5]Art. 1082, *ibid.*
[6]Art. 1083, *ibid.*
[7]Art. 1085, *ibid.*
[8]Art. 1086, *ibid.*
[9]Art. 1089, *ibid.*

assigned to two or more co-heirs, or when it covers one piece of land which has been divided between two or more co-heirs, the title shall be delivered to the one having the largest interest, and authentic copies of the title shall be furnished to the other co-heirs at the expense of the estate. If the interest of each co-heir should be the same, the oldest shall have the title.[10]

An action for partition, which is typically brought by a person claiming to be the owner of a specified property against a defendant or defendants whom the plaintiff recognizes to be his co-owners, may readily be seen to simultaneously present two principal issues. *Firstly*, there is the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned. *Secondly*, assuming that the plaintiff successfully hurdles the first issue, there is the secondary issue of how the property is to be divided between the plaintiff and the defendants, that is, what portion should go to which co-owner.

After a judgment is rendered in an action for partition declaring that the property in question shall be divided among the parties thereto, the procedure provided by law thereafter is that, if the parties can agree among themselves, then the partition can be made by them through the proper instruments of conveyance which shall be submitted for approval of the court, and such partition with the court order confirming the same shall be recorded in the office of the proper Registry of Deeds. But, if the parties are unable to agree upon the partition, the court shall by order appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court in such order shall direct.[11] Partition may be judicial or extrajudicial.

### (1) Judicial partition

An action for partition of real property, as the name itself clearly suggests, is a judicial controversy between persons who, being co-owners or co-parceners thereof, seek to secure a division or partition among them of the common property, giving to each one the part corresponding to him.[12]

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[10]Art. 1090, *ibid*.
[11]De Mesa v. Court of Appeals, GR No. 109387, April 25, 1994, 231 SCRA 773.
[12]Reyes v. Cordero, GR No. L-14242, Sept. 20, 1920, 46 Phil. 658.

A person having the right to compel the partition of real estate may do so by setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property. If after the trial the court finds that the plaintiff has the right thereto, it shall order the partition of the real estate among all the parties in interest.

Thereupon the parties may, if they are able to agree, make the partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties, and such partition, together with the order of the court confirming the same, shall be recorded in the Registry of Deeds of the place in which the property is situated.[13]

If actual partition of property is made, the judgment shall state definitely, by metes and bounds and adequate description, the particular portion of the real estate assigned to each party, and the effect of the judgment shall be to vest in each party to the action in severalty the portion of the real estate assigned to him. A certified copy of the judgment shall be recorded in the Registry of Deeds of the place in which the real estate is situated, and the expenses of such recording shall be taxed as part of the costs of the action.[14]

Section 81 provides that after the entry of the final judgment of partition, a copy of such final judgment, certified by the clerk of court, shall be filed and registered with the proper Registry of Deeds. Thereupon, if the land is set off to the owners in severalty, each owner shall be entitled to have his certificate entered showing the share set-off to him in severalty, and to receive an owner's duplicate thereof.

### (2) Extrajudicial partition between heirs

If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the Register of Deeds, and should they disagree, they may do so in an ordinary action for partition. If there is only one

[13]Secs. 1 and 2, Rule 69, Rules of Court.
[14]Sec. 11, *id.*

heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the Register of Deeds. The parties to an extra-judicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the Register of Deeds, a bond with the said Register of Deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under Section 4 of Rule 74. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent. The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided by the rules; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.[15]

**(3) Oral partition**

It is of general knowledge that in the provinces, specially in the barrios, when a person dies leaving small parcels of land not included in the Torrens system of registration, either through ignorance of the law or in order to avoid expenses in the way of legal services, notarial fees, and fees of registration, the heirs merely come together, make a list of the properties included in the estate, pay off small debts and sums advanced by some of the heirs, specially for expenses incurred during the last illness of the decedent and for his funeral, and then proceed to assign to each one his share of the estate, even taking into account the last instructions and wishes of the decedent. So far, this practice has been found to be not only convenient and inexpensive, but even advisable, and is accepted by the people, and we find no good reason for disturbing said practice. Now, when valuable properties, specially those covered by certificates of title, are involved in the partition, perhaps strict compliance with the law may be advisable, even necessary.[16]

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[15]Sec. 1, Rule 74, Rules of Court.

[16]Barcelona v. Barcelona, GR No. L-9014, Oct. 31, 1956, 100 Phil. 251.

### (4) Statute of frauds inapplicable

Partition among heirs or renunciation of an inheritance by some of them is not exactly a conveyance of real property for the reason that it does not involve transfer of property from one to the other, but rather a confirmation or ratification of title or right of property by the heir renouncing in favor of another heir accepting and receiving the inheritance. Hence, it is not covered by the Statute of Frauds. Furthermore, the Statute of Frauds is applicable to executory and not to completed or executed contracts, and that performance of the contract takes it out of the operation of the Statute of Frauds; and on the grounds of equity, where no rights of creditors are involved, it is competent for the heirs of an estate to enter into an oral agreement for distribution of the estate among themselves.[17] On general principle, independent and in spite of the Statute of Frauds, courts of equity have enforced oral partition when it has been completely or partly performed.[18]

## 02. Action for partition imprescriptible; exception.

Article 494 of the Civil Code states that "No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned." The article implies that an action to demand partition is imprescriptible or cannot be barred by laches. Co-ownership is a form of trust and every co-owner is a trustee for the others. Thus, as a general rule, no one of them may acquire exclusive ownership of the common property through prescription, for possession by one trustee alone is not deemed adverse to the rest.[19]

The imprescriptibility of the action cannot, however, be invoked when one of the co-owners has possessed the property as exclusive owner and for a period sufficient to acquire it by prescription.[20] In *Gerona* v. *De Guzman*,[21] it was held that although, as a general rule, an action for partition among co-heirs does not prescribe, this is true only as long as the defendants do not hold the property in question under an adverse title. The statute of limitations operates, as in other

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[17]*Ibid.*
[18]Hernandez v. Andal, GR No. L-273, March 29, 1947, 78 Phil. 196.
[19]Castrillo v. Court of Appeals, GR No. L-18046, March 31, 1964, 10 SCRA 549.
[20]Salvador v. Court of Appeals, GR No. 109910, April 5, 1995, 243 SCRA 239.
[21]GR No. L-19060, May 20, 1964, 11 SCRA 153.

cases, from the moment such adverse title is asserted by the possessor of the property. Thus, when respondents, for instance, executed a deed of extrajudicial settlement stating therein that they are the sole heirs of the deceased, and secured new transfer certificates of title in their own name, they thereby excluded the petitioners from the estate of the deceased, and, consequently, set up a title adverse to them.

**03. Parties.**

Section 1, Rule 69 of the Rules of Court provides that in an action for partition, all persons interested in the property shall be joined as defendants. Thus, all the co-heirs and persons having an interest in the property are indispensable parties; as such, an action for partition will not lie without the joinder of the said parties. The mere fact that an heir or interested party has repudiated the co-ownership does not deprive the trial court of jurisdiction to take cognizance of the action for partition, for, in a complaint for partition, the plaintiff seeks, first, a declaration that he is a co-owner of the subject property; and, second, the conveyance of his lawful shares. A party being entitled to a share in usufruct is an indispensable party.[22]

**04. Stages in partition.**

As the Court ruled in *De Mesa* v. *Court of Appeals*:[23]

> "There are two stages involved in the special civil action of judicial partition and accounting under Rule 69 of the Rules of Court.
>
> The first stage of an action for judicial partition and/or accounting is concerned with the determination of whether or not a co-ownership in fact exists and a partition is proper, that is, it is not otherwise legally proscribed and may be made by voluntary agreement of all the parties interested in the property. This phase may end in a declaration that plaintiff is not entitled to the desired partition either because a co-ownership does not exist or a partition is legally prohibited. It may also end, on the

[22]Sepulveda v. Pelaez, GR No. 152195, Jan. 31, 2005, 450 SCRA 302.
[23]*Supra.*

other hand, with an adjudgment that a co-ownership does in truth exist, that partition is proper in the premises, and that an accounting of rents and profits received by the defendant from the real estate in question is in order. In the latter case, 'the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties.' In either case, whether the action is dismissed or partition and/or accounting is decreed, the order is a final one and may be appealed by any party aggrieved thereby.

The second stage commences when the parties are unable to agree upon the partition ordered by the court. In that event, partition shall be effected for the parties by the court with the assistance of not more than three (3) commissioners. This second phase may also deal with the rendition of the accounting itself and its approval by the Court after the parties have been accorded the opportunity to be heard thereon, and an award for the recovery by the party or parties thereto entitled of their just shares in the rents and profits of the real estate in question. Such an order is, to be sure, also final and appealable."

**05. Proof of partition.**

Partition may be inferred from circumstances sufficiently strong to support the presumption. Thus, after a long possession in severalty, a deed of partition may be presumed. It has been held that recitals in deeds, possession and occupation of land, improvements made thereon for a long series of years, and acquiescence for 60 years, furnish sufficient evidence that there was an actual partition of land either by deed or by proceedings in the probate court, which had been lost and were not recorded. And where a tract of land held in common has been subdivided into lots, and one of the lots has long been known and called by the name of one of the tenants in common, and there is no evidence of any subsequent claim of a tenancy in common, it may fairly be inferred that there has been a partition and that such lot was set-off to him whose name it bears.[24]

[24]Maglucot-aw v. Maglucot, GR No. 132518, March 28, 2000, 329 SCRA 78.

**06. Finality of judgment; execution.**

Jurisprudentially entrenched is the rule that a judgment order-ing partition with damages is final and duly appealable, notwithstanding the fact that further proceedings will still have to take place in the trial court. The execution thereof thus becomes a matter of right on the part of the plaintiffs, and is a mandatory and ministerial duty on the part of the court. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the judgment debtor need not be given advance notice of the application for execution nor be afforded prior hearings thereon. Failure to serve a copy of the motion for execution is not a fatal defect. In fact, there is no necessity for such service.[25]

**07. Purpose of registration.**

In *Maglucot-aw* v. *Maglucot*,[26] respondents contended that unless partition is shown in the title of the subject property, there can be no valid partition, or that the annotation in the title is the sole evidence of partition. The contention was rejected by the Court, holding that the purpose of registration is to notify and protect the interests of strangers to a given transaction, who may be ignorant thereof, but the non-registration of the deed evidencing such transaction does not relieve the parties thereto of their obligations thereunder. As originally conceived, registration is merely a species of notice. The act of registering a document is never necessary in order to give it legal effect as between the parties. Requirements for the recording of the instruments are designed to prevent frauds and to permit and require the public to act with the presumption that recorded instruments exist and are genuine.

**SEC. 82. *Registration of prior registered mortgage or lease on partitioned property.* — If a certified copy of a final judgment or decree of partition is presented and it appears that a mortgage or lease affecting a specific portion or an undivided share of the premises had previously been registered, the Register of Deeds shall carry over such encumbrance on the certificate of title that may be issued.**

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[25]De Mesa v. Court of Appeals, *supra*.
[26]*Supra*.

**01. Partition of land subject of mortgage.**

When a certified copy of the final judgment or decree of partition is presented for registration and it appears that a mortgage or lease affecting a specific portion or an undivided share of the property had been previously registered, the Register of Deeds shall carry over and annotate such encumbrance on the certificate of title that may be issued, with a description of the land set-off in severalty on which such mortgage or lease remains in force.

**SEC. 83. *Notice of insolvency.* — Whenever proceeding in bankruptcy or insolvency, or analogous proceedings, are instituted against a debtor who owns registered land, it shall be the duty of the officer serving the notice of the institution of such proceedings on the debtor to file a copy thereof with the office of the Register of Deeds for the province or city where the land of the debtor lies. The assignee or trustee appointed by the court in such proceedings shall be entitled to the entry of a new certificate of the registered land of the debtor or bankrupt, upon presenting and filing a certified copy of the assignment in insolvency or order or adjudication in bankruptcy with the insolvent's or bankrupt's duplicate certificate of title; but the new certificate shall state that it is entered to him as assignee in insolvency or trustee in bankruptcy or other proceedings, as the case may be.**

**01. Insolvency proceedings *in rem.***

Insolvency proceedings and settlement of a decedent's estate are both proceedings *in rem* which are binding against the whole world. All persons having interest in the subject matter involved, whether they were notified or not, are equally bound. Consequently, a liquidation of similar import or "other equivalent general liquidation" must also necessarily be a proceeding *in rem* so that all interested persons whether known to the parties or not may be bound by such proceeding.[27]

Where the action filed by the private respondent is not one which can be considered as "equivalent general liquidation" having the same import as an insolvency or settlement of the decedent's

[27]Philippine Savings Bank v. Lantin, GR No. L-33929, Sept. 2, 1983, 124 SCRA 476.

estate proceeding, the well-established principle must be applied that a purchaser in good faith and for value takes registered land free from liens and encumbrances other than statutory liens and those recorded in the certificate of title.[28]

**02. Preference of credits not limited to insolvent debtors.**

Article 2242 of the New Civil Code enumerates the claims, mortgages and liens that constitute an encumbrance on specific immovable property. Article 2249 of the same Code provides that "if there are two or more credits with respect to the same specific real property or real rights, they shall be satisfied pro-rata, after the payment of the taxes and assessments upon the immovable property or real rights." Note must be taken of the fact that Article 2242 of the new Civil Code enumerating the preferred claims, mortgages and liens on immovables specifically requires that — unlike the unpaid price of real property sold — mortgage credits, in order to be given preference, should be recorded in the Registry of Property. The law, however, does not make any distinction between registered and unregistered vendor's lien, which shows that any lien of that kind enjoys the preferred credit status.

The full application of Articles 2249 and 2242 demands that there must be first some proceeding where the claims of all the preferred creditors may be bindingly adjudicated such as insolvency, the settlement of a decedent's estate under the Rules of Court, or other liquidation proceedings of similar import.

There is nothing in the Civil Code to show that the articles therein on concurrence and preference of credits are applicable only to the insolvent debtor. If that portion of the Code were interpreted as intended only for insolvency cases, then other creditor-debtor relationships where there is concurrence of credits would be left without any rule to govern them, and it would render purposeless the special laws on insolvency.[29]

**03. Notice of insolvency; powers of assignee.**

Section 83 provides that whenever proceedings in bankruptcy or insolvency, or analogous proceedings, are instituted against a

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[28]Philippine Savings Bank v. Lantin, *supra*.
[29]De Barreto v. Villanueva, GR No. L-14938, Jan. 28, 1961.

debtor who owns registered land, it shall be the duty of the officer serving the notice of the institution of such proceedings to file a copy thereof with the office of the Register of Deeds for the province or city where the land of the debtor lies. The assignee or trustee appointed by the court shall be entitled to the entry of a new certificate of the registered land of the debtor or bankrupt, upon presenting and filing a certified copy of the assignment in insolvency or order or adjudication in bankruptcy, together with the insolvent's or bankrupt's duplicate certificate of title.

Under the Insolvency Law (Act No. 1956), creditors holding security shall vote for the election of an assignee. But if they fail to elect an assignee, or if a vacancy occurs, the court shall appoint an assignee and fix the amount of his bond.[30]

As soon as an assignee is elected or appointed and qualified, the clerk of court shall, by a proper instrument, assign and convey to the assignee all the real and personal property, estate, and effects of the debtor, and such assignment shall relate back to the commencement of the proceedings in insolvency.[31] The assignee shall, within one month after the making of the assignment to him, cause the same to be recorded in every province or city where any real estate owned by the debtor is situated, and the record of such assignment, or a duly certified copy thereof, shall be conclusive evidence thereof in all courts. The assignee shall, within one month after the making of the assignment to him, cause the same to be recorded in every province or city where any real estate owned by the debtor is situated, and the record of such assignment, or a duly certified copy thereof, shall be conclusive evidence thereof in all courts.[32]

Among the powers of the assignee is to sue and recover all the estate, assets, debts, and claims, belonging to or due to such debtor; and to take into his possession all the estate of such debtor except property exempt by law from execution, whether attached or delivered to him, or afterwards discovered.[33]

**SEC. 84. *Judgment or order vacating insolvency proceedings.* — Whenever any of the proceedings of the character named in the preceding section against a registered owner, of which notice has**

[30]Secs. 30 and 31, Act No. 1956.
[31]Sec. 32, *ibid.*
[32]Sec. 34, *ibid.*
[33]Sec. 36, *ibid.*

**been registered, is vacated by judgment, a certified copy of the judgment or order may be registered. Where a new certificate has been entered in the name of the assignee or trustee, such certificate shall be surrendered for cancellation and forthwith the debtor shall be entitled to the entry of a new certificate to him.**

### 01. Judgment or order vacating insolvency proceedings.

Whenever insolvency or analogous proceedings against a registered owner, of which notice has been registered, is vacated by judgment, a certified copy of the judgment or order may be registered. Where a new certificate has been entered in the name of the assignee or trustee, such certificate shall be surrendered for cancellation and forthwith the debtor shall be entitled to the entry of a new certificate to him.

### 02. Recording of judgment; entry of new certificate.

This section provides that where any proceeding in bankruptcy or insolvency, or analogous, is vacated by a judgment or order of the court, a certified copy thereof may be registered in the proper registry. Where a certificate had been entered in the name of the assignee or trustee, such certificate shall be surrendered for cancellation and forthwith the debtor shall be entitled to the entry of a new certificate to him.

**SEC. 85. *Land taken by eminent domain.* — Whenever any registered land, or interest therein, is expropriated or taken by eminent domain, the National Government, province, city, municipality, or any other agency or instrumentality exercising such right shall file for registration in the proper Registry a certified copy of the judgment which shall state definitely, by an adequate description, the particular property or interest expropriated, the number of the certificate of title, and the nature of the public use. A memorandum of the right or interest taken shall be made on each certificate of title by the Register of Deeds, and where the fee simple title is taken, a new certificate shall be issued in favor of the National Government, province, city, municipality, or any other agency or instrumentality exercising such right for the land so taken. The legal expenses incident to the memorandum of registration or issuances incident to the memorandum of registration or issuance of a new certificate shall be for the account of the authority taking the land or interest therein.**

**01. Eminent domain, generally.**

The right of eminent domain is usually understood to be an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose. Fundamental to the independent existence of a State, it requires no recognition by the Constitution, whose provisions are taken as being merely confirmatory of its presence and as being regulatory, at most, in the due exercise of the power. In the hands of the legislature, the power is inherent, its scope matching that of taxation, even that of police power itself, in many respects. It reaches to every form of property the State needs for public use and, as an old case so puts it, all separate interests of individuals in property are held under a tacit agreement or implied reservation vesting upon the sovereign the right to resume the possession of the property whenever the public interest so requires it.

The ubiquitous character of eminent domain is manifest in the nature of the expropriation proceedings. Expropriation proceedings are not adversarial in the conventional sense for the condemning authority is not required to assert any conflicting interest in the property. Thus, by filing the action, the condemnor in effect merely serves notice that it is taking title and possession of the property, and the defendant asserts title or interest in the property, not to prove a right to possession, but to prove a right to compensation for the taking.[34]

Eminent domain is an inherent power of the State that enables it to forcibly acquire private lands intended for public use upon payment of just compensation to the owner. Obviously, there is no need to expropriate where the owner is willing to sell under terms also acceptable to the purchaser, in which case an ordinary deed of sale may be agreed upon by the parties. It is only where the owner is unwilling to sell, or cannot accept the price or other conditions offered by the vendee, that the power of eminent domain will come into play to assert the paramount authority of the State over the interests of the property owner. Private rights must then yield to the irresistible demands of the public interest on the time-honored justification, as in the case of the police power, that the welfare of the people is the supreme law. But for all its primacy and urgency, the power of

[34]Republic v. Court of Appeals and Santos, GR No. 146587, July 2, 2002, 383 SCRA 611.

expropriation is by no means absolute (as indeed no power is absolute). The limitation is found in the constitutional injunction that "private property shall not be taken for public use without just compensation" and in the abundant jurisprudence that has evolved from the interpretation of this principle. Basically, the requirements for a proper exercise of the power are: (1) public use and (2) just compensation.[35]

Local government units may exercise the power of eminent domain, subject to the limitations embodied in RA No. 7160 (Local Government Code) and RA No. 7279 (Urban Development Housing Act of 1992). The expropriation must be through an ordinance and not a mere resolution of the lawmaking body. Expropriation has no binding legal effect unless a formal expropriation proceeding has been instituted. Thus, a mere resolution authorizing expropriation cannot partake of a subsequent event so as to suspend a writ of execution in an ejectment case.[36]

### (1) Constitutional provisions

The power of eminent domain is inseparable from sovereignty being essential to the existence of the State and inherent in government even in its most primitive forms.

Section 10, Article III (Bill of Rights) states that private property shall not be taken for public use without just compensation.

Section 18, Article XII (National Economy and Patrimony) provides that the State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership, utilities and other private enterprises to be operated by the government.

The provisions on social justice and agrarian reforms which allow the exercise of police power together with the power of eminent domain in the implementation of constitutional objectives are even more far reaching insofar as taking of private property is concerned. Thus, Section 4, Article XIII (Agrarian and Natural Resources Reform) states that the State shall, by law, undertake am agrarian reform program founded on the right of farmers and regular

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[35]Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, GR No. 78742, July 14, 1989, 175 SCRA 343.

[36]Antonio v. Geronimo, GR No. 124779, Nov. 29, 2005.

farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Section 9, Article XIII (Urban Land Reform and Housing) provides that the State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas.

The equitable diffusion of property ownership in the promotion of social justice implies the exercise, whenever necessary, of the power to expropriate private property. There can be no meaningful agrarian reform program unless the power to expropriate is utilized.[37] The expropriation of private property for the purpose of socialized housing for the marginalized sector is in furtherance of the social justice provision under Section 1, Article XIII of the Constitution.[38] The enactment of the principle of social justice falls within the parameter of public use.[39]

### (2) Requirement of public use

In determining "public use," two approaches are utilized — the first is public employment or the actual use by the public, and the second is public advantage or benefit. It is also useful to view the matter as being subject to constant growth, which is to say that as society advances, its demands upon the individual so increases, and each demand is a new use to which the resources of the individual may be devoted.[40]

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[37]Ardona v. Reyes, GR No. L-60549, Oct. 26, 1983, 125 SCRA 220.

[38]Reyes v. National Housing Authority, GR No. 147511, Jan. 20, 2003, 395 SCRA 494.

[39]Antonio v. Geronimo, GR No. 124779, Nov. 29, 2005.

[40]Republic v. Court of Appeals and Santos, *supra*.

Chief Justice Fernando has aptly summarized the statutory and judicial trend as follows:

> "The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not any more. As long as the purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be subdivided into small lots for resale at cost to individuals. The other is in the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use."[41]

Justice Gutierrez, in *Ardona* v. *Reyes*,[42] says that "public use" is not limited to traditional uses, such that the expropriation of 282 hectares of land already identified as fit for the establishment of a resort complex to promote tourism is a valid exercise of eminent domain by the government.

> "The petitioners' contention that the promotion of tourism is not 'public use' because private concessioners would be allowed to maintain various facilities such as restaurants, hotels, stores, etc. inside the tourist complex is impressed with even less merit. Private bus firms, taxicab fleets, roadside restaurants, and other private businesses using public streets and highways do not diminish in the least bit the public character of expropriations for roads and streets. The lease of store spaces in underpasses of streets built on expropriated land does not make the taking for a private purpose. Airports and piers catering exclusively to private airlines and shipping companies are still for public use. The expropriation of

[41]Fernando, The Constitution of the Philippines, 2nd Ed., 523-524.
[42]*Supra.*

private land for slum clearance and urban development is for a public purpose even if the developed area is later sold to private homeowners, commercial firms, entertainment and service companies, and other private concerns."

The power to expropriate may not be objected to simply because of the claim that the properties subject of expropriation are within the coverage of "operation land transfer" under the land reform program. In *Ardona*, petitioners claimed that certificates of land transfer (CLTs) and emancipation patents have already been issued to them thereby making the lands expropriated within the coverage of the land reform area under PD No. 27, that the agrarian reform program occupies a higher level in the order of priorities than other State policies like those relating to the health and physical well-being of the people; and that property already taken for public use may not be taken for another public use. The Court rejected the contention, thus:

"We have considered the above arguments with scrupulous and thorough circumspection. For indeed any claim of rights under the social justice and land reform provisions of the Constitution deserves the most serious consideration. The petitioners, however, have failed to show that the area being developed is indeed a land reform area and that the affected persons have emancipation patents and certificates of land transfer.

The records show that the area being developed into a tourism complex consists of more than 808 hectares, almost all of which is not affected by the land reform program. The portion being expropriated is 282 hectares of hilly and unproductive land where even subsistence farming of crops other than rice and corn can hardly survive. And of the 282 disputed hectares, only 8,970 square meters — less than one hectare — is affected by Operation Land Transfer. Of the 40 defendants, only two have emancipation patents for the less than one hectare of land affected. And this 8,970 square meters parcel of land is not even within the sports complex proper but forms part of the 32 hectares resettlement area where the petitioners and others similarly situated would be provided with proper housing, subsidiary employment, community centers, schools, and essential services like water and electricity — which are non-existent in the expropriated

> lands. We see no need under the facts of this petition to rule on whether one public purpose is superior or inferior to another purpose or engage in a balancing of competing public interests. The petitioners have also failed to overcome the showing that the taking of the 8,970 square meters covered by Operation Land Transfer forms a necessary part of an inseparable transaction involving the development of the 808 hectares tourism complex. And certainly, the human settlement needs of the many beneficiaries of the 32 hectares resettlement area should prevail over the property rights of two of their compatriots.
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> The invocation of the contracts clause has no merit. The non-impairment clause has never been a barrier to the exercise of police power and likewise eminent domain. As stated in *Manigault* v. *Springs* (199 U.S. 473) 'parties by entering into contracts may not estop the legislature from enacting laws intended for the public good.'

The term "public use," not having been otherwise defined by the Constitution, must be considered in its general concept of meeting a public need or a public exigency. Thus declared the Court, through Justice Vitug, in *Manosca* v. *Court of Appeals*,[43] which upheld the expropriation of a small parcel of land as a national historical landmark because it was the birthplace of Felix Manalo, founder of the *Iglesia ni Cristo*. "The purpose in setting up the marker is essentially to recognize the distinctive contribution of the late Felix Manalo to the culture of the Philippines, rather than to commemorate his founding and leadership of the *Iglesia ni Cristo*. x x x The practical reality that greater benefit may be derived by members of the *Iglesia ni Cristo* than by most others could well be true but such a peculiar advantage still remains to be merely incidental and secondary in nature. Indeed, that only a few would actually benefit from the expropriation of property does not necessarily diminish the essence and character of public use."

The Court further explained that the guidelines in *Guido* v. *Rural Progress Administration*,[44] to wit: (a) the size of the land expropriated; (b) the large number of people benefited; and, (c) the extent of social and economic reform, were not meant to be preclu-

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[43]GR No. 106440, Jan. 29, 1996, 252 SCRA 412.
[44]GR No. L-2089, Oct. 31, 1949, 84 Phil. 847.

sive in nature and, most certainly, the power of eminent domain should not now be understood as being confined only to the expropriation of vast tracts of land and landed estates.[45] The concept of public use is no longer limited to traditional purposes. Here, as elsewhere, the idea that "public use" is strictly limited to clear cases of "use by the public" has been abandoned. The term "public use" has now been held to be synonymous with "public interest," "public benefit," "public welfare," and "public convenience."[46] Also, there must be genuine necessity for the taking.[46a]

No less than the 1987 Charter calls for agrarian reform, which is the reason why private agricultural lands are to be taken from their owners, subject to the prescribed maximum retention limits. The purposes specified in PD No. 27, Proc. No. 131 and RA No. 6657 are only an elaboration of the constitutional injunction that the State adopt the necessary measures "to encourage and undertake the just distribution of all agricultural lands to enable farmers who are landless to own directly or collectively the lands they till." The taking then of private landholdings for agrarian reform is obviously for public use.[47]

### (3) Payment of just compensation

As held in *Republic of the Philippines* v. *Castellvi*,[48] there is compensable taking when the following conditions concur: (1) the expropriator must enter a private property; (2) the entry must be for more than a momentary period; (3) the entry must be under warrant or color of legal authority; (4) the property must be devoted to public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by the Court that the measure is not the taker's gain but the owner's loss. The word *"just"* is used to intensify the meaning of the word *"compensation"* to convey the idea that the

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[45]Manosca v. Court of Appeals, *supra*.

[46]Reyes v. National Housing Authority, *supra*.

[46a]Masikip v. City of Pasig, GR No. 136349, Jan. 23, 2006.

[47]Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, *supra*.

[48]GR No. L-20620, Aug. 15, 1974, 58 SCRA 336.

equivalent to be rendered for the property to be taken shall be real, substantial, full, ample.[49]

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell it fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

Interests on the zonal value of the property is to be computed from the time petitioner instituted condemnation proceedings and "took" the property. This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum, should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. Article 1250 of the Civil Code, providing that, in case of extraordinary inflation or deflation, the value of the currency at the time of the establishment of the obligation shall be the basis for the payment when no agreement to the contrary is stipulated, has strict application only to contractual obligations. In other words, a contractual agreement is needed for the effects of extraordinary inflation to be taken into account to alter the value of the currency.[50]

### (4) Compensation in agrarian reform cases

The traditional medium for the payment of just compensation is money and no other. And so, conformably, has just compensation been paid in the past solely in that medium. However, under the

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[49]Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, *supra*.

[50]Republic v. Philippine National Bank, GR No. L-14158, April 12, 1961, 1 SCRA 957; Republic v. Castellvi, *supra*.

Comprehensive Agrarian Reform Program (CARP) of the government, the taking of private property does not deal with the traditional exercise of the power of eminent domain where only a specific property of relatively limited area is sought to be taken by the State. What is involved according to the Supreme Court in *Small Landowners of the Philippines, Inc.* v. *Secretary of Agrarian Reform*[51] is a *revolutionary* kind of expropriation. The expropriation affects all private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or of a small segment of the population but of the entire Filipino nation. Hence, Section 18 of RA No. 6657, otherwise known as the "Comprehensive Agrarian Reform Law of 1988," has provided the criteria for the payment of just compensation under the following modes, *i.e.*, cash payment, shares of stock, tax credits and LBP bonds. In light of the magnitude of the expenditure, the Court declared that the content and manner of the just compensation provided for "is not violative of the Constitution."

**(5) When to determine value of compensation**

It is now settled that to determine due compensation for lands appropriated by the Government, the basis should be the price or value at the time it was taken from the owner and appropriated by the Government. But when the taking of the property coincides with the commencement of the expropriation proceedings, or takes place subsequent to the filing of the complaint for eminent domain, the just compensation should be determined as of the date of the filing of the complaint.[52]

**02. Expropriated private land becomes property of public domain; registration.**

Private lands taken by the Government for public use under its own power of eminent domain become unquestionably part of the public domain. Nevertheless, Section 85 of PD No. 1529 authorizes the Register of Deeds to issue in the name of the national government new certificates of title covering such expropriated lands. Conse-

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[51]*Supra.*

[52]National Power Corporation v. Court of Appeals, June 22, 1984, 129 SCRA 665.

quently, lands registered under Act No. 496 or PD No. 1529 are not exclusively private or patrimonial lands. Lands of the public domain may also be registered pursuant to existing laws.[53]

When private land is expropriated for a particular public use, the same does not return to its former owner upon an abandonment of the particular use for which the land was expropriated. When land has been acquired for public use in fee simple, unconditionally, either by the exercise of the right of eminent domain or by purchase, the former owner retains no right in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner.[54]

**03. Recording of judgment.**

The judgment entered in expropriation proceedings shall state definitely, by an adequate description, the particular property or interest therein expropriated, and the nature of the public use or purpose for which it is expropriated. When real estate is expropriated, a certified copy of such judgment shall be recorded in the Registry of Deeds of the place in which the property is situated, and its effect shall be to vest in the plaintiff the title to the real estate so described for such public use or purpose.[55]

**SEC. 86. *Extrajudicial settlement of estate.* — When a deed of extrajudicial settlement has been duly registered, the Register of Deeds shall annotate on the proper title the two-year lien mentioned in Section 4 of Rule 74 of the Rules of Court. Upon the expiration of the two-year period and presentation of a verified petition by the registered heirs, devisees or legatees or any other party in interest that no claim or claims of any creditor, heir or other person exist, the Register of Deeds shall cancel the two-year lien noted on the title without the necessity of a court order. The verified petition shall be entered in the Primary Entry Book and a memorandum thereof made on the title.**

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[53]Chavez v. Public Estates Authority, GR No. 133250, July 9, 2002, 384 SCRA 152

[54]Fery v. Municipality of Cabanatuan, GR No. 17540, July 23, 1921, 42 Phil. 28.

[55]Sec. 13, Rule 67.

**No deed of extrajudicial settlement or affidavit of adjudication shall be registered unless the fact of extrajudicial settlement or adjudication is published once a week for three consecutive weeks in a newspaper of general circulation in the province and proof thereof is filed with the Register of Deeds. The proof may consist of the certification of the publisher, printer, his foreman or principal clerk, or of the editor, business or advertising manager of the newspaper concerned, or a copy of each week's issue of the newspaper wherein the publication appeared.**

**01. Extrajudicial settlement by agreement of the parties.**

If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under Section 4 of Rule 74. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in Section 2, Rule 74, but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.[56]

[56]Sec. 1, Rule 74.

The procedure outlined in Section 1, Rule 74 is an *ex-parte* proceeding. It cannot by any reason or logic be contended that such settlement or distribution would affect third persons who had no knowledge either of the death of the decedent or of the extrajudicial settlement or affidavit, specially as no mention of such effect is made either directly or by implication.[57]

An extrajudicial partition is valid as between the participants even if the requisites of Section 1, Rule 74 for extrajudicial partition are not followed, since said requisites are for purposes of binding creditors and non-participating heirs only. Should it be contended that said partition was attended with fraud, lesion or inadequacy of price, the remedy is to rescind or to annul the same in an action for that purpose. And in the meanwhile, the assigning heir cannot initiate a settlement proceedings, for until the deed of assignment is annulled or rescinded, it is deemed valid and effective against him, so that he is left without that "interest" in the estate required to petition for settlement proceedings.[58]

**02. Judicial administration not favored.**

When a person dies without leaving pending obligations to be paid, his heirs, whether of age or not, are not bound to submit the property to a judicial administration, which is always long and costly, or to apply for the appointment of an administrator by the court. It has been uniformly held that in such case the judicial administration and the appointment of an administrator are superfluous and unnecessary proceedings.[59] Where the estate has no debts, recourse may be had to an administration proceeding only if the heirs have good reasons for not resorting to an action for partition. Where partition is possible, either in or out of court, the estate should not be burdened with an administration proceeding without good and compelling reasons.[60]

**03. Validity of oral partition.**

Is Section 1 of Rule 74 *constitutive* and not merely *evidential* of partition? Section 1 contains no express or clear declaration that a

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[57]Sampilo v. Court of Appeals, GR No. L-10474, Feb. 28, 1958, 103 Phil. 70.
[58]Duran v. Duran, GR No. L-23372, June 14, 1967, 20 SCRA 379.
[59]Utulo v. Pasion, GR No. 45904, Sept. 30, 1938, 66 Phil. 302.
[60]Mercado v. Magtibay, GR No. L-6829, Dec. 29, 1954, 96 Phil. 383.

public instrument is to be constitutive of a contract of partition or an inherent element of its effectiveness as between the parties. The requirement that a partition be put in a public document and registered has for its purpose the protection of creditors and at the same time the protection of the heirs themselves against tardy claims. The object of registration is to serve as constructive notice, and this means notice to others. It follows that the intrinsic validity of partition not executed with the prescribed formalities does not come into play when there are no creditors or the rights of creditors are not affected. Where no rights of creditors are involved, it is competent for the heirs of an estate to enter into an agreement for distribution in a manner and upon a plan different from those provided by law.[61] Where partition is possible, either in or out of court, the estate should not be burdened with an administration proceeding without good and compelling reasons.[62]

**04. Prescriptive period to annul deed of extrajudicial settlement.**

Although, as a general rule, an action for partition among co-heirs does not prescribe, this is true only as long as the defendants do not hold the property in question under an adverse title. The statute of limitations operates, as in other cases, from the moment such adverse title is asserted by the possessor of the property. Thus, when respondents executed a deed of extrajudicial settlement stating therein that they are the sole heirs of the deceased, and secured new transfer certificates of title in their own name, they thereby excluded the petitioners from the estate of the deceased, and, consequently, set up a title adverse to them.[63]

Although, there are some decisions to the contrary,[64] it is already settled that an action for reconveyance of real property based upon a constructive or implied trust, resulting from fraud, may be barred by the statute of limitations.[65] Where petitioners seek to annul a

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[61]Hernandez v. Andal, GR No. L-273, March 29, 1947, 78 Phil. 196.

[62]Pereira v. Court of Appeals, GR No. 81147, June 20, 1989, 174 SCRA 154.

[63]Gerona v. De Guzman, GR No. L-19060, May 20, 1964, 11 SCRA 154.

[64]Jacinto v. Mendoza, GR No. L-12540, Feb. 28, 1959, 105 Phil. 260; Cuison v. Fernandez, GR No. L-11764, Jan. 31, 1959, 105 Phil. 135; Marabiles v. Quito, GR No. L-10408, Oct. 18, 1956, 100 Phil. 64; Sevilla v. De los Angeles, GR No. L-7745, Nov. 18, 1955, 97 Phil. 875.

[65]Candelaria v. Romero, GR No. L-12149, Sept. 30, 1960, 109 Phil. 500; Alzona v. Capunita, L-10220, February 28, 1962, 14 SCRA 450.

deed of extrajudicial settlement upon the ground of fraud, the action may be filed within four (4) years from the discovery of the fraud. Such discovery is deemed to have taken place when said instrument was filed with the Register of Deeds and new certificates of title were issued in the name of respondents exclusively, for the registration of the deed of extrajudicial settlement constitutes constructive notice to whole world.[66]

**05. Liability of distributees and estate.**

Section 4, Rule 74 of the Rules of Court provides that if it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made.[67]

Section 4, Rule 74 which bars distributees or heirs from objecting to an extrajudicial partition after the expiration of two years from such extrajudicial partition, is applicable only (1) to persons who have participated or taken part or had notice of the extrajudicial partition,

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[66]Diaz v. Gorricho, GR No. L-11229, March 29, 1958, 103 Phil. 261; Avecilla v. Yatco, L-11578, May 14, 1958, 103 Phil. 666; J.M. Tuason & Co., Inc. v. Magdangal, L-15539, January 30, 1962, 4 SCRA 84; Lopez v. Gonzaga, L-18788, January 31, 1964, 110 SCRA 167.

[67]Sec. 4, Rule 74.

and, in addition, (2) when the provisions of Section 1 of Rule 74 have been strictly complied with, *i.e.*, that all the persons or heirs of the decedent have taken part in the extrajudicial settlement or are represented by themselves or through guardians. There is nothing in said section which shows clearly a statute of limitations and a bar of action against third persons. It is only a bar against the parties who had taken part in the extrajudicial proceedings, but not against third persons not parties thereto.[68]

**SEC. 87. *Filing of letters of administration and will.* — Before the executor or administrator of the estate of a deceased owner of registered land may deal with the same, he shall file with the office of the Register of Deeds a certified copy of his letters of administration or if there is a will, a certified copy thereof and the order allowing the same, together with the letters testamentary or of administration with the will annexed, as the case may be, and shall produce the duplicate certificate of title, and thereupon the Register of Deeds shall enter upon the certificate a memorandum thereof, making reference to the letters and/or will by their file number, and the date of filing the same.**

**SEC. 88. *Dealings by administator subject to court approval.* — After a memorandum of the will, if any, and order allowing the same, and letters testamentary or letters of administration have been entered upon the certificate of title as hereinabove provided, the executor or administrator may alienate or encumber registered land belonging to the estate, or any interest therein, upon approval of the court obtained as provided by the Rules of Court.**

### 01. Letters testamentary and administration, to whom issued.

No person is competent to serve as executor or administrator who:

(a) Is a minor;

(b) Is not a resident of the Philippines; and

(c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of under-

[68]Sampilo v. Court of Appeals, *supra*.

standing or integrity, or by reason of conviction of an offense involving moral turpitude.[69]

When a will has been proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trust, and gives bond as required by the Rules.[70]

If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.[71]

**02. Letters of administration, when granted to any person.**

Letters of administration may be granted to any qualified applicant even though it appears that there are other competent persons having better right to the administration where such persons fail to appear when notified and claim the issuance of letters to themselves.[72]

**03. Appointment of special administrator.**

When there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance

[69]Sec. 1, Rule 78.
[70]Sec. 4, *Ibid*.
[71]Sec. 6, *Ibid*.
[72]Sec. 6, Rule 79.

or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed.[73]

**04. Filing of letters of administration and will.**

Before the executor or administrator of the estate of a deceased owner of registered land may deal with the same, he shall file with the office of the Register of Deeds a certified copy of his letters of administration or if there is a will, a certified copy thereof and the order allowing the same, together with the letters testamentary or of administration with the will annexed, as the case may be, and shall produce the duplicate certificate of title, and thereupon the Register of Deeds shall enter upon the certificate a memorandum thereof, making reference to the letters and/or will by their file number, and the date of filing the same.[74]

**05. Dealings by administrator subject to approval by the court.**

After a memorandum of the will, if any, and order allowing the same, and letters testamentary or letters of administration have been entered upon the certificate of title, the executor or administrator may alienate or encumber registered land belonging to the estate, or any interest therein, upon approval of the court as provided by the Rules of Court.[75] Sections 2 and 4, Rule 89, provide:

> "SEC. 2. *When court may authorize sale, mortgage, or other encumbrance of realty to pay debts and legacies through personalty not exhausted.* — When the personal estate of the deceased is not sufficient to pay the debts, expenses of administration, and legacies, or where the sale of such personal estate may injure the business or other interests of those interested in the estate, and where a testator has not otherwise made sufficient provision for the payment of such debts, expenses, and legacies, the court, on the application of the executor or administrator

[73]Sec. 1, Rule 80.
[74]Sec. 87, PD No. 1529.
[75]Sec. 88, *Ibid*.

and on written notice to the heirs, devisees, and legatees residing in the Philippines, may authorize the executor or administrator to sell, mortgage, or otherwise encumber so much as may be necessary of the real estate, in lieu of personal estate, for the purpose of paying such debts, expenses, and legacies, if it clearly appears that such sale, mortgage, or encumbrance would be beneficial to the persons interested; and if a part cannot be sold, mortgaged, or otherwise encumbered without injury to those interested in the remainder, the authority may be for the sale, mortgage, or other encumbrance of the whole of such real estate, or so much thereof as is necessary or beneficial under the circumstances."

"SEC. 4. *When court may authorize sale of estate as beneficial to interested persons. Disposal of proceeds.* — When it appears that the sale of the whole or a part of the real or personal estate, will be beneficial to the heirs, devisees, legatees, and other interested persons, the court may, upon application of the executor or administrator and on written notice to the heirs, devisees and legatees who are interested in the estate to be sold, authorize the executor or administrator to sell the whole or a part of said estate, although not necessary to pay debts, legacies, or expenses of administration; but such authority shall not be granted if inconsistent with the provisions of a will. In case of such sale, the proceeds shall be assigned to the persons entitled to the estate in the proper proportions."

The law requires that the sale, mortgage, or other encumbrance of real property should not only be beneficial to the heirs but that a written notice of the application as well as the time and place of hearing be served upon them. This is mandatory. Without such notice, the sale, mortgage or encumbrance is void.[76] The reason behind the requirement is that the heirs are the presumptive owners.[77]

A judicial administrator is appointed by the court. He is not only the representative of said court but also the heirs and creditors

[76]Estate of Gamboa v. Floranza, GR No. 4069, Dec. 5, 1908, 12 Phil. 191.

[77]Ortaliz v. Registrar of Deeds of Negros Occidental, GR No. 33106, Oct. 15, 1930, 55 Phil. 33.

of the estate. Before entering into his duties, he is required to file a bond. Hence, a judicial administrator can validly *lease* property of the estate without prior judicial approval.[78]

**SEC. 89. *Land devised to executor.* — When it appears by will, a certified copy of which with letters testamentary had already been filed as provided in this Decree, that registered land is devised to the executor to his own use, or upon some trust, the executor may have the land transferred to himself upon the register in like manner and subject to like terms and conditions and to like rights as in the case of a transfer pursuant to a deed filed in the office of the Register of Deeds.**

**SEC. 90. *When executor empowered by will to sell, etc.* — When the will of a deceased owner of registered lands, or an interest therein, empowers the executor to sell, convey, encumber, charge or otherwise deal with the land, a certified copy of the will and letters testamentary being filed as provided in this Decree, such executor may sell, convey, encumber, charge or otherwise deal with the land pursuant to the power in like manner as if he were registered owner, subject to the terms and conditions and limitations expressed in the will.**

**SEC. 91. *Transfer in anticipation of final distribution.* — Whenever the court having jurisdiction of the testate or intestate proceedings directs the executor or administrator to take over and transfer to the devisees or heirs, or any of them, in anticipation of final distribution a portion or the whole of the registered land to which they might be entitled on final distribution, upon the filing of a certified copy of such order in the office of the Register of Deeds, the executor or administrator may cause such transfer to be made upon the register in like manner as in case of a sale, and upon the presentation of the owner's duplicate certificate to the Register of Deeds, the devisees or heirs concerned shall be entitled to the issuance of the corresponding certificates of title.**

**SEC. 92. *Registration of final distribution of estate.* — A certified copy of the partition and distribution, together with the final judgment or order of the court approving the same or otherwise making final distribution, supported by evidence of**

[78]San Diego v. Nombre, GR No. L-19265, May 29, 1964, 120 Phil. 162.

**payment of estate tax or exemption therefrom, as the case may be, shall be filed with the Register of Deeds, and upon the presentation of the owner's duplicate certificate of title, new certificates of title shall be issued to the parties severally entitled thereto in accordance with the approved partition and distribution.**

**01. Sales, mortgages, and other encumbrances of property of decedent.**

When it appears that the sale of the whole or a part of the real or personal estate, will be beneficial to the heirs, devisees, legatees, and other interested persons, the court may, upon application of the executor or administrator and on written notice to the heirs, devisees and legatees who are interested in the estate to be sold, authorize the executor or administrator to sell the whole or a part of said estate, although not necessary to pay debts, legacies, or expenses of administration; but such authority shall not be granted if inconsistent with the provisions of a will. In case of such sale, the proceeds shall be assigned to the persons entitled to the estate in the proper proportions.[79]

The court may authorize an executor or administrator to sell, mortgage, or otherwise encumber real estate acquired by him on execution or foreclosure sale, under the same circumstances and under the same regulations as prescribed in Rule 89 for the sale, mortgage, or other encumbrance of other real estate.[80]

**02. Regulations for granting authority to sell, mortgage, or encumber estate.**

The court having jurisdiction of the estate of the deceased may authorize the executor or administrator to sell personal estate, or to sell, mortgage, or otherwise encumber real estate in cases provided by the rules and when it appears necessary or beneficial, under the following regulations:

(a) The executor or administrator shall file a written petition setting forth the debts due from the deceased, the expenses of administration, the legacies, the value of the personal estate, the situation of the estate to be sold, mortgaged, or otherwise encum-

[79]Sec. 4, Rule 89.
[80]Sec. 6, *Ibid*.

bered, and such other facts as show that the sale, mortgage, or other encumbrance is necessary or beneficial;

(b) The court shall thereupon fix a time and place for hearing such petition, and cause notice stating the nature of the petition, the reason for the same, and the time and place of hearing, to be given personally or by mail to the persons interested, and may cause such further notice to be given, by publication or otherwise, as it shall deem proper;

(c) If the court requires it, the executor or administrator shall give an additional bond, in such sum as the court directs, conditioned that such executor or administrator will account for the proceeds of the sale, mortgage, or other encumbrance;

(d) If the requirements in the preceding subdivisions of this section have been complied with, the court, by order stating such compliance, may authorize the executor or administrator to sell, mortgage, or otherwise encumber, in proper cases, such part of the estate as is deemed necessary, and in case of sale the court may authorize it to be public or private, as would be most beneficial to all parties concerned. The executor or administrator shall be furnished with a certified copy of such order;

(e) If the estate is to be sold at auction, the mode of giving notice of the time and place of the sale shall be governed by the provisions concerning notice of execution sale;

(f) There shall be recorded in the Registry of Deeds of the province in which the real estate thus sold, mortgaged, or otherwise encumbered is situated, a certified copy of the order of the court, together with the deed of the executor or administrator for such real estate, which shall be as valid as if the deed had been executed by the deceased in his lifetime.[81]

**03. Registration of final distribution of estate.**

A certified copy of the partition and distribution, together with the final judgment or order of the court approving the same or otherwise making final distribution, supported by evidence of payment of estate tax or exemption therefrom, as the case may be, shall be filed with the Register of Deeds, and upon the presentation

[81]Sec. 7, *Ibid*.

of the owner's duplicate certificate of title, new certificates of title shall be issued to the parties severally entitled thereto in accordance with the approved partition and distribution.[82]

Section 4, Rule 90 of the Rules of Court similarly provides that certified copies of final orders and judgments of the court relating to the real estate or the partition thereof shall be recorded in the Registry of Deeds of the province where the property is situated.

[82]Sec. 92, PD No. 1529.

## CHAPTER VII
## ASSURANCE FUND

**SEC. 93.** ***Contribution to Assurance Fund.*** **— Upon the entry of a certificate of title in the name of the registered owner, and also upon the original registration on the certificate of title of a building or other improvements on the land covered by said certificate, as well as upon the entry of a certificate pursuant to any subsequent transfer of registered land, there shall be paid to the Register of Deeds one-fourth of one per cent of the assessed value of the real estate on the basis of the last assessment for taxation purposes, as contribution to the Assurance Fund. Where the land involved has not yet been assessed for taxation, its value for purposes of this decree shall be determined by the sworn declaration of two disinterested persons to the effect that the value fixed by them is to their knowledge, a fair valuation.**

**Nothing in this section shall in any way preclude the court from increasing the valuation of the property should it appear during the hearing that the value stated is too small.**

**SEC. 94.** ***Custody and investment of fund.*** **— All money received by the Register of Deeds under the preceding section shall be paid to the National Treasurer. He shall keep this money in an Assurance Fund which may be invested in the manner and form authorized by law, and shall report annually to the Commissioner of the Budget the condition and income thereof.**

**The income of the Assurance Fund shall be added to the principal until said fund amounts to five hundred thousand pesos, in which event the excess income from investments as well as from the collections of such fund shall be paid into the National Treasury to the account of the Assurance Fund.**

**SEC. 95.** ***Action for compensation from funds.*** **— A person who, without negligence on his part, sustains loss or damage, or is deprived of land or any estate or interest therein in consequence**

**of the bringing of the land under the operation of the Torrens system of arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damages to be paid out of the Assurance Fund.**

**01. Claims against the Assurance Fund.**

Section 95 provides a remedy where a person who sustains loss or damage or is deprived of any estate or interest in land in consequence of the operation of the Torrens system of registration, without negligence on his part, may bring an action for the recovery of damages to be paid out of the Assurance Fund.

The requisites for recovery from the Assurance Fund are: (a) that a person sustains loss or damage, or is deprived of any estate or interest in land, (b) on account of the bringing of land under the operation of the Torrens system arising after original registration, (c) through fraud, error, omission, mistake or misdescription in a certificate of title or entry or memorandum in the registration book, (d) without negligence on his part, and (e) is barred or precluded from bringing an action for the recovery of such land or estate or interest therein.

The Supreme Court explained: "(P)ublic policy and public order demand not only that litigations must terminate at some definite point but also that titles over lands under the Torrens system should be given stability for on it greatly depends the stability of the country's economy. *Interest republicae ut sit finis litium*. However, this conclusiveness of judgment in the registration of lands is not absolute. It admits of exception. Public policy also dictates that those unjustly deprived of their rights over real property by reason of the operation of our registration laws be afforded remedies. Thus, the aggrieved party may file a suit for reconveyance of property or a personal action for recovery of damages against the party who registered his property through fraud, or in case of insolvency of the party who procured the registration through fraud, an action against the Treasurer of the Philippines for recovery of damages from the Assurance Fund.

Through these remedial proceedings, the law, while holding registered titles indefeasible, allows redress calculated to prevent one from enriching himself at the expense of other. Necessarily, without setting aside the decree of title, the issues raised in the previous registration case are relitigated, for purposes of reconveyance of said title or recovery of damages."

According to the principles underlying the Torrens system, it is a condition *sine qua non* that the person who brings an action for damages against the Assurance Fund be the registered owner, and, as to holders of transfer certificates of title, that they be innocent purchasers in good faith and for value. Moreover, there must be a showing that there is no negligence on the part of the party sustaining the loss or damage or deprivation of any land or interest therein by the operation of the Property Registration Decree.[1]

Thus, it has been held that where plaintiff is solely responsible for the plight in which it finds itself, the Director of Lands and the National Treasurer of the Philippines are exempt from any liability.[2] In another case,[3] the Court sustained the dismissal by the trial court of the third-party complaint against the Treasurer of the Philippines as custodian of the Assurance Fund after finding the third-party plaintiffs negligent in protecting their interest. The trial court recognized the principle that a person dealing with registered lands need not go beyond the certificate of title but nevertheless pointed out that there are circumstances in this case which should have put the third-party plaintiffs on guard and prompted them to investigate the property being mortgaged to them, which "is a very valuable property" whose value lies principally in its income potential.

In *Joaquin* v. *Madrid*,[4] the spouses Abundio Madrid and Rosalinda Yu, owners of a residential lot in Makati, and seeking a building construction loan from the then Rehabilitation Finance Corporation, entrusted their certificate of title Rosalinda's godmother, Carmencita de Jesus, who had offered to expedite the approval of the loan. Later, having obtained a loan from another source, the spouses decided to withdraw the application they had filed with the RFC and asked Carmencita to retrieve their title from the RFC and

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[1]La Urbana v. Bernardo, GR No. 41915, Jan. 8, 1936, 62 Phil. 790.

[2]Development Bank of the Philippines v. Bautista, GR No. L-21362, Nov. 29, 1968, 26 SCRA 366.

[3]Torres v. Court of Appeals, GR No. 63046, June 21, 1990, 186 SCRA 672.

[4]GR No. L-13551, Jan. 30, 1960, 106 Phil. 1060.

return it to them. Carmencita failed to do so, giving the excuse that the employee in charge of keeping the title was on leave. It turned out, however, that through the machinations of Carmencita, the property had been mortgaged to Constancio Joaquin (petitioner) in a deed signed by two persons posing as the owners and after said deed had been registered, the amount for which the mortgage was constituted was given to a person who passed herself off as Rosalinda Yu. Petitioner admitted that the spouses Madrid and Yu were in fact not the persons who had signed the deed of mortgage. In upholding the rights of the true owners (Madrid and Yu), the Court ruled that in order that the holder of a certificate for value issued by virtue of the registration of a voluntary instrument may be considered a holder in good faith for value, the instrument registered should not be forged. When the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property.

As to the claim of petitioner that he should be protected as against the registered owners because the latter can secure reparation from the Assurance Fund, the Court held that petitioner is not the innocent purchaser for value protected by law. "The innocent purchaser for value protected by law is one who purchases a titled land by virtue of a deed executed by the registered owner himself, not by a forged deed, as the law expressly states. Such is not the situation of the petitioner, who has been the victim of impostors pretending to be the registered owners but who are not said owners." The Court further ruled:

> "The giving of the certificate of title to Carmencita de Jesus is in itself no act of negligence on the part of respondents; it was perfectly a legitimate act. Delay in demanding the certificate of title is no act of neglect either, as respondents have not executed any deed or document authorizing Carmencita de Jesus to execute deeds for and on their behalf. It was petitioner who was negligent, as he did not take enough care to see to it that the persons who executed the deed of mortgage are the real registered owners of the property. The argument raised by petitioner's counsel that in case of negligence on the part of both the one who committed a breach of faith is responsible, is not applicable. Petitioner alone is guilty of neglect, so he must suffer from it."

**02. Recorded mortgage protected even if title is subsequently nullified.**

In *Blanco* v. *Esquierdo*,[5] defendant, claiming in her affidavit to be the widow and only heir of her deceased husband, obtained the cancellation of the latter's certificate of title and caused the issuance in her name of a transfer certificate of title for the entire land. Upon learning this, plaintiffs who were the brothers and sisters of the deceased, filed a complaint to annul defendant's title, alleging that the deceased died without any descendant or ascendant except plaintiffs themselves as heirs. Included as party defendant was the Development Bank of the Philippines to which the property was mortgaged by defendant. After trial, the lower court rendered judgment declaring the certificate of title of defendant invalid, and ordering its cancellation and the restoration of the original certificate of title "in the name of the Heirs of Maximiano Blanco, or the issuance of a new transfer certificate of title in the name of said heirs." The court, likewise, ordered the cancellation of the registration of the mortgage deed annotated on the back of the certificate of title. Arguing that it is an innocent mortgagee for valuable consideration, the bank appealed. The Supreme Court upheld the bank's contention, holding:

> "That the certificate of title issued in the name of Fructuosa Esquierdo is a nullity, the same having been secured thru fraud, is not here in question. The only question for determination is whether the defendant bank is entitled to the protection accorded to 'innocent purchasers for value', which phrase, according to Sec. 38 of the Land Registration Law (now Sec. 32 of the Property Registration Decree), includes an innocent mortgagee for value. The question, in our opinion, must be answered in the affirmative.
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> The trial court, in the decision complained of, made no finding that the defendant mortgagee bank was a party to the fraudulent transfer of the land to Fructuosa Esquierdo. Indeed, there is nothing alleged in the complaint which may implicate said defendant mortgagee in the fraud, or justify a finding that it acted in bad faith.

[5]GR No. L-15182, Dec. 29, 1960, 110 Phil. 494.

> On the other hand, the certificate of title was in the name of the mortgagor Fructuosa Esquierdo when the land was mortgaged by her to the defendant bank. Such being the case, the said defendant bank, as mortgagee, had the right to rely on what appeared in the certificate and, in the absence of anything to excite suspicion, was under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate. Being thus an innocent mortgagee for value, its right or lien upon the land mortgaged must be respected and protected, even if the mortgagor obtained her title thereto thru fraud. *The remedy of the persons prejudiced is to bring an action for damages against those causing the fraud, and if the latter are insolvent, an action against the Treasurer of the Philippines may be filed for the recovery of damages against the Assurance Fund*."

**SEC. 96. *Against whom action filed.* — If such action is brought to recover for loss or damage or for deprivation of land or of any estate or interest therein arising wholly through fraud, negligence, omission, mistake or misfeasance of the court personnel, Register of Deeds, his deputy, or other employees of the Registry in the performance of their respective duties, the action shall be brought against the Register of Deeds of the province or city where the land is situated and the National Treasurer as defendants. But if such action is brought to recover for loss or damage or for deprivation of land or of any interest therein arising through fraud, negligence, omission, mistake or misfeasance of person other than court personnel, the Register of Deeds, his deputy or other employees of the Registry, such action shall be brought against the Register of Deeds, the National Treasurer and other person or persons, as co-defendants. It shall be the duty of the Solicitor General in person or by representative to appear and to defend all such suits with the aid of the fiscal of the province or city where the land lies: *Provided, however,* That nothing in this Decree shall be construed to deprive the plaintiff of any right of action which he may have against any person for such loss or damage or deprivation without joining the National Treasurer as party defendant. In every action filed against the Assurance Fund, the court shall consider the report of the Commissioner of Land Registration.**

**01. Against whom claim for damages may be filed.**

Claims against the Assurance Fund are provided for in Section 102 of the Property Registration Decree, to wit:

1. If the action is brought for the recovery of loss or damage or for deprivation of land or of any estate or interest therein arising through fraud, negligence, omission, mistake or misfeasance of the court personnel, the Register of Deeds or other employees of the registry in the performance of their duties, the action shall be brought against the Register of Deeds of the province or city where the land lies and the National Treasurer as defendants.

2. If the action is brought for the recovery of loss or damage or for deprivation of land or of any estate or interest therein arising through fraud, negligence, omission, mistake or misfeasance of persons other than the court personnel, the Register of Deeds or other employees of the Registry, the action shall be brought against the Register of Deeds, the National Treasure and such other persons, as co-defendants.

The plaintiff must clearly allege the basis of the action, and specify the details which led to his loss, damage or deprivation, as well as the market value of the property subject of the action.

It shall be the duty of the Solicitor General to represent the government is all suits for recovery of damages against the Assurance Fund. The court shall consider the report of the LRA Administrator on the matter.

**(1) Where there is no deprivation of land or interest therein**

Illustrative of a case where there is no deprivation of land or interest therein, and hence no recovery is authorized against the Assurance Fund, is *Treasurer of the Philippines* v. *Court of Appeals*,[6] where a person, posing as the registered owner of the land in question, transferred the land to private respondents who obtained a transfer certificate of title thereto. Said title was subsequently nullified on the ground that the transfer was made by an impostor. In this case,

[6]GR No. L-42805, Aug. 31, 1987, 153 SCRA 359.

the supposed vendor had no title or interest in the land which he could transfer, and, consequently, the transferees could not have been deprived of land or any interest therein which can be compensated by the Assurance Fund. The Court, through Justice Cruz, stated:

> "The strongest obstacle to recovery thereunder is that the private respondents acquired no land or any interest therein as a result of the invalid sale made to them by the spurious Lawaan Lopez.
>
> The petition correctly points out that such sale conveyed no title or any interest at all to them for the simple reason that the supposed vendor had no title or interest to transfer. He was not the owner of the land. He had no right thereto he could convey. Manifestly, the deception imposed upon them by the impostor deprived the private respondents of the money they delivered to him as consideration for the sale. But there is no question that the subsequent cancellation of the sale did not deprive them of the land subject thereof, or of any interest therein, for they never acquired ownership over it in the first place."
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> Additionally, the Court observes that the private respondents were not exactly diligent in verifying the credentials of the impostor whom they had never met before he came to them with his bogus offer. The fact alone that he claimed to have lost his duplicate certificate of title in a fire, not to mention the amount of the consideration involved, would have put them on their guard and warned them to make a more thorough investigation of the seller's identity. They did not. x x x As this Court held in *La Urbana* v. *Bernardo* 'it is a condition sine qua non that the person who brings an action for damages against the Assurance Fund be the registered owner and as the holders of transfer certificates of title, that they be innocent purchasers in good faith and for value.' Being neither the registered owners nor innocent purchasers, the private respondents are not entitled to recover from the Assurance Fund."

In *Torres* v. *Court of Appeals*,[7] the trial court also dismissed the third party complaint against the Treasurer of the Philippines as custodian of the Assurance Fund after finding the third-party plaintiffs negligent in protecting their interest. The trial court recognized the principle that a person dealing with registered lands need not go beyond the certificate of title but nevertheless pointed out that there are circumstances in this case which should have put said plaintiffs on guard and prompted them to investigate the property being mortgaged to them.

In the same case, the Court elucidated that the principle that a forged instrument may become the root of a valid title cannot be applied where the owner still holds a valid and existing certificate of title covering the same interest in a realty. The doctrine would apply rather when the forger, through insidious means, obtains the owner's duplicate certificate of title, converts it in his name, and subsequently sells or otherwise encumbers it to an innocent holder for value, for in such a case the new certificate is binding upon the owner (Sec. 53, PD No. 1529). But if the owner holds a valid and existing certificate of title, his would be indefeasible as against the whole world, and not that of the innocent holder's.

**SEC. 97. *Judgment, how satisfied.* — If there are defendants other than the National Treasurer and the Register of Deeds and judgment is entered for the plaintiff and against the National Treasury, the Register of Deeds and any of the other defendants, execution shall first issue against such defendants other than the National Treasurer and the Register of Deeds. If the execution is returned unsatisfied in whole or in part, and the officer returning the same certificates that the amount due cannot be collected from the land or personal property of such other defendants, only then shall the court, upon proper showing, order the amount of the execution and costs, or so much thereof as remains unpaid, to be paid by the National Treasurer out of the Assurance Fund. In an action under this Decree, the plaintiff cannot recover as compensation more than the fair market value of the land at the time he suffered the loss, damage, or deprivation thereof.**

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[7]GR No. 63046, June 21, 1990, 186 SCRA 672.

**01. How judgment is satisfied.**

Where judgment is rendered against the government, execution shall first issue against the persons who have been joined as co-defendants, and if the execution is returned unsatisfied, then the damages awarded by the court shall be assessed against the Assurance Fund. But the plaintiff cannot recover as compensation more than the fair market value of the land at the time he suffered the loss, damage, or deprivation thereof. In every case where payment has been made by the National Treasurer, the government shall be subrogated to the rights of the plaintiff against any other parties or securities, and any amount recovered shall be paid to the account of the Assurance Fund.[8]

**SEC. 98. *General Fund when liable.* — If at any time the Assurance Fund is not sufficient to satisfy such judgment, the National Treasurer shall make up for the deficiency from any funds available in the treasury not otherwise appropriated.**

**SEC. 99. *Subrogation of government to plaintiff's rights.* — In every case where payment has been made by the National Treasurer in accordance with the provisions of this Decree, the Government of the Republic of the Philippines shall be subrogated to the rights of the plaintiff against any other parties or securities. The National Treasurer shall enforce said rights and the amount recovered shall be paid to the account of the Assurance Fund.**

**SEC. 100. *Register of Deeds as party in interest.* — When it appears that the Assurance Fund may be liable for damages that may be incurred due to the unlawful or erroneous issuance of a certificate of title, the Register of Deeds concerned shall be deemed a proper party in interest who shall, upon authority of the Commissioner of Land Registration, file the necessary action in court to annul or amend the title.**

**The court may order the Register of Deeds to amend or cancel a certificate of title or to do any other act as may be just and equitable.**

**01. Amendment or cancellation of title.**

In the event the Assurance Fund is held liable on account of the unlawful or erroneous issuance of a certificate of title, the Register

[8]Sec. 99, PD No. 1529.

of Deeds, upon authority of the LRA Administrator, shall file the necessary action to amend or cancel the title or perform any other act as may be directed by the court. Such action may pre-empt any action against the Assurance Fund.

**SEC. 101. *Losses not recoverable.* — The Assurance Fund shall not be liable for any loss, damage or deprivation caused or occasioned by a breach of trust, whether express, implied or constructive or by any mistake in the resurvey or subdivision of registered land resulting in the expansion of area in the certificate of title.**

**01. Loss or damage arising from breach of trust or expansion of area not recoverable.**

The Assurance Fund shall not be liable for any loss, damage or deprivation of any right or interest in land which may have been caused by a breach of trust, whether express or implied, or by any mistake in the resurvey or subdivision of the land resulting in the unlawful enlargement or expansion of the area thereof. There have been instances where, on the pretext of a relocation or subdivision survey, the area of registered land has increased beyond the original area as decreed by the court or awarded administratively. This anomalous practice has resulted in landgrabbing affecting both public and private property, not to mention its destabilizing effect on the Torrens system of registration. The law mandates that the Assurance Fund shall not be held liable for loss or damage if the increase in area has come about because of irregular surveys.

**SEC. 102. *Limitation of Action.* — Any action for compensation against the Assurance Fund by reason of any loss, damage or deprivation of land or any interest therein shall be instituted within a period of six years from the time the right to bring such action first occurred: *Provided,* That the right of action herein provided shall survive to the legal representative of the person sustaining loss or damage, unless barred in his lifetime; *And provided, further*, That if at the time such right of action first accrued the person entitled to bring such action was a minor or insane or imprisoned, or otherwise under legal disability, such person or anyone claiming from, by or under him may bring the proper action at any time within two years after such disability has been removed, not-**

**withstanding the expiration of the original period of six years first above provided.**

### 01. Prescriptive period.

The plaintiff has a period of six years from the time the right of action accrues within which to bring the action against the Assurance Fund. In a case, a complaint filed more than ten years after the property had been registered was ordered dismissed.[9]

[9]Enriquez v. Enriquez, GR No. 16869, March 13, 1922, 44 Phil. 885.

# CHAPTER VIII
# REGISTRATION OF PATENTS

**SEC. 103.** ***Certificates of title pursuant to patents.*** **— Whenever public land is by the Government alienated, granted or conveyed to any person, the same shall be brought forthwith under the operation of this Decree. It shall be the duty of the official issuing the instrument of alienation, grant, patent or conveyance in behalf of the Government to cause such instrument to be filed with the Register of Deeds of the province or city where the land lies, and to be there registered like other deeds and conveyance, whereupon a certificate of title shall be entered as in other cases of registered land, and an owner's duplicate issued to the grantee. The deed, grant, patent or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land but shall operate only as a contract between the Government and the grantee and as evidence of authority to the Register of Deeds to make registration. It is the act of registration that shall be the operative act to affect and convey the land, and in all cases under this Decree, registration shall be made in the office of the Register of Deeds of the province or city where the land lies. The fees for registration shall be paid by the grantee. After due registration and issuance of the certificate of title, such land shall be deemed to be registered land to all intents and purposes under this Decree.**

## 01. Scope of Section 103.

The instruments mentioned in Section 103 whereby public lands are "alienated, granted, or conveyed" are instruments *transferring ownership* — not documents of lease, transferring mere possession.[1] The provision directs the issuance to the grantee of "an owner's

[1]Dagdag v. Nepomuceno, GR No. L-12691, Feb. 27, 1959, 105 Phil. 216.

duplicate certificate." After due registration and issuance of the certificate of title, the land shall be deemed registered land to all intents and purposes under the Property Registration Decree. Public land patents when duly registered are veritable Torrens titles subject to no encumbrances except those stated therein, plus those specified by the statute. They become private property which can no longer be the subject of subsequent disposition by the Director of Lands.[2]

As explained in *Lahora* v. *Dayanghirang*,[3] where disposable public land is granted by the government by virtue of a public land patent (like homestead, sales or free patent), the patent is recorded and the corresponding certificate of title is issued to the grantee; thereafter, the land is automatically brought within the operation of the Property Registration Decree, entitled to all the safeguards of a veritable Torrens title. In other words, upon expiration of one year from its issuance, the certificate of title shall become irrevocable and indefeasible like a certificate issued in a registration proceeding.

In the case of *Pajomayo* v. *Manipon*,[4] it was held that once a homestead patent granted in accordance with the Public Land Act is registered pursuant to Section 122 of Act No. 496 (Sec. 103 of PD No. 1529), the certificate of title issued by virtue of said patent has the force and effect of a Torrens title issued through judicial registration proceedings. This principle is applicable to certificates of title issued by virtue of other land patents under the Public Land Act.

But a land registration court which has validly acquired jurisdiction over a parcel of land for registration of title cannot be divested of said jurisdiction by a subsequent administrative act consisting in the issuance by the Director of Lands of a homestead patent covering the same parcel of land. As held in *De los Angeles* v. *Santos,*[5] the Director of Lands' jurisdiction, administrative supervision and executive control extend only over lands of the public domain and not to lands already of private ownership. Accordingly, a homestead patent issued by him over land not of the public domain is a nullity, devoid of force and effect against the owner.

In *De los Angeles*, the applicants for registration contended that as of the date they applied for registration, they were already "owners

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[2]*Ibid*.
[3]GR No. L-28565, Jan. 30, 1971, 37 SCRA 346.
[4]GR No. L-33676, June 30, 1971, 39 SCRA 676.
[5]GR No. L-19615, Dec. 24, 1964, 12 SCRA 622.

*pro-indiviso* and in fee simple of the aforesaid land." If applicants were to successfully prove this averment, and thereby show their alleged registrable title to the land, it could only result in the finding that when the homestead patent was issued over Lot No. 11, said lot was no longer public. The land registration court, in that event, would have to order a decree of title issued in applicants' favor and declare the homestead patent a nullity which vested no title in the patentee as against the real owners. Since the existence or non-existence of applicants' registrable title to Lot 11 is decisive of the validity or nullity of the homestead patent, the court *a quo's* jurisdiction in the land registration proceedings could not have been divested by the homestead patent's issuance. "Proceedings for land registration are *in rem*, whereas proceedings for acquisition of homestead patent are not. A homestead patent, therefore, does not finally dispose of the public or private character of the land as far as courts acting upon proceedings *in rem* are concerned." Consequently, the applicants for registration should be given opportunity to prove their registrable title to the land in the registration case.

**02. Regalian doctrine — all lands and other natural resources are owned by the State.**

As elsewhere stated, under the Regalian doctrine, all lands of the public domain and all other natural resources are owned by the State and all lands not otherwise clearly appearing to be privately owned are presumed to belong the State which is the source of any asserted right to ownership of land.[6] The Regalian doctrine finds expression in Section 2, Article XII of the Constitution on the National Economy and Patrimony which provides:

> "SEC. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such

[6]Seville v. National Development Co., GR No. 129401, Feb. 2, 2001, 351 SCRA 112.

> activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. x x x ."

Except for agricultural lands, natural resources cannot be alienated. The exploration, development and utilization (EDU) of natural resources shall be under the full control and supervision of the State.[7]

The Philippines passed to the Spanish Crown by discovery and conquest in the 16th century. Before the Treaty of Paris in April 11, 1899, our lands, whether agricultural, mineral or forest were under the exclusive patrimony and dominion of the Spanish Crown. Hence, private ownership of land could only be acquired through royal concessions which were documented in various forms.[8] The 1935, 1973 and 1987 Constitutions adopted the *Regalian* doctrine substituting, however, the State, in lieu of the King, as the owner of all lands and waters of the public domain.[9] Generally then, under the concept of *jura regalia*, private title to land must be traced to some grant, express or implied, from the Spanish Crown or its successors, the American colonial government, and thereafter, the Philippine Republic.[10] The doctrine is the foundation of the time-honored principle of land ownership that "all lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain." Article 339 of the Civil Code of 1889, which is

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[7]La Bugal-B'laan Tribal Association, Inc. v. Ramos, GR No. 127882, Dec. 1, 2004, 445 SCRA 1 (Resolution on motion for reconsideration).

[8]Palomo v. Court of Appeals, GR No. 95608, Jan. 21, 1997, 266 SCRA 392.

[9]Cruz v. Secretary of Environment and Natural Resources, GR No. 135385, Dec. 6, 2000, 347 SCRA 128; Piñero v. Director of Lands, GR No. L-36507, June 14, 1974, 57 SCRA 386; Lee Hong Hok v. David, GR No. L-30389, Dec. 27, 1972, 48 SCRA 372; Krivenko v. Register of Deeds, GR No. L-630, Nov. 15, 1947, 79 Phil. 461.

[10]Cruz v. Secretary of Environment and Natural Resources, *supra*, per Justice Kapunan.

now Article 420 of the Civil Code, has incorporated the Regalian doctrine.[11]

As owner of the natural resources, the State is accorded primary power and responsibility in the exploration, development and utilization of these natural resources. The State may directly undertake the exploitation and development by itself, or, it may allow participation by the private sector through co-production, joint venture, or production-sharing agreements.[12]

The Regalian doctrine reserves to the State all natural wealth that may be found in the bowels of the earth even if the land where the discovery is made be private. Thus, for instance, once minerals are discovered in the land, whatever the use to which it is being devoted at the time, such use may be discontinued by the State to enable it to extract the minerals therein in the exercise of its sovereign prerogative.[13]

### (1) Imperium and dominium

There is a well-known distinction in public law between the government authority possessed by the State which is appropriately embraced in the concept of sovereignty, and its capacity to own or acquire property. The former comes under the heading of *imperium* and the latter of *dominium*. The use of this term is appropriate with reference to lands held by the State in its proprietary character. In such capacity, it may provide for the exploitation and use of lands and other natural resources, including their disposition, except as limited by the Constitution. *Dominium* was the foundation of the early Spanish decrees which embraced the feudal theory of *jura regalia* "that all lands were held from the Crown," and has been adopted by the present Constitution in the first paragraph of Section 1, Article XII which says that "all lands of the public domain x x x and all other natural resources are owned by the State," although ownership is vested in the State itself rather than the head thereof.[14]

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[11]Chavez v. Public Estates Authority, GR No. 133250, July 9, 2002, 384 SCRA 152.

[12]Sec. 2, Art. XII, Constitution; La Bugal-B'laan Tribal Association, Inc. v. Ramos, *supra*.

[13]Republic of the Philippines v. Court of Appeals and De la Rosa, GR No. L-43938, April 15, 1988, 160 SCRA 228.

[14]Lee Hong Hok v. David, *supra*.

No public land can be acquired by private persons without any grant, express or implied, from the government.[15] Accordingly, where there is no evidence that property was acquired from the State by purchase or grant,[16] or by any other means for the acquisition of public lands, the property must be held to be of the public domain.[17] It is thus indispensable that there be a showing of a title from the State or any other mode of acquisition recognized by law.[18]

### (2) The IPRA and native title over ancestral lands and ancestral domains

In *Cruz* v. *Secretary of Environment and Natural Resources*,[19] the crux of the controversy is the constitutionality of certain provisions of RA No. 8371, the Indigenous Peoples Rights Act (IPRA) of 1997, which recognized the ownership of indigenous peoples over their ancestral lands and ancestral domains on the basis of native title. The law was challenged as unconstitutional because it allegedly collided with the principle of *jura regalia* enshrined in Section 2, Article XII of the Constitution which decrees that all lands and all other natural resources belong to the State.

Under the IPRA, indigenous peoples may obtain the recognition of their right of ownership over ancestral lands and ancestral domains by virtue of native title. The term "ancestral lands" under the statute refers to lands occupied by individuals, families and clans who are members of indigenous cultural communities including residential lots, rice terraces or paddies, private forests, swidden farms and tree lots. These lands are required to have been "occupied, possessed and utilized" by them or through their ancestors "since time immemorial, continuously to the present." On the other hand, "ancestral domains" is defined as areas generally belonging to indigenous cultural communities, including ancestral lands, forests, pasture, residential and agricultural lands, hunting grounds, worship areas, and lands no longer occupied exclusively by indigenous cultural communities but to which they had traditional access, particularly the home ranges

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[15]Padilla v. Reyes, GR No. 37435, Nov. 28, 1934, 60 Phil. 967.

[16]Director of Lands v. Court of Appeals and Raymundo, GR No. L-29575, April 30, 1971, 38 SCRA 634.

[17]Pendatun v. Director of Lands, GR No. 36699, March 13, 1934, 59 Phil. 600.

[18]Gordula v. Court of Appeals, GR No. 127296, Jan. 22, 1998, 284 SCRA 617; Director of Lands v. Court of Appeals and Raymundo, *supra*.

[19]GR No. 135385, Dec. 6, 2000, 347 SCRA 128.

of indigenous cultural communities who are still nomadic or shifting cultivators. Ancestral domains also include inland waters, coastal areas and natural resources therein. Again, the same are required to have been "held under a claim of ownership, occupied or possessed by indigenous cultural communities or indigenous peoples (ICCs/IPs), by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present." Under Section 56, property rights within the ancestral domains already existing and/or vested upon effectivity of said law "shall be recognized and respected."

Ownership is the crux of the issue — whether or not the provisions of IPRA pertaining to ancestral lands, ancestral domains, and natural resources are unconstitutional. Who, between the State and the indigenous peoples, are the rightful owners of these properties?

Seven members of the Supreme Court voted to dismiss the petition while seven others voted to grant the same. As the votes were equally divided and the necessary majority was not obtained, the petition was dismissed pursuant to Section 7, Rule 56 of the Rules of Court with the result that the constitutionality of the IPRA was deemed upheld.

In the opinion of Justice Kapunan,[20] the Regalian theory does not negate native title to lands held in private ownership since time immemorial, adverting to the landmark case of *Cariño* v. *Insular Government*[21] where the United States Supreme Court, reversing the decision of the pre-war Philippine Supreme Court, made the following pronouncement:

> "x x x Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that when,

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[20]Justice Kapunan filed an opinion, which the Chief Justice and Justices Bellosillo, Quisumbing, and Santiago joined, sustaining the validity of the challenged provisions of RA No. 8371. Justice Puno also filed a separate opinion sustaining all challenged provisions of the law with the exception of Section 1, Part II, Rule III of NCIP Administrative Order No. 1, series of 1998, the Rules and Regulations Implementing the IPRA, and Section 57 of the IPRA which, he contends, should be interpreted as dealing with the large-scale exploitation of natural resources and should be read in conjunction with Section 2, Article XII of the 1987 Constitution. On the other hand, Justice Mendoza voted to dismiss the petition solely on the ground that it does not raise a justiciable controversy and that petitioners do not have standing to question the constitutionality of RA No. 8371.

[21]212 U.S. 449; 54 Law Ed., 594.

> as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land x x x ."

The above ruling institutionalized the recognition of the existence of native title to land, or ownership of land by Filipinos by virtue of possession under a claim of ownership since time immemorial and independent of any grant from the Spanish Crown, as an exception to the theory of *jura regalia*.

Disputing the claim of the Solicitor General that the *Cariño* doctrine applies only to alienable lands of the public domain and, as such, cannot be extended to other lands of the public domain such as forest or timber, mineral lands, and national parks, Justice Kapunan stated:

> "A proper reading of *Cariño* would show that the doctrine enunciated therein applies only to *lands which have always been considered as private*, and not to lands of the public domain, whether alienable or otherwise. A distinction must be made between ownership of land under native title and ownership by acquisitive prescription against the State. Ownership by virtue of native title presupposes that the land has been held by its possessor and his predecessors-in-interest in the concept of an owner since time immemorial. The land is not acquired from the State, that is, Spain or its successors-in-interest, the United States and the Philippine Government. There has been no transfer of title from the State as the land has been regarded as private in character as far back as memory goes. In contrast, ownership of land by acquisitive prescription against the State involves a conversion of the character of the property from alienable public land to private land, which presupposes a transfer of title from the State to a private person. Since native title assumes that the property covered by it is private land and is deemed never to have been part of the public domain, the Solicitor General's thesis that native title under *Cariño* applies only to lands of the public domain is erroneous. Consequently, the classification of lands of the public domain into agricultural, forest or timber, mineral lands, and national parks under the Constitution is irrelevant

to the application of the *Cariño* doctrine because the Regalian doctrine which vests in the State ownership of lands of the public domain does not cover ancestral lands and ancestral domains."

### (3) Reservations of lands of the public domain for specific public purposes are a valid assertion of Regalian right

Presidential proclamations reserving certain lands of the public domain for specific public purposes have the character of official assertions of ownership, and the presumption is that they have been issued by right of sovereignty and in the exercise of the State's dominical authority. These proclamations are matters not only of judicial notice but are accepted as in the nature of a valid asseveration of Regalian right over property.

The case of *Acting Registrars of Land Titles and Deeds of Pasay City* v. *Regional Trial Court, Branch 57, Makati*[22] involved the claim of ownership by the heirs of Delfin Casal over a 2,574-hectare parcel of land known as *Hacienda de Maricaban* spread out in various parts of the cities of Makati, Pasig, Taguig, Pasay and Parañaque, purportedly on the basis of OCT No. 291. Overruling the claim of petitioners that the land had long been conveyed to the government, resulting in the cancellation of said title, the lower court sustained the claim of ownership of the Casal heirs and authorized the latter to subdivide and sell the same subject to the approval of the intestate court.

On appeal, the Supreme Court upheld the government's ownership over the *Hacienda Maricaban*, noting that the property had been validly conveyed to the government which resulted in the cancellation of OCT No. 291. The Court stated that portions of the property have been reserved by Presidential proclamation for the veterans center site and for military purposes, which have the character of official assertions of Regalian right over property and issued in the exercise of the State's dominical authority. With respect to the premises occupied by the Libingan ng mga Bayani, Ninoy Aquino International Airport, Nayong Pilipino, the Population Commission, National Science and Development Board, and the National Housing Authority, the Court further stated that these stand on

[22]GR No. 81564, April 26, 1990, 184 SCRA 622.

government property by sheer presumption that, unless otherwise shown, what the government occupies is what the government owns.

**03. Classification of lands of the public domain under the Constitution.**

Under the 1987 Constitution, lands of the public domain are classified into four categories, namely: (a) agricultural, (b) forest or timber, (c) mineral lands, and (d) national parks. Only agricultural lands, which may be further classified according to the uses or purposes to which they are destined, may be disposed of in accordance with law. Section 3, Article XII of the Constitution provides:

> "SEC. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead or grant."

The 1935 Constitution classified lands of the public domain into three groups, namely, agricultural, timber and mineral,[23] and the term "public agricultural lands" has always been construed as referring to those lands that were neither timber nor mineral, and as including residential lands.[24] In contrast, the 1973 Constitution classified lands of the public domain into agricultural, industrial, or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, and such other classes as may be provided by law.[25]

Ancestral domains and ancestral lands as defined in RA No. 8371 (IPRA) are not part of the lands of the public domain. They are private and belong to the ICCs/IPs. Section 3 of Article XII classifies lands of the public domain into the four categories enumerated above,

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[23]Sec. 1, Art. XIII.
[24]Krivenko v. Register of Deeds, GR No. L-630, Nov. 15, 1947, 79 Phil. 461.
[25]Sec. 10, Art. XIV.

but it does not classify ancestral domains and ancestral lands under any of the said four categories. To classify them as public lands under any one of the four classes will render the entire IPRA law a nullity. The spirit of the IPRA lies in the distinct concept of ancestral domains and ancestral lands. The IPRA addresses the major problem of the ICCs/IPs which is loss of land. Land and space are of vital concern in terms of sheer survival of the ICCs/IPs.[26]

**04. The Public Land Act (CA No. 141), historical background.**

Act No. 926, the first Public Land Act, was passed in pursuance of the provisions of the Philippine Bill of 1902. The law governed the disposition of lands of the public domain. It prescribed rules and regulations for the homesteading, selling, and leasing of portions of the public domain of the Philippine Islands, and prescribed the terms and conditions to enable persons to perfect their titles to public lands in the Islands. It also provided for the "issuance of patents to certain native settlers upon public lands," for the establishment of town sites and sale of lots therein, for the completion of imperfect titles, and for the cancellation or confirmation of Spanish concessions and grants in the Islands."

Act No. 926 was superseded in 1919 by Act No. 2874, the second Public Land Act. This new law was passed under the Jones Law. It was more comprehensive in scope but limited the exploitation of agricultural lands to Filipinos and Americans and citizens of other countries which gave Filipinos the same privileges. After the passage of the 1935 Constitution, CA No. 141, the present Public Land Act, was enacted on November 7, 1936. CA No. 141 is essentially the same as Act No. 2874.[27] Grants of public lands are brought under the operation of the Torrens system of registration pursuant to section 103 of PD No. 1529, or the Property Registration Decree (formerly section 122 of Act No. 496, or Land Registration Act).

The Public Land Act, which compiled the then existing laws on lands of the public domain, remains to this day the existing general law governing the classification and disposition of lands of the public domain other than timber and mineral lands.[28]

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[26]Cruz v. Secretary of Environment and Natural Resources, GR No. 135385, Dec. 6, 2000, *supra*, separate opinion, per Justice Puno.

[27]Cruz v. Secretary of Environment and Natural Resources, *id*.

[28]Chavez v. Public Estates Authority, *supra*.

**05. Differences between the Property Registration Decree and the Public Land Act.**

The main differences between the Property Registration Decree (PD No. 1529) and the Public Land Act (CA No. 141) are:

(a) Under the Property Registration Decree, there exists already a title which is to be confirmed by the court; under the Public Land Act, the presumption always is that the land applied for pertains to the State, and that the occupants and possessors claim an interest only in the same by virtue of their imperfect title or continuous, open, and notorious possession.

(b) Under the Property Registration Decree, the court may dismiss the application of the applicant with or without prejudice to the right to file a new application for the registration of the same land; under the Public Land Act, the court has jurisdiction or power to adjudicate land in favor of any of the conflicting claimants.

(c) Under the Property Registration Decree, the only risk that an applicant runs is to have his application denied; under the Public Land Act, the applicant runs the risk of losing the land applied for.

(d) While the goal at which the two laws finally arrive is the same, namely, a Torrens title, which aims at complete extinguishment once and for all of right adverse to the record title, one law containing certain advantages not found in the other law, and similarly certain disadvantages, the two laws provide different routes to travel to attain the ultimate goal.[29]

CA No. 141, as amended, otherwise known as the Public Land Act, vests in the Director of Lands, and ultimately to the Secretary of the Department of Environment and Natural Resources (DENR), the authority to dispose and manage public lands.

**(1) Specific functions of the DENR Secretary**

Section 4, Chapter I, Title XIV of the Revised Administrative Code of 1987 specifically vests in the DENR the following powers and functions:

"Sec. 4. *Powers and Functions*. The Department shall:

x x x x x x x x x

[29]Republic v. Aquino, GR No. L-33983, Jan. 27, 1983, 120 SCRA 186; Republic v. Herbieto, GR No. 156117, May 26, 2005.

(4) Exercise supervision and control over forest lands, alienable and disposable public lands, mineral resources and, in the process of exercising such control, impose appropriate taxes, fees, charges, rentals and any such form of levy and collect such revenues for the exploration, development, utilization or gathering of such resources;

x x x x x x x x x

(14) Promulgate rules, regulations and guidelines on the issuance of licenses, permits, concessions, lease agreements and such other privileges concerning the development, exploration and utilization of the country's marine, freshwater, and brackish water and over all aquatic resources of the country and shall continue to oversee, supervise and police our natural resources; cancel or cause to cancel such privileges upon failure, non-compliance or violations of any regulation, order, and for all other causes which are in furtherance of the conservation of natural resources and supportive of the national interest;

(15) Exercise exclusive jurisdiction on the management and disposition of all lands of the public domain and serve as the sole agency responsible for classification, subclassification, surveying and titling of lands in consultation with appropriate agencies."

As manager, conservator and overseer of the natural resources of the State, the DENR exercises "supervision and control over alienable and disposable public lands." The DENR also exercises "exclusive jurisdiction on the management and disposition of all lands of the public domain."[30]

However, the jurisdiction of the DENR over public lands does not negate the authority of courts of justice to resolve questions of possession and their decisions stand in the meantime that the DENR itself has not settled the respective rights of public land claimants. But once the DENR has decided, particularly with the grant of a

[30]Chavez v. Public Estates Authority, *supra*.

public land patent for instance and issuance of the corresponding certificate of title, its decision prevails.[31]

The Public Land Act applies only to lands of the public domain. It is provided therein that the Secretary of Environment and Natural Resources is the executive officer charged with carrying out the provisions of the Act through the Director of Lands who acts under his immediate control. Subject to the control of the Secretary of Environment and Natural Resources, the Director of Lands shall have direct executive control of the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Environment and Natural Resources,[32] in the absence of a showing that such decision was rendered in consequence of fraud, imposition, or mistake, other than error of judgment in estimating the value or effect of evidence, regardless of whatever or not it is consistent with the preponderance of the evidence, so long as there is some evidence upon which the finding in question could be made.[33] It is understood of course that the decision of the Director of Lands may be annulled or reviewed in a direct proceeding and not collaterally[34] as when the issue involves a question of law or is based upon a misconstruction of the law,[35] or when the conclusions drawn by the Secretary from the facts found are erroneous or not warranted by law.[36]

On June 10, 1987, EO No. 192 was issued reorganizing the Department of Environment, Energy and Natural Resources and renaming it as the Department of Environment and Natural Resources. Among its powers and functions are to exercise supervision and control over forest lands, alienable and disposable lands; undertake geological surveys of the whole country including its territorial waters; establish policies and implement programs for the accelerated inventory, surveys and classification of lands, forest and mineral resources, exercise exclusive jurisdiction over the management and disposition of all lands of the public domain, and continue to be the sole agency responsible for the classification, sub-classification, surveying and titling of lands.

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[31]Omandam v. Court of Appeals, GR No. 128750, Jan. 18, 2001, 340 SCRA 483.

[32]Secs. 2, 3 and 4, CA No. 141; Calibo v. Ballesteros, GR No. L-17466, Sept. 18, 1965, 15 SCRA 37.

[33]Ortua v. Encarnacion, GR No. 39919, Jan. 30, 1934, 59 Phil. 440.

[34]Firmalo v. Tutaan, GR No. L-35408, Oct. 27, 1973, 53 SCRA 505.

[35]Ortua v. Encarnacion, *supra*.

[36]Alfafara v. Mapa, GR No. L-7042, May 28, 1954, 95 Phil. 125.

### (2) Specific functions of the LMB Director and other officers

Under EO No. 192, the newly created Lands Management Bureau (LMB) has absorbed the functions and powers of the Bureau of Lands except those line functions and powers which were transferred to the regional field offices. The LMB is headed by a Director and assisted by an Assistant Director who shall advise the DENR Secretary on matters pertaining to rational land classification management and disposition and shall have the following functions:

(a) Recommend policies and programs for the efficient and effective administration, surveys, management and disposition of alienable and disposable lands of the public domain and other lands outside the responsibilities of other government agencies; such as reclaimed areas and other areas not needed for or are not being utilized for the purposes for which they have been established;

(b) Advise the Regional Offices on the efficient and effective implementation of policies, programs and projects for more effective public lands management;

(c) Assist in the monitoring and evaluation of land surveys, management and disposition of lands to ensure efficiency and effectiveness thereof;

(d) Issue standards, guidelines, regulations and orders to enforce policies for the maximization of land use and development;

(e) Develop operating standards and procedures to enhance the Bureau's objectives and functions;

(f) Assist the Secretary as Executive Officer charged with carrying out the provisions of the Public Land Act (C.A. No. 141, as amended), who shall have direct executive control of the survey, classification, lease, sale or any other forms of concessions or disposition and management of the lands of the public domain;

(g) Perform other functions as may be assigned by the Secretary and/or provided by law.

The regional offices of the then Bureau of Forest Development, Bureau of Mines and Geo-Sciences and Bureau of Lands in each of the thirteen (13) administrative regions are now integrated into the Department-wide Regional Environment and Natural Resources Office of the DENR. A regional office is headed by a Regional Exe-

cutive Director who shall be assisted by five (5) Regional Technical Directors.

Under DENR Administrative Order No. 38, series of 1990, various regulatory and administrative matters and delegated functions are defined.

On Land Management, the DENR Secretary, among others, approves the appraisal of public lands and issues authority to conduct bidding covering agricultural land sales above five (5) hectares and leases covering one hundred (100) hectares and above; approves transfer of public land applications or deeds of sale/mortgage of patented lands above twelve (12) hectares; decides cases on appeal involving claims/conflicts over public lands; and signs patents for areas more than five (5) hectares for sales and more than ten (10) hectares for homestead and free patents.

The Regional Executive Director issues orders of bidding and signs contracts for cadastral and public land subdivision survey projects; issues investigation orders involving patented lots; decides claims and conflicts involving public lands; issues orders of execution; signs patents and reconstituted patents for areas up to five (5) hectares for sales and five (5) up to ten (10) hectares for homestead and free patent; and issues original revocable or provisional permits for alienable and disposable lands.

The Regional Technical Director verifies, approves and sign maps and plans for public land subdivision, cadastral and isolated surveys; approves survey plans for OLT and other agrarian reform projects; verifies and approves political boundary surveys; and issues survey orders for public land subdivision and cadastral survey covering land up to 500 hectares.

The Provincial, Environment and Natural Resources Officer (PENRO) approves appraisal of public lands and issues authority to conduct bidding on sales and leases for areas up to 1,000 sq.m. for commercial, industrial and residential purposes; approves appraisal of public lands and issues authority to conduct bidding covering leases below five (5) hectares for agricultural purposes; issues orders of investigation involving claims and conflicts over unpatented lots; and signs patents and reconstituted patents for areas up to five (5) hectares for homestead and free patent.

The Community Environment and Natural Resources Officer (CENRO) issues survey orders to conduct isolated surveys; accepts

public land applications and processes the same; conducts oral or sealed bidding for the sale or lease of public lands; and issues survey orders for the subdivision of cadastral lots for patented and unpatented lands.

**06. No public land can be acquired except by a grant from the State.**

No public land can be acquired by private persons without any grant, express or implied from the government. In other words, it is indispensable that there be a showing of a title from the state.[37] This may come in the form of a homestead, sales or free patent or grant.

One claiming "private rights" must prove that he has complied with the Public Land Act which prescribes the substantive as well as the procedural requirements for acquisition of public lands. For instance, the law requires at least thirty (30) years of open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition, immediately preceding the filing of the application for free patent. The rationale for the 30-year period lies in the presumption that the land applied for pertains to the State, and that the occupants and/or possessors claim an interest therein only by virtue of their imperfect title or continuous, open and notorious possession.[38]

**07. Classification of lands.**

Government lands are classified in a number of ways. They may be (a) *lands of the public domain*, either *alienable or inalienable*, or (b) *lands of the private domain,* which refer to "land belonging to and owned by the state as a private individual, without being devoted for public use, public service or the development of national wealth . . . similar to patrimonial properties of the State." Under the Civil Code, government lands can either be *properties of the public dominion*, or those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character, or those which belong to the State, without being for public use, intended for some

[37]Lee Hong Hok v. David, *supra*.

[38]Gordula v. Court of Appeals, *supra*. Note, however, that as presently worded, Sec. 48(b) of the Public Land Act requires possession and occupation since June 12, 1945 for the confirmation of an imperfect or incomplete title.

public service or for the development of the national wealth; or *patrimonial properties* of the State, *i.e.*, properties other than *properties of the public dominion* or former properties of the public dominion that are no longer intended for public use or for public service.[39]

**08. Classification of lands under the Public Land Act.**

For purposes of the administration and disposition of alienable or disposable public lands, the President, upon recommendation of the Secretary of Environment and Natural Resources, shall from time to time declare what lands are open to disposition or concession under the Act.[40] Section 6 of the Public Land Act classifies lands of the public domain into alienable or disposable, timber, and mineral lands. The classification is a prerogative of the executive department and not the courts.[41]

> "The classification of public lands is an exclusive prerogative of the Executive Department of the Government and not of the courts. In the absence of such classification, the land remains as unclassified land until it is released therefrom and rendered open to disposition. This should be so under time-honored Constitutional precepts. This is also in consonance with the *Regalian* doctrine that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony."[42]

**09. Only alienable and disposable (A and D) lands may be the subject of disposition.**

Alienable lands of the public domain, or those available for alienation or disposition, are part of the patrimonial properties of the State. They are State properties available for private ownership

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[39]Chavez v. Public Estates Authority, GR No. 133250, *supra,* per Justice Bellosillo.

[40]Sec. 7, CA No. 141.

[41]Bureau of Forestry v. Court of Appeals, GR No. L-37995, Aug. 31, 1987, 153 SCRA 351; Chavez v. Court of Appeals, *supra*.

[42]Director of Lands v. Court of Appeals and Valeriano, GR No. 58867, June 22, 1984, 129 SCRA 689.

except that their appropriation is qualified by Sections 2 and 3 of Article XII of the Constitution and the public land laws. Before lands of the public domain are declared available for private acquisition, or while they remain intended for public use or for public service or for the development of national wealth, they would partake of properties of public dominion just like mines before their concessions are granted, in which case, they cannot be alienated or leased or otherwise be the object of contracts.[43]

Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and which have not been reserved for public or quasi-public uses, nor appropriated by the government, nor in any manner become private property, nor those on which a private right authorized and recognized by the Act or any valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so.[44] In the absence of such classification, the land remains as unclassified land until it is released therefrom and rendered open to disposition.[45] In *Menguito* v. *Republic*,[46] it was held that unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. Indeed, "occupation thereof in the concept of owner, no matter how long, cannot ripen into ownership and be registered as a title."

Land remains unclassified land until it is released therefrom and rendered open to disposition. Adherence to the Regalian doctrine subjects all agricultural, timber, and mineral lands to the dominion of the State.[47] Thus, before any land may be declassified from the forest group and converted into alienable or disposable land for agricultural or other purposes, there must be a positive act from the government. Even rules on the confirmation of imperfect titles do not apply unless and until the land classified as forest land is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain.[48]

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[43]Chavez v. Public Estates Authority, GR No. 133250, May 6, 2003, per Justice Bellosillo.

[44]Sec. 8, CA No. 141.

[45]Director of Lands v. Court of Appeals and Valeriano, *supra*.

[46]GR No. 134308, Dec. 14, 2000, 348 SCRA 128.

[47]Republic v. Court of Appeals and Valeriano, *supra*.

[48]Director of Lands v. Court of Appeals and Bisnar, GR No. 83609, Oct. 26, 1989, 178 SCRA 708.

Where a municipality has been cadastrally surveyed, it does not follow that all lands comprised therein are automatically released as alienable. A survey made in a cadastral proceeding merely identifies each lot preparatory to a judicial proceeding for adjudication of title to any of the lands upon claim of interested parties.[49] Neither does the conversion of property into a fishpond by the applicants, or the alleged titling of properties around it, automatically render the property as alienable and disposable. Applicants' remedy lies in the release of the property from its present classification.[50]

The defense of indefeasibility of a certificate of title issued pursuant to a free patent does not lie in an action for reversion of the land covered thereby when such land is a part of a public forest and, hence, incapable of registration.[51]

It also bears noting that submerged lands, like the waters (sea or bay) above them, are part of the State's inalienable natural resources. Submerged lands are property of public dominion, absolutely inalienable and outside the commerce of man. This is also true with respect to foreshore lands. Any sale of submerged or foreshore lands is void for being contrary to the Constitution.[52]

**10. Classification of public lands open to disposition.**

The classification of public lands is a function of the executive branch of government.[53]

For purposes of their administration and disposition, lands of the public domain which are alienable or open to disposition may be further classified as: (a) agricultural, (b) residential, commercial, industrial, or for similar productive purposes, (c) educational, charitable, or other similar purposes, and (d) reservations for townsites and for public and quasi-public uses.[54]

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[49]Director of Lands v. Court of Appeals and Valeriano, *supra*.

[50]*Ibid*.

[51]Gordula v. Court of Appeals, *supra*.

[52]Chavez v. Public Estates Authority, *supra* (Resolution on motion for reconsideration).

[53]Republic v. Imperial, GR No. 130906, Feb. 11, 1990, 303 SCRA 127.

[54]Sec. 9, CA No. 141.

## 11. Modes of disposition.

Public lands suitable for agricultural purposes can be disposed of only as follows:

1. For homestead settlement;
2. By sale;
3. By lease; and
4. By confirmation of imperfect or incomplete titles:
   (a) By judicial legalization
   (b) By administrative legalization (free patent)[55]

The words "alienation," "disposition," or "concession," as used in the Public Land Act means any of the methods authorized by the Act for the acquisition, lease, use, or benefit of the lands of the public domain other than timber or mineral lands.[56]

## 12. Homestead patent.

Chapter IV (Homesteads) of the Public Land Act governs the disposition of alienable public lands through homestead. The law provides that any citizen of the Philippines over the age of eighteen years, or the head of a family, may enter a homestead of not exceeding twelve hectares[57] of agricultural land of the public domain. The applicant must have cultivated and improved at least one-fifth of the land continuously since the approval of the application and resided for at least one year in the municipality in which the land is located, or in a municipality adjacent to the same, and then, upon payment of the required fee, he shall be entitled to a patent.[58]

### (1) Effect of compliance with legal requirements

When a homesteader has complied with all the terms and conditions which entitle him to a patent for a particular tract of public

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[55]Sec. 11, *id*.
[56]Sec. 10, *id*.
[57]Sec. 3, Art. XII of the Constitution provides: "Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead or grant."
[58]Secs. 12 and 14, CA No. 141.

land, he acquires a vested interest therein, and is to be regarded as the equitable owner thereof. The execution and delivery of the patent, after the right to a particular parcel of land has become complete, are the mere ministerial acts of the officer charged with that duty. Even without a patent, a perfected homestead is a property right in the fullest sense, unaffected by the fact that the paramount title to the land is still in the government. Such land may be conveyed or inherited. No subsequent law can deprive him of that vested right.[59]

In *Mesina* v. *Sonza*,[60] the Supreme Court, citing *Susi* v. *Razon*,[61] held that once a homestead applicant has complied with all the conditions essential to a government grant, he acquires not only a right to a grant, but a grant of the government. Thus:

> ". . . where all the necessary requirements for a grant by the Government are complied with through actual physical possession openly, continuously, and publicly, with a right to a certificate of title to said land under the provisions of Chapter VII of Act No. 2874, amending Act No. 926 (carried over as Chapter VIII of Commonwealth Act No. 141), the possessor is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the Government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the courts — an application therefor being sufficient under the provisions of Section 47 of Act No. 2874 (reproduced as Section 50, Commonwealth Act No. 141)."

In *Nieto* v. *Quines*,[62] the Supreme Court affirmed the doctrine in these words:

> "As established during the trial and found by the trial court, Bartolome Quines had been in the continuous and peaceful possession of Lot No. 3044 from the time his homestead application was approved in 1918 up to 1953 when he was forcibly ejected therefrom by Arturo Nieto. As a homestead applicant, he religiously complied with

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[59]Balboa v. Farrales, GR No. 27059, Feb. 14, 1928, 51 Phil. 498.

[60]GR No. L-14722, May 25, 1960, 108 Phil. 251.

[61]*Supra.*

[62]GR No. L-14634, Jan. 28, 1961, 1 SCRA 227; Miguel v. Court of Appeals, GR No. L-20274, Oct. 30, 1969, 29 SCRA 760.

all the requirements of the Public Land Act and, on August 29, 1930, a homestead patent was issued in his favor. Considering the requirement that the final proof must be presented within 5 years from the approval of the home-stead application *(Sec. 14, Public Land Act)*, it is safe to assume that Bartolome Quines submitted his final proof way back yet in 1923 and that the Director of Lands approved the same not long thereafter or before the land became the subject of the cadastral proceedings in 1927. Unfortunately, there was some delay in the ministerial act of issuing the patent and the same was actually issued only after the cadastral court had adjudicated the land to Maria Florentino. Nevertheless, having complied with all the terms and conditions which would entitle him to a patent, Bartolome Quines, even without a patent actually issued, has unquestionably acquired a vested right on the land and is to be regarded as the equitable owner thereof. (Balboa vs. Farrales, 51 Phil., 498.) Under these circumstances and applying by analogy the principles governing sales of immovable property to two different persons by the same vendor, Bartolome Quines' title must prevail over that of Maria Florentino not only because he had always been in possession of the land but also because he obtained title to the land prior to that of Maria Florentino."

## 13. Sales patent.

### (1) Public agricultural lands

The acquisition of public agricultural lands by purchase is governed by Chapter V (Sale) of the Public Land Act. Any citizen of the Philippines of lawful age or the head of a family may purchase any tract of *public agricultural land* not to exceed twelve hectares[63] which shall be sold thru sealed bidding. The land shall be awarded to the highest bidder, but the applicant may equal the highest bid. The purchase price may be paid in full upon the making of the award or in not more than ten equal annual installments from the date of the award. It is required that the purchaser shall have not less than one-fifth of the land cultivated within five years from the date of the

[63]See Sec. 3, Art. XII, Constitution.

award, and before any patent is issued, he must show actual occupancy, cultivation and improvement of at least one-fifth of the land until the date of final payment.[64]

### (2) Lands for residential, commercial or industrial purposes

The disposition of lands of the public domain which are intended for residential, commercial, industrial or other productive purposes is governed by Chapter IX (Classification and Concession of Public Lands Suitable for Residence, Commerce and Industry) of the Public Land Act. Lands under this chapter are classified as:

(a) Lands reclaimed by the government by dredging, filling, or other means

(b) Foreshore

(c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers

(d) Lands not included in any of the foregoing classes.

The lands comprised in classes (a) and (b) shall be disposed by lease only.[65] Lands comprised in classes (c) and (d) may be sold on condition that the purchaser shall make improvements of a permanent character appropriate for the purpose for which the land is purchased within eighteen months from the date of the award.[66] The lease or sale shall be made through oral bidding, and adjudication shall be made to the highest bidder. However, where an applicant has made improvements on the land by virtue of a permit issued to him by competent authority, the sale or lease shall be made by sealed bidding as prescribed in Section 26 of the Public Land Act.[67]

Section 60 expressly requires congressional authority before lands under Section 59 which the government had previously transferred to government units or entities could be sold to private parties.

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[64]Secs. 22, 26 and 28, CA No. 141.
[65]Secs. 59 and 61, CA No. 141.
[66]Sec. 65, *id.*, as amended by RA No. 293, approved June 16, 1948.
[67]Sec. 67, CA No. 141.

### (3) Lands for residential purposes (direct sale)

While specific classes of lands may be sold only at auction, RA No. 730[68] permits the direct sale of public lands for residential purposes to qualified applicants under certain conditions.

> "SEC. 1. Notwithstanding the provisions of sections sixty-one and sixty-seven of Commonwealth Act Numbered One hundred forty-one, as amended by Republic Act Numbered Two hundred ninety-three, any Filipino citizen of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for the public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupants has constructed his house on the land and actually resided therein. Ten per cent of the purchase price shall be paid upon the approval of the sale and the balance may be paid in full, or in ten equal annual installments."

To be qualified, the applicant must: (a) be a Filipino citizen of legal age; (b) not the owner of a home lot in the municipality or city in which he resides; (c) have established in good faith his residence on a parcel of public land which is not needed for public service; and (d) have constructed his house and actually resided therein. If he complies with these conditions, he shall be given preference to purchase at a private sale not more than one thousand square meters of land at a price to be fixed by the Director of Lands.

RA No. 730 merely provides an exception to Sections 61 and 67 of CA No. 141. In short, the law authorizes a sale by private sale, as an exception to the general rule that it should be by bidding, provided the area applied for does not exceed 1,000 square meters, and the applicant has in his favor the conditions specified for in Section 1 thereof. Hence, if the area applied for is in excess of 1,000 square meters, the sale must be done only through bidding.[69]

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[68]Approved June 18, 1952.
[69]Agura v. Serfino, GR No. 50685, Dec. 4, 1991, 204 SCRA 569.

### (4) Lands within military reservations

Pursuant to RA No. 274,[70] lands within military reservations when declared by the President as no longer needed for military purposes may be subdivided by the Director of Lands, and thereafter sold to persons qualified to acquire agricultural public lands under the Public Land Act, with priority given to *bona fide* occupants and then to war veterans. The area of each lot shall be determined by the Director of Lands according to the nature of the land, the number of prospective applicants, and the purpose for which it will be utilized.

### (5) Lands for educational, charitable and other similar purposes

Under Chapter X (Concession of Lands for Educational, Charitable and Other Similar Purposes) of the Public Land Act, lands for said purposes may be sold or leased, under the same conditions as the sale or lease of agricultural public lands, for the purpose of founding a cemetery, church, college, school, university, or other institutions for educational, charitable, or philanthropical purposes or scientific research, the area to be such as may actually and reasonably be necessary to carry out such purposes. The Secretary of Environment and Natural Resources may order the sale to be made without public auction, at a price to be fixed by him.[71]

## 14. Free patent.

Section 44, Chapter VII (Free Patents) of the Public Land Act provides that "(a)ny natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for at least thirty (30) years prior to the effectivity of this amendatory Act, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest a tract or tracts of agricultural public lands subject to disposition, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares."[72]

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[70]Approved June 15, 1948.

[71]Secs. 69 and 70, Chapter X, CA No. 141, as amended.

[72]As amended by RA No. 782 and RA No. 6940, approved March 28, 1990; Del Rosario-Igtiben v. Republic, GR No. 158449, Oct. 22, 2004.

Under PD No. 1073,[73] it is provided that the provisions of Section 48(b) and Section 48(c), Chapter VIII (Judicial Confirmation of Imperfect or Incomplete Titles) of the Public Land Act, "shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessors-in-interest, under a *bona fide* claim of ownership, since June 12, 1945." It will be noted that, under the amendment, the land applied for must be "alienable and disposable" and that possession thereof must be since June 12, 1945, and not only for thirty years as earlier provided in RA No. 1942.

Section 44 has been amended by RA No. 9176[74] by extending the benefits of Chapter VIII (on free patents) to December 31, 2020.

**15. Reservations.**

Chapter XII of the Public Land Act governs the establishment of reservations for public and semi-public purposes. Upon the recommendation of the Secretary of Environment and Natural Resources, the President may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Republic of the Philippines or of any of its branches, or of the inhabitants thereof, in accordance with regulations prescribed for this purpose, or for quasi-public uses or purposes when the public interest requires it.[75] A certified copy of every proclamation of the President issued under the provisions of this title shall be forwarded to the Director of Lands for record in his office, and a copy of this record shall be forwarded to the Register of Deeds of the province or city where the land lies. Upon receipt of such certified copy, the Director of Lands shall order the immediate survey of the proposed reservation if the land has not yet been surveyed, and as soon as the plat has been completed, he shall proceed in accordance with the next following section.[76]

The tract or tracts of land reserved under the provisions of section eighty-three shall be non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again

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[73]Approved Jan. 25, 1977.
[74]Approved Nov. 13, 2002.
[75]Sec. 83, Chapter XII, CA No. 141, as amended.
[76]Secs. 86 and 88, Chapter XIII, CA No. 141, as amended.

declared alienable under the provisions of this Act or by proclamation of the President.

### 16. Special patents.

As a matter of ordinary land registration practice, a *special patent* is a "patent to grant, cede, and convey full ownership of alienable and disposable lands formerly covered by a reservation or lands of the public domain" and is issued upon the "promulgation of a special law or act of Congress or by the Secretary of Environment and Natural Resources as authorized by an Executive Order of the President." What is important in the definition of "special patent" is the grant by law of a property of the Republic for the full ownership of the grantee while the classification of the land is not at all decisive in such description since the "special law or act of Congress" or the "Executive Order" may classify the subject land differently. Thus the Department of Environment and Natural Resources (DENR), through the Reservation and Special Land Grants Section of the Lands Management Division, is tasked to issue special patents in favor of "government agencies pursuant to special laws, proclamations, and executive orders x x x ."[77]

An example of "special patent" is that issued by the President on January 19, 1988 to the Public Estates Authority, now Philippine Reclamation Authority, under PD No. 1085 over three reclaimed islands known as the Freedom Islands located in the Manila Bay and pursuant to which the Register of Deeds issued TCT Nos. 7309, 7311 and 7312 in the name of PEA.

### 17. Friar lands, generally.

The so-called friar lands were purchased by the government for sale to actual occupants under the provisions of Act No. 1120, or the Friar Lands Act, which was enacted on April 26, 1904. These lands are not public lands but private or patrimonial property of the government,[78] and their acquisition is not governed by the provisions of CA No. 141 (Public Land Act).[79] CA No. 32 dated September 15,

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[77]Chavez v. Public Estates Authority, GR No. 133250, July 9, 2002, 384 SCRA 152.

[78]Jacinto v. Director of Lands, GR No. 26374, Dec. 31, 1926, 49 Phil. 853.

[79]De la Cruz v. De la Cruz, GR No. L-61969, July 25, 1984, 130 SCRA 666.

1936, as amended by CA No. 316 dated June 9, 1938, provides for the subdivision and sale of all the portions of the friar lands estate remaining undisposed of.

Friar lands were purchased by the government for sale to actual settlers and occupants at the time said lands were acquired by the government. The Lands Management Bureau shall first issue a certificate stating therein that the government has agreed to sell the land to such settler or occupant. The latter shall then accept the certificate and agree to pay the purchase price so fixed, in installments and at the rate of interest specified in the certificate.

The conveyance or certificate of sale executed in favor of a buyer or purchaser is a conveyance of the ownership of the property, subject only to the resolutory condition that the sale may be cancelled if the price agreed upon is not paid in full. The purchaser becomes the owner upon the issuance of the certificate of sale subject only to the cancellation thereof in case the price agreed upon is not paid.[80]

Upon the payment of the final installment together with all accrued interests, the government shall then issue a final deed of conveyance in favor of the purchaser. But the sale shall be valid only if approved by the Secretary of Environment and Natural Resources as provided in Act No. 1120.[81]

**(1) Ownership transferred to buyer upon execution of certificate of sale**

Pertinent provisions of the Friar Lands Act read:

> "SEC. 12. It shall be the duty of the Chief of the Bureau of Public Lands by proper investigation to ascertain what is the actual value of the parcel of land held by each settler and occupant, taking into consideration the location and quality of each holding of land, and any other circumstances giving its value. The basis of valuation shall likewise be, so far as practicable, such that the aggregate of the values of all the holdings included in each particular tract shall be equal to the cost to the Government to the entire tract, including the cost of surveys, administration

[80]Pugeda v. Trias, GR No. L-16925, March 31, 1962, 4 SCRA 849.

[81]Solid State Multi-Products Corporation v. Court of Appeals, GR No. 83383, May 6, 1991, 196 SCRA 630.

and interest upon the purchase money to the time of sale. When the cost thereof shall have been thus ascertained, the Chief of the Bureau of Public Lands shall give the said settler and occupant a certificate which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the price so fixed, payable as provided in this Act at the office of the Chief of Bureau of Public Lands, in gold coin of the United States or its equivalent in Philippine currency, and that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act. The Chief of the Bureau of Public Lands shall, in each instance where a certificate is given to the settler and occupant of any holding, take his formal receipt showing the delivery of such certificate, signed by said settler and occupant.

SEC. 13. The acceptance by the settler and occupant of such certificate shall be considered as an agreement by him to pay the purchase price so fixed and in the installments and at the interest specified in the certificate, and he shall from such acceptance become a debtor to the Government in the amount together with all accrued interest. In the event that any such settler and occupant may desire to pay for his holding of said lands in cash, or within a shorter period of time than that above specified, he shall be allowed to do so, and if payment be made in cash the lands shall at once be conveyed to him as above provided. But if purchase is made by installments, the certificate shall so state in accordance with the facts of the transaction; *Provided, however,* That every settler and occupant who desires to purchase his holding must enter into the agreement to purchase such holding by accepting the said certificate and executing the said receipt whenever called on to do so by the Chief of the Bureau of Public Lands, and a failure on the part of the settler and occupant to comply with this requirement shall be considered as a refusal to purchase, and he shall be ousted as above pro-

vided and thereafter his holding may be leased or sold as in case of unoccupied lands: x x x"

"SEC. 15. The Government hereby reserves the title to each and every parcel of land sold under the provisions of this Act until the full payment of all installments or purchase money and interest by the purchaser has been made, and any sale or encumbrance made by him shall be invalid as against the Government of the Philippine Islands and shall be in all respects subordinate to its prior claim.

The right of possession and purchase acquired by certificates of sale signed under the provisions hereof by purchasers of friar lands, pending final payment and the issuance of title, shall be considered as personal property for the purposes of serving as security for mortgages, and shall be considered as such in judicial proceedings relative to such security. (Section 1, Act No. 2642.)"

The above provisions indicate that the conveyance executed in favor of a buyer or purchaser, or the so-called certificate of sale, is a conveyance of the ownership of the property, subject only to the resolutory condition that the sale may be cancelled if the price agreed upon is not paid for in full. The purchaser, even before the payment of the full price and before the execution of the final deed of conveyance, is considered by the law as the actual owner of the lot purchased, under obligation to pay in full the purchase price, the role or position of the government being that of a mere lien holder or mortgagee. In other words, in the sale of a lot or parcel under Act No. 1120, pending payment in full of the purchase price, although the government reserves title thereto, merely for its protection, the beneficial and equitable title is in the purchaser.[82]

As explained in *Director of Lands* v. *Rizal,*[83] the equitable and beneficial title really goes to the purchaser the moment he pays the first installment and is given a certificate of sale. The reservation of the title in favor of the government is made merely to protect its interest, that is, to preclude or prevent the purchaser from encumbering or disposing of the lot purchased before the payment in full of

[82]Pugeda v. Trias, *supra*.
[83]GR No. L-2925, Dec. 29, 1950, 87 Phil. 806.

the purchase price. Outside of this protection the government retains no right as an owner. For instance, after issuance of the sales certificate and pending payment in full of the purchase price, the government may not sell or encumber the lot to another, nor use or cultivate it. When the purchaser finally pays the final installment on the purchase price and is given a deed of conveyance and a certificate of title, the title, at least in equity, retroacts to the time he first occupied the land. In other words, pending the completion of the payment of the purchase price, the purchaser is entitled to all the benefits and advantages which may accrue to the land as well as suffer the losses that may befall it.

Friar lands are surveyed before they are sold. The purchaser buys a definite parcel with fixed boundaries, at an agreed price. If the parcel increases in value pending the payment of the installments or gains in area by natural causes, or on the other hand, it suffers a loss in value or in area, the purchaser must receive the increase or suffer the loss or decrease.

### (2) Sale of friar lands different from sale of public lands

The sale of friar lands is entirely different from a sale of public lands under the provisions of the Public Land Act. In the case of public lands, a person who desires to acquire must first apply for the parcel of land desired. Thereafter the land is opened for bidding. If the land is awarded to an applicant or to a qualified bidder, the successful bidder is given a right of entry to occupy the land and cultivate and improve it.[84] It is only after satisfying the requirements of cultivation and improvement of 1/5 of the land that the applicant is given a sales patent.[85] In the case of friar lands, the purchaser becomes the owner upon issuance of the certificate of sale in his favor, subject only to cancellation thereof in case the price agreed upon is not paid. In case of sale of public lands, if the applicant dies and his widow remarries, both she and the second husband are entitled to the land; the new husband has the same right as his wife. Such is not the case with friar lands. As indicated in section 16 of Act No. 1120, if a holder of a certificate dies before the payment of the price in full, the sale certificate is assigned to the widow, but if the buyer

[84]Secs. 22-28, CA No. 141, as amended.
[85]Sec. 30, *id.*

does not leave a widow, the right to the friar land is transmitted to his heirs at law.[86]

## 18. Foreshore lands, submerged areas and reclaimed lands.

A foreshore land is that "strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide." Foreshore lands, submerged areas and reclaimed lands are inalienable unless converted by law into alienable and disposable lands of the public domain.

### (1) Case of *Republic* v. *Court of Appeals and Republic Real Estate Corporation*

In this case,[87] on April 24, 1959, Pasay City and Republic Real Estate Corporation (RREC) entered into an agreement for the reclamation of "foreshore lands" in Pasay City, pursuant to RA No. 1899, approved on June 22, 1957, which authorized the reclamation of foreshore lands by chartered cities and municipalities. On December 19, 1961, the Republic of the Philippines filed a complaint for recovery of possession and damages with prayer for a writ of preliminary injunction questioning the agreement on grounds that the subject matter of such agreement is outside the commerce of man and that the terms and conditions thereof are violative of RA No. 1899. Republic alleged that there are no foreshore lands along the seaside of Pasay City, that what Pasay City has are submerged or offshore areas which are outside the commerce of man, and that the area affected is within a national park. The trial court issued a preliminary injunction as prayed for, but on March 24, 1972, it came out with a decision dismissing Republic's complaint. Republic appealed to the Court of Appeals.

On January 11, 1973, before the appeal could be resolved, PD No. 3-A was issued, amending PD No. 3, thus:

> "SEC. 1. Section 7 of Presidential Decree No. 3, dated September 26, 1972, is hereby amended by the addition of the following paragraphs:

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[86]Director of Lands v. Rizal, *supra*.

[87]GR Nos. 103882 and 105276, Nov. 25, 1998, 299 SCRA 199, per Justice Purisima.

> The provisions of any law to the contrary notwithstanding, the reclamation of areas under water, whether foreshore or inland, shall be limited to the National Government or any person authorized by it under a proper contract.
>
> All reclamations made in violation of this provision shall be forfeited to the State without need of judicial action.
>
> Contracts for reclamation still legally existing or whose validity has been accepted by the National Government shall be taken over by the National Government on the basis of *quantum meruit*, for proper prosecution of the project involved by administration."

Meantime, on November 20, 1973, Republic and the Construction Development Corporation of the Philippines (CDCP) signed a contract for the Manila-Cavite Coastal Road Project (Phases I and II) which included the reclamation and development of areas covered by the agreement between Pasay City and RREC. PD No. 1085 transferred to the Public Estates Authority (PEA) the rights and obligations of the Republic under the contract between the Republic and CDCP.

On January 28, 1992, the Court of Appeals rendered a decision dismissing the appeal of the Republic and ordering the latter to turn over to Pasay City the ownership and possession over all vacant spaces in the twenty-one hectare area supposedly already reclaimed by Pasay City and RREC. Pasay City and RREC filed a motion for reconsideration contending that RREC had actually reclaimed fifty-five hectares, and not only twenty-one hectares. On April 28, 1992, the appellate court issued a resolution amending its decision by ordering the Republic to turn over to Pasay City the ownership and possession of the nine lots enumerated in the motion and sustaining RREC's irrevocable option to purchase sixty percent (60%) of the land in dispute. Republic, Pasay City and RREC all appealed to the Supreme Court. Meantime, the Cultural Center of the Philippines (CCP) intervened and was allowed to present its evidence, as it did, before the Court of Appeals.

Republic argued that there are no foreshore lands along the seaside of Pasay City but only submerged or offshore lands which, however, cannot be the subject of reclamation under RA No. 1899; hence, the reclamation agreement between Pasay City and RREC is

*ultra vires*. On the other hand, Pasay City and RREC faulted the appellate court in not declaring PD No. 3-A unconstitutional.

On November 25, 1998, the Supreme Court rendered its decision reversing that of the Court of Appeals. A foreshore land, according to the Court, is that "strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide" or "that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides." The Court held that the reclamation project undertaken by Pasay City and RREC violated RA No. 1899 since the subject areas were "submerged lands," not "foreshore lands" which are the only lands that may be reclaimed by local governments under said law. Consequently, the Court declared the questioned agreement null and void for being *ultra vires*. The Court also declared that there is no evidence to prove that RREC had really reclaimed 55 hectares, especially considering that as early as April 26, 1962, RREC was enjoined from proceeding with its reclamation work. When the CCP main building was being constructed from 1966 to 1969, the only land mass is that area where the CCP main building was erected, and the rest of the surroundings were all under water.

The concurring opinion of Justice Romero stated:

> "Applying the (R)egalian doctrine, the State owns all waters and lands of the public domain, including those physically reclaimed. As a general rule, therefore, only the National Government can reclaim foreshore lands and other submerged areas. At times, though, the State, to effectuate an expressed public policy, delegates some of its sovereign powers either to the legislature or to some of its alter egos. One such instance was R.A. No. 1899 which was intended to increase the autonomy of local governments, an innovation introduced by the Marcos administration. There is no doubt, however, that R.A. No. 1899 was a mere public grant, a privilege which may be withdrawn by the granting authority, the sovereign, in the exercise of police power. This is precisely what President Marcos did when he issued P.D. No. 3-A, a valid and effective means of regaining the State's right to reclaim. x x x ."

From this case of *Republic* v. *Pasay City,* there is no mistaking that the Manila Bay area is definitely outside the scope of RA No.

1899. It remains part of the public domain and is, as such, outside the commerce of man. It could not be the object of ordinary contracts or ordinances.[88]

Moreover, the term "foreshore lands" does not include submerged lands. If it were otherwise, there would have been no need for the legislative and executive branches of government to include "submerged areas" or "areas under water" in subsequent laws (*e.g.*, RA No. 5187 and PD No. 3-A). R.A. No. 1899 is limited to the reclamation of foreshore lands and does not include offshore and submerged lands. It must also be noted that RA No. 1899 is a legislative grant of the right to reclaim, the right to develop the land reclaimed and the right to own the reclaimed land. Grants of public land derogate from sovereign authority and are to be construed strictly against the grantee.[89]

It should be noted that PD No. 3-A, dated January 11, 1973, provides that the provisions of any law to the contrary notwithstanding, the reclamation of areas under water, whether foreshore or inland, shall now be limited to the national government or any person authorized by it under a proper contract, and that all reclamations made in violation of thereof shall be forfeited to the State without need of judicial action. Reclamation contracts legally existing or whose validity has been accepted by the government shall be taken over by the government on the basis of *quantum meruit*, for proper prosecution of the project involved by administration.

On February 4, 1977, PD No. 1085 was issued providing that lands reclaimed in the foreshore and offshore areas of Manila Bay pursuant to the contract for the reclamation and construction of the Manila-Cavite Coastal Road Project between the Republic of the Philippines and the Construction and Development Corporation of the Philippines (CDCP) dated November 20, 1973 and/or any other contract or reclamation covering the same areas are transferred and assigned to the ownership and administration of the PEA pursuant to PD No. 1084, and in consideration thereof, the PEA shall issue in favor of the government its corresponding shares of stock in said entity. Special land patents shall be issued by the Secretary of Environment and Natural Resources in favor of the PEA without prejudice to the subsequent transfer to the contractor or his assignees

[88]Concurring opinion of Justice Panganiban.
[89]Concurring opinion of Justice Puno.

of such portion or portions of the land reclaimed. On the basis of such patents, the Land Registration Authority shall issue the corresponding certificates of title.

### (2) Case of *Chavez* v. *Public Estates Authority*

In this case,[90] petitioner sought to nullify the amended joint venture agreement (JVA) between PEA and the Amari Coastal Bay and Development Corporation (AMARI) to reclaim portions of Manila Bay, involving an area of 750 hectares, 157.84 hectares of which have already been reclaimed and the rest, or 592.15 hectares, being still submerged areas. Under the JVA, AMARI was to complete the reclamation at its expense, and then AMARI and PEA shall share, in the proportion of 70/30%, respectively, in the total net usable area, less 30% earmarked for common areas. Title to AMARI's share, totaling 367.5 hectares, was to be issued in its name.

The threshold issue is whether AMARI, a private corporation, can acquire and own the reclaimed foreshore and submerged areas in Manila Bay in view of Sections 2 and 3, Article XII of the 1987 Constitution which state that:

> "SEC. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. *With the exception of agricultural lands, all other natural resources shall not be alienated* x x x.
>
> SEC. 3. x x x Alienable lands of the public domain shall be limited to agricultural lands. *Private corporations or associations may not hold such alienable lands of the public domain except by lease* x x x " (Emphasis supplied)

In holding that the amended JVA violates the Constitution, the Supreme Court, through Justice Carpio, stated:

> "Under Section 2, Article XII of the 1987 Constitution, the foreshore and submerged areas of Manila Bay are part of the 'lands of the public domain, waters . . . and other

[90]GR No. 133250, July 9, 2002, 384 SCRA 152; see also Resolutions dated May 6, 2001 and Nov. 11, 2003.

natural resources' and consequently 'owned by the State.' As such, foreshore and submerged areas 'shall not be alienated,' unless they are classified as 'agricultural lands' of the public domain. The mere reclamation of these areas by PEA does not convert these inalienable natural resources of the State into alienable or disposable lands of the public domain. There must be a law or presidential proclamation officially classifying these reclaimed lands as alienable or disposable and open to disposition or concession. Moreover, these reclaimed lands cannot be classified as alienable or disposable if the law has reserved them for some public or quasi-public use. x x x

The constitutional prohibition in Section 3, Article XII of the 1987 Constitution is absolute and clear: 'Private corporations or associations may not hold such alienable lands of the public domain except by lease,' x x x

Jurisprudence holding that upon the grant of the patent or issuance of the certificate of title the alienable land of the public domain automatically becomes private land cannot apply to government units and entities like PEA. The transfer of the Freedom Islands to PEA was made subject to the provisions of CA No. 141 as expressly stated in Special Patent No. 3517 x x x . Congress, however, cannot authorize the sale to private corporations of reclaimed alienable lands of the public domain because of the constitutional ban. Only individuals can benefit from such law. x x x

The Regalian doctrine is deeply implanted in our legal system. Foreshore and submerged areas form part of the public domain and are inalienable. Lands reclaimed from foreshore and submerged areas also form part of the public domain and are also inalienable, unless converted pursuant to law into alienable or disposable lands of the public domain. Historically, lands reclaimed by the government are *sui generis*, not available for sale to private parties unlike other alienable public lands. Reclaimed lands retain their inherent potential as areas for public use or public service. Alienable lands of the public domain, increasingly becoming scarce natural resources, are to be distributed equitably among our ever-growing population.

> To insure such equitable distribution, the 1973 and 1987 Constitutions have barred private corporations from acquiring any kind of alienable land of the public domain. Those who attempt to dispose of inalienable natural resources of the state, or seek to circumvent the conditional ban on alienation of lands of the public domain to private corporations, do so at their own risks."

Summarizing —

1. The 157.84 hectares of reclaimed lands comprising the Freedom Islands, now covered by certificates of title in the name of PEA, are alienable lands of the public domain. PEA may lease these lands to private corporations but may not sell or transfer ownership of these lands to private corporations. PEA may only sell these lands to Philippine citizens, subject to the ownership limitations in the 1987 Constitution and existing laws.

2. The 592.15 hectares of submerged areas of Manila Bay remain inalienable natural resources of the public domain until classified as alienable or disposable lands open to disposition and declared no longer needed for public service. The government can make such classification and declaration only after PEA has reclaimed these submerged areas. Only then can these lands qualify as agricultural lands of the public domain.

3. Since the amended JVA seeks to transfer to AMARI, a private corporation, ownership of 77.34 hectares of the Freedom Islands, such transfer is void for being contrary to Section 3, Article XII of the 1987 Constitution which prohibits private corporations from acquiring any kind of alienable land of the public domain.

4. Since the amended JVA also seeks to transfer to AMARI ownership of 290.156 hectares of still submerged areas of Manila Bay, such transfer is void for being contrary to Section 2, Article XII of the 1987 Constitution which prohibits the alienation of natural resources other than agricultural lands of the public domain. PEA may reclaim these submerged areas. Thereafter, the government can classify the reclaimed lands as alienable or disposable, and further declare them no longer needed for public service. Still, the transfer of such reclaimed alienable lands of the public domain to AMARI will be void in view of Section 3, Article XII of the 1987 Constitution which prohibits private corporations from acquiring any kind of alienable land of the public domain.

**19. The Public Estates Authority, now Philippine Reclamation Authority.**

The Public Estates Authority (PEA), renamed Philippine Reclamation Authority pursuant to EO No. 380, dated October 26, 1004, was established under PD No. 1984, dated February 4, 1977, to provide for a coordinated reclamation of lands, and the administration and operation of lands belonging to, managed and/or operated by the government, with the object of maximizing their utilization. More specifically, its purposes are to reclaim land, including foreshore and submerged areas, and acquire, administer, dispose, lease and sell any and all kinds of lands, buildings, estates and other forms of real property, owned, managed, controlled and/or operated by the government. It is empowered to exercise the right of eminent domain in the name of the Republic of the Philippines, and to exercise such functions as may be necessary for the attainment of the purposes for which it has been created.

**20. Vested rights, defined.**

A vested right is some right or interest in property that has become fixed and established, and is no longer open to doubt or controversy. Rights are vested when the right to enjoyment, present or prospective, has become the property of some person as present interest.

An open, continuous, adverse and public possession of a land of the public domain from time immemorial by a private individual personally and through his predecessors confers an effective title on said possessor, whereby the land ceases to be public, to become private, property. The possessor under such circumstances acquires by operation of law, not only a right to a grant, but a grant of the government, and the actual issuance of a title is not necessary in order that said grant may be sanctioned by the courts. As the possessor of a public land under the circumstances mentioned acquires the land by operation of law as a grant from the State, the land ceasing to be of public domain, to become private property, at least by presumption, it follows that it can no longer be sold by the Director of Lands to another person, and if he does, the sale is void, and the said possessor may recover the land from any person holding it against his will.[91]

[91]Susi v. Razon, GR No. 24066, Dec. 9, 1925, 48 Phil. 424.

**21. Option of claimant to file free patent application or obtain judicial confirmation of title.**

Where the applicants claimed that they acquired ownership of the properties in question partly by inheritance from their father and by purchase, they could opt to file a free patent application therefor (administrative legalization) or obtain judicial confirmation of their imperfect title. As enunciated by the Supreme Court:

> "x x x the dictum of the lower court that the appellants chose the wrong remedy in applying for free patents instead of obtaining a judicial confirmation of their imperfect titles involves a technicality that is of no material consequence now in view of the declaration by the same court that the appellants are the rightful and exclusive owners of the lands covered by said titles. Indeed, insofar as the kind of land that may be the subject of one or the other remedy is concerned, there is no difference between them. Both refer to public lands suitable for agricultural purposes; both require continuous occupation and cultivation either by the applicant himself or through his predecessors-in-interest for a certain length of time; and both are modes of confirming an imperfect or incomplete title — one judicially and the other administratively. * * * The fact that the appellants inherited part of the lands in question from their father and acquired the rest by purchase from their co-heirs does not necessarily imply that they had become private lands in the sense of being no longer subject to disposal under the provisions of the Public Land Act. What is not to be denied is that in connection with their free patent applications the appellants, as well as the Director of Lands, considered the lands as still part of the public domain, although the appellants had an imperfect title to them."[92]

**22. Registration of patent is the operative act to convey the land.**

Once a public land is alienated, granted or conveyed by the government, "the same shall be brought forthwith under the

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[92]Kayaban v. Republic, GR No. L-33307, Aug. 30, 1973, 52 SCRA 357; see also Antonio v. Barroga, GR No. L-23769, April 29, 1968, 23 SCRA 360.

operation of (the Property Registration Decree)."[93] It is the duty of the issuing agency of the government to cause the same to be filed and registered with the Register of Deeds, whereupon an owner's duplicate certificate of title shall be issued to the patentee or grantee. The patent or grant shall not take effect as a conveyance or bind the land but shall operate only as a contract between the government and the grantee. It is the act of registration that conveys or affects the land, and binds third persons.[94]

### (1) Certificate of title issued pursuant to a patent indefeasible

Once the patent is registered and the corresponding certificate of title is issued, the land ceases to be part of the public domain and becomes private property over which the Director of Lands has neither control nor jurisdiction. A public land patent when registered in the corresponding Registry of Deeds is a veritable Torrens title and becomes as indefeasible as a Torrens title upon the expiration of one year from the date of its issuance.[95]

A certificate of title issued pursuant to a public land patent partakes of the nature of a certificate of title issued through judicial proceeding. It has in its favor the presumption of regularity. It becomes incontrovertible upon the expiration of one year from the date of the order for issuance of the patent, hence, prescription cannot operate against the registered owner.[96] Section 103 states that "(w)henever public land is by the Government alienated, granted or conveyed to any person, the same shall be brought forthwith under the operation of this Decree." Accordingly, the indefeasibility of the certificate of title issued after the corresponding patent has been duly registered is settled. The land automatically comes under the operation of Sections 31 and 32 of the Property Registration Decree and subject to all the safeguards therein provided. And this has been the constant doctrine land down by the Supreme Court in a long line of adjudicated cases.

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[93]Sec. 103, Property Registration Decree.

[94]Marasigan v. Intermediate Appellate Court, GR No. L-69303, July 23, 1987, 152 SCRA 253.

[95]Director of Lands v. De Luna, GR No. L-14641, Nov. 23, 1960, 110 Phil. 28.

[96]Tengco v. Aliwalas, GR No. L-77541, Nov. 29, 1988, 168 SCRA 198; Lopez v. Court of Appeals, GR No. 49739, Jan. 20, 1989, 169 SCRA 271; Iglesia ni Cristo v. Judge of the Court of First Instance of Nueva Ecija, GR No. L-35273, July 25, 1983, 123 SCRA 516.

Thus, it has been held that once a homestead patent is registered in accordance with Section 122 of the Land Registration Act (now Section 103 of the Property Registration Decree), it becomes irrevocable and enjoys the same privileges as Torrens titles issued under said Act. The title to the land thus granted and registered may no longer be the subject of any inquiry, decision, or judgment in a cadastral proceeding."[97] Public land patents when registered in the corresponding Registry of Deeds are veritable Torrens titles subject to no encumbrances except those stated therein, plus those specified by the statute.[98]

> "A homestead patent, once registered under the Registration Act, becomes as indefeasible as a Torrens title, and cannot thereafter be the subject of an investigation for determination or judgment in a cadastral case. Any new title which the cadastral court may order to be issued is null and void and should be cancelled. All that the cadastral court may do is to make corrections of technical errors in the description of the property contained in its title, or to proceed to the partition thereof if it is owned by two or more co-owners."[99]

> "The rule is well-settled that an original certificate of title issued on the strength of a homestead patent partakes of the nature of a certificate of title issued in a judicial proceeding, as long as the land disposed of is really part of the disposable land of the public domain, and becomes indefeasible and incontrovertible upon the expiration of one year from the date of the promulgation of the order of the Director of Lands for the issuance of the patent. [Republic v. Heirs of Carle, 105 Phil. 1227 (1959); Ingaran v. Ramelo, 107 Phil. 498 (1960); Lopez v. Padilla, G.R. No. L-27559, May 18, 1972, 45 SCRA 44.] A homestead patent, once registered under the Land Registration Act, becomes as indefeasible as a Torrens Title. [Pamintuan v. San Agustin, 43 Phil. 558 (1982); El Hogar Filipino v. Olviga, 60 Phil. 17 (1934); Duran v. Oliva, 113 Phil. 144 (1961); Pajomayo v. Manipon, G.R. No. L-33676, June 30, 1971, 39 SCRA 676.]"

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[97]El Hogar Filipino v. Olviga, GR No. 37434, April 5, 1934, 60 Phil. 17; Manalo v. Lukban, GR No. 22424, Sept. 8, 1924, 48 Phil. 973.

[98]Dagdag v. Nepomuceno, *supra*.

[99]Ramoso v. Obligado, GR No. 46548, June 21, 1940, 70 Phil. 86.

x x x x x x x x x

Finally, petitioners contend that private respondent have lost their title to the property through laches and prescription. They assert that private respondents and their predecessors-in-interest have never actually possessed the property while petitioners and their predecessor-in-interest have been in actual, open, uninterrupted and adverse possession of the property since 1918. But as stated above, title acquired through a homestead patent registered under the Land Registration Act is imprescriptible. Thus, prescription cannot operate against the registered owner.[100]

"(A)fter the registration and issuance of the certificate and owner's duplicate certificate of title of a public land patent, the land covered thereby automatically comes under the operation of Act 496 and subject to all the safeguards provided therein (See El Hogar Filipino vs. Olviga, 60 Phil., 17; Aquino vs. Director of Lands, 39 Phil., 850; Manalo vs. Lukban and Liwanag, 48 Phil., 973). Section 38 of Act 496, otherwise called the Land Registration Act, prohibits the raising of any question concerning the validity of a certificate of title after one year from entry of the decree of registration. And the period of one year has been construed, in the case of public land grants, to begin from the issuance of the patent (Sumail vs. C.F.I. of Cotabato, *infra*; Nelayan vs. Nelayan, G.R. No. L-14518, August 29, 1960)."[101]

**(2) Title cannot be defeated by adverse possession**

Once a title is registered, as a consequence either of judicial or administrative proceedings, the owner may rest secure, without the necessity of waiting in the portals of the court sitting in the *mirador de su casa* to avoid the possibility of losing his land.[102] The certificate of title cannot be defeated by adverse, open and notorious possession. Neither can it be defeated by prescription.[103] In fact, by express provi-

[100]Tengco v. Aliwalas, *supra*.
[101]Director of Lands v. Jugado, GR No. L-14702, May 23, 1961, 2 SCRA 32.
[102]Salao v. Salao, GR No. L-26699, March 16, 1976, 70 SCRA 65.
[103]Brusas v. Court of Appeals, GR No. 126875, August 26, 1999, 313 SCRA 176.

sion of Section 48, PD No. 1529, a certificate of title cannot be collaterally attacked.[104]

True it may be that neither the Public Land Act (CA No. 141) nor the Property Registration Decree (PD No. 1529) provides for the period within which the certificate of title to a public land grant may be questioned, but this does not necessarily mean that an action questioning the title may be brought within 10 years (Art. 1144, new Civil Code), because a certificate of title issued pursuant to a patent partakes of the nature of a certificate issued as a consequence of a judicial proceeding, as long as the land disposed of is really a part of the disposable land of the public domain, and becomes indefeasible and incontrovertible upon the expiration of one year from the date of the issuance thereof.[105]

It should be noted, however, that while with the due registration and issuance of a certificate of title over a land acquired pursuant to the Public Land Act, said property becomes registered in contemplation of PD No. 1529, in view of its nature and manner of acquisition, such certificate of title, when in conflict with one obtained on the same date through judicial proceedings, must give way to the latter.[106]

### 23. Director of Lands has continuing authority to investigate fraudulent issuance of patents.

The Director of Lands, who is the officer charged with carrying out the provisions of the Public Land Law, has control over the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain. His decision as to questions of fact, when approved by the Secretary of Environment and Natural Resources, is conclusive.[107]

Under Section 91 of the Public Land Act, it is not only the right but the duty of the Director of Lands to conduct the investigation of any alleged fraud in securing a free patent and the corresponding title to a public land and to file the corresponding court action for

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[104]Gonzales v. Court of Appeals, GR No. 62556, Aug. 13, 1992, 212 SCRA 595.

[105]Republic v. Carle, GR No. L-12485, July 31, 1959, 105 Phil. 1227.

[106]Nieto v. Quines, *supra*.

[107]Sec. 4, CA No. 141; Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc., GR No. 158455, June 28, 2005, 461 SCRA 517; Calibo v. Ballesteros, GR No. L-17466, Sept. 18, 1965, 15 SCRA 37.

the reversion of the same to the State, if the facts disclosed in the course of such investigation should so warrant. It is to the public interest that one who succeeds in fraudulently acquiring title to a public land should not be allowed to benefit therefrom, and the State should, therefore, have an ever existing authority, thru its duly authorized officers, to inquire into the circumstances surrounding the issuance of any such title, to the end that the Republic, thru the Solicitor General or any other officer who may be authorized by law, may file the corresponding action for the reversion of the land involved to the public domain, subject thereafter to disposal to other qualified persons in accordance with law. In other words, the indefeasibility of a title over land previously public is not a bar to an investigation by the Director of Lands as to how such title has been acquired, if the purpose of such investigation is to determine whether or not fraud had been committed in securing such title inorder that the appropriate action for reversion may be filed by the government. Consequently, prohibition cannot be issued to enjoin such an investigation despite the existence of a Torrens title.[108]

As a rule then, courts have no jurisdiction to intrude upon matters properly falling within the powers of the Director of Lands (Lands Management Bureau).[109]

### 24. Government may initiate action for cancellation of title and reversion.

Notwithstanding the doctrine of indefeasibility of a Torrens title after the expiration of the 1-year period provided in Section 32 of the Property Registration Decree, Section 101 of the Public Land Act provides a remedy whereby lands of the public domain fraudulently awarded to the applicant may be recovered or reverted back to its original owner, the government. An action for reversion has to be instituted by the Solicitor General[110] pursuant to said section which provides:

> "SEC. 101. All actions for the reversion to the Government of lands of the public domain or improvements

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[108]Republic v. Court of Appeals and Felisilda, GR No. 79582, April 10, 1989, 171 SCRA 721.

[109]Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc., *supra*.

[110]*Ibid*.

> thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines."

Under Section 35, Chapter XII, Title III of the Administrative Code of 1987 (EO No. 292), the Office of the Solicitor General shall represent the government in all land registration and related proceedings and institute actions for the reversion to the government of lands of the public domain and improvements thereon as well as lands held in violation of the Constitution.

Thus, it has been held that where the questioned property was a public land, only the Solicitor General or the officer acting in his stead has the authority to institute the action on behalf of the Republic for cancellation of title and for reversion of the land to the government.[111] But it would be improper for the government, through the Solicitor General, to file an action for reversion of land titled to defendant pursuant to a free patent where the alleged fraud consists in the fact that said land, at the time of the issuance of the patent, was no longer a part of the public domain, having been adjudicated as private property of another person in a previous registration case. The nullification of defendant's title would not result in the reversion of the land to the state but remains private property. Consequently, the government, not being the real party-in-interest, is without personality to institute the action for reversion.[112] An action for reversion on the ground that defendant obtained patent through fraud would also fail where the land had successively been sold by the heirs of the patentee to third parties who are holding Torrens titles and enjoying the presumption of good faith. For while one person may not enjoy the fruits of fraud *(fraus et jus nunquam cohabitant)*, equally applicable is the doctrine that a fraudulent title may be the root of a valid title in the name of an innocent buyer for value and in good faith.[113]

In *Sumail v. Judge of the Court of First Instance of Cotabato*,[114] the Court held:

> "Under Section 101 (of the Public Land Act), only the Solicitor General or the officer acting in his stead may

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[111]Causapin v. Court of Appeals, GR No. 107432, July 4, 1994, 233 SCRA 615.

[112]Republic v. Agunoy, GR No. 155394, Feb. 17, 2005, 451 SCRA 735; Evangelista v. Santiago, GR No. 157447, April 29, 2005.

[113]*Ibid*.

[114]GR No. L-8278, April 31, 1955, 96 Phil. 946.

> bring the action for reversion. Consequently, Sumail may not bring such action or any action which would have the effect of cancelling a free patent and the corresponding certificate of title issued on the basis thereof, with the result that the land covered thereby will again form part of the public domain. Furthermore, there is another reason for withholding legal personality from Sumail. He does not claim the land to be his private property. In fact, by his application for a free patent, he had formally acknowledged and recognized the land to be a part of the public domain; this, aside from the declaration made by the cadastral court that lot 3633 was public land. Consequently, even if the parcel were declared reverted to the public domain, Sumail does not automatically become owner thereof. He is a mere public land applicant like others who might apply for the same."

Private parties cannot challenge the validity of the patent and title when they are not the registered owners thereof nor had they been declared as owners in the cadastral proceedings. The reason for the rule is explained in *Maninang* v. *Consolacion*[115] as follows:

> "Whether the grant was in conformity with the law or not is a question which the government may raise, but until it is raised by the government and set aside, the defendant can not question it. The legality of the grant is a question between the grantee and the government."

In *Nagaño* v. *Director of Lands*,[116] plaintiffs filed a complaint for the declaration of nullity of a certificate of title issued to defendants on the basis of a free patent. Plaintiffs alleged that defendants obtained their title through fraud since plaintiffs, and no other persons, have always been in possession of the land since 1950. Defendant filed a motion to dismiss alleging that the court has no jurisdiction over the nature of the action; plaintiffs have no cause of action since the suit for annulment should be instituted by the Solicitor General; and plaintiffs' cause of action is barred by the statute of limitations, the lawsuit having been instituted more than one year, or in fact almost fifteen years after the issuance of the title. The trial

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[115]GR No. 3942, Dec. 26, 1908, 12 Phil. 342.
[116]GR No. 123231, Nov. 17, 1997, 282 SCRA 43.

court granted the motion to dismiss on the ground that the "action to annul the subject certificate of title, which is the plaintiffs' principal cause of action, should be instituted by the Solicitor General." The case reached the Supreme Court.

In reversing the order of dismissal, the Court said that the complaint of private respondents may be considered an action for quieting of title. Private respondents' claim of open, public, peaceful, continuous and adverse possession of the 2,250 square meter portion since 1920, and its illegal inclusion in the free patent of petitioners and in their original certificate of title, gave private respondents a cause of action for quieting of title which is imprescriptible. It is settled that a free patent issued over *private land* is null and void, and produces no legal effects whatsoever. *Quod nullum est, nullum producit effectum*. The facts do not bring out a case for reversion to be instituted by the Solicitor General.

In *Republic* v. *Umali*,[117] the government sought the reversion of a parcel of land on the ground that the original sale thereof from the government was based on a forgery and therefore void *ab initio*. Respondents as transferees, claiming to be innocent purchasers for value and not privy to the alleged forgery, contended that the action cannot lie against them as they were not privy to the alleged forgery. Upholding such claim, the Supreme Court held that even if the original grantee is proven to have procured the patent and the original certificate of title by means of fraud, the land would not revert back to the State precisely because it has become private land. Respondents are transferees in good faith and for value and that the original acquisition thereof, although fraudulent, did not affect their own titles. The Court, citing *Ramirez* v. *Court of Appeals,*[118] further held:

> "A certificate of title fraudulently secured is not null and void ab initio, unless the fraud consisted in misrepresenting that the land is part of the public domain, although it is not. In such case the nullity arises, not from the fraud or deceit, but from the fact that the land is not under the jurisdiction of the Bureau of Lands. Inasmuch as the land involved in the present case does not belong to such category, (the title) would be merely voidable or reviewable:

[117]GR No. 80687, April 10, 1989, 171 SCRA 647.
[118]GR No. L-28591, Oct. 31, 1969, 30 SCRA 297.

> (1) upon proof of actual fraud; (2) although valid and effective, until annulled or reviewed in a direct proceeding therefore, not collaterally; (3) within the statutory period therefor; (4) after which, the title would be conclusive against the whole world, including the Government."

The case of *Republic* v. *Umali*, *supra*, should be differentiated from the case of *Piñero* v. *Director of Lands*[119] where the government also sought the reversion of the lands granted to the applicants (Piñeros) on the ground of fraud because said lands *had not yet passed to the hands of an innocent purchaser for value*. They were still held by the Piñeros. The action for reversion was filed by the government against them as the original and direct grantees of the free patents issued by the government pursuant to which the corresponding certificates of title were issued. The fraud alleged by the government as a ground for the reversion sought was imputable directly to the Piñeros, who could not plead the status of innocent purchasers for value.

**(1) Private party cannot bring action for reversion**

If there has been any fraud or misrepresentation in obtaining the title, an action for reversion instituted by the Solicitor General would be the proper remedy.[120] But an action for reversion may be filed by the Solicitor General only upon the recommendation of the Director of Lands. As explained in *Kayaban* v. *Republic*:[121]

> "Since it was the Director of Lands who processed and approved the applications of the appellants and who ordered the issuance of the corresponding free patents in their favor in his capacity as administrator of the disposable lands of the public domain, the action for annulment should have been initiated by him, or at least with his prior authority and consent."

A private party may not bring an action for reversion or any action which would have the effect of cancelling a public land patent and the corresponding certificate of title, with the result that the

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[119]GR No. L-36507, June 14, 1974, 57 SCRA 386.

[120]Tengco v. Aliwalas, *supra*; Director of Lands v. Jugado, GR No. L-14702, May 23, 1961, 2 SCRA 32.

[121]*Supra*.

land covered thereby will again form part of the public domain. This is especially true where that party does not claim the land to be his private property as when, for instance, he has filed an application for free patent for the land, thereby formally acknowledging and recognizing the land to be a part of the public domain. Consequently, even if the parcel were declared reverted to the public domain, that party does not automatically become owner thereof. He is a mere public land applicant like others who might apply for the same.[122]

### (2) Action for reversion not barred by prescription

Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. Prescription does not lie against the State in such cases for the Statute of Limitations does not run against the State. The right of reversion or reconveyance to the State is not barred by prescription.[123]

### (3) Action for cancellation of title

It is proper for a private party to file an action for cancellation of certificate title issued by virtue of a public land patent as when he claims ownership of the land as private property by virtue of long period of possession and, hence, no longer deemed a part of the public domain which could be disposed of under the provisions of the Public Land Act, or when the land is already covered by a previously issued certificate of title.

Thus, it has been held that where the land awarded by virtue of patent was not part of the public domain but was private property, the owner who has been wrongfully deprived of such land may, notwithstanding the lapse of the one-year period, bring an action for the recovery thereof, and "the court, in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens title issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof."[124] Also, a recognized exception

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[122]Sumail v. Judge of the CFI of Cotabato, GR No. L-8278, April 30, 1955, 96 Phil. 946.

[123]Republic v. Animas, GR No. L-37682, March 29, 1974, 56 SCRA 499.

[124]Municipality of Hagonoy v. Secretary of Agriculture and Natural Resources, *supra*.

to the rule that only the government may bring an action for cancellation and reversion is where plaintiff-claimant seeks direct reconveyance from defendant public land unlawfully and in breach of trust titled by him, for the enforcement of a constructive trust.[125]

In the same vein, *Roco* v. *Gimeda*[126] states that if patent has already been issued through fraud or mistake and has been registered, the remedy of the party who has been injured by the fraudulent registration is an action for reconveyance, thus:

> "It is to be noted that the petition does not seek for a reconsideration of the granting of the patent or of the decree issued in the registration proceeding. The purpose is not to annul the title but to have it conveyed to plaintiffs. Fraudulent statements were made in the application for the patent and no notice thereof was given to plaintiffs, nor knowledge of the petition known to the actual possessors and occupants of the property. The action is one based on fraud and under the law, it can be instituted within four years from the discovery of the fraud. (Art. 1146, Civil Code, as based on Section 3, paragraph 43 of Act No. 190.) It is to be noted that as the patent here has already been issued, the land has the character of registered property in accordance with the provisions of Section 122 of Act No. 496, as amended by Act No. 2332, and the remedy of the party who has been injured by the fraudulent registration is an action for reconveyance. (Director of Lands vs. Register of Deeds, 92 Phil., 826; 49 Off. Gaz. [3] 935; Section 55 of Act No. 496.)"

The case of *Quiñiano* v. *Court of Appeals*,[127] where patent and title were obtained over a parcel of land belonging to private owners, reiterated the legal norm enunciated in *Director of Lands* v. *Register of Deeds of Rizal*[128] that: "The sole remedy of the landowner whose property has been wrongfully or erroneously registered in another's name is after one year from the date of the decree, not to set aside the decree . . . but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary

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[125]Causapin v. Court of Appeals, *supra*.
[126]Roco v. Gimeda, GR No. L-11651, Dec. 27, 1958, 94 Phil. 1011.
[127]GR No. L-23024, May 31, 1971, 39 SCRA 221.
[128]GR No. L-4463, March 24, 1953, 92 Phil. 826.

court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages."

### 25. Courts have jurisdiction over possessory actions involving public lands.

Even pending the investigation of, and resolution on, an application by a *bona fide* occupant, by the priority of his application and record of his entry, he acquires a right to the possession of the public land he applied for against any other public land applicant, which right may be protected by the possessory action of forcible entry or by any other suitable remedy that our rules provide. The grant of power and duty to the Department of Environment and Natural Resources (DENR), through the Lands Management Bureau (LMB), to alienate and dispose of public lands does not divest the courts of their duty or power to take cognizance of actions instituted by settlers or occupants or applicants against others to protect their respective possessions and occupations, more especially the actions of trespass, forcible entry and unlawful detainer. The exercise of such jurisdiction is not considered as an interference with the alienation, disposition, and control of public lands.[129]

The DENR's jurisdiction over public lands does not negate the authority of courts of justice to resolve questions of possession and their decisions stand in the meantime that the DENR has not settled the respective rights of public land claimants.[130] But once the DENR has decided, particularly with the grant of the corresponding homestead and title, its decision prevails.[131] As provided in Section 104 of the Public Land Act, the "owner" of land may bring action in the proper court to recover the same before such action for prescribes. Hence, one who is not the owner but simply another applicant for a free patent to the same land may not bring an action in court to recover the land for the court may not usurp the authority of the Lands Department to dispose of lands of the public domain, or to determine, as between two or more applicants, who has satisfactorily met the requirements of the law for the issuance of patent.[132]

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[129]Pitargue v. Sorilla, GR No. L-4302, Sept. 17, 1952, 92 Phil. 5.

[130]Rallon v. Ruiz, GR No. L-23315, May 26, 1969, 28 SCRA 331.

[131]Omandam v. Court of Appeals, GR No. 128570, Jan. 18, 2001, 349 SCRA 483.

[132]Maximo v. Court of First Instance of Capiz, GR No. L-61113, Feb. 21, 1990, 182 SCRA 420.

Similarly, an applicant for sales patent whose application had not been acted upon by the Lands Management Bureau from the time it was filed in 1953 could not claim to be holding the land under a *bona fide* claim of acquisition of ownership. The application for sales patent is an acknowledgment that the land is public land under the administration of the Lands Management Bureau to which the application was submitted.[133]

It is a well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts. This is generally true with respect to acts involving the exercise of judgment or discretion. Findings of fact by an administrative board or official, following a hearing, are binding upon the courts and will not be disturbed except where the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion.[134]

## 26. Prohibition against alienation of lands acquired under the homestead and free patent provisions.

Quoted below are relevant sections of CA No. 141, otherwise known as the Public Land Act, on prohibited alienation of public lands:

> "SEC. 118. Except in favor of the Government or any of its branches, units or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.
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> No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the

[133]Magsino v. Republic, GR No. 136291, Oct. 17, 2001, 367 SCRA 455.
[134]Pajo v. Ago, GR No. L-15414, June 30, 1960, 108 Phil. 905.

Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal grounds. (As amended by CA No. 456, approved June 8, 1939)"

"SEC. 121. Except with the consent of the grantee and the approval of the Secretary of Agriculture and Natural Resources, and solely for educational, religious, or charitable purposes or for a right of way, no corporation, association, or partnership may acquire or have any right, title, interest, or property right whatsoever to any land granted under the free patent, homestead, or individual sale provisions of this Act or to any permanent improvement on such land. (As amended by CA No. 615, approved May 5, 1941)

SEC. 122. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated or transferred, except to persons, corporations, association, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefore by their charters.

Except in cases of hereditary successions, no land or any portion thereof originally acquired under the free patent, homestead, or individual sale provisions of this Act, or any permanent improvement on such land, shall be transferred or assigned to any individual, nor shall such land or any permanent improvement thereon be leased to such individual, when the area of said land, added to that of his own, shall exceed one hundred and forty-four hectares. Any transfer, assignment, or lease made in violation hereto shall be null and void. (As amended by CA No. 615, *id*.)"

"SEC. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit

> originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State."

The foregoing legal provisions clearly proscribe the encumbrance of a parcel of land acquired under a free patent or homestead within five years from the grant of such patent. Furthermore, such encumbrance results in the cancellation of the grant and the reversion of the land to the public domain. Encumbrance has been defined as "[a]nything that impairs the use or transfer of property; anything which constitutes a burden on the title; a burden or charge upon property; a claim on lien upon property." It may be a "legal claim on an estate for the discharge of which the estate is liable; an embarrassment of the estate or property so that it cannot be disposed of without being subject to it; an estate, interest, or right in lands, diminishing their value to the general owner; a liability resting upon an estate."[135]

The grantee's right to enjoy the property is restricted when it is leased — hence, encumbered — to another during the five-year prohibitory period. The contract of lease "impairs the use of the property" because the owner temporarily grants the use of his property to another who undertakes to pay rent therefor. During the term of the lease, the grantee of the patent cannot enjoy the beneficial use of the land leased. As already observed, the Public Land Act does not permit a grantee of a free patent from encumbering any portion of such land. Such encumbrance is a ground for the nullification of the award.[136] In the same vein, a mortgage constitutes a legal limitation on the estate and the foreclosure of such mortgage would necessarily result in the auction of the property.[137]

Even if only part of the property has been sold or alienated within the prohibited period of five years from the issuance of the patent, such alienation is a sufficient cause for the reversion of the whole estate to the State. As a condition for the grant of a free patent to an applicant, the law requires that the land should not be encumbered, sold or alienated within five years from the issuance of the patent. The sale or the alienation of part of the homestead violates that condition.[138]

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[135]Republic v. Court of Appeals and Morato, GR No. 100709, Nov. 14, 1997, 281 SCRA 639.

[136]*Ibid.*

[137]Prudential Bank v. Panis, GR No. L-50008, Aug. 31, 1987, 153 SCRA 390.

[138]Republic v. Garcia, GR No. L-11597, May 27, 1959, 105 Phil. 826.

The prohibition against the encumbrance — lease and mortgage included — of a homestead which, by analogy applies to a free patent, is mandated by the rationale for the grant, *viz*.:

> "It is well-known that the homestead laws were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation. Pursuant to such benevolent intention the State prohibits the sale or encumbrance of the homestead (Section 116) within five years after the grant of the patent. After that five-year period the law impliedly permits alienation of the homestead; but in line with the primordial purpose to favor the homesteader and his family the statute provides that such alienation or conveyance (Section 117) shall be subject to the right of repurchase by the homesteader, his widow or heirs within five years. This Section 117 is undoubtedly a complement of Section 116. It aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him. It would, therefore, be in keeping with this fundamental idea to hold, as we hold, that the right to repurchase exists not only when the original homesteader makes the conveyance, but also when it is made by his widow or heirs. This construction is clearly deducible from the terms of the statute."[139]

By express provision of Section 118 of the Public Land Act, and in conformity with the policy of the law, any transfer or alienation of a free patent or homestead within five years from the issuance of the patent is proscribed. Such transfer nullifies said alienation and constitutes a cause for the reversion of the property to the State.

### (1) Prohibition starts from date of approval up to fifth year from issuance of patent

In *Beniga v. Bugas*,[140] the Court explained that the alienation of lands acquired by homestead or free patent grants is forbidden "from the date of approval of the application" up to and including the fifth year "from and after the date of the issuance of the patent or grant." In this case, a free patent was issued to the patentee on

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[139]Pascua v. Talens, GR No. L-348, April 30, 1948, 80 Phil. 792.
[140]GR No. L-28918, Sept. 29, 1970, 35 SCRA 111.

May 3, 1963. The patentee died on September 5, 1966. Before his death, however, he donated *inter vivos* on September 22, 1965 the controverted portion of the parcel of land to the defendant who, thenceforth, took possession of the property. At the time of the donation, both donor and donee did not know about the issuance of the patent. The court *a quo* held that the donation was null and void, being in violation of the 5-year prohibitory period. On appeal, the Court held:

> "Anyway, it has been repeatedly held that the period is not computed from the date of registration with the Register of Deeds or from the date of the certificate of title.
>
> Section 118 does not exempt patentees and their purported transferees who had no knowledge of the issuance of the patent from the prohibition against alienation; for the law does not say that the five years are to be counted 'from knowledge or notice of issuance' of the patent or grant. The date of the issuance of the patent is documented and is a matter of government and official record. As such, it is more reliable and precise than mere knowledge, with its inherent frailties. Indeed, the policy of the law, which is to give the patentee a place where to live with his family so that he may become a happy citizen and a useful member of our society, would be defeated were ignorance of the issuance of a patent a ground for the non-application of the prohibition.
>
> Equity, as ground for the validation of the donation, may not be invoked, for the prohibition under the aforesaid Section 118 is mandatory, and the 'general principles of equity will not be applied to frustrate the purpose of the laws or to thwart public policy.'"

The prohibition against any alienation or encumbrance of the land grant is a proviso attached to the approval of every application.[141] Prior to the fulfillment of the requirements of law, the applicant has only an inchoate right to the property; such property remains part of the public domain and, therefore, not susceptible to alienation or encumbrance. Conversely, when a "homesteader has complied with all the terms and conditions which entitled him to a patent for a particular tract of public land, he acquires a vested in-

[141]Republic v. Ruiz, GR No. L-23712, April 29, 1968, 23 SCRA 348.

terest therein and has to be regarded an equitable owner thereof."[142] However, for the grantee's title of ownership over the patented land to be perfected, he should have complied with the requirements of the law, one of which is to keep the property for himself and his family within the prescribed period of five (5) years. Prior to the fulfillment of all requirements of the law, his title over the property is incomplete. Accordingly, if the requirements are not complied with, the State as the grantor could petition for the annulment of the patent and the cancellation of the title.[143]

In a legal sense, when the Director of Lands issues the order for the issuance of a patent, after the approval of the final proof, the right of the homesteader to the patent becomes absolute and then it becomes the ministerial duty of the corresponding officials of the government to issue said patent. To all intents and purposes the order for the issuance of a patent is the same in effect as the issuance of a patent itself. And if the law prohibits the sale or conveyance of a homestead after the issuance of a patent, the prohibition should be extended, in view of the apparent policy of the law, to the date on which the order for the issuance of the patent is issued.[144]

The latest rulings of the Supreme Court emphasize that the patent is considered issued once the order for its issuance is promulgated and, therefore, the five year period is computed from this date and not from the date of registration with the Register of Deeds or from the date of the certificate of title.[145] The provision of law which prohibits the sale or encumbrance of the homestead, except in favor of the government or any of its branches, units or institutions, within five years is mandatory. Thus, a sale of homestead within the five-year prohibitive period is void *ab initio* and the same cannot be ratified nor can it acquire validity through the passage of time.

**(2) Policy of the law**

As fully explained in *Tinio* v. *Frances,*[146] the legislative policy or intent is to conserve the land which a grantee has acquired under

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[142]Delizo v. Delizo, GR No. L-32820, Jan. 30, 1976, 69 SCRA 216, citing Juanico v. American Land Commercial Company, Inc., GR No. L-7459, June 23, 1955, 97 Phil. 221.

[143]Republic v. Court of Appeals and Morato, *supra*.

[144]Dumelod v. Vilaray, GR No. L-4814, April 27, 1953, 92 Phil. 967.

[145]Decolongon v. Court of Appeals, GR No. L-46495, June 24, 1983, 122 SCRA 843.

[146]GR No. L-7747, Nov. 29, 1955, 198 Phil. 32.

the Public Land Act, for him and his heirs, and, as stated ion *Beniga* v. *Bugas*,[147] "to give the patentee a place where to live with his family so he may become a happy citizen and useful member of our society." The legislative policy is so strong and consistent that the original period of five years from the issuance of the patent, within which period conveyance or sale thereof by the homesteader or his heirs was prohibited[148] is now extended to twenty-five years if no approval of the Secretary of Environment and Natural Resources is secured. Provision has also been inserted authorizing the repurchase of the homestead when properly sold by the homesteader within five years from the date of the sale.[149] This legislative intent and policy is also sought to be carried out in Section 20 of the Public Land Act, as may be seen from the fact that transfer of homestead rights from a homesteader can only be justified upon proof satisfactory to the Director of Lands that the homesteader cannot continue with his homestead through no fault of his own. This is not the only requirement; a previous permission of the Secretary of Environment and Natural Resources should first be obtained, as it is also expressly provided that any transfer made without such previous approval is null and void and shall result in the cancellation of the entry and the refusal of the patent.

### (3) Approval of Secretary merely directory

However, in *Raffiñan v. Abel*,[150] it was held that the requirement for the approval of the Secretary of Environment and Natural Resources is merely directory, and its absence does not invalidate any alienation, transfer or conveyance of the homestead after five years and before the twenty-five year period. Such approval may be secured at any time in the future.

### (4) Agreements which are considered a circumvention of the law

The prohibition applies as well to the sale of the land to the homesteader's own son or daughter as a clever homesteader who wants to circumvent the ban may simply sell the lot to his descendant

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[147]*Supra*.
[148]Sec. 116, Act No. 2874.
[149]Sec. 119, CA No. 141, as amended, *infra*.
[150]GR No. L-17082, April 30, 1962, 4 SCRA 1260.

and the latter after registering the same in his name would sell it to a third person.[151]

In a case,[152] it was held that where the homesteader sold a two-hectare portion of the homestead to the plaintiffs on the understanding that the actual conveyance of the said portion would be made only after the lapse of the five-year prohibitory period, the agreement is clearly illegal and void *ab initio* as it is intended to circumvent and violate the law.

In *Manzano* v. *Ocampo*,[153] it was held that the law prohibiting any transfer or alienation of homestead land within five years from the issuance of the patent does not distinguish between executory and consummated sales, thus:

> "(I)t would hardly be in keeping with the primordial aim of this prohibition to preserve and keep in the family of the homesteader the piece of land that the state had gratuitously given to them, to hold valid a homestead sale actually perfected during the period of prohibition but with the execution of the formal deed of conveyance and the delivery of possession of the land sold to the buyer deferred until after the expiration of the prohibitory period, purposely to circumvent the very law that prohibits and declares invalid such transaction to protect the homesteader and his family."

The rationale against the alienation of a homestead is equally applicable to land acquired under a free patent, except that in the latter, the alienation after five years from the order for the issuance of patent does not need the approval of the Secretary.

### 27. Repurchase by applicant or his heirs.

Section 119 of the Public Land Act provides that every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

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[151]Gayapanao v. Intermediate Appellate Court, GR No. 68109, July 17, 1991, 199 SCRA 309.

[152]Homena v. Casa, GR No. L-32749, Jan. 22, 1988, 157 SCRA 232.

[153]GR No. L-14778, Feb. 28, 1961, 1 SCRA 691.

When the patentee-vendor is still living, he has the right to repurchase,[154] otherwise, his widow or his legal heirs have that right.[155]

### (1) Rationale of the provision

Section 119 is undoubtedly a complement of Section 118. The *raison d'etre* of the provision is to give the homesteader or patentee every chance to preserve for himself and his family the land that the state had gratuitously given to him as a reward for his labor in cleaning and cultivating it. Its basic objective is to promote public policy, that is, to provide home and decent living for destitutes, aimed at promoting a class of independent small landholders which is the bulwark of peace and order.[156] In keeping with this fundamental idea, the right to repurchase exists not only when the original homesteader makes the conveyance, but also when it is made by his widow or heirs.[157]

The right to repurchase attaches to every alienation or encumbrance, and that right can be exercised even in the absence of any stipulation in the deed of sale.[158] Such right cannot be waived since the law is designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation. In line with the primordial purpose to favor the grantee and his family, the law provides that the sale shall be subject to the right of repurchase by him, his widow or heirs within five years.[159] The right to repurchase cannot be waived. It is not within the competence of any citizen to barter way what public policy by law seeks to preserve.[160]

Where the purchaser against whom the right to repurchase a homestead asserted by a daughter is a son of the homesteader himself, said defendant is an immediate member of the family of said homesteader and his direct descendant and heir; hence the right to redeem cannot prosper because the redemption does not fall within

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[154]Enervida v. Dela Torre, GR No. L-38037, Jan. 28, 1974, 55 SCRA 339.

[155]Ferrer v. Mangente, GR No. L-36410, April 13, 1973, 50 SCRA 424.

[156]Santana v. Mariñas, GR No. L-35537, Dec. 27, 1979, 94 SCRA 853.

[157]Pascua v. Talens, GR No. L-348, April 30, 1948, 80 Phil. 792.

[158]Vallangaca v. Court of Appeals, GR No. 55336, May 4, 1989, 173 SCRA 42.

[159]Rural Bank of Davao City, Inc. v. Court of Appeals, GR No. 83992, Jan. 27, 1993, 217 SCRA 554.

[160]Santos v. Roman Catholic Church of Midsayap, GR No. L-6088, Feb. 25, 1954, 94 Phil. 405.

the purpose spirit and meaning of the provision of the Public Land Act authorizing such redemption in order to keep a homestead within the family of the original homesteader.[161] Also, where it is established that the intention in exercising the right to repurchase is for the speculative purpose of redeeming the land only to dispose of it again for greater profit, this has been held to be in violation of the policy and spirit of the law.[162] Similarly, where respondent was 71 years old and a widower at the time of the sale in 1956; that he was not living on the property when he sold the same but was residing in the *poblacion* attending to a hardware store; and that the property was no longer agricultural at the time of the sale, but was a residential and commercial lot in the midst of many subdivisions, it was held that the profit motivation behind the effort to repurchase was evident and, accordingly, the repurchase was not allowed.[163]

May a judgment creditor who bought at a public auction a land covered by a homestead patent recover possession thereof from another buyer to whom the same was conveyed by the grantee and judgment debtor in violation of Section 118 of CA No. 141? In *Sala* v. *Court of First Instance of Negros Oriental*,[163a] the Supreme Court said no, reiterating that the prohibition to alienate commences to run from the date the application is approved which may be a date earlier than the date of issuance of the patent. The period of five years within which the alienation or encumbrance of a homestead is restricted starts to be computed from the latter date. In this case, it is not disputed that the sale made by the grantee to private respondent was made barely one month and eleven days from the issuance of the patent to him. The sale was, therefore, null and void and without effect. The nullity of the sale of only a portion of the land extended to the entire property,[164] produced the effect of annulment and cancellation of the title issued to the grantee and caused the reversion of the lots and its improvements to the State.[165]

Although the sheriff's sale was conducted after five years from the issuance of the patent and that petitioner, although in good faith, was subsequently issued title over the disputed lots, the proceedings

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[161]Lasud v. Lasud, GR No. L-19242, Feb. 29, 1964, 10 SCRA 425.

[162]Simeon v. Peña, GR No. L-29049, Dec. 29, 1970, 36 SCRA 610.

[163]Santana v. Mariñas, GR No. L-35537, Dec. 27, 1979, 94 SCRA 853.

[163a]G.R. No. L-47281, April 27, 1990.

[164]Republic v. Garcia, GR No. L-11597, May 27, 1959, 105 Phil. 826; Francisco v. Rodriguez, GR No. L-31083, Sept. 30, 1975, 67 SCRA 212.

[165]Sec. 124, Public Land Act.

had did not cure the nullity of the first sale. The provision against alienation is mandatory. Thus, where a grantee is found not entitled to hold and possess the land in fee simple by reason of his having violated Section 118 of the Public Land Act, the court may properly order its reconveyance to the grantor although the property had already been brought under the operation of the Torrens system. The right of the government to bring an action for reconveyance (or reversion) is not barred by the lapse of time since the statute of limitations does not run against the State.[166] In *Republic* v. *Ruiz*,[167] the Court declared:

> "It may likewise be stated that while the prohibition against the alienation of the land grant is designed to preserve it within the family of the homesteader and to promote small land ownership in this country, it is equally true that this policy of the State cannot be invoked to condone a violation of the Public Land Act and withhold enforcement of the provision directing the reversion of the property to the grantor in case of such violation. For, the prohibitory provision against any alienation or encumbrance of the land grant is not only mandatory, but is considered a condition attached to the approval of every application."

The principle of conclusiveness of title, though sound, as applied to lands registered through judicial proceedings, cannot defeat the express policy of the State which prohibits the alienation or encumbrance of lands of the public domain acquired under the provisions of the Public Land Act within five years from and after the date of the patent.[168]

### (2) Period of repurchase under Section 119

Under the above section, the five-year period for legal redemption starts from the date of the execution of the deed of sale, and not from the date of registration in the office of the Register of Deeds. This is true even if full payment of the purchase price is not made on the date of conveyance, unless there is a stipulation in the

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[166]Republic v. Ruiz, GR No. L-23712, April 29, 1968, 23 SCRA 348.
[167]*Ibid*.
[168]Companero v. Calomna, GR No. L-11908, Jan. 30, 1960, 106 Phil. 993.

deed that ownership shall not vest in the vendee until full payment of the price.[169]

The redemption of extrajudicially foreclosed properties, on the other hand, is exercisable within one (1) year from the date of the auction sale as provided for in Act No. 3135.[170]

### (3) A homestead is exempt from CARP coverage

In *Patricio* v. *Bayog*,[171] the Court held that a homestead is not covered by the Comprehensive Agrarian Reform Program (CARP). In this case, Policarpio Mendez obtained a patent and Torrens title for a homestead with an area of about twenty-three hectares. More than five years after the issuance of the patent, Mendez sold the homestead to the spouses Eugenio and Ester Lamberang. Later, the heirs of Mendez filed an action against the Lamberang spouses for the reconveyance of the homestead and another action for the ejectment of the latter's tenants on the land. The tenants contended that under Section 118 of the Public Land Act, share tenancy may be constituted on a homestead after five years from the grant of the patent since Section 119 thereof does not prohibit any encumbrance on the homestead after that period and, hence, they cannot be ejected. Overruling said contention, the Supreme Court held that where two competing interests have to be weighed against each other: the tenant's right to security of tenure as against the right of the homesteader or his heirs to own a piece of land for their residence and livelihood, the more paramount and superior policy consideration is to uphold the right of the homesteader and his heirs to own and cultivate personally the land acquired from the State without being encumbered by tenancy relations.

### (4) Rule when homestead is the subject of mortgage

As regards land acquired under the homestead or free patent provisions which are the subject of a mortgage, the Supreme Court in *Belisario* v. *Intermediate Appellate Court*[172] ruled:

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[169]Lee Chuy Realty Corporation v. Court of Appeals, GR No. 104114, Dec. 4, 1995, 250 SCRA 596; Sucaldito v. Montejo, GR No. 75080, Feb. 6, 1991, 193 SCRA 556.

[170]Lee Chuy Realty Corporation v. Court of Appeals, *supra*.

[171]GR No. L-54106, Feb. 16, 1982, 112 SCRA 41.

[172]GR No. L-73503, Aug. 30, 1988, 165 SCRA 101.

> "The subject piece of land was sold at public auction to respondent PNB on January 31, 1963. However, the Sheriff's Certificate of Sale was registered only on July 22, 1971. The redemption period, for purposes of determining the time when a final Deed of Sale may be executed or issued and the ownership of the registered land consolidated in the purchaser at an extrajudicial foreclosure sale under Act 3135, should be reckoned from the date of the registration of the Certificate of Sale in the Office of the Register of Deeds concerned and not from the date of public auction (PNB vs. CA, et al., G.R. L-30831 and L-31176, Nov. 21, 1979, 94 SCRA 357, 371). In this case, under Act 3135, petitioners may redeem the property until July 22, 1972. In addition, Section 119 of Commonwealth Act 141 provides that every conveyance of land acquired under the free patent or homestead patent provisions of the Public Land Act, when proper, shall be subject to repurchase by the applicant, his widow or legal heirs, within the period of five years from the date of conveyance. The five-year period of redemption fixed in Section 119 of the Public Land Law of homestead sold at extrajudicial foreclosure begins to run from the day after the expiration of the one-year period of repurchase allowed in an extrajudicial foreclosure. (Manuel vs. PNB, et al., 101 Phil. 968) Hence, petitioners still had five (5) years from July 22, 1972 (the expiration of the redemption period under Act 3135) within which to exercise their right to repurchase under the Public Land Act."

The five-year period within which a homesteader or his widow or heirs may repurchase a homestead sold at public auction or foreclosure sale under Act No. 3135, as amended, begins not at the date of the sale when merely a certificate is issued by the sheriff or other official, but rather on the day after the expiration of the period of repurchase, when the deed of absolute sale is executed and the property formally transferred to the purchaser.[173] In short, the period of redemption begins to run from the day after the expiration of the one-year period of repurchase allowed in an extrajudicial foreclosure.[174]

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[173]Paras v. Court of Appeals, GR No. L-4091, May 28, 1952, 91 Phil. 389

[174]Manuel v. Philippine National Bank, GR No. L-9664, July 31, 1957, 101 Phil. 968.

The owner of a piece of land is neither prohibited nor precluded from binding himself to an agreement whereby his right of repurchase is for a certain period starting from the date of the deed of sale for even without the act of registration, a deed purporting to convey or affect registered land shall operate as a contract between the parties. The registration is intended to protect the buyer against claims of third parties arising from subsequent alienations by the vendor, and is certainly not necessary to give effect, as between the parties, to their deed of sale.[175]

### (5) Repurchase may be barred by laches

The prohibition against the sale of lands covered by free patents is for a period of five years "from the date of the issuance of patent" and after that period, a patentee would be free to dispose of the land. While the rule is that the right to repurchase may not be waived, a patentee or his heirs may however lose that right by virtue of laches.

In *Go Chi Gun* v. *Co Cho*,[176] it was held that the equitable defense of laches requires four elements: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

Thus, in *Lucas* v. *Gamponia*,[177] where land acquired under a free patent was sold only eleven days after the issuance of the patent, but the original patentee or his heirs did not bring an action to repurchase the land until after 37 years from the sale, it was held that the equitable defense of laches barred the action. It was certainly natural for the purchaser to have assumed that the original patentee gave up his right to recover back the property and acquiesced in the vendee's right and title. The Supreme Court explained:

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[175]Galanza v. Nueva, GR No. L-6628, Aug. 31, 1954, 95 Phil. 713.
[176]GR No. L-5208, Feb. 28, 1955, 96 Phil. 622.
[177]GR No. L-9335, Oct. 31, 1956, 100 Phil. 277.

> "The reason upon which the rule is based is not alone the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court of equity finds that the position of the parties has to change that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect."

### (6) Effect of a void conveyance

Section 124 provides that any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.

Where the parties to a sale of a portion of the public domain covered by homestead patent have been proven to be guilty of having effected the transaction with knowledge of the cause of its invalidity, the sale is null and void and shall cause the reversion of the property to the State. This principle, however, recognizes certain exceptions as where its enforcement or application will run counter to an avowed fundamental policy of public interest. Where the subject of the transaction is a piece of public land, an heir should not be prevented from reacquiring it because it was given by law to her family for her home and cultivation and this is the policy on which the homestead law is predicated.

On the other hand, while the government (the proper party to institute an action for the reversion of the property subject of a void sale), does not take steps to assert its title to the homestead, the vendees should not be allowed to remain in it because their right to its possession is no better than that of the vendor or his heirs.[178]

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[178]De los Santos v. Roman Catholic Church of Midsayap, GR No. L-6088, Feb. 25, 1954, 94 Phil. 405.

While the sale or donation of the land in violation of Section 118 shall cause the reversion of the property to the State, as provided for in Section 124 of the law, such reversion, which could be of the entire land covered by the patent, is a matter between the State and the grantee or his heirs but does not preclude the heirs from suing to have the alienation declared invalid, for their right to the possession of the land is superior to that of the transferee in the void alienation.

In *De los Santos* v. *Roman Catholic Church of Midsayap*,[179] the Court ruled:

> "It appears that the patent covering the tract of land which includes the portion now disputed in this appeal was issued to the late Julio Sarabillo on December 9, 1938, and the sale of the portion of two hectares to the Roman Catholic Church took place on December 31, 1940. This shows that the sale was made before the expiration of the period of five years from the date of the issuance of the patent and as such is null and void it being in contravention of section 118 of Commonwealth Act No. 141. The fact that it was expressly stipulated in the deed of sale that it was subject to the approval of the Secretary of Agriculture and Natural Resources and the approval was sought and obtained on March 26, 1949, or more than ten years after the date of the issuance of the patent, or the fact that the deed of sale was registered in the Office of the Register of Deeds only on March 29, 1950, and was annotated on the back of the title on that date, cannot have the effect of validating the sale for the reason that the approval of the Secretary of Agriculture and Natural Resources does not have any valid curative effect. x x x The provision of the law which prohibits the sale or encumbrance of the homestead within five years after the grant of the patent is mandatory. This cannot be obviated even if official approval is granted beyond the expiration of that period, because the purpose of the law is to promote a definite public policy, which is 'to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him.'"

[179] *Ibid.*

### (7) Rule of *pari delicto* not applicable

In *De los Santos* v. *Roman Catholic Church of Midsayap*,[180] the Court rejected the argument that the heirs of the patentee may not maintain an action for the nullification of the void conveyance, firstly, because it is the government which is the proper party, and secondly, the action is barred by the principle of *pari delicto*.

> "The principles thus invoked by appellants are correct and cannot be disputed. They are recognized not only by our law but by our jurisprudence. Section 124 of the Public Land Act indeed provides that any acquisition, conveyance or transfer executed in violation of any of its provisions shall be null and void and shall produce the effect of annulling and cancelling the grant or patent and cause the reversion of the property to the State, and the principle of *pari delicto* has been applied by this Court in a number of cases wherein the parties to a transaction have proven to be guilty of having effected the transaction with knowledge of the cause of its invalidity. But we doubt if these principles can now be invoked considering the philosophy and the policy behind the approval of the Public Land Act. The principle underlying *pari delicto* as known here and in the United States is not absolute in its application. It recognizes certain exceptions one of them being when its enforcement or application runs counter to an avowed fundamental policy or to public interest. x x x 'This doctrine is subject to one important limitation, namely, whenever public policy is considered advanced by allowing either party to sue for relief against the transaction.'
>
> (B)ecause the subject of the transaction is a piece of public land, public policy requires that (the heirs of the patentee) be not prevented from re-acquiring it because it was given by law to his family for his home and cultivation. This is the policy on which our homestead law is predicated. This right cannot be waived. 'It is not within the competence of any citizen to barter away what public policy by law seeks to preserve.'"

As regards the contention that because the immediate effect of the nullification of the sale is the reversion of the property to the

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[180]*Supra*.

State, the Court said that that is a matter between the State and the grantee of the homestead, or his heirs. Meantime, the vendee should not be allowed to remain in it to the prejudice of the patentee's heirs during and until the government takes steps toward its reversion to the State.

Relatedly, in *Castro* v. *Orpiano*,[181] the Court stated: "Whether as the result of the void sale the land reverted to the State is a point which we do not have, and do not propose, to decide. That is a matter between the State and the grantee of the homestead or his heirs. x x x In any event, the plaintiff's right to the possession and use of the property can hardly be disputed while the government does not take steps to assert its title to the homestead. Possession as well as ownership is a property right transmitted by operation of law to the distributees, whoever they may be of decedent's estate, and the heirs' right to the possession is unquestionably superior to any of the purchaser's in the void sale. Upon the annulment of the sale, the purchaser's claim is reduced to the purchase price and its interest. As against the vendor or his heirs, the purchaser is no more entitled to keep the land than any intruder."

The sale of a homestead within the prohibitory period is unlawful and null and void from its execution by express provision of law. The contract of sale is inexistent and "the action or defense for declaration" of such inexistence does not prescribe. Corollarily, it is generally considered that as between the parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy. Also, reversion is not automatic, and so long as the government has not chosen to act, the rights of the patentee stand and must be recognized in the courts of law.[182]

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[181]GR No. L-4094, Nov. 29, 1951, 90 Phil. 491.
[182]Eugenio v. Perdido, GR No. L-7083, May 19, 1955, 97 Phil. 41.

## CHAPTER IX

## CERTIFICATE OF LAND TRANSFER, EMANCIPATION PATENT, AFFIDAVIT OF NON-TENANCY

**SEC. 104.** ***Provisional Register of Documents.*** **— The Department of Agrarian Reform shall prepare by automate data processing a special registry book to be known as the "Provisional Register of Documents issued under PD-27" which shall be kept and maintained in every Registry of Deeds throughout the country. Said Registry Book shall be a register of:**

**a. All Certificates of Land Transfer (CLT) issued pursuant to P.D. No. 27; and**

**b. All subsequent transactions affecting Certificates of Land Transfer such as adjustments, transfer, duplication and cancellations of erroneous Certificates of Land Transfer.**

**SEC. 105.** ***Certificates of Land Transfer, Emancipation Patents.*** **— The Department of Agrarian reform shall pursuant to P.D. No. 27 issue in duplicate, a Certificate of Land Transfer for every land brought under "Operation Land Transfer," the original of which shall be kept by the tenant-farmer and the duplicate, in the Registry of Deeds.**

**After the tenant-farmer shall have fully complied with the requirements for a grant of title under P.D. No. 27, an Emancipation Patent which may cover previously titled or untitled property shall be issued by the Department of Agrarian Reform.**

**The Register of Deeds shall complete the entries on the aforementioned Emancipation Patent and shall assign an original certificate of title number in case of unregistered land, and in case of registered property, shall issue the corresponding transfer certificate of title without requiring the surrender of the owner's duplicate of the title to be cancelled.**

**In case of death of the grantee, the Department of Agrarian Reform shall determine his heirs or successors-in-interest and shall notify the Register of Deeds accordingly.**

**In case of subsequent transfer of property covered by an Emancipation Patent or a Certificate of Title emanating from an Emancipation Patent, the Register of Deeds shall effect the transfer only upon receipt of the supporting papers from the Department of Agrarian Reform.**

**No fee, premium, of tax of any kind shall be charged or imposed in connection with the issuance of an original Emancipation Patent and for the registration of related documents.**

## 01. The Comprehensive Agrarian Reform Program (CARP), its etymology.

The Supreme Court, through the exhaustive *ponencia* of Justice Cruz in the landmark case of *Association of Small Landowners in the Philippines* v. *Secretary of Agrarian Reform*,[1] gives a profound background of the agrarian reform program aimed at emancipating the tenant from the bondage of the soil, thus —

"Land for the Landless" is a slogan that underscores the acute imbalance in the distribution of this precious resource among our people. But it is more than a slogan. Through the brooding centuries, it has become a battlecry dramatizing the increasingly urgent demand of the dispossessed among us for a plot of earth as their place in the sun.

Recognizing this need, the Constitution in 1935 mandated the policy of social justice to "insure the well-being and economic security of all the people," especially the less privileged. In 1973, the new Constitution affirmed this goal, adding specifically that "the State shall regulate the acquisition, ownership, use, enjoyment and disposition of private property and equitably diffuse property ownership and profits." Significantly, there was also the specific injunction to "formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil."

The Constitution of 1987 was not to be outdone. Besides echoing these sentiments, it also adopted one whole and separate Article XIII

[1]GR No. 78742, July 14, 1989, 175 SCRA 342.

on Social Justice and Human Rights, containing grandiose but undoubtedly sincere provisions for the uplift of the common people. These include a call in the following words for the adoption by the State of an agrarian reform program:

> "SEC. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing."

Earlier, in fact, RA No. 3844, otherwise known as the Agricultural Land Reform Code, had already been enacted by the Congress of the Philippines on August 8, 1963, in line with the above-stated principles. This was substantially superseded almost a decade later by PD No. 27, which was promulgated on October 21, 1972, along with martial law, to provide for the compulsory acquisition of private lands for distribution among tenant-farmers and to specify maximum retention limits for landowners.

The people power revolution of 1986 did not change and indeed even energized the thrust for agrarian reform. Thus, on July 17, 1987, President Corazon C. Aquino issued EO No. 228, declaring full land ownership in favor of the beneficiaries of PD No. 27 and providing for the valuation of still unvalued lands covered by the decree as well as the manner of their payment. This was followed on July 22, 1987 by Presidential Proclamation No. 131, instituting a comprehensive agrarian reform program (CARP), and EO No. 229, providing the mechanics for its implementation.

Subsequently, with its formal organization, the revived Congress of the Philippines took over legislative power from the President and started its own deliberations, including extensive public hearings, on the improvement of the interests of farmers. The result, after almost a year of spirited debate, was the enactment of RA

No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, which President Aquino signed on June 10, 1988. This law, while considerably changing the earlier mentioned enactments, nevertheless gives them suppletory effect insofar as they are not inconsistent with its provisions.

**02. Agrarian reform provisions.**

**(1) Constitutional provisions**

Section 12, Article XIV of the 1973 Constitution provides:

> "SEC. 12. The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution.
>
> Such program may include the grant or distribution of alienable and disposable lands of the public domain to qualified tenants, farmers and other landless citizens in areas which the President may by or pursuant to law reserve from time to time, not exceeding the limitations fixed in accordance with the immediately preceding section.
>
> The State shall moreover undertake an urban land reform and social housing program to provide deserving landless, homeless or inadequately sheltered low income resident citizens reasonable opportunity to acquire land and decent housing consistent with Section 2 of Article IV of this Constitution."

On the other hand, Section 4, Article XIII of the 1987 Constitution provides:

> "SEC. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the pay-

ment of just compensation. In determining retention limits, the State shall respect the right of small land-owners. The State shall further provide incentives for voluntary land-sharing."

**(2) PD No. 27, or the "Tenant Emancipation Decree"**

On October 21, 1972, Pres. Marcos issued PD No. 27, otherwise known as the "Tenant Emancipation Decree," which reads:

"Inasmuch as the old concept of land ownership by a few has spawned valid and legitimate grievances that gave rise to violent conflict and social tension,

The redress of such legitimate grievances being one of the fundamental objectives of the New Society,

Since Reformation must start with the emancipation of the tiller of the soil from his bondage,

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1 dated September 22, 1972, as amended do hereby decree and order the emancipation of all tenant farmers as of this day, October 21, 1972;

This shall apply to tenant farmers of private agricultural lands primarily devoted to rice and corn under a system of sharecrop or lease-tenancy, whether classified as landed estate or not;

The tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated;

In all cases, the landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it;

For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, the value of the land shall be equivalent to two and one-half (2 1/2) times the average harvest of three

normal crop years immediately preceding the promulgation of this Decree;

The total cost of the land, including interest at the rate of six (6) per centum per annum, shall be paid by the tenant in fifteen (15) years of fifteen (15) equal annual amortizations;

In case of default, the amortizations due shall be paid by the farmers' cooperative in which the defaulting tenant-farmer is a member, with the cooperative having a right of recourse against him;

The government shall guaranty such amortizations with shares of stock in government-owned and government-controlled corporations;

No title to the land owned by the tenant-farmers under this Decree shall be actually issued to a tenant-farmer unless and until the tenant-farmer has become a full-fledged member of a duly recognized farmer's cooperative;

Title to land acquired pursuant to this Decree or the Land Reform Program of the Government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of this Decree, the Code of Agrarian Reforms and other existing laws and regulations;

The Department of Agrarian Reform through its Secretary is hereby empowered to promulgate rules and regulations for the implementation of this Decree.

All laws, executive orders, decrees and rules and regulations, or parts thereof, inconsistent with this Decree are hereby repealed and or modified accordingly.

Done in the City of Manila, this 21st day of October, in the year of Our Lord, nineteen hundred and seventy-two."

### (3) RA No. 6657, or the "Comprehensive Agrarian Reform Law of 1988"

The agrarian reform program is founded on the right of farmers and regular farmworkers, who are landless, to own directly or

collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to the priorities and retention limits set forth in the law, taking into account ecological, developmental, and equity considerations, and subject to the payment of just compensation. The State shall respect the right of small landowners, and shall provide incentives for voluntary land-sharing. Corollarily, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

The Comprehensive Agrarian Reform Program (CARP) is implemented by RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), approved June 10, 1988, pertinent provisions of which read:

> "SEC. 4. *Scope*. — The Comprehensive Agrarian Reform Law of 1989 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands, as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.
>
> More specifically the following lands are covered by the Comprehensive Agrarian Reform Program:
>
> (a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.
>
> (b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;
>
> (c) All other lands owned by the Government devoted to or suitable for agriculture; and
>
> (d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon."

"SEC. 6. *Retention Limits*. — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the areas originally retained by them thereunder: *Provided, further,* That original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner: *Provided, however,* That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

In all cases, the security of tenure of the farmers or farmworkers on the land prior to the approval of this Act shall be respected.

Upon the effectivity of this Act, any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in viola-

tion of the Act shall be null and void: *Provided, however,* That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares."

"SEC. 10. *Exemptions and Exclusions*. — Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds, and mangroves, national defense, school sites and campuses including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production centers, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed shall be exempt from the coverage of the Act."

"SEC. 18. *Valuation and Mode of Compensation*. — The LBP shall compensate the landowner in such amounts as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land.

SEC. 19. *Incentives for Voluntary Offers for Sales*. — Landowners, other than banks and other financial institutions, who voluntarily offer their lands for sale shall be entitled to an additional five percent (5%) cash payment.

SEC. 20. *Voluntary Land Transfer*. — Landowners of agricultural lands subject to acquisition under this Act may enter into a voluntary arrangement for direct transfer of their lands to qualified beneficiaries subject to the following guidelines:

(a) All notices for voluntary land transfer must be submitted to the DAR within the first year of the imple-

mentation of the CARP. Negotiations between the landowners and qualified beneficiaries covering any voluntary land transfer which remain unresolved after one (1) year shall not be recognized and such land shall instead be acquired by the government and transferred pursuant to this Act.

(b) The terms and conditions of such transfer shall not be less favorable to the transferee than those of the government's standing offer to purchase from the landowner and to resell to the beneficiaries, if such offers have been made and are fully known to both parties.

(c) The voluntary agreement shall include sanctions for non-compliance by either party and shall be duly recorded and its implementation monitored by the DAR.

SEC. 21. *Payment of Compensation by Beneficiaries Under Voluntary Land Transfer*. — Direct payment in cash or in kind may be made by the farmer-beneficiary to the landowner under terms to be mutually agreed upon by both parties, which shall be binding upon them, upon registration with the approval by the DAR. Said approval shall be considered given, unless notice of disapproval is received by the farmer-beneficiary within thirty (30) days from the date of registration.

In the event they cannot agree on the price of land, the procedure for compulsory acquisition as provided in Section 16 shall apply. The LBP shall extend financing to the beneficiaries for purposes of acquiring the land."

"SEC. 26. *Payment by Beneficiaries*. — Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations at six percent (6%) interest per annum. The payments for the first three (3) years after the award may be at reduced amounts as established by the PARC: *Provided,* That the first five (5) annual payments may not be more than five percent (5%) of the value of the annual gross production as established by the DAR. Should the scheduled annual payments after the fifth year exceed ten percent (10%) of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, the LBP may reduce the interest rate or reduce the principal obligations to make the repayment affordable.

The LBP shall have a lien by way of mortgage on the land awarded to the beneficiary; and this mortgage may be foreclosed by the LBP for non-payment of an aggregate of three (3) annual amortizations. The LBP shall advise the DAR of such proceedings and the latter shall subsequently award the forfeited landholdings to other qualified beneficiaries. A beneficiary whose land, as provided herein, has been foreclosed shall thereafter be permanently disqualified from becoming a beneficiary under this Act.

SEC. 27. *Transferability of Awarded Lands*. — Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or the LBP, or to other qualified beneficiaries for a period of ten (10) years: *Provided, however,* That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the barangay where the land is situated. The Provincial Agrarian Reform Coordinating Committee (PARCCOM) as herein provided, shall, in turn, be given due notice thereof by the BARC.

If the land has not yet been fully paid by the beneficiary, the rights to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land."

"SEC. 50. *Quasi-Judicial Powers of the DAR*. — The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and

shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination for every action or proceeding before it.

It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue subpoena, and subpoena *duces tecum*, and enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct and indirect contempts in the same manner and subject to the same penalties as provided in the Rules of Court.

Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR: *Provided, however,* That when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings.

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

SEC. 51. *Finality of Determination*. — Any case or controversy before it shall be decided within thirty (30) days after it is submitted for resolution. Only one (1) motion for reconsideration shall be allowed. Any order, ruling or decision shall be final after the lapse of fifteen (15) days from receipt of a copy thereof."

"SEC. 54. *Certiorari*. — Any decision, order, award or ruling of the DAR on any agrarian dispute or on any

matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari* except as otherwise provided in this Act within fifteen (15) days from the receipt of a copy thereof.

The findings of fact of the DAR shall be final and conclusive if based on substantial evidence."

"SEC. 56. *Special Agrarian Court*. — The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court.

The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations.

The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts.

The Special Agrarian Courts shall have the powers and prerogatives inherent in or belonging to the Regional Trial Courts.

SEC. 57. *Special Jurisdiction*. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision."

"SEC. 65. *Conversion of Lands*. — After the lapse of five (5) years from its award, when the land ceases to be

economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: *Provided,* That the beneficiary shall have fully paid his obligation.

SEC. 67. *Free Registration of Patents and Titles*. — All Registers of Deeds are hereby directed to register, free from payment of all fees and other charges, patents, titles and documents required for the implementation of the CARP."

"SEC. 70. *Disposition of Private Agricultural Lands*. — The sale or disposition of agricultural lands retained by a landowner as a consequence of Section 6 hereof shall be valid as long as the total landholdings that shall be owned by the transferee thereof inclusive of the land to be acquired shall not exceed the landholding ceilings provided for in this Act.

Any sale or disposition of agricultural lands after the effectivity of this Act found to be contrary to the provisions hereof shall be null and void.

Transferees of agricultural lands shall furnish the appropriate Register of Deeds and the BARC an affidavit attesting that his total landholdings as a result of the said acquisition do not exceed the landholding ceiling. The Register of Deeds shall not register the transfer of any agricultural land without the submission of this sworn statement together with proof of service of a copy thereof to the BARC."

**03. PD No. 27 laid down a system for the purchase by small farmers of the lands they were tilling.**

PD No. 27 was anchored upon the fundamental objective of addressing valid and legitimate grievances of land ownership giving rise to violent conflict and social tension in the countryside. More importantly, it recognized the necessity to encourage a more productive agricultural base of the country's economy. To achieve this

end, the decree laid down a system for the purchase by small farmers, long recognized as the backbone of the economy, of the lands they were tilling. Landowners of agricultural lands which were devoted primarily to rice and corn production and exceeded the minimum retention area were thus compelled to sell, through the intercession of the government, their lands to qualified farmers at liberal terms and conditions. However, a careful study of the provisions of PD No. 27, and the certificate of land transfer issued to qualified farmers, will reveal that the transfer of ownership over these lands is subject to particular terms and conditions the compliance with which is necessary in order that the grantees can claim the right of absolute ownership over them.

The certificate of land transfer issued pursuant to PD No. 27 provides that the tenant farmer is deemed to be the owner of the agricultural land subject to the conditions that the cost of the portion transferred to the him, including the interest, shall be paid in fifteen (15) equal annual amortization, and that he must be a member of a barrio association upon organization of such association in his locality.

**04. PD No. 27 declared constitutional.**

One of the most far-reaching governmental reforms, acclaimed both here and abroad, is PD No. 27 issued on October 21, 1972, decreeing the emancipation of the tenants from the bondage of the soil and transferring the ownership of the land they till. Its validity was assumed in *Chavez* v. *Zobel*,[2] and upheld in *Gonzales* v. *Estrella*.[3]

Under a Letter of Instruction (LOI) dated October 21, 1976, the President directed the then Secretary of Agrarian Reform, to "undertake to place under the Land Transfer Program of the government pursuant to PD No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families."

In *Zurbano* v. *Estrella*,[4] petitioners alleged that they are the owners of agricultural lands, with six (6) parcels planted to coconuts,

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[2]GR No. L-28609, Jan. 17, 1974, 55 SCRA 23.
[3]GR No. L-35739, July 2, 1979, 91 SCRA 294.
[4]GR No. L-61617, July 2, 1985, 137 SCRA 333.

56 hectares in area, and two (2) parcels of riceland, 1.86 hectares in size. They further alleged that said "coconut lands which are scattered in different barrios are very far from the *poblacion* of Labo where petitioners reside which they could not even visit due to the unsettled peace and order conditions," resulting in their only productive property being the ricelands. On August 10, 1982, "petitioners received a communication from respondent Salvador Pejo of Region V of the Ministry of Agrarian Reform informing them that the processing of the land transfer had been initiated and requiring them to submit to the Regional Office all the necessary documents pertinent to their claim" otherwise, the farmer-beneficiaries would be issued the corresponding emancipation patents. When they asked why a small piece of property of only 1.86 hectares of riceland should be under PD No. 27, they were informed that the text of the LOI No. 474 calls for the two parcels of ricelands being included in the Land Transfer Program.

Upholding the validity of LOI No. 474, the Court, through Justice Fernando, said:

> "There is no legal basis for declaring Letter of Instruction No. 474 void on its face on equal protection, due process and taking of private property without just compensation grounds. The Constitution decrees no less than the emancipation of tenants, and there are safeguards therein to assure that there be no arbitrariness or injustice in its enforcement, There are, moreover, built-in safe-guards to preclude any unlawful taking of private property.
>
> 1. There is no merit to the contention that Letter of Instruction No. 474 denies equal protection. To condemn as class legislation an executive act intended to promote the welfare of tenants is to ignore not only the letter of the Constitution — incidentally cited in the petition itself — requiring the 'formulation and implementation of an agrarian reform program aimed at emancipating the tenant from the bondage of the soil,' but also the nation's history. x x x
>
> 2. There is no merit either to the contention that Letter of Instruction No. 474 amounts to deprivation of property without due process of law. All that it provides is that the Secretary then, now the Minister, of Agrarian Reform, is to take charge of the Land Transfer Program

pursuant to Presidential Decree No. 27. Landholders with tenanted rice/corn lands with areas of seven hectares or less are included if they 'own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.' It is manifest that there is no departure from constitutional restraints. x x x In language, scheme, and framework, this Letter of Instruction reveals the plan and purpose to attain the goal envisioned by the Constitution but with due regard to the landowners affected. There is a saving clause. They are exempt from its operation if it be shown that from the other lands owned by them *of more than seven hectares in aggregate areas if agricultural*, or other areas, whether residential, commercial, or industrial or lands devoted to other urban purposes, they are unable to 'derive adequate income to support themselves and their families.'

3. Neither is there any merit to the contention that there would be the taking of property for public use without just compensation. x x x The only remaining question then is the compensation to be awarded the landowner. That is provided for in the Decree. Thus: 'For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, the value of the land shall be equivalent to two and one-half (2-1/2) times the average harvest of three normal crop years immediately preceding the promulgation of this Decree; The total cost of the land, including interest at the rate of six (6) per centum per annum, shall be paid by the tenant in fifteen (15) years of (15) equal annual amortization.' Nor is this all. This petition may be premature. There are, as pointed out, built-in safeguards to assure that landowners are not to be deprived of such lots 'from which they derive adequate income for the support of themselves and their families.' If petitioners could show that the application of the Letter of Instruction to them would be visited by the failure to meet that standard, they are exempt. They would have then no valid cause for complaint."[5]

[5]See also Vinzons-Magana v. Estrella, Sept. 13, 1991, 201 SCRA 536.

**05. Constitutionality of RA No. 6657 upheld.**

RA No. 6657 was enacted pursuant to the constitutional mandate enshrined in Section 4, Article XIII of the 1987 Constitution which provides:

> "SEC. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing."

The constitutionality of RA No. 6657 was upheld in the case of *Association of Small Landowners in the Philippines, Inc*. v. *Secrertary of Agrarian Reform*.[6] The Supreme Court, through Justice Cruz, held that the requirement of public use has been settled by the Constitution itself. It noted that "(n)o less than the 1987 Charter calls for agrarian reform which is the reason why private agricultural lands are to be taken from their owners, subject to the prescribed maximum retention limits." The Court also declared that the law is a valid exercise by the State of the police power and the power of eminent domain. On the alleged violation of the equal protection clause, the sugar planters have failed to show that they belong to a different class and should be differently treated. And on the alleged payment of public money as just compensation without the corresponding appropriation, the Court said that there is no rule that only money already in existence can be the subject of an appropriation law. The earmarking of fifty billion pesos as Agrarian Reform Fund, although denominated as an initial amount, is actually the maximum sum appropriated. The word "initial" simply means that additional amounts may be appropriated later when necessary. Finally, on the contention that the law is unconstitutional insofar as it requires the

[6]GR No. 78742, July 14, 1989, 175 SCRA 342.

owners of the expropriated properties to accept just compensation therefor in less than money, which is the only medium of payment allowed, the Court held that the law "is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose," but deals with "a *revolutionary* kind of expropriation (which) affects *all* private agricultural lands." "(S)uch a program will involve not mere millions of pesos (but) hundreds of billions of pesos will be needed, far more indeed than the amount of P50 billion initially appropriated, which is already staggering as it is by our present standards."

> "The legislature and the executive have been seen fit, in their wisdom, to include in the CARP the redistribution of private landholdings (even as the distribution of public agricultural lands is first provided for, while also continuing space under the Public Land Act and other cognate laws). The Court sees no justification to interpose its authority, which we may assert only if we believe that the political decision is not unwise, but illegal. We do not find it to be so.
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> x x x x x x x x x
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> As earlier observed, the requirement for public use has already been settled for us by the Constitution itself. No less than the 1987 Charter calls for agrarian reform, which is the reason why private agricultural lands are to be taken from their owners, subject to the prescribed maximum retention limits. The purposes specified in P.D. No. 27, Proc. No. 131 and R.A. No. 6657 are only an elaboration of the constitutional injunction that the State adopt the necessary measures 'to encourage and undertake the just distribution of all agricultural lands to enable farmers who are landless to own directly or collectively the lands they till.' That public use, as pronounced by the fundamental law itself, must be binding on us."
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> x x x x x x x x x
>
> Objection is raised, however, to the manner of fixing the just compensation, which it is claimed is entrusted to the administrative authorities in violation of judicial prerogatives. Specific reference is made to Section 16(d), which provides that in case of the rejection or disregard

by the owner of the offer of the government to buy his land —

> . . . the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

x x x x x x x x x

A reading of the aforecited Section 16(d) will readily show that it does not suffer from the arbitrariness that rendered the challenged decrees constitutionally objectionable. Although the proceedings are described as summary, the landowner and other interested parties are nevertheless allowed an opportunity to submit evidence on the real value of the property. But more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon the landowner or any other interested party, for Section 16(f) clearly provides:

> Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

The determination made by the DAR is only *preliminary* unless accepted by all parties concerned. Otherwise, the courts of justice will still have the right to review with *finality* the said determination in the exercise of what is admittedly a judicial function.

x x x x x x x x x

It cannot be denied x x x that the traditional medium for the payment of just compensation is money and no other. And so, conformably, has just compensation been paid in the past solely in that medium. However, we do

not deal here with the *traditional* exercise of the power of eminent domain. This is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose. What we deal with here is a *revolutionary* kind of expropriation.

The expropriation before us affects *all* private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or of a small segment of the population but of the entire Filipino nation, from all levels of our society, from the impoverished farmer to the land-glutted owner. Its purpose does not cover only the whole territory of this country but goes beyond in time to the foreseeable future, which it hopes to secure and edify with the vision and the sacrifice of the present generation of Filipinos. x x x

Such a program will involve not mere millions of pesos. The cost will be tremendous. Considering the vast areas of land subject to expropriation under the laws before us, we estimate that hundreds of billions of pesos will be needed, far more indeed than the amount of P50 billion initially appropriated, which is already staggering as it is by our present standards. Such amount is in fact not even fully available at this time.

We assume that the framers of the Constitution were aware of this difficulty when they called for agrarian reform as a top priority project of the government. It is a part of this assumption that when they envisioned the expropriation that would be needed, they also intended that the just compensation would have to be paid not in the orthodox way but a less conventional if more practical method. There can be no doubt that they were aware of the financial limitations of the government and had no illusions that there would be enough money to pay in cash and in full for the lands they wanted to be distributed among the farmers. We may therefore assume that their intention was to allow such manner of payment as is now provided for by the CARP Law, particularly the payment of the balance (if the owner cannot be paid fully with

money), or indeed of the entire amount of the just compensation, with other things of value. We may also suppose that what they had in mind was a similar scheme of payment as that prescribed in P.D. No. 27, which was the law in force at the time they deliberated on the new Charter and with which they presumably agreed in principle.

x x x x x x x x x

With these assumptions, the Court hereby declares that the content and manner of the just compensation provided for in the afore-quoted Section 18 of the CARP Law is not violative of the Constitution. x x x"

**06. Scope of the Comprehensive Agrarian Reform Program (CARP).**

The Constitution in Section 4, Article XIII mandates the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits which Congress may prescribe, taking into account ecological, developmental or equity considerations and subject to the payment of just compensation.

*Agrarian reform* means redistribution of lands, regardless of crops or fruits produced, to farmers and regular farmworkers who are landless, irrespective of tenurial arrangement, to include the totality of factors and support services designed to lift the economic status of the beneficiaries and all other arrangements alternative to the physical redistribution of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stocks, which will allow beneficiaries to receive a just share of the fruits of the lands they work.[7]

Prior to RA No. 6657, the operative law on land distribution was PD No. 27. However, PD No. 27 is limited in scope, covering only tenanted private agricultural lands primarily devoted to rice and corn operating under a system of share-tenancy or lease tenancy, whether classified as landed estate or not. The constitutional provision expanded the scope of agrarian reform to cover all agricultural lands. RA No. 6657 operationalized this constitutional mandate by

[7]Sec. 3(a), RA No. 6657.

providing that the CARP shall cover, regardless of tenurial arrangement and commodity produced, *all public and private agricultural lands*, as provided in Proclamation No. 131 and EO No. 229, including other lands of the public domain suitable for agriculture. Specifically, the following lands are covered by CARP:

(a) All alienable lands of the public domain devoted to or suitable for agriculture;

(b) All lands of the public domain in excess of the specific limits as determined by Congress;

(c) All other lands owned by the government devoted to or suitable for agriculture; and

(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

**(1) Exemptions and exclusions**

Section 10 of RA No. 6657, as amended by RA No. 7881, dated February 20, 1995, exempts or excludes the following from CARP coverage:

(a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves;

(b) Private lands actually, directly and exclusively used for prawn farms and fishponds; *Provided,* That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the CARP, and subject further to the conditions prescribed in the law;

(c) Lands actually, directly and exclusively used and found to be necessary for:

— national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedling research and pilot production center;

— church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries;

— penal colonies and penal farms actually worked by the inmates;

— government and private research and quarantine centers; and

— all lands with eighteen percent (18%) slope and over, except those already developed.

### (2) Only agricultural lands are subject to agrarian reform coverage

The agrarian reform program, be it under the aegis of PD No. 27 or RA No. 6657, covers only agricultural lands. PD No. 27, by its terms, applies to tenant-farmers of private agricultural lands primarily devoted to rice and corn under a system of share-cropping or lease-tenancy. On the other hand, RA No. 6657 covers all public and private agricultural lands, regardless of tenurial arrangement and commodity produced. Lands classified as mineral, or any area where mineral resources, or concentration of minerals/rocks with potential economic value are found, are outside of Operation Land Transfer (OLT) coverage.[8]

#### 1. Meaning of "agricultural land," "agricultural activity"

Section 3(c) of RA No. 6657 defines *agricultural land* as "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land." On the other hand, Section 3(b) defines *agricultural activity* as "the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by person whether natural or juridical."

In *Natalia Realty, Inc.* v. *Depatment of Agrarian Reform*,[9] the Supreme Court, through Justice Bellosillo, held: "Section 4 of R.A. 6657 provides that the CARL (Comprehensive Agrarian Reform Law) shall 'cover, regardless of tenurial arrangement and commodity pro-

[8]Sec. 4, RA No. 6657; Aninao v. Asturias Chemical Industries, Inc., GR No. 160420, July 28, 2005, 464 SCRA 526.

[9]GR No. 103302, Aug. 12, 1993, 225 SCRA 278.

duced, all public and private agricultural lands.' As to what constitutes 'agricultural land,' it is referred to as 'land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land.' The deliberations of the Constitutional Commission confirm this limitation. 'Agricultural lands' are only those lands which are 'arable and suitable agricultural lands' and 'do not include commercial, industrial and residential lands.'

### 2. Lands converted to non-agricultural uses prior to the effectivity of CARL are outside its coverage

The Court in *Natalia* further held that lands not devoted to agricultural activity are outside the coverage of CARL. These include lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than the Department of Agrarian Reform (DAR). Thus, for instance, the conversion of portions of the Antipolo Hills Subdivision for residential use and developed as such prior to the passage of the law excluded the area for CARL coverage because it ceased to be devoted to agricultural activity.

> "Interestingly, the Office of the Solicitor General does not contest the conversion of portions of the Antipolo Hills Subdivision which have already been developed. x x x The applications for the developed and undeveloped portions of subject subdivision were similarly situated. Consequently, both did not need prior DAR approval.
>
> x x x x x x x x x
>
> Based on the foregoing, it is clear that the undeveloped portions of the Antipolo Hills Subdivision cannot in any language be considered as 'agricultural lands.' These lots were intended for residential use. They ceased to be agricultural lands upon approval of their inclusion in the Lungsod Silangan Reservation. Even today, the areas in question continue to be developed as a low-cost housing subdivision, albeit at a snail's pace. This can readily be gleaned from the fact that SAMBA members even instituted an action to restrain petitioners from continuing with such development. The enormity of the resources needed for developing a subdivision may have delayed its completion but this does not detract from the fact that

these lands are still residential lands and outside the ambit of the CARL.

x x x x x x x x x

Since the NATALIA lands were converted prior to 15 June 1988, respondent DAR is bound by such conversion. It was therefore error to include the undeveloped portions of the Antipolo Hills Subdivision within the coverage of CARL."

### 3. Farms used for raising livestock, poultry and swine not covered

RA No. 6657 originally included in its coverage farms used for raising livestock, poultry and swine. However, on December 4, 1990, in an *en banc* decision in the case of *Luz Farms* v. *Secretary of the Department of Agrarian Reform*,[10] the Court ruled that lands devoted to livestock and poultry-raising are not included in the definition of agricultural land. Hence, it declared as unconstitutional certain provisions of the CARL insofar as they included livestock farms in the coverage of agrarian reform. On December 27, 1993, the Department of Agrarian Reform (DAR) issued AO No. 9, series of 1993**,** which provided that only portions of private agricultural lands used for the raising of livestock, poultry and swine as of June 15, 1988 shall be excluded from the coverage of the CARL. But in determining the area of land to be excluded, AO No. 9 fixed the following retention limits, *viz.*: 1:1 animal-land ratio (*i.e.,* 1 hectare of land per 1 head of animal shall be retained by the landowner), and a ratio of 1.7815 hectares for livestock infrastructure for every 21 heads of cattle shall likewise be excluded from the operations of the CARL.

AO No. 9 was declared invalid by the Supreme Court in *Department of Agrarian Reform* v. *Sutton*[11] for the reason that the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, *inter alia,* all lands exclusively devoted to livestock, swine and poultry-raising. Through the *ponencia* of Justice Puno, the Court ruled:

"In the case at bar, we find that the impugned A.O. is invalid as it contravenes the Constitution. The A.O.

[10]GR No. 86889, Dec. 4, 1990, 192 SCRA 51.
[11]GR No. 162070, Oct. 19, 2005.

sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership. However, **the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, *inter alia*, all lands exclusively devoted to livestock, swine and poultry-raising.** The Court clarified in the **Luz Farms** case that livestock, swine and poultry-raising are industrial activities and do not fall within the definition of 'agriculture' or 'agricultural activity.' The raising of live-stock, swine and poultry is different from crop or tree farming. It is an industrial, not an agricultural, activity. x x x

Clearly, petitioner **DAR has no power to regulate livestock farms which have been exempted by the Constitution from the coverage of agrarian reform.** It has exceeded its power in issuing the assailed A.O."

### 4. Agricultural lands reclassified by LGU's into residential, commercial or industrial uses excluded

If the agricultural land was classified as residential, commercial or industrial by the local government units (LGU's) and approved by the Housing and Land Use Regulatory Board (HLURB), or its predecessor agencies, prior to June 15, 1988, the land will be recognized as so classified under Section 3(c) of RA No. 6657 and is, therefore, not covered by CARP. However, an exemption clearance from the DAR is still necessary to confirm or declare its exempt status.[12]

This is based on DOJ Opinion No. 44 (1990) which provides that with respect to the conversion of agricultural lands covered by RA No. 6657 to non-agricultural uses, the authority of the DAR to approve such conversion may be exercised from the date of its effectivity or on June 15, 1988. Thus, all lands already classified as commercial, industrial or residential before that date no longer need any conversion clearance from the DAR.

If an agricultural land is reclassified after June 15, 1988, the provisions on land conversion under CARL and its implementing rules will apply.[13]

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[12]DAR AO No. 6 (1994).

[13]DAR AO No. 1 (1999); Agrarian Law and Jurisprudence, DAR-UNDP, 7-8.

### 5. Lands used for academic or educational purposes exempted

In *Central Mindanao University* v. *Department of Agrarian Reform Adjudication Board*,[14] the Court, through Justice Campos, held that the 400-hectare land owned by the Central Mindanao University for school site and campus, including experimental farm stations for educational purposes, is exempt from CARP coverage because —

(1) It is not alienable and disposable land of the public domain;

(2) The CMU land reservation is not in excess of specific limits as determined by Congress;

(3) It is private land registered and titled in the name of its lawful owner, the CMU;

(4) It is exempt from coverage under Section 10 of R.A. 6657 because the lands are actually, directly and exclusively used and *found to be necessary* for school site and campus, including experimental farm stations for educational purposes, and for establishing seed and seedling research and pilot production centers.

The Court further held that the determination of when and what lands are *found to be necessary* for use by the CMU, the school is in the best position to resolve and answer the question and pass upon the problem of its needs in relation to its avowed objectives for which the land was given to it by the State. Neither the DARAB nor the Court of Appeals has the right to substitute its judgment or discretion on this matter, unless the evidentiary facts are so manifest as to show that the CMU has no real need for the land. Under Section 4 and Section 10 of RA No. 6657, the jurisdiction of the DARAB is limited only to matters involving the implementation of the CARP. More specifically, it is restricted to agrarian cases and controversies involving lands falling within the coverage of the aforementioned program. It does not include those which are actually, directly and exclusively used and found to be necessary for, among such purposes, school sites and campuses for setting up experimental farm stations, research and pilot production centers, etc.

Moreover, the Department of Agrarian Reform Adjudication Board (DARAB) itself found that the complainants are *not* share

[14]GR No. 100091, Oct. 22, 1992, 215 SCRA 85.

tenants or lease holders of the CMU, yet it ordered the "segregation of a suitable compact and contiguous area" from the CMU land reservation, and directed the DAR Regional Director to implement its order of segregation. Consequently, its order for the segregation of 400 hectares of the CMU land was without legal authority and beyond the scope of its quasi-judicial function.

### 6. Homesteads are excluded

In *Alita* v. *Court of Appeals*,[15] the Court, through Justice Paras, held that a homestead acquired under the provisions of the Public Land Act is exempt from CARP coverage. The Court said that while PD No. 27 decreeing the emancipation of tenants from the bondage of the soil and transferring to them ownership of the land they till is a sweeping social legislation, it cannot defeat the very purpose of the Public Land Act which has been enacted for the welfare and protection of the poor. The law gives a needy citizen a piece of land where he may build a modest house for himself and family and plant what is necessary for subsistence and for the satisfaction of life's other needs. "The right of the citizens to their homes and to the things necessary for their subsistence is as vital as the right to life itself. They have a right to live with a certain degree of comfort as become human beings, and the State which looks after the welfare of the people's happiness is under a duty to safeguard the satisfaction of this vital right."

In *Patricio* v. *Bayog*,[16] where the issue is whether under Section 118 of the Public Land Act, share tenancy may be constituted on a homestead after five years from the grant of the patent since there is nothing in Section 119 thereof which prohibits any encumbrance on the homestead after that period, the Supreme Court, through Justice Aquino, declared that where two competing interests have to be weighed against each othe, *i.e.*, the tenant's right to security of tenure as against the right of the homesteader or his heirs to own a piece of land for their residence and livelihood, the more paramount and superior policy consideration is to uphold the right of the homesteader and his heirs to own and cultivate personally the land acquired from the State without being encumbered by tenancy relations.

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[15]GR No. 78157, Feb. 27, 1989, 170 SCRA 706.

[16]Citing Patricio v. Bayog, GR No. L-54106, Feb. 16, 1982, 112 SCRA 41.

Indeed, Section 6 of RA No. 6657 provides that homesteaders are allowed to retain the total homestead lot subject to the conditions provided in the same section and as set out in DAR MC 4, to wit:

(a) That the original homestead grantee or his direct compulsory heirs still own the land on June 15, 1988; and

(b) That the original homestead grantee or his compulsory heirs cultivate the land as of June 15, 1988 and continue to cultivate the same.

It is also provided that tenants of lands covered by homestead patents exempted from PD No. 27 or retained under RA No. 6657 shall not be ejected therefrom but shall remain as leaseholders therein.[17]

**07. Jurisdiction of the DAR.**

Matters involving the administrative implementation of the transfer of the land, such as the giving out of notices of coverage to the tenant-farmer under PD No. 27 and amendatory and related decrees, rules and regulations, shall be exclusively cognizable by the Secretary of Agrarian Reform, including the issuance, recall or cancellation of Emancipation Patents (EPs) or Certificate of Land Ownership Award (CLOA), save when such certificates of land transfer have been registered with the Register of Deeds, in which instance the recalling authority is the DAR Adjudicating Board (DARAB).[18]

A petition asking for the exclusion of petitioner's landholding from the coverage of the Comprehensive Agrarian Reform Program (CARP) involves the implementation of agrarian reform, a matter over which the DAR has original and exclusive jurisdiction, pursuant to Section 50 of the Comprehensive Agrarian Reform Law (CARL).[19] The failure of petitioners to pay back rentals pursuant to the leasehold contract with private respondent is an issue which is clearly beyond the legal competence of the trial court to resolve. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which

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[17]Agrarian Law and Jurisprudence, DAR-UNDP, 19.

[18]Aninao v. Asturias Chemical Industries, Inc., *supra*.

[19]Department of Agrarian Reform v. Cuenca, GR No. 1541121, Sept. 23, 2004, 439 SCRA 15.

is initially lodged with an administrative body of special competence.[20]

Likewise, all controversies on the implementation of the CARP fall under the jurisdiction of the Department of Agrarian Reform (DAR), even though they raise questions that are also legal or constitutional in nature. All doubts should be resolved in favor of the DAR, since the law has granted it special and original authority to hear and adjudicate agrarian matters.[21]

EO No. 229, which took effect on August 29, 1987, provides for the mechanism for the implementation of the CARP instituted by Proclamation No. 131, dated July 22, 1987, and vests in the DAR quasi-judicial powers to determine and adjudicate agrarian reform matters. The pertinent provision of executive order reads as follows:

> "SEC. 17. *Quasi-Judicial Powers of the DAR*. — The DAR is hereby vested with quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA).
>
> "The DAR shall have powers to punish for contempt and to issue subpoena, subpoena *duces tecum* and writs to enforce its order or decisions.
>
> "The decisions of the DAR may, in proper cases, be appealed to the Regional Trial Courts but shall be immediately executory notwithstanding such appeal."

The above-quoted provision should be deemed to have repealed Section 12(a) and (b) of PD No. 946 which invested the then courts of agrarian relations with original exclusive jurisdiction over cases and questions involving rights granted and obligations imposed by presidential issuances promulgated in relation to the agrarian reform program.[22]

DAR's jurisdiction is further sustained by the passage of RA No. 6657, the Comprehensive Agrarian Reform Law, which took effect

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[20]Machete v. Court of Appeals, GR No. 109083, Nov. 20, 1995.

[21]Department of Agrarian Reform v. Cuenca, *supra*.

[22]Quismundo v. Court of Appeals, GR No. 95664, Sept. 13, 1991, 201 SCRA 609.

on June 15, 1988. The said law contains provisions which evince and support the intention of the legislature to vest in the DAR exclusive jurisdiction over all agrarian reform matters.

Section 50 of said Act substantially reiterates Section 17 of EO No. 229 vesting in the DAR exclusive and original jurisdiction over all matters involving the implementation of agrarian reform, to wit:

> "SEC. 50. *Quasi-Judicial Powers of the DAR*. — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR)."

In addition, Sections 56 and 57 thereof provide for the designation by the Supreme Court of at least one (1) branch of the Regional Trial Court within each province to act as a special agrarian court. The said special court shall have original and exclusive jurisdiction only over (a) petitions for the determination of just compensation to landowners and (b) the prosecution of criminal offenses under said Act. Said provisions thus delimit the jurisdiction of the Regional Trial Courts in agrarian cases only to these two instances.

Poceedings in the DAR are summary in nature and the department is not bound by technical rules of procedure and evidence, to the end that agrarian reform disputes and other issues will be adjudicated in a just, expeditious and inexpensive action or proceedings.[23]

In *Tangub* v. *Court of Appeals*,[24] Justice Narvasa explains that RA No. 6657 strives to make resolution of controversies therein more expeditious and inexpensive, by providing not only that the DAR Adjudication Board (DARAB) — which exercises the adjudicatory functions of the DAR and the allocation to it of "original and exclusive jurisdiction over the subject matter vested upon it by law, and all cases, disputes, controversies and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under Executive Order No. 229, Executive Order No. 129-A, Republic

[23]Quismundo v. Court of Appeals, *supra*; see also Machete v. Court of Appeals, *supra*.

[24]Tangub v. Court of Appeals, GR No. 9864, Dec. 3, 1990, 191 SCRA 885.

Act No. 3844, as amended by Republic Act No. 6289, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations" — "shall not be bound by technical rules of procedure and evidence," but also that, as explicitly stated by the penultimate paragraph of Section 50 of the Act, "(r)esponsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR."

**08. CARs abolished; jurisdiction now vested in RTCs.**

Ever since agrarian reform legislations began, litigants have invariably sought the aid of the courts. Courts of Agrarian Relations (CARs) were organized under RA No. 1267 "[f]or the enforcement of all laws and regulations governing the relation of capital and labor on all agricultural lands under any system of cultivation." All the powers and prerogatives inherent in or belonging to the then Courts of First Instance (CFIs), now Regional Trial Courts (RTCs), were granted to the CARs. PD No. 946 thereafter reorganized the CARs, streamlined their operations, and expanded their jurisdiction.

The CARs were abolished, however, pursuant to Section 44 of BP Blg. 129, approved August 14, 1981, which was fully implemented on February 14, 1983. Jurisdiction over cases theretofore given to the CAR's was vested in the RTCs. Then came EO No. 229. Under Section 17 thereof, the DAR shall exercise "quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture [DA]." The DAR shall also have the "powers to punish for contempt and to issue *subpoena*, *subpoena duces tecum* and writs to enforce its orders or decisions."

In *Quismundo* v. *Court of Appeals*,[25] the provision was deemed to have repealed Section 12(a) and (b) of PD No. 946 which vested the then CARs with "original exclusive jurisdiction over cases and questions involving rights granted and obligations imposed by presidential issuances promulgated in relation to the agrarian reform program."

[25]*Supra.*

RA No. 6657, which was signed into law on June 10, 1988 and became effective immediately after its publication in two national newspapers of general circulation on June 15, 1988, makes reference to and explicitly recognizes the effectivity and applicability of PD No. 229. More particularly, the Act echoes the provisions of Section 17 of PD No. 229 investing the DAR with original jurisdiction, generally, over all cases involving agrarian laws.[26]

Nonetheless, the RTCs have not been completely divested of jurisdiction over agrarian reform matters. Section 56 of RA No. 6657 confers special jurisdiction on "Special Agrarian Courts," which are actually RTCs designated as such by the Supreme Court. Under Section 57 of the same law, these Special Agrarian Courts have original and exclusive jurisdiction over the following matters:

(1) all petitions for the determination of just compensation to land-owners, and

(2) the prosecution of all criminal offenses under the Act.

The above delineation of jurisdiction remains in place to this date. Administrative Circular No. 29-2002 of the Supreme Court stresses the distinction between the quasi-judicial powers of the DAR under Sections 50 and 55 of RA No. 6657 and the jurisdiction of the Special Agrarian Courts referred to by Sections 56 and 57 of the same law.[27]

**09. Decisions of "Special Agrarian Courts" appealable to the Court of Appeals.**

It is relevant to mention in this connection that —

(1) Appeals from decisions of the Special Agrarian Courts may be taken by filing a petition for review with the Court of Appeals within fifteen (15) days from receipt or notice of the decision; and

(2) Appeals from any "decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari*, except as otherwise provided,

[26]Tangub v. Court of Appeals, *supra*.
[27]Department of Agrarian Reform v. Cuenca, *supra*.

within fifteen (15) days from receipt of a copy thereof, the findings of fact of the DAR being final and conclusive if based on substantial evidence.[28]

## 10. Meaning of the phrase "deemed to be the owner" under PD No. 27.

In *Pagtalunan* v. *Tamayo*,[29] the Court, through Justice Cortes, held that the phrase "deemed to be the owner" as used to describe the grantee of a certificate of land transfer must be construed within the policy framework of PD No. 27, and interpreted with the other stipulations of the certificate issued pursuant to the Decree. PD No. 27 was anchored upon the fundamental objective of addressing valid and legitimate grievances of land ownership giving rise to violent conflict and social tension in the countryside. More importantly, it recognized the necessity to encourage a more productive agricultural base of the country's economy. To achieve this end, the decree laid down a system for the purchase by small farmers, long recognized as the backbone of the economy, of the lands they were tilling. Landowners of agricultural lands which were devoted primarily to rice and corn production and exceeded the minimum retention area were thus compelled to sell, through the intercession of the government, their lands to qualified farmers at liberal terms and conditions. However, a careful study of the provisions of PD No. 27, and the certificate of land transfer issued to qualified farmers, will reveal that the transfer of ownership over these lands is subject to particular terms and conditions the compliance with which is necessary in order that the grantees can claim the right of absolute ownership over them.

The grantee is deemed to be the owner of the agricultural land described in the certificate of land transfer (CLT) "subject to the conditions that the cost of the portion herein transferred to the tenant farmer as fixed by the authorities concerned, including the interest rate at the rate of *six percentum* (6%) per annum shall be paid by the tenant farmer in fifteen (15) equal annual amortization, that the tenant farmer must be a member of a Barrio Association upon organization of such association in his locality, and that the title to the land herein shall not be transferred except by hereditary succession or to the Government in accordance with the provisions

[28]Tangub v. Court of Appeals, *supra*.
[29]GR No. 54281, March 19, 1990, 188 SCRA 252.

of Presidential Decree Number 27, the Code of Agrarian Reform and other existing laws and regulations."

PD No. 266 specifies the procedure for the registration of title to lands acquired under PD No. 27. Full compliance by the grantee with the abovementioned undertakings is required for a grant of title under the "Tenant Emancipation Decree" and the subsequent issuance of an emancipation patent in favor of the farmer/grantee. It is the emancipation patent which constitutes conclusive authority for the issuance of an original certificate of transfer, or a transfer certificate of title, in the name of the grantee.

Hence, the mere issuance of the certificate of land transfer does not vest in the farmer/grantee ownership of the land described therein. The certificate simply evidences the government's recognition of the grantee as the party qualified to avail of the statutory mechanisms for the acquisition of ownership of the land tilled by him as provided under PD No. 27. Neither is this recognition permanent nor irrevocable. Failure on the part of the farmer/grantee to comply with his obligation to pay his lease rentals or amortization payments when they fall due for a period of two (2) years to the landowner or agricultural lessor is a ground for forfeiture of his certificate of land transfer (Sec. 2, PD No. 816).

It is only after compliance with the above conditions which entitle a farmer/grantee to an emancipation patent that he acquires the vested right of absolute ownership in the landholding — a right which has become fixed and established, and is no longer open to doubt or controversy.[30] At best, the farmer/grantee, prior to compliance with these conditions, merely possesses a contingent or expectant right of ownership over the landholding.[31]

In *Quiban* v. *Butalid*,[32] the Court, through Justice Gancayco, further explained that with the issuance of the certificate of land transfer *and* compliance by the grantee of the implementing rules and regulations of the Department of Agrarian Reform, he is thereby deemed to be the owner of the agricultural land in question. There is no more landlord and tenant relationship and all that remains is

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[30]See definition of "vested right" or "vested interest" in Balbao v. Farrales, GR No. 27059, Feb. 14, 1928, 51 Phil. 498 (1928); Republic of the Philippines v. de Porkan, GR No. 66866, June 18, 1987, 151 SCRA 88.

[31]Pagtalunan v. Tamayo, *supra*; see also Vinzons-Magana v. Estrella, *supra*.

[32]GR No. 90974, Aug. 27, 1990, 189 SCRA 107.

for the Department of Agrarian Reform to determine the valuation of the land in accordance with existing rules and regulations for purposes of compensation to the land owner.

**11. Distinctive features of PD No. 27 and RA No. 6657; exemption distinguished from retention.**

PD No. 27, which implemented the Operation Land Transfer (OLT) Program, covers tenanted rice or corn lands. The requisites for coverage under the OLT program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease-tenancy obtaining therein. If either requisite is absent, a landowner may apply for exemption. In other words, the land is not covered by OLT. Hence, a landowner need not apply for retention where his ownership over the entire landholding is intact and undisturbed.

PD No. 27 grants each tenant of covered lands a five 5-hectare lot, or in case the land is irrigated, a 3-hectare lot constituting a family size farm. However, said law allows a covered landowner to retain not more than seven (7) hectares of his land if his aggregate landholding does not exceed twenty-four (24) hectares. Otherwise, his entire landholding is covered without him being entitled to any retention right.

Consequently, a landowner may keep his entire covered landholding if its aggregate size does not exceed the retention limit of seven (7) hectares. In effect, his land will not be covered at all by the OLT program although all requisites for coverage are present. LOI No. 474 clarified the effective coverage of OLT to include tenanted rice or corn lands of seven (7) hectares or less if the landowner owns other agricultural lands of more than seven (7) hectares. The term "other agricultural lands" refers to lands other than tenanted rice or corn lands from which the landowner derives adequate income to support his family.

Thus, on one hand, exemption from coverage of OLT lies if:

(1) the land is not devoted to rice or corn crops even if it is tenanted; or

(2) the land is untenanted even though it is devoted to rice or corn crops.

On the other hand, the requisites for the exercise by the landowner of his right of retention under RA No. 6657 are the following:

(1) the land must be devoted to rice or corn crops;

(2) there must be a system of share-crop or lease-tenancy obtaining therein; and

(3) the size of the landholding must not exceed twenty-four (24) hectares, or it could be more than twenty-four (24) hectares provided that at least seven (7) hectares thereof are covered lands and more than seven (7) hectares consist of "other agricultural lands."

Thus, an application for exemption and an application for retention are not one and the same thing. Being distinct remedies, finality of judgment in one does not preclude the subsequent institution of the other.

The right of retention is a constitutionally guaranteed right, which is subject to qualification by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. A retained area, as its name denotes, is land which is not supposed to anymore leave the landowner's dominion, thus sparing the government from the inconvenience of taking land only to return it to the landowner afterwards, which would be a pointless process.[33]

In the case of *Association of Small Landowners*,[34] it was held that landowners who have not yet exercised their retention rights under PD No. 27 are entitled to the new retention rights under RA No. 6657. The Court disregarded the August 27, 1985 deadline imposed by DAR Administrative Order No. 1, series of 1985 on landowners covered by OLT. However, if a landowner filed his application for retention after August 27, 1985 but he had previously filed the sworn statements required by LOI Nos. 41, 45 and 52, he is still entitled to the retention limit of seven (7) hectares under PD No. 27. Otherwise, he is only entitled to retain five (5) hectares under RA No. 6657.

Section 6 of RA No. 6657 defines the nature and incidents of a landowner's right of retention. For as long as the area to be retained is compact or contiguous and it does not exceed the retention ceiling

[33]Daez v. Court of Appeals, GR No. 133507, Feb. 17, 2000, 325 SCRA 856.
[34]*Supra*.

of five (5) hectares, a landowner's choice of the area to be retained must prevail. Moreover, Administrative Order No. 4, series of 1991, which supplies the details for the exercise of a landowner's retention rights, likewise recognizes no limit to the prerogative of the landowner, although he is persuaded to retain other lands instead to avoid dislocation of farmers.

This right of retention may be exercised over tenanted land despite the issuance of certificate of land transfer (CLT) to farmer-beneficiaries. What must be protected, however, is the right of the tenants to opt to either stay on the land chosen to be retained by the landowner or be a beneficiary in another agricultural land with similar or comparable features.

Land awards made pursuant to the government's agrarian reform program are subject to the exercise by a landowner, who is qualified, of his right of retention.

Under PD No. 27, beneficiaries are issued certificates of land transfer (CLTs) to entitle them to possess lands. Thereafter, they are issued emancipation patents (EPs) after compliance with all necessary conditions. Such EPs, upon their presentation to the Register of Deeds, shall be the basis for the issuance of the corresponding transfer certificates of title (TCTs) in favor of the corresponding beneficiaries.

Under RA No. 6657, the procedure has been simplified. Only certificates of land ownership award (CLOAs) are issued, in lieu of EPs, after compliance with all prerequisites. Thereafter, upon presentation of the CLOAs to the Register of Deeds, TCTs are issued to the designated beneficiaries. CLTs are no longer issued.

The issuance of EPs or CLOAs to beneficiaries does not absolutely bar the landowner from retaining the area covered thereby. Under AO No. 2, series of 1994, an EP or CLOA may be cancelled if the land covered is later found to be part of the landowner's retained area.[35]

**12. Retention limits.**

Section 4, Article XIII of the Constitution subjects the distribution of agricultural lands for agrarian reform to "reasonable re-

[35]Daez v. Court of Appeals, *supra*.

tention limits as Congress may prescribe." Section 6 of RA No. 6657 implements this mandate and recognizes the right of persons to own, or retain, directly or indirectly, any public or private land, the size of which shall vary according to the factors governing a viable family-size farm such as commodity produced, terrain, infrastructure, and soil fertility, but in no case shall it exceed 5 hectares. Section 6 provides:

> "SEC. 6. *Retention Limits*. — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm; *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder, further, That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead."

The retention limits under Section 6 of RA No. 6657 covers all persons whether natural or juridical. Juridical persons like corporations and partnerships are therefore subject to the 5-hectare limit.

The 5-hectare retention limit applies to all lands regardless of how acquired, *i.e.*, by purchase, award, succession, or donation, as the law does not distinguish. Thus, a child who was awarded 3 hectares as a preferred beneficiary under Section 6 of RA No. 6657 and subsequently acquires a 5-hectare landholding of his parent by succession can retain only 5 hectares of the total landholding.

A landowner has the obligation to cultivate the land directly or through labor administration, and thereby make productive the area he retains. Before he can commit the retained land to non-agricultural

purposes, he must first secure a conversion order from the DAR, otherwise he can be held liable for premature conversion.[36]

**(1) Rights of retention under PD No. 27 are retained even now under RA No. 6657**

It is worth stressing that all rights acquired by the tenant-farmer under PD No. 27, as recognized under EO No. 228, are retained by him even now under RA No. 6657. This should counterbalance the express provision in Section 6 of the said law that "the landowners whose lands have been covered by PD No. 27 shall be allowed to keep the area originally retained by them thereunder, further, that original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead."[37]

The following OLT owners are still entitled to retain 7 hectares even if they exercised their right of retention under PD No. 27 after June 15, 1988:

(a) Those landowners who complied with the requirement of either LOI Nos. 41, 45 or 52;

(b) Those who filed their applications before the deadline set on August 27, 1985, whether or not they have complied with LOI Nos. 41, 45 and 52;

(c) Those who filed their applications after the deadline but complied with the requirements of LOI Nos. 41, 45 and 52; and

(d) The heirs of a deceased landowner who manifested, while still alive, the intention to exercise the right of retention prior to August 23, 1990.[38]

**(2) Exercise of right of retention**

While Section 6 of RA No. 6657 acknowledges the right of the landowners to choose the area to be retained, it requires that the area be compact and contiguous, and shall be least prejudicial to the entire landholding and the majority of the farmers therein.[39]

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[36]DAR AO No. 1 (1999); Agrarian Law and Jurisprudence, DAR-UNDP, 23-24.

[37]Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, *supra*.

[38]DAR AO No. 4 (1991), Agrarian Law and Jurisprudence, DAR-UNDP, 25.

[39]Sec. 2(b), DAR AO No. 5 (2000), DAR-UNDP, 26-27.

The landowner shall exercise his right of retention within sixty (60) days from receipt of the Notice of Coverage from the DAR. Failure to exercise this right within the prescribed period means that the landowner waives his right to choose which area to retain. Thereafter, the Municipal Agrarian Reform Officer (MARO) shall designate the retained area for the landowner.[40]

Under the Voluntary Offer to Sell (VOS) scheme, the right of retention shall be exercised at the time the land is offered for sale. The offer should specify and segregate the portion covered by VOS and the portion applied for retention; otherwise, the landowner shall be deemed to have waived his right of retention over the subject property.[41]

As a matter of policy, all rights acquired by the tenant-farmers under PD No. 27 and the security of tenure of the farmers or farmworkers on the land prior to the approval of RA No. 6657 shall be respected.[42]

In case the area selected by the landowner or awarded for retention by the DAR is tenanted, the tenant has two options:

(a) To remain as a lessee. If he chooses to remain in the area retained, he shall be considered a leaseholder and shall lose his right to be a beneficiary; and

(b) Be a beneficiary in the same or another agricultural land with similar or comparable features.

The tenant must exercise either option within one (1) year after the landowner manifests his choice of the area for retention, or from the time the MARO has chosen the area to be retained by the landowner, or from the time an order is issued granting the retention. In case the tenant declines to enter into a leasehold and there is no available land to transfer, or if there is, the tenant refuses the same, he may choose to be paid disturbance compensation by the landowner.[43]

Where Certificates of Land Transfer (CLTs), Emancipation Patents (EPs) or Certificates of Land Ownership Award (CLOAs) have already been issued on the land chosen by the landowner as retention

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[40]Sec. 4, *ibid*.
[41]*Ibid*.
[42]Sec. 2(c), *ibid*.
[43]Sec. 10, *ibid*.

area, the DAR shall immediately inform the agrarian reform beneficiaries (ARBs) concerned and provide them the opportunity to contest the landowner's claim. Moreover, the DAR shall ensure that the affected ARBs, should they so desire, be given priority in the distribution other lands of the landowner or other lands identified by the DAR for redistribution, subject to the rights of those already in the area.[44]

**(3) Waiver of right of retention**

Under Section 7 of DAR AO No. 5, the following acts constitute waiver of the landowner's right of retention:

(a) Executing an affidavit or any other document duly attested by the MARO, Provincial Agrarian Reform Officer (PARO) or Regional Director (RD) indicating that he is expressly waiving his retention right over subject landholding;

(b) Signing of the Landowner-Tenant Production Agreement and Farmer's Undertaking (LTPA-FU) or Application for Purchase and Farmer's Undertaking (APFU) covering subject property;

(c) Entering into a Voluntary Land Transfer/Direct Payment Scheme (VLT-DPS) agreement as evidenced by a Deed of Transfer over the subject property;

(d) Offering the subject landholding under VOS scheme and failure to indicate his retained area;

(e) Signing/submission of other documents indicating consent to have the entire property covered, such as the form letter of the LBP on the disposition of the case and bond portions of a land transfer claim for payment, and the Deed of Assignment, warranties and undertaking executed in favor the LBP;

(f) Performing acts which constitute estoppel by laches;

(g) Doing such act or acts as would amount to a valid waiver in accordance with applicable laws and jurisprudence.[45]

## 13. Policy for ancestral lands under CARP.

CARP ensures the protection of the right of ICCs/IPs to their ancestral lands to ensure their economic, social and cultural well-

[44]Sec. 11, *ibid*.
[45]Agrarian Law and Jurisprudence, DAR-UNDP, 27-28.

being. Systems of land ownership, land use, and modes of settling land disputes of the ICCs/IPs shall be recognized and respected in line with the principles of self-determination and autonomy.

The Presidential Agrarian Reform Committee (PARC), notwithstanding any law to the contrary, has the power to suspend the implementation of the CARP with respect to ancestral lands for the purpose of identifying and delineating such lands. It shall respect laws on ancestral domain enacted by the respective legislators of autonomous regions subject to the provisions of the Constitution and the principles enumerated in RA No. 6657 and other national laws.[46]

## 14. Agricultural tenancy.

*Agricultural tenancy* is defined as "the physical possession by a person of land devoted to agriculture, belonging to, or legally possessed by, another for the purpose of production through the labor of the former and of the members of his immediate farm household, in consideration of which the former agrees to share the harvest with the latter, or to pay a price certain or ascertainable, either in produce or in money, or both."[47]

Courts determine the existence (or nonexistence) of a tenancy relationship on the basis of the evidence presented by the parties. Certifications of administrative agencies and officers declaring the existence of a tenancy relation are merely provisional. They are persuasive but not binding on courts, which must make their own findings.[48]

In *Gelos* v. *Court of Appeals*,[49] it was held that "tenancy is not a purely factual relationship dependent on what the alleged tenant does upon the land. It is also a legal relationship. The intent of the parties, the understanding when the farmer is installed, and their written agreements, provided these are complied with and are not contrary to law, are even more important."

### (1) Requisites of tenancy relationship

The essential requisites of a tenancy relationship are the following:

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[46]*Ibid.*, 32.
[47]Sec. 3, RA No. 1199.
[48]Oarde v. Court of Appeals, GR No. 104774, Oct. 8, 1997, 280 SCRA 235.
[49]GR No. 86186, May 8, 1992, 208 SCRA 608.

(1) the parties are the landowner and the tenant;

(2) the subject is agricultural land;

(3) there is consent;

(4) the purpose is agricultural production;

(5) there is personal cultivation; and

(6) there is sharing of harvests.

All these must concur to establish the juridical relationship of tenancy.[50]

Tenancy relationship is distinguished from farm employer-farm worker relationship in that: "In farm employer-farm worker relationship, the lease is one of labor with the agricultural laborer as the lessor of his services and the farm employer as the lessee thereof. In tenancy relationship, it is the landowner who is the lessor, and the tenant the lessee of agricultural land. The agricultural worker works for the farm employer and for his labor he receives a salary or wage regardless of whether the employer makes a profit. On the other hand, the tenant derives his income from the agricultural produce or harvest."[51]

**(2) Quantum of proof**

The determination that a person is a tenant is a factual finding made by the trial court on the basis of evidence directly available to it and such finding will not be reversed on appeal except for the most compelling reasons.[52]

In agrarian cases, all that is required is mere substantial evidence. Hence, the trial court's findings of fact which attained the minimum of evidentiary support demanded by law, *i.e.,* by *substantial evidence*, are final and conclusive and cannot be disturbed by the appellate tribunals.[52a]

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[50]Sintos v. Court of Appeals, GR No. 96489, July 14, 1995, 246 SCRA 223; Castillo v. Court of Appeals, GR No. 98028, Jan. 27, 1992, 205 SCRA 529.

[51]Gelos v. Court of Appeals, *supra*.

[52]Sintos v. Court of Appeals, *supra*; Hernandez v. Intermediate Appellate Court, GR No. 74323, Sept. 21, 1990, 189 SCRA 758.

[52a]Hernandez v. Intermediate Appellate Court, 189 SCRA 758 (1990).

### (3) Only leasehold tenancy is recognized

A *tenant* is defined under Section 5(a) of RA No. 1199 as a person who himself and with the aid available from within his immediate farm household cultivates the land belonging to or possessed by another, with the latter's consent, for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price-certain or ascertainable in produce or in money or both, under the leasehold tenancy system.[53]

Agricultural tenancy is classified into share tenancy and leasehold tenancy. But under RA No. 6657, the only agricultural tenancy relation that is recognized is *leasehold tenancy.* Said law expressly repealed Section 35 of RA No. 3844, making all tenanted agricultural lands throughout the country subject to leasehold.[54]

The area of agricultural land that a lessee may cultivate has no limit, but he should cultivate the entire area leased. The 3-hectare limit under RA No. 6657 applies only to the award that may be given to the agrarian reform beneficiary.

### (4) Finding by DAR of tenancy relationship is merely preliminary

It is well-settled that the findings of or certifications issued by the Secretary of Agrarian Reform, or his authorized representative, in a given locality concerning the presence or absence of a tenancy relationship between the contending parties is merely preliminary or provisional and is not binding upon the courts.[55]

One cannot be said to be an agricultural lessee if he has not personally or by his farm household cultivated the land in question. The mere fact that the land is agricultural does not *ipso facto* make him an agricultural lessee. The law provides conditions or requisites before he can qualify as one and the land being agricultural is only one of them. Among others, the law is explicit in requiring the tenant and his immediate family to work the land.[56]

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[53]*Ibid.*

[54]Agrarian Law and Jurisprudence, DAR-UNDP, 36; Castro v. Court of Appeals and Baron, GR No. L-44727, Sept. 11, 1980, 59 SCRA 722.

[55]Puertollano v. Intermediate Appellate Court, GR No. L-73698, Dec. 3, 1987, 156 SCRA 188.

[56]De Jesus v. Intermediate Appellate Court, GR No. 72282, July 24, 1989, 175 SCRA 559.

### (5) Extinguishment of agricultural leasehold relation

Once a leasehold relation has been established, the agricultural lessee is entitled to *security of tenure* and has a right to continue working on the land except when he is ejected therefrom for cause as provided by law.[57]

The agricultural leasehold relation shall be extinguished by:

(1) Abandonment of the landholding without the knowledge of the agricultural lessor;

(2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or

(3) Absence of the persons under section nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee.[58]

### (6) Disturbance compensation

Under Section 36 of RA No. 3844, as amended, it is provided that notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the court in a judgment that is final and executory if, after due hearing, it is shown that:

> "(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: *Provided,* That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, x x x."

In *Sintos* v. *Court of Appeals*,[59] petitioner asked for the exclusion of his landholding from land reform, contending that the por-

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[57]*Ibid.*
[58]Sec. 8, RA No. 3844.
[59]*Supra*.

tions occupied by private respondents were part of his land development project. The MAR District Office recommended the cancellation of the certificates of land transfer issued to private respondents and instead recommended the award to them of disturbance compensation. In refusing to pay disturbance compensation, petitioner claimed that the contract between the parties was a civil law lease contract, and that the land had ceased to be an agricultural land. The Court overruled petitioner's contention, holding that there was a landlord and tenant relationship between petitioner and private respondents, thus:

> "Petitioner does not dispute the fact that before the conversion of his rice land into a subdivision in 1971, the said land was occupied and cultivated by private respondents. In addition, petitioner also admitted in his answer with counterclaim that he allowed private respondents to cultivate the land and, in return, received a share of the harvests.
>
> Where persons cultivated the land and did not receive salaries but a share in the produce or the cash equivalent thereof, the relationship created between them and the landowner is one of tenancy and not employment. x x x Considering that private respondents are tenants of petitioner, the former are therefore entitled to disturbance compensation."

### (7) State not liable for disturbance compensation

The claim for disturbance compensation against the government was denied in *Pagtalunan* v. *Tamayo*[60] where the Court held that the liability for disturbance compensation arises only *where the peaceful enjoyment and possession by the agricultural tenants or lessees is disturbed or interrupted by the owner/lessor* and not where the conversion of the land is made by the government independent of the will of the owner/lessor.

> "Anent petitioners' claim for disturbance compensation, the Court finds that the law cited by petitioners, Section 36(1) of Rep. Act No. 3844, as amended by Rep.

[60]GR No. 54281, March 19, 1990.

Act No. 6389, cannot be invoked to hold the State liable for disturbance compensation *[See Campos v. CA, G.R. No. 51904, October 1, 1980]* where this Court by resolution denied for lack of merit therein petitioner's claim that, as agricultural lessee or tenant, he was entitled to disturbance compensation against the State. It refers to situations where the peaceful enjoyment and possession by the agricultural tenants or lessees of the land is disturbed or interrupted by the owner/lessor thereof. Paragraphs 1 to 7 of the said section enumerate the instances when the lessees may be evicted by the owner/lessor, and paragraph 1 thereof provides that lessees shall be entitled to disturbance compensation from the owner/lessor, if the land will be converted by the latter into a residential, commercial or industrial land. Thus, Section 36(1) of Rep. Act No. 3844, as amended, deals with the liability of an owner/lessor to his agricultural tenant lessee and cannot be invoked to make the State liable to petitioners herein for disturbance compensation.

Nor may petitioners invoke this section as basis to hold private respondents liable for disturbance compensation. Section 36(1) of Rep. Act No. 3844, as amended, is applicable only when it is the owner/lessor who voluntarily opts for the conversion of his land into non-agricultural land. In the present case, it is the State, not the private respondents, who disturbed petitioners' possession of the subject property. The conversion of the property into a permanent site for the Bulacan Area Shop of the Department of Public Works and Highways was undertaken by the government independent of the will of private respondents herein."

The State in the exercise of its sovereign power of eminent domain may expropriate property for public use where no emancipation patent has yet been issued to the farmer/grantee. Under this circumstance, the latter is not legally entitled to a portion of the proceeds from the expropriation proceedings corresponding to the value of the landholding.[61]

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[61]Pagtalunan v. Tamayo, *supra*.

**15. Acquisition of private agricultural lands; payment of just compensation.**

CARP is founded on the right of landless farmers and regular farmers to own directly or collectively the lands they till through the just distribution of all agricultural lands. In order that the acquisition process may be completed, the following requisites must be complied with:

*First*, the land must be privately-owned and found suitable for agriculture.

*Second*, there are beneficiaries willing to take over the ownership of the land and make it more productive;

*Third*, the landowner is paid just compensation or deposit in cash or LBP bonds is made in his name if the value is contested; and

*Finally*, title to the land is transferred in the name of the Republic of the Philippines.[62]

It must be clarified, however, that full payment of just compensation is not necessarily required in Voluntary Land Transfer (VLT)/ Direct Payment Scheme (DPS) because the terms of payment of just compensation are governed by the mutual agreement of the parties, *i.e.*, the farmer-beneficiary and the landowner. Likewise, under EO No. 407, the payment of just compensation to the government instrumentality as landowner may come even after land distribution, *i.e.*, thirty (30) days from the registration of the ownership documents by the Register of Deeds in favor of the Department of Agrarian Reform.[63]

In the same manner that fuill payment of just compensation is not always necessary to complete acquisition, transfer of title to the Republic of the Philippines is not necessary in VLT/DPS since the landholding is directly transferred from the landowner to the beneficiary.[64]

**16. Modes of acquisition.**

The modes by which private agricultural lands may be acquired are:

(a) Operation Land Transfer (OLT)

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[62]Agrarian Law and Jurisprudence, DAR-UNDP, 70.
[63]Sec. 1(4), EO No. 407 (1990); DAR-NUDP, 70.
[64]Agrarian Law and Jurisprudence, DAR-NUDP, 70.

(b) Voluntary Offer to Sell (VOS)

(c) Voluntary Land Transfer/Direct Payment Scheme (VLT/DPS)

(d) Compulsory Acquisition (CA)

(e) Voluntary Stock Distribution (VSD) in the case of corporate farms.

### (1) Operation Land Transfer

Operation Land Transfer (OLT) is a mechanism established for the implementation of PD No. 27. It is a mode by which ownership of tenanted rice and corn lands is transferred to tenant beneficiaries. But for the lands to come under OLT, there must first be a showing that they are *tenanted lands*.[65]

As earlier stated, Pres. Marcos issued LOI No. 227 (1974) to extend the operations implementing the land reform program to landholdings of over seven (7) hectares. Then, on October 21, 1976, he issued LOI No. 474 placing under the Land Transfer Program of the government pursuant to PD No. 27 all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families. Landowners who may choose to be paid the cost of their lands by the Land Bank of the Philippines shall be paid in accordance with the mode of payment provided in LOI No. 273 dated May 7, 1973.

The constitutionality of LOI No. 474 was upheld in the case of *Zurbano* v. *Estrella*.[66]

### (2) Voluntary Offer to Sell

Voluntary Offer to Sell (VOS) is a scheme whereby the landowners voluntarily offer their agricultural lands for coverage regardless of phasing. It does not, however, mean that their landholdings voluntarily offered for sale are automatically accepted by the DAR. A VOS may be rejected if the landholding is not suitable for agricul-

[65]Castro v. Court of Appeals and Baron, *supra*.
[66]*Supra*.

ture, or has a slope of more than eighteen percent (18%) and is undeveloped. Likewise, said offer may be refused if there are no takers or persons willing to be agrarian reform beneficiaries and, lastly, the only identified ARBs are the qualified children of the landowner. As a general rule, withdrawal of VOS shall no longer be allowed after the receipt by the DAR of the offer.[67]

Landowners, other than banks and other financial institutions, who voluntarily offer their lands for sale shall be entitled to an additional five percent (5%) cash payment.[68]

**(3) Voluntary Land Transfer/Direct Payment Scheme**

Voluntary Land Transfer or Direct Payment Scheme (VLT/DPS) is a mode of acquisition whereby the landowner and the beneficiary enter into a voluntary arrangement for the direct transfer of the lands to the latter. Not all private agricultural lands may be the subject of voluntary transfer. For instance, lands mortgaged with banking and/or financial institutions cannot be the subject of VLT/DPS.[69]

**(4) Compulsory Acquisition**

Compulsory acquisition is a mode whereby the land is expropriated by the State in accordance with the procedure outlined in Section 16 of RA No. 6657.

For purposes of acquisition of private lands, the following procedure shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and *barangay* hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his

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[67]Agrarian Law and Jurisprudence, DAR-NUDP, 76.
[68]Sec. 19, RA No. 6657.
[69]Agrarian Law and Jurisprudence, DAR-NUDP, 77.

administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government and surrenders the certificate of title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.[70]

### (5) Voluntary stock distribution of corporate farms; AO No. 101, s. 2006

Voluntary stock distribution is an alternative arrangement for the physical distribution of lands wherein corporate owners voluntarily divest a portion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries. Stock ownership is based on the capital stocks of the corporation and is equivalent to the agricultural land actually devoted to agricultural activities valued in relation to the total assets of the corporation.[71]

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[70]Sec. 1(6), RA No. 6657.

[71]DAR AO No. 1 (1991); Agrarian Law and Jurisprudence, DAR-NUDP, 80-81.

Upon certification by the DAR, corporations owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to associations, with respect to their equity or participation.[72]

Section 31 of RA No. 6657 provides the legal basis for the corporate landowners to avail themselves of the stock distribution option (SDA) in which corporations that voluntarily divest themselves of a portion of their capital stock, equity or participation in favor of their workers and other qualified beneficiaries can be considered as a form of compliance under the provisions of said Act. In view thereof, the DAR issued AO No. 10, series of 1988, providing guidelines and procedures for the implementation of said provision.

Over the past years, some issues have been raised as regards the non-compliance by some corporations with the terms and conditions stipulated in the approved SDO plans and Memorandum of Agreement (MOA) signed between the beneficiaries and the corporations. Some petitions/protests were filed with the DAR from concerned groups of farmworkers seeking the revocation of the approved SDO plans. Hence, AO No. 01, dated January 26, 2006, was issued, pertinent provisions of which state:

### *1. Features of transferability of shares of stock*

1. Any shares acquired by the workers and beneficiaries shall have the same rights and features as all other shares (Sec. 21[c], RA No. 6657).

2. Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

3. The beneficiaries do not lose their rights and privileges as stockholders of the corporation even if they have retired, are incapacitated, or are separated from the service unless they opted to sell their shares of stocks.

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[72]Sec. 31, RA No. 6657.

### *2. Right of first refusal*

1. The beneficiaries shall have the right of first refusal over the unsubscribed capital stock in the same proportion of the par value of their shares to the total par value of the outstanding shares of stock.

2. The beneficiaries, if they so decide, may opt to immediately exercise their right of first refusal by subscribing for the proportionate number of shares, thus, affording them the pre-emptive right over such shares.

3. In the event that the BOD decides to call the subscriptions and/or issue additional shares in order the raise funds, the beneficiaries shall have 60 days or within a period specified in the MOA to make the payment for their subscribed shares.

### *3. Revocation of the approved SDO plan/MOA*

The grounds for the cancellation/revocation of the approved SDO plan/MOA shall be as follows:

1. When the corporation fails to implement the approved SDO plan/MOA within two (2) years after its approval;

2. When the corporation fails to provide the beneficiaries with guaranteed and continuous employment in the agricultural land by deliberately curtailing or shortening farm operations and work schedules thereby resulting to decreased or low farm income by the beneficiaries;

3. When the corporation fails to provide benefits to the beneficiaries, as may be stipulated in the approved SDO plan/MOA, such as dividends, production and profit shares accruing the shares of stock without justifiable reasons;

4. When the agricultural operations are no longer financially and economically viable; or

5. When a portion of the agricultural land was converted into non-agricultural use without the prior written consent by the majority of the beneficiaries under the SDO plan.

### *4. Transfer of shares of stock*

Transfer of shares of stock can take place in any of the following situations:

1. When the beneficiary opts to sell or dispose the same;

2. When the beneficiary dies and the legal heir/s opts to sell his shares of stocks or opts to assume the obligations as a stockholder in the corporation; or

3. When the corporation files a petition for the substitution of the beneficiaries whose whereabouts can no longer be traced in his last known postal address or permanent residence.

***5. Disposition of protests/complaints***

Protests or complaints for violations in the implementation of the SDO plan/MOA may be brought to any of the following agencies/ forums for resolution, depending on the principal cause of action:

1. Department of Labor and Employment (DOLE) and its attached agencies (*e.g.*, the National Labor Relations Commission [NLRC] and Bureau of Labor Relations [BLR]) if there are violations in the appropriate provisions of the Labor Code;

2. Regional Trial Court (RTC) if the disputes are intra-corporate in nature;

3. Securities and Exchange Commission (SEC) if the issues involved are corporate in nature consistent with the provisions of the Corporation Code the Philippines and the Securities Regular Code;

4. Cooperative Development Authority (CDA) if the issues involved are intra-cooperative dispute; or

5. Presidential Agrarian Reform Council (PARC) if the issues call for the revocation/cancellation of the approved SDO plan/MOA.

**17. Just compensation.**

In *Association of Small Landowners in the Philippines* v. *Secretary of Agrarian Reform*,[73] the Court explained the meaning of just compensation as "the full and fair equivalent of the property taken from its owner by the expropriator." It has been repeatedly stressed that the measure is not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, ample.

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[73]*Supra.*

In *Export Processing Zone Authority* v. *Dulay,*[74] the Court said that just compensation means the value of the property at the time of the taking. It means a fair and full equivalent for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities, should be considered.

There is compensable taking when the following conditions concur:

(1) the expropriator must enter a private property;

(2) the entry must be for more than a momentary period;

(3) the entry must be under warrant or color of legal authority;

(4) the property must be devoted to public use or otherwise informally appropriated or injuriously affected; and

(5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property. All these requisites are envisioned in the measures before us.[75]

**(1) Determination of just compensation**

Section 6 of RA No. 6657 provides that the following shall be considered as additional factors in determining just compensation:

(a) cost of acquisition of the land;

(b) current value of the like properties;

(c) nature, actual use and income of the land;

(d) sworn valuation by the owner;

(e) tax declarations and the assessment made by government assessors;

(f) social and economic benefits contributed by the farmers and the farmworkers and by the government to the property; and

(g) non-payment of taxes or loans secured from any government financing institution on the said land.

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[74]Export Processing Zone Authority v. Dulay, GR No. L-59603, April 19, 1987, 149 SCRA 305.

[75]Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, *supra*, citing Republic v. Castellvi, GR No. L-20620, Aug. 15, 1974, 58 SCRA 336.

**(2) No deposit required where the State itself is the expropriator**

Where the State itself is the expropriator, it is not necessary for it to make a deposit upon its taking possession of the condemned property, as "the compensation is a public charge, the good faith of the public is pledged for its payment, and all the resources of taxation may be employed in raising the amount." Nevertheless, Section 16 (e) of the CARL provides that:

> "Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries."

**(3) Determination of just compensation a judicial function**

Objection has been raised as to the manner of fixing the just compensation, which it is claimed is entrusted to the administrative authorities in violation of judicial prerogatives. Specific reference is made to Section 16(d), which provides that in case of the rejection or disregard by the owner of the offer of the government to buy his land —

> ". . . the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision."

However, in *Association of Small Landowners in the Philippines* v. *Secretary of Agrarian Reform*,[76] the Court explained that the de-

[76]*Supra.*

ter-mination of just compensation is a function addressed to the courts of justice and may not be usurped by any other branch or official of the government. A reading of the Section 16(d) will readily show that although the proceedings are described as summary, the landowner and other interested parties are nevertheless allowed an opportunity to submit evidence on the real value of the property. But more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon the landowner or any other interested party, for Section 16(f) clearly provides:

> "Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation."

The Court said that the "determination made by the DAR is only *preliminary* unless accepted by all parties concerned. Otherwise, the courts of justice will still have the right to review *with finality* the said determination in the exercise of what is admittedly a judicial function."

### (4) Valuation and mode of compensation

Section 18 of the RA No. 6657 provides that the LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land. The compensation shall be paid in one of the modes provided by said Section 15, at the option of the landowner.

### (5) Appeal taken to the Court of Appeals via petition for review

In *Land Bank of the Philippines* v. *De Leon*,[77] the Court reiterated that a petition for review, not an ordinary appeal, is the proper procedure in effecting an appeal from decisions of the Regional Trial Courts, acting as Special Agrarian Courts, in cases involving the determination of just compensation to the landowners concerned, pursuant to Section 60 of RA No. 6657. The reason is the need for

[77]GR No. 143175, Sept. 10, 2002, 388 SCRA 537.

absolute dispatch in the determination of just compensation. Just compensation means not only paying the correct amount but also paying for the land within a reasonable time from its acquisition. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. Unlike an ordinary appeal, a petition for review dispenses with the filing of a notice of appeal or completion of records as requisites before any pleading is submitted. A petition for review hastens the award of fair recompense to deprived landowners for the government-acquired property, an end not foreseeable in an ordinary appeal.

**18. OLT coverage may be nullified despite issuance of EP where land is not agricultural land.**

As already pointed out, to bring land within the coverage of the Operation Land Transfer (OLT) program under PD No. 27, two requisites must concur: (a) there must be a showing that the land is devoted to rice and corn crops; and (b) there must be a system of share-crop or lease tenancy obtaining when the Decree took effect on October 21, 1972. If either requisite is absent, exclusion from OLT coverage lies and Emancipation Patents (EPs), if issued, may be recalled.

In *Aninao* v. *Asturias Chemical Industries, Inc.*,[78] the Court, through Justice Garcia, said:

> "In the case at bench, it has been peremptorily determined by OP and, before it, by the DAR, acting on investigation reports of its provincial (Batangas) office, as reviewed and validated by its regional office, that the **OLT coverage** of the disputed landholdings was **erroneous**, it being established that the lands covered are not primarily devoted to rice and corn and that the tenancy relationship has not been clearly established. x x x Upon the foregoing perspective, the nullification by the offices *a quo* of the coverage of the property in question under the OLT program was rightly decreed.

[78]*Supra.*

But the more compelling reason arguing for the propriety of DAR's assailed nullification is its determination that the property in question '*had long ceased to be agricultural land and converted to mineral land even before it was placed under OLT coverage*.' For, lands classified as mineral are exempt from agrarian reform coverage. x x x

x x x x x x x x x

Nullification of OLT coverage and cancellation of EPs are entirely different concepts, albeit the cancellation of an EP, if issued over a piece of land, would be the logical consequence of the nullification of the OLT coverage of such land. It cannot be over-emphasized, however, that the assailed ruling of the DAR Secretary, as sustained by OP, merely gave due course to the protest lodged by respondent against the OLT coverage of the property in question. It stopped short of ordering the recall and cancellation of the EPs thus issued over the covered property. In fact, the DAR Secretary made it abundantly clear that '*the cancellation of the [EPs] . . . shall be the subject of separate proceedings before the DAR Adjudication Board*.' There can be no quibbling about the DAR Secretary's competence to act on protests against agrarian reform coverage and to nullify such coverage."

**19. Summary.**

With the decisions of the Supreme Court upholding the constitutionality of RA No. 6657, PD No. 27, Proclamation No. 131, and EO Nos. 228 and 229, the following rules evolve:

1. Title to all expropriated properties shall be transferred to the State only upon full payment of compensation to their respective owners.

2. All rights previously acquired by the tenant-farmers under PD No. 27 are retained and recognized.

3. Landowners who were unable to exercise their rights of retention under PD No. 27 shall enjoy the retention rights granted by RA No. 6657 under the conditions therein prescribed.

**20. Recording of certificates of land transfer and emancipation patents; registry book.**

Section 104, PD No. 1529, provides that the Department of Agrarian Reform (DAR) shall prepare a special registry book known as "Provisional Register of Documents under PD-27" which shall be kept and maintained in every Registry of Deeds throughout the country. The registry book shall be a register of (a) all certificates of land transfer issued pursuant to PD No. 27, and (b) all subsequent transactions affecting such certificates such as adjustments, transfer, duplication and cancellation of erroneous certificates.

Pursuant to Section 105, the DAR shall issue in duplicate a Certificate of Land Transfer for every land brought under "Operation Land Transfer," the original of which shall be kept by the tenant-farmer and the duplicate, in the Registry of Deeds. This is a departure from the regular procedure under the Torrens system where the original of the certificate of title is kept by the Register of Deeds whereas the owner's duplicate thereof is given to the registered owner.

The Register of Deeds shall complete the required entries on the emancipation patent and assign an original certificate of title number in case of unregistered land. In case of registered property, he shall issue the corresponding transfer certificate of title without requiring the surrender of the owner's duplicate of title to be cancelled.

In case of subsequent transfer of property covered by an emancipation patent or certificate of title emanating from an emancipation patent, the Register of Deeds shall effect transfer only upon receipt of the supporting documents from the DAR.

**SEC. 106. *Sale of agricultural land; affidavit.* — No voluntary deed or instrument purporting to be a subdivision, mortgage, lease, sale or any other mode of encumbrance or conveyance of private agricultural land principally devoted to rice or corn or any portion thereof shall be registered unless accompanied by an affidavit of the vendor or executor stating that the land involved is not tenanted, or if tenanted, the same is not primarily devoted to the production of rice and/or corn.**

**If only a portion of the land is primarily devoted to the production of rice and/or corn, and such area so devoted is tenanted, no such deed or instrument shall be registered unless accompanied by an affidavit stating the area (size) of the portion**

**which is tenanted and primarily devoted to rice and/or corn, and stating further that the deed or instrument covers only the untenanted portion or that which is not primarily devoted to the production of rice and/or corn. A memorandum of said affidavit shall be annotated on the certificate of title. The Register of Deeds shall cause a copy of the registered deed or instrument, together with the affidavit, to be furnished the Department of Agrarian Reform Regional Office where the land is located. The affidavit provided in this section shall not be required in the case of a tenant-farmer who deals with his Certificate of Land Transfer or Emancipation Patent in accordance with law.**

### 01. Restriction on sale or other voluntary disposition of agricultural land.

Section 6 RA No. 6657 provides that any sale, disposition, lease, management contract or transfer of possession of private lands executed by the original landowner violation of the Act shall be null and void. All Registers of Deeds are required to inform the DAR within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

Section 106 of PD No. 1529 states that no voluntary deed or instrument purporting to be a subdivision, mortgage, lease, sale or any other mode of encumbrance or conveyance of private agricultural land principally devoted to rice or corn or any portion thereof shall be registered unless accompanied by an affidavit of the vendor or executor stating that the land involved is not tenanted, or if tenanted, the same is not primarily devoted to the production of rice and/or corn. A memorandum of said affidavit shall be annotated on the certificate of title. The Register of Deeds shall cause a copy of the registered deed or instrument, together with the affidavit, to be furnished the DAR Regional Office where the land is located. The affidavit shall not be required in the case of a tenant-farmer who deals with his Certificate of Land Transfer (CLT) or Emancipation Patent (EP) in accordance with law.

The requirement conforms and is consistent with the objective of the Comprehensive Agrarian Reform Law to equitably distribute ownership of land to the beneficiaries of the program — landless farmers and farmworkers who are to receive the highest consideration to promote social justice.

# CHAPTER X

# PETITIONS AND ACTIONS AFTER ORIGINAL REGISTRATION

**SEC. 107. *Surrender of withheld duplicate certificates*. — Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.**

## 01. Remedy where duplicate certificate is withheld.

In case the person in possession of the owner's duplicate certificates refuses or fails to surrender the same to the Register of Deeds so that any involuntary or voluntary instrument may be registered and a new certificate issued, Section 107 provides that the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate

certificate cannot be delivered, the court may order the annulment of said certificate and the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.[1]

In a case,[2] it was held that it was not necessary for the sheriff to present the owner's duplicate of the certificate of title when he filed notice of the attachment with the Register of Deeds, nor was it necessary for the Philippine National Bank to present the owner's duplicate when the bank filed its certificate of sale for registration.

**02. Petition to surrender title may be filed as an incident in an action affecting said title.**

Where the court, in an action for specific performance, upheld the sale of the property to the plaintiff and ordered the defendant to comply with its terms and conditions, it was proper for the plaintiff, in the same case, to ask the court to compel defendant to surrender the duplicate certificate of title to the Register of Deeds for the registration of the sale, this being a necessary incident in the main case. Even while Section 107 of PD No. 1529 speaks of a petition which can be filed by one who wants to compel another to surrender the certificates of title to the Register of Deeds, this does not preclude a party to a pending case to include as incident therein the relief stated under said section, especially if the subject certificate of title to be surrendered is intimately connected with the subject matter of the principal action. This principle is based on expediency and in accordance with the policy against multiplicity of suits.[3]

Where the title is subject to a mortgage, the order of the court directing the surrender of the title cannot in any way prejudice the rights of the mortgagee since any lien annotated on the certificate of title is incorporated in or carried over to the new transfer certificate of title to whoever it is issued. The mortgage subsists notwithstanding a change in ownership; in short, the personality of the owner is disregarded.[4]

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[1]Selp v. Aguilar, GR No. L-13465, March 29, 1960, 107 Phil. 443.

[2]Philippine National Bank v. Fernandez, GR No. 42109, May 13, 1935, 61 Phil. 448.

[3]Ligon v. Court of Appeals, GR No. 107751, June 1, 1995, 244 SCRA 693.

[4]*Ibid*.

### 03. Authority of the court to order surrender owner's certificate of title.

The authority of the court in land registration cases to order the registered owner to surrender his duplicate certificate of title, pursuant to Section 107 of the Property Registration Decree must be predicated upon the validity and legality of the claim of the petitioner that he is entitled to such surrender so that a new certificate of title may be issued to him, because the registered owner had been lawfully divested of his title to the registered land. Hence, in order that the court may order the registered owner to surrender his owner's duplicate certificate of title, it has to determine upon the evidence presented by the parties whether the registered owner had been lawfully divested of his title thereto. That, of course, requires and involves determination of the question of title to the registered property. As the authority granted to the court by Section 107 does not constitute a reopening of the decree entered as a result of proceedings *in rem* for the confirmation of imperfect titles under the said act, it cannot be deemed to contravene the purpose and aim of the Torrens system.[5]

**SEC. 108. *Amendment and alteration of certificates*. — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner of other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interests not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected;**

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[5]Ruiz v. Paguio, GR No. L-7466, June 30, 1956, 99 Phil. 474.

**or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; *Provided, however,* That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.**

**All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.**

### 01. Where to file petition.

Under Section 108 of the Decree, all petitions or motions after original registration shall be filed and entitled in the original case in which the decree of registration was entered.[6] Said section does not require that the petition or the answer or opposition thereto be under oath.

Land registration proceedings are as separate and distinct from ordinary civil actions as are the latter from criminal actions. The rule that "all petitions or motions" filed under Section 108 as well as under any other provision of the Property Registration Decree after original registration shall be filed and entitled in the original registration case was adopted with an intelligent purpose in view — to allow such petitions and motions to be filed and disposed of elsewhere would eventually lead to confusion and render it difficult to trace the origin of the entries in the registry.[7]

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[6]Office of the Court Administrator v. Matas, Adm. Matter RTJ-92-836, Aug. 2, 1995, 247 SCRA 9.

[7]Cavan v. Wislizenus, GR No. 24678, Jan. 21, 1926, 48 Phil. 632.

**02. Proceedings under Sec. 112 of the Land Registration Act were summary in nature.**

Under Act No. 496 (Land Registration Act), case law stressed the summary character of the proceedings for the amendment or alteration of certificates of title. Thus, it was held in *Fojas* v. *Grey*[8] that proceedings under Section 112 of the Land registration Act (now Section 108 of the Property Registration Decree) are summary in nature, and relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes contentious and controversial which should be threshed out in an ordinary action or in any case where the incident properly belongs. Similarly, in *Bareng* v. *Shintoist Shrine & Japanese Charity Bureau*,[9] the Supreme Court held that the proceedings under Sections 111 and 112 of the Land Registration Act (Sections 107 and 108, Property Registration Decree), being summary in nature, are inadequate for the litigation of controversial issues, and it was the duty of the land court where controversial issues are raised to dismiss the petition so that said issues may be threshed out in an ordinary case before a regular court.

It was also held in *Abella* v. *Rodriguez*[10] that under Section 112 of the Land Registration Act, any registered owner of land or other person in interest may, on certain grounds, apply by petition to the cadastral court for a new certificate or the entry or cancellation of a memorandum thereon, but such relief can only be granted if there is no adverse claim or serious objection on the part of any party in interest; otherwise, the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs. In other words, relief under said section can only be granted if there is unanimity among the parties, which means the absence of serious controversy between the parties in interest as to the title of the party seeking relief under said section.

Although there have been instances wherein the Supreme Court sanctioned deviations from the otherwise rigid rule that the jurisdiction of a land registration court, being special and limited in character, and proceedings therein being summary in nature, does

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[8]Fojas v. Grey, GR No. L-29613, Sept. 18, 1984, 132 SCRA 76.

[9]GR No. L-29262, May 31, 1978, 83 SCRA 418; see also Rehabilitation Finance Corporation v. Alto Surety & Insurance Co., Inc., GR No. L-14303, March 24, 1960, 107 Phil. 386.

[10]GR No. L-17889, Dec. 29, 1962, 116 Phil. 1277.

not extend to cases involving issues properly litigable in other independent suits or ordinary civil actions, the peculiarity of the exceptions is based not alone on the fact that land registration courts are likewise the same Courts of First Instance (Regional Trial Courts), but also on the following premises: (1) mutual consent of the parties or their acquiescence in submitting the issues for determination by the court in the registration proceedings; (2) full opportunity given to the parties in the presentation of their respective sides of the issues and the evidence in support thereto; and (3) consideration by the court that the evidence already of record is sufficient and adequate for rendering a decision upon those issues. The latter condition is a matter that largely lies within the sound discretion of the trial judge.[11]

**03. Rule under Sec. 108, in relation to Sec. 2, PD No. 1529: court may now hear both contentious and non-contentious cases.**

With the advent of PD No. 1529 (Property Registration Decree), which became effective on June 11, 1979, the *ponencia* of Justice Cruz in *Averia* v. *Caguioa*[12] held that Section 2 thereof which provides that —

> "Courts of First Instance (Regional Trial Courts) shall have exclusive jurisdiction over all applications for original registration of title to lands, including improvements and interests therein, and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions x x x."

has eliminated the distinction between the general jurisdiction vested in the Regional Trial Court and the limited jurisdiction conferred upon it by the former law when acting merely as a cadastral court.

In *Averia*, the question is whether or not the registration court has jurisdiction to order the registration of a deed of sale which is opposed on the ground of an antecedent contract to sell. Petitioner (oppositor) refused to participate in the proceedings below, claiming the respondent court, acting as a cadastral court, had no competence

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[11]Aglipay v. De los Reyes, GR No. L-12776, March 23, 1960, 107 Phil. 331.
[12]GR No. L-65129, Dec. 29, 1986, 146 SCRA 459.

to act upon the said case under Section 112 of Act No. 496, otherwise known as the Land Registration Act. Respondent court then held a hearing *ex parte* and rendered a decision ordering the registration prayed for on the basis of the evidence presented by the private respondent. In his petition for *certiorari* and prohibition, petitioner argued that the lower court had no competence to act on the registration sought because of the absence of unanimity among the parties as required under Section 112 of the Land Registration Act. The Court rejected the argument, holding:

> "Aimed at avoiding multiplicity of suits, the change has simplified registration proceedings by conferring upon the regional trial courts the authority to act not only on applications for 'original registration' but also 'over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions.'
>
> Consequently, the court is no longer fettered by its former limited jurisdiction which enabled it to grant relief only in cases where there was 'unanimity among the parties' or none of them raised any 'adverse claim or serious objection.' Under the amended law, *the court is now authorized to hear and decide not only such non-controversial cases but even the contentious and substantial issues.*" (Emphasis supplied)

It is worth noting, however, that in *Liwag* v. *Court of Appeals*,[13] where the basic issue for resolution is whether a Regional Trial Court, sitting as a land registration court, has jurisdiction over the petition for cancellation of titles filed by petitioner in a pending *reconstitution case*, the Court, through Justice Regalado, held that the petition is beyond the jurisdiction of the court, thus:

> "It bears repeating that in her petition filed in Reconstitution Case No. 80 in Branch 160, petitioner asked the court there into declare null and void the cancellation of her titles by the register of deeds as a result of the approval of what she alleged were unlawful provisions in the compromise agreement in Civil Case No. 53389 in Branch 162. Private respondents, however, vehemently objected

[13]GR No. 86074, Dec. 20, 1989, 180 SCRA 420.

> to the contentions of petitioner alleging that the assailed stipulations are valid and binding. It is thus evident that the issue involved in the instant case is not a simple reconstitution of a lost title but is actually a challenge to the legality and enforceability of the judgment upon compromise rendered in Civil Case No. 53389.
>
> This controverted point *per se* is beyond the jurisdiction of the land registration court acting on a petition filed under Section 108 of Presidential Decree No. 1529, the proceedings wherein are summary in nature and are allowed only when a scrutiny of the allegations discloses that the issues are patently insubstantial as not to be genuine issues. Furthermore, the relief provided for under Section 108 requires that there be unanimity of parties, that is, that there be no adverse claim or serious objection on the part of any party in interest. Considering the serious and weighty objections raised by private respondents, petitioner cannot legally invoke or avail herself of Section 108 in support of the relief she aspires for. The land registration court should have dismissed the petition without prejudice to the right of petitioner to file the appropriate action in the proper court."

In any event, it is now definitive that the rule that a Regional Trial Court, sitting as a land registration court, has limited jurisdiction and has no authority to resolve controversial issues, no longer holds. Thus, the Court, in *Philippine National Bank* v. *International Corporate Bank*,[14] upheld the jurisdiction of the registration court over the petition for the cancellation of annotations of encumbrances on petitioner's transfer certificates of title, despite respondent's contention that the issue is controversial.

Similarly, in *Ligon* v. *Court of Appeals*,[15] Justice Bellosillo expounded for the Court:

> "Before the enactment of P.D. No. 1529 otherwise known as the *Property Registration Decree*, the former law, Act No. 496 otherwise known as the Land Registration Act, and all jurisprudence interpreting the former law had

[14]GR No. 86679, July 23, 1991, 199 SCRA 508.
[15]GR No. 107751, June 1, 1995, 244 SCRA 693.

established that summary reliefs such as an action to compel the surrender of owner's duplicate certificate of title to the Register of Deeds could only be filed with and granted by the Regional Trial Court sitting as a land registration court if there was unanimity among the parties or there was no adverse claim or serious objection on the part of any party in interest, otherwise, if the case became contentious and controversial it should be threshed out in an ordinary action or in the case where the incident properly belonged.

Under Sec. 2 of P.D. No. 1529, it is now provided that 'Courts of First Instance (now Regional Trial Courts) shall have exclusive jurisdiction over all applications for original registration of titles to lands, including improvements and interest therein and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions.' The above provision has eliminated the distinction between the general jurisdiction vested in the regional trial court and the limited jurisdiction conferred upon it by the former law when acting merely as a cadastral court. Aimed at avoiding multiplicity of suits the change has simplified registration proceedings by conferring upon the regional trial courts the authority to act not only on applications for original registration but also over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions."

In *Ligon*, INK, as vendee, filed an action for specific performance against IDP, registered owner of the land in question. Meanwhile, the court issued an order directing petitioner, as mortgagee of IDP, to surrender the owner's duplicate certificate in her possession in order that a new title may be issued to INK. Petitioner questioned the jurisdiction of the court, arguing that the case between INK and IDP involved the "registrability" of the document of sale as in fact IDFP filed a counterclaim for the rescission thereof. Moreover, petitioner is not even a party to the case. Rejecting petitioner's submission of lack of jurisdiction, the Court said:

"It is clear therefore that the surrender by petitioner of the certificate of title to the Register of Deeds as ordered by the trial court will not create any substantial injustice

> to her. To grant the petition and compel INK to file a new action in order to obtain the same reliefs it asked in the motion before the trial court is to encourage litigations where no substantial rights are prejudiced. This end should be avoided. Courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. The rules are intended to insure the orderly conduct of litigations because of the higher objective they seek, which is, to protect the parties' substantive rights."

Relatedly, in *Concepcion* v. *Concepcion*,[16] petitioners' thesis is that the cadastral court had no authority to order the surrender and/or delivery to the respondents of the owner's copy of the title covering the disputed property because the same had been devised to them by their common ascendant as indicated in her will. Rejecting petitioner's contention, Justice Garcia reiterated doctrinal jurisprudence[17] that a Regional Trial Court, as a land registration court, can hear cases otherwise litigable only in ordinary civil actions since it is at the same time a court of general jurisdiction and could, for instance, entertain and dispose of the validity or invalidity of an adverse claim with a view to determining whether petitioner is entitled or not to the relief that he seeks.

**04. No amendment or alteration of decree is permitted except upon order of the court.**

Since the fundamental purpose of the Torrens system of registration is to settle finally and for all time the title to land registered, no erasure, alteration, or amendment shall be made upon the registration book after the entry of the certificate of title or memorandum thereon except upon order of the court and in accordance with the procedure prescribed by Section 108 of the Property Registration Decree. A decree of registration cannot be permanent if, for instance, the limits of the land therein registered may be changed or the amount of land so registered altered by a subsequent adjudication of said court based upon new evidence tending to show that the evidence introduced on the former hearing was incorrect.[18]

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[16]GR No. 147928, Jan. 11, 2005, 448 SCRA 31.

[17]Junio v. De los Santos, GR No. L-35744, Sept. 28, 1974, 128 SCRA 705; Ligon v. Director of Lands, *supra*.

[18]Cuyugan v. Sy Quia, GR No. 7857, March 27, 1913, 24 Phil. 567.

There being a legal prohibition that a decree of registration be reviewed after the expiration of one year from the issuance thereof for any reason whatsoever, neither the consent of the originally registered owner, nor the fact that some of the encumbrances were obtained by fraud, can authorize any revision of the decree. The procedure to be followed, when a registered owner is agreeable to including other co-owners in his title, is to have the portion or portions assigned to the co-owners transferred in accordance with the provisions of the law and the transfer registered in the Registry of Deeds and noted on the proper certificate of title and a new title issued immediately, provided, of course, that there are no encumbrances noted on the original certificate of title.[19]

If any encumbrance exists, even if it was obtained fraudulently, such amendment cannot be made without the consent of the mortgagee. Moreover, the prohibition contained in section 108 of the Property Registration Decree that nothing be done to injure the title or any other rights of the purchaser or mortgagee who may hold a certificate by onerous title and in good faith, does not necessarily imply that when the mortgage lien was fraudulently obtained, such amendment can be made because it is contrary to the prohibition contained in Sections 32 and 108 of the Decree.[20]

**05. No time limit to file petition.**

No limitation or period is fixed for filing a petition to annotate a deed of sale at the back of a certificate of title. If any party claims that a person registering a deed of sale can no longer do so, because the deed was executed more than 10 years before, such objection must be raised in an ordinary civil action.[21]

Where there is no question as to the existence and validity of the deed of sale, the registration of the sale and the issuance of a transfer certificate of title are ministerial duties of the Register of Deeds.[22]

**SEC. 109. *Notice and replacement of lost duplicate certificate.* — In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by**

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[19]Garcia v Reyes, GR No. 28675, Jan. 26, 1938, 51 Phil. 409.
[20]*Ibid*.
[21]Mendoza v. Abrera, GR No. L-10159, April 30, 1959, 105 Phil. 611.
[22]Mendoza v. Abrera, *supra*.

**someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.**

**Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.**

### 01. Section 109 governs replacement of lost duplicate certificate.

Section 109 of PD No. 1529 is the law applicable in petitions for issuance of new owner's duplicate certificates of title which are lost or stolen or destroyed. On the other hand, RA No. 26 applies only in cases of reconstitution of lost or destroyed original certificates on file with the Register of Deeds. The requirements for the replacement of a lost duplicate certificate are:

(a) The registered owner or other person in interest shall send notice of the loss or destruction of the owner's duplicate certificate of title to the Register of Deeds of the province or city where the land lies as soon as the loss or destruction is discovered;

(b) The corresponding petition for the replacement of the loss or destroyed owner's duplicate certificate shall then be filed in court and entitled in the original case in which the decree of registration was entered;

(c) The petition shall state under oath the facts and circumstances surrounding such loss or destruction;

(d) The court may set the petition for hearing, after due notice to the Register of Deeds and all other interested parties as shown in the memorandum of encumbrances noted in the original or transfer certificate of title on file in the office of the Register of Deeds;

(e) After due notice and hearing, the court may direct the issuance of a new duplicate certificate which shall contain a memo-

randum of the fact that it is issued in place of the lost or destroyed certificate and shall in all respects be entitled to the same faith and credit as the original duplicate.

Section 109 provides, *inter alia*, that "due notice under oath" of the loss or theft of the owner's duplicate "shall be sent by the owner or by someone in his behalf to the Register of Deeds . . ." Hence, a mere affidavit of loss attached to the petition in the lower court is insufficient.[23]

Where the owner's duplicate certificate of title is not in fact lost or destroyed, a petition for the issuance of a new owner's duplicate certificate is unwarranted, as in fact the court has no jurisdiction over the petition, and any owner's duplicate issued pursuant to said petition is null and void.[24]

### 02. Petition for replacement, where filed.

It will be noted that under Section 2 of the Property Registration Decree, Regional Trial Courts have exclusive jurisdiction over all applications for original registration of title to lands including improvements and interests therein, and over *all* petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions. Corollarily, under Section 108, all petitions or motions *after* original registration shall be filed and entitled in the original case in which the decree of registration was entered. Consequently, a petition for replacement of a lost duplicate certificate of title shall be filed with the Regional Trial Court of the place where the land lies, and this is true even if the title was issued pursuant to a public land patent registered in accordance with Section 103 of the Decree.[25]

**SEC. 110. *Reconstitution of lost or destroyed original of Torrens title*. — Original copies of certificates of title lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure pres-**

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[23]New Durawood Co. v. Court of Appeals, GR No. 111732, Feb. 20, 1996, 253 SCRA 740.

[24]*Ibid.*

[25]Office of the Court Administrator v. Matas, *supra*.

**cribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act is hereby abrogated.**

**Notice of all hearings of the petition for judicial reconstitution shall be given to the Register of Deeds of the place where the land is situated and to the Commissioner of Land Registration. No order or judgment ordering the reconstitution of a certificate of title shall become final until the lapse of thirty days from receipt by the Register of Deeds and by the Commissioner of Land Registration of a notice of such order or judgment without any appeal having been filed by any of such officials.**

### 01. Judicial reconstitution under RA No. 26.

RA No. 26 entitled "An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Titles Lost or Destroyed" approved on September 25, 1946 confers jurisdiction or authority upon the Regional Trial Court to hear and decide petitions for judicial reconstitution.

Reconstitution of title under RA No. 26 is an action *in rem*, which means it is one directed not only against particular persons, but against the thing itself. Its object is to bar indifferently all who might be minded to make any objection against the right sought to be enforced, hence the judgment therein is binding theoretically upon the whole world.[26]

A judicially reconstituted title has the same validity and legal effect as the original thereof, and is not subject to the reservation that it shall be without prejudice to any party whose right or interest in the property was duly noted in the original at the time of loss or destruction but which entry or notation has not been made on the reconstituted title. The limitation that reconstitution of title should be limited to the certificate as it stood at the time of its loss or destruction has reference only to changes which alter or affect title of the registered owner and not to mere liens and other encumbrances.[27] Unlike an extrajudicially reconstituted title where there

[26]Republic v. Court of Appeals, GR No. 101690, Aug. 23, 1995, 247 SCRA 551.

[27]Philippine National Bank v. Dela Viña, GR No. L-14601, Aug. 31, 1960, 109 Phil. 342.

is statutory reservation that the new title "shall be without prejudice to any party whose right or interest in the property was duly noted in the original, at the time it was lost or destroyed" as provided in Section 7 of RA No. 26, a judicially reconstituted title, by express provision of Section 10, shall not be subject to the encumbrance referred to in Section 7 of the Act.[28]

**02. Reconstitution denotes restoration of the lost title in its original form and condition.**

The reconstitution or reconstruction of a certificate of title literally and within the meaning of RA No. 26 denotes restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition. The purpose of the reconstitution of any document, book or record is to have the same reproduced, after observing the procedure prescribed by law, in the same form they were when the loss or destruction occurred. Thus, if the certificate of title covering the lot was decreed in the form of "Antonio Ompad and Dionisia Icong," the reconstituted certificate of title should likewise be in the name of the owners as they appeared in the lost or destroyed certificate of title sought to be reconstituted, and not, for instance, in the name of "spouses Antonio Ompad and Dionisia Icong" which involves a material change in the certificate of title, and which cannot be authorized under the summary proceedings for reconstitution prescribed in RA No. 26. Any change that should be made in the ownership of the property should be the subject of a separate suit.[29] The order granting reconstitution of title confirms the fact that the subject land had been previously registered and covered by a Torrens title. The fact that the title to the lot was lost does not mean that the lot ceased to be a registered land before the reconstitution of its title. As the subject land did not cease to be titled, it cannot be acquired by acquisitive prescription.[30] Reconstitution is proper only when it is satisfactorily shown that the title sought to be reconstituted is lost or is no longer available.[31]

Where the petition for reconstitution was not to restore a lost registered certificate of title but to re-register and issue a new

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[28]*Ibid*.

[29]Bunagan v. Court of First Instance of Cebu, GR No. L-29073, April 18, 1980, 97 SCRA 72.

[30]Rivera v. Court of Appeals, GR No. 107903, May 22, 1995, 244 SCRA 218.

[31]Republic v. Mateo, GR No. 148025, Aug. 13, 2004, 436 SCRA 502.

certificate in the names of the petitioner and her deceased husband, in lieu of one originally registered in the names of other persons, the petition should be denied without prejudice to the right of the parties to take the necessary action under Sections 51 and 53 of PD No. 1529 which provide for the entry and issuance of new certificates and duplicate certificates of title to the transferees upon the presentation and entry of deeds of conveyance.[32]

RA No. 26 provides for a special procedure for the reconstitution of Torrens certificates of title that are missing and not fictitious titles or titles which are existing. It is a patent absurdity to reconstitute existing certificates of title that are on file and available in the Registry of Deeds. Thus, where a certificate of title over a parcel of land was reconstituted judicially and later it was found that there existed a previous certificate of title covering the same land in the name of another person, the Court ruled that the existence of the prior title *ipso facto* nullified the reconstitution proceedings.[33]

**03. Sources of reconstitution.**

Section 2 of RA No. 26 governs reconstitution of *original* certificates of title while Section 3 governs petitions for reconstitution of *transfer* certificates of title.

**(1) For original certificates of title**

Pursuant to Section 2 of RA No. 26, lost or destroyed original certificates of title shall be reconstituted from the sources hereunder enumerated, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

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[32]Zafra v. Caballes, GR No. L-5040, Sept. 29, 1953, 93 Phil. 875.

[33]Republic v. Court of Appeals and A & A Torrijos Engineering Corporation, GR No. L-46626, Dec. 27, 1979, 94 SCRA 865.

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

**(2) For transfer certificates of title**

On the other hand, Section 3 states that lost or destroyed transfer certificates of title shall be reconstituted from the sources hereunder enumerated, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

It should be noted that Sections 2 and 3 of RA No. 26 are similar provisions except for the following differences:

> "SEC. 2. Original certificate of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: x x x
>
> (d) *An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;*

x x x x x x x x x

SEC. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: x x x

(d) *The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed certificate of title was issued;*"

From the foregoing, Section 2 differs from Section 3 as follows:

a. *As to applicability* — Section 2 applies to original certificates of title while Section 3 applies to transfer certificates of title;

b. *As to (d) of both sections* — While Section 2(d) requires an authenticated copy of the decree of registration or patent, Section 3(d) requires the deed of transfer or other document in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed certificate of title was issued.

Note, however, that both Sections 2(f) and 3(f) are the same: "*Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title*."[34]

### (3) For liens and encumbrances

With respect to liens and encumbrances affecting lost or destroyed certificates of title, Section 4 provides that they shall be reconstituted from the sources enumerated hereunder, in the following order:

(a) Annotations or memoranda appearing on the owner's co-owner's mortgagee's or lessee's duplicate;

(b) Registered documents on file in the registry of deeds, or authenticated copies thereof showing that the originals thereof had been registered; and

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[34]Dizon v. Discaya, GR No. 133502, Feb. 15, 1999, 303 SCRA 197.

(c) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the liens or encumbrances affecting the property covered by the lost or destroyed certificate of title.

### (4) Meaning of "any other document"

RA No. 26 enumerates the sources on which the reconstituted certificate of title may be based. It should be noted that both Sections 2 and 3 thereof list sources that evidence title or transactions affecting title to property. When Sections 2, 3 and 4 of the law therefore speaks of "[a]ny other document," the phrase must refer to similar documents previously enumerated therein.[35]

Paragraph 5 of LRC Circular No. 35, dated June 13, 1983, reads in part:

> "5. In case the reconstitution is to be made exclusively from sources enumerated in Sections 2(f) and 3(f) of Republic Act No. 26 in relation to section 12 thereof, the signed duplicate copy of the petition to be forwarded to this Commission shall be accompanied by the following:
>
> (a) A duly prepared plan of said parcel of land in tracing cloth, with two (2) print copies thereof, prepared by the government agency which issued the certified technical description, or by a duly licensed Geodetic Engineer who shall certify thereon that he prepared the same on the basis of a duly certified technical description. Where the plan as submitted is certified by the government agency which issued the same, it is sufficient that the technical description be prepared by a duly licensed Geodetic Engineer on the basis of said certified plan.
>
> (b) The original, two (2) duplicate copies, and a xerox copy of the original of the technical description of the parcel of land covered by the certificate of title, duly certified by the authorized officer of the Bureau of Lands or the Land Registration Commission who issued the technical description.

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[35]Republic v. Intermediate Appellate Court and Kiram, GR No. L-68303, Jan. 15, 1988, 157 SCRA 62.

> (c) A signed copy of the certification of the Register of Deeds concerned that the original of the certificate of title on file in the Registry was either lost or destroyed, indicating the name of the registered owner, if known from the other records on file in said office."

In *Dizon* v. *Discaya*,[36] petitioners maintain that since they submitted to the lower court Exhibits "N," "S" and "S-1" and "T," consisting of the certification from the Register of Deeds, technical descriptions, and tracing cloth plan, respectively, their petition for reconstitution should have been granted by the court. The Court, through Justice Purisima, rejected the contention, holding that subparagraphs (a), (b), and (c) of paragraph 5 of LRC Circular No. 35 are merely *additional* documents that must accompany the petition to be forwarded to the Land Registration Authority. When Section 2(f) of RA No. 26 speaks of "any other document," the same must refer to similar documents previously enumerated therein, that is, those mentioned in Sections 2(a), (b), (c), and (d).

In one case,[37] petitioner presented the owner's duplicate of the certificate of title in support of his petition for reconstitution. However, oppositors claimed that said title does not contain the name of the third registered owners. Oppositors presented two documents, namely, a certificate from the Bureau of Lands and a copy of the decision of the lower court to prove not only the ownership of the third registered owners but all the registered owners. The Supreme Court held that these documents fall under Section 3(f) of RA No. 26 and are sufficient and proper bases for reconstituting the burned or destroyed original certificate of title.

In another case,[38] the Court of Appeals relied on a one page, two-liner decision dated March 31, 1929 as well as the index of decree which contained an annotation relating to Decree No. 365835 for Lot No. 1499 in affirming the decision of the trial court court which granted respondent's petition for reconstitution. The Supreme Court said that while these documents may be considered as falling under Section 2(f) as "any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or

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[36]*Supra*.

[37]Republic v. Intermediate Appellate Court and Susukan, GR No. 71835, April 30, 1991, 196 SCRA 422.

[38]Republic v. El Gobierno de las Islas Filipinas, GR No. 142284, June 8, 2005.

destroyed certificate of title," it nevertheless ruled that these are not enough evidence for reconstitution purposes. For one, the text of the decision, quoted verbatim, simply stated: *"Lote No. 1499. — A favor de Tirso Tumulak, casado con Engrasia Pongasi."* Moreover, the geodetic engineer who certified that the copy of the decision attached to the petition was a true copy of the same is not the public officer who is in custody thereof as required by Section 7, Rule 130 of the Revised Rules on Evidence, hence, the certification has no probative value. The Court further noted:

> "We also find insufficient the index of decree showing that Decree No. 365835 was issued for Lot No. 1499, as a basis for reconstitution. We noticed that the name of the applicant as well as the date of the issuance of such decree was illegible. While Decree No. 365835 existed in the Record Book of Cadastral Lots in the Land Registration Authority as stated in the Report submitted by it, however, the same report did not state the number of the original certificate of title, which is not sufficient evidence in support of the petition for reconstitution. The deed of extrajudicial declaration of heirs with sale executed by Aguinaldo and Restituto Tumulak Perez and respondent on February 12, 1979 did not also mention the number of the original certificate of title but only Tax Declaration No. 00393. As we held in *Tahanan Development Corp*. vs. *Court of Appeals*, the absence of any document, private or official, mentioning the number of the certificate of title and the date when the certificate of title was issued, does not warrant the granting of such petition.
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> x x x x x x x x x
>
> Respondent Gacho also submitted the plan, the technical description of Lot No. 1499 as well as the certification from the Register of Deeds of Lapu-Lapu City, Dioscoro Y. Sanchez, Jr., stating that the Original Certificate of Title of Lot No. 1499 of Opon Cadastre as per records on file has been lost or destroyed during the last Global War. However, these are not the documents referred to under Section 2(f) of R.A. No. 26 but are mere additional documents that will accompany the petition to be forwarded to the Land Registration Authority."

**04. Where to file petition; contents.**

Under Section 12, RA No. 26, the petition for reconstitution which shall be filed by the registered owner, his assigns, or any person having an interest in the property with the proper Regional Trial Court where the same is based on sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e) and/or 3(f) of the Act.

The petition shall state or contain, among other things, the following:

(a) that the owner's duplicate of the certificate of title had been lost or destroyed;

(b) that no co-owner's mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed;

(c) the location, area and boundaries of the property;

(d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements;

(e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and all persons who may have any interest in the property;

(f) a detailed description of the encumbrances, if any, affecting the property; and

(g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet.

All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: *Provided,* That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f), the petition shall be further be accompanied with a plan and technical description of the property duly approved by the Administrator, Land Registration Authority, or with a certified copy of the description taken from a prior certificate of title covering the same property.

**05. Requirements of notice by publication, posting and mailing.**

Judicial reconstitution of title partakes of a land registration proceeding, hence, notice of the proceedings must be done in the manner set forth by the law. Failure to comply therewith is fatal to the court's jurisdiction. Section 13 of RA No. 26 provides:

> "SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court."

It is not enough that there is publication of the notice in the Official Gazette. In addition, RA No. 26 decrees that such a notice be posted "on the main entrance" of the corresponding provincial capitol and municipal building, as well as served by mail or otherwise upon every person named in the notice whose address is known. Failure to comply with such requirements will nullify the decree of reconstitution.[39]

The jurisdiction of the cadastral court is hedged in by the four walls of the petition and the published notice of hearing which define

[39]Republic v. Intermediate Appellate Court and Kiram, *supra*.

the subject matter of the petition. If the court oversteps those borders, it acts without or in excess of its jurisdiction in the case. As the petition for reconstitution of title is a proceeding *in rem*, compliance with the requirements of RA No. 26 is a condition *sine qua non* for the conferment of jurisdiction on the court taking cognizance of the petition.[40]

**06. LRC Circular No. 35.**

In order to forestall, if not eliminate entirely, anomalous or irregular reconstitution of lost or destroyed land certificates of title and, pursuant to the provisions of Section 6, subsections (b) and (d) and Section 110 of PD No. 1529, the Land Registration Commission (now Land Registration Authority) adopted LRC Circular No. 35, dated June 13, 1983, providing in part as follows:[41]

> "1. Certificates of title lost or destroyed for any cause shall be judicially reconstituted in accordance with the provisions of Republic Act No. 26, and its implementing rules and regulations, Circulars, memoranda and Administrative Orders relative to judicial reconstitution of lost or destroyed certificates of title insofar as not inconsistent with this circular.
>
> 2. All petitions for reconstitution shall be directly filed in duplicate with the clerk of court of the Regional Trial Court of the province or city where the property is situated serving copies thereof and its annexes to the following:
>
> a. The Registrar of Deeds concerned
>
> b. The Director of Lands
>
> c. The Solicitor General
>
> d. The corresponding Provincial or City Fiscal.
>
> x x x x x x x x x
>
> 3. Within five (5) days from receipt of the petition, the Clerk of Court shall forward to this Administration a signed copy of the petition together with the necessary

[40]Pinote v. Dulay, GR No. 56694, July 2, 1990, 187 SCRA 12.
[41]Cited in Republic v. Intermediate Appellate Court and Susukan, *supra*.

requirements as prescribed in Sections 4 and 5 thereof; provided, however, that if the certificate of title sought to be reconstituted covers two or more lots originally decreed in two or more registration cases, or that the petition covers two or more certificates of title issued pursuant to different registration cases, additional copies of the petition shall be forwarded to this Administration for each additional case.

4. Where the reconstitution is to be made from the sources enumerated in Sections 2 and 3(a-e) of Republic Act No. 26, the signed duplicate copy of the petition to be forwarded to this Administration must be accompanied by the following:

(a) A copy of the document on file in the Registrar of Deeds or title on the basis of which the reconstitution is to be made duly certified by the Clerk of Court of the Regional Trial Court where the petition is filed that the same is true and faithful reproduction of the document or title presented by the petitioner or owner;

(b) A signed copy of the certification of the Registrar of Deeds concerned that the original of the duplicate title on file in the registry was either lost or destroyed indicating the name of the registered owner, if known from the records on file in the said office.

5. In case the reconstitution is to be made exclusively from sources enumerated in Sections 2(f) and 3(f) of Republic Act No. 26 in relation to Section 12 thereof, the signed duplicate copy of the petition to be forwarded to this Administration shall be accompanied by the following:

(a) A duly prepared plan of said parcel of land in tracing cloth, with two (2) print copies thereof, prepared by the government agency which issued the certified technical description, or by a duly licensed Geodetic Engineer who shall certify thereon that he prepared the same on the basis of a duly certified technical description. Where the plan as submitted is certified by the government agency which issued the same, it is sufficient that the technical description be prepared by a duly licensed Geodetic Engineer on the basis of said certified plan.

(b) The original, two (2) duplicate copies, and a xerox copy of the original of the technical description of the parcel of land covered by the certificate of title, duly certified by the authorized officer of the Bureau of Lands or the Land Registration Authority who issued the technical description.

(c) A signed copy of the certification of the Registrar of Dees concerned that the original of the certificate of title on file in the Registry was either lost or destroyed, indicating the name of the registered owner, if known from the other records on file in the said office.

6. The notice shall state, among other things:

(a) the number of the lost or destroyed certificate of title, if known;

(b) the name of the registered owner;

(c) the location and area of the property;

(d) the names of the occupants or persons in possession of then property;

(e) the owners of the adjoining properties;

(f) all other interested parties; and

(g) the date on which all persons having any interest therein must appear and file their claim or objection to the petition.

7. The Clerk of Court must comply strictly with the requirements of publication, posting and mailing as required under Section 13 of Republic Act No. 26.

Notices of hearings shall also be given to the Register of Deeds of the place where the property is located, the Administrator of the Land Registration Authority (LRA) and the Provincial or City Fiscal of the province or city where the land is located who shall appear for and protect the interests of the government in court on the basis of the report and recommendations of the Administrator of the LRA and the Registrar of Deeds concerned which are required to be submitted to the Court.

x x x x x x x x x

13. The Court, after considering the report of the Administrator of the LRA and comments and findings of the Register of Deeds concerned, as well as the documentary and parole evidence presented by the petitioner, may take such action on the petition as it may deem proper.

14. The Clerk of Court shall furnish by registered mail the Administrator of the LRA, the Register of Deeds concerned, the Solicitor General, and the Provincial or City Fiscal each with a copy of the order or judgment.

15. No order or judgment ordering the reconstitution of a lost or destroyed certificate of title shall become final until after fifteen days (see B.P. Blg. 129) from receipt of a copy thereof by the Register of Deeds and by the Administrator of the LRA without an appeal having been filed by any of such officials (Sec. 110, P.D. No. 1529).

16. Should an order or judgment granting reconstitution be issued by the Court without awaiting the report and the recommendations of this Administration as well as the verification of the Register of Deeds concerned, or while the examination, verification and preparation of the report and recommendation are still pending in the said office due to the failure of the Clerk of Court or the petitioner to comply with all the necessary requirements as called for herein, and it appears that there is a valid ground to oppose the reconstitution, a motion to set aside the order/judgment shall be filed by the Administrator of the LRA and or the Register of Deeds thru the Solicitor General or the Provincial or City Fiscal concerned.

17. In no case shall the Register of Deeds comply with the order of the court to reconstitute a certificate of tile without the petitioner presenting the certificate of finality from the Clerk of Court concerned."

**07. Compliance with jurisdictional requirements mandatory.**

The jurisdictional requirements of (a) *publication*, (b) *posting,* and (c) *service of notice* are mandatory. They provide constructive notice to the whole world of the *in rem* reconstitution proceedings, The purpose is to apprise all interested parties of the existence of such action and to give them ample time to intervene in the pro-

ceedings. The whole world is a party to the case. Compliance with the requirements of publication, posting and service vests the court with jurisdiction to hear and decide the case.

RA No. 26 obligates the petitioner to prove to the trial court two things, namely, that: (1) its order giving due course to the petition for reconstitution and setting it for hearing was published twice, in two consecutive issues of the Official Gazette; and (2) such publication was made at least thirty days prior to the date of hearing. What must be proved under Section 13 is not the contents of the order published in the Official Gazette, but the fact of two-time publication in successive issues thereof at least thirty days before the hearing date. This may be proved by the certification of the Director of the National Printing Office.

While LRC Circular No. 35, series of 1983, mandates the LRA Administrator and the Register of Deeds concerned to submit their reports and recommendations regarding the petition for reconstitution to the court, it attaches no concomitant obligation on the petitioner to show compliance therewith by said officials before the petition may be acted upon. Section 15 of RA No 26 states:

> "SEC. 15. If the court, after hearing, finds that the documents presented, as supported by parole evidence or otherwise, are sufficient and proper to warrant the reconstitution of the lost or destroyed certificate of title, and that the petitioner is the registered owner of the property or has an interest therein, that the said certificate of title was in force at the time it was lost or destroyed and that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title, an order of recons-titution shall be issued. The clerk of court shall forward to the register of deeds a certified copy of said order and all the documents which, pursuant to said order, are to be used as the basis of the reconstitution. If the court finds that there is no sufficient evidence or basis to justify the reconstitution, the petition shall be dismissed, but such dismissal shall not preclude the right of the party or parties entitled thereto to file an application for confirmation of his or their title under the provisions of the Land Registration Act."[42]

[42]Republic v. Court of Appeals and Dayao, GR No. 101690, Aug. 23, 1995, 247 SCRA 551.

It is worth emphasizing that the destroyed or lost certificate of title which may be reconstituted is one that was in force at the time of loss or destruction.[43]

### (1) Publication; effect of defective or lack of publication

Section 13 of RA No. 26 requires publication of the petition for reconstitution since this is a proceeding *in rem*. If an order of reconstitution is issued without any previous publication, as required by law, such order of reconstitution is null and void and of no effect, and anything done under said void order is also void.[44]

Where the order of the court setting the hearing of the petition on August 17, 1988 was included in the May 22 and 30 issues of the Official Gazette which was, however, released for circulation only on October 8, 1988, the court did not acquire jurisdiction to hear the petition because of tardiness as held in *Register of Deeds of Malabon* v. *Regional Trial Court of Malabon*:[45]

> "The petitioner filed a petition for certiorari in this Court raising a purely legal issue: whether the actual publication of the notice of the petition in the Official Gazette forty-seven (47) days after the hearing, instead of 'at least thirty (30) days prior to the date of hearing' was sufficient to vest jurisdiction in the court to hear and determine the petition.
>
> Evidently, it did not. The purpose of the publication of the notice of the petition for reconstitution in the Official Gazette is to apprise the whole world that such a petition has been filed and that whoever is minded to oppose it for good cause may do so within thirty (30) days before the date set by the court for hearing the petition. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.
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> In *Director of Lands* vs. *The Court of Appeals and Demetria Sta. Maria de Bernal, Greenfield Development*

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[43]Syjuco v. Philippine National Bank, GR No. L-1597, May 5, 1950, 86 Phil. 320.

[44]*Ibid.*

[45]GR No. 88623, Feb. 5, 1990, 181 SCRA 788.

> *Corporation, Alabang Development Corporation and Ramon Bagatsing*, 102 SCRA 370, this Court ruled that 'in all cases where the authority of the courts to proceed is conferred by a statute and when the manner of obtaining jurisdiction is mandatory, it must be strictly complied with, or the proceedings will be utterly void.'
>
> Where there is a defect in the publication of the petition, such defect deprives the court of jurisdiction (Po vs. Republic, 40 SCRA 37). And when the court a quo lacks jurisdiction to take cognizance of a case, it lacks authority over the whole case and all its aspects (Pinza vs. Aldovino, 25 SCRA 220, 224)."

It is not enough, however, that there is publication in the Official Gazette. RA No. 26 also decrees that such a notice be posted "on the main entrance" of the corresponding provincial capitol and municipal building, as well as served actually upon the owners of adjacent lands if known. Failure to comply with such requisites will nullify the proceedings.

Nor is it sufficient to show that the Solicitor General failed to interpose an opposition to the petition. The court must nonetheless convince itself that the petitioner's evidence is substantial enough to warrant reconstitution.[46]

**(2) Requirement of notice mandatory; illustrative cases.**

In *Tahanan Development Corporation* v. *Court of Appeals*,[47] the Supreme Court stressed that the failure or omission to notify the person as owner, possessor or occupant of property adjacent to the land subject of reconstitution or as claimant or person having an interest, title or claim to said land, as well as the failure or omission to post copies of the notice of hearing on the main entrance of the municipality on which the land is situated, at the provincial building and at the municipal building thereat, are fatal to the acquisition and exercise of jurisdiction by the trial court.[48]

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[46]Republic v. Intermediate Appellate Court and Kiram, GR No. L-68303, Jan. 15, 1988, 157 SCRA 62.

[47]Tahanan Development Corporation v. Court of Appeals, GR No. 55771, Nov. 15, 1982, 203 Phil. 652.

[48]See also Director of Lands v. Court of Appeals and Bernal, GR No. L-45168, Jan. 27, 1981, 102 SCRA 370.

*Tahanan* further stressed that the petitioners are duty-bound to know who are their actual adjacent boundary owners on all sides and directions of their property. They are charged with the obligation to inquire who their neighbors are in actual possession and occupancy not only of portions of their own property but also of land adjacent thereto. This duty or obligation cannot be ignored or simply brushed aside where the location or the properties involved is a prime site for land development, expansion, suitable for residential, commercial and industrial purposes and where every square inch of real estate becomes a valuable and profitable investment. Also, it is not sufficient that the notice of hearing directed that copies thereof be posted only in the bulletin board of the court since the law specifically requires that the notice of the petition shall be posted on the main entrance of the municipality or city on which the land is situated, at the provincial building and at the municipal building at least thirty days prior to the date of hearing.

That the giving of notices to adjoining owners and the actual occupants of the land is mandatory and jurisdictional in judicial reconstitution of certificates of title is stressed in *Republic* v. *Marasigan*.[49] In this case, the Supreme Court explained that Section 23 of PD No. 1529 stating that "the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court" has not dispensed with the requirements of mailing and posting, thus:

> "This proviso was never meant to dispense with the requirement of notice by mailing and by posting. What it simply means is that in so far as publication is concerned, there is sufficient compliance if the notice is published in the Official Gazette, although the law mandates that it be published 'once in the Official Gazette and once in a newspaper of general circulation in the Philippines.' However, publication in the latter alone would not suffice. This is to accord primacy to the official publication.
>
> That such proviso was never meant to dispense with the other modes of giving notice, which remain mandatory and jurisdictional, is obvious from Section 23 itself. If the intention of the law were otherwise, said section would not have stressed in detail the requirements of mailing of

[49]GR No. 85515, June 6, 1991, 198 SCRA 219.

> notices to all persons named in the petition who, per Section 15 of the Decree, include owners of adjoining properties, and occupants of the land.
>
> x x x x x x x x x
>
> Judicial notice may be taken of the fact that only very few have access to or could read the Official Gazette, which comes out in few copies only per issue. If publication in the Official Gazette of the notice of hearing in both proceedings would be sufficient to confer jurisdiction upon the court, owners of both unregistered and registered lands may someday painfully find out that others have certificates of title to their land because scheming parties had caused their registration, or secured reconstituted certificates of title thereto and sold the property to third parties."

It has been held, however, that while notice to actual occupants is mandatory, notice is not required as regards a person who is a mere squatter or usurper of the premises.[50]

The effect of non-compliance with the requirements of the law is further explained in *Alabang Development Corporation* v. *Valenzuela*,[51] thus:

> "In view of these multiple omissions which constitute non-compliance with the above-cited sections of the Act, We rule that said defects have not invested the Court with the authority or jurisdiction to proceed with the case because the manner or mode of obtaining jurisdiction as prescribed by the statute which is mandatory has not been strictly followed, thereby rendering all proceedings utterly null and void. We hold that the mere Notice that 'all interested parties are hereby cited to appear and show cause if any they have why said petition should not be granted' is not sufficient for the law must be interpreted strictly; it must be applied rigorously, with exactness and precision. We agree with the ruling of the trial court granting the motion to amend the original petition

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[50]Esso Standard Eastern, Inc. v. Lim, GR Nos. L-29182-83, July 25, 1983, 123 SCRA 464.

[51]GR No. 54094, Aug. 30, 1982, 116 SCRA 261.

> provided all the requisites for publication and posting of notices be complied with, it appearing that the amendment is quite substantial in nature. As We have pointed above, respondent Demetria Sta. Maria Vda. de Bernal failed to comply with all the requirements for publication and posting of notices, which failure is fatal to the jurisdiction of the Court."

The above rule is a reiteration of the doctrine laid down in *Manila Railroad Company* v. *Moya*,[52] to wit:

> "Where a petition for reconstitution would have the certificates of title reconstituted from the plans and technical descriptions of the lots involved, which sources may fall properly under Section 3(e) or 3(f) of Republic Act No. 26, the possessor thereof or the one who is known to have an interest in the property should be sent a copy of the notice of the petition at the expense of the petitioner, pursuant to Section 13 of the said Act.
>
> If no notice of the date of hearing of a reconstitution case is served on a possessor or one having interest in the property involved, he is deprived of his day in court and the order of reconstitution is null and void, even if otherwise the said order should have been final and executory.
>
> Under Section 13 of Republic Act No. 26, notice by publication is not sufficient but such notice must be actually sent or delivered to parties affected by petition for reconstitution."

In *Serra Serra* v. *Court of Appeals*,[53] private respondents argued that petitioners were bound by the order granting reconstitution because the reconstitution proceedings was heard after notices were sent to alleged boundary owners and the petition was published in the Official Gazette. The Court, however, held that notice by publication is not sufficient as regards actual possessors of the property. In petitions for reconstitution of titles, actual owners and possessors of the lands involved must be duly served with *actual* and *personal* notice of the petition.

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[52]GR No. L-17913, June 22, 1965, 14 SCRA 358.
[53]GR No. 34080, March 22, 1991, 195 SCRA 482.

**08. Reconstitution improper where there is no title to be reconstituted, or where the original certificate of title in fact exists.**

Sections 18 and 19 of RA No. 26 provides:

"SEC. 18. In case a certificate of title, considered lost or destroyed, be found or recovered, the same shall prevail over the reconstituted certificate of title, and, if both titles appear in the name of the same registered owner, all memoranda of new liens or encumbrances, if any, made on the latter, after its reconstitution, except the memorandum of the reservation referred to in Section Seven of this Act, shall be transferred to the recovered certificate of title. Thereupon, the register of deeds shall cancel the reconstituted certificate of title and spread upon the owners duplicate, as well as on the co-owners, mortgagee's or lessee's duplicate, if any has been issued, such annotations of subsisting liens or encumbrances as may appear on the recovered certificate of title, cancelling at the same time the memorandum of the reservation referred to in Section seven hereof; *Provided, however,* That if the reconstituted certificate of title has been cancelled by virtue of any deed instrument, whether voluntary or involuntary, or by an order of the court, and a new certificate of title has been issued, the recovered certificate of title shall be likewise cancelled, but all subsisting liens or encumbrances, if any, appearing thereon shall be transferred to the new certificate of title and to its owner's duplicate, as well as to any co-owner's mortgagee's, or lessee's duplicate that may have been issued, the memorandum of the reservation referred to in section seven of this Act, if any, being thereby *ipso facto* cancelled.

SEC. 19. If the certificate of title considered lost or destroyed, and subsequently found or recovered, is not in the name of the same person in whose favor the reconstituted certificate of title has been issued, the register of deeds should bring the matter to the attention of the proper Court of First Instance, which, after due notice and hearing, shall order the cancellation of the reconstituted certificate of title and render, with respect to the memoranda of new liens or encumbrances, if any, made on the reconstituted certificate of title, after its reconstitution, such

> judgment as justice and equity may require; *Provided, however*, That if the reconstituted certificate of title has been cancelled by virtue of any deed or instrument, whether voluntary or involuntary or by an order of the court, and a new certificate of title has been issued, the procedure prescribed above with respect to memoranda of new liens or encumbrances made on the reconstituted certificate of title, after its reconstitution, shall be followed with respect to the new certificate of title, and to such new liens or encumbrances, if any, as may have been made on the latter, after the issuance thereof."

The phrase "certificate of title, considered lost or destroyed, be found or recovered" cannot refer to transfer certificates of title that had never been recovered. Neither can the phrase refer to mere owner's duplicate transfer certificates of title. What is contemplated by Section 18 is the original certificate of title which was lost or destroyed in the office of the Register of Deeds.[54]

If there is no original title to be reconstituted as where no such original title in fact exists, the reconstituted title is a nullity and the order for its reconstitution does not become final because the court rendering the order has not acquired jurisdiction. It may be attacked at any time. The same rule applies if in fact there is an earlier valid certificate of title in the name and in the possession of another person and said title is existing.[55] Lands already covered by duly issued existing Torrens titles cannot be the subject of petitions for reconstitution of allegedly lost or destroyed titles filed by third parties without first securing by final judgment the cancellation of such existing titles.[56]

The Court had already ruled in *Serra* v. *Court of Appeals*[57] that if a certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void and the court rendering the decision has not acquired jurisdiction over the petition for issuance of a new title. Thus, it was held in a case that where the owner's duplicate copy of OCT No. 7864 earlier issued to another person is still in existence, the lower court did not acquire jurisdiction

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[54]Syjuco v. Philippine National Bank, GR No. L-1597, May 5, 1950, 86 Phil. 320.

[55]Serra v. Court of Appeals, *supra*.

[56]Alabang Development Corporation v. Valenzuela, *supra*.

[57]*Supra*.

over respondent's petition for reconstitution of title. The duplicate certificate of title subsequently issued to respondent is therefore void and of no effect.[58]

**09. Action of the court; reconstitution, when mandatory.**

Compliance with the requirements of RA No. 26 obligates the court to issue the order of reconstitution.

> "SEC. 15. If the court, after hearing, finds that the documents presented, as supported by parole evidence or otherwise, are sufficient and proper to warrant the reconstitution of the lost or destroyed certificate of title, and that the petitioner is the registered owner of the property or has an interest therein, that the said certificate of title was in force at the time it was lost or destroyed, and that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title, an order of reconstitution shall be issued. The clerk of court shall forward to the register of deeds a certified copy of said order and all the documents which, pursuant to said order, are to be used as the basis of the reconstitution. If the court finds that there is no sufficient evidence or basis to justify the reconstitution, the petition shall be dismissed, but such dismissal shall not preclude the right of the party or parties entitled thereto to file an application for confirmation of his or their title under the provisions of the Land Registration Act.
>
> SEC. 16. After the reconstitution of a certificate of title under the provisions of this Act, the register of deeds shall issue the corresponding owner's duplicate and the additional copies of said certificates of title, if any had been previously issued, where such owner's duplicate and/or additional copies have been destroyed or lost. This fact shall be noted on the reconstituted certificate of title.
>
> SEC. 17. The register of deeds shall certify on each certificate of title reconstituted the date of the reconstitution, the source or sources from which reconstitution

[58]Panganiban v. Dayrit, GR No. 151235, July 28, 2005, 464 SCRA 370.

has been accomplished, and whether administratively or judicially."

It was held in *Republic* v. *Intermediate Appellate Court and Susukan*[59] that if the court, after hearing, finds that the evidence presented is sufficient and proper to warrant the reconstitution of the lost (or destroyed) certificate of title and that the petitioner is the registered owner of the property, and said certificate was in force at the time it was lost (or destroyed), the duty of the court is to issue the order of reconstitution. This duty is mandatory. The law does not give the court discretion to deny the reconstitution if all the basic requirements have been complied with. It was further held that where the government did not oppose the petition for reconstitution, nor moved to set aside the judgment of reconstitution after due notice, the implication is that no interest of the government was prejudiced by such judgment.

**10. Register of Deeds not a proper party to file the petition.**

The Register of Deeds is not a proper party to file the petition for reconstitution. Section 6 of RA No. 26, which allowed the Register of Deeds to *motu proprio* reconstitute a lost or destroyed certificate of title from its corresponding owner's duplicate certificate, was expressly repealed or declared to be "inoperative" by Section 6 of RA No. 6732, approved on July 17, 1989. A petition for reconstitution may now be filed only by "the registered owner, his assigns, or any person who has an interest in the property" pursuant to Section 12, RA No. 26. In other respects, the special procedure provided in RA No. 26 remains unchanged.[60]

**11. Writ of possession not proper in a reconstitution proceeding.**

In a land registration case, a writ of possession may be issued only pursuant to a decree of registration in an original land registration proceedings "not only against the person who has been defeated in a registration case but also against anyone adversely occupying the land or any portion thereof during the proceedings up

[59]*Supra.*

[60]Register of Deeds of Malabon v. Regional Trial Court of Malabon, GR No. 88623, Feb. 5, 1990, 181 SCRA 788.

to the issuance of the decree."[61] It cannot, however, be issued in a petition for reconstitution of an allegedly lost or destroyed certificate of title. Reconstitution does not confirm or adjudicate ownership over the property covered by the reconstituted title as in original land registration proceedings where, in the latter, a writ of possession may be issued to place the applicant-owner in possession. A person who seeks a reconstitution of a certificate of title over a property he does not actually possess cannot, by a mere motion for the issuance of a writ of possession, which is summary in nature, deprive the actual occupants of possession thereof. Possession and/or ownership of the property should be threshed out in a separate proceeding.[62]

**12. Courts cautioned to be careful in granting petitions for reconstitution.**

In *Tahanan*, the Supreme Court explained the need for the courts to be cautious and careful in granting petitions for reconstitution considering the ease and facility with which supporting documents are made to appear as authentic.

> "Time and again, the integrity and inviolability of Torrens titles issued pursuant to the Land Registration Act (Act 496) and Presidential Decree No. 1529 have been shaken by the very courts whose unwavering duty should be to protect the rights and interests of title holders but instead have favored claimants under the guise of reconstitution filed after a long lapse of time after the Japanese occupation, alleging the existence of original and duplicate certificates of title issued pursuant to a court decree but have subsequently been lost or destroyed including the records of the land registration case on account of the war and lay claim and title to valuable parcels of land previously titled and registered under the Torrens registration system and are even able to dispose these properties to unsuspecting homelot buyers and speculating land developers. The courts must be cautious and careful in granting reconstitution of lost or destroyed certificates of

[61]Lucero v. Loot, GR No. L-16995, Oct. 28, 1968, 25 SCRA 687; Marcelo v. Mencias, GR No. L-15609, April 29, 1960, 107 Phil. 1071; Demorar v. Ibañez, GR No. L-7595, May 21, 1955, 97 Phil. 72.

[62]Serra Serra v. Court of Appeals, *supra*.

> title, both original and duplicate owner's, based on documents and decrees made to appear authentic from mere xerox copies and certifications of officials supposedly signed with the seals of their office affixed thereon, considering the ease and facility with which documents are made to appear as official and authentic. It is the duty of the court to scrutinize and verify carefully all supporting documents, deeds and certifications. Each and every fact, circumstance or incident which corroborates or relates to the existence and loss of the title should be examined."

Words of caution were also echoed in *Pinote* v. *Dulay*[63] where the Court, through Justice Griño-Aquino, said:

> "There is no gainsaying the need for courts to proceed with extreme caution in proceedings for reconstitution of titles to land under R.A. No. 26. Experience has shown that this proceeding has many times been misused as a means of divesting a property owner of the title to his property. Through fraudulent reconstitution proceedings, he wakes up one day to discover that his certificate of title has been cancelled and replaced by a reconstituted title in someone else's name. Courts, therefore, should not only require strict compliance with the requirements of R.A. No. 26 but, in addition, should ascertain the identity of every person who files a petition for reconstitution of title to land. If the petition is filed by someone other than the registered owner, the court should spare no effort to assure itself of the authenticity and due execution of the petitioner's authority to institute the proceeding.
>
> It should avoid being unwittingly used as a tool of swindlers and impostors in robbing someone of his title."

In *Alabang Development Corporation* v. *Valenzuela*,[64] the *ponencia* of Justice Teehankee stressed that "courts must exercise the *greatest caution* in entertaining such petitions for reconstitution of allegedly lost certificates of title, particularly where the petitions are filed, as in this case, after an inexplicable delay of 25 years after the alleged loss." Furthermore —

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[63]*Supra.*
[64]*Supra.*

"the courts must likewise make sure that *indispensable parties, i.e., the actual owners and possessors of the lands involved*, are duly served with actual and personal notice of the petition (not by mere general publication), particularly where the lands involved constitute prime developed commercial land including a part of the South Super-highway. The stability and indefeasibility of the Torrens System would have been greatly imperiled had the appellate court's judgment granting reconstitution prevailed, resulting in two holders of Torrens certificates over the same lands. We can take judicial notice of innumerable litigations and controversies that have been spawned by the reckless and hasty grant of such reconstitution of alleged lost or destroyed titles as well as of the numerous purchasers who have been victimized only to find that the 'lands' purchased by them were covered by forged or fake titles or their areas simply 'expanded' through 'table surveys' with the cooperation of unscrupulous officials.

The Court stresses once more that lands already covered by duly issued existing Torrens titles (which become incontrovertible upon the expiration of one year from their issuance under section 38 of the Land Registration Act) cannot be the subject of petitions for *reconstitution* of allegedly lost or destroyed titles filed by *third parties without first* securing by final judgment the *cancellation* of such existing titles. (And as the Court reiterated in the recent case of Silvestre vs. Court of Appeals, 'in cases of annulment and/or reconveyance of title, a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his.') The courts simply have no *jurisdiction* over petitions by such *third parties* for *reconstitution* of allegedly lost or destroyed titles over lands that are *already covered by duly issued subsisting titles* in the names of their duly registered owners. The very concept of *stability and indefeasibility of titles* covered under the Torrens System of registration rules out as anathema the issuance of two certificates of title over the same land to two different holders thereof. *A fortiori*, such proceedings for 'reconstitution' without actual notice to the duly registered owners and holders of Torrens Titles to the land are

null and void. Applicants, land officials and judges who disregard these basic and fundamental principles will be held duly accountable therefor."

And in the case of *Republic* v. *El Gobierno de las Islas Filipinas,*[65] the Court intoned:

"The courts must be cautious and careful in granting reconstitution of lost or destroyed certificates of titles. It is the duty of the trial court to scrutinize and verify carefully all supporting documents, deeds and certifications. Each and every fact, circumstance or incident which corroborates or relates to the existence and loss of the title should be examined."

**13. Administrative reconstitution.**

Administrative reconstitution of lost or destroyed original certificates is governed by RA No. 6732, approved on July 17, 1989. Section 1 amends Section 110 of PD No. 1529, thus:

"SEC. 110. *Reconstitution of Lost or Destroyed Original of Torrens Title*. — Original copies of certificates of titles lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act may be availed of only in case of substantial loss or destruction of land titles due to fire, flood or other *force majeure* as de-ter-mined by the Administrator of the Land Registration Authority: *Provided*, That the number of certificates of titles lost or damaged should be at least ten percent (10%) of the total number in the possession of the Office of the Register of Deeds: *Provided, further*, That in no case shall the number of certificates of titles lost or damaged be less than five hundred (500).

[65]*Supra.*

> Notice of all hearings of the petition for judicial reconstitution shall be furnished the Register of Deeds of the place where the land is situated and to the Administrator of the Land Registration Authority. No order or judgment ordering the reconstitution of a certificate of title shall become final until the lapse of fifteen (15) days from receipt by the Register of Deeds and by the Administrator of the Land Registration Authority of a notice of such order or judgment without any appeal having been filed by any such officials."

As stated in the law, the administrative reconstitution of lost or destroyed certificates of title may be availed of only in case of substantial loss or destruction of land titles due to fire, flood or other *force majeure* as determined by the Administrator of the Land Registration Authority, and on the further condition that:

(a) the number of certificates of title lost or damaged should be at least ten percent (10%) of the total number in the possession of the office of the Register of Deeds; and

(b) in no case shall the number of certificates be less than five hundred (500).

### (1) Duty of LRA to prepare inventory

Immediately after the loss or destruction of titles to be reconstituted, a true, complete and faithful inventory of all books, titles, documents, cash and property in the Registry of Deeds concerned shall be prepared by the Land Registration Authority through the designated reconstituting officer or Register of Deeds. Said inventory, duly signed and certified under oath by the Administrator, shall be published in a newspaper of general circulation in the province or city where the loss or destruction of titles occurred.[66]

### (2) Sources of reconstitution; contents of petition

Pursuant to Section 5, RA No. 26, as amended by Section 2, RA No. 6732, petitions for reconstitution from sources enumerated in Sections 2(a), 2(b), 3(a), and 3(b) of RA No. 26 may be filed with the Register of Deeds concerned by the registered owner, his assigns, or

[66]Sec. 3, RA No. 6732.

other person, both natural and juridical, having an interest in the property. The petition shall be accompanied with the necessary sources for reconstitution and with an affidavit of the registered owner stating, among other things:

(1) That no deed or other instrument affecting the property had been presented for registration, or, if there be any, the nature thereof, the date of its presentation, as well as the names of the parties, and whether the registration of such deed or instrument is still pending accomplishment;

(2) That the owner's duplicate certificate or co-owner's duplicate is in due form without any apparent intentional alterations or erasures;

(3) That the certificate of title is not the subject of litigation or investigation, administrative or judicial, regarding its genuineness or due execution or issuance;

(4) That the certificate of title was in full force and effect at the time it was lost or destroyed;

(5) That the certificate of title is covered by a tax declaration regularly issued by the Assessor's Office; and

(6) That real estate taxes have been fully paid up to at least two (2) years prior to the filing of the petition for reconstitution.

If the reconstitution is to be made from any of the sources enumerated in Section 2(b) or 3(b), the affidavit should further state that the owner's duplicate has been lost or destroyed and the circumstances under which it was lost or destroyed. Thereupon, the Register of Deeds shall, no valid reason to the contrary existing, reconstitute the certificate of title as provided in the Act.

In the case of *Manotok* v. *Barque*,[67] Justice Ynares-Santiago declared that reconstitution shall be made following the *hierarchy of sources* enumerated in the law, thus:

> "When respondents filed the petition for reconstitution, they submitted in support thereof the owner's duplicate certificate of title, real estate tax receipts and tax declaration. Plainly, the same should have more than sufficed as sources for the reconstitution pursuant to

[67]GR No. 152335, Dec. 12, 2005.

> Section 3 of RA No. 26 which explicitly mandates that the reconstitution shall be made following the **hierarchy of sources** as enumerated by law. In addition, Section 12 of the same law requires that the petition shall be accompanied with a plan and technical description of the property *only* if the sources of the reconstitution is Section 3(f) of RA No. 26. x x x
>
> Since respondents' source of reconstitution is the onwer's duplicate certificate of title, there is no need for the reconstituting officer to require the submission of the plan, much less deny the petition on the ground that the submitted plan appears to be spurious. By enumerating the hierarchy of sources to be used for the reconstitution, it is the intent of the law to give more weight and preference to the owner's duplicate certificate of title over the other enumerated sources."

**(3) Action on the petition**

All reconstituted titles shall be reproduced by the Land Registration Authority in at least three image copies or in whatever means by which the original can be reproduced, one copy to be kept by the Land Registration Authority, the second copy to be kept by the National Library Archives Division, and the third copy to be secured in a government fire-proof vault, preferably in the Security Printing Plant of the Central Bank. Such image copy of the original copy of the reconstituted title shall be considered after due authentication by the Land Registration Authority, through the Register of Deeds in the province or city where the land is located, as a duplicate original, and as an authorized source or basis for reconstitution together with the sources enumerated in Sections 2 and 3 of Republic Act No. 26.[68]

After reconstitution, said owner's duplicate or co-owner's duplicate exhibited as basis for the reconstitution shall be surrendered to the Register of Deeds and a new certificate of title issued in lieu thereof, the original of which shall be kept by the Register of Deeds and the owners duplicate delivered to the registered owner.[69]

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[68]Sec. 4, RA No. 6732.
[69]Sec. 5, *ibid.*

### (4) Function of LRA to review and adjudicate

The Land Registration Authority (LRA) has the jurisdiction to act on petitions for administrative reconstitution. It has the authority to review, revise, reverse, modify or affirm on appeal the decision of the reconstituting officer. The function is adjudicatory in nature — it can properly deliberate on the validity of the titles submitted for reconstitution. Logically, it can declare a title as sham or spurious, or valid on its face. Otherwise, if it cannot make such declaration, then there would be no basis for its decision to grant or deny the reconstitution. The findings of fact of the LRA, when supported by substantial evidence, shall be binding on the Court of Appeals.

The factual finding of the LRA that respondents' title is authentic, genuine, valid, and existing, while petitioners' title is sham and spurious, as affirmed by the Court of Appeals, is conclusive before the Supreme Court.[70]

### (5) Remedy of aggrieved party

A reconstituted title obtained by means of fraud, deceit or other machination is void *ab initio* as against the party obtaining the same and all persons having knowledge thereof.[71]

Section 9 of RA No. 6732 provides for the review by the Land Registration Authority Administrator of any decision of the reconstituting officer or Register of Deeds, thus:

> "SEC. 9. The Land Registration Authority Administrator may review, revise, reverse, modify or affirm any decision of the reconstituting officer or Register of Deeds. Any appeal shall be filed within fifteen days from the receipt of the judgment or order by the aggrieved party."

On the other hand, Section 10 provides for the remedy of a petition filed in the "proper court" to set aside a decision granting reconstitution where the interested party was unjustly deprived or prevented from taking part in the proceedings through fraud, accident, mistake or excusable negligence, thus:

> SEC. 10. Any interested party who by fraud, accident, mistake or excusable negligence has been unjustly

[70]Manotok v. Homer, *supra*.
[71]Sec. 11, RA No. 6732.

> deprived or prevented from taking part in the proceedings may file a petition in the proper court to set aside the decision and to re-open the proceedings. The petition shall be verified and must be filed within sixty days after the petitioner learns of the decision but not more than six months from the promulgation thereof."

Thus, insofar as the administrative reconstitution of original copies of certificates of title is concerned, RA No. 6732 provides for two remedies to an aggrieved party, namely:

(a) Appeal from the order or decision of reconstitution issued by the Reconstituting Officer or Register of Deeds to the LRA Administrator who may review, revise, reverse modify, or affirm it under the first sentence of Section 9; and

(b) Petition for review on the ground of fraud, accident, mistake, or excusable negligence filed with the proper court under Section 10.[72]

As held in *Medina* v. *Court of Appeals*,[73] the decision of the Land Registration Authority under Section 9 of RA No. 6732 may be appealed, within fifteen days from the receipt of the judgment or order by the aggrieved party, to the Court of Appeals pursuant to Section 9(3) of BP Blg. 129 and Section 1, Rule 43 of the Rules of Court.

On the other hand, the "proper court" referred to in Section 10 could only mean the Regional Trial Court, a court of general jurisdiction, which has exclusive original jurisdiction over the petition to set aside the decision of the reconstituting officer on ground of fraud, accident, mistake or excusable negligence.

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[72]Medina v. Court of Appeals, GR No. 107595, Feb. 2, 1994, 229 SCRA 601.
[73]*Ibid*.

# CHAPTER XI

# SCHEDULE OF FEES; SPECIAL FUND

**SEC. 111.** ***Fees payable.*** **— The fees payable to the Clerk of Court, the Sheriff, the Register of Deeds and the Land Registration Commission shall be as follows:**

**A.** ***Fees payable to the Clerk of Court.*** **— The fees payable to the clerk of court or his deputies shall be as follows:**

**1. For filing an application for the registration of land, the fees shall be based on the assessed value of the property for the current year, in accordance with the following schedule —**

**(a) When the value of the property does not exceed two thousand pesos, fifteen pesos for the first five hundred pesos, or fractional part thereof, and five pesos for each additional five hundred pesos, or fractional part thereof.**

**(b) When the value of the property is more than two thousand pesos but does not exceed ten thousand pesos, thirty five pesos for the first three thousand pesos, or fractional part thereof, and five pesos for each additional one thousand pesos, or fractional part thereof.**

**(c) When the value of the property is more than ten thousand pesos but does not exceed one hundred thousand pesos, eighty pesos for the first twenty thousand pesos, or fractional part thereof, and ten pesos for each additional ten thousand pesos, or fractional part thereof.**

**(d) When the value of the property is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, one hundred eighty pesos for the first one hundred twenty-five thousand pesos, or fractional part thereof, and twenty pesos for each additional twenty-five thousand pesos, or fractional part thereof.**

**(e) When the value of the property is more than five hundred thousand pesos, five hundred twenty pesos for the first five hundred fifty thousand pesos, or fractional part thereof, and forty pesos for each additional fifty thousand pesos, or fractional part thereof.**

**If the property has not been assessed for taxation, the fees above prescribed shall be based on the current market value; and the applicant shall file with his application a sworn declaration of three disinterested persons that the value fixed by him is to their knowledge a fair valuation.**

**2. For filing a petition for review of judgment and decree, or other claim adverse to the registered owner, for each petition, twenty pesos.**

**3. For filing a petition after the decision has become final, twenty pesos. If it affects land decreed in more than one case, for each additional case, one peso. If it affects several lots or parcels of land in which the petitioners have no common interest, each of such petitioners shall pay the corresponding fees as if separate petitions had been filed by him.**

**B. *Fees payable to the Sheriff*. — The sheriff shall collect fees for his services rendered in connection with land registration and cadastral proceedings as follows:**

**1. For posting notices of initial hearing of land registration cases in conspicuous places on the lands described in the notice, for each parcel of land on which a copy of such notice is posted, besides travel fees, three pesos.**

**2. For posting notices of initial hearing of cadastral cases in conspicuous places on the lands included in the survey, for each group of one hundred lots on which a copy of the notice is posted, besides travel fees, three pesos.**

**3. For posting one copy of a notice of initial hearing in a conspicuous place upon the municipal building of the city, municipality, or municipal district in which the land or portion thereof lies, besides travel fees, three pesos.**

**4. For serving notices upon cadastral claimants to appear before the court, travel fees only as provided in the Rules of Court.**

**5. For all other services not mentioned above, the same fees including travel fees as provided in the Rules of Court for similar services.**

**C. *Fees payable to the Register of Deeds*. — The Register of Deeds shall collect fees for all services rendered by him under this Decree in accordance with the following schedule:**

**1. *Original certificate of title*. — For the entry of one original certificate of title and issuance of one owner's duplicate certificate, ten pesos for the first parcel of land described thereon and five pesos for each additional parcel.**

**2. *Entry fee*. — For each entry in the primary entry book, five pesos.**

**3. *Attachment, levy, etc*. — For the annotation of an attachment, levy, writ of execution, adverse claim, five pesos for each parcel of land affected thereby.**

**4. *Lis Pendens, etc.* — For the annotation of a notice of lis pendens, or of any document or order in connection therewith, for each parcel of land affected thereby, five pesos.**

**5. *Release of encumbrance*. — For the annotation of a release of any encumbrance, except mortgage, lease, or other lien for the cancellation of which a specific fee is prescribed herein, for each parcel of land so released, five pesos; but the total amount of fees to be collected shall not exceed the amount of fees paid for the registration of such encumbrance.**

**6. *Court Order*. — For the annotation of an order of the court for the amendment of, or the making of a memorandum on, a certificate of title, except inclusion of buildings or improvements, or any order directing the registration of a document, or of any right or interest referred to in said order, or the cancellation of a certificate of title and/or the issuance of a new one, ten pesos for each certificate of title on which the annotation is made, in addition to the fees prescribed under paragraphs sixteen or seventeen, as the case may be, of this subsection, if the same are also due for the registration of such document, right or interest.**

**7. *Building*. — For the annotation of an order of the court for the inclusion of building and/or improvement in a certificate of title, ten pesos for each certificate of title.**

**8. *Powers of attorney, letters of administration, appointment of guardian, resolution or revocation thereof*. — For registering and filing a power of attorney, letters of administration or letters testamentary whether or not accompanied by a copy of**

**the testament, certificate of allowance of a will with attested copy of the will annexed, appointment of guardian for a minor or incompetent person, appointment of receiver, trustee, or administrator, articles of incorporation of any corporation, association or partnership, or resolution of its board of directors empowering an officer or member thereof to act in behalf of the same, twenty pesos; and for the annotation of such papers on certificates of title when required by existing laws or regulations, five pesos for each certificate of title so annotated: *Provided, however*, That when the certificate of allowance of a will and the letters testamentary or letters of administration are filed together, only one fee shall be collected. For registering an instrument of revocation of any of the papers mentioned above, five pesos, and if annotated on the corresponding certificate of title, three pesos for each certificate of title.**

**9. *Notice of tax lien, loss, etc.* — For the annotation of a notice of tax lien of any description notice of lost duplicate or copy of a certificate of title, order of the court declaring such duplicate or copy null and void, notice of change of address, or the cancellation of any such annotation, for each certificate of title, five pesos.**

**10. *Carry over of annotation*. — For transferring the memorandum of an encumbrance of any kind from one certificate of title which is cancelled to a new one in lieu thereof, for each memorandum thus transferred, five pesos.**

**11. *Annotation on additional copy of title*. — For any memorandum made in a standing co-owner's copy of a certificate of title after a similar memorandum has been made in the original thereof, of each certificate of title, five pesos.**

**12. *No specific fee*. — For any memorandum made in a certificate of title for which no specific fee is prescribe above, for each certificate of title, five pesos.**

**13. *Transfer to trustee, executor, administrator, receiver*. — For the issuance of a transfer certificate of title, including its duplicate, to a trustee, executor, administrator, or receiver, or for the cancellation of such certificate of title and issuance of a new one, including its duplicate, to the *cestui que trust* in case of trusteeship, ten pesos. If the certificate covers more than one parcel or lot, an additional fee of five pesos shall be collected for each additional parcel or lot.**

**14. *Transfer certificate of title*. — For the issuance of a transfer certificate of title, including its duplicate, to a person other than those named in the next preceding paragraph, ten pesos, in addition to the fees hereinafter prescribed in paragraph sixteen or seventeen, as the case may be, of this subsection, if the same are also due. If the certificate covers more than one parcel or lot, an additional fee of five pesos shall be collected for each additional parcel or lot.**

**15. *Additional copy of title*. — For the issuance of a new owner's duplicate or a co-owner's copy of a certificate of title, or any additional duplicate or copy thereof, ten pesos for the first page and five pesos for each subsequent page, or fraction thereof.**

**16. *Registration fee*. — For the registration of a deed of sale, conveyance, transfer, exchange, partition, or donation; a deed of sale with *pacto de retro*, conditional sale, sheriff's sale at public auction, sale for non-payment of taxes, or any sale subject to redemption, or the repurchase or redemption of the property so sold; any instrument, order, judgment or decree divesting the title of the registered owner, except in favor of a trustee, executor, administrator or receiver; option to purchase or promise to sell; any mortgage, surety, bond, lease, easement, right-of-way, or other real right or lien created or constituted by virtue of a distinct contract or agreement, and not as an incidental condition of sale, transfer or conveyance; the assignment, enlargement, extension or novation of a mortgage or of any other real right, or a release of mortgage, termination of lease, or consolidation of ownership over a property sold with *pacto de retro*; where no specific fee is prescribed therefor in the preceding paragraphs, the fees shall be based on the value of the consideration in accordance with the following schedule:**

**(a) *Six thousand pesos maximum*. — When the value of the consideration does not exceed six thousand pesos, seven pesos for the first five hundred pesos, or fractional part thereof, and three pesos for each additional five hundred pesos, or fractional part thereof.**

**(b) *Thirty thousand pesos maximum*. — When the value of the consideration is more than six thousand pesos but does not exceed thirty thousand pesos, forty eight pesos for the fisrt eight thousand pesos, or fractional part thereof, and eight pesos for each additional two thousand pesos, or fractional part thereof.**

**(c) *One hundred thousand pesos maximum*. — When the value of the consideration is more than thirty thousand pesos but does not exceed one hundred thousand pesos, one hundred fifty pesos for the first thirty-five thousand pesos, or fractional part thereof, and fourteen pesos for each additional five thousand pesos, or fractional part thereof.**

**(d) *Five hundred thousand pesos maximum*. — When the value of the consideration is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, three hundred fifty-two pesos for the first one hundred ten thousand pesos, or fractional part thereof, and twenty pesos for each additional ten thousand pesos, or fractional part thereof.**

**(e) *More than five hundred thousand pesos*. — When the value of the consideration is more than five hundred thousand pesos, one thousand one hundred sixty-two pesos for the first five hundred twenty thousand pesos, or fractional part thereof, and thirty pesos for each additional twenty thousand pesos, or fractional part thereof.**

**17. *Fees for specific transactions*. — In the following transactions, however, the basis of the fees collectible under paragraph sixteen of this subsection, whether or not the value of the consideration is stated in the instrument, shall be as hereunder set forth:**

**(a) *Exchange*. — In the exchange of real property the basis of the fees to be paid by each party shall be the current assessed value of the properties acquired by one party from the other, in addition to the value of any other consideration, if any, stated in the contract.**

**(b) *Hereditary transfer*. — In the transmission of an hereditary estate without partition or subdivision of the property among the heirs, devisees or legatees, although with specification of the share of each in the value of the estate, the basis shall be the total current assessed value of the property thus transmitted.**

**(c) *Partition of hereditary estate; Conjugal property*. — In the partition of an hereditary estate which is still in the name of the deceased, in which determinate properties are adjudicated to each heir, devisee or legatee, or to each group of heirs, devisees or legatees, the basis of the fees to be paid**

**by each person or group, as the case may be, shall be the total current assessed value of the properties thus adjudicated to each person or group. In the case, however, of conjugal property, the basis of the fees for the registration of one-half thereof in the name of the surviving spouse shall be the total current assessed value of the properties adjudicated to said spouse.**

**(d) *Subdivision or partition*. — In the partition of real property held in common by several registered co-owner's the basis of the fees to be paid by each co-owner or group of co-owners shall be the total assessed value of the property taken by each co-owner or group.**

**(e) *Conveyance: several lots and parties*. — In the sale, conveyance or transfer of two or more parcels of land in favor of two or more separate parties but executed in one single instrument, the basis shall be the total selling price paid by each party-buyer, or, in the case of lump sum consideration, such portion thereof as apportioned in accordance with the assessed value of the respective land acquired by each party-buyer.**

**(f) *Conveyance of properties in different places*. — In the sale, conveyance, or transfer of properties situated in different cities or provinces, the basis of the fees in each Registry of Deeds where the instrument is to be registered shall be the total selling price of the properties situated in the respective city or province, or, in the case of lump sum consideration, such portion thereof as obtained for those properties lying within the jurisdiction of the respective Registry after apportioning the total consideration of the sale, conveyance or transfer in accordance with the current assessed value of such properties.**

**(g) *Conveyance of mortgaged properties*. — In the sale, conveyance, or transfer of a mortgaged property, the basis shall be the selling price of the property proper plus the full amount of the mortgage, or the unpaid balance thereof if the latter is stated in the instrument. If the properties are situated in different cities or provinces, the basis of the fees in each Registry of Deeds where the instrument is to be registered shall be such sum as obtained for the properties situated in the respective city or province after apportioning in accordance with the current assessed values of said properties the**

**total amount of consideration as above computed, unless the selling price of the properties in each city or province and the proportionate share thereof in the amount of unpaid balance of the mortgage are stated in the instrument, in which case, the aggregate of such selling price and share shall be the basis. In any case, however, where the aggregate value of the consideration as above computed shall be less than the current assessed value of the properties in the city or province concerned, such assessed value shall be the basis of the fees in the respective Registry.**

**(h) *Mortgage of properties in different places*. — In a mortgage affecting properties situated in different cities or provinces, the basis of the fees in each Registry of Deeds where the document is to be registered shall be such amount as obtained for the properties lying within the jurisdiction of said Registry after apportioning the total amount of the mortgage in accordance with the current assessed value of such properties.**

**(i) *Release of mortgage*. — In the release of a mortgage the basis of the fees shall be an amount equal to ten *per centum* of the total amount of obligation secured by the mortgage. If the properties are situated in different cities or provinces, the basis of the fees in each Registry shall be ten *per centum* of such sum as obtained for the properties in the respective city or province after apportioning the amount of the mortgage in accordance with the current assessed values of such properties. In the case of a partial release, the fees shall be based on ten *per centum* of the current assessed value of the property so released in the respective city or province; *Provided, however,* That where several partial releases had been registered, the fees corresponding to the final release shall be computed on the basis of ten per centum of the difference between the amount of the mortgage and the aggregate of the consideration used as basis for the collection of the fees paid for the registration of all previous partial releases.**

**(j) *Certificate of sale*. — In a certificate of sale at public auction by virtue of an order of execution or sale for delinquency in the payment of taxes, or repurchase of the property so sold, the basis of the fees in each Registry shall be ten *per centum* of the selling or repurchase price of the property lying within the jurisdiction of the Registry.**

**(k) *Affidavit of consolidation of ownership*. — In an affidavit for the consolidation of ownership over a property sold with *pacto de retro* or pursuant to an extra judicial foreclosure under the provisions of Act Numbered Thirty-one hundred and thirty-five, as amended, the basis of the fees in each Registry shall be an amount equivalent to ten *per centum* of the consideration of the sale in the respective city or province.**

**(l) *Contract of lease*. — In contracts of lease, the basis of the fees in each Registry shall be the sum total to be paid by the lessee for the properties situated in the respective city or province during the entire period specified in the contract, including the extension contemplated by the parties which may be given effect without the necessity of further registration. If the period is from year to year, or otherwise not fixed, the basis shall be the total amount of rentals due for thirty months. If the rentals are not distributed, the total amount thereof as above computed shall be apportioned to said properties in accordance with their assessed values, and the proportionate sum thus obtained for each city or province shall be the basis of the fees to be collected in the Registry concerned.**

**(m) *Termination of lease*. — In the termination of lease, the basis of the fees in each Registry shall be ten *per centum* of the amount used as basis for the collection of the fees paid for the registration of said lease.**

**(n) *Option to purchase or promise to sell*. — In contracts of option to purchase or promise to sell, the basis of the fees in each Registry shall be ten *per centum* of the current assessed value of the property subject of such contract in the respective city or province.**

**(o) *Consideration not stated or fixed or less than assessed value*. — In other transactions where the actual value of the consideration is not fixed in the contract or cannot be determined from the terms thereof, or, in case of a sale, conveyance, or transfer, the consideration stated is less than the current assessed value of the property, the basis of the fees shall be the current assessed value of the property involved in the transaction. If the properties are situated in different cities or provinces, the basis of the fees in each**

**Registry shall be the current assessed value of the properties lying within the jurisdiction of the Registry concerned.**

**18. *Issuance of copy of document*. — For furnishing copies of any entry, decree, document, or other papers on file, fifty centavos for each hundred words or fraction thereof contained in the copies thus furnished.**

**19. *Certified copy*. — For certifying a copy furnished under the next preceding paragraph, for each certification, five pesos for one page and one peso for each additional page certified.**

**20. *Certification*. — For issuing a certificate relative to, or showing the existence or non-existence of, an entry in the registration books or a document on file, for each such certificate containing not more than two hundred words, five pesos; if it exceeds that number an additional fee of one peso shall be collected for every hundred words, or fraction thereof, in excess of the first two hundred words.**

**21. *Research fee*. — For services rendered in attending to request for reference or researches on any records or documents on file in the Registry, there shall be collected two pesos per document or record.**

**D. *Fees payable to the Commissioner of Land Registration*. — The fees payable to the Commissioner of Land Registration shall be as follows:**

**(1) For verification and approval of subdivision plans, the fee shall be:**

| | | |
|---|---|---|
| **(a)** | **For each lot** | **P2.00** |
| **(b)** | **For each corner of a lot, irrespective of whether such corner is common to two or more lots** | **0.20** |
| **(c)** | **For each traverse station** | **0.10** |
| **(d)** | **For each observation** | **0.50** |

**(e) In case the plan is a resurvey or relocation plan, an additional 40 per cent of the rates prescribed above shall be collected.**

***Provided, however*, That the total fee as computed above, whether for subdivision and/or consolidation-subdivision survey,**

**resurvey or relocation plan, shall in no case be less than P8.00 per plan.**

**(2) For changing or correcting the name of any person appearing on the subdivision plan or other plan in order to have it conform to that stated in the certificate of title covering the land, and for the cancellation of an approved plan when so requested by the interested party, there shall be a fee of P5.00 per plan.**

**(3) The rates of fees prescribed in paragraph 1 and 2, inclusive, shall apply to similar services rendered in connection with the examination, verification, and approval of consolidation, consolidation-subdivision, resubdivision, and reconsolidation plans, special work order plans on the basis of certified copies of technical descriptions of plans approved by the Land Registration Commission or the Bureau of Lands, private surveys, and other plans of similar nature.**

**In the computation of fees relative to lots subject of consolidation and consolidation-subdivision plans, a fee of two pesos shall be collected per lot as appearing in the old survey in addition to the fee collectible in paragraph 1 hereof for the new lots.**

**(4) For the preparation of a plan in a tracing cloth of any survey, the data of which are available in the Commission, except when the same is merely traced from an existing plan, the fees shall be computed as follows:**

**(a) When the plan to be so prepared contains only one lot:**

| | | |
|---|---|---|
| **(1)** | **For the first ten corners or fraction thereof** | **P40.00** |
| **(2)** | **For the next ten corners or fraction thereof** | **6.00** |
| **(3)** | **For each corner in excess of the first twenty corners** | **0.40** |

**(b) When the plan to be so prepared contains two or more lots:**

| | | |
|---|---|---|
| **(1)** | **For the first lot, which must be the biggest of the group, irrespective of the number of its corner** | **P40.00** |
| **(2)** | **For each additional lot, irrespective of the number of its corners, said lot being adjacent to the first lot or any other lot** | **P15.00** |

**(3) For each non-adjacent lot (other than the first charged lot), irrespective of the number of its corners P20.00**

**(4) If any lot contains more than twenty corners for each corner of such lot in the first twenty corners P0.40**

**(5) For the preparation of a plan in tracing cloth, to be traced from an existing plan, complete with bearings and distances of corners and tie-lines, the fee shall be 30 *per centum* of the fees prescribed in paragraph 4 above.**

**(6) For the preparation of a plan in tracing cloth, to be copied from an existing plan, complete with bearings and distances of sides and tie-lines, but using a different scale, the fee shall be 50 *per centum* of the fees prescribed under paragraph 4 above, if made on a reduced scale; or 60 *per centum* of the same fees, if made on an enlarged scale.**

**(7) For the preparation of a simple plan or sketch of any available survey or plan on any paper other than a tracing cloth, the fee on the basis of each lot, shall be as follows:**

**(a) For the first ten corners or fraction thereof P20.00**

**(b) For the second ten corners or fraction thereof 5.00**

**(c) For the third ten corners or fraction thereof 2.00**

**(d) For each corner in excess of the first thirty corners 0.20**

**(e) If the sketch is prepared in tracing cloth, add to the total fees as above computed 5.00**

**(f) If the plan or sketch so prepared contains the bearing and distances of the sides and tie-lines, add to the total fees as above computed 10 *per centum* thereof.**

**(8) For furnishing a plan copy (blue-print, or white print) of any plan on file in the Commission, the fees shall be as follows:**

**(a) For the copy of any size not exceeding forty square decimeters P3.00**

**(b) For one copy of more than forty square decimeters but not exceeding eighty square decimeters in size 6.00**

**(c) For one copy of more than eighty square decimeters but not exceeding one hundred twenty square decimeter in size 9.00**

**(d) For one copy in excess of one hundred twenty square decimeters in size, the basic rate of nine pesos plus for every twenty square decimeters or fraction thereof in excess. 0.50**

**(9) For the preparation of technical descriptions, other than mere copying from an existing copy, there shall be collected the following fees:**

**(a) For technical descriptions of lots or parcels, typewritten in triplicate and double-spaced, including certification:**

**(1) For each lot P3.00**

**(2) For each corner of a lot 0.20**

**(3) For each extra carbon copy, extra charge 0.20**

**(4) Minimum total charge 3.00**

**(b) For lot description prepared in tracing cloth (on tabulated form) including certification:**

**(1) For each sheet P1.50**

**(2) For each lot 0.20**

**(3) For each corner in excess of ten for a lot 0.10**

**(c) Any common corner shall be counted as many items as there are lots to which it pertains.**

**(10) For certification of plans or copies of plans as to the correctness of the same, per plan or print copy — P3.00 and for the issuance of all other certifications — P5.00 plus one 30-centavo documentary stamp to be affixed thereto.**

**(11) For inspection of land subject of private surveys, simple or complex subdivision plans, or consolidation, consolidation-subdivision, resubdivision, or reconsolidation plans, special work orders, and other plans of similar nature for the purpose of verification and/or approval:**

**(a) For each plan with an aggregate area of 1,000 sq.m. or less P100.00**

**(b) For each subdivision with an aggregate area of more than 1,000 sq.m.:**

**1. For the first 1,000 sq.m. P100.00**

**2. For every succeeding 1,000 sq.m. or fraction thereof 10.00**

**(12) For actual field work of subdivision survey, relocation survey and resurvey of land, the fees shall be as follows:**

**(a) Subdivision survey:**

**1. Rural (Agricultural)**

| *Area* | *Survey fee* |
|---|---|
| For the first hectare | P350.00 |
| For the 2nd ha. to 10th ha. | An additional 60.00 per ha. |
| For the 11th ha. to 20th ha. | An additional P30.00 per ha. |
| For the 21st ha. to 30th ha. | An additional P20.00 per ha. |
| For the 31st ha. to 200th ha. | An additional P10.00 per ha. |
| For the 201st ha. or over | An additional P8.00 per ha. |

**A fraction of a hectare shall be considered one hectare.**

**2. Urban (Solar):**

| | |
|---|---|
| First 200 sq.m. or less | P350.00 |
| Succeeding 201 sq.m. or more | P20.00 — 100 sq.m. |

**(b) Relocation Survey or Resurvey:**

**The fee for relocation survey or resurvey shall be one hundred fifty percent (150%) of the amount of survey fee collectible on the basis of the schedule of fees for subdivision survey as provided in the preceding paragraph plus one percent (1%) of the assessed value of the land.**

***Special Account.* — Twenty *per centum* of all the collections of the Registers of Deeds and of the Land Registration Commission under this Section and Sections 118 and 116 of this Decree shall**

**be appropriated and upon approval of a budget for it by the Ministry of the Budget, such amounts shall be disbursed for the construction and maintenance of buildings and all offices under the Land Registration Commission, for the purchase of necessary equipment, for payment of allowances of officials and employees of the Commission, including those of the Registries of Deeds, as authorized by the Commissioner, for contracts regarding security printing of Land title forms, for survey contracts, and for the maintenance and other operating expenses of the Commission.**

# CHAPTER XII

# FORMS USED IN LAND REGISTRATION AND CONVEYANCING

**SEC. 112.** ***Forms in conveyancing.*** **— The Commissioner of Land Registration shall prepare convenient blank forms as may be necessary to help facilitate the proceedings in land registration and shall take charge of the printing of land title forms.**

**Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law in the form of public instruments shall be registrable:** ***Provided,*** **That, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment. Where the instrument so acknowl-edged consists of two or more pages including the page whereon acknowl-edgment is written, each page of the copy which is to be registered in the office of the Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the ages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment.**

## CHAPTER XIII

## DEALINGS WITH UNREGISTERED LANDS

**SEC. 113.** ***Recording of instruments relating to unregistered lands.*** **— No deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies.**

**(a) The Register of Deeds for each province or city shall keep a Primary Entry Book and a Registration Book. The Primary Entry Book shall contain, among other particulars, the entry number, the names of the parties, the nature of the document, the date, hour and minute it was presented and received. The recording of the deed and other instruments relating to unregistered lands shall be effected by any of annotation on the space provided therefor in the Registration Book, after the same shall have been entered in the Primary Entry Book.**

**(b) If, on the face of the instrument, it appears that it is sufficient in law, the Register of Deeds shall forthwith record the instrument in the manner provided herein. In case the Register of Deeds refuses its administration to record, said official shall advise the party in interest in writing of the ground or grounds for his refusal, and the latter may appeal the matter to the Commissioner of Land Registration in accordance with the provisions of Section 117 of this Decree. It shall be understood that any recording made under this section shall be without prejudice to a third party with a better right.**

**(c) After recording on the Record Book, the Register of Deeds shall endorse among other things, upon the original of the recorded instruments, the file number and the date as well as the hour and minute when the document was received for recording as shown in the Primary Entry Book, returning to the registrant or person in interest the duplicate of the instrument, with appropriate**

**annotation, certifying that he has recorded the instrument after reserving one copy thereof to be furnished the provincial or city assessor as required by existing law.**

**(d) Tax sale, attachment and levy, notice of *lis pendens*, adverse claim and other instruments in the nature of involuntary dealings with respect to unregistered lands, if made in the form sufficient in law, shall likewise be admissible to record under this section.**

**(e) For the services to be rendered by the Register of Deeds under this section, he shall collect the same amount of fees prescribed for similar services for the registration of deeds or instruments concerning registered lands.**

### 01. Registration of instruments dealing with unregistered land.

The system of registration under the Spanish Mortgage Law, by express provision of Section 2 of the Property Registration Decree, has been discontinued and all lands registered under said system which are not yet covered by Torrens titles shall be considered unregistered lands. However, all instruments affecting lands originally registered under the Spanish Mortgage Law may be recorded under Section 113 of the decree until the land shall have been brought under the operation of the Torrens system. The books of registration of the Revised Administrative Code, as amended by Act No. 3344, shall continue to be in force, provided that unregistered lands shall henceforth be registered under Section 113.

Where registered land has been the subject of a transaction and this was recorded under Act No. 3344, such recording does not bind third persons since registration thereunder refers to properties not registered under the Land Registration Act, and, hence, not effective for purposes of Article 1544 of the Civil Code on double sales. Registration of instruments, in order to affect and bind the land, must be done in the proper registry.[1]

### 02. Recording by ministerial officers.

The opening paragraph of Section 113 declares in substance that no instrument or deed affecting rights to real property not registered

[1]Soriano v. Magali, GR No. L-15133, July 31, 1953, 118 Phil. 505.

under the Torrens system (Land Registration Act, now Property Registration Decree) shall be valid, except as between the parties thereto, until such instrument or deed shall have been registered in the manner prescribed therein. This provision cannot be interpreted to include conveyances made by ministerial officers, such as sheriff's deeds. It contemplates only such instruments as may be created by agreement of the parties.[2] The fact that the vendee *a retro* of unregistered land did not object to the auction sale thereof does not safeguard the purchaser at auction even if the sheriff's deed be registered in the Registry of Deeds since the provisions of Act No. 3344 do not apply to judicial sales.[3]

The rule that the Register of Deeds must record a sheriff's certificate of sale or sheriff's deed, upon demand made by the purchaser and tender of the necessary fee, is applicable not only to the situation where a single sale has been made by the sheriff but also to the situation where there is a succession of sales made at the instance of various creditors. The fact that a similar certificate of sale in favor of the first creditor has already been registered is no obstacle to the recording of the others.[4]

### 03. Recording shall be without prejudice to a third party with "better right."

Paragraph (b) of Section 113 states that any recording made under said section shall be without prejudice to a third party with a "better right." Thus, it has been held that the inscription of a mortgage of unregistered land did not materially improve the petitioners' situation, for such inscription is without prejudice to third parties with a better right.[5] A mortgage of unregistered property which is recorded under Act No. 3344 is valid as against everybody except a third person having a better right.[6] Relevantly, Article 1608 of the Civil Code provides that "(t)he vendor may bring his action against every possessor whose right is derived from the vendee even if in the second contract no mention should have been made of the right to repurchase, without prejudice to the provisions of the Mortgage Law and the Land Registration Law with respect to third persons."

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[2]Williams v. Suñer, GR No. 25795, Nov. 6, 1926, 49 Phil. 534.

[3]Laxamana v. Carlos, GR No. 35797, Dec. 13, 1932, 57 Phil. 722.

[4]Pua Hermanos v. Register of Deeds, GR No. 274349, Sept. 10, 1927, 50 Phil. 670.

[5]Rivera v. Moran, GR No. 24568, March 2, 1926, 48 Phil. 836.

[6]Mota v. Concepcion, GR No. 34581, March 31, 1932, 56 Phil. 712.

A person who has acquired ownership of unregistered land by prescription under the Civil Code may be considered as having acquired a right unaffected by a subsequent transaction over the same land even if recorded under said section.

It is worth noting that under paragraph (d), a tax sale, attachment and levy, notice of *lis pendens*, adverse claim and other instruments in the nature of involuntary dealing with respect to unregistered lands, if made in the form sufficient in law, shall be admissible to record.

**04. Recording by Register of Deeds ministerial.**

The Register of Deeds does not exercise a judicial or quasi-judicial power in the registration of sheriff's deeds or certificates of sale. His duty with respect to the notation or recording of these instruments, so far at least as relates to unregistered property, is ministerial only; and the registration of such instruments adds nothing to their intrinsic effect. Registration in such cases is required merely as a means of notification of the purchasers' rights to the public.[7] If the Register of Deeds refuses to register the instrument, he shall advise the party in interest in writing of the grounds for his refusal, and the latter may elevate the matter to the Administrator, Land Registration Authority, *en consulta* pursuant to Section 117 of the Property Registration Decree.

**05. How recording is effected.**

The Register of Deeds shall keep a primary entry book and a registration book. The primary entry book shall contain, among other particulars, the entry number, names of the parties, nature of the document, and the date, hour and minute it was presented. The recording shall be effected by an annotation on the registration book after the same shall have been entered in the primary entry book. After recording, the Register of Deeds shall endorse on the original of the instrument the file number and the date as well as the hour and minute when the instrument was received, returning to the registrant the duplicate of the instrument with a certification that he has recorded the same.

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[7]Pua Hermanos v. Register of Deeds, *supra*.

## CHAPTER XIV

## REGISTRATION OF CHATTEL MORTGAGES

**SEC. 114.** ***Recording of chattel mortgages.*** **— A chattel mortgage shall be recorded in the office of the Register of Deeds of the province or city where the mortgagor resides as well as where the property is situated or ordinarily kept.**

**SEC. 115.** ***Manner of recording chattel mortgages.*** **— Every Register of Deeds shall keep a Primary Entry Book and a Registration Book for chattel mortgages; shall certify on each mortgage filed for record, as well as on its duplicate, the date, hour, and minute when the same was by him received; and shall record in such books any chattel mortgage, assignment or discharge thereof, and any other instrument relating to a recorded mortgage, and all such instruments shall be presented to him in duplicate, the original to be filed and the duplicate to be returned to the person concerned.**

**The recording of a mortgage shall be effected by making an entry, which shall be given a correlative number, setting forth the names of the mortgagee and the mortgagor, the sum or obligation guaranteed, date of the instrument, name of the notary before whom it was sworn to or acknowledged, and a note that the property mortgaged, as well as the terms and conditions of the mortgage, is mentioned in detail in the instrument filed, giving the proper file number thereof. The recording of other instruments relating to a recorded mortgage shall be effected by way of annotation on the space provided therefor in the Registration Book, after the same shall have been entered in the primary Entry Book.**

**The Register of Deeds shall also certify the officer's return of sale upon any mortgage, making reference upon the record of such officer's return to the volume and page of the record of the mortgage, and a reference of such return on the record of the mortgage itself, and give a certified copy thereof, when requested, upon payment of the legal fees for such copy thereof, when**

**requested, upon payment of the legal fees for such copy and certify upon each mortgage officer's return of sale or discharge of mortgage, and upon any other instrument relating to such a recorded mortgage, both on the original and in the duplicate, the date, hour, and minute when the same is received for record and record such certificate index of mortgagors and mortgagees, which record and index shall be open to public inspection.**

**Duly certified copies of such records and of filed instruments shall be receivable as evidence in any court.**

### 01. Chattel mortgage, generally.

By a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation. If the movable, instead of being recorded, is delivered to the creditor or a third person, the contract is a pledge and not a chattel mortgage.[1] The provisions of the Civil Code on pledge, insofar as they are not in conflict with the Chattel Mortgage Law, shall be applicable to chattel mortgages.[2]

The sole purpose and object of the chattel mortgage registry is to provide for the registry of "chattel mortgages," and transfers thereof, that is to say, mortgages of personal property executed in the manner and form prescribed in the statute. A factory building is real property, and the mere fact that it is mortgaged and sold, separate and apart from the land on which it stands, in no wise changes its character as real property. Hence, neither the original registry in a chattel mortgage registry of an instrument purporting to be a chattel mortgage of a building and the machinery installed therein, nor the annotation in that registry of the sale of the mortgaged property, has any effect whatever insofar as the building is concerned.[3]

### 02. Mortgage of a motor vehicle.

The mortgage of any motor vehicle in order to affect third persons should not only be registered in the Chattel Mortgage Registry, but the same should also be recorded in the Motor Vehicles

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[1]Art. 2140, Civil Code.

[2]Art. 2141, *ibid*.

[3]Leung Yee v. Strong Machinery Co., GR No. L-11658, Feb. 15, 1918, 37 Phil. 644.

Office as required by Section 5(e) of the Revised Motor Vehicles Law. The failure of the mortgage to report the mortgage executed in his favor has the effect of making said mortgage ineffective against a purchaser in good faith who registers his purchase in the Motor Vehicles Office. The recording provisions of the Revised Motor Vehicles Law are merely complementary to those of the Chattel Mortgage Law.[4] Thus, as between a chattel mortgagee, whose mortgage is not recorded in the Motor Vehicles Office, and an innocent purchaser for value of a car who registers the car in his name, the latter is entitled to preference.[5]

The Revised Motor Vehicles Law is a special legislation enacted to "amend and compile the laws relative to motor vehicles," whereas the Chattel Mortgage Law is a general law covering mortgages of all kinds of personal property The former is the latest attempt to assemble and compile the motor vehicle laws of the Philippines, all the earlier laws on the subject having been found to be very deficient in form as well as in substance. It had been designed primarily to control the registration and operation of motor vehicles.[6]

**SEC. 116.** ***Fees for chattel mortgages, etc.*** **— The register of Deeds shall collect the following fees for services rendered by him under this section:**

**1.** ***Entry fee.*** **— For entry or presentation of any document in the Primary Entry Book, five pesos. Supporting papers presented together with the principal document need not be charged any entry or presentation fee unless the party in interest desires that they be likewise entered.**

**2.** ***Chattel Mortgage.*** **— For filing and recording each chattel mortgage, including the necessary certificates and affidavits, the fees established in the following schedule shall be collected:**

> **(a)** ***Six thousand pesos maximum.*** **— When the amount of the mortgage does not exceed six thousand pesos, seven pesos for the first five hundred pesos, or fractional part thereof, and three pesos for each additional five hundred pesos, or fractional part thereof.**

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[4]*Ibid*.

[5]Montano v. Manila Trading & Supply Co., GR No. L-13057, Feb. 27, 1963, 117 Phil. 262.

[6]Borlough v. Fortune Enterprises, GR No. L-9451, March 29, 1957, 100 Phil. 1063.

**(b) *Thirty thousand pesos maximum.* — When the amount of the mortgage is more than six thousand pesos but does not exceed thirty thousand pesos, forty-eight pesos for the initial amount not exceeding eight thousand pesos, and eight pesos for each additional two thousand pesos or fractional part thereof.**

**(c) *One hundred thousand pesos maximum.* — When the amount of the mortgage is more than thirty thousand pesos but does not exceed one hundred thousand pesos, one hundred fifty pesos for the initial amount not exceeding thirty-five thousand pesos, and fourteen pesos for each additional five thousand pesos of fractional part thereof.**

**(d) *Five hundred thousand pesos maximum.* — When the amount of the mortgage is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, three hundred fifty-two pesos for the initial amount not exceeding one hundred ten thousand pesos and twenty pesos or each additional ten thousand pesos or fractional part thereof.**

**(e) *More than five hundred thousand pesos.* — When the amount of the mortgage is more than five hundred thousand pesos, one thousand one hundred sixty-two pesos for the initial amount not exceeding five hundred twenty thousand pesos, and thirty pesos for each additional twenty thousand pesos or fractional part thereof: *Provided, however*, That registration of the mortgage in the province where the property is situated shall be sufficient registration and provided, further, that if the mortgage is to be registered in more than one city or province, the Register of Deeds of the city or province where the instrument is first presented for registration shall collect the full amount of the fees due in accordance with the schedule prescribed above, and the Register of Deeds of the other city of province where the same instrument is also to be registered shall collect only a sum equivalent to twenty per centum of the amount of fees due and paid in the first city of province, but in no case shall the fees payable in any Registry be less than the minimum fixed in this schedule.**

**3. *Conveyance of mortgaged property, etc.* — For recording each instrument of sale, conveyance, or transfer of the property which is subject of a recorded mortgage, or of the assignment of**

**mortgage credit, the fees established in the preceding schedule shall be collected on the bases of ten per centum of the amount of the mortgage or unpaid balance thereof, *Provided*, That the latter is stated in the instrument.**

**4. *Notice of attachment.* — For recording each notice of attachment, including the necessary index and annotations, eight pesos.**

**5. *Release of mortgage.* — For recording such release of mortgage, including the necessary index and references, the fees established in the schedule under paragraph (b) above shall be collected on the basis of five per centum of the amount of the mortgage.**

**6. *Release of attachment.* — For recording each release of attachment, including the proper annotations, five pesos.**

**7. *Sheriff's return of sale.* — For recording each sheriff's return of sale, including the index and references, seven pesos.**

**8. *Power of attorney, appointment of guardian, administrator or trustee.* — For recording a power of attorney, appointment of judicial guardian, administrator, or trustee, or any other instrument in which a person is given power to act in behalf of another in connection with a mortgage, ten pesos.**

**9. *No specific fee.* — For recording each instrument or order relating to a recorded mortgage, including the necessary index and references, for which no specific fee is provided above, five pesos.**

**10. *Certified copy.* — For certified copies of records, such fees as are allowed by law for copies kept by the Register of Deeds.**

**11. *Certification.* — For issuing a certificate relative to, or showing the existence or non-existence of an entry in the registration book, or a document on file, for each such certificate containing not more than two hundred words, five pesos; if it exceeds that number, an additional fee of one peso shall be collected for every one hundred words or fractional part thereof, in excess of the first two hundred words.**

**12. *Research Fee.* — For services rendered in attending to requests for references to, or researches on any document on file in the Registry, there shall be collected a fee of two pesos per document.**

# CHAPTER XV
# CONSULTAS

**SEC. 117. *Procedure*. — When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration, or where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument, the question shall be submitted to the Commissioner of Land Registration by the Register of Deeds, or by the party in interest thru the Register of Deeds. Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by *consulta* within five days from receipt of notice of the denial of registration to the Commissioner of Land Registration upon payment of a *consulta* fee in such amount as shall be prescribed by the Commissioner of Land Registration.**

**The Register of Deeds shall make a memorandum of the pending *consulta* on the certificate of title which shall be cancelled *motu proprio* by the Register of Deeds after final resolution or decision thereof, or before resolution, if withdrawn by petitioner.**

**The Commissioner of Land Registration, considering the *consulta* and the records certified to him after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His resolution or ruling in *consultas* shall be conclusive and binding upon all Registers of Deeds, provided, that the party in interest who disagrees with the final resolution, ruling or order of the Commissioner relative to *consultas* may appeal to the Court of Appeals within the period and in the manner provided in Republic Act No. 5434.**

**01. Duty of Register of Deeds to register document presented for registration is ministerial.**

Section 10 of PD No. 1529 reads:

> "SEC. 10. *General Functions of Registers of Deeds*. — The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.
>
> It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. If the instrument is not registrable, he shall forthwith deny registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefor, and advising him of his right to appeal by *consulta* in accordance with Section 117 of this Decree."

The function of a Register of Deeds with reference to the registration of deeds, encumbrances, instruments and the like is ministerial in nature.[1] He may not validly refuse to register an instrument, a deed of sale for example, presented to him for registration. Whether a document is valid or not is not for the Register of Deeds to determine since such function belongs to the courts. The law on registration does not require that only valid instruments shall be registered. If the purpose of registration is merely to give notice, then questions regarding the effect or invalidity of instruments are expected to be decided after, not before, registration. Hence, registration must first be allowed, and the validity or effect thereof litigated afterwards.[2]

Relatedly, Section 57 of PD No. 1529 states:

> "SEC. 57. *Procedure in registration of conveyances*. — An owner desiring to convey his registered land in fee

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[1]Baranda v. Gustilo, GR No. 81153, Sept. 26, 1988, 165 SCRA 757.

[2]Gurbax Singh Pabla and Co. v. Reyes, GR No. L-3970, Oct. 29, 1952, 92 Phil. 182.

> simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped 'cancelled'. The deed of conveyance shall be filed and indorsed with the number and the place of registration of the certificate of title of the land conveyed."

According to this provision, upon presentation of a deed of conveyance of a registered land, together with the grantor's duplicate certificate, the Register of Deeds "*shall* make out in the registration book a new certificate of title to the grantee and *shall* prepare and deliver to him an owner's duplicate certificate." The duties enjoined upon the Register of Deeds by the aforecited provision are ministerial and mandatory in character not only as is indicated by the auxiliary "shall" but by the nature of such functions required to be performed by him. If the Register of Deeds is in doubt as to the propriety of recording any given instrument, Section 117 provides the procedure to be followed.

**02. Matters which should be left to the courts for determination.**

The functions of the Register of Deeds are generally regarded as ministerial only and said officer has no power to pass upon the legality of an order issued by a court of justice.[3] Whether a document presented for registration is invalid, frivolous or intended to harass, is not the duty of the Register of Deeds to decide, but a court of competent jurisdiction.[4] The question of whether or not a conveyance was made to defraud creditors of the transferor should better be left

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[3]Register of Deeds v. Caiji, GR No. L-7261, May 11, 1956, 99 Phil. 25.

[4]Gabriel vs. Register of Deeds of Rizal, GR No. L-17956, Sept. 30, 1963, 118 Phil. 980.

for determination by the proper court.[5] And although there may be some matters in which the Register of Deeds has quasi-judicial power, a suit to quiet title or to ascertain and determine an interest in real property is a matter exclusively within the jurisdiction of the courts.[6]

If any party claims that a person registering a deed of sale can no longer do so, because the deed was executed more than 10 years before, such objection must be raised in an ordinary civil action.[7]

**03. Reference of doubtful questions to the LRA via *consulta*.**

Section 117 provides that when the Register of Deeds is in doubt as to what action should be taken when any deed or other instrument is presented to him for registration, or where any party does not agree with the action by the Register of Deeds, the question shall be submitted to the LRA Administrator, via the process of *consulta*, for proper determination, after due notice and hearing.

As held in *Almirol* v. *Register of Deeds of Agusan*,[8] a Register of Deeds is entirely precluded from exercising his personal judgment and discretion when confronted with the problem of whether to register a deed or instrument on the ground that it is invalid. For when he is in doubt as to the proper step to be taken with respect to any deed or other instrument presented to him for registration, all that he is supposed to do is to submit and certify the question to the LRA Administrator who shall, after notice and hearing, enter an order prescribing the step to be taken on the doubtful question.

In a situation where the Register of Deeds determines that the instrument is not registrable, he shall notify the interested party in writing, stating the reasons for such denial, and if such party does not agree with his ruling, he may elevate the matter by *consulta* to the LRA Adminstrator for resolution. The Register of Deeds shall make a memorandum of the pending *consulta* on the certificate of title which shall be cancelled *motu proprio* (a) upon final resolution of the case by the LRA Administrator, or (b) if the *consulta* is withdrawn by the petitioner before such resolution.

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[5]*In re* Vicente J. Francisco, GR No. 45192, April 10, 1939, 67 Phil. 222.

[6]Smith, Bell & Co. v. Register of Deeds of Leyte, GR No. 24736, Jan. 29, 1926, 48 Phil. 656.

[7]Mendoza v. Abrera, GR No. L-10519, April 30, 1959, 105 Phil. 611.

[8]GR No. L-22486, March 20, 1968, 22 SCRA 1152.

Where any party in interest does not agree with the Register of Deeds, the question shall be submitted to the LRA Administrator who thereafter "shall enter an order prescribing the step to be taken or memorandum to be made," which shall be "conclusive and binding upon all Registers of Deeds." This administrative remedy must be resorted to by the petitioner before he can have recourse to the courts.[9]

The decision or ruling of the LRA Administrator shall be conclusive and binding upon all Registers of Deeds, without prejudice to an appeal which the interested party may take to the Court of Appeals.

**04. Appeal to the Court of Appeals.**

As stated in *Calalang* v. *Register of Deeds of Quezon City*,[10] the proper remedy available to a party who does not agree with the action taken by the LRA Administrator is to appeal to the Court of Appeals, and not by *certiorari* or prohibition. The procedure is specifically governed by Rule 43 of the Rules of Court which provides for appeals from the decisions, orders or resolutions of any quasi-judicial agency, like the Land Registration Authority, in the exercise of its quasi-judicial functions. The appeal shall be taken within fifteen (15) days from notice of the decision, order of resolution. If no appeal is filed within said period, the decision, order or resolution shall become final and may be executed as provided by existing law.

[9]Almirol v. Register of Deeds of Quezon City, *supra*.
[10]GR No. 76265, March 11, 1994, 231 SCRA 88.

## CHAPTER XVI

## FINAL PROVISIONS

**SEC. 118.** ***Appropriation.*** **— There is hereby appropriated initially the sum of TWELVE MILLION THREE HUNDRED FORTY THOUSAND PESOS (P12,340,000.00) from the National Treasury not otherwise appropriated for the implementation of this decree; thereafter, said sum shall be added to the regular appropriation act of every year.**

**SEC. 119.** ***Postage exemption.*** **— No postage stamps or mailing charges shall be required in all matters transmitted by the Land Registration Commission or any of its Registry of Deeds in the implementation of Sections 21, 40, 106, 118 and 117 of this Decree.**

**SEC. 120.** ***Repealing clause.*** **— All laws, decrees, orders, rules and regulations, or parts thereof, in conflict or inconsistent with any of the provisions of this Decree are hereby repealed or modified accordingly.**

**SEC. 121.** ***Separability clause.*** **— In the event that any provision of this Decree is declared unconstitutional, the validity of the remainder shall not be affected thereby.**

**SEC. 122.** ***Effectivity.*** **— This Decree shall take effect upon its approval.**

**Done in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.**

# CHAPTER XVII

# REPUBLIC ACT NO. 4726

## AN ACT TO DEFINE CONDOMINIUM, ESTABLISH REQUIREMENTS FOR ITS CREATION, AND GOVERN ITS INCIDENTS

**SECTION 1. The short title of this Act shall *be "The Condominium Act."***

**SEC. 2. A condominium is an interest in real property consisting of separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.**

**The real right in condominium may be ownership or any other interest in real property recognized by law, on property in the Civil Code and other pertinent laws.**

### 01. Incorporators of a condominium corporation must be shareholders.

It is an indispensable requirement that all incorporators of a condominium corporation must be shareholders thereof. To be a shareholder, one must necessarily be an owner of a condominium unit.[1]

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[1]Sunset View Condominium Corporation v. Campos, GR No. 52361, April 27, 1981, 104 SCRA 295; Skyworld Condominium Owners Association v. Securities and Exchange Commission, GR No. 95778, July 17, 1992, 211 SCRA 565.

**SEC. 3. As used in this Act, unless the context otherwise requires:**

**(a) *"Condominium"* means a condominium as defined in the next preceding section.**

**(b) *"Unit"* means a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building or buildings and such accessories as may be appended thereto.**

**(c) *"Project"* means the entire parcel of real property divided or to be divided in condominiums, including all structures thereon.**

**(d) *"Common areas"* means the entire project excepting all units separately granted or held or reserved.**

**(e) *"To divide"* real property means to divide the ownership thereof or other interest therein by conveying one or more condominiums therein but less than the whole thereof.**

**SEC. 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following:**

**(a) Description of the land on which the building or buildings and improvements are or are to be located;**

**(b) Description of the building or buildings, stating the number of storeys and basements, the number of units and their accessories, if any;**

**(c) Description of the common areas and facilities;**

**(d) A statement of the exact nature of the interest acquired or to be acquired by the purchaser in the separate units and in the common areas of the condominium project. Where title to or the appurtenant interests in the common areas is or is to be held by a condominium corporation, a statement to this effect shall be included;**

**(e) Statement of the purposes for which the building or buildings and each of the units are intended or restricted as to use;**

**(f) A certificate of the registered owner of the property, if he is other than those executing the master deed, as well as of all registered holders of any lien or encumbrance on the property, that they consent to the registration of the deed;**

**(g) The following plans shall be appended to the deed as integral parts thereof:**

**(1) A survey plan of the land included in the project, unless a survey plan of the same property had previously been filed in said office;**

**(2) A diagrammatic floor plan of the building or buildings in the project, in sufficient detail to identify each unit, its relative location and approximate dimensions;**

**(h) Any reasonable restriction not contrary to law, morals or public policy regarding the right of any condominium owner to alienate or dispose of his condominium.**

**The enabling or master deed may be amended or revoked upon registration of an instrument executed by the registered owner or owners of the property and consented to by all registered holders of any lien or encumbrance on the land or building or portion thereof. The term *"registered owner"* shall include the registered owners of condominiums in the project. Until registration of a revocation, the provisions of this Act shall continue to apply to such property.**

**SEC. 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interests in the common areas or, in a proper case, the membership or shareholdings in the condominium corporation: *Provided, however*, That where the common areas in the condominium project are owned by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens, or corporations at least sixty percent of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.**

**01. The owner of a unit is considered a shareholder in the condominium corporation.**

Section 5 of the Condominium Act expressly provides that the shareholding in the condominium corporation will be conveyed only in a proper case. Section 5 provides:

> "Any transfer or conveyance of a unit or an apartment, office or other space therein, shall include the transfer or conveyance of the undivided interests in the common areas or, in a proper case, the membership or shareholding in the condominium corporation . . ."

It is clear then that not every purchaser of a condominium unit is a shareholder of the condominium corporation. The Condominium Act leaves to the Master Deed the determination of when the shareholding will be transferred to the purchaser of a unit. Thus, Section 4 of said Act provides:

> "The provisions of this Act shall apply to property divided or to be divided into condominium only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land . . . an enabling or master deed which shall contain, among others, the following:
>
> x x x x x x x x x
>
> "(d) A statement of the exact nature of the interest acquired or to be acquired by the purchaser in the separate units and in the common areas of the condominium project . . ."

Inasmuch as ownership is conveyed only upon full payment of the purchase price, it necessarily follows that a purchaser of a unit who has not paid the full purchase price thereof is not the owner of the unit and consequently is not a shareholder of the Condominium Corporation.[2]

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[2]Sunset View Condominium Corporation v. Campos, *supra*.

**02. When a person automatically ceases as a stockholder.**

That only the owner of a unit is a stockholder of the condominium corporation is inferred from Section 10 of the Condominium Act which reads:

> "SEC. 10 . . . Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation."

Pursuant to this provision, ownership of a unit is a condition *sine qua non* to being a shareholder in the condominium corporation. It follows that a purchaser of a unit who is not yet the owner thereof for not having fully paid the full purchase price, is not a shareholder. By necessary implication, the "separate interest" in a condominium, which entitles the holder to become automatically a shareholder in the condominium corporation, as provided in Section 2 of the Condominium Act, can be no other than ownership of a unit. This is so because nobody can be a shareholder unless he is the owner of a unit and when he ceases to be the owner, he also ceases automatically to be a shareholder.[3]

**SEC. 6. Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of a condominium grant are as follows:**

**(a) The boundary of the unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof. The following are not part of the unit bearing walls, columns, floors, roofs, foundations and other common structural elements of the building; lobbies, stairways, hallways, and other areas of common use, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services and facilities, pipes, ducts, flues, chutes, conduits, wires and other utility installations,**

[3]*Ibid.*

**wherever located, except the outlets thereof when located within the unit.**

**(b) There shall pass with the unit, as an appurtenance thereof, an exclusive easement for the use of the air space encompassed by the boundaries of the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. Such easement shall be automatically terminated in any air space upon destruction of the unit as to render it untenantable.**

**(c) Unless otherwise, provided, the common areas are held in common by the holders of units, in equal shares, one for each unit.**

**(d) A non-exclusive easement for ingress, egress and support through the common areas is appurtenant to each unit and the common areas are subject to such easements.**

**(e) Each condominium owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own unit.**

**(f) Each condominium owner shall have the exclusive right to mortgage, pledge or encumber his condominium and to have the same appraised independently of the other condominiums but any obligation incurred by such condominium owner is personal to him.**

**(g) Each condominium owner has also the absolute right to sell or dispose of his condominium unless the master deed contains a requirement that the property be first offered to the condominium owners within a reasonable period of time before the same is offered to outside parties;**

**SEC. 7. Except as provided in the following section, the common areas shall remain undivided, and there shall be no judicial partition thereof.**

**SEC. 8. Where several persons own condominiums in a condominium project, an action may be brought by one or more such persons for partition thereof by sale of the entire project, as if the owners of all of the condominiums in such project were co-owners of the entire project in the same proportion as their interests in the common areas: *Provided, however*, That a partition shall be made only upon a showing:**

**(a) That three years after damage or destruction to the project which renders material part thereof unit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or**

**(b) That damage or destruction to the project has rendered one-half or more of the units therein untenantable and that condominium owners holding in aggregate more than thirty percent interest in the common areas are opposed to repair or restoration of the project; or**

**(c) That the project has been in existence in excess of fifty years, that it is obsolete and uneconomic, and that condominium owners holding in aggregate more than fifty percent interest in the common areas are opposed to repair or restoration or remodelling or modernizing of the project; or**

**(d) That the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the condominium owners holding in aggregate more than seventy percent interest in the common areas are opposed to continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or**

**(e) That the conditions for such partition by sale set forth in the declaration of restrictions, duly registered in accordance with the terms of this Act, have been met.**

**SEC. 9. The owner of a project shall, prior to the conveyance of any condominium therein, register a declaration of restrictions relating to such project, which restrictions shall constitute a lien upon each condominium in the project, and shall insure to and bind all condominium owners in the project. Such liens, unless otherwise provided, may be enforced by any condominium owner in the project or by the management body of such project. The Register of Deeds shall enter and annotate the declaration of restrictions upon the certificate of title covering the land included within the project, if the land is patented or registered under the Land Registration or Cadastral Acts.**

**The declaration of restrictions shall provide for the management of the project by anyone of the following management bodies: a condominium corporation, an association of the condominium owners, a board of governors elected by condominium owners, or a management agent elected by the owners or by the board named**

**in the declaration. It shall also provide for voting majorities quorums, notices, meeting date, and other rules governing such body or bodies.**

**Such declaration of restrictions, among other things, may also provide:**

**(a) As to any such management body;**

**(1) For the powers thereof, including power to enforce the provisions of the declarations of restrictions;**

**(2) For maintenance of insurance policies, insuring condominium owners against loss by fire, casualty, liability, workmen's compensation and other insurable risks, and for bonding of the members of any management body;**

**(3) Provisions for maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary for the operation of the building, and legal, accounting and other professional and technical services;**

**(4) For purchase of materials, supplies and the like needed by the common areas;**

**(5) For payment of taxes and special assessments which would be a lien upon the entire project or common areas, and for discharge of any lien or encumbrance levied against the entire project or the common areas;**

**(6) For reconstruction of any portion or portions of any damage to or destruction of the project;**

**(7) The manner for delegation of its powers;**

**(8) For entry by its officers and agents into any unit when necessary in connection with the maintenance or construction for which such body is responsible;**

**(9) For a power of attorney to the management body to sell the entire project for the benefit of all of the owners thereof when partition of the project may be authorized under Section 8 of this Act, which said power shall be binding upon all of the condominium owners regardless of whether they assume the obligations of the restrictions or not.**

**(b) The manner and procedure for amending such restrictions: *Provided,* That the vote of not less than a majority in interest of the owners is obtained.**

**(c) For independent audit of the accounts of the management body;**

**(d) For reasonable assessments to meet authorized expenditures, each condominium unit to be assessed separately for its share of such expenses in proportion (unless otherwise provided) to its owners fractional interest in any common areas;**

**(e) For the subordination of the liens securing such assessments to other liens either generally or specifically described;**

**(f) For conditions, other than those provided for in Sections eight and thirteen of this Act, upon which partition of the project and dissolution of the condominium corporation may be made. Such right to partition or dissolution may be conditioned upon failure of the condominium owners to rebuild within a certain period or upon specified inadequacy of insurance proceeds, or upon specified percentage of damage to the building, or upon a decision of an arbitrator, or upon any other reasonable condition.**

**SEC. 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project. Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.**

**SEC. 11. The term of a condominium corporation shall be coterminus with the duration of the condominium project, the provisions of the Corporation Law to the contrary notwithstanding.**

**SEC. 12. In case of involuntary dissolution of a condominium corporation for any of the causes provided by law, the common areas owned or held by the corporation shall, by way of liquidation, be transferred pro-indiviso and in proportion to their interest in the corporation to the members or stockholders thereof, subject to the superior rights of the corporation creditors. Such transfer or conveyance shall be deemed to be a full liquidation of the interest of such members or stockholders in the corporation. After such transfer or conveyance, the provisions of this Act governing undivided co-ownership of, or undivided interest in, the common areas in condominium projects shall fully apply.**

**SEC. 13. Until the enabling or the master deed of the project in which the condominium corporation owns or holds the common area is revoked, the corporation shall not be voluntarily dissolved through an action for dissolution under Rule 104 of the Rules of Court except upon a showing:**

**(a) That three years after damage or destruction to the project in which the corporation owns or holds the common areas, which damage or destruction renders a material part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or**

**(b) That damage or destruction to the project has rendered one-half or more of the units therein untenantable and that more than thirty percent of the members of the corporation, if non-stock, or the shareholders representing more than thirty percent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or reconstruction of the project; or**

**(c) That the project has been in existence in excess of fifty years, that it is obsolete and uneconomical, and that more than fifty percent of the members of the corporation, if non-stock, or the stockholders representing more than fifty percent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or restoration or remodelling or modernizing of the project; or**

**(d) That the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the members holding in aggregate more than seventy percent interest in the corporation, if non-stock, or the stockholders representing more than seventy percent of the capital stock entitled to vote, if a stock corporation, are opposed to the continuation of**

**the condominium regime after expropriation or condemnation of a material portion thereof; or**

**(e) That the conditions for such a dissolution set forth in the declaration of restrictions of the project in which the corporation owns of holds the common areas, have been met.**

**SEC. 14. The condominium corporation may also be dissolved by the affirmative vote of all the stockholders or members thereof at a general or special meeting duly called for the purpose: *Provided,* That, all the requirements of Section sixty-two of the Corporation Law are complied with.**

**SEC. 15. Unless otherwise provided for in the declaration of restrictions upon voluntary dissolution of a condominium corporation in accordance with the provisions of Sections thirteen and fourteen of this Act, the corporation shall be deemed to hold a power of attorney from all the members or stockholders to sell and dispose of their separate interests in the project and liquidation of the corporation shall be effected by a sale of the entire project as if the corporation owned the whole thereof, subject to the rights of the corporate and of individual condominium creditors.**

**SEC. 16. A condominium corporation shall not, during its existence, sell, exchange, lease or otherwise dispose of the common areas owned or held by it in the condominium project unless authorized by the affirmative vote of all the stockholders or members.**

**SEC. 17. Any provision of the Corporation Law to the contrary notwithstanding, the by-laws of a condominium corporation shall provide that a stockholder or member shall not be entitled to demand payment of his shares or interest in those cases where such right is granted under the Corporation Law unless he consents to sell his separate interest in the project to the corporation or to any purchaser of the corporation's choice who shall also buy from the corporation the dissenting member or stockholder's interest. In case of disagreement as to price, the procedure set forth in the appropriate provision of the Corporation Law for valuation of shares shall be followed. The corporation shall have two years within which to pay for the shares or furnish a purchaser of its choice from the time of award. All expenses incurred in the liquidation of the interest of the dissenting member or stockholder shall be borne by him.**

**SEC. 18. Upon registration of an instrument conveying a condominium, the Register of Deeds shall, upon payment of the**

**proper fees, enter and annotate the conveyance on the certificate of title covering the land included within the project and the transferee shall be entitled to the issuance of a "condominium owner's" copy of the pertinent portion of such certificate of title. Said "condominium owner's" copy need not reproduce the ownership status or series of transactions in force or annotated with respect to other condominiums in the project. A copy of the description of the land, a brief description of the condominium conveyed, name and personal circumstances of the condominium owner would be sufficient for purposes of the "condominium owner's" copy of the certificate of title. No conveyance of condominiums or part thereof, subsequent to the original conveyance thereof from the owner of the project, shall be registered unless accompanied by a certificate of the management body of the project that such conveyance is in accordance with the provisions of the declaration of restrictions of such project.**

**In cases of condominium projects registered under the provisions of the Spanish Mortgage Law or Act 3344, as amended, the registration of the deed of conveyance of a condominium shall be sufficient if the Register of Deeds shall keep the original or signed copy thereof, together with the certificate of the management body of the project, and return a copy of the deed of conveyance to the condominium owner duly acknowledged and stamped by the Register of Deeds in the same manner as in the case of registration of conveyances of real property under said laws.**

**SEC. 19. Where the enabling or master deed provides that the land included within a condominium project are to be owned in common by the condominium owners therein, the Register of Deeds may, at the request of all the condominium owners and upon surrender of all their "condominium owner's" copies, cancel the certificates of title of the property and issue a new one in the name of said condominium owners as pro-indiviso co-owners thereof.**

**SEC. 20. An assessment upon any condominium made in accordance with a duly registered declaration of restrictions shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, shall be and become a lien upon the condominium assessed when the management body causes a notice of assessment to be registered with the Register of Deeds of the city**

**or province where such condominium project is located. The notice shall state the amount of such assessment and such other charges thereon a may be authorized by the declaration of restrictions, a description of the condominium, unit against which same has been assessed, and the name of the registered owner thereof. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration of restrictions. Upon payment of said assessment and charges or other satisfaction thereof, the management body shall cause to be registered a release of the lien.**

**Such lien shall be superior to all other liens registered subsequent to the registration of said notice of assessment except real property tax liens and except that the declaration of restrictions may provide for the subordination thereof to any other liens and encumbrances.**

**Such liens may be enforced in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgages of real property. Unless otherwise provided for in the declaration of restrictions, the management body shall have power to bid at foreclosure sale. The condominium owner shall have the same right of redemption as in cases of judicial or extra-judicial foreclosure of mortgages.**

**SEC. 21. No labor performed or services or materials furnished with the consent of or at the request of a condominium owner or his agent or his contractor or subcontractor, shall be the basis of a lien against the condominium of any other condominium owner, unless such other owners have expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs of his condominium unit. Labor performed or services or materials furnished for the common areas, if duly authorized by the management body provided for in a declaration of restrictions governing the property, shall be deemed to be performed or furnished with the express consent of each condominium owner. The owner of any condominium may remove his condominium from a lien against two or more condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his condominium unit.**

**SEC. 22. Unless otherwise provided for by the declaration of restrictions, the management body, provided for herein, may acquire and hold, for the benefit of the condominium owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the condominium owners in the same proportion as their respective interests in the common areas. A transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.**

**SEC. 23. Where, in an action for partition of a condominium project or for the dissolution of condominium corporation on the ground that the project or a material part thereof has been condemned or expropriated, the Court finds that the conditions provided for in this Act or in the declaration of restrictions have not been met, the Court may decree a reorganization of the project, declaring which portion or portions of the project shall continue as a condominium project, the owners thereof, and the respective rights of said remaining owners and the just compensation, if any, that a condominium owner may be entitled to due to deprivation of his property. Upon receipt of a copy of the decree, the Register of Deeds shall enter and annotate the same on the pertinent certificate of title.**

**SEC. 24. Any deed, declaration or plan for a condominium project shall be liberally construed to facilitate the operation of the project, and its provisions shall be presumed to be independent and severable.**

**SEC. 25. Whenever real property has been divided into condominiums, each condominium separately owned shall be separately assessed, for purposes of real property taxation and other tax purposes to the owners thereof and the tax on each such condominium shall constitute a lien solely thereon.**

**SEC. 26. All Acts or parts of Acts in conflict or inconsistent with this Act are hereby amended insofar as condominium and its incidents are concerned.**

**SEC. 27. This Act shall take effect upon its approval.**

**Approved: June 18, 1966**

# CHAPTER XVIII

# PRESIDENTIAL DECREE NO. 957

# THE SUBDIVISION AND CONDOMINIUM PROTECTIVE BUYERS' DECREE

## REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF

**WHEREAS, it is the policy of the State to afford its inhabitants the requirements of decent human settlement and to provide them with ample opportunities for improving their quality of life;**

**WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers;**

**WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value;**

**WHEREAS, these acts not only undermine the land and housing program of the government but also defeat the objectives of the New Society, particularly the promotion of peace and order and the enhancement of the economic, social and moral condition of the Filipino people;**

**WHEREAS, this state of affairs has rendered it imperative that the real estate subdivision and condominium businesses be closely supervised and regulated, and that penalties be imposed on**

**fraudulent practices and manipulations committed in connection therewith.**

**NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order:**

## TITLE I

## TITLE AND DEFINITIONS

**SECTION 1. *Title.* — This Decree shall be known as *THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE.***

**SEC. 2. *Definition of Terms.* — When used in this Decree, the following terms shall, unless the context otherwise indicates, have the following respective meanings:**

**a) *Person.* — *"Person"* shall mean a natural or a juridical person. A juridical person refers to a business firm whether a corporation, partnership, cooperative or associations or a single proprietorship.**

**b) *Sale or sell.* — *"Sale"* or *"sell"* shall include every disposition, or attempt to dispose, for a valuable consideration, of a subdivision lot, including the building and other improvements thereof, if any, in a subdivision project or a condominium unit in a condominium project. "Sale" and "sell" shall also include a contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell, directly or by an agent, or by a circular, letter, advertisement or otherwise.**

**A privilege given to a member of a cooperative, corporation, partnership, or any association and/or the issuance of a certificate or receipt evidencing or giving the right of participation in, or right to, any land in consideration of payment of the membership fee or dues, shall be deemed a sale within the meaning of this definition.**

**c) *Buy and purchase.* — The *"buy"* and *"purchase"* shall include any contract to buy, purchase, or otherwise acquire for a valuable consideration a subdivision lot, including the building and other improvements, if any, in a subdivision project or a condominium unit in a condominium project.**

**d) *Subdivision project.* — *"Subdivision project"* shall mean a tract or a parcel of land registered under Act No. 496 which is**

**partitioned primarily for residential purposes into individual lots with or without improvements thereon, and offered to the public for sale, in cash or in installment terms. It shall include all residential, commercial, industrial and recreational areas as well as open spaces and other community and public areas in the project.**

**e) *Subdivision lot. — "Subdivision lot"* shall mean any of the lots, whether residential, commercial, industrial, or recreational, in a subdivision project.**

**f) *Complex subdivision plan. — "Complex subdivision plan"* shall mean a subdivision plan of a registered land wherein a street, passageway or open space is delineated on the plan.**

**g) *Condominium project. — "Condominium project"* shall mean the entire parcel of real property divided or to be divided primarily for residential purposes into condominium units, including all structures thereon.**

**h) *Condominium unit. — "Condominium unit"* shall mean a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part of parts of floors) in a building or buildings and such accessories as may be appended thereto.**

**i) *Owner. — "Owner"* shall refer to the registered owner of the land subject of a subdivision or a condominium project.**

**j) *Developer. — "Developer"* shall mean the person who develops or improves the subdivision project or condominium project for and in behalf of the owner thereof.**

**k) *Dealer. — "Dealer"* shall mean any person directly engaged as principal in the business of buying, selling or exchanging real estate whether on a full-time or part-time basis.**

**l) *Broker. — "Broker"* shall mean any person who, for commission or other compensation, undertakes to sell or negotiate the sale of a real estate belonging to another.**

**m) *Salesman. — "Salesman"* shall refer to the person regularly employed by a broker to perform, for and in his behalf, any or all functions of a real estate broker.**

**n) *Authority. — "Authority"* shall mean the National Housing Authority.**

## TITLE II

## REGISTRATION AND LICENSE TO SELL

**SEC. 3. *National Housing Authority.* — The National Housing Authority shall have exclusive jurisdiction to regulate the real estate trade and business in accordance with the provisions of this Decree.**

### 01. Jurisdiction of the National Housing Authority.

The scope of the regulatory authority lodged in the National Housing Authority is indicated in the second and third paragraphs of the preamble, to wit:

> "WHEREAS, the numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems and other similar basic requirements, thus endangering the health and safety of home and lot buyers;
>
> WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes and fraudulent sales of the same subdivision lots to different innocent purchasers for value."

On April 2, 1978, PD No. 1344 was passed providing, *inter alia*:

> "Section 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:
>
> a) Unsound real estate business practices;
>
> b) Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against

the project owner, developer, dealer, broker or salesman; and

(c) Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

Section 2. The decision of the National Housing Authority shall become final and executory after the lapse of fifteen (15) days from the date of its receipt. It is appealable only to the President of the Philippines and in the event the appeal is filed and the decision is not reversed and/or amended within a period of thirty (30) days, the decision is deemed affirmed. Proof of the appeal of the decision must be furnished the National Housing Authority."

As ruled in *Tropical Homes, Inc.* v. *National Housing Authority*,[1] the fact that PD No. 1344 does not specifically provide for judicial review of NHA decisions affirmed or reversed by the President, does not necessarily preclude judicial review. The extraordinary writs of *certiorari*, prohibition, *mandamus* or *quo warranto* (Rules 65 and 66) are always available in proper cases where there is no appeal or other plain, speedy, or adequate remedy in the ordinary course of law. The power of the Supreme Court to strike down acts which infringe on constitutional protections or to nullify administrative decisions contrary to constitutional mandates cannot be reduced or circumscribed by any statute or decree. No statute is needed to bring arbitrary acts or decisions within the court's jurisdiction.

On the issue of "affirmance-by-inaction," failure on the part of the President to act upon an appeal does not necessarily mean that the appealed decision automatically becomes final and executory. Access to the courts of law may still be made as mentioned above. Therefore, any such decision is far from being final and executory.

Parenthetically, Section 9(3) of BP Blg. 129 empowers the Court of Appeals to have:

"(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of Regional Trial Courts and quasi-judicial agencies, instru-

[1]GR No. L-48672, July 31, 1987, 152 SCRA 540.

> mentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948."

BP Blg. 129 was signed into law on August 14, 1981 and provides a uniform appellate body for all administrative agencies, instrumentalities, boards and commissions subject to limited exceptions.

**02. Functions of NHA now transferred to the Housing and Land Use and Regulatory Board.**

On February 7, 1981, by virtue of EO No. 648, the regulatory functions of the National Housing Authority (NHA) were transferred to the Human Settlements Regulatory Commission. Section 8 thereof, among others, provides as follows:

> "SEC. 8. *Transfer of Functions*. — The regulatory functions of the National Housing Authority pursuant to Presidential Decree Nos. 957, 1216, 1344 and other related laws are hereby transferred to the Commission. x x x Among these regulatory functions are x x x (11) Hear and decide cases of unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers, or salesmen; and cases of specific performance."

Then on December 17, 1986, EO No. 90 was issued pursuant to which the functions of the HSRC were assumed by the Housing and Land Use Regulatory Board (HLURB). Section 1(c) of EO No. 90 reads:

> "(c) *Human Settlements Regulatory Commission.* — The Human Settlements Regulatory Commission renamed as the Housing and Land Use Regulatory Board, shall be the sole regulatory body for housing and land development. It is charged with encouraging greater private sector participation in low-cost housing through liberalization of development standards, simplification of regulations and decentralization of approvals for permits and licenses."

### (1) Specific functions of HLURB

Under PD No. 1344, dated April 2, 1978, the HLURB has exclusive jurisdiction to hear and decide: (a) unsound real estate practices, (b) claims involving refund and any other claims filed by a subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman, and (c) cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit, against the owner, etc. The law does not make a distinction between a perfected sale and one that has yet to be perfected. The word *"buyer"* in the law refers to any person who purchases anything for money.

With the promulgation of EO No. 90, the former provision that the claim be made by a buyer has been eliminated. Now, any claim for refund whether by a buyer or other party in any other capacity is definitely within the exclusive jurisdiction of the HLURB.[2]

A transaction to "buy" and "purchase" under PD No. 957 has been defined as "any contract to buy, purchase, or otherwise acquire for a valuable consideration . . . a condominium unit in a condominium project." The term "buyer" is not limited to those who enter into contracts of sale. Its concept is broad enough as to include those who "acquire for a valuable consideration" a condominium unit. Thus, a buyer of said unit seeking to enforce the performance of an obligation arising from such transaction, or claiming damages therefrom, may bring an action with the HLURB.[3]

### (2) Illustrative cases

In *Arranza* v. *B.F. Homes, Inc.*,[4] the Court stressed the peculiar nature of the transactions involving subdivisions and condominiums. PD No. 957 was promulgated to encompass all questions regarding subdivisions and condominiums. It is aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of its provisions and the enforcement of contractual rights with respect to said category of real estate may

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[2]Tejada v. Homestead Property Corporation, GR No. 79622, Sept. 29, 1989, 178 SCRA 164.

[3]AMA Computer College v. Factora, GR No. 137911, Feb. 27, 2002, 378 SCRA 121.

[4]GR No. 131683, June 19, 2000, 333 SCRA 799; see also Roxas v. Court of Appeals, GR No. 138955, Oct. 29, 2002, 391 SCRA 351.

take recourse. Thus, where plaintiffs seek the specific performance of alleged contractual and statutory obligations of the defendants, *e.g.*, the execution of contracts of sale in favor of the plaintiffs and the introduction in the disputed property of the facilities required by subdivision laws, exclusive jurisdiction over the case rests with the HULRB and not the RTC.[5] A counterclaim for specific performance (correction of defects/deficiencies in the condominium unit) and damages falls under the jurisdiction of the HLURB.[6] And the fact that the subject matter of the complaint involved defective housing units does not remove the complaint from the HLURB's jurisdiction. The delivery of habitable houses is petitioners' responsibility as owner/developer.[7]

The transfer of functions from the NHA to the HRSC effected by Section 8 of EO No. 648, series of 1981, resulted in the acquisition by the HLURB of adjudicatory powers which included the power to "(h)ear and decide cases of unsound real estate business practices . . . and cases of specific performance." In the exercise of its powers and functions, the HLURB must interpret and apply contracts, determine the rights of the parties under these contracts, and award damages whenever appropriate. Under Section 5 of EO No. 648, the Board is specifically mandated to "(a)dopt rules of procedure for the conduct of its business" and perform such functions necessary for the effective accomplishment of its functions. Since nothing in the provisions of either EO No. 90 or EO No. 648 denies or withholds the power or authority to delegate adjudicatory functions to a division, the Board, for the purpose of effectively carrying out its administrative responsibilities and quasi-judicial powers as a regulatory body, has the power to constitute its adjudicatory boards into various divisions.[8] It should be stressed, however, that only when there is a showing that the property subject of the controversy is a subdivision lot or condominium that the exercise of the adjudicative authority of the HLURB comes into play.[9]

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[5]Alcasid v. Court of Appeals, GR No. 94927, Jan. 22, 1993, 217 SCRA 437; Dulos Realty and Development Corporation v. Court of Appeals, GR No. 128516, Nov. 28, 2001, 370 SCRA 709.

[6]Bank of the Philippine Islands v. ALS Management and Development Corporation, GR No. 151821, April 14, 2004, 427 SCRA 564.

[7]HLC Construction and Development Corporation v. EHSHA, GR No. 139360, Sept. 23, 2003, 411 SCRA 504.

[8]Realty Exchange Venture Corporation v. Sendino, GR No. 109703, July 5, 1994, 233 SCRA 665.

[9]Magat v. Delizo, GR No. 135199, July 5, 2001, 360 SCRA 508; Dela Cruz v. Court of Appeals and Aguila, GR No. 148333, Nov. 17, 2004.

In *Kakilla* v. *Faraon,*[10] petitioners simply alleged in their complaint that the subject lot is "a subdivision lot" in "a subdivision project." Under Section 2(d) and (e) of PD No. 957, "subdivision project" and "subdivision lot" are defined as follows:

> "d) Subdivision project. — 'Subdivision project' shall mean a tract or a parcel of land registered under Act No. 496 which is partitioned primarily for residential purposes into individual lots with or without improvements thereon, and offered to the public for sale, in cash or in installment terms. It shall include all residential, commercial, industrial and recreational areas as well as open spaces and other community and public areas in the project.
>
> e) Subdivision lot. — 'Subdivision lot' shall mean any of the lots, whether residential, commercial, industrial, or recreational, in a subdivision project."

There is no allegation in the complaint that the lot purchased by petitioners is part of a tract of land partitioned primarily for residential purposes or into individual lots and offered to the public for sale. There is likewise no allegation that the tract of land includes recreational areas and open spaces. Nor does the contract to sell describe the subject property as a subdivision lot. What the contract strongly suggests is that the property is simply a lot offered by respondents, as vendors, to the petitioners, as vendees, for sale on installment. As can be clearly gleaned from the same contract, respondents are not acting as subdivision owners, developers, brokers or salesmen, nor are they engaged in the real estate business. What is plain is that the parties are acting only as ordinary sellers and buyers of a specific lot, a portion of a big tract of land co-owned by certain heirs. Neither are there undertakings specified in the contract that respondents shall develop the land, like providing for the subdivision concrete roads and sidewalks, street lights, curbs and gutters, underground drainage system, independent water system, landscaping, developed park, and 24-hour security guard service. Even the rights and obligations of the sellers and buyers of a subdivision lot are not provided in the agreement. All these provisions are usually contained in a standard contract involving a sale of a subdivision lot. Moreover, although the receipts of payment delivered

[10]GR No. 143233, Oct. 18, 2004, 440 SCRA 414.

to petitioners by respondents bear the name "Faraon Village Subdivision," the same does not automatically convert the ordinary and isolated sale of real property into a sale of subdivision lot. Clearly, the HLURB has no jurisdiction over the case.

The law clearly defines who is considered a subdivision owner or developer. But even if petitioners were subdivision owners or developers, this would not bar them from seeking redress from the courts. The mere relationship between the parties, *i.e.,* that of being subdivision owner/developer and subdivision lot buyer, does not automatically vest jurisdiction in the HLURB. For an action to fall within the exclusive jurisdiction of the HLURB, the decisive element is the nature of the action as enumerated in Section 1 of PD No. 1344.[11]

In *Solid Homes, Inc.* v. *Payawal*,[12] the Supreme Court ruled that the HLURB, not the Regional Trial Court, has exclusive jurisdiction over a complaint filed by a buyer against the subdivision owner for delivery of title to a subdivision lot. The Court said:

> "The argument that the trial court could also assume jurisdiction because of Section 41 of PD No. 957, earlier quoted, is also unacceptable. We do not read that provision as vesting concurrent jurisdiction on the Regional Trial Court and the Board over the complaint mentioned in PD No. 1344 if only because grants of power are not to be lightly inferred or merely implied. The only purpose of this section, as we see it, is to reserve to the aggrieved party such other remedies as may be provided by existing law, like a prosecution for the act complained of under the Revised Penal Code.
>
> On the competence of the Board to award damages, we find that this is part of the exclusive power conferred upon it by PD No. 1344 to hear and decide 'claims involving refund and any other claims filed by subdivision lot or condominium unit buyers against the project owner, developer, dealer, broker or salesman.' It was therefore erroneous for the respondent to brush aside the well-taken opinion of the Secretary of Justice that —

[11]Dela Cruz v. Court of Appeals, GR No. 151298, Nov. 17, 2004, 442 SCRA 492.
[12]GR No. 84811, Aug. 29, 1989, 177 SCRA 72.

> Such claim for damages which the subdivision condominium buyer may have against the owner, developer, dealer or salesman, being a necessary consequence of an adjudication of liability for non-performance of contractual or statutory obligation, may be deemed necessarily included in the phrase 'claims involving refund and any other claims' used in the aforequoted subparagraph C of Section 1 of PD No. 1344. The phrase 'any other claims' is, we believe, sufficiently broad to include any and all claims which are incidental to or a necessary consequence of the claims/cases specifically included in the grant of jurisdiction to the National Housing Authority under the subject provisions.
>
> The same may be said with respect to claims for attorney's fees which are recoverable either by agreement of the parties or pursuant to Art. 2208 of the Civil Code (1) when exemplary damages are awarded and (2) where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim."

In *Estate Developers and Investors Corporation* v. *Court of Appeals*,[13] it was reiterated that an action filed by a developer of a subdivision against a buyer of a lot in said subdivision for collection of the balance of the unpaid price of said lot evidenced by a promissory note executed by the lot buyer falls under the jurisdiction of the HLURB, as successor of the NHA under PD No. 957. While PD No. 957 was designed to meet the need basically to protect lot buyers from the fraudulent manipulations of unscrupulous subdivision owners, sellers and operators, the "exclusive jurisdiction" vested in the HLURB is broad and general — "to regulate the real estate trade and business" in accordance with the provisions of said law. As clarified in PD No. 1344, such exclusive jurisdiction includes jurisdiction to hear and decide cases involving "unsound real estate business practices" as well as claims for refund and complaints for specific performance filed by the buyer.[14]

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[13]GR No. 92461, Sept. 2, 1992, 213 SCRA 353.

[14]Francel Realty Corporation v. Court of Appeals, GR No. 117051, Jan. 22, 1996, 252 SCRA 127.

**(3) Writ of execution**

Section 3 of PD No. 1344 provides that as soon as the decision of the HLURB becomes final, it shall, on motion of the interested party, issue a writ of execution enforceable in accordance with the provisions of the Rules of Court. Upon failure of the HLURB to act on the motion for execution, a petition for mandamus may be filed to compel it to perform its purely ministerial duty of enforcing its final and executory decision.[15]

**03. Court has jurisdiction when issue involves ownership of property.**

The subject of controversy in *Multinational Village Homeownes' Association, Inc*. v. *Court of Appeals*[16] is a stretch of road connecting the Multinational Village in Parañaque, Metro Manila, with the Ninoy Aquino Avenue. The use of this road is disputed between the Multinational Village Homeowners' Association, Inc. and Multinational Realty and Development Corporation.

The case arose when the corporation filed a complaint against the association and the G-Man Security Agency in the Regional Trial Court for "Enforcement of Rights of Property Ownership, Injunction with Temporary Restraining Order and Damages." The corporation alleged that, as owner, it had allowed the association to use the road and set up thereon a guardhouse manned by the agency, but the defendants were now preventing the plaintiff from using the road for transporting construction materials needed to develop its other lots adjacent to the Village. The plaintiff prayed that it be placed in peaceful possession of the said road with full exercise of the attributes and rights of ownership, plus damages, attorney's fees and costs.

Defendants alleged that the complaint comes under the jurisdiction of the HLURB under PD No. 957, as amended by PD No. 1344; that there is a pending administrative case between the parties before the said agency that barred the filing of the civil case; and that the civil case is a form of forum-shopping. In upholding the jurisdiction of the Regional Trial Court, and not that of HLURB, the Supreme Court said:

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[15]United Housing Corporation v. Dayrit, GR No. 76422, Jan. 22, 1990, 181 SCRA 285; C.T. Torres Enterprises, Inc. v. Hibionada, GR No. 80916, Nov. 9, 1990, 191 SCRA 268.

[16]GR No. 98023, Oct. 17, 1991, 203 SCRA 104.

"A study of the above-quoted section[17] shows that the contention of the Association is untenable. It disregards the fact that the Corporation has directly asserted a claim of ownership over the subject property, which is why it filed its complaint not with the HLURB but with the regional trial court. The mere contention by the defendants that the road is subject to the exclusive use of this Village will not remove the case from the jurisdiction of the trial court and transfer it to the administrative agency. It is elementary that jurisdiction is determined by the allegations in the complaint, not the allegations in the answer. x x x

Significantly, the Association has admitted in its answer to the complaint of the Corporation that the latter is the owner of the disputed road. The Association insists, however, that the said road forms part of the Village and is reserved by agreement with the Corporation for the exclusive use of the residents. True or not, that argument may be — as it has been — asserted as a defense to resist the demands of the Corporation. But such a submission surely cannot have the effect of transferring the controversy to the HLURB as the complaint is not among the cases subject to its exclusive jurisdiction under Section 1 of P.D. 957 as amended. The matter is clearly resoluble by the courts of justice under the provisions of the Civil Code.

x x x x x x x x x

Invocation by the petitioner of Solid Homes, Inc. v. Payawal does not advance its cause. That case involved a complaint for the delivery of title to a subdivision lot and clearly came under the exclusive jurisdiction of the HLURB pursuant to the abovequoted Section 1 of PD 957."

Relatedly, an action for specific performance filed by the vendee against the bank which acquired title to the lots in a foreclosure sale falls under the jurisdiction of the regular courts where the bank was not acting as subdivision owner, developer, broker or salesman, nor was it engaged in the real estate business when it entered into

[17]Sec. 1, PD No. 1344.

the contract with the vendee. Section 19 of BP Blg. 129 vests in the Regional Trial Courts exclusive original jurisdiction over civil actions involving title to or possession of real property or any interest therein.[18]

**04. Ordinary courts do not have jurisdiction over collection of unpaid installments.**

On the other hand, ordinary courts do not have jurisdiction over the collection of unpaid installments regarding a subdivision lot. This is clear from the language of PD No. 1344. In *Sandoval* v. *Cañeba*,[19] the Supreme Court stated:

> "Undeniably the sum of money sought to be collected by private respondent from petitioner represented unpaid installments of a subdivision lot which the petitioner purchased. Petitioner alleges that he suspended payments thereof because of the failure of the developer to develop the subdivision pursuant to their agreement.
>
> In *Antipolo Realty Corporation* vs. *National Housing Authority*, the suit which was filed with the NHA, likewise involved non-payment of installments over a subdivision lot, wherein this Court held that the NHA has exclusive authority to hear and decide the case.
>
> In *Solid Homes, Inc.* vs. *Teresita Payawal*, this Court ruled that upon the issuance of Presidential Decree No. 957, the trial court may no longer assume jurisdiction over the cases enumerated in Section 1 of Presidential Decree No. 397. We even stated therein that the Housing and Land Use Regulatory Board has the authority to award damages in the exercise of this exclusive power conferred upon it by Presidential Decree No. 1344.
>
> In *Estate Developers and Investors Corporation* vs. *Antonio Sarte and Erlinda Sarte*, G.R. No. 93646, which is a case substantially similar to the instant case, in a resolution of August 13, 1990 this Court upheld the exclusive jurisdiction of the HLURB over the collection suit.

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[18]Dy v. Court of Appeals, GR No. 87929, Dec. 17, 1991, 204 SCRA 878.
[19]GR No. 90503, Sept. 27, 1990, 190 SCRA 77.

Considering that the trial court has no jurisdiction under the circumstances obtaining in this case, the decision it rendered is null and void *ab initio*. It is as if no decision was rendered by the trial court at all."

**05. Summary of cases or incidents where HULRB has jurisdiction.**

*Fajardo* v. *Bautista*,[20] gives a summary of the cases or actions over which the HLURB has jurisdiction under Section 1 of PD No. 1344, to wit:

(a) For a determination of the rights of the parties under a contract to sell a subdivision lot;

(b) For the delivery of title against the subdivision owner;

(c) For the refund of reservation fees for the purchase of a subdivision lot;

(d) For specific performance filed by a lot buyer against the seller of a subdivision lot;

(e) For the annulment of the mortgage constituted by the project owner without the buyer's consent, the mortgage foreclosure sale, and the condominium certificate of title issued to the highest bidder at the said foreclosure sale;

(f) For the collection of the balance of the unpaid purchase price of a subdivision lot filed by the developer of a subdivision against the lot buyer; and

(g) For incidental claims for damages.

**SEC. 4. *Registration of Projects.* — The registered owner of a parcel of land who wishes to convert the same into a subdivision project shall submit his subdivision plan to the Authority which shall act upon and approve the same, upon a finding that the plan complies with the Subdivision Standards' and Regulations enforceable at the time the plan is submitted. The same procedure shall**

[20]GR No. 102193, May 10, 1994, 232 SCRA 291.

**be followed in the case of a plan for a condominium project except that, in addition, said Authority shall act upon and approve the plan with respect to the building or buildings included in the condominium project in accordance with the National Building Code (R.A. No. 6541).**

**The subdivision plan, as so approved, shall then be submitted to the Director of Lands for approval in accordance with the procedure prescribed in Section 44 of the Land Registration Act *(Act No. 496, as amended by R.A. No. 440)*: *Provided,* That in case of complex subdivision plans, court approval shall no longer be required. The condominium plan as likewise so approved, shall be submitted to the Register of Deeds of the province or city in which the property lies and the same shall be acted upon subject to the conditions and in accordance with the procedure prescribed in Section 4 of the Condominium Act *(R.A. No. 4726).***

**The owner or the real estate dealer interested in the sale of lots or units, respectively, in such subdivision project or condominium project shall register the project with the Authority by filing therewith a sworn registration statement containing the following information:**

**a) Name of the owner;**

**b) The location of the owner's principal business office, and if the owner is a non-resident Filipino, the name and address of his agent or representative in the Philippines is authorized to receive notice;**

**c) The names and addresses of all the directors and officers of the business firm, if the owner be a corporation, association, trust, or other entity, and of all the partners, if it be a partnership;**

**d) The general character of the business actually transacted or to be transacted by the owner; and**

**e) A statement of the capitalization of the owner, including the authorized and outstanding amounts of its capital stock and the proportion thereof which is paid-up.**

**The following documents shall be attached to the registration statement:**

**a) A copy of the subdivision plan or condominium plan as approved in accordance with the first and second paragraphs of this section;**

**b) A copy of any circular, prospectus, brochure, advertisement, letter, or communication to be used for the public offering of the subdivision lots or condominium units;**

**c) In case of a business firm, a balance sheet showing the amount and general character of its assets and liabilities and a copy of its articles of incorporation or articles of partnership or association, as the case may be, with all the amendments thereof and existing by-laws or instruments corresponding thereto;**

**d) A title to the property which is free from all liens and encumbrances: *Provided, however,* That in case any subdivision lot or condominium unit is mortgaged, it is sufficient if the instrument of mortgage contains a stipulation that the mortgagee shall release the mortgage on any subdivision lot or condominium unit as soon as the full purchase price for the same is paid by the buyer.**

**The person filing the registration statement shall pay the registration fees prescribed therefor by the Authority.**

**Thereupon, the Authority shall immediately cause to be published a notice of the filing of the registration statement at the expense of the applicant-owner or dealer, in two newspapers general circulation, one published in English and another in Pilipino, once a week for two consecutive weeks, reciting that a registration statement for the sale of subdivision lots or condominium units has been filed in the National Housing Authority; that the aforesaid registration statement, as well as the papers attached thereto, are open to inspection during business hours by interested parties, under such regulations as the Authority may impose; and that copies thereof shall be furnished to any party upon payment of the proper fees.**

**The subdivision project of the condominium project shall be deemed registered upon completion of the above publication requirement. The fact of such registration shall be evidenced by a registration certificate to be issued to the applicant-owner or dealer.**

### 01. Transfer of ownership or change of name.

A request for transfer of ownership and/or change of name may be granted only if there is a deed of absolute sale over the subdivision or condominium project sought to be transferred and/or the name thereof changed with an undertaking on the part of the transferee to assume full responsibility for the completion of the development

thereof. Such request for transfer of ownership or change of name shall be published at applicant's expense in a newspaper of general circulation within the city or municipality where the project is located at least once a week for two (2) consecutive weeks.[21]

**02. Townsite areas not subject to coverage under the Comprehensive Agrarian Reform Law.**

Are lands already classified for residential, commercial or industrial use, as approved by the Housing and Land Use Regulatory Board and its precursor agencies prior to June 15, 1988, covered by RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988? This is the pivotal issue raised in *Natalia Realty, Inc*. v. *Department of Agrarian Reform*,[22] questioning the Notice of Coverage of the Department of Agrarian Reform (DAR) over parcels of land already reserved as townsite areas before the enactment of the law.

Petitioner Natalia Realty, Inc. (NATALIA, for brevity) is the owner of three (3) contiguous parcels of land located in Banaba, Antipolo, Rizal, with areas of 120.9793 hectares, 1.3205 hectares and 2.7080 hectares, or a total of 125.0078 hectares, and embraced in TCT No. 31527 of the Register of Deeds of the Province of Rizal. On April 18, 1979, Presidential Proclamation No. 1637 set aside 20,312 hectares of land located in the Municipalities of Antipolo, San Mateo and Montalban as townsite areas to absorb the population overspill in the metropolis which were designated as the Lungsod Silangan Townsite. The NATALIA properties are situated within the areas proclaimed as townsite reservation. Since private landowners were allowed to develop their properties into low-cost housing subdivisions within the reservation, petitioner Estate Developers and Investors Corporation (EDIC, for brevity), as developer of NATALIA properties, applied for and was granted preliminary approval and locational clearances by the Human Settlements Regulatory Commission. Thus the NATALIA properties later became the Antipolo Hills Subdivision.

On June 15, 1988, RA No. 6657, otherwise known as the "Comprehensive Agrarian Reform Law of 1988," went into effect. Conformably therewith, respondent DAR, through its Municipal

[21]Sec. 21, PD No. 957.
[22]GR No. 103302, Aug. 12, 1993, 226 SCRA 278.

Agrarian Reform Officer, issued on November 22, 1990 a Notice of Coverage on the undeveloped portions of the Antipolo Hills Subdivision which consisted of roughly 90.3307 hectares. NATALIA immediately registered its objection to the Notice of Coverage. It argued that the NATALIA properties already ceased to be agricultural lands when they were included in the areas reserved by presidential fiat for townsite reservation. The Supreme Court declared the Notice of Coverage invalid, holding:

> "The petition is impressed with merit. A cursory reading of the Preliminary Approval and Locational Clearances as well as the Development Permits granted petitioners for Phases I, II and III of the Antipolo Hills Subdivision reveals that contrary to the claim of public respondents, petitioners NATALIA and EDIC did in fact comply with all the requirements of law.
>
> As a matter of fact, there was even no need for petitioners to secure a clearance or prior approval from DAR. The NATALIA properties were within the areas set aside for the Lungsod Silangan Reservation. Since Presidential Proclamation No. 1637 created the townsite reservation for the purpose of providing additional housing to the burgeoning population of Metro Manila, it in effect converted for residential use what were erstwhile agricultural lands provided all requisites were met. x x x
>
> The implementing Standards, Rules and Regulations of P.D. No. 957 applied to all subdivisions and condominiums in general. On the other hand, Presidential Proclamation No. 1637 referred only to the Lungsod Silangan Reservation, which makes it a special law. It is a basic tenet in statutory construction that between a general law and a special law, the latter prevails.
>
> We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that the CARL shall 'cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands.' As to what constitutes 'agricultural land,' it is referred to as 'land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land.' The deliberations of the Constitutional Commission confirm this

limitation. 'Agricultural lands' are only those lands which are 'arable and suitable agricultural lands' and 'do not include commercial, industrial and residential lands.'

Based on the foregoing, it is clear that the undeveloped portions of the Antipolo Hills Subdivision cannot in any language be considered as 'agricultural lands.' These lots were intended for residential use. They ceased to be agricultural lands upon approval of their inclusion in the Lungsod Silangan Reservation. x x x

Indeed, lands not devoted to agricultural activity are outside the coverage of CARL. These include lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than respondent DAR. In its Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses, DAR itself defined 'agricultural land' thus —

> '. . . Agricultural land refers to those devoted to agricultural activity as defined in R.A. 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential, commercial or industrial use.'

Since the NATALIA lands were converted prior to 15 June 1988, respondent DAR is bound by such conversion. It was therefore error to include the undeveloped portions of the Antipolo Hills Subdivision within the coverage of CARL."

**SEC. 5. *License to sell.* — Such owner or dealer to whom has been issued a registration certificate shall not, however, be authorized to sell any subdivision lot or condominium unit in the registered project unless he shall have first obtained a license to sell the project within two weeks from the registration of such project.**

**The Authority, upon proper application therefor, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent.**

**SEC. 6. *Performance Bond*. — No license to sell subdivision lots or condominium units shall be issued by the Authority under Section 5 of this Decree unless the owner or dealer shall have filed an adequate performance bond approved by said Authority to guarantee the construction and maintenance of the roads, gutters, drainage, sewerage, water system, lighting systems, and full development of the subdivision project or the condominium project and the compliance by the owner or dealer with the applicable laws and rules and regulations.**

**The performance bond shall be executed in favor of the Republic of the Philippines and shall authorize the Authority to use the proceeds thereof for the purposes of its undertaking in case of forfeiture as provided in this Decree.**

**SEC. 7. *Exempt transactions*. — A license to sell and performance bond shall not be required in any of the following transactions:**

**a) Sale of a subdivision lot resulting from the partition of land among co-owners and co-heirs.**

**b) Sale or transfer of a subdivision lot by the original purchaser thereof and any subsequent sale of the same lot.**

**c) Sale of a subdivision lot or a condominium unit by or for the account of a mortgagee in the ordinary course of business when necessary to liquidate a *bona fide* debt.**

**SEC. 8. *Suspension of license to sell.* — Upon verified complaint by a buyer of a subdivision lot or a condominium unit in any interested party, the Authority may, in its discretion, immediately suspend the owner's or dealer's license to sell pending investigation and hearing of the case as provided in Section 13 hereof.**

**The Authority may *motu proprio* suspend the license to sell if, in its opinion, any information in the registration statement filed**

**by the owner or dealer is or has become misleading, incorrect, inadequate or incomplete or the sale or offering for a sale of the subdivision or condominium project may work or tend to work a fraud upon prospective buyers.**

**The suspension order may be lifted if, after notice and hearing, the Authority is convinced that the registration statement is accurate or that any deficiency therein has been corrected or supplemented or that the sale to the public of the subdivision or condominium project will neither be fraudulent not result in fraud. It shall also be lifted upon dismissal of the complaint for lack of legal basis.**

**Until the final entry of an order of suspension, the suspension of the right to sell the project, though binding upon all persons notified thereof, shall be deemed confidential unless it shall appear that the order of suspension has in the meantime been violated.**

**SEC. 9. *Revocation of registration certificate and license to sell.* — The Authority may, *motu proprio* or upon verified complaint filed by a buyer of a subdivision lot or condominium unit, revoke the registration of any subdivision project or condominium project and the license to sell any subdivision lot or condominium unit in said project by issuing an order to this effect, with his findings in respect thereto, if upon examination into the affairs of the owner or dealer during a hearing as provided for in Section 14 hereof, if shall appear there is satisfactory evidence that the said owner or dealer:**

**a) Is insolvent; or**

**b) Has violated any of the provisions of this Decree or any applicable rule or regulation of the Authority, or any undertaking of his/its performance bond; or**

**c) Has been or is engaged or is about to engage in fraudulent transactions; or**

**d) Has made any misrepresentation in any prospectus, brochure, circular or other literature about the subdivision project or condominium project that has been distributed to prospective buyers; or**

**e) Is of bad business repute; or**

**f) Does not conduct his business in accordance with law or sound business principles.**

**Where the owner or dealer is a partnership or corporation or an unincorporated association, it shall be sufficient cause for cancellation of its registration certificate and its license to sell, if any member of such partnership or any officer or director of such corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer, broker or salesman as provided in Section 11 hereof.**

**SEC. 10.** ***Registers of subdivision lots and condominium units.*** **— A record of subdivision lots and condominium units shall be kept in the Authority wherein shall be entered all orders of the Authority affecting the condition or status thereof. The registers of subdivision lots and condominium units shall be open to public inspection subject to such reasonable rules as the Authority may prescribe.**

## TITLE III

## DEALERS, BROKERS AND SALESMEN

**SEC. 11.** ***Registration of dealers, brokers and salesmen.*** **— No real estate dealer, broker or salesman shall engage in the business of selling subdivision lots or condominium units unless he has registered himself with the Authority in accordance with the provisions of this section.**

**If the Authority shall find that the applicant is of good repute and has complied with the applicable rules of the Authority, including the payment of the prescribed fee, he shall register such applicant as a dealer, broker or salesman upon filing a bond, or other security in lieu thereof, in such sum as may be fixed by the Authority conditioned upon his faithful compliance with the provisions of this Decree:** ***Provided,*** **That the registration of a salesman shall cease upon the termination of his employment with a dealer or broker.**

**Every registration under this section shall expire on the thirty-first day of December of each year. Renewal of registration for the succeeding year shall be granted upon written application therefor made not less than thirty nor more than sixty days before the first day of the ensuing year and upon payment of the prescribed fee, without the necessity of filing further statements or information, unless specifically required by the Authority. All applications filed beyond said period shall be treated as original applications.**

**The names and addresses of all persons registered as dealers, brokers, or salesmen shall be recorded in a Register of Brokers, Dealers and Salesmen kept in the Authority which shall be open to public inspection.**

**SEC. 12. *Revocation of registration as dealers, brokers or salesmen*. — Registration under the preceding section may be refused or any registration granted thereunder, revoked by the Authority if, after reasonable notice and hearing, it shall determine that such applicant or registrant:**

**1) Has violated any provision of this Decree or any rule or regulation made hereunder; or**

**2) Has made a material false statement in his application for registration; or**

**3) Has been guilty of a fraudulent act in connection with any sale of a subdivision lot or condominium unit; or**

**4) Has demonstrated his unworthiness to transact the business of dealer, broker, or salesman, as the case may be.**

**In case of charges against a salesman, notice thereof shall also be given the broker or dealer employing such salesman.**

**Pending hearing of the case, the Authority shall have the power to order the suspension of the dealer's, broker's, of salesman's registration; *Provided,* That such order shall state the cause for the suspension.**

**The suspension or revocation of the registration of a dealer or broker shall carry with it all the suspension or revocation of the registrations of all his salesmen.**

## TITLE IV

## PROCEDURE FOR REVOCATION OF REGISTRATION CERTIFICATE

**SEC. 13. *Hearing*. — In the hearing for determining the existence of any ground or grounds for the suspension and/or revocation of registration certificate and license to sell as provided in Sections 8 and 9 hereof, the following shall be complied with:**

**a) *Notice*. — No such hearing shall proceed unless the respondent is furnished with a copy of the complaint against him or is notified in writing of the purpose of such hearing.**

**b) *Venue*. — The hearing may be held before the officer or officers designated by the Authority on the date and place specified in the notice.**

**c) *Nature of proceeding*. — The proceedings shall be non-litigious and summary in nature without regard to legal technicalities obtaining in courts of law. The Rules of Court shall not apply in said hearing except by analogy or in a suppletory character and whenever practicable and convenient.**

**d) *Power incidental to the hearing*. — For the purpose of the hearing or other proceeding under this Decree, the officer or officers designated to hear the complaint shall have the power to administer oaths, subpoena witnesses, conduct ocular inspections, take depositions, and require the production of any book, paper, correspondence, memorandum, or other record which are deemed relevant or material to the inquiry.**

**SEC. 14. *Contempt.* —**

**a) *Direct contempt*. — The officer or officers designated by the Authority to hear the complaint may summarily adjudge in direct contempt any person guilty of misbehavior in the presence of or so near the said hearing officials as to obstruct or interrupt the proceedings before the same or of refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition when lawfully required to do so. The person found guilty of direct contempt under this section shall be punished by a fine not exceeding Fifty Pesos (P50.00) or imprisonment not exceeding five (5) days, or both.**

**b) *Indirect contempt*. — The officer or officers designated to hear the complaint may also adjudge any person in indirect contempt on grounds and in the manner prescribed in Rule 71 of the Revised Rules of Court.**

**SEC. 15. *Decision*. — The case shall be decided within thirty (30) days from the time the same is submitted for decision. The Decision may order the revocation of the registration of the subdivision or condominium project, the suspension, cancellation, or revocation of the license to sell and/or forfeiture, in whole or in part, of the performance bond mentioned in Section 6 hereof. In case forfeiture of the bond is ordered, the Decision may direct the provincial or city engineer to undertake or cause the construction of roads and of other requirements for the subdivision or condominium as stipulated in the bond, chargeable to the amount**

**forfeited. Such decision shall be immediately executory and shall become final after the lapse of 15 days from the date of receipt of the Decision.**

**SEC. 16. *Cease and Desist Order*. — Whenever it shall appear to the Authority that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of the provisions of this Decree, or of any rule or regulation thereunder, it may, upon due notice and hearing as provided in Section 13 hereof, issue a cease and desist order to enjoin such act or practices.**

**01. Period to appeal is 15 days.**

In *SGMC Realty Corporation* v. *Office of the President*,[23] it was settled that the period within which to appeal the decision of the Board of Commissioners of HLURB to the Office of the President is fifteen (15) days from receipt of the assailed decision, pursuant to Section 15 of PD No. 957 and Section 2 of PD No. 1344. The Court ruled that the 30-day period to appeal to the Office of the President from decisions of the Board as provided in Section 27 of the 1994 HLURB Rules of Procedure is not applicable, because special laws providing for the remedy of appeal to the Office of the President such as PD No. 957 and PD No. 1344, must prevail over the HLURB Rules of Procedure.

**SEC. 17. *Registration.* — All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.**

**Whenever a subdivision plan duly approved in accordance with Section 4 hereof, together with the corresponding owner's duplicate certificate of title, is presented to the Register of Deeds for registration, the Register of Deeds shall register the same in accordance with the provisions of the Land Registration Act, as amended: *Provided, however,* That if there is a street, passageway**

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[23]GR No. 126999, Aug. 30, 2000, 339 SCRA 275; Maxima Realty Management and Development Corporation v. Parkway Real Estate Development Corporation, GR No. 136492, Feb. 13, 2004, 422 SCRA 572.

**or required open space delineated on a complex subdivision plan hereafter approved and as defined in this Decree, the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of a city or municipality, no portion of any street, passageway, or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the requisite approval as provided under Section 22 of this Decree.**

### 01. Registration of sale.

Sales or conveyances of subdivision lots and condominium units shall be registered from the execution thereof by the seller with the Register of Deeds of the province or city where the property is situated. Except as otherwise provided for by law, the HLURB may in appropriate cases cause the Register of Deeds to cancel the registration, entries or annotations on titles made in this regard.[24]

**SEC. 18. *Mortgages*. — No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.**

### 01. Mortgage without knowledge of the buyer is an unsound business practice.

The act of a subdivision owner of mortgaging the condominium project without the knowledge and consent of the buyer of a unit

[24]Sec. 24, *ibid*.

therein, and without the approval of the HLURB is not only an unsound real estate business practice but also highly prejudicial to the buyer. The buyer as has a cause of action for annulment of the mortgage, the mortgage foreclosure sale, and the condominium certificate of title that was issued to mortgagee bank as highest bidder. The case falls within the exclusive jurisdiction of the HLURB as provided in PD No. 957 and PD No. 1344. The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for specific performance of the sale, or annulment of the mortgage, of a condominium unit, with damages.[25] That an encumbrance has been constituted over an entire property, of which the subject lot or unit is merely a part, does not affect the invalidity of the lien over the specific portion at issue. The fact that the lot had no separate TCT did not make it less of a "subdivision lot" entitled to the protection of PD No. 957.[26]

**SEC. 19. *Advertisements*. — Advertisements that may be made by the owner or developer through newspaper, radio, television, leaflets, circulars or any other form about the subdivision or the condominium or its operations or activities must reflect the real facts and must be presented in such manner that will not tend to mislead or deceive the public.**

**The owner or developer shall answerable and liable for the facilities, improvements, infrastructures or other forms of development represented or promised in brochures, advertisements and other sales propaganda disseminated by the owner or developer or his agents and the same shall form part of the sales warranties enforceable against said owner or developer, jointly and severally. Failure to comply with these warranties shall also be punishable in accordance with the penalties provided for in this Decree.**

### 01. Liability of owner for breach of warranties.

Under this provision, where the brochure that was disseminated indicated features that would be provided each condominium unit, this forms part of the sales warranties of the petitioner as subdivision

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[25]Union Bank of the Philippines v. Housing and Land Use Regulatory Board, GR No. 95364, June 29, 1992, 210 SCRA 558.

[26]Far East Bank & Trust Co. v. Marquez, GR No. 147964, Jan. 20, 2004, 420 SCRA 349.

owner. Hence, where respondent relied on the brochure in its decision to purchase a unit, and the petitioner failed to deliver certain items stated therein, then there was a clear violation of its warranties and representations. Petitioner was thus in breach when it failed to deliver a "closed-circuit TV monitor through which residents from their apartments can see their guests . . ."[27]

**SEC. 20. *Time of Completion.* — Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority.**

**01. Consequence of delay.**

Where petitioner sent respondent a "Contract to Sell" declaring that the construction would be finished on or before a certain date, but there was delay in the delivery, petitioner may be held liable in damages as may proved as a consequence of the delay.[28]

**02. Extension of time for completion.**

A **r**equest for extension of time to complete development of a subdivision or condominium project may be granted only in cases where non-completion of the project is caused by fortuitous events, legal orders or *force majeure* and with the written notice to lot or unit buyers without prejudice to the exercise of theirs rights pursuant to Section 23 of the Decree. The request for extension of time for completion shall be accompanied by a revised and financing scheme thereof.[29]

**SEC. 21. *Sales Prior to Decree.* — In cases of subdivision lots or condominium units sold or disposed of prior to the effectivity**

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[27]Bank of the Philippine Islands v. ALS Management and Development Corporation, *supra*.

[28]*Ibid*.

[29]Sec. 20, Rules Implementing PD No. 957.

**of this Decree, it shall be incumbent upon the owner or developer of the subdivision or condominium project to complete compliance with his or its obligations as provided in the preceding section within two years from the date of this Decree unless otherwise extended by the Authority or unless an adequate performance bond is filed in accordance with Section 6 hereof.**

**Failure of the owner or developer to comply with the obligations under this and the preceding provisions shall constitute a violation punishable under Sections 38 and 39 of this Decree.**

**SEC. 22. *Alteration of Plans.* — No owner or developer shall change or alter the roads, open spaces, infrastructures, facilities for public use and/or other form of subdivision development as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the Authority and the written conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the lot buyers in the subdivision.**

**SEC. 23. *Non-Forfeiture of Payments.* — No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. Such buyer may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate.**

### 01. Buyer need not give prior notice before desisting from further paying amortizations.

PD No. 957, "The Subdivision and Condominium Buyers' Protective Decree," was issued in the wake of numerous reports that many real estate subdivision owners, developers, operators and/or sellers "have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems and other basic requirements" for the health and safety of home and lot buyers. It was designed to stem the tide of "fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure

to deliver titles to buyers or titles free from liens and encumbrances." Should the notice requirement provided for in Section 23 be construed as required to be given before a buyer desists from further paying amortizations, the intent of the law to protect subdivision lot buyers will tend to be defeated.

A vendor of real estate whereon an adverse claim is validly annotated cannot invoke such registration to avoid his own obligation to make a full disclosure to the vendee of adverse claims affecting the property. The registration protects the adverse claimant because of the rule on constructive notice but not the person who makes the conveyance. It behooves such real estate developer and dealers to make proper arrangements with the financial institutions to allow the release of titles to buyers upon their full payment of the purchase price.[30]

**02. Buyer may not be ousted for non-payment due to the failure of the subdivision owner to put up the required improvements.**

The vendor and vendee are legally free to stipulate for the payment of either the cash price of a subdivision lot or its installment price. Should the vendee opt to purchase a subdivision lot via the installment payment system, he is in effect paying interest on the cash price, whether the fact and rate of such interest payment is disclosed in the contract or not. The contract for the purchase and sale of a piece of land on the installment payment system is not only lawful; it also reflects a widespread usage or custom in present-day commercial life.

Despite respondent's failure to fully pay the stipulated price of the lots subject of the action, petitioner as subdivision owner could not validly rescind the contract where he failed to introduce the required improvements in the subdivision. As Section 23 vests upon the buyer the option to demand reimbursement of the total amount paid, or to wait for further development of the subdivision, having opted for the latter alternative by waiting for the proper development of the site, he may not be ousted from the subdivision.[31]

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[30]Casa Filipina Realty Corporation v. Office of the President, GR No. 99346, Feb. 7, 1995, 241 SCRA 165.

[31]Relucio v. Brillante-Garfin, GR No. 76518, July 13, 1990, 199 SCRA 405.

**03. Prior purchasers cannot be dispossessed by a buyer of the foreclosed property.**

May a buyer of a property at a foreclosure sale dispossess prior purchasers on installment of individual lots therein, or compel them to pay again for the lots which they previously bought from the defaulting mortgagor-subdivision developer, on the theory that PD No. 957, "The Subdivision and Condominium Buyers' Protective Decree," is not applicable to the mortgage contract in question, the same having been executed prior to the enactment of the decree? This question was answered in the negative by the Supreme Court in *Philippine National Bank* v. *Office of the President*,[32] the facts of which are as follows:

Private respondents were buyers on installment of subdivision lots from Marikina Village, Inc. Notwithstanding the land purchase agreements it executed over said lots, the subdivision developer mortgaged the lots in favor of the petitioner, Philippine National Bank. The subdivision developer defaulted and PNB foreclosed on the mortgage. Acting on suits brought by private respondents, the HLURB Office of Appeals Adjudication and Legal Affairs (OAALA) in its decision ruled that PNB — without prejudice to seeking relief against Marikina Village, Inc. — may collect from private respondents only the remaining amortization, in accordance with the land purchase agreements they had previously entered into with Marikina Village, Inc., and cannot compel private respondents to pay all over again for the lots they had already bought from said subdivision developer. The HLURB and the Office of the President concurred.

Petitioner bank raised the following issues:

1. The Office of the President erred in applying PD No. 957 because said law was enacted only on July 12, 1976, while the subject mortgage was executed on December 18, 1975; and

2. PNB is not privy to the contracts between private respondents and mortgagor-subdivision developer, hence, the Office of the President erred in ordering petitioner Bank to accept private respondents' remaining amortization and issue the corresponding titles after payment thereof.

In ruling in favor of the retroactivity of the law, Justice Panganiban, speaking for the Supreme Court, stated:

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[32]GR No. 104528, Jan. 18, 1996, 252 SCRA 5.

"While P.D. No. 957 did not expressly provide for retroactivity in its entirety, yet the same can be plainly inferred from the unmistakable intent of the law to protect innocent lot buyers from scheming subdivision developers. As between these small lot buyers and the gigantic financial institutions which the developers deal with, it is obvious that the law — as an instrument of social justice — must favor the weak. x x x Indeed, the petitioner Bank had at its disposal vast resources with which it could adequately protect its loan activities, and therefore is presumed to have conducted the usual 'due diligence' checking and ascertained (whether thru ocular inspection or other modes of investigation) the actual status, condition, utilization and occupancy of the property offered as collateral. It could not have been unaware that the property had been built on by small lot buyers. On the other hand, private respondents obviously were powerless to discover the attempt of the land developer to hypothecate the property being sold to them. It was precisely in order to deal with this kind of situation that P.D. 957 was enacted, its very essence and intendment being to provide a protective mantle over helpless citizens who may fall prey to the razzmatazz of what P.D. 957 termed 'unscrupulous subdivision and condominium sellers.'

Truly, this Court cannot allow the injustice that will be wrought by a strictly prospective application of the law. Little people who have toiled for years through blood and tears would be deprived of their homes through no fault of their own. x x x Indeed, it would be illogical in the extreme if P.D. 957 is to be given full force and effect and yet, the fraudulent practices and manipulations it seeks to curb in the first instance can nevertheless be liberally perpetrated precisely because P.D. 957 cannot be applied to existing antecedent mortgage contracts.

Likewise noteworthy are certain provisions of P.D. 957, which themselves constitute strong arguments in favor of the retroactivity of P.D. 957 as a whole. These are Sections 20, 21 and 23 thereof, which by their very terms have retroactive effect and will impact upon even those contracts and transactions entered into prior to P.D. 957's enactment."

**04. Failure to develop a subdivision may justify non-payment of amortizations by a lot buyer.**

It was also held in *Eugenio* v. *Drilon*[33] that the failure to develop a subdivision constitute legal justification for the non-payment of amortization by a buyer on installment under land purchase agreements entered into prior to the enactment of PD No. 957. While the law did not expressly provide for retroactivity in its entirety, such can be plainly inferred from the unmistakable intent of the law which is to provide a protective mantle over helpless citizens who may fall prey to the manipulations and machinations of "unscrupulous subdivision and condominium sellers."

> "Moreover, as P.D. No. 957 is undeniably applicable to the contracts in question, it follows that Section 23 thereof had been properly invoked by private respondent when he desisted from making further payment to petitioner due to petitioner's failure to develop the subdivision project according to the approved plans and within the time limit for complying with the same. x x x Furthermore, respondent Executive Secretary also gave due weight to the following matters: although private respondent started to default on amortization payments beginning May 1975, so that by the end of July 1975 he had already incurred three consecutive arrearages in payments, nevertheless, the petitioner, who had the cancellation option available to him under the contract, did not exercise or utilize the same in timely fashion but delayed until May 1979 when he finally made up his mind to cancel the contracts. But by that time the land purchase agreements had already been overtaken by the provisions of P.D. 957, promulgated on July 12, 1976. In any event, as pointed out by respondent HLURB and seconded by the Solicitor General, the defaults in amortization payments incurred by private respondent had been effectively condoned by the petitioner, by reason of the latter's tolerance of the defaults for a long period of time."

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[33]GR No. 109494, Jan. 22, 1996, 252 SCRA 106.

**05. New obligations of the owner under PD No. 957 cannot be deemed part of contracts executed before its effectivity.**

It should be noted that in *Mapa* v. *Arroyo*,[34] it was held that what subsequently were statutorily provided in PD No. 957 dated July 12, 1976 as obligations of the owner or developer could not have been intended by the parties to be a part of their contracts executed before its effectivity. Section 20, in relation to Section 21, of the decree merely requires the owner or developer to construct the facilities, improvements, infrastructures and other forms of development but only such as are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisements. Thus, in a case where the petitioner stopped payments of his monthly obligations as early as December, 1976, which is a mere five months after the effectivity of PD No. 957 or about a year after the execution of the contracts, it was held to be improper for petitioner to have suspended payments on the ground of non-development since the period allowed for respondent's obligation to undertake such development had not yet expired, *i.e.*, respondent still had one and 1/2 years to comply with its legal obligation to develop the subdivision under the decree and two years to do so under their agreement.

Relatedly, in *Dueñas* v. *Santos Subdivision Homeowners Association*,[35] it was held that where there is no issue as to non-development of the subdivision nor any allegation of non-payment of amortizations, PD No. 957 is not to be applied retroactively. Additionally, Article 4 of the Civil Code provides that laws shall have no retroactive effect, unless the contrary is provided. Thus, it is necessary that an express provision for its retroactive application must be made in the law. There being no such provision in both PD Nos. 957 and 1344, these decrees cannot be applied to a situation that occurred years before their promulgation.[36]

**06. PD No. 957 has no provision on abatement of nuisance.**

In *Calma* v. *Court of Appeals*,[37] petitioner, purchaser of a lot in respondent's subdivision, wrote respondent complaining that the

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[34]GR No. 78585, July 5, 1989, 175 SCRA 76.

[35]GR No. 149417, June 4, 2004, 431 SCRA 76.

[36]People's Industrial and Commercial Corporation v. Court of Appeals, GR No. 112733, Oct. 24, 1997, 281 SCRA 206.

[37]GR No. 78447, Aug. 17, 1989, 176 SCRA 555.

compound of the Ongs fronting their residence was being utilized as a lumber yard and that a "loathsome noise and nervous developing sound" emanating therefrom disturbed him and his family. Failing to get an answer, petitioners filed with the National Housing Authority (NHA) a complaint against respondent for "Violation of the Provisions, Rules and Regulations of the Subdivision and Condominium Buyers Protective Decree under Presidential Decree No. 957," specifically its refusal to exercise its right to cause the demolition of the structures built by the Ongs. Petitioner prayed that respondent be ordered to abate the nuisance and/or demolish the offending structures and to refund the amortization payments made on petitioner's lot. He also prayed that respondent be penalized under Section 39 of PD No. 957 and that its license be revoked. In due time, the Human Settlements and Regulatory Commission, which had in the meantime taken over the powers of the NHA, rendered its decision dismissing the complaint for lack of merit, finding that respondent did not violate Sections 9(b), 19 and 23 of PD No. 957, but included a portion holding respondent responsible for the abatement of the alleged nuisance on the ground that it was part of its implied warranty that its subdivision lots would be used solely and primarily for residential purpose. The case eventually reached the Supreme Court which held that the power to abate a nuisance is not one of those enumerated under PD No. 957, hence, the commission gravely abused its discretion amounting to lack or excess of jurisdiction when it ordered respondent to "take appropriate measure for the prevention/abatement of the nuisance complained of." The Court noted that while the Commission is specifically authorized by EO No. 648 dated February 7, 1981 (otherwise known as the "Charter of the Human Settlements Regulatory Commission") to "issue orders after conducting the appropriate investigation for the cessation or closure of any use or activity and to issue orders to vacate or demolish any building or structure that it determines to have violated or failed to comply with any of the laws, presidential decrees, letter of instructions, executive orders and other presidential issuances and directives being implemented by it, either on its own motion or upon complaint of any interested party," the commission's conclusion that the activities being conducted and the structures in the property of the Ongs constituted a nuisance was not supported by any evidence.

**SEC. 24. *Failure to pay installments.* — The rights of the buyer in the event of this failure to pay the installments due for reasons other than the failure of the owner or developer to develop the project shall be governed by Republic Act No. 6552.**

**Where the transaction or contract was entered into prior to the effectivity of Republic Act No. 6552 on August 26, 1972, the defaulting buyer shall be entitled to the corresponding refund based on the installments paid after the effectivity of the law in the absence of any provision in the contract to the contrary.**

**01. Rights of the buyer under RA No. 6552 (Maceda Law).**

RA No. 6552, otherwise known as the "Realty Installment Buyer Protection Act," reads:

"AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS

SECTION 1. This Act shall be known as the "Realty Installment Buyer Protection Act."

SEC. 2. It is hereby declared a public policy to protect buyers of real estate on installment payments against onerous and oppressive conditions.

SEC. 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: *Provided,* That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made, and, after five years of installments, an addi-

tional five per cent every year but not to exceed ninety per cent of the total payments made: *Provided,* That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

SEC. 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due.

If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

SEC. 5. Under Sections 3 and 4, the buyer shall have the right to sell his rights or assign the same to another person or to reinstate the contract by updating the account during the grace period and before actual cancellation of the contract. The deed of sale or assignment shall be done by notarial act.

SEC. 6. The buyer shall have the right to pay in advance any installment or the full unpaid balance of the purchase price any time without interest and to have such full payment of the purchase price annotated in the certificate of title covering the property.

SEC. 7. Any stipulation in any contract hereafter entered into contrary to the provisions of Sections 3, 4, 5 and 6, shall be null and void.

SEC. 8. If any provision of this Act is held invalid or unconstitutional, no other provision shall be affected thereby.

SEC. 9. This Act shall take effect upon its approval.

Approved: August 26, 1972."

Known as the Maceda Law, RA No. 6552 recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force. It also provides the right of the buyer on installments in case he defaults in the payment of succeeding installments.[38]

RA No. 6552 governs sales of real estate on installments. It recognizes the vendor's right to cancel such contracts upon failure of the vendee to comply with the terms of the sale, but imposes, chiefly for the latter's protection, certain conditions thereon. Even in residential properties, the Act recognizes and reaffirms the vendor's right to cancel the contract to sell upon breach and non-payment of the stipulated installments.[39] The Act provides that in all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments x x x where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) **Grace Period** — to pay, without additional interest, the unpaid installments due within the total grace period earned by him which is fixed at the rate of one month grace period for every year of installment payments made: *Provided,* That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any; and

(b) **Refund of "Cash Surrender Value"** — if the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made and, after five years of installments, an additional five percent every year but not to exceed ninety per cent of the total payments made; *Provided,* That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

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[38]Rillo v. Court of Appeals, GR No. 125347, June 19, 1997, 274 SCRA 461.

[39]Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc., GR No. L-25885, Nov. 16, 1978, 86 SCRA 305.

The case of *Layug* v. *Intermediate Appellate Court*[40] is illustrative:

> "In the case at bar, Layug had paid two (2) annual installments of P40,000.00 each. He is deemed therefore, in the words of the law, to have 'paid at least two years of installments.' He therefore had a grace period of 'one month . . . for every year of installment payments made,' or two (2) months (corresponding to the two years of installments paid) from October 5, 1980 within which to pay the final installment. That he made no payment within this grace period is plain from the evidence. He has thus been left only with the right to a refund of the 'cash surrender value of the payments on the property equivalent to fifty percent of the total payments made,' or P40,000.00 (*i.e.,* 1/2 of the total payments of P80,000.00). Such refund will be the operative act to make effective the cancellation of the contract by Gabuya, conformably with the terms of the law. The additional formality of a demand on Gabuya's part for rescission by notarial act would appear, in the premises, to be merely circuitous and consequently superfluous."

RA No. 6552 makes no distinction between "option" and "sale" which, under PD No. 957, also includes "an exchange or attempt to sell, an option of sale or purchase, a solicitation of a sale or an offer to sell directly." This all-embracing definition virtually includes all transactions concerning land and housing acquisition, including reservation agreements. It should be noted that RA No. 6552 mandates cancellation of a contract by a notarial act.[41]

As with PD Nos. 957 and 1344, RA No. 6552 does not expressly provide for its retroactive application.[42]

### 02. Rule before passage of RA No. 6552.

In *Jison* v. *Court of Appeals*,[43] petitioners entered into a contract to sell with private respondent, Robert O. Phillips & Sons, Inc.,

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[40]Layug v. Intermediate Appellate Court, GR No. 75364, Nov. 23, 1988, 167 SCRA 627.

[41]Realty Exchange Venture Corporation v. Sendino, GR No. 109703, July 5, 1994, 233 SCRA 665.

[42]People's Industrial and Commercial Corporation v. Court of Appeals, *supra*.

[43]GR No. L-45349, Aug. 15, 1988, 164 SCRA 399.

whereby the latter agreed to sell to the former a lot at the Victoria Valley Subdivision in Antipolo, Rizal for the agreed price of P55,000.00, with interest at 8% per annum, payable on an installment basis. Pursuant to the contract, petitioners paid private respondents a down payment of P11,000.00 on October 20, 1961 and from October 27, 1961 to May 8, 1965 a monthly installment of P533.85. Thereafter, due to the failure of petitioners to build a house as provided in the contract, the stipulated penalty of P5.00 per square meter was imposed to the effect that the monthly amortization was increased to P707.24.

On January 1, 1966, February 1, 1966 and March 1, 1966, petitioners failed to pay the monthly installments due on said dates although petitioners subsequently paid the amounts due and these were accepted by private respondent. Again on October 1, 1966, November 1, 1966, December 1, 1966 and January 1, 1967, petitioners failed to pay. On January 11, 1967, private respondent sent a letter to petitioners calling their attention to the fact that their account was four months overdue. This letter was followed up by another letter dated February 27, 1967 where private respondent reminded petitioner of the automatic rescission clause of the contract. Petitioners eventually paid on March 1, 1967. Petitioners again failed to pay the monthly installments due on February 1, 1967, March 1, 1967 and April 1, 1967. Thus, in a letter dated April 6, 1967, private respondent returned petitioners' check and informed them that the contract was cancelled when on April 1, 1987 petitioners failed to pay the monthly installment due, thereby making their account delinquent for three months.

The principal issue in the case is the legality of the rescission of the contract and the forfeiture of the payments already made by petitioners. To support the rescission and forfeiture, private respondent falls back on paragraph 3 of the contract which reads:

> "This contract shall be considered automatically rescinded and cancelled and of no further force and effect, upon the failure of the Vendee to pay when due Three (3) or more consecutive monthly installments mentioned in Paragraph 2 of this Contract, or to comply with any of the terms and conditions hereof, in which case the Vendor shall have the right to resell the said parcel of land to any Vendee and any amount derived from the sale on account hereof shall be forfeited in favor of the Vendor as liquidated damages for the breach of the Contract by the Vendee, the

latter hereby renouncing and reconveying absolutely and forever in favor of the Vendor all rights and claims to and for all the amount paid by the Vendee on account of the Contract, as well as to and for all compensation of any kind, hereby also agreeing in this connection, to forthwith vacate the said property or properties peacefully without further advise of any kind."

In ruling that the rescission by private respondent of the contract to sell was valid, the Supreme Court stated:

"There is no denying that in the instant case the resolution or rescission of the Contract to Sell was valid. Neither can it be said that the cancellation of the contract was ineffective for failure of private respondents to give petitioners notice thereof as petitioners were informed by private respondent that the contract was cancelled in the letter dated April 6, 1967 (Exh. 'D'). As R.A. No. 6552 was not yet effective, the notice of cancellation need not be by notarial act, private respondent's letter being sufficient compliance with the legal requirement.

The facts of the instant case should be distinguished from those in the Palay, Inc. case,[44] as such distinction will explain why the Court in said case invalidated the resolution of the contract. In said case, the subdivision developer, without informing the buyer of the cancellation of the contract, resold the lot to another person. The lot buyer in said case was only informed of the resolution of the contract some six years later after the developer rejected his request for authority to assign his rights under the contract. Such a situation does not obtain in the instant case. In fact, petitioners were informed of the cancellation of their contract in April 1967, when private respondent wrote them the letter dated April 6, 1967 (Exh. 'D'), and within a month they were able to file a complaint against private respondent.

While the resolution of the contract and the forfeiture of the amounts already paid are valid and binding upon petitioners, the Court is convinced that the forfeiture of

[44]GR No. L-56076, Sept. 21, 1983, 124 SCRA 692.

the amount of P47,312.64, although it includes the accumulated fines for petitioners' failure to construct a house as required by the contract, is clearly iniquitous considering that the contract price is only P55,000.00. The forfeiture of fifty percent (50%) of the amount already paid, or P23,656.32, appears to be a fair settlement. In arriving at this amount the Court gives weight to the fact that although petitioners have been delinquent in paying their amortizations several times to the prejudice of private respondent, with the cancellation of the contract the possession of the lot reverts to private respondent who is free to resell it to another party. Also, had R.A. No. 6552 been applicable to the instant case, the same percentage of the amount already paid would have been forfeited [Sec. 3(b)].

The Court's decision to reduce the amount forfeited finds support in the Civil Code. As stated in paragraph 3 of the contract, in case the contract is cancelled, the amounts already paid shall be forfeited in favor of the vendor as liquidated damages. The Code provides that liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable [Art. 2227.]"

**03. Buyer is entitled to a copy of the contract to sell.**

It is the duty of the subdivision owner to furnish the buyer with a copy of the contract to sell, otherwise the latter may be justified in suspending payment of his monthly amortization.[45]

**SEC. 25. *Issuance of Title.* — The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the**

[45]Gold Loop Properties v. Court of Appeals, GR No. 122088, Jan. 26, 2001, 350 SCRA 371.

**corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.**

**01. Duty of owner to deliver title.**

The foregoing provision makes it clear that upon full payment, the seller is duty-bound to deliver the title of the unit to the buyer. Even with a valid mortgage over the lot, the seller is still bound to redeem said mortgage without any cost to the buyer apart from the balance of the purchase price and registration fees.[46]

Section 25 imposes an obligation on the part of the owner or developer, in the event the mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, to redeem the mortgage or the corresponding portion thereof within six months from such issuance. Supposing there is no such issuance of the title, from what event is the six-month period counted? Will this period not begin to run at all unless the title has been issued?

The Supreme Court, in *Casa Filipina Development Corporation* v. *Deputy Executive Secretary,*[47] rejected the argument that the issuance of the title is a prerequisite to the running of the six-month period of redemption, otherwise, it explained, the owner or developer can readily concoct a thousand and one reasons as justifications for its failure to issue the title and in the process, prolong the period within which to deliver the title to the buyer free from any liens or encumbrances. Additionally, by not issuing/delivering the title of the lot to private respondent upon full payment thereof, the subdivision owner has already violated the explicit mandate of the first sentence of Section 25 of the decree. Of equal importance is the primary reason behind the enactment of the law, *i.e.*, the need to curve the alarming magnitude of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value.

Upon full payment of the agreed price, the subdivision owner is mandated by law to deliver the title of the lot or unit to the buyer.

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[46]De Vera v. Court of Appeals, GR No. 132869, Oct. 18, 2001, 367 SCRA 534.
[47]GR No. 96494, May 28, 1992.

He has no right to use the certificate of title of the buyer as collateral for a new loan.[48]

**SEC. 26. *Realty Tax.* — Real estate tax and assessment on a lot or unit shall de paid by the owner or developer without recourse to the buyer for as long as the title has not passed the buyer; *Provided, however,* That if the buyer has actually taken possession of and occupied the lot or unit, he shall be liable to the owner or developer for such tax and assessment effective the year following such taking of possession and occupancy.**

**SEC. 27. *Other Charges.* — No owner or developer shall levy upon any lot or buyer a fee for an alleged community benefit. Fees to finance services for common comfort, security and sanitation may be collected only by a properly organized homeowners association and only with the consent of a majority of the lot or unit buyers actually residing in the subdivision or condominium project.**

**SEC. 28. *Access to Public Offices in the Subdivisions.* — No owner or developer shall deny any person free access to any government office or public establishment located within the subdivision or which may be reached only by passing through the subdivision.**

**SEC. 29. *Right of Way to Public Road.* — The owner or developer of a subdivision without access to any existing public road or street must secure a right of way to a public road or street and such right of way must be developed and maintained according to the requirement of the government and authorities concerned.**

### 01. Duty of subdivision owner to secure right of way.

The above provision applies to the owner or developer of a subdivision without access to a public highway. A municipal ordinance declaring a subdivision road open to public use "when deemed necessary by the proper authorities" simply allows persons other than the residents of the subdivision to use the road when they are inside the subdivision but it does not give outsiders a right to open subdivision walls so they can enter the subdivision from any point. The closure of the dead ends is a valid exercise of proprietary rights.[49]

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[48]G.O.A.L. v. Court of Appeals, GR No. 118822, July 28, 1997, 276 SCRA 359.
[49]Abellana v. Court of Appeals, GR No. 97039, April 24, 1992, 208 SCRA 316.

**SEC. 30. *Organization of Homeowners Association.* — The owner or developer of a subdivision project or condominium project shall initiate the organization of a homeowners association among the buyers and residents of the projects for the purpose of promoting and protecting their mutual interest and assist in their community development.**

**SEC. 31. *Roads, Alleys, Sidewalks and Open Spaces.* — The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty percent (30%) of the gross area for open space. such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:**

**a. 9% of gross area for high density or social housing (66 to 100 family lot per gross hectare)**

**b. 7% of gross area for medium-density or economic housing (21 to 65 family lot per gross hectare).**

**c. 3.5 % of gross area low-density or open market housing (20 family lots and below per gross hectare).**

**These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.**

**Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes. *(As amended by PD No. 1216, October 14, 1977)***

### 01. Donation of parks and playgrounds by owner to the city or municipality mandatory.

Pursuant to the wording of Section 31 of PD No. 957, as amended by PD No. 1216, the owner as developer of a subdivision is under legal obligation to donate the open space exclusively allocated for parks, playgrounds and recreational use. This can be clearly estab-

lished by referring to the original provision of Section 31 of PD No. 957 which reads as follows:

> "SEC. 31. *Donation of roads and open spaces to local government*. — The registered owner or developer of the subdivision or condominium project, upon completion of the development of said project may, at his option, convey by way of donation the roads and open spaces found within the project to the city or municipality wherein the project is located. Upon acceptance of the donation by the city or municipality concerned, no portion of the area donated shall thereafter be converted to any other purpose or purposes unless after hearing, the proposed conversion is approved by the Authority."

It will be noted that under the aforequoted original provision, it was optional on the part of the owner or developer to donate the roads and open spaces found within the project to the city or municipality where the project is located. However, said Section 31 as amended now states in its last paragraph:

> "Upon their completion . . ., the roads, alleys, sidewalks and playgrounds *shall be donated* by the owner or developer to the city or municipality and it shall be mandatory for the local government to accept; provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. . . ."

It is clear from the aforequoted amendment that it is no longer optional on the part of the subdivision owner/developer to donate the open space for parks and playgrounds; rather, there is now a legal obligation to donate the same. Although there is a proviso that the donation of the parks and playgrounds may be made to the homeowners association of the project with the consent of the city or municipality concerned, nonetheless, the owner/developer is still obligated under the law to donate. Such option does not change the mandatory character of the provision. The donation has to be made regardless of which donee is picked by the owner/developer.[50] PD No. 1216 has no retroactive effect.[51]

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[50]City of Angeles v. Court of Appeals, GR No. 97882, Aug. 28, 1996, 261 SCRA 90.

[51]Dueñas v. Santos Subdivision Homeowners Association, *supra*.

**02. Percentage of area devoted for parks and playgrounds.**

As to the percentage of area for parks and playgrounds, the 3.5% to 9% allotted by law for said purposes should be based on the gross area of the entire subdivision, and not merely on the area of the open space alone. The language of Section 31 of PD No. 957, as amended by PD No. 1216, is wanting in clarity and exactitude, but it can be easily inferred that the phrase "gross area" refers to the entire subdivision area. PD No. 1216 was an attempt to achieve a happy compromise and a realistic balance between the imperatives of environmental planning and the need to maintain economic feasibility in subdivision and housing development, by reducing the required area for parks, playgrounds and recreational uses from thirty percent (30%) as required by PD No. 953 to only 3.5% — 9% of the *entire area of the subdivision* under the amendatory law.[52]

In light of Section 31, as amended, declaring the open space for parks, playgrounds and recreational area as non-buildable, the construction and operation of a drug rehabilitation center, for example, on the land constitutes a violation of the law. The donated land should remain with the donee as the law clearly intended such open spaces to be perpetually part of the public domain, non-alienable and permanently devoted to public use as such parks, playgrounds or recreation areas.[53]

**03. Certificate of title over road lots cannot be collaterally attacked.**

In *Borbajo* v. *Hidden View Homeowners, Inc.*,[54] respondents (members of the homeowners association) closed the road lots registered in the name of petitioner which adversely affected the residents of the subdivisions at the back, as well as petitioner herself since her delivery trucks and heavy equipment used in the construction of her housing projects then on-going had been effectively prevented from passing through the road lots. Respondents claimed that the sale of the road lots to petitioner was illegal and contrary to the provisions of PD No. 957 which requires that the road lots in a subdivision development shall be in the name of the developer or

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[52]Angeles v. Court of Appeals, *supra*.
[53]*Ibid.*
[54]GR No. 152440, Jan. 31, 2005, 450 SCRA 315.

owner, of which petitioner is neither. The closure of the road lots prompted petitioner to file an action with the regional trial court, with prayer for injunction to maintain the *status quo* and enjoin respondents from preventing him to use the road lots as registered owner thereof. In their defense, respondents argued that petitioner is not the owner or developer of the subdivision, and in any case his title was obtained fraudulently. The Court sustained the right of petitioner to the property on the basis of his title which is presumed valid until annulled in a separate and direct proceeding. Justice Tinga wrote the opinion for the Court:

> "The ultimate question for resolution is whether respondents may legally prevent Borbajo (petitioner) from using and passing through the three (3) road lots within Hidden View Subdivision I. It is worthy of note that the right of respondents to use the road lots themselves is not in dispute.
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> x x x x x x x x x
>
> As a registered co-owner of the road lots, Borbajo is entitled to avail of all the attributes of ownership under the Civil Code — *jus utendi, fruendi, abutendi, disponendi et vindicandi*. Article 428 of the New Civil Code is explicit that the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law. A co-owner, such as Borbajo, is entitled to use the property owned in common under Article 486 of the Civil Code. Therefore, respondents cannot close the road lots to prevent Borbajo from using the same.
>
> The Court of Appeals ruled that the road lots cannot be sold to any person pursuant to P.D. No. 957, as amended. It also pointed out that fraud is manifest in the acquisition of titles thereto. However, it is a settled rule that a Torrens title cannot be collaterally attacked.
>
> It is a well-known doctrine that the issue as to whether title was procured by falsification or fraud can only be raised in an action expressly instituted for the purpose. A Torrens title can be attacked only for fraud, within one year after the date of the issuance of the decree of registration. Such attack must be direct, and not by a collateral proceeding. The title represented by the certificate cannot be changed, altered, modified, enlarged, or

diminished in a collateral proceeding. The certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein.

However, in upholding the efficiency value of the disputed titles for purposes of the present petition, we are not foreclosing any future determination by appropriate forum on the legality of Borbajo's titles over the road lots. Verily, a separate case for annulment of titles over the road lots is now pending before the court. There are serious allegations that the issuance of the TCTs over the road lots was tainted with fraud as evidenced by alterations made on the face of the certificates and discrepancies in the records of the contract of absolute sale filed before the Office of the Register of Deeds and the Notarial Division of the RTC of Cebu City. If the court finds that the titles of Borbajo were obtained fraudulently, her right to the road lots ceases as well as her right-of-way by virtue of said titles."

**SEC. 32. *Phases of Subdivision.* — For purposes of complying with the provisions of this Decree, the owner or developer may divide the development and sale of the subdivision into phases, each phase to cover not less than ten hectares. The requirement imposed by this Decree on the subdivision as a whole shall be deemed imposed on each phase.**

**SEC. 33. *Nullity of waivers.* — Any condition, stipulation, or provision in contract of sale whereby any person waives compliance with any provision of this Decree or of any rule or regulation issued thereunder shall be void.**

**SEC. 34. *Visitorial powers.* — This Authority, through its duly authorized representative may, at any time, make an examination into the business affairs, administration, and condition of any person, corporation, partnership, cooperative, or association engaged in the business of selling subdivision lots and condominium units. For this purpose, the official authorized so to do shall have the authority to examine under oath the directors, officers, stockholders or members of any corporation, partnership, association, cooperative or other persons associated or connected with the business and to issue subpoena or subpoena *duces tecum* in relation to any investigation that may arise therefrom.**

**The Authority may also authorize the Provincial, City or Municipal Engineer, as the case may be, to conduct an ocular inspection of the project to determine whether the development of said project conforms to the standards and specifications prescribed by the government.**

**The books, papers, letters, and other documents belonging to the person or entities herein mentioned shall be open to inspection by the Authority or its duly authorized representative.**

**SEC. 35. *Takeover Development.* — The Authority, may take over or cause the development and completion of the subdivision or condominium project at the expenses of the owner or developer, jointly and severally, in cases where the owner or developer has refused or failed to develop or complete the development of the project as provided for in this Decree.**

**The Authority may, after such takeover, demand, collect and receive from the buyers the installment payments due on the lots, which shall be utilized for the development of the subdivision.**

**SEC. 36. *Rules and Regulations.* — The Authority shall issue the necessary standards, rules and regulations for the effective implementation of the provisions of this Decree. Such standards, rules and regulations shall take effect immediately after their publication three times a week for two consecutive weeks in any newspaper of general circulation.**

**SEC. 37. *Deputization of law enforcement agencies*. — The Authority may deputize the Philippine Constabulary or any law enforcement agency in the execution of its final orders, rulings or decisions.**

**SEC. 38. *Administrative Fines*. — The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court.**

**SEC. 39. *Penalties*. — Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine of not more than twenty thousand pesos (P20,000.00) and/or imprisonment of not more than ten years: *Provided,* That in the case of corporations, partnership, cooperatives, or associations,**

**the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto.**

**SEC. 40. *Liability of controlling persons*. — Every person who directly or indirectly controls any person liable under any provision of this Decree or of any rule or regulation issued thereunder shall be liable jointly and severally with and to the same extent as such controlled person unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.**

**SEC. 41. *Other remedies.* — The rights and remedies provided in this Decree shall be in addition to any and all other rights and remedies that may be available under existing laws.**

**SEC. 42. *Repealing clause.* — All laws, executive orders, rules and regulations or part thereof inconsistent with the provisions of this Decree are hereby repealed or modified accordingly.**

**SEC. 43. *Effectivity*. — This Decree shall take effect upon its approval.**

**Done in the City of Manila, this 12th day of July, in the year of Our Lord, nineteen hundred and seventy-six.**

# APPENDICES

## APPENDIX "A"

## ACT NO. 496

AN ACT TO PROVIDE FOR THE ADJUDICATION AND REGISTRATION OF TITLES TO LANDS IN THE PHILIPPINE ISLANDS

SECTION 1. The short title of this Act shall be *"The Land Registration Act."*

SEC. 2. A court is hereby established to be called the "Court of Land Registration," which shall have the exclusive jurisdiction of all applications for the registration under this Act of title to land or buildings or an interest therein within the Philippine Islands, with power to hear and determine all questions arising upon such applications, and also have jurisdiction over such other questions as may come before it under this Act, subject, however, to the right of appeal, as hereinafter provided. The proceedings upon such applications shall be proceedings *in rem* against the land and the buildings and improvements thereon, and the decrees shall operate directly on the land and the buildings and improvements thereon, and vest and establish title thereto.

The court shall hold its sittings in Manila, but may adjourn from time to time to such other places as the public convenience may require, and may hold sessions at any time in the capital of any province. In the city of Manila, the Municipal Board, and in the provinces, the provincial boards, shall provide suitable rooms for the sittings of the Court of Land Registration in the same building with, or convenient to, the office of the registrar of deeds, and shall provide all necessary books and such printed blanks and stationery for use in registration proceedings as may be ordered by the court hereby created.

The court shall have jurisdiction throughout the Philippine Archipelago, and shall always be open, except on Sundays and holi-

days established by law. It shall be a court of record, and shall cause to be made a seal, and to be sealed therewith all orders, process, and papers made by or proceeding from the court and requiring a seal. All notices, orders, and process of such court may run into any province and be returnable, as the court may direct.

The court shall from time to time make general rules and forms for procedure, conforming as near as may be to practice in special proceedings in Courts of First Instance, but subject to the express provisions of this Act and to general laws. Such rules and forms before taking effect shall be approved by the judges of the Supreme Court or a majority thereof.

In this Act, except where the context requires a different construction, the word "court" shall mean the Court of Land Registration. (Amended by Sec. 1, Act No. 659; partly repealed by Secs. 10 and 26[a], Act No. 2347; Secs. 161, *et seq.,* Act No. 2711, as amended by Acts Nos. 2941, 3107 and 3334; and Sec. 88, RA No. 296)

SEC. 3. (Repealed by Final Section [b], Act No. 2711)

SEC. 4. (Repealed by Secs. 10 and 29, Act No. 2347)

SEC. 5. Citations, orders of notice, and all other process issuing from the court shall be under the seal of the court and signed by the judge or clerk thereof, and shall be served in the manner provided for the service of process in the Code of Procedure in Civil Actions and Special Proceedings, and by the officers therein designated as officers of the court, unless otherwise specially ordered in this Act.

SEC. 6. (Repealed by Sec. 29, Act No. 2347 and by Final Section [b], Act No. 2711)

SEC. 7. There shall be a clerk and an assistant clerk of the Court of Land Registration, who shall be appointed by the Attorney-General, with the approval of the Secretary of Finance and Justice. The clerk and assistant clerk shall perform their duties under the control and supervision of the senior judge of the court and may be removed from office for cause by said senior judge.

The clerk shall have authority, subject to the provisions of the Civil Service Law and with the approval of the Attorney-General, to appoint and employ the necessary deputies, assistants, clerks, translators, stenographers, typists, messengers, and other subordinate employees which may be authorized by law.

The assistant clerk shall act as chief deputy to the clerk of the court and shall perform such other duties as may be assigned to him

by the senior judge or the clerk of the court. In case of the death or disability of the clerk, the assistant clerk shall perform the duties of the clerk until the vacancy is filled or the disability is removed: *Provided, however,* That any judge of the Court of Land Registration having jurisdiction over any particular case may issue such orders to the clerk with reference to the case he may deem proper, without the intervention of the senior judge, and the clerk shall comply therewith. (Amended by Sec. 1, Act No. 614, and Sec. 2, Act No. 1648; Superseded by R.A. No. 1151.)

SEC. 8. (Superseded by Sec. 174*, et seq.,* Act No. 2711)

SEC. 9. (Superseded by Sec. 29, Act No. 2347, and by Final Section [b], Act No. 2711)

SEC. 10. (Impliedly repealed and superseded by Sec. 192, Act No. 2711)

SEC. 11. (Repealed by Sec. 29, Act No. 2347)

SEC. 12. (Repealed by Sec. 12, Act No. 1699)

SEC. 13. The salary of the judge of the Court of Land registration shall be ten thousand pesos *per annum*, and that of the associate judge shall be nine thousand pesos *per annum*; the salary of the clerk of the court shall be five thousand pesos *per annum*; the salary of any associate judge appointed after July first nineteen hundred and five, under this Act shall be eight thousand pesos *per annum* for the first two years of service, and thereafter nine thousand pesos *per annum*.

All salaries and expenses of the court, including those for necessary interpreters, translators, stenographers, typists, and other employees, as well as those of deputy or assistant clerks duly authorized, shall be paid from the Insular Treasury, but the salary of the register of deeds for the city of Manila and of all his deputies, assistants or clerks duly authorized and appointed, and all the expenses of every kind incident to the office of register of deeds, including necessary books and stationery, shall be paid out of the respective provincial treasuries, or out of the Insular Treasury from funds belonging to the city of Manila as the case may be. All fees payable under this Act for services of the clerk of the Court of Land Registration shall be deposited in the Insular Treasury. All fees payable under this Act for services of the register of deeds or his deputy or clerks, including those of entry of original certificate of title, issuing all duplicates thereof, for the registration of instruments,

making and attesting copies of memorandum or instruments, for filing and registering adverse claims, for entering statement of change of residence or post office, for entering any note on registration books, for registration of a suggestion of dearth or notice of proceedings in bankruptcy, insolvency, or the like, for the registration of a discharge of a lease or a mortgage or instrument creating an encumbrance, for the registration of any levy or discharge or dissolution of attachment or levy or of any certificate of or receipt for payment of taxes or a notice of any pending action, or a judgment or decree, for indorsing of any mortgage lien or other instrument, memorandum of partition or for certified copies of registered instruments, shall be deposited in the appropriate provincial treasury, or in the Insular Treasury for the city of Manila, as the case may be.

All fees payable under this Act for services by sheriff or other officer shall be paid to the officer or person entitled thereto.

Registers of Deeds shall pay over to the provincial treasury or to the Treasury of the Philippine Archipelago, as the case may be, at the end of each calendar month all funds received by them in accordance with the provisions of this Act. (Amended by Sec. 3, Act No. 1108, Sec. 1, Act No. 1109, Sec. 1, Act No. 1312, and Sec. 6, Act No. 1699; part referring to Court of Land Registration repealed by Secs. 10 and 11, Act No. 2374; and part referring to Register of Deeds and fees collected by him repealed by Sec. 192, *et seq*. of the Administrative Code, as amended by Act No. 3156.)

SEC. 14. Every order, decision, and decree of the Court of Land Registration may be reviewed by the Supreme Court in the same manner as an order, decision, decree, judgment of the Court of First Instance might be reviewed, and for that purpose Sections 141, 142, 143, 496, 497 (except that portion Court, except as otherwise provided in this section; *Provided, however,* That no certificate of title shall be issued by the Court of Land Registration until after the expiration of the period for perfecting a bill of exceptions for filing: *And provided, further,* That the Court of Land Registration may grant a new trial in any case that has not passed to the Supreme Court, in the manner and under the circumstances provided in Sections 145, 146 and 147 of Act No. 190; *And, provided, also,* That the certificates of judgment to be issued by the Supreme Court, in cases passing to it from the Court of Land Registration, shall be certified to the clerk of the last-named court as well as the copies of the opinion of the Supreme Court; *And provided, also,* That the bill of exceptions to be printed, no testimony or exhibits shall be printed except such limited portions

thereof as are necessary to enable the Supreme Court to understand the points of law reserved. The original testimony and exhibits shall be transmitted to the Supreme Court: *And provided, further*, That the period within which the litigating parties must file their appeals and bills of exceptions against the final judgment in land registration cases shall be thirty days, counting from the date on which the party received a copy of the decision. (Amended by Sec. 4, Act No. 1108; Sec. 1, Act No. 1884; Sec. 25[a] and [b], Act No. 2347)

SEC. 15. Immediately after final decisions by the court directing the registration of any property, the clerk shall send a certified copy of such decision to the chief of the General Land Registration Office, who shall prepare the decree in accordance with Section 40 of Act No. 496, and he shall forward a certified copy of said decree to the Register of Deeds of the province or city in which the property is situated. The registrar shall then comply with the duties assigned to him in Section 41 of Act No. 496. (As amended by Sec. 21, Act No. 2347.)

SEC. 16. If the party appealing does not prosecute his appeal within the time limited, the original order, decision, or decree shall stand as if no appeal had been taken.

SEC. 17. (Repealed by Final Section [b], Act No. 2711)

SEC. 18. Costs shall be taxed in contested cases in the Court of Land Registration in the same manner and for the same items of cost as in Court of First Instance where no different provisions is made.

SEC. 19. Application for registration of title may be made by the following persons, namely:

*First*. The person or persons claiming, singly or collectively, to own the legal estate in fee simple.

*Second*. The person or persons claiming, singly or collectively, to have the power of appointing or disposing of the legal estate in fee simple.

*Third*. Infants or other persons under disability may make application by their legally appointed guardians, but the person in whose behalf the application is made shall be named as applicant by the guardian.

*Fourth*. Corporations may make application by any officer duly authorized by vote of the directors.

SEC. 20. The application may be filed with the clerk of the Court of Land Registration, or with the register of deeds of the province a memorandum stating that application for registration has been filed, and the date and place of filing, and a copy of the description of the land contained in the application. This memorandum shall be recorded and indexed by the register with the records of deeds. Each register of deeds shall also keep an index of all applications in his province or city, and, in every case where the application is filed with him, shall transmit the same, with the papers and plans filed therewith, and such memorandum when recorded, to the clerk of the Court of Land Registration.

SEC. 21. The application shall be in writing, signed and sworn to by applicant, or by some person duly authorized in his behalf. All oaths required by this Act may be administered by any officer authorized to administer oaths in the Philippine Islands. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. It shall contain a description of the land and shall state whether the applicant, the applicant is married; and if married, the name of the wife or husband; and if married, whether he or she has been married, and if so, when and how the married relation terminated. If by divorce, when, where, and by what court the divorce was granted. It shall also state the name in full and the address of the applicant, and also the names and addresses of all adjoining owners and occupants, if known; and, if not known, it shall state what search has been made to find them. It may be in form as follows:

UNITED STATES OF AMERICA, PHILIPPINE ISLANDS

To the Honorable Judge of the Court of Land Registration:

I (or we), the undersigned, hereby apply to have the land hereinafter described brought under the operations of the Land Registration Act, and to have under the operations of the Land Registration Act, and I have my (or our) title herein registered and confirmed. And I (or we) declare: (1) That I am (or we are) the owner (or owners) in fee simple of a certain parcel of land with the buildings (if any; if not, strike out the words "with the buildings"), situated in (here insert accurate description). (2) That said land at the last assessment for taxation was assessed at _____ dollars; and the buildings (if any) at _____ dollars. (3) That I (or we) do not know of any mortgage or encumbrance affecting said land, or that any other person has any estate or interest therein, legal or

equitable, in possession, remainder, reversion, or expectancy (if any, add "other than as follows," and set forth each clearly). If in any other way, state it). (5) That said land is _____ occupied (if occupied, state name in full and place of residence and post-office address of occupant and nature of his occupancy. If unoccupied, insert "not"). (6) That the names in full and addresses as far as known to me (or us) of the occupants of all lands adjoining said land are as follows (give street and number wherever possible. If names not known, state whether inquiry has been made, and what inquiry has been made, and inquiry). (7) That the names and addresses so far as known to me (or us) of the owners of all lands adjoining the above land are as follows (same directions as above). (8) That I am (or we are) married. (Follow literally the directions given in the prior portions of this section). (9) That my (or our) full name (or names), residence, and post-office address is (or are) as follows:

_____

Dated this _____ day of _____ in the year two thousand and _____.

_____

(SCHEDULE OF DOCUMENTS)

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

Province (or City)_____ (date)

There personally appeared the above-named _____, known to me to be the signer/signers of the foregoing application, and made oath that the statements therein, so far as made of his/their own knowledge are true, and so far as made upon information and belief, that he/they believe them to be true, before me. The residence certificate _____ of the applicant/applicants, or representative was exhibited to me, being No. _____ issued at _____ dated _____, 20____.

BEFORE ME:
(Notary Public or other official
authorized to administer oaths)

(As amended by Sec. 1[2], Act No. 700 and Sec. 1[d] and [e], Act No. 809; repealed by Sec. 15, PD No. 1529)

SEC. 22. If the applicant is not a resident of the Philippine Islands, he shall file with his application a paper appointing an agent residing in the Philippine Islands, giving his name in full, and his post-office address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect if served upon the agent as if upon the applicant if within the Philippine Islands. If the agent dies or becomes insane, or removes from the Philippine Islands, the applicant shall at once make another appointment; and if he fails to do so, the court may dismiss the application. (Repealed by Sec. 16, PD No. 1529)

SEC. 23. Amendments to the application, including joinder, substitution, or discontinuing as to parties, shall be allowed by the court at any time upon terms that are just and reasonable. But all amendments shall be in writing, signed and sworn to like the original.

SEC. 24. The application may include two or more contiguous parcels of land, or two or more parcels constituting one holding under one and the same title, if within the same province or city. But two or more persons claiming in the same parcels different interests, which, collectively, making up the legal estate in fee simple in each parcel, shall not join in one application for more than one parcel, unless their interests are alike in each and every parcel. The court may at any time order an application to be amended by striking out one or more parcels, or by severance of the application.

SEC. 25. (Repealed by Sec. 20, P.D. No. 1529)

SEC. 26. The applicant shall file with the application a plan of the land, and all original muniments of title within his control mentioned in the schedule of documents, such original muniments to be produced before the examiner or the court at the hearing when required. When an application is dismissed or discontinued, the applicant may, with the consent of the court, withdraw such original muniments of title. (As amended by Sec. 19, Act 2347)

SEC. 27. When an application is made subject to an existing recorded mortgage, the holder of which has consented thereto, or to a recorded lease, or when the registration is to be made subject to such mortgage or lease executed after the time of the application and before the date of the transcription of the decree, the applicant shall, if required by the court, file a certified copy of such mortgage

or lease, and shall cause the original, or, in the discretion of the court, a certified copy thereof to be presented for registration before the decree of registration is entered, and no registration fee shall be charged for registering such original mortgage or lease or such certified copy.

SEC. 28. (Repealed by Sec. 21, PD No. 1529)

SEC. 29. After the filing of the application and before the issuance of the decree of title by the Chief of the General Land Registration Office, the land therein described may be dealt with and instruments relating thereto shall be recorded in the office of the register of deeds at any time before issuance of the decree of title, in the same manner as if no application had been made. The interested party may however, present such instruments to the Court of First Instance instead of presenting them to the office of the register of deeds, together with a motion that the same be considered in relation with the application, and the court after notice to the parties, shall order such land registered subject to the encumbrance created by said instruments, or order the decree of registration issued in the name of the buyer or of the person to whom the property has been conveyed by said instruments. If such motion is made after the decision has become final, the court shall require the interested party, before granting his motion, to pay the fees which the register of deeds would collect in accordance with section one hundred and fourteen of this Act, as amended, if such instruments had been presented for registration in the office of the register of deeds after registration of the original certificate of title. If the order of the court above mentioned is received by the Chief of the General land Registration Office after issuance of the decree of title, such order shall forthwith be forwarded by said officer to the register of deeds concerned, for compliance therewith. If the proceedings upon the application end in the issuance of a decree of title, the property included therein shall, as soon as said decree has been registered in the office of the register of deeds, as provided in Section forty-one, become registered land under this Act, and thereafter all deeds relating to such property shall be registered only in the registration book of property registered under this Act. (Amended by Sec. 26[a], Act No. 2347; and Sec. 1, Act No. 3901)

SEC. 30. (Repealed by Sec. 2, Act No. 2556)

SEC. 31. Upon receipt of the order of the court setting the time for initial hearing of the application from the clerk of Court of First instance, the Chief of the General Land Registration Office shall cause a notice thereof to be published twice, in successive issues of

the Official Gazette, in the English language. The notice shall be issued by order of the court, attested by the Chief of the General Land Registration Office, and shall be in form substantially as follows:

REPUBLIC OF THE PHILIPPINES

Court of Firs Instance, Province of _____
Land Registration Case No. _____
G.L.R.O. Record No. _____

NOTICE OF INTIAL HEARING

To (here insert the names of all persons appearing to have an interest and the adjoining owners so far as known), and to all whom it may concern:

Whereas, an application has been presented to said Court by (name or names, addresses in full) to register and confirm his (or their) title in the following described lands (insert description) you are hereby cited to appear at the Court of First Instance of _____ at its session to be held at _____ in said province (or city) of _____, Philippines, on the _____ day of _____, 200_, at _____ o'clock in the afternoon, to show cause, if any you have, why the prayer of said application shall not be granted; and unless you appear at such Court, at the time and place aforesaid, your default will be recorded and the said application will be taken as confessed and you will be forever barred from contesting said application or any decree entered thereon.

Witness _____, Judge of said Court, this ___ day of _____, in the year 200___.

Issued at Manila, Philippines, this _____ day of _____. 200___.

ATTEST:

_____
Commissioner of Land Registration

(As amended by Sec. 1, RA No. 96; see also RA No. 1151.)

(NOTE: Pursuant to the decision of the Supreme Court in the case of *Domingo T. Parras v. Land Registration Commission, G.R. No. L-160121, promulgated July 26, 1960*, the cost of publication of notices of initial hearing in the Official Gazette of applications for registration of land under Act No. 496, as amended, is no longer to be borne by the land Registration Commission but by the applicants. See also Circulars Nos. 109, 120 and 124)

SEC. 32. The return of said notice shall not be less than twenty not more than one hundred twenty days from date of issue. The Chief of the General land Registration Office shall also, within seven days after publication of said notice in the official Gazette, as hereinbefore provided, cause a copy of the notice to be mailed to every person named therein whose address is known. The Chief of the General land Registration office shall also cause a duly attested copy of the notice to be posted in a conspicuous place on each parcel of land included in the application, and also in a conspicuous place upon the chief municipal building of the municipality or city in which the land or a portion thereof is situated, by the sheriff of the province or city, as the case may be, or by his deputy, fourteen days at least before the return day thereof, and his return shall be conclusive proof of such service. If the applicant requests to have the line of a public way determined, the Chief of the General land Registration Office shall cause a copy of said notice to be mailed to the Mayor of the municipality or city, as the case may be, in which the land lies, and to the Provincial Governor. If the land borders on a river, navigable stream or shore, or on an arm of the sea where a river or harbor line has been established or on a lake, or if it otherwise appears from the application or the proceedings that the National Government may have a claim adverse to that of the applicant, notice shall be given in the same manner to the Solicitor General, the Director of Public Works, the Director of Lands and the Director of Forestry. The court may also cause other or further notice of the application to be given in such manner and to such person as it may deem proper. The court shall, so far as it deems it possible, require proof of actual notice to all adjoining owners and to all persons who appear to have interest in or claims to the land included in the application. Notice to such persons may mail shall be by registered letter if practicable. The certificate of the Chief of the General land Registration Office that he has served the notice as directed by the court, by publishing or mailing, shall be filed in the case before the return day, and shall be conclusive proof of such service. (As amended by Sec. 2, RA No. 96)

SEC. 33. Upon the return day of the notice, and proof of service of all orders of notice issued, the court may appoint a disinterested person to act as guardian *ad litem* for minors and persons not in being, unascertained, unknown, or out of the Philippine Islands, who may have an interest. The compensation of the guardian or agent shall be determined by the court and paid as part of the expenses of the Court.

SEC. 34. Any person claiming interest, whether named in the notice or not, may appear and file an answer on or before the return day, or within such further time as may be allowed by the court. The answer shall state all the objections to the application, and shall set forth the interest claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf. (As amended by Sec. 25, PD No. 1529)

SEC. 35. (Repealed by Sec. 26, PD No. 1529)

SEC. 36. If in any case an appearance is entered and answer filed, the case shall be set down for hearing on motion of either party, but a default and order shall be entered against all persons who do not appear and answer, in the manner provided in the preceding section. The court may hear the parties and their evidence or may refer the case or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. The trial before the referee may occur at any convenient place within the province or city, and the time and place of trial shall be fixed by the referee and reasonable notice thereof shall be given by him to the parties. The court shall render judgment in accordance with the report as though the facts had been found by the judge himself, unless the court shall for cause shown set the report aside or order it to be recommitted to the referee for further finding: *Provided, nevertheless*, That the court may in its discretion accept the report in part or set it aside in part. The court may in any case before decree require a survey to be made for the purpose of determining boundaries, and may order durable bounds to be set, and referred to in the application, by amendment. The expenses of survey and bounds shall be taxed in the costs of the case and may be apportioned among the parties as justice may require. If no persons appear to oppose the application, such expense shall be borne by the applicant. If two or more applications claim the same land, or part of the same land, the court may order the hearing upon all such applications to be consolidated, if such consolidation is in the interest

of economy of time and expense. (As amended by Sec. 9, Act No. 1699; see Final Sec. [b], Act No. 2711)

SEC. 37. If in any case the court finds that the applicant has not proper title for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may withdraw his application at any time before final decree, upon terms to be fixed by the court. *Provided, however*, That in a case where there is an adverse claim, the court shall determine the conflicting interests of the applicant and the adverse claimant, and after taking evidence shall dismiss the application if neither of them succeeds in showing that he has proper title for registration or shall enter a decree awarding the land applied for, or any part thereof, to the person entitled thereto, and such decree, when final, shall entitle to the issuance of an original certificate of title to such person: *Provided, further*, That if the adverse claim covers only a portion of the lot and said portion is not properly delimited on the plan attached to the application, the court, upon pronouncing judgment, in case the same be in favor of the adverse claimant, shall order the latter to file a plan of the portion awarded to him duly approved by the Director of Lands: *And provided, finally,* That the court shall in its judgment determine strictly necessary expenses incurred by the applicant for fees for the registration of his application in the office of the clerk of the court and for the publication thereof, and shall order the adverse claimant to whom a portion of the land applied for has been awarded to pay to the applicant such part of said expenses as may be in proportion to the area awarded to said adverse claimant, unless the court finds that the applicant, upon filing his application, acted in bad faith or knowing that he had no right to the land awarded to another, in which case he shall not be entitled to any refund. In case the adverse claim is for the entire lot, the refund of expenses to which the applicant is entitled as provided in this Act shall also include the actual cost of making the plan of the lot in question. (As amended by Sec. 2, Act No. 3621)

SEC. 38. If the court after hearing finds that the applicant has title as stated in his application, and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To

all whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review within one year after the entry of the decree, provided no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided. But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Act, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value. (As amended by Sec. 3, Act No. 3621; and Sec. 1, Act No. 3630)

SEC. 39. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith, shall hold the same free of all encumbrance except those noted on said certificate, and any of the following encumbrances which may be subsisting, namely:

*First*. Liens, claims, or rights arising or existing under the laws or Constitution of the United States or of the Philippine Islands which the statutes of the Philippine Islands can not require to appear of record in the registry.

*Second*. Taxes within two years after the same have become due and payable.

*Third*. Any public highway, way, or private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.

But if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner. (As amended by Act No. 2011, and Sec. 4, Act No. 3621)

SEC. 40. Every decree of registration shall bear the day of the year, hour, and minute of its entry, and shall be signed by the clerk. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife. If the owner is under disability, it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of husband or wife, if any, to which the land or owner's estate is subject, and may contain any other matter properly to be determined in pursuance of this Act. The decree shall be stated in a convenient form for transcription upon the certificates of title hereinafter mentioned.

SEC. 41. Immediately after final decision by the court directing the registration of any property, the clerk shall send a certified copy of such decision to the Chief of the General Land Registration Office, who shall prepare the decree in accordance with Section forty of Act Numbered Four hundred and ninety six, and he shall forward a certified copy of said decree to the register of deeds of the province or city in which the property is situated. The register of deeds shall transcribe the decree in a book to be called the "registration Book," in which a leaf, or leaves, in consecutive order shall be devoted exclusively to each title. The entry made by the register of deeds in this book in each case shall be the original certificate of title, and shall be signed by him and sealed with the seal of the court. All certificates of title shall be numbered consecutively, beginning with number one. The register of deeds shall in each case make an exact duplicate of the original certificate, including the seal, but putting on it the words "Owner's duplicate certificate," and deliver the same to the owner, or to his attorney duly authorized. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. The certified copy of the decree of registration shall be filed and numbered by the register of deeds with reference noted on it to the place of record of the original certificate of title: *Provided, however*, That when an application includes land lying in more than one province, or one province and the city of Manila, the court shall cause the part lying in each province or in the city of Manila to be described separately by metes and bounds in the decree of registration, and the clerk shall send to the register of deeds for each province, or the city of Manila, as the case may be, a copy of the decree containing a description of the land within that

province or city, and the register of deeds shall register the same and issue an owner's duplicate thereof, and thereafter for all matters pertaining to registration under this Act the portion in each province or city shall be treated as a separate parcel of land. (As amended by Sec. 21, Act No. 2347; see RA No. 113)

SEC. 42. The certificate first registered in pursuance of the decree of registration in regard to any parcel of land shall be entitled in the registration book, "Original certificate of title, entered pursuant to decree of the Court of Land Registration, dated at" (stating the time and place of entry of decree and the number of case). This certificate shall take effect upon the date of the transcription of the decree. Subsequent certificates relating to the same land shall be in like form, but shall be entitled "Transfer from number" (the number of the next previous certificate relating to the same land), and also the words "Originally registered" (date, volume, and page of registration).

SEC. 43. Where two or more persons are registered owners, as tenants in common, or otherwise, one owner's duplicate certificate may be issued for the whole land, or a separate duplicate may be issued to each for his undivided share.

SEC. 44. A registered owner of several distinct parcels of land embraced in a single certificate of title desiring to have in lieu thereof several new certificates each containing one or more parcels, may file a petition for that purpose with the register of deeds, and this officer, upon the surrender of the owner's duplicate, shall cancel it and its original and issue in lieu thereof the desired new certificates. So a registered owner of several distinct parcels of land in separate certificates desiring to have in lieu thereof a single certificate for the whole land or several certificates for the different portions thereof, may file a petition with the register of deeds, and this officer, upon the surrender of the owner's duplicates, shall cancel them and their originals and issue in lieu thereof new ones as requested.

Any owner subdividing a tract of registered land into lots shall file with the Chief of the General Land Registration Office a subdivision plan of such land on which all boundaries, streets and passageways, if any, shall be distinctly and accurately delineated. If no streets or passageways are indicated or no alteration of the perimeter of the land is made, and it appears that the land as subdivided does not need of them and that the plan has been approved by the Chief of the General Land Registration Office, or the Director of

Lands as provided in Section fifty eight of this Act, the Register of deeds may issue new certificates of title for any lot in accordance with said subdivision plan. If there are streets and/or passageways, no new certificates shall be issued until said plan has been approved by the Court of First Instance of the province or city in which the land is situated. A petition for that purpose shall be filed by the registered owner, and the court after notice and hearing, and after considering the report of the Chief of the General Land Registration Office, may grant the petition, subject to the condition, which shall be noted on the proper certificate, that no portion of any street or passageway so delineated on the plan shall be closed or otherwise disposed of by the registered owner without approval of the court first had, or may render such judgment as just and equity may require.

A registered owner desiring to consolidate several lots into one or more, requiring new technical descriptions, shall file with the Chief of the General Land Registration Office a plan on which shall be shown the lots affected, as they are before, and as they will appear after the consolidation, Upon the surrender of the owner's duplicate certificate or certificates and the receipt of proper authority from the Chief of the General Land Registration Office, the register of deeds concerned shall cancel the old certificates and issue a new one for the consolidated lot or lots. (As amended by Republic Acts Nos. 440, 1575 and P.D. No. 957, for other restrictions relative to residential lands in Quezon City)

SEC. 45. The obtaining of a decree of registration and the entry of a certificate of title shall be regarded as an agreement running with the land, and binding upon the applicant and all successors in title that the land shall be and always remain registered land, and subject to the provisions of this Act and all Acts amendatory thereof.

SEC. 46. No title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.

SEC. 47. The original certificate in the registration book, any copy thereof duly certified under the signature of the clerk, or of the register of deeds of the province or city where the land is situated, and the seal of the court, and also the owner's duplicate certificate, shall be received as evidence in all the courts of the Philippine Islands and shall be conclusive as to all matters contained therein except as far as otherwise provided in this Act.

SEC. 48. Every certificate of title shall set forth the names of all the persons interested in the estate in fee simple in the whole land and duplicate certificates may be issued to each person, but the clerk or register of deeds, as the case may be, shall note in the registration book, and upon such certificate, to whom such duplicate was issued.

SEC. 49. The clerk of the court, shall make and keep indexes of all applications, of all decrees of registration, and shall also index and classify all papers and instruments filed in his office relating to applications and to registered titles. (He shall also, under direction of the court, cause forms of index and registration and entry books to be prepared for use of the registers of deeds. The court shall prepare and adopt convenient forms of certificates of title, and shall also adopt general forms of memoranda to be used by registers of deeds in registering common forms of deeds of conveyance and other instruments, and to express briefly their effect.) (The latter part has been superseded by Secs. 179, 180 and 181 of Act No. 2711)

## VOLUNTARY DEALING WITH LAND AFTER ORIGINAL REGISTRATION

SEC. 50. An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. He may use forms of deeds, mortgages leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies. (Now Sec. 51, PD No. 1529)

SEC. 51. Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would under existing laws, or recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument

relates lies, be notice to all persons from the time of such registering, filing, or entering. (Now Sec. 51, PD No. 1529)

SEC. 52. No new certificate shall be entered or issued upon any transfer of registered land which does not divest the land in fee simple from the owner or from some one of the registered owners. All interests in registered land less than an estate in fee simple shall be registered by filing with the register of deeds the instrument creating or transferring or claiming such interest and by a brief memorandum thereof made by the register of deeds upon the certificate of title, signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner. (Now Sec. 52, PD No. 1529)

SEC. 53. *Reference of doubtful matters to Commissioner of Land Registration*. — When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented to him for registration, or where any party in interest does not agree with the Register of deeds with reference to any such matter, the question shall be submitted to the Commission of and Registration upon the certification of the Register of Deeds, stating the question upon which he is in doubt, or upon the suggestion in writing by the party in interest; and thereupon the Commissioner, after consideration of the matter shown by the records certified to him, and in case of registered lands, after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His decision in such cases shall be conclusive and binding upon all Registers of Deeds: *Provided, however*, That when a party in interest disagrees with the ruling or resolution of the Commissioner and the issue involves a question of law, said decision may be appealed to the Supreme Court within thirty days from and after receipt of the notice thereof. (As superseded by Rep. Act No. 1151; Repealed by Sec. 117, PD 1529)

SEC. 54. Every deed or other voluntary instrument presented for registration shall contain or have indorsed upon it the full name, nationality, place of residence, and post office address of the grantee or other person acquiring or claiming such interest under such instrument, and every such instrument shall also state whether the grantee or other person acquiring or claiming such interest under such instrument, and every such instrument shall also state whether the grantee is married or unmarried, and, if married, give the name

in full of the husband or wife. If the grantee is a corporation or association, the deed must state that such corporation or association has the requirements prescribed by existing law for acquiring public land, in case the land sold or conveyed was originally public land, in accordance with the provisions of Act Numbered Twenty-eight hundred and seventy-four, known as the Public Act. Any change in the residence or post office address of such person shall be indorsed by the register of deeds on the original instrument, or receiving sworn statement of such change. All names and addresses shall also be entered upon all certificates. Notices and process in relation to registered land in pursuance of this Act may be served upon any person in interest by mailing the same to the address so given, and shall be binding whether such person resides within or without the Philippine Islands, but the court may, in its discretion require further or other notice to be given in any case, if in its opinion the interests of justice so require. *(As amended by Sec. 11, Act No. 3300; and Sec. 1, Act No. 3796)*

SEC. 55. No new certificate of title shall be entered, no memorandum shall be made upon any certificate of title by the clerk, or by any register of deeds, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented for such endorsement, except in cases expressly provided for in this Act, or upon the order of the court, for cause shown; and whenever such order is made, a memorandum thereof shall be entered upon the new certificate of title and upon the owner's duplicate; *Provided, however,* That in case the mortgage refuses or fails to deliver within a reasonable time to the register of deeds the duplicate or copy of the certificate of title surrendered by the owner, after advice by said officer, in order to enable him to register or annotate thereon another real right acquired by said owner, the record or annotation made on the certificate in the register book shall be valid for all legal purposes.

The production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the clerk or register of deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith: *Provided, however*, That in all cases of registration procured by fraud the owner may pursue all his

legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title: *And provided further*, That after the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void. In case of the loss or theft of an owner's duplicate certificate, notice shall be sent by the owner or by someone in his behalf to the register of deeds of the province in which the land, lies as soon as the loss or theft is discovered. (As amended by Act No. 3322)

SEC. 56. Each register of deeds shall keep an entry book in which he shall enter in the order of their reception all deeds and other voluntary instruments, and all copies of writs and other process filed with him relating to registered land. He shall note in such book the year month, day, hour, and minute of reception of all instruments, in the order in which they are received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument when made on the certificate of title to which it refers shall bear the same date: *Provided, however,* That no registration, annotation, or memorandum on a certificate of title shall be made unless the fees prescribed therefore by this Act are paid within fifteen days' time after the date of the registration of the deed, instrument, order, or document in the entry book or day book, and in case said fee is not paid within the time above-mentioned, such entry shall be null and void: *Provided, further,* That the Insular Government and the provincial and municipal governments need not pay such fees in advance in order to be entitled to entry or registration.

Every deed or other instrument, whether voluntary or involuntary, so filed with the clerk or register of deeds shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records and papers relating to registered land in the office of the register of deeds shall be open to the public, subject to such reasonable regulations as may be prescribed by the Chief of the General Land Registration Office, with the approval of the Secretary of Justice.

Deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the register of deeds, and endorsed with the file number, and such attested copies shall be returned to the person presenting the same.

Certified copies of all instruments filed and registered may be obtained at any time, upon payment of the proper fees. (As amended by Sec. 2, Act No. 3300, now Sec. 56, PD No. 1529)

## CONVEYANCE IN FEE

SEC. 57. An owner desiring to convey in fee his registered land or any portion thereof shall execute a deed of conveyance, in which the grantor or grantee may present to the register of deeds in the province where the land lies. The grantor's duplicate certificate shall be produced and presented at the same time. The register of deeds shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee, and shall prepare and deliver to him an owner's duplicate certificate. The register of deeds shall note upon the original and duplicate certificates the date of transfer, the volume and page of the registration book where the new certificate is registered, and a reference by number to the last prior certificate. The grantor's duplicate certificate shall be surrendered, and the word "canceled" stamped upon it. The original certificate shall also be stamped "canceled." The deed of conveyance shall be filed and indorsed with the number and place of registration of the certificate of title of the land conveyed.

SEC. 58. When a deed in fee is for a part only of the land described in a certificate of title, or for one or more of several lots into which said land shall have been subdivided, the register of deeds shall not enter the transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided, and the technical description of each portion or lot, have been verified and approved by the Director of Lands, but only, upon written request of the party concerned, make a memorandum or such deed of conveyance on the grantors certificate of title and on its owner's duplicate, said memorandum to serve only as a notice to third parties of the fact that such portion or lot has been sold to the person or persons named in said deed. Upon the approval of said plan and technical descriptions, a certified copy thereof shall be filed in the office of the register of deeds and recorded in the corresponding certificate of title, and thereupon the register of deeds shall, after entering the transfer certificate and issuing its owner's duplicate to the grantee for the portion sold, also enter a new certificate and issue an owner's duplicate to the grantor for the part of the land not included in the deed: *Provided, however,* That if the land has been

subdivided into several lots, designated by numbers of letters, the register of deeds may if desired by the grantor, instead of canceling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said certificate and on its owner's duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is cancelled to such lot or lots; and every certificate with such memorandum shall be effectual for the purpose of showing the grantor's title to the remainder of the land not conveyed as if the old certificate had been cancelled and a new certificate to a grantee for part only of the land shall be invalid by reason of the non-issuance of a new certificate to the grantor for the remaining unconveyed portion: *Provided, further,* That if there is discrepancy between the subdivision plan and the original plan, and in the opinion of the Director of Lands such discrepancy may be prejudicial to an adjoining owner or other person having interest in the adjoining lands, the matter should be reported to the Court of First Instance of the province where the land lies, and the court, after notice to all persons concerned and hearing, shall decide the case and all questions arising in connection with such subdivision plan: *And provided, lastly,* That after the annotation of the sale of a portion of land on the grantor's certificate of title, as above authorized, no subsequent deed or other voluntary instrument relative to the same portion of land should be accepted for registration or annotation until the necessary subdivision plan and technical description of said portion of land, as approved by the Director of Lands, shall have been filed with the register of deeds, and the proper transfer certificate of title shall have been entered in the name of the person executing such deed of instrument.

For the purpose of securing loans from banking and credit institution, the foregoing prohibition against accepting for registration or annotation of a subsequent deed or other voluntary instrument shall not apply in the case of deeds of sale duly executed by the Government, or any of its instrumentalities, with respect to portions of lands registered in the name of the Republic of the Philippines. (As amended by RA Nos. 93 and 1096)

SEC. 59. If at the time of any transfer there appear upon the registration book encumbrances or claims adverse to the title of the registered owner, they shall be stated in the new certificate or certificates except so far as they may be simultaneously released or discharged.

## MORTGAGES

SEC. 60. The owner of registered land may mortgage the same by executing a mortgage deed, and such deed may be assigned, extended-discharged, released, in whole or in part, or otherwise dealt with by the mortgagee by any form of deed or instrument sufficient in law for the purpose. But such mortgage deed, and all instruments assigning extending, discharging, and otherwise dealing with the mortgage, shall be registered, and shall take effect upon the title only from the time of registration.

SEC. 61. Registration of a mortgage shall be made in the manner following, to wit: The owner's duplicate certificate shall be presented to the register of deeds with the mortgage deed, and he shall enter upon the original certificate of title and also upon the owner's duplicate certificate a memorandum of the purport of the mortgage deed, the time of filing and the file number of the deed, and shall sign the memorandum. He shall also note upon the mortgage deed the time of filing and a reference to the volume and page of the registration book where it is registered.

The register of deeds shall also, at the request of the mortgagee, make out and deliver to him a duplicate of the certificate of title, like the owner's duplicate, except that the words "mortgagee's duplicate" shall be stamped upon it in large letters diagonally across its face. A memorandum of the issue of the mortgagee's duplicate shall be made upon the original certificate of title.

SEC. 62. Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended, or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorandum of the instrument shall be made upon the mortgagee's duplicate certificate. When the mortgage is discharged or otherwise extinguished the mortgagee's duplicate certificate shall be surrendered and stamped "canceled." The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented, subject, however, to all the provisions and exceptions contained in section fifty-five of this Act so far as the same are applicable.

A mortgage on registered land may also be discharged, by the mortgagee in person, on the registration book, by indorsing upon the original certificate of title and upon the owner's duplicate certificate

a memorandum stating that the mortgage has been satisfied and is discharged, together with the date of such entry, signed by the mortgagee, and such discharge shall be attested by the register of deeds, the mortgagee's duplicate certificate being at the same time surrendered and stamped "cancelled."

SEC. 63. Mortgages of registered land may be foreclosed in the manner provided in the Code of Procedure in Civil Actions and Special Proceedings. A certified copy of the final decree of the court confirming the sale under foreclosure proceedings may be filed with the register of deeds after the time for appealing therefrom has expired, and the purchaser shall thereupon be entitled to the entry of a new certificate and to the issuance of a new owner's duplicate certificate, a memorandum thereof being at the same time likewise indorsed upon the mortgagor's original certificate and the mortgagee's duplicate, if any, being first delivered up and canceled: *Provided, however,* That nothing contained in this Act shall be construed to prevent the mortgagor or other person interested from directly impeaching by any proper legal proceedings any foreclosure proceedings affecting registered land, prior to the entry of a new certificate of title.

## LEASES

SEC. 64. Leases of registered land shall be registered in the manner provided in section fifty-two of this Act, in lieu of recording. A lessee's duplicate certificate may be issued to the lessee upon his request, subject to the provisions hereinbefore made in regard to a mortgagee's duplicate certificate, so far as the same are applicable.

## TRUSTS

SEC. 65. Whenever a deed or other instrument is filed for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in such land without transfer, the particulars of the trust, condition, limitation, or other equitable interest shall not be entered on the certificate; but a memorandum thereof shall be by the words "in trust," or "upon condition," or other apt words, and by a reference by number to the instrument authorizing or creating the same. A similar memorandum shall be made upon the duplicate certificate. The Register of Deeds shall note upon the original instrument creating or declaring the trust

or other equitable interest a reference by number to the certificate of title to which it relates, and to the volume and page in the registration book where it is registered. If the instrument creating or declaring trust or other equitable interest is already recorded in the land register of the Philippine Islands, a certified copy may be filed by the register of deeds and registered.

SEC. 66. If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage, or deal with the land in any manner, such power shall be stated in the certificate of title by the words "with power to sell," or "with power to mortgage," and by apt words of description in case of other powers. No instrument transferring, mortgaging, or in any way dealing with registered land held in trust shall be registered, unless the power thereto enabling is expressly conferred in the instrument of trust, or unless the decree of a court of competent jurisdiction has construed the instrument in favor of such power, in which case a certified copy of such decree may be filed with the register of deeds, and he shall make registration in accordance therewith.

SEC. 67. When a new trustee of registered land is appointed by a court of competent jurisdiction, a new certificate shall be entered to him upon presentation to the register of deeds of a certified copy of the decree and the surrender and cancellation of the duplicate certificate.

SEC. 68. Whoever claims an interest in registered land by reason of any implied or constructive trust shall file for registration a statement thereof with the register of deeds. The statement shall contain a description of the land, and a reference to the number of the certificate of title and the volume and page of the registration book where it is entered. Such claim shall not affect the title of a purchaser for value and in good faith before its registration.

SEC. 69. Any trustee shall have authority to file an application for registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust.

## LEGAL INCIDENTS OF REGISTERED LAND

SEC. 70. Registered land, and ownership therein, shall in all respects be subject to the same burdens and incidents attached by law to unregistered land. Nothing contained in this Act shall in any way be construed to relieve registered land or the owners thereof

from any rights incident to the relation of husband and wife, or from liability to attachment on mesne process or levy on execution, or from liability to any lien of any description established by law on land and the buildings thereon, or the interest of the owner in such land or buildings, or to change the laws of descent, or the rights of partition between co-owners, joint tenants and other co-tenants, or the right to take the same by eminent domain, or to relieve such land from liability to be appropriated in any lawful manner for the payment of debts, or to change or affect in any other way any other rights or liability created by law and applicable to unregistered land, except as otherwise expressly provided in this Act or in the amendments hereof.

## ATTACHMENTS AND OTHER LIENS

SEC. 71. In every case where a writing of any description or a copy of any writ is required by law to be filed or recorded in the Registry of Deeds in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the register of deeds for the province in which the land lies, and, in addition to any particulars required in such papers for recording with records of deeds, shall also contain a reference to the number of the certificate of title of the land to be affected, and the volume and page in the registration book where the certificate is registered, and also, if the attachment, right, or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for identification of the land intended to be affected.

SEC. 72. In every case where an attachment or other lien or adverse claim of any description is registered, and the duplicate certificate is not presented at the time of registration to the register of deeds, he shall within twenty-four hours thereafter send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce the duplicate certificate in order that a memorandum of the attachment or other lien or adverse claim shall be made thereon. If the owner neglects or refuses to comply within a reasonable time the register of deeds shall suggest the fact to the court, and the court, after notice shall enter an order to the owner to produce his certificate at a time and place to be named therein, and may enforce the order by suitable process.

SEC. 73. Attachment on mesne process and liens of every description upon registered land shall be continued, reduced, discharged, and dissolved by any method sufficient in law to continue, reduce, discharge or dissolve like liens on unregistered land. All certificates or other instruments which are permitted or required by law to be recorded in the registry of deeds to give effect to the continuance, reduction, discharge, or dissolution of attachments or other liens on unregistered lands, or to give notice of such continuance, reduction, discharge, or dissolution, shall in the case of like liens on registered land be filed with the register of deeds and registered in the registration book, in lieu of recording.

SEC. 74. All the provisions of law now in force relating to attachments of real estate and leasehold estates on mesne process shall apply to registered land, except that the duties required to be performed by the present recording officer shall be performed by the register of deeds of the province where the land lies, who in lieu of recording, shall register the facts heretofore required to be recorded, and for that purpose shall keep suitable books.

SEC. 75. The name and address of the plaintiff's lawyer shall in all cases be indorsed on the writ or process where an attachment is made, and he shall be deemed to be the attorney of the plaintiff until written notice that he has ceased to be such shall be filed for registration by the plaintiff.

SEC. 76. Whenever an attachment on mesne process is continued, reduced, dissolved, or otherwise affected by an order, decision, or judgment of the court in which the action or proceeding in which said attachment was made is pending, or by the order of any judge or court having jurisdiction thereof, a certificate of the entry of such order, decision, or judgment from the clerk of the court or judge by which such order, decision, or judgment has been rendered and under the seal of the court or judge, shall be entitled to be registered on presentation to the register of deeds.

SEC. 77. A lien of any description on registered land shall be enforced in the same manner as like liens upon unregistered land. Whenever registered land is sold on execution, or taken or sold for taxes or for any assessment, or to enforce a lien of any character, or for any costs and charges incident to such liens, any execution or copy of execution, any officer's return, or any deed, demand, certificate, or affidavit, or other instrument made in the course of proceedings to enforce such liens and required by law to be recorded in the registry of deeds in the case of unregistered land, shall be

filed with the register of deeds for the province where the land lies and registered in the registration book, and a memorandum made upon the proper certificate of title, in each case, as an adverse claim or encumbrance.

SEC. 78. Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on any execution, or taken or sold for the enforcement of any lien of any description, the person claiming under the execution or under any deed or other instrument made in the course of the proceedings to levy such execution or enforce any lien, may petition the court for the entry of a new certificate to him, and the application may be granted: *Provided*, *however*, That every new certificate entered under this section shall contain a memorandum of the nature of the proceeding on which it is based: *Provided further,* That at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under executions or to enforce liens of any description.

## PENDING SUITS, JUDGMENTS, DECREES AND PARTITIONS

SEC. 79. No action to recover possession of real estate, or to quiet the title thereto, or to remove clouds upon the title thereof, or for partition of other proceeding of any kind in court affecting the title to real estate or the use and occupation thereof or the buildings thereon, and no judgment or decree, and no proceeding to vacate or reverse any judgment or decree, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum stating the institution of such action or proceeding and the court wherein the same is pending, and the date of the institution thereof, containing also a reference to the number of the certificate of title of the land affected and the volume and page of the registration book where it is entered, shall be filed and registered. This section shall not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration of the estates of deceased persons in the Court of First Instance: *Provided, however*, That in case notice of the pendency of the action has been duly registered, it shall be sufficient to register the judgment or decree in such action within sixty days after the rendition thereof.

SEC. 80. At any time after final judgment or decree in favor of the defendant, or other disposition of the action such as to terminate

finally all rights of the plaintiff in and to the land and buildings involved, in any case in which a memorandum has been registered as provided in the preceding section, a certificate of the clerk of the court in which the action or proceeding was pending stating the manner of disposal thereof shall be entitled to registration.

SEC. 81. Whenever in any action to recover the possession or ownership of real estate or any interest therein affecting registered land judgment is entered for the plaintiff, such judgment shall be entitled to registration on presentation of a certificate of the entry thereof from the clerk of the court where the action is pending to the register of deeds for the province where the land lies, who shall enter a memorandum upon the certificate of title of the land to which such judgment relates. If the judgment does not apply to all the land described in the certificate of title, the certificate of the clerk of the court where the action is pending and the memorandum entered by the register of deeds shall contain a description of the land affected by the judgment.

SEC. 82. When in any action to recover the possession or title of real estate or an interest therein execution has been issued directing the officer to place the plaintiff in possession of the land affected by the judgment on which the execution was issued, the officer shall cause an attested copy of the execution, with a return of his doings thereon, to be filed and registered within three months after the service, and before the return of the execution into the office of the clerk whence it issued, and the plaintiff, in case the judgment was that he was entitled to an estate in fee simple in the demanded premises or in any part thereof, and for which execution issued, shall thereupon be entitled to the entry of a new certificate of title and to a cancellation or the certificate and owner's duplicate certificate of the former registered owner. If the former registered owner neglects or refuses within a reasonable time after request to produce his duplicate certificate in order that the same may be canceled, the court on application and after notice shall enter an order to the owner to produce his certificate at the time and place named therein, and may enforce the order by suitable process.

SEC. 83. Every court passing a judgment or decree in favor of the plaintiff, affecting registered land shall, upon application of the plaintiff, order any parties before it to execute for registration any deed or instrument necessary to give effect to its judgment or decree, and may require the registered owner to deliver his duplicate certificate to the plaintiff to be canceled or to have a memorandum

entered upon it by the register of deeds. In case the person required to execute any deed or other instrument necessary to give effect to the judgment or decree is absent from the Philippine Islands, or is a minor, or insane, or for any reason not amenable to the process of the court, the court passing the judgment or decree may appoint some suitable person a trustee to execute such instrument, and the same when executed shall be registered and shall have full force and effect to bind the land to be affected thereby.

SEC. 84. In all proceedings for partition of registered land, after the entry of the final judgment or decree of partition and the filing of the report of the committee or commissioners and final judgment thereon, a copy of the final judgment or decree, certified by the clerk of the court rendering the same, shall be filed and registered; and thereupon, in case the land is set off to the owners in severalty, any owner shall be entitled to have his certificate entered to the share set off to him in severalty, and to receive an owner's duplicate thereof. In case the land is ordered by the court to be sold, the purchaser or his assigns shall be entitled to have a certificate of title entered to him or to them on presenting the deed of the commissioners or committee for registration. In case the land is ordered by the court rendering the judgment to be set off in entirety to one of the parties upon payment to the other parties to the action, the party to whom the land is thus ordered to be set off shall be entitled to have a certificate of the title entered to him on presenting a copy of the judgment or decree certified by the clerk of the court rendering the same: *Provided, however,* That any new certificate entered in pursuance of partition proceedings, whether by way of set-off or of assignment or of sale, shall contain a reference to the final judgment or decree of partition and shall be conclusive as to the title to the same extent against the same person as such judgment or decree is made conclusive by the laws applicable thereto: *And provided also,* That any person holding such certificates of title or transfer thereof shall have the right to petition the court at any time to cancel the memorandum relating to such judgment or decree, and the court after notice and hearing, may grant the application. Such certificate shall thereafter be conclusive in the same manner and in the same extent as other certificates of title.

SEC. 85. When a certified copy of a judgment or decree making final partition of land or buildings is presented for registration, of a mortgage or lease affecting a specific portion or an undivided share of the premises had previously been registered, the mortgagee, or

tenant claiming under the mortgagor or lessor, shall cause the mortgage or lease and any duplicate certificate of title issued to the mortgagee or lessee to be again presented for registration, and the register of deeds shall indorse on each the memorandum of such partition, with a description of the land set off in severalty on which such mortgage or lease remains in force. Such mortgage or tenant shall not be entitled to receive his own duplicate certificate of title until such mortgage or lease has been so presented for registration.

## BANKRUPTCY, INSOLVENCY AND ANALOGOUS PROCEEDINGS

SEC. 86. Whenever proceedings in bankruptcy or insolvency, or analogous proceedings, are instituted. against a debtor who is an owner of registered land, it shall be the duty of the officer serving the notice of the institution of such proceedings on the debtor to file a copy thereof in the registry of deeds for the province wherein the land of the debtor lies. The assignee or trustee appointed by the court having jurisdiction thereof in such proceedings shall be entitled to the entry of a new certificate of registered land of the debtor upon presenting and filing a certified copy of the order appointing him such assignee or trustee, with the debtor's duplicate certificate of title; the new certificate shall state that it is entered to him as assignee or trustee in insolvency or bankruptcy or other proceedings, as the case may be.

SEC. 87. Whenever proceedings of the character named in the preceding section against a registered owner, of which notice has been registered, are vacated by decree or judgment, a certified copy of the decree or judgment may be filed and registered. If a new certificate has been entered to the assignee or trustee as registered owner, the debtor shall be entitled to the entry of a new certificate to him, and the certificate of the assignee or trustee shall be surrendered.

## EMINENT DOMAIN

SEC. 88. Whenever any land of a registered owner, or any right or interest therein, is taken by eminent domain, the Government or municipality or corporation or other authority exercising such right shall file for registration in the proper province a description of the registered land so taken, giving the name of each owner thereof, referring by number and place of registration in the registration book to each certificate of title, and stating what amount or interest in

the land is taken, and for what purpose. A memorandum of the right or interest taken shall be made on each certificate of title by the register of deeds, and where the fee simple is taken a new certificate shall be entered to the owner for the land remaining to him after such taking, and a new certificate shall be entered to the Government, municipality, corporation or other authority exercising such right for the land so taken. All fees on account of any memorandum of registration or entry of new certificates shall be paid by the authority taking the land.

## TRANSMISSION BY DESCENT AND DEVISE

SEC. 89. Lands and any estate or interest therein registered under this Act shall, upon the death of the owner, go to the executor or administrator of the deceased in like manner as personal estate, whether the owner dies testate or intestate, and shall be subject to the same rules of administration as if the same were personalty, except as otherwise provided in this Act, and except that the rule of division shall be the same as in the descent of real property, or as shall be provided by will.

SEC. 90. Before the executor or administrator of a deceased owner of registered land or any estate or interest therein shall deal with the same, he shall file in the office of the register of deeds a certified copy of his letter of administration, or if there is a will, a certified copy of the same and of the letters testamentary, or of administration, with the will annexed, as the case may be, and shall produce the duplicate certificate of title, and thereupon the register of deeds shall enter upon the certificate and the duplicate certificate a memorandum thereof with a reference to the letters or will and letters by their file number, and the date of filing the same.

SEC. 91. Except in case of a will devising the land to an executor to his own use or upon some trust or giving to the executor power to sell, no sale or transfer of registered land shall be made by an executor or by an administrator in the course of administration for the payment of debts or for any other purpose, except in pursuance of an order of a court of competent jurisdiction obtained as provided by law.

SEC. 92. But after a memorandum of the will, letters testamentary or letters of administration have been entered upon the register as hereinbefore provided, the executor or administrator may deal

with mortgages, leases, and other personal interests in or upon registered land as if he were the registered owner thereof.

SEC. 93. Where it appears by the will, a certified copy of which with letters testamentary is filed as provided in this Act, that registered land is devised to the executor to his own use, or upon some trust, the executor may have the land transferred to himself upon the register in like manner and subject to like terms and conditions and to like rights as in the case of a transfer pursuant to deed filed in the office of the register of deeds.

SEC. 94. When the will of a deceased owner of registered land, or any estate or interest therein, empowers the executor to sell, convey, encumber, charge, or otherwise deal with the land, it shall not be necessary for such executor to be registered as the owner, but a certified copy of the will and letters testamentary being filed as provided in this Act, such executor may sell, convey, encumber, charge, or otherwise deal with the land pursuant to the power in like manner as if he were the registered owner, subject to the like conditions as to the trusts, limitations, and conditions expressed in a will as in case of trusts, limitations, and conditions expressed in a deed.

SEC. 95. Before making distribution of undevised registered land the executor or administrator shall file in the office of the register of deeds a certified copy of the final decree of the court having jurisdiction of the estate, which shall be conclusive evidence in favor of all persons thereafter dealing with the land that the persons therein named as the only heirs at law of the deceased owner are such heirs.

SEC. 96. Whenever the court having jurisdiction of the settlement of an estate shall, for the purpose of distribution thereof or for other purposes provided by law, order registered land or any interest or estate therein to be sold by the executor or administrator, upon the filing of a certified copy of the order of sale and the deeds executed in pursuance of the same in the office of the register of deeds, a transfer of the land, estate, or interest to the purchaser may be made upon the register as in the case of other sales by deed, and the original certificate and owner's duplicate shall be canceled and a new certificate and owner's duplicate be issued to the purchaser.

SEC. 97. Whenever, after the final determination of the amount of all claims against the estate of the deceased, it shall be made to appear to the court having jurisdiction of the estate that the estate will justify it and the proof of heirship has been made clear to that

court, it may direct the executor or administrator to make over and transfer to the devisees or heirs, or some of them, in anticipation of final distribution, a portion or the whole of the registered lands to which they might be entitled on final distribution; and upon the filing of a certified copy of such order in the office of the register of deeds, the executor or administrator may cause such transfer to be made upon the register in like manner as in case of a sale, and a certificate and owner's duplicate certificate shall be issued to the devisees or heirs entitled thereto as in other cases. The land so transferred shall be held free from all liens or claims against the estate. In the proceedings to procure such order or directions such notice shall be given to all parties in interest as the court having jurisdiction of the estate may direct.

SEC. 98. For the purpose of final distribution of the estate the court having jurisdiction thereof may determine the rights of all persons in registered land, or any estate or interest therein of the deceased, declare and enforce the rights of devisees, heirs, surviving husbands or wives, and others, and make partition and distribution according to the rights of the parties, and may give direction to the executor and administrator as to the transfer of registered lands and any estate or interest therein to the devisees or heirs, and may direct the transfer to be to the several devisees or heirs or tenants in common, or otherwise, as shall appear to the court to be most convenient, consistently with the rights of the parties, or as the parties interested may agree. A certified copy of the final order, judgment, or decree of the court having jurisdiction of the estate making final distribution shall be filed with the register of deeds and thereupon new certificates and owner's duplicate certificates shall be issued to the parties severally entitled thereto in accordance with such order, judgment, or decree, but nothing in this section contained shall in any way affect or impair existing requirements of law as to notice to be given to all parties interested in the estate of a deceased person before the final decree of distribution thereof.

## ASSURANCE FUND

SEC. 99. Upon the original registration of land under this Act, and also upon the entry of a certificate showing title as registered owners in heirs and devisees, there shall be paid to the register of deeds one-tenth of one per centum of the assessed value of the real estate on the basis of the last assessment for municipal taxation, as an assurance fund.

SEC. 100. All money received by the register of deeds under the preceding section shall be paid to the Treasurer of the Philippine Archipelago. He shall keep the same invested, with the advice and approval of the Civil Governor, and shall report annually to the legislative body of the Philippine Islands the condition and income thereof.

SEC. 101. Any person who without negligence on his part sustains loss or damage through any omission, mistake, or misfeasance of the clerk, or register of deeds, or of any examiner of titles, or of any deputy or clerk of the register of deeds in the performance of their respective duties under the provisions of this Act, and any person who is wrongfully deprived of any land or any interest therein, without negligence on his part, through the bringing of the same under the provisions of this Act or by the registration of any other person as owner of such land, or by any mistake, omission, or misdescription in any certificate or owner's duplicate, or in any entry or memorandum in the register or other official book, or by any cancellation, and who by the provisions of this Act is barred or in any way precluded from bringing an action for the recovery of such land or interest therein, or claim upon the same, may bring in any court of competent jurisdiction an action against the Treasurer of the Philippine Archipelago for the recovery of damages to be paid out of the assurance fund.

SEC. 102. If such action be for recovery for loss or damage arising only through any omission, mistake, or misfeasance of the clerk, or of the register of deeds, or of any examiner of titles, or of any deputy or clerk of the register of deeds in the performance of their respective duties under the provisions of this Act, then the Treasurer of the Philippine Archipelago shall be the sole defendant to such action. But if such action be brought for loss or damage arising only through the fraud or willful act of some person or persons other than the clerk, the register of deeds, the examiners of titles, deputies, and clerks, or arising jointly through the fraud or wrongful act of such other person or persons and the omission, mistake, or misfeasance of the clerk, the register of deeds, the examiners of titles, deputies, or clerks, then such action shall be brought against both the Treasurer of the Philippine Archipelago and such person or persons aforesaid. In all such actions where there are defendants other than the Treasurer of the Philippine Archipelago and damages shall have been recovered, no final judgment shall be entered against the Treasurer of the Philippine Archipelago until execution against the other defendants shall be returned unsatisfied in whole or in part,

and the officer returning the execution shall certify that the amount still due upon the execution can not be collected except by application to the assurance fund. Thereupon, the court having jurisdiction of the action, being satisfied as to the truth of such return, may, upon proper showing, order the amount of the execution and costs, or so much thereof as remains unpaid, to be paid by the Treasurer of the Philippine Archipelago out of the assurance fund. It shall be the duty of the Attorney General in person or by deputy to appear and defend all such suits with the aid of the fiscal of the province in which the land lies or the City Attorney of the city of Manila as the case may be: *Provided, however,* That nothing in this Act shall be construed to deprive the plaintiff of any action which he may have against any person for such loss or damage or deprivation of land or of any estate or interest therein without joining the Treasurer of the Philippine Archipelago as a defendant therein.

SEC. 103. If the assurance fund at any time be not sufficient to meet the amount called for by such judgment, the Treasurer of the Philippine Archipelago shall make up the deficiency from any funds in the Treasury not otherwise appropriated; and in such case any sums thereafter received by the Treasurer on account of the assurance fund shall be transferred to the general fund of the Treasury until the amount paid on account of the deficiency shall have been made up.

SEC. 104. In every case where payment has been made by the Treasurer of the Philippine Archipelago in accordance with the provisions of this Act, the Government of the Philippine Islands shall be subrogated to all rights of the plaintiff against any other parties or securities, and the Treasurer shall enforce the same in behalf of the Government. Any sum recovered by the Treasurer shall be paid into the Treasury of the Philippine Islands to the account of the assurance fund.

SEC. 105. The income of the assurance fund shall be added to the principal and invested until such fund amounts to the sum of two hundred thousand dollars, and thereafter the income of such funds shall be paid into the Insular Treasury for the general purposes of the Insular Government.

The term "dollars" wherever used in this Act shall be construed to mean money of the United States.

SEC. 106. The assurance fund shall not be liable to pay for any loss or damage or deprivation occasioned by a breach of trust, whether

express, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any sale in mortgage-foreclosure proceedings. Nor shall any plaintiff recover as compensation in an action under this Act more than the fair market value of the real estate at the time when he suffered the loss, damage, or deprivation thereof.

SEC. 107. All actions for compensation under this Act by reason of any loss or damage or deprivation of land or any estate or interest therein shall be begun within the period of six years from the time when the right to bring or take such action or proceeding first accrued, and not afterwards: *Provided*, That the right of action herein provided shall survive to the personal representative of the person sustaining loss or damage, if deceased, unless barred in his lifetime: *And provided, further*, That if at the time when such right of action first accrues the person entitled to bring such action or take such proceeding is within the age of majority, or insane, or imprisoned, such person, or anyone claiming from, by, or under him, may bring the action or take the proceeding at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired.

## POWER OF ATTORNEY

SEC. 108. Any person may by power of attorney procure land to be registered and convey or otherwise deal with registered land, but the letters of attorney shall be acknowledged before a notary public or a judge or clerk of a court of record attested by at least one witness and shall be filed with the clerk or register of deeds of the province where the land lies, and registered. Any instrument revoking such letters shall be acknowledged, attested, and registered in like manner.

## LOST DUPLICATE CERTIFICATE

SEC. 109. If a duplicate certificate is lost or destroyed, or can not be produced by a grantee, heir, devisee, assignee, or other person applying for the entry of a new certificate to him or for the registration of any instrument, a suggestion of the fact of such loss or destruction may be filed by the registered owner or other person in interest, and registered. The court may thereupon, upon the petition of the registered owner or other person in interest, after notice and hearing, direct the issue of a new duplicate certificate, which

shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as the original duplicate for all the purposes of this Act.

## ADVERSE CLAIMS

SEC. 110. Whoever claims any right or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the court, upon a petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. If the claim is adjudged to be invalid, the registration shall be canceled. If in any case the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble costs in its discretion.

## SURRENDER OF DUPLICATE CERTIFICATES

SEC. 111. In every case where the clerk or any register of deeds is requested to enter a new certificate in pursuance of an instrument purporting to be executed by the registered owner, or by reason of any instrument or proceedings which divest the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the clerk or register of deeds shall not enter a new certificate, but the person claiming to be entitled thereto may apply by petition to the court. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate upon such surrender.

If in any case the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the

outstanding owner's duplicate certificate can not be delivered up, the court may by decree annul the same and order a new certificate of title to be entered. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

If in any case an outstanding mortgagee's or lessee's duplicate certificate is not produced and surrendered when the mortgage is discharged or extinguished or the lease is terminated, like proceedings may be had to obtain registration as in the case of the non-production of the owner's duplicate.

## AMENDMENT AND ALTERATION OF CERTIFICATES OF TITLE

SEC. 112. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the clerk or the register of deeds, except by order of the court. Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married; or, if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: *Provided, however,* That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent.

Any petition filed under this section and all petitions and motions filed under the provisions of this Act after original registration shall be filed and entitled in the original case in which the decree of registration was entered.

## SERVICE OF NOTICES AFTER REGISTRATION

SEC. 113. All notices required by or given in pursuance of the provisions of this Act by the clerk or any register of deeds, after original registration, shall be sent by mail to the person to be notified at his residence and post-office address as stated in the certificate of title, or in any registered instrument under which he claims an interest, in the office of the clerk or register of deeds, relating to the parcel of land in question.

All notices and citations directed by special order of the court under the provisions of this Act, after original registration, may be served in the manner above stated, and the certificate of the clerk shall be conclusive proof of such service: *Provided, however,* That the court may in any case order different or further service, by publication or otherwise, and shall in all cases do so when the interests of justice require such action.

## FEES FOR REGISTRATION

SEC. 114. Fees payable under this Act shall be as follows:

A. *Fees payable to the Clerk of Court*. — The fees payable to the clerk of court or his deputies shall be as follows:

1. For filing an application for the registration of land, the fees shall be based on the assessed value of the property for the current year, in accordance with the following schedule —

(a) When the value of the property does not exceed two thousand pesos, fifteen pesos for the first five hundred pesos, or fractional part thereof, and five pesos, or fractional part thereof, and five pesos for each additional five hundred pesos, or fractional thereof.

(b) When the value of the property is more than two thousand pesos but does not exceed ten thousand pesos, thirty-five pesos for the first three hundred pesos, or fractional part thereof, and five pesos for each additional one thousand pesos, or fractional part thereof.

(c) When the value of the property is more than ten thousand pesos but does not exceed one hundred thousand pesos, eighty pesos for the first twenty thousand pesos, or fractional part thereof, and ten pesos for each additional ten thousand pesos, or fractional part thereof.

(d) When the value of the property is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, one hundred eighty pesos for the first one hundred twenty-five thousand pesos, or fractional part thereof, and twenty pesos for each additional twenty-five thousand pesos or fractional part thereof.

(e) When the value of the property is more than five hundred thousand pesos, five hundred twenty pesos for the first five hundred fifty thousand pesos, or fractional part thereof, and forty pesos for each additional fifty thousand pesos, or fractional part thereof.

If the property has not been assessed for taxation, the fees above prescribed shall be based on the current market value, and the applicant shall file with his application a sworn declaration of three disinterested persons that the value fixed by him is to their knowledge a fair valuation.

2. For filing a petition for review of decree, or other claim adverse to the registered owner, for each petition, six pesos.

3. For filing a petition after the decision has become final, three pesos. If it affects land decreed in more than one case, for each additional case, one peso. If it affects several lots or parcels of land in which the petitioners have no common interest, each of such petitioners shall pay the corresponding fees as if separate petition has been filed by him. (As amended by Republic Act No. 117.)

B. *Fees payable to the Sheriff.* — The sheriff shall collect fees for his services rendered in connection with land registration and cadastral proceedings as follows:

1. For posting notices of initial hearing of land registration cases in conspicuous places on the lands described in the notice, for each parcel of land on which a copy of such notice is posted, besides travel fees, three pesos.

2. For posting notices of initial hearing of cadastral cases in conspicuous places on the lands included in the survey, for each group

of one hundred lots on which a copy of the notice is posted, besides travel fees, three pesos.

3. For posting one copy of a notice of initial hearing in a conspicuous place upon the chief municipal building of the city, municipality, or municipal district in which the land or portion thereof lies, besides travel fees, two pesos.

4. For posting notices upon cadastral claimants to appear before the court, travel fees only as provided in the Rules of Court.

5. For all other services not mentioned above, the same fees including travel fees as provided in the Rules of Court for similar services. (As amended by Republic Act No. 117.)

C. *Fees payable to the Register of Deeds*. — The register of deeds shall collect fees for all services rendered by him under this Act in accordance with the following schedule.

1. For the entry of one original certificate of title, and issuing one owner's duplicate certificate, eight pesos for the first parcel of land described thereon, and one peso for each additional parcel: *Provided, however,* That in case of certificates of title under the Cadastral Act, the fees for entering one original certificate of title and issuing the owner's duplicate thereof, when the total current assessed value of the lots included therein does not exceed seven hundred pesos, and irrespective of the number of such lots, shall be one pesos for every one hundred pesos, or fractional part thereof.

2. For each entry in the primary entry book, one peso.

3. For the annotation of an attachment, levy, writ of execution, or adverse claim, three pesos for the first parcel of land affected thereby, and two pesos for each additional parcel. If the total assessed value of the land and improvements exceeds six thousand pesos, there shall be collected an additional fee equivalent to ten *per centum* of the fees under paragraph sixteen of this subsection computed on the basis of said assessed value.

4. For the annotation of a notice of *lis pendens*, or of any document or order in connection therewith, for each parcel of land affected thereby, two pesos.

5. For the annotation of a release of any encumbrance, except mortgage, lease, or other lien for the cancellation of which a specific fee is prescribed herein, for each parcel of land so released, two pesos; but the total amount of fees to be collected shall not exceed the amount of fees paid for the registration of such encumbrance.

6. For the annotation of an order of the court for the amendment of, or the making of a memorandum on, a certificate of title, except inclusion of buildings or improvements, or any order directing the registration of a document, or of any right or interest referred to in said order, or the cancellation of a certificate of title and/or the issuance of a new one, two pesos for each certificate of title on which the annotation is made, in addition to the fees prescribed under paragraph sixteen or seventeen, as the case may be, of this subsection, if the same are also due for the registration of such document, right or interest.

7. For the annotation of an order of the court for the inclusion of buildings and/or improvements in a certificate of title, five pesos for each certificate of title if the buildings or improvements belong to a person other than the registered owner of the land. If they belong to the same registered owner the fees to be collected shall be based on the value of such buildings and improvements in accordance with the schedule prescribed under paragraph sixteen or seventeen, as the case may be, of this section.

8. For registering and filing a power of attorney, letters of attorney, letters of administration or letters testamentary whether or not accompanied by a copy of the testament, certificate of allowance of a will with attested copy of the will annexed, appointment of guardian for a minor or incompetent person, appointment of receiver, trustee, or administrator, articles of incorporation of any corporation, association or partnership, or resolution of its board of directors empowering an officer or member thereof to act in behalf of the same, seven pesos; and for the annotation of such papers on certificates of title when required by existing laws or regulation, one peso and fifty centavos for each certificate of title so annotation; *Provided, however,* That when the certificate of allowance of a will and the letters testamentary or letters of administration are filed together, only one fee shall be collected. For registering and filing an instrument of revocation of any of the papers mentioned above, two pesos; and if annotated on the corresponding certificate of title, one peso and fifty centavos for each certificate of title.

9. For the annotation of a notice of tax lien of any description, notice of lost duplicate or copy of a certificate of title, order of the court declaring such duplicate or copy null and void, notice of change of address, or the cancellation of any such annotation, for each certificate of title, one peso.

10. For transferring the memorandum of an encumbrance of any kind from one certificate of title which is cancelled to a new one in lieu thereof in the name of a new owner, for each memorandum thus transferred, one peso.

11. For any memorandum made in a standing co-owner's mortgagee's or lessee's copy of a certificate of title after a similar memorandum has been made in the original thereof, for each such certificate of title, one peso.

12. For any memorandum made in a certificate of title for which no specific fee is prescribed above, for each certificate of title, two pesos.

13. For the issuance of a transfer certificate of title, including its duplicate, to a trustee, executor, administrator, or receiver, or for the cancellation of such certificate of title and issuance of a new one, including its duplicate, to the *cestui que trust* in case of trusteeship, eight pesos. If the certificate covers more than one parcel or lot, an additional fee of one pesos and fifty centavos shall be collected for each additional parcel or lot.

14. For the issuance of a transfer certificate of title, including its duplicate to a person other than those named in the next preceding paragraph, three pesos, in addition to the fees herein after prescribed in paragraph sixteen or seventeen, as the case may be, of this subsection, if the same are also due. If the certificate covers more than one parcel or lot, an additional fee of one peso and fifty centavos shall be collected for each additional parcel or lot.

15. For the issuance of a new owner's duplicate or co-owner's mortgagee's or lessee's copy of a certificate of title, or any additional duplicate or copy thereof, three pesos for the first page and one peso for each subsequent page, or fraction thereof.

16. For the registration of a deed of sale, conveyance, transfer, exchange, partition, or donation; a deed of sale with *pacto de retro,* conditional sale, sheriff's sale at public auction, sale for nonpayment of taxes, or any sale subject to redemption, or the repurchase or redemption of the property so sold; any instrument, order, judgment or decree divesting the title of the registered owner, except in favor of a trustee, executor, administrator or receiver; option to purchase or promise to sell; any mortgage, surety, bond, lease, easement, right-of-way, or other real right or lien created or constituted by virtue of a distinct contract or agreement, and not as an

incidental condition of a sale, transfer or conveyance the assignment, enlargement, extension or novation of a mortgage or of any other real right, or a release of mortgage, termination of lease, or consolidation of ownership over a property sold with *pacto de retro;* where no specific fee is prescribed thereof in the preceding paragraphs, the fees shall be based on the value of the consideration in accordance with the following schedule:

(a) When the value of the consideration does not exceed six thousand pesos, three pesos and fifty centavos for the first five hundred pesos, or fractional part thereof, and one pesos and fifty centavos for each additional five hundred pesos, or fractional part thereof.

(b) When the value of the consideration is more than six thousand pesos, but does not exceed thirty thousand pesos, twenty four pesos for the first eight thousand pesos, or fractional part thereof, and four pesos for each additional two thousand pesos, or fractional part thereof.

(c) When the value of the consideration is more than thirty thousand pesos but does not exceed one hundred thousand pesos, seventy-five pesos for the first thirty-five thousand pesos, or fractional part thereof, and seven pesos for each additional five thousand pesos, or fractional part thereof.

(d) When the value of the consideration is more than one hundred thousand pesos, one hundred but does not exceed five hundred thousand pesos, one hundred seventy-six pesos for the first one hundred thousand pesos, or fractional part thereof, and ten pesos for each additional ten thousand pesos, or fractional part thereof.

(e) When the value of the consideration is more than five hundred thousand pesos, five hundred eighty-one pesos for the first five hundred twenty thousand pesos, or fractional part thereof, and fifteen pesos for each additional twenty thousand pesos, or fractional part thereof.

17. In the following transactions, however, the basis of the fees collectible under paragraph sixteen of this subsection, whether or not the value of the consideration is stated in the instrument, shall be as hereunder set forth:

(a) In the exchange of real property the basis of the fees to be paid by each party shall be the current assessed value of

the properties acquired by one party from the other, in addition to the value of any other consideration, if any, stated in the contract.

(b) In the transmission of an hereditary estate without partition or subdivision of the property among the heirs, devisees, or legatees, although with specification of the share of each in the value of the estate, the basis shall be the total current assessed value of the property thus transmitted.

(c) In the partition of an hereditary estate which is still in the name of the deceased, in which determined properties are adjudicated to each heir, devisee or legatee, or to each group of heirs, devisees or legatees, the basis of the fees to be paid by each person, or group, as the case may be, shall be the total current assessed value of the properties thus adjudicated to each person or group. In the case, however, of conjugal property, the basis of the fees for the registration of one-half thereof in the name of the surviving spouse shall be an amount equal to ten *per centum* of the total current assessed value of the properties adjudicate to said spouse.

(d) In the partition of real property held in common by several registered co-owners, the basis of the fee to be paid by each co-owner or group of co-owners shall be the total assessed value of the property taken by each co-owner or group.

(e) In the sale, conveyance or transfer of two or more parcels of land in favor of two or more separate parties but executed in one single instrument, the basis shall be the total selling price paid by each party-buyer, or, in the case of lump sum consideration, such portion thereof as apportioned in accordance with the assessed value of the respective land acquired by each party-buyer.

(f) In the sale, conveyance, or transfer of properties situated in different cities or provinces, the basis of the fees in each registry of deeds where the instrument is to be registered shall be the total selling price of the properties situated in the respective city of province, or, in the case of a lump sum consideration, such portion thereof as obtained for those properties lying within the jurisdiction of the respective registry after apportioning the total consideration of the sale, conveyance or transfer in accordance with the current assessed values of such properties.

(g) In the sale, conveyance, or transfer of mortgaged property, the basis shall be the selling price of the property proper plus the full amount of the mortgage, or the unpaid balance thereof if the latter is stated in the instrument. If the properties are situated in different cities or provinces, the basis of the fees in each registry of deeds where the instrument is to be registered shall be such sum as obtained for the properties situated in the respective city or province after apportioning in accordance with the current assessed values of said properties the total amount of consideration as above computed, unless the selling price of the properties in each city or province and the proportionate share thereof in the amount or unpaid balance of the mortgage are stated in the instrument, in which case the aggregate of such selling price and share shall be the basis. In any case, however, where the aggregate value of the consideration as above computed shall be less than the current assessed value of the properties in the city or province concerned, such assessed value shall be the basis of the fees in the respective registry.

(h) In a mortgage affecting properties situated in different cities or provinces, the basis of the fees in each registry of deeds where the document is to be registered shall be such amount as obtained for the properties lying within the jurisdiction of said registry after apportioning the total amount of the mortgage in accordance with the current assessed value of such properties.

(i) In the release of a mortgage the basis of the fees shall be an amount equal to ten *per centum* of the total amount of obligation secured by the mortgage. If the properties are situated in different cities or provinces, the basis of the fees in each registry shall be ten *per centum* of such sum as obtained for the properties in the respective city or province after apportioning the amount of the mortgage in accordance with the current assessed values of such properties. In the case of a partial released, the fee shall be based on ten *per centum* of the current assessed value of the property so released in the respective city or province: *Provided, however,* That where several releases had been registered, the fees corresponding to the final release shall be computed on the basis of ten *per centum* of the difference between the amount of the mortgage and the aggregate of the consideration used as basis for the collection of the fees paid for the registration of a previous partial released.

(j) In a certificate of sale at public auction by virtue of an order or execution, or sale for deficiency in the payment of taxes, or repurchase of the property so sold, the basis of the fees in each registry shall be ten *per centum* of the selling or repurchase price of the property lying within the jurisdiction of the registry.

(k) In an affidavit for the consolidation of ownership over a property sold with *pacto de retro* or pursuant to an extrajudicial foreclosure under the provisions of Act Numbered Thirty-one hundred and thirty-five as amended, the basis of the fees in each registry shall be an amount equivalent to ten *per centum* of the consideration of the sale in the respective city or province.

(l) In contracts of lease, the basis of the fees in each registry shall be the sum total to be paid by the lessee for the properties situated in the respective city or province during the entire period specified in the contract, including the extension contemplated by the parties which may be given effect without the necessity of further registration. If the period is from year to year, or otherwise not fixed, the basis shall be the total amount of rentals due for thirty months. If the rentals are not distributed; the total amount thereof as above computed shall be apportioned to said properties in accordance with their assessed values, and the proportionate sum thus obtained for each city or province shall be the basis of the fees to be collected in the registry concerned.

(m) In the termination of a lease, the basis of the fees in each registry shall be ten *per centum* of the amount used as basis for the collection of the fees paid for the registration of said lease.

(n) In contracts of option to purchase or promise to sell, the basis of the fees in each registry shall be five *per centum* of the current assessed value of the property subject of such contract in the respective city or province.

(o) In other transaction where the actual value of the consideration is not fixed in the contract or cannot be determined from the terms thereof, or, in case of a sale conveyance, or transfer, the consideration stated is less than the current assessed value of the property, the basis of the fees shall be the current assessed value of the property involved in the trans-

action. If the properties are situated in different cities or provinces, the basis of the fees in each registry shall be the assessed value of the properties lying within the jurisdiction of the registry concerned.

(18) For furnishing copies of any entry, decree, document, or other papers on file, twenty centavos for each hundred words or fraction thereof contained in the copies thus furnished.

(19) For certifying a copy furnished under the next preceding paragraph, for each certification, one peso.

(20) For issuing a certificate relative to, or showing the existence or non-existence, of an entry in the registration books or a document on file, for each such certificate containing not more than two hundred words, three pesos; if it exceeds that number, an additional fee of fifty centavos shall be collected for every one hundred words, or fraction thereof, in excess of the first two hundred words. (As amended by Republic Act No. 928; See Circular No. N-165, [P.D. 91, July 1, 1953]; Also P.D. 1529 [Property Registration Decree])

## PENALTIES

SEC. 115. Certificates of title and duplicate certificates issued under this Act shall be subjects of larceny.

SEC. 116. Whoever knowingly swears falsely to any statement required to be made under oath by this Act shall be guilty of perjury and liable to the penalties provided by law for perjury.

SEC. 117. Whoever fraudulently procures, or assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title or owner's duplicate certificate, or of any entry in the register or other book kept in the office of the clerk or of any register of deeds, or of any erasure or alteration in any entry in any set of books or in any instrument authorized by this Act, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, owner's duplicate certificate, statement or affidavit affecting registered land, shall be fined not exceeding five thousand dollars or imprisonment not exceeding five years, or both, in the discretion of the court.

SEC. 118. (1) Whoever forges or procures to be forged or assists in forging the seal of the clerk or of any register of deeds, or the name, signature, or handwriting of any officer of the court or of the

register of deeds, in case where such officer is expressly or impliedly authorized to affix his signature; or

(2) Fraudulently stamps or procures to be stamped or assists in stamping any document with any forged seal of the clerk or register of deeds; or

(3) Forges, or procures to be forged, or assists in forging the name, signature, or handwriting of any person whosoever to any instrument which is expressly or impliedly authorized to be signed by such person under this provisions of this Act; or

(4) Uses any document upon which an impression, or part of the impression, of any seal of the clerk or of a register of deeds has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged, shall be imprisoned not exceeding ten years or fined not exceeding five thousand dollars, or both, in the discretion of the court.

Prosecutions for offenses for violations of any of the provisions of this Act shall be instituted and conducted in the proper Court of First Instance.

SEC. 119. Whoever, with intent to defraud, sells and conveys registered land, knowing that an undischarged or any other incumbrance exists thereon which is not noted by memorandum on the duplicate certificate of the title, without informing the grantee of such attachment or other incumbrance before the consideration is paid, shall be punished by imprisonment not exceeding three years or by a fine not exceeding one thousand dollars, or by both, in the discretion of the court.

SEC. 120. No conviction for any act prohibited by this Act shall affect any remedy which any person aggrieved or injured by such act shall be entitled to by law against the person who has committed such act or against his estate.

Register of Deeds in Manila

## REGISTER OF DEEDS OF MANILA

SEC. 121. Wherever in this Act the phrase "the register of deeds in the province where the land lies," or an equivalent phrase, occurs, it shall be construed to include and be applicable to the register of deeds in the City of Manila.

## PUBLIC LANDS

SEC. 122. Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and owner's duplicate such land shall be registered land for all purposes under this Act.

## ACT, HOW CONSTRUED

SEC. 123. This Act shall be construed liberally so far as may be necessary for the purpose of effecting its general intent.

## CONTINUANCE OF EXISTING SYSTEM AS TO UNREGISTERED LAND

SEC. 124. As to land not registered in accordance with the provisions of this Act, the system of registration and recording heretofore established by law in these islands shall continue and remain in force, except in so far as hereinafter modified, and the evidential weight given by existing law to titles registered as existing law now provides shall be accorded to such titles in the hearings had under this Act before the examiners and before the court. The duties of registering and recording land titles in accordance with the

law heretofore existing shall be performed in the several provinces and the city of Manila by the register of deeds in this Act provided, after such register of deeds have been appointed: *Provided, however*, That the originals of deeds, mortgages, leases, and other instruments affecting the title to unregistered land shall not be retained by notaries public or other officials before whom the same are solemnized, but after having been duly executed may be delivered to the grantee, mortgagee, lessee, or other person entitled to the same and be by him presented to the register of deeds for the province where the land lies for registration and recording, in the same manner and with the same legal effect that copies thereof certified by notaries public under existing law are registered and recorded. The register of deeds upon receiving any such deed, mortgage, lease, or other instrument dealing with land not registered under this Act shall indorse upon the instrument so received the true year, month, day, hour, and minute when the same is received, and the same shall be deemed to have been registered and recorded as unregistered land from the time of the indorsement of such memorandum thereon. He shall also indorse thereon the volume and page wherein the same is registered and recorded. After the due registration and recording of such instrument the owner thereof shall be entitled to the custody and possession of the same. The original instrument, the record thereof in the books of the register of deeds, and any certified copy of such record shall be competent evidence in any court of justice. The fees of the register of deeds for registering and recording any such instrument shall be the same as those now provided by law for registering and recording a certified copy of a notarial instrument dealing with land.

SEC. 125. Until registers of deeds shall be appointed in accordance with the provisions of this Act, the officials performing the duties of registrars and recorders of deeds in the several provinces and in the city of Manila shall be registers of deeds and perform the duties of registers or deeds as defined by this Act. Their deputies shall be deputy registers of deeds. All laws relative to existing registrars of deeds and recorders, their deputies, including their compensation, clerk hire, and expenses shall extend to registers of deeds and their deputies under this Act so far as the same may be applicable.

## NOTARIES PUBLIC

SEC. 126. (Repealed by Final Section [b], Act No. 2711)

## FORMS

SEC. 127. Deeds, conveyances, mortgages, leases, releases, and discharges affecting lands, whether registered under this Act or unregistered, shall be sufficient in law when made substantially in accordance with the following forms, and shall be as effective to convey, encumber, lease, release, discharge, or bind the lands as though made in accordance with the more prolix form heretofore in use: *Provided,* That every such instrument shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the instrument as witnesses to the execution thereof, and shall be acknowledged to be his or their free act and deed by the person or persons executing the same, before the judge of a court of record or clerk of a court of record, or a notary public, or a justice of the peace, who shall certify to such acknowledgment substantially in the form next hereinafter stated:

(Forms omitted)

*Provided,* That when the instrument acknowledged before a notary public consists of two or more pages, including the page on which the acknowledgement is written, each page of the copy which is to be recorded in the office of the Register of Deeds, or, if such copy is not to be recorded, each page of the copy to be kept by the Notary Public, shall be signed on the left margin by the person or persons executing the instrument and their witnesses and sealed with the notarial seal, and this fact as well as the number of pages contained shall be stated in the acknowledgment: *Provided, further,* That when the instrument acknowledged relates to the sale, assignment, cession, conveyance, or mortgage of two ore more parcels of lands, the number thereof shall be set forth in said acknowledgment. (As amended by Act Nos. 3362 and 3439)

SEC. 128. The chief of the General Land Registration Office, with the approval of the judge of the fourth branch, as aforesaid, shall also prepare the blank forms necessary for carrying into proper effect the laws relative to the registration of land. (As superseded by Sec. 180, Act No. 2711)

SEC. 129. This Act shall take effect February first, Nineteen hundred and three, and the law in force prior to January first, Nineteen hundred and three, in reference to the registration of titles

to lands in the Philippine Islands, the execution of conveyance and the duties of notaries public and their appointment, is hereby continued in force f or the month of January, Nineteen hundred and three, including the first day thereof. (As amended by Act No. 527)

APPROVED, November 6, 1902.

# APPENDIX "B"

# ACT NO. 2259

# THE CADASTRAL ACT

SECTION 1. When, in the opinion of the Governor-General (now the President), the public interests require that the title to any lands be titled and adjudicated, he may to this end order the Director of Lands to make a survey and plan thereof. (As amended by Sec. 1850, Act No. 2711)

The Director of Lands shall, thereupon, give notice to persons claiming an interest in the lands, and to the general public, of the day on which such survey will begin, giving as full and accurate a description as possible of the lands to be surveyed. Such notice shall be published in two successive issues of the Official Gazette, and a copy of the notice in the English and Spanish languages shall be posted in a conspicuous place on the chief municipal building of the municipality, township or settlement in which the lands, or any portion thereof, are situated. A copy of the notice shall also be sent to the president of such municipality, township, or settlement, and to the provincial board. (As amended by Sec. 1851, Act No. 2711)

SEC. 2. The surveyor or other employees of the Bureau of Lands in charge of the survey shall give reasonable notice to the day on which the survey of any portion of such lands is to begin, and shall post such notice in the usual place on the chief municipal building of such municipality, township, or settlement in which the lands are situated, and shall mark the boundaries of the lands by monuments set up at proper places thereon. (As amended by Sec. 1852, Act No. 2711)

SEC. 3. (Repealed by Act No. 2711)

SEC. 4. It shall be lawful for surveyors and other employees of the Bureau of Lands to enter upon the lands whenever necessary for the making of such survey or for the placing of monuments. (As amended by Sec. 1853, Act No. 2711)

It shall be the duty of every person claiming an interest in the lands to be surveyed, or in any parcel thereof, to communicate to the surveyor in charge upon his request therefor all information possessed by such person concerning the boundary lines of any lands to which he claims title or in which he claims any interest. (As amended by Sec. 1584, Act No. 2711)

*Interference with surveys and monuments*. Any person who shall interfere with the making of any survey undertaken by the Bureau of Lands, or shall interfere with the placing of any monument in connection with any such survey, or shall deface, destroy, or remove any monuments so placed, or shall alter the location of any such monument, or shall destroy or remove any notice of survey posted on the land pursuant to law, shall be punished by a fine of not more than one hundred pesos or by imprisonment for not more than thirty days or both. (As amended by Section 2753, Act No. 2711)

SEC. 5. When the lands have been surveyed and platted, the Director of Lands represented by the Attorney-General (now Solicitor General), shall institute registration proceedings, by petition against the holders, claimants, possessors, or occupants of such lands or any part thereof, stating in substance that the public interests require that the titles to such lands be settled and adjudicated, and praying that such titles be so settled and adjudicated.

The petition shall contain a description of the lands and shall be accompanied by a plan thereof, and may contain such other data as may serve to furnish full notice to the occupants of the lands and to all persons who may claim any right or interest therein. (As amended by Sec. 1855, Act No. 2711)

If the lands contain two or more parcels held or occupied by different persons, the plan shall indicate the boundaries or limits of the various parcels as correctly as may be. The parcels shall be known as "lots" and shall on the plans filed in the case be given separate numbers by the Director of Lands, which numbers shall be known is "cadastral numbers." The lots situated within each municipality, township or settlement, shall, as far as practicable, be numbered consecutively, beginning with the number "one" and only one series of numbers shall be used for that purpose in each municipality, township, or settlement.

In cities or town-sites, a designation of the land holdings by block and lot numbers may be employed instead of the designation

by cadastral numbers and shall have the same effect for all purposes as the latter. (As amended by Sec. 1856, Act No. 2711)

SEC. 6. After final decree has been entered for the registration of a lot, its cadastral number shall not be changed except by order of the Court of First Instance. Future subdivisions of any lot shall, with the approval of said Court, be designated by a letter or letters of the alphabet added to the cadastral number of the lot to which the respective subdivisions pertain. The letter with which a subdivision, is designated shall be known as its "cadastral letter": *Provided, however,* That subdivisions of additions to cities or town sites may, with the approval of the court, be designated by block and lot numbers instead of cadastral numbers and letters.

All subdivisions under this section shall be made in accordance with the provisions of section forty-four of Act Numbered Four hundred and ninety-six and the provisions of section fifty-eight of the said Act shall be applicable to conveyances of lands so subdivided.

SEC. 7. Upon the receipt of the order of the court setting the time for initial hearing of the petition, the Chief of the General Land Registration Office shall cause notice thereof to be published twice, in successive issues of the Official Gazette, in the English language. The notice shall be issued by order of the court, attested by the Chief of the General Land Registration Office, and shall be in form substantially as follows:

REPUBLIC OF THE PHILIPPINES

Regional Trial Court, Province of _____

Cadastral Case No. _____
G.L.R.O. Cadastral Record No. _____

NOTICE OF HEARING

To (here insert the names of all persons appearing to have an interest and the adjoining owners so far as known), and to all whom it may concern:

WHEREAS, a petition has been presented to said Court by the Director of Lands, praying that the titles to the following described lands or the various parcels thereof be settled and adjudicated (insert description), you are hereby cited to appear et the Court of First Instance to be held at _____, in the Province of _____, on the day of

___, 19___, at ___ o'clock, to present such claims as you may have to said lands or any portion thereof, and to present evidence, if any you have, in support of such claims.

And unless you appear at said court at the time and place aforesaid, your default will be recorded and the titles to the lands will be adjudicated and determined in accordance with the prayer of the petition and upon the evidence before the Court and you will be forever barred from contesting such petition or any decree entered thereon.

WITNESS _____, Judge of said Court, this __ day of ____, 19 __.

ISSUED at Manila, Philippines, this __ day of _____, 19_____.

ATTEST:

_____

Administrator, Land Registration Authority

(As amended by Sec. 3, RA No. 96, and Sec. 3, RA No. 1151)

SEC. 8. The return of said notice shall not be less than thirty days nor more than one year from the date of issue. The Land Registration Authority Administrator shall also, within seven days after the publication of said notice in the Official Gazette, as hereinbefore provided, cause a copy of the notice to be mailed to every person named therein whose address is known. Said official shall also cause a duly, attested copy of the notice to be posted, in a conspicuous place on the lands included in the petition and also in a conspicuous place upon the chief municipal building of the city, municipality, township, or settlement in which the lands or a portion thereof are situated, by the sheriff of the province, or by his deputy, or by such other person as may be designated by the Land Registration Authority Administrator, fourteen days at least before the return day thereof. A copy of the notice shall also be sent by registered mail to the Mayor of the city, municipality, township, or settlement in which the lands are situated and to the Provincial Governor. The court may cause other or further notice of the petition to be given in such manner and to such persons as it may deem proper. (As amended by Sec. 4 of RA No. 96)

SEC. 9. Any person claiming any interest in any part of the lands, whether named in the notice or not, shall appear before the Court by himself, or by some person in his behalf and shall file an

answer on or before the return day or within such further time as may be allowed by the Court. The answer shall be signed and sworn to by the claimant or by some person in his behalf, and shall state whether the claimant is married or unmarried, and, if married, the name of the husband or wife and the date of the marriage, and shall also contain:

(a) The age of the claimant.

(b) The cadastral number of the lot or lots claimed, as appearing on the plan filed in the case by the Director of Lands, or the block and lot numbers, as the case may be.

(c) The name of the barrio and municipality, township, or settlement in which the lots are situated.

(d) The names of the owners of the adjoining lots as far as known to the claimant.

(e) If the claimant is in possession of the lots claimed and can show no express grant of the land by the Government to him or to his predecessors in interest, the answer shall state the length of time he has held such possession and the manner in which it has been acquired, and shall also state the length of time, as far as known, during which his predecessors, if any, held possession.

(f) If the claimant is not in possession or occupation of the lands, the answer shall fully set forth the interest claimed by him and the time and manner of its acquisition.

(g) If the lots have been assessed for taxation, their last assessed value.

(h) The encumbrance, if any, affecting the lots and the names of the adverse claimants as far as known.

SEC. 10. The governor of the province shall, upon the request of the court, detail an officer or employee of the province to assist the defendants in action brought under this Act in the preparation of their pleadings and evidence, without cost to them: *Provided, however,* That the court may in its discretion, detail any of its employees to perform such service, and in case of the failure of the provincial governor to make suitable provision for the assistance of the defendants as above set forth, the court may, with the approval of the Secretary of Justice, employ for such purpose the necessary personnel, to be paid out of provincial funds. The officer or employee detailed, or the person employed to assist the defendants, shall prepare their

answer, which shall be sworn to before such officer, employee or person. No fees shall be charged for the preparation, acknowledgment and filing of answer, nor shall a documentary stamp be required. The court shall, at some convenient date prior to the expiration of the time for filing the answer, cause such general notice to be issued to all persons interested as may be necessary fully to inform them of the purposes of this section and their rights with respect thereto.

SEC. 11. The trial of the case may occur at any convenient place within the province in which the lands are situated or at such other place as the court, for reasons stated in writing and filed with the record of case, may designate, and shall be conducted in the same manner as ordinary trials and proceedings in the Court of First Instance and shall be governed by the same rules. Orders of default and confession shall also be entered in the same manner as in ordinary cases in cases in the same court and shall have the same effect. All conflicting interests shall be adjudicated by the court and decrees awarded in favor of the persons entitled to the lands or the various parts thereof, and such decrees, when final, shall be the basis for original certificates of title in favor of said persons which shall have the same effect as certificates of title granted on application for registration of land under the Land Registration Act, and except as herein otherwise provided all of the provisions of said Land Registration Act, as now amended, and as it hereafter may be amended, shall be applicable to proceedings under this Act, and to the titles and certificates of title granted or issued hereunder.

*Provided, however*, That in deciding a cadastral case the court shall set aside from the cadastral proceedings all lots that have not been contested and shall award such lots to the claimants in a decision which shall become final thirty days after the rendition of the same, without prejudice to going on with the preceding as regards the contested lots. Every decision shall set forth the civil status of the respective claimant, the name of the spouse if married, the age if a minor, and if under disability, the nature of such disability. (As amended by Sec. 1, Act No. 3080)

SEC. 12. In case of the death of any judge, who may have begun the trial of an action brought under the provisions of this Act, before the termination of the trial or in case of his inability for any other reason to terminate such trial, the Secretary of Justice may designate another judge to complete the trial and to decide the case. Such other judge shall have the same power as the judge who began

the trial to decide all questions arising in connection with the case and to decide the case upon the evidence appearing in the record.

SEC. 13. Whenever in an action brought under the provisions of this Act a new trial is ordered, the court shall specify the lot or lots with reference to which the new trial is ordered, and the case shall remain closed as to all other lots, if any, included in the action.

SEC. 14. In the event of an appeal to the Supreme Court from any decision or order of the Court of First Instance in an action brought under the provisions of this Act, only the lots claimed by the appellant shall be affected thereby. The decision of the Court of First Instance shall be final as to all remaining lots, if any, included in the action, and upon the expiration of the time for the filing of a bill of exceptions, final decree for such remaining lots may be entered and certificates of title therefor issued.

SEC. 15. Except as otherwise ordered by the court, a separate certificate of title shall be entered and a corresponding duplicate certificate issued for each separate parcel or holding of land included in the petition.

SEC. 16. After the entry of the final decree of registration of any lot, the designation of the lot by its cadastral number, or block and lot number as the case may be, together with the name of the municipality, township, or settlement and province in which the lot is situated, shall be a sufficient description of said lot for all purposes. The cadastral letter of a subdivision of a lot added to the cadastral number thereof shall, together with the name of the municipality, township, or settlement and province, be a sufficient description of each subdivision. In deeds of conveyance or other documents evidencing the transfer of title to lands, or creating encumbrances thereon, the cadastral numbers or the block and lot numbers, as the case may be, shall be written in words and figures.

SEC. 17. In all proceedings under this Act, the fees of the several registers of deeds for the making and entering of a certificate of title, including the issue of one duplicate certificate, and for the registration of the same, including the entering, indexing, filing, and attesting thereof, shall be as follows and no other fees shall be lawful:

When the value of property does not exceed fifty pesos, fifty centavos.

When the value of the property exceeds fifty pesos but does not exceed two hundred pesos, one peso.

When the value of the property exceeds two hundred pesos but does not exceed five hundred pesos, two pesos.

When the value of the property exceeds five hundred pesos, six pesos.

For the purposes of this section the value of the property shall be its last assessed value, or, in default thereof, its market value.

The fees authorized under this section shall be payable to the register upon the delivery of the titles to the owners thereof: *Provided, however,* That such fees may be payable to the provincial treasurer or his deputies when these deliver said titles by delegation to the register. (As amended by Sec. 1, Act No. 3080)

SEC. 18. (a) One-tenth of the cost of registration proceedings and the cadastral survey and monumenting had under this Act shall be borne by the Insular Government; one-tenth shall be paid by the province concerned, and one-tenth by the city, municipality, municipal district, township, or settlement in which the land is situated, the City of Manila to be considered for this purpose, both as a province, and municipality; and the remaining seven-tenth shall be assessed and collected against each and all of the lots included in a cadastral proceeding and shall be apportioned in accordance with the square root of the area thereof, but in no case shall less than five-pesos be taxed against each lot: *Provided*, That when the province, a municipality, municipal district, township, or settlement has not sufficient funds to pay this obligation, its share may be paid in five equal installments within five years, without interest. The amount thus taxed against each of the lots or parcels of land shall be considered a special assessment of taxes against the respective parcels, shall constitute a first lien upon the land, and shall be collected by the Director of Lands or his duly authorized representatives in equal installments within a period of five years, bearing interest at the rate of six per centum per annum. The first installment shall become due and payable at the same time as the general land taxes for the year next succeeding the year in which the assessment of the costs shall be received by the provincial treasurer, and shall be collected in the same manner as such general land taxes. Each succeeding installment shall become due and payable at the same time as the general land taxes for the corresponding current year and shall be collected in the same manner. The Director of Lands shall for this purpose send to the officer in charge of such collection a copy of said assessment of costs: *Provided, however,* That the amounts repre-

senting the proportional shares of the costs taxed against lots surveyed at the request and expenses of their owner and for which a plan other than the cadastral plan has been made by a duly authorized surveyor prior to the decision in the cadastral proceeding, or which have been registered in accordance with the provisions of Act Numbered Four hundred and ninety-six, entitled. "The Land Registration Act" or surveyed, patented, or leased under the Public Land and Mining Laws, prior to the decision in the cadastral proceeding, or have been declared to be public land by the court, shall not constitute a lien against said lot nor shall be collected from the owners thereof: *Provided, further*, That the owner of any lot may, if he so desired, pay any installment of the costs taxed against his lot at any time before the same becomes due.

(b) In case of the sale, transfer, or conveyance, for a pecuniary consideration, of any property, or part thereof, registered by virtue of a decree issued in a cadastral proceeding, prior to the payment of the total amount of the costs taxed against such property in accordance with the preceding paragraph, endorsed as an encumbrance of lien upon each cadastral certificate of title, the vendor or his legal representatives shall pay such costs in their entirety in case the order apportioning the costs has already been issued in the cadastral proceeding in which the property being sold, transferred, or conveyed is included, and the register of deeds concerned shall demand of the vendor, before registering the deed for such sale, transfer, or conveyance of said property, that he exhibit a receipt signed by the Director of Lands or his duly authorized representative, showing that such encumbrance or lien has been paid: *Provided, however*, That in cases of sale, transfer, or conveyance of the property in. which the order apportioning the costs has not yet been issued, the register shall endorse on the certificate of transfer issued by him the encumbrance or lien appearing on the former certificate as guarantee of the payment of the costs above referred to.

(*Note:* See also RA No. 849, approved May 28, 1953, on payment of unpaid costs and expenses of cadastral proceedings completed and assessed on or before December 8, 1941, without penalty under certain conditions)

(c) The costs of the registration proceedings under the provisions of this Act shall consist of a sum equivalent to ten per centum of the cost of the survey and monumenting of the land. The amount of the costs of the proceeding so taxes shall be for all services rendered by the General Land Registration Office and the clerk or

his deputies in each cadastral proceeding, and the expense of publication, mailing, and posting notices, as well as the notices of the decision and the order apportioning the costs shall be borne by the General Land Registration Office.

(d) All amounts collected by the Director of Lands or his duly authorized representatives from the owners of the various lots as costs of proceedings, survey, and monumenting in accordance with this section, shall be covered into the Insular Treasury: *Provided, however*, That the various lots and owners thereof, and in such event the payments required to be made by said owners shall be made as herein provided and shall be covered into the provincial or municipal treasury as a part of the general funds of the province or municipality.

(e) Upon the collection of the amount of the cost of the registration proceedings, or part thereof, in each cadastral proceeding in accordance with this Section, the Commissioner of Land Registration shall forward to the Insular Auditor and the Insular Treasurer a statement of such collection, and the latter is hereby authorized and empowered to pay to the General Land Registration office a sum equal to the amount of said cost of proceedings collected, and the sums necessary to make such payments, are hereby appropriated, such sums to be credited to the appropriation for the General Land Registration Office for disbursement in other cadastral registration proceedings. (As amended by Sec. 2, Act No. 3081, and Secs. 3 and 5, RA No. 1151)

SEC. 19. Whenever in proceedings under this Act the Court is of the opinion that the interests of justice require or the parties themselves petition that a partition be made of lands included in the petition and held by various persons in common or jointly, the court may order that partition be made and for that purpose may appoint two or more disinterested and judicious persons to be commissioners, commanding them to make partition of the lands and to get off to each of the parties in interest such part and proportion of the lands as the court shall order. By agreement between the co-owners or co-tenants of lands included in the petition, lands not so included but held by said co-owners or co-tenants in the same manner and by the same tenure may, with the approval of the court, be included in the same partition proceedings, and in such cases the court may order a survey to be made of such lands.

SEC. 20. Before making the partition, the commissioners shall take and subscribe an oath before any officer authorized to administer

oaths, that they will faithfully perform their duties as such commissioners, which oath shall be filed in court with the proceedings in the case.

SEC. 21. Except as herein otherwise provided, the commissioners and the court in making the partition shall be governed by the provisions of sections one hundred and eighty-five, one hundred and eighty-six, one hundred and eighty-seven, one hundred and ninety, one hundred-and ninety-one of the Code of Civil Procedure and the commissioners shall receive such compensation as the court may determine, but not to exceed three, pesos per day for the time actually and necessarily employed in the performance of the duties.

SEC. 22. The order of the court effecting the partition shall state definitely, by adequate description, the particular portion of the estate which is apportioned to each party in interest and shall have the same force and effect as the final judgment in partition proceedings under the Code of Civil Procedure.

SEC. 23. The guardian of minors and persons of unsound mind shall represent them in the partition proceedings authorized by this Act. Where no guardian is appointed, or where he fails to appear, the court may appoint a guardian *ad litem* to represent the minors or persons of unsound mind in the proceedings. Such guardian or guardian *"ad litem"* may, on behalf of his ward, and with the approval of the court, do and perform any act, matter, or thing respecting the partition of the estate, including amicable partition thereof which such minor or person of unsound mind could do in the partition proceedings if he were of age or of sound mind.

SEC. 24. The proceedings in partitions authorized by this Act shall be regarded as a part of the land registration case in connection with which the partition is ordered, and no special fees shall be charged by the clerk of the court for any service performed by him in such partition proceedings, but the compensation of the commissioners appointed and additional expenses incurred in connection with the partition, including the costs of additional surveys, may be taxed as cost in the case and apportioned among the parties interested in the partition to such an extent and in such a manner as the court may deem just and equitable. Upon the order taxing and apportioning such costs becoming final, an execution may issue therefor as in partition proceedings under the Code of Civil Procedure unless the court directs that payment be made in installments as provided in section eighteen of this Act.

SEC. 25. If the property partitioned under the foregoing provisions constitutes the estate, or part of the estate, of a deceased person, which has not been settled by administration proceedings under the provisions of the Code of Civil Procedure, the heirs or devisees of such deceased person shall, for the full period of two years from the date of the order effecting the partition, be jointly liable to the creditors of the deceased for his debts: *Provided, however*, That no heir or devisee shall be liable for a greater amount than the value of the property received by him as his share in the estate: *And Provided, further*, That for the purpose of contribution between the heirs or devisees themselves, the amount of the debts of the estate for which each shall be liable shall bear the same proportion to the value of his share of the estate as the total amount of the legal debts paid by the heirs or devisees demanding contribution bears to the total value of the estate. Any heir or devisee who, under a final judgment rendered in an action brought under this section, pays more than his proportionate share of the debts of the estate shall, with reference to the excess, be subrogated to the rights of the creditors under such judgment against each of the other heirs or devisees to the extent of their respective proportionate shares of the debts so paid by him: *Provided, further*, That the provisions of this section shall not be construed to modify the provisions of existing law as to the order in which the heirs or devisees are liable to pay the debts of the deceased.

The judgment rendered in any action brought under this section by a creditor against the heirs or devisees of a deceased person shall, if favorable to the plaintiff, specify the maximum amount for which each heir or devisee shall be liable under such judgments.

SEC. 26. In the interpretation of the provisions of this Act, the rules of construction laid down by Sections 1, 2, 3, and 4 of the Code of Civil Procedure and Section 123 of the Land Registration Act shall apply. The word "court" as used in this Act shall mean the Court of First Instance.

SEC. 27. In the event that the Philippine Legislature shall pass an Act transferring to the Courts of First Instance the jurisdiction now conferred upon the Court of Land Registration, the word "court" used in this Act shall be construed to mean the respective Courts of First Instance and the word "clerk" to mean the Clerk of the respective Regional Trial Courts, or the Administrator of the Land Registration Authority if that office shall have been created and the powers and duties now performed by the clerk of the court of Land

Registration transferred to that office. (Amended by Secs. 1, 2, 3 and 5, RA No. 1151)

SEC. 28. The surveyors employed to make surveys for registration purposes, or to prepare maps and plats of property in connection therewith, shall give due notice in advance to the adjoining owners, whose, addresses are known, of the date and hour when they should present themselves on the property for the purpose of making such objections to the boundaries of the properties to be surveyed as they consider necessary for the protection of their rights. (As amended by Sec. 1859, Act No. 2711)

Surveyors shall report all objections made by adjoining property owners and occupants or claimants of any portion of the lands at the time of the survey and demarcation, giving a proper description of the boundaries claimed by such owners, occupants or claimants. (As amended by Sec. 1859, Act No. 2711)

Surveyors shall define the boundaries of the lands, surveyed for registration purposes, by means of monuments placed thereon and shall indicate on the maps or plats the respective boundaries as designated, both by the applicant for the survey and adverse claimants of adjoining properties; but the work of survey and demarcation of the boundaries of the lands as occupied by the said applicant need not be suspended because of the presentation of any complaint or objections. (As amended by Sec. 1860, Act No. 2711)

If, in any registration proceeding involving such survey, the court shall find the boundary line designated by an adverse claimant to be incorrect and that designated by the applicant to be correct, the expense of making any extra survey over that required by the applicant shall be assessed by the court as cost against the adverse claimant. (As amended by Sec. 1861, Act No. 2711)

Private surveyors employed in making survey as hereinabove contemplated shall be subject to the regulations of the Bureau of Lands in respect to such surveys and shall execute the same in accordance with current instructions relative thereto as issued by the Director of Lands. Promptly upon completing their work, it shall be their duty to send their original field notes, computations, reports, surveys, maps and plate of the property in question to the Bureau of Lands, for verification and approval. (As amended by Sec. 1862, Act No. 2711)

Surveyors who have held the office of assistant in one of the technical corps of engineers of public works, forests, mines, and agro-

nomist during the Spanish Government and surveyors holding an academic diploma issued by a duly authorized and recognized university, college of school who furnished satisfactory proof to the Director of Lands that they have practiced surveying in the Philippine Islands prior to June First, nineteen hundred and nine, shall be exempted from the examination hereinabove required, excepting those who, having taken the said examination, failed to obtain a rating of fifty *per centum* therein. "Surveyors, holding an academic diplomas," as herein used, shall include all those who with similar diplomas under the Spanish Government, were considered as surveyors or as entitled to practice to said profession in the Philippine Islands. (As amended by Sec. 1863, Act No. 2711)

A private surveyor possessing the prescribed qualifications shall, upon application to the Director of Lands, be given a certificate authorizing him to make surveys as contemplated in this article; and without such certificate no private surveyor shall make any survey for Land registration purposes. (As amended by Sec. 1864, Act No. 2711)

When the Director of Lands shall find that any certified private surveyor is incompetent or that any plan or survey made by him is defective, incorrect, or substantially erroneous, owing to incompetency, inexperience, bad faith, or inexcusable negligence, the said Director may cancel the certificate of such surveyor but the latter may within five days after receiving notice of such action, take an appeal to a committee composed of the Department Head, the judge of the fourth branch of the Court of First Instance for the Ninth Judicial District (now Sixth Judicial District) and a duly authorized surveyor appointed by the Governor-General (now President). Pending appeal, the right of the surveyor shall be suspended, and the action of said committee shall be final. (As amended by Sec. 1865, Act No. 2711)

SEC. 29. The short title of this Act shall be *"The Cadastral Act."*

SEC. 30. This Act shall take effect on its passage.

Enacted, February 11, 1913.

# APPENDIX "C"

# COMMONWEALTH ACT NO. 141

AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN

TITLE I

TITLE AND APPLICATION OF THE ACT, LANDS TO WHICH IT REFERS, AND CLASSIFICATION, DELIMITATION AND SURVEY THEREOF FOR CONCESSION

Chapter I — *Short Title of the Act, Lands to Which It Applies, and Officers Charged With Its Execution*

SECTION 1. The short title of this Act shall be *"The Public Land Act."*

SEC. 2. The provisions of this Act shall apply to the lands of the public domain; but timber and mineral lands shall be governed by special laws and nothing in this Act provided shall be understood or construed to change or modify the administration and disposition of the lands commonly called "friar lands" and those which, being privately owned, have reverted to or become the property of the Commonwealth of the Philippines, which administration and disposition shall be governed by the laws at present in force or which may hereafter be enacted.

SEC. 3. The Secretary of Agriculture and Commerce[1] shall be the executive officer charged with carrying out the provisions of this Act through the Director of Lands, who shall act under his immediate control.

[1]Now Secretary of Environment and Natural Resources.

SEC. 4. Subject to said control, the Director of Lands shall have direct executive control of the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Commerce.

SEC. 5. The Director of Lands, with the approval of the Secretary of Agriculture and Commerce, shall prepare and issue such forms, instructions, rules, and regulations consistent with this Act, as may be necessary and proper to carry into effect the provisions thereof and for the conduct of proceedings arising under such provisions.

## CHAPTER II — *Classification, Delimitation, and Survey of Lands of the Public Domain, for the Concession Thereof*

SEC. 6. The President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into —

(a) Alienable or disposable,

(b) Timber, and

(c) Mineral lands, and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

SEC. 7. For the purposes of the administration and disposition of alienable or disposable public lands, the President, upon recommendation by the Secretary of Agriculture and Commerce, shall from time to time declare what lands are open to disposition or concession under this Act.

SEC. 8. Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and which have not been reserved for public or quasi-public uses, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so. However, the President may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reason, suspend their concession or disposition

until they are again declared open to concession or disposition by proclamation duly published or by Act of the National Assembly.

SEC. 9. For the purpose of their administration and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

(a) Agricultural;

(b) Residential, commercial, industrial, or for similar productive purposes;

(c) Educational, charitable, or other similar purposes;

(d) Reservations for town-sites and for public and quasi-public uses.

The President, upon recommendation by the Secretary of Agriculture and Commerce, shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another.

SEC. 10. The words *"alienation," "disposition,"* or *"concession"* as used in this Act, shall mean any of the methods authorized by this Act for the acquisition, lease, use, or benefit of the lands of the public domain other than timber or mineral lands.

## TITLE II

## AGRICULTURAL PUBLIC LANDS

### CHAPTER III — *Forms of Concession of Agricultural Lands*

SEC. 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:

(1) For homestead settlement;

(2) By sale;

(3) By lease;

(4) By confirmation of imperfect or incomplete titles:

(a) By judicial legalization;

(b) By administrative legalization (free patent).

(Note: Chapters IV to VII were omitted)

## CHAPTER VIII — *Judicial Confirmation of Imperfect or Incomplete Titles*

SEC. 47. The persons specified in the next following section are hereby granted time, not to extend beyond December 31, 2020, within which to take advantage of the benefits of this chapter: *Provided*, That the several periods of time designated by the President in accordance with section forty-five of this Act shall apply also to the lands comprised in the provisions of this chapter, but this section shall not be construed as prohibiting any of said persons from acting under this chapter at any time prior to the period fixed by the President.[2]

SEC. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance[3] of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act,[4] to wit:

(a) x x x

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. [5]

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of alienable lands of the public domain, under a *bona fide* claim of ownership, shall be entitled to the rights granted in subsection (b) hereof.[6]

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[2]As amended by RA No. 9176, approved Nov. 13, 2002.
[3]Now Regional Trial Court.
[4]Now Property Registration Decree, PD No. 1529.
[5]As amended by PD No. 1073, dated Jan. 25, 1977.
[6]As amended by PD No. 1073, dated Jan. 25, 1977.

SEC. 49. No person claiming title to lands of the public domain not in possession of the qualifications specified in the last preceding section may apply for the benefits of this chapter.

SEC. 50. Any person or persons, or their legal representatives or successors in right, claiming any lands or interest in lands under the provisions of this chapter, must in every case present an application to the proper Court of First Instance, praying that the validity of the alleged title or claim be inquired into and that a certificate of title be issued to them under the provisions of the Land Registration Act.

The application shall conform as nearly as may be in its material allegations to the requirements of an application for registration under the Land Registration Act, and shall be accompanied by a plan of the land and all documents evidencing a right on the part of the applicant to the land claimed. The application shall also state the citizenship of the applicant and shall set forth fully the nature of the claim, and when based upon proceedings initiated under Spanish laws, it shall specify as exactly as possible the date and form of application for purchase, composition or other form of grant, the extent of the compliance with the conditions required by the Spanish laws and royal decrees for the acquisition of legal title, and if not fully complied with, the reason for such non-compliance, together with a statement of the length of time such land or any portion thereof has been actually occupied by the claimant or his predecessors in interest; the use made of the land, and the nature of the inclosure, if any.

The fees provided to be paid for the registration of lands under the Land Registration Act shall be collected from applicants under this chapter.

SEC. 51. Applications for registration under this chapter shall be heard in the Court of First Instance in the same manner and shall be subject to the same procedure as established in the Land Registration Act for other applications, except that a notice of all such applications, together with a plan of the lands claimed, shall be immediately forwarded to the Director of Lands, who may appear as a party in such cases: *Provided,* That prior to the publication for hearing, all of the papers in said case shall be transmitted by the clerk to the Solicitor General or officer acting in his stead, in order that he may, if he deems it advisable for the interests of the Government, investigate all of the facts alleged in the application or otherwise brought to his attention. The Solicitor-General shall

return such papers to the clerk as soon as practicable within three months.

The final decree of the court shall in every case be the basis for the original certificate of title in favor of the persons entitled to the property under the procedure prescribed in section forty-one of the Land Registration Act.

SEC. 52. In cadastral proceedings, instead of an application, an answer or claim may be filed with the same effect as in the procedure provided in the last preceding two sections.

SEC. 53. It shall be lawful for the Director of Lands, whenever in the opinion of the President the public interests shall require it, to cause to be filed in the proper Court of First Instance, through the Solicitor-General or the officer acting in his stead, a petition against the holder, claimant, possessor, or occupant of any land who shall not have voluntarily come in under the provisions of this chapter or of the Land Registration Act, stating in substance that the title of such holder, claimant, possessor, or occupant is open to discussion; or that the boundaries of any such land which has not been brought into court as aforesaid are open to question; or that it is advisable that the title to such lands be settled and adjudicated, and praying that the title to any such land or the boundaries thereof or the right to occupancy thereof be settled and adjudicated. The judicial proceedings under this section shall be in accordance with the laws on adjudication of title in cadastral proceedings.

SEC. 54. If in the hearing of any application arising under this chapter the court shall find that more than one person or claimant has an interest in the land, such conflicting interests shall be adjudicated by the courts and decree awarded in favor of the person or persons entitled to the land according to the laws, but if none of said persons is entitled to the land, or if the person who might be entitled to the same lacks the qualifications required by this Act for acquiring agricultural land of the public domain, the decision shall be in favor of the Government.

SEC. 55. Whenever, in any proceedings under this chapter to secure registration of an incomplete or imperfect claim of title initiated prior to the transfer of sovereignty from Spain to the United States, it shall appear that had such claims been prosecuted to completion under the laws prevailing when instituted, and under the conditions of the grant then contemplated, the conveyance of such land to the applicant would not have been gratuitous, but would have

involved payment therefor to the Government, then and in that event the court shall, after decreeing in whom title should vest, further determine the amount to be paid as a condition for the registration of the land. Such judgment shall be certified to the Director of Lands by the clerk of the court for collection of the amount due from the person entitled to conveyance.

Upon payment to the Director of Lands of the price specified in the judgment, he shall so certify to the proper Court of First Instance and said court shall forthwith order the registration of the land in favor of the competent person entitled thereto. If said person shall fail to pay the amount of money required by the decree within a reasonable time fixed in the same, the court shall order the proceeding to stand dismissed and the title to the land shall then be in the State free from any claim of the applicant.

SEC. 56. Whenever any judgment of confirmation or other decree of the court under this chapter shall become final, the clerk of the court concerned shall certify that fact to the Director of Lands, with a certified copy of the decree of confirmation or judgment of the court and the plan and technical description of the land involved in the decree or judgment of the court.

SEC. 57. No title or right to, or equity in, any lands of the public domain may hereafter be acquired by prescription or by adverse possession or occupancy, or under or by virtue of any law in effect prior to American occupation, except as expressly provided by laws enacted after said occupation of the Philippines by the United States.

(Note: Secs. 58 to 117 were omitted)

## TITLE VI

## GENERAL PROVISIONS

### CHAPTER XIV — *Applications: Procedures, Concession of Lands, and Legal Restrictions and Encumbrances*

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SEC. 118. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and

after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, conveyance or any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal grounds.[7]

SEC. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

SEC. 120. Conveyances and encumbrances made by persons belonging to the so-called "non-Christian tribes," when proper, shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument of conveyance or encumbrance is written. Conveyances and encumbrances made by illiterate non-Christians or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by the said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration.[8]

SEC. 121. Except with the consent of the grantee and the approval of the Secretary of Agriculture and Commerce,[9] and solely for commercial, industrial, educational, religious or charitable purposes or for a right of way, no corporation, association, or partnership may acquire or have any right, title, interest, or property right whatsoever to any land granted under the free patent, homestead or individual sale provisions of this Act or to any permanent improvement on such land.

The provisions of Section 124 of this Act to the contrary notwithstanding, any acquisition of such land, rights thereto or improvements thereon by a corporation, association, or partnership prior to

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[7]As amended by CA No. 456, approved June 28, 1939.
[8]As amended by RA No. 3872, approved June 18, 1964.
[9]Now Secretary of Environment and Natural Resources.

the promulgation of this Decree for the purposes herein stated is deemed valid and binding: *Provided,* That no final decision of reversion of such land to the State has been rendered by a court: *And provided, further,* That such acquisition is approved by the Secretary of Natural Resources within six (6) months from the effectivity of this Decree.[10]

SEC. 122. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated, or transferred, except to persons, corporations, associations, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefor by their charters.

Except in cases of hereditary succession, no land or any portion thereof originally acquired under the free patent, homestead, or individual sale provisions of this Act, or any permanent improvement on such land, shall be transferred or assigned to any individual, nor shall such land or any permanent improvement thereon be leased to such individual, when the area of said land, added to that of his own, shall exceed one hundred and forty-four hectares. Any transfer, assignment, or lease made in violation hereof shall be null and void. (As amended by CA No. 615)

SEC. 123. No land originally acquired in any manner under the provisions of any previous Act, ordinance, royal order, royal decree, or any other provision of law formerly in force in the Philippines with regard to public lands, *terrenos baldios y realengos*, or lands of any other denomination that were actually or presumptively of the public domain, or by royal grant or in any other form, nor any permanent improvement on such land, shall be encumbered, alienated, or conveyed, except to persons, corporations or associations who may acquire land of the public domain under this Act or to corporate bodies organized in the Philippines whose charters authorize them to do so: *Provided, however*, That this prohibition shall not be applicable to the conveyance or acquisition by reason of hereditary succession duly acknowledged and legalized by competent courts; *Provided, further*, That in the event of the ownership of the lands and improvements mentioned in this section and in the last preceding section being transferred by judicial decree to persons, corporations or associations not legally capacitated to

[10]As amended by CA No. 615 and PD No. 763, issued Aug. 6, 1975.

acquire the same under the provisions of this Act, such persons, corporations, or improvements shall be obliged to alienate said lands or improvements to others so capacitated within the precise period of five years; otherwise, such property shall revert to the Government.

SEC. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.

SEC. 125. The provisions of sections twenty-two, twenty-three, thirty-three, one hundred and twenty-two, and one hundred and twenty-three of this Act, and any other provision or provisions restricting or tending to restrict the right of persons, corporations, or associations to acquire, hold, lease, encumber, dispose of, or alienate land in the Philippines, or permanent improvements thereon, or any interest therein, shall not be applied in cases in which the right to acquire, hold or dispose of such land, permanent improvements thereon or interests therein in the Philippines is recognized by existing treaties in favor of citizens or subjects of foreign nations and corporations or associations organized and constituted by the same, which right, insofar as it exists under such treaties, shall continue and subsist in the manner and to the extent stipulated in said treaties, and only while these are in force, but not thereafter.[11]

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[11]*Note:* The foregoing provisions should be read in relation to Section 2, Article XII of the Constitution which states that "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated . . ." and Section 3 which provides that "Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease."

# APPENDIX "D"

# REPUBLIC ACT NO. 26

AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED

SECTION 1. Certificates of title lost or destroyed shall be reconstituted in accordance with the provisions of this Act.

SEC. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

SEC. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

d) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

SEC. 4. Liens and other encumbrances affecting a destroyed or lost certificate of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) Annotations or memoranda appearing on the owner's co-owner's mortgagee's or lessee's duplicate;

(b) Registered documents on file in the registry of deeds, or authenticated copies thereof showing that the originals thereof had been registered; and

(c) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the liens or encumbrances affecting the property covered by the lost or destroyed certificate of title.

SEC. 5. Petitions for reconstitution from sources enumerated in Sections 2(a), 2(b), 3(a), 3(b), and/or 4(a) of this Act may be filed with the register of deeds concerned by the registered owner, his assigns, or other person having an interest in the property. The petition shall be accompanied with the necessary sources for reconstitution and with an affidavit of the registered owner stating, among other things, that no deed or other instrument affecting the property had been presented for registration, or, if there be any, the

nature thereof, the date of its presentation, as well as the names of the parties, and whatever the registration of such deed or instrument is still pending accomplishment. If the reconstitution is to be made from any of the sources enumerated in Section 2(b) or 3(b), the affidavit should further state that the owner's duplicate has been lost or destroyed and the circumstances under which it was lost or destroyed. Thereupon, the register of deeds shall, no valid reason to the contrary existing, reconstitute the certificate of title as provided in this Act.

SEC. 6. The register of deeds may *motu proprio* reconstitute a certificate of title from its corresponding owner's duplicate, and, for this purpose, may compel the registered owner, or any person holding such owner's duplicate, to surrender the same to the registry of deeds. After the reconstitution said owner's duplicate shall be returned to the person concerned.

SEC. 7. Reconstituted certificates of title shall have the same validity and legal effect as the originals thereof: *Provided, however,* That certificates of title reconstituted extrajudicially, in the manner stated in sections five and six hereof, shall be without prejudice to any party whose right or interest in the property was duly noted in the original, at the time it was lost or destroyed, but entry or notation of which has not been made on the reconstituted certificate of title. This reservation shall be noted as an encumbrance on the reconstituted certificate of title.

SEC. 8. Any person whose right or interest was duly noted in the original of a certificate of title, at the time it was lost or destroyed, but does not appear so noted on the reconstituted certificate of title, which is subject to the reservation provided in the preceding section, may, while such reservation subsists, file a petition with the proper Court of First Instance for the annotation of such right or interest on said reconstituted certificate of title, and the court, after notice and hearing, shall determine the merits of the petition and render such judgment as justice and equity may require. The petition shall state the number of the reconstituted certificate of title and the nature, as well as a description, of the right or interest claimed.

SEC. 9. A registered owner desiring to have his reconstituted certificate of title freed from the encumbrance mentioned in section seven of this Act, may file a petition to that end with the proper Court of First Instance, giving his reason or reasons therefor. A similar petition may, likewise, be filed by a mortgagee, lessees or other lien

holder whose interest is annotated in the reconstituted certificate of title. Thereupon, the court shall cause a notice of the petition to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land lies, at least thirty days prior to the date of hearing, and after hearing, shall determine the petition and render such judgment as justice and equity may require. The notice shall specify, among other things, the number of the certificate of title, the name of the registered owner, the names of the interested parties appearing in the reconstituted certificate of title, the location of the property, and the date on which all persons having an interest in the property must appear and file such claim as they may have. The petitioner shall, at the hearing, submit proof of the publication and posting of the notice: *Provided, however,* That after the expiration of two years from the date of the reconstitution of a certificate of title, if no petition has been filed within that period under the preceding section, the court shall, on motion *ex parte* by the registered owner or other person having registered interest in the reconstituted certificate of title, order the register of deeds to cancel, proper annotation, the encumbrance mentioned in section seven hereof.

SEC. 10. Nothing hereinbefore provided shall prevent any registered owner or person in interest from filing the petition mentioned in section five of this Act directly with the proper Court of First Instance, based on sources enumerated in Sections 2(a), 2(b), 3(a), 3(b), and/or 4(a) of this Act: *Provided, however*, That the court shall cause a notice of the petition, before hearing and granting the same, to be published in the manner stated in section nine hereof: *And provided, further,* That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrance referred to in section seven of this Act.

SEC. 11. Petitions for reconstitution of registered interests, liens and other encumbrances, based on sources enumerated in Sections 4(b) and/or 4(c) of this Act, shall be filed, by the interested party, with the proper Court of First Instance. The petition shall be accompanied with the necessary documents and shall state, among other things, the number of the certificate of title and the nature as well as a description of the interest, lien or encumbrance which is to be reconstituted, and the court, after publication, in the manner stated in section nine of this Act, and hearing shall determine the merits of the petition and render such judgment as justice and equity may require.

SEC. 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e) and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: *Provided,* That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further be accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property.

SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of

the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

SEC. 14. If any person withholds, refuses or fails within a reasonable time after request, to produce a document or paper without which the reconstitution of a certificate of title, or any lien or annotation affecting the same, cannot be fully accomplished, the court may, on motion and after notice and hearing order such person to produce and/or surrender such document or paper at the time and place named in the order and may enforce the same by suitable process.

SEC. 15. If the court, after hearing, finds that the documents presented, as supported by parole evidence or otherwise, are sufficient and proper to warrant the reconstitution of the lost or destroyed certificate of title, and that the petitioner is the registered owner of the property or has an interest therein, that the said certificate of title was in force at the time it was lost or destroyed, and that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title, an order of reconstitution shall be issued. The clerk of court shall forward to the register of deeds a certified copy of said order and all the documents which, pursuant to said order, are to be used as the basis of the reconstitution. If the court finds that there is no sufficient evidence or basis to justify the reconstitution, the petition shall be dismissed, but such dismissal shall not preclude the right of the party or parties entitled thereto to file an application for confirmation of his or their title under the provisions of the Land Registration Act.

SEC. 16. After the reconstitution of a certificate of title under the provisions of this Act, the register of deeds shall issue the corresponding owner's duplicate and the additional copies of said certificates of title, if any had been previously issued, where such owner's duplicate and/or additional copies have been destroyed or lost. This fact shall be noted on the reconstituted certificate of title.

SEC. 17. The register of deeds shall certify on each certificate of title reconstituted the date of the reconstitution, the source or sources from which reconstitution has been accomplished, and whether administratively or judicially.

SEC. 18. In case a certificate of title, considered lost or destroyed, be found or recovered, the same shall prevail over the recon-

stituted certificate of title, and, if both titles appear in the name of the same registered owner, all memoranda of new liens or encumbrances, if any, made on the latter, after its reconstitution, except the memorandum of the reservation referred to in section seven of this Act, shall be transferred to the recovered certificate of title. Thereupon, the register of deeds shall cancel the reconstituted certificate of title and spread upon the owner's duplicate, as well as on the co-owner's, mortgagee's or lessee's duplicate, if any has been issued, such annotations of subsisting liens or encumbrances as may appear on the recovered certificate of title, cancelling at the same time the memorandum of the reservation referred to in section seven hereof: *Provided, however,* That if the reconstituted certificate of title has been cancelled by virtue of any deed or instrument, whether voluntary or involuntary, or by an order of the court, and a new certificate of title has been issued, the recovered certificate of title shall be likewise cancelled, but all subsisting liens or encumbrances, if any, appearing thereon shall be transferred to the new certificate of title and to its owner's duplicate, as well as to any co-owner's, mortgagee's or lessee's duplicate that may have been issued, the memorandum of the reservation referred to in section seven of this Act, if any, being thereby *ipso facto* cancelled.

SEC. 19. If the certificate of title considered lost or destroyed, and subsequently found or recovered, is not in the name of the same person in whose favor the reconstituted certificate of title has been issued, the register of deeds should bring the matter to the attention of the proper Court of First Instance, which, after due notice and hearing, shall order the cancellation of the reconstituted certificate of title and render, with respect to the memoranda of new liens or encumbrances, if any, made in the reconstituted certificate of title, after its reconstitution, such judgment as justice and equity may require: *Provided, however*, That, if the reconstituted certificate of title has been cancelled by virtue of any deed or instrument, whether voluntary or involuntary, or by an order of the court, and a new certificate of title has been issued, the procedure prescribed above, with respect to memoranda of new liens or encumbrances made on the reconstituted certificate of title, after its reconstitution, shall be followed with respect to the new certificate of title, and to such new liens or encumbrances, if any, as may have been made on the latter after the issuance thereof.

SEC. 20. If the registered owner or any other person withholds, refuses or fails, within a reasonable time after request, to produce the owner's duplicate or any other duplicate of a certificate of title,

for cancellation or annotation as provided in sections eighteen and nineteen of this Act, the register of deeds shall report the fact to the proper Court of First Instance and the court, after notice and hearing, may order the person concerned to produce the duplicate in his possession at the time and place named in the order, and may enforce the same by suitable process.

SEC. 21. In all cases where the reconstituted certificate of title does not contain the full technical description of the land, except where such technical description is contained, in a prior certificate of title which is available, the registered owner shall, within two years from the date of the reconstitution, file a plan of such land with the Chief of the General Land Registration Office, who, after approving the same, shall furnish the register of deeds with a copy of the technical description of said land for annotation on the proper certificate of title and file. After the expiration of the period above prescribed, no transfer certificate of title shall be issued in pursuance of any voluntary instrument until such plan and technical description shall have been filed and noted as provided above.

SEC. 22. Every petition filed with the court under this Act shall be sworn to by the petitioner or the person acting in his behalf and filed and entitled in the land registration or cadastral case in which the decree of registration was entered. If the petition relates to a certificate of title originally issued under the provisions of section one hundred twenty-two of Act Numbered Four hundred and ninety-six and the property has been included in a cadastral survey, the petition shall be filed in the corresponding cadastral case: *Provided, however,* That where the property has not been included in a cadastral survey, or where the land registration or cadastral case has been lost or destroyed and/or the number thereof cannot be identified, the petition shall be filed in a special case to be entitled "Special proceedings for reconstitution of lost certificate of title."

SEC. 23. No fees shall be charged for the filing of any petition under this Act, nor for any service rendered, in connection therewith or in compliance with any provision of this Act, by the Chief of the General Land Registration Office, clerks of Court of First Instance, sheriffs, and/or register of deeds. Any certified copy of document or paper that may be necessary in the reconstitution of a certificate of title under this Act shall, upon request of the court, register of deeds, or Chief of the General Land Registration Office, be furnished free of charge, by any office or branch of the Government, including Government controlled corporations, institutions or instrumentalities.

SEC. 24. The Chief of the General Land Registration Office, with the approval of the Secretary of Justice, shall issue rules, regulations, circulars and instructions, and prescribe such books and blank form, as may be necessary to carry into effect the provisions of this Act.

SEC. 25. Sections seventy-six, seventy-seven and eighty-nine of Act Numbered Thirty-one hundred and ten are hereby declared inoperative, insofar as they provide for the reconstitution of certificates of title.

SEC. 26. This Act shall take effect on its approval.

Approved: September 25, 1946.

# APPENDIX "E"

# REPUBLIC ACT NO. 6732

AN ACT ALLOWING ADMINISTRATIVE RECONSTITUTION OF ORIGINAL COPIES OF CERTIFICATES OF TITLES LOST OR DESTROYED DUE TO FIRE, FLOOD AND OTHER *FORCE MAJEURE,* AMENDING FOR THE PURPOSE SECTION ONE HUNDRED TEN OF PRESIDENTIAL DECREE NUMBERED FIFTEEN TWENTY-NINE AND SECTION FIVE OF REPUBLIC ACT NUMBERED TWENTY-SIX

SECTION 1. Section 110 of Presidential Decree No. 1529 is hereby amended to read as follows:

"Sec. 110. *Reconstitution of Lost or Destroyed Original of Torrens Title.* — Original copies of certificates of titles lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act may be availed of only in case of substantial loss or destruction of land titles due to fire, flood or other *force majeure* as determined by the Administrator of the Land Registration Authority: *Provided,* That the number of certificates of titles lost or damaged should be at least ten percent (10%) of the total number in the possession of the Office of the Register of Deeds: *Provided, further,* That in no case shall the number of certificates of titles lost or damaged be less than five hundred (500).

"Notice of all hearings of the petition for judicial reconstitution shall be furnished the Register of Deeds of the place where the land is situated and to the Admi-

nistrator of the Land Registration Authority. No order or judgment ordering the reconstitution of a certificate of title shall become final until the lapse of fifteen (15) days from receipt by the Register of Deeds and by the Administrator of the Land Registration Authority of a notice of such order or judgment without any appeal having been filed by any such officials."

SEC. 2. For the purpose of the preceding section, Section 5 of Republic Act No. 26 is hereby revived and amended to read as follows:

"Sec. 5. Petitions for reconstitution from sources enumerated in Sections 2(a), 2(b), 3(a,) and 3(b) of this Act may be filed with the Register of Deeds concerned by the registered owner, his assigns, or other person, both natural and juridical, having an interest in the property. The petition shall be accompanied with the necessary sources for reconstitution and with an affidavit of the registered owner stating, among other things:

"(1) That no deed or other instrument affecting the property had been presented for registration, or, if there be any, the nature thereof, the date of its presentation, as well as the names of the parties, and whether the registration of such deed or instrument is still pending accomplishment;

"(2) That the owner's duplicate certificate or co-owner's duplicate is in due form without any apparent intentional alterations or erasures;

"(3) That the certificate of title is not the subject of litigation or investigation, administrative or judicial, regarding its genuineness or due execution or issuance;

"(4) That the certificate of title was in full force and effect at the time it was lost or destroyed;

"(5) That the certificate of title is covered by a tax declaration regularly issued by the Assessor's Office; and

"(6) That real estate taxes have been fully paid up to at least two (2) years prior to the filing of the petition for reconstitution.

"If the reconstitution is to be made from any of the sources enumerated in Section 2(b) or 3(b), the affidavit

should further state that the owner's duplicate has been lost or destroyed and the circumstances under which it was lost or destroyed. Thereupon, the Register of Deeds shall, no valid reason to the contrary existing, reconstitute the certificate of title as provided in this Act."

SEC. 3. Immediately after the loss or destruction of titles mentioned in Section 2 hereof, a true, complete and faithful inventory of all books, titles, documents, cash and property in the Registry of Deeds concerned shall be prepared by the Land Registration Authority through the newly designated reconstituting officer or Register of Deeds. Said inventory, duly signed and certified under oath by the Administrator of the Land Registration Authority, shall be published in a newspaper of general circulation in the province or city where the loss or destruction of titles occurred.

SEC. 4. All reconstituted titles shall be reproduced by the Land Registration Authority in at least three image copies or in whatever means by which the original can be reproduced, one copy to be kept by the Land Registration Authority, the second copy to be kept by the National Library Archives Division, and the third copy to be secured in a government fire-proof vault, preferably in the Security Printing Plant of the Central Bank. Such image copy of the original copy of the reconstituted title shall be considered after due authentication by the Land Registration Authority, through the Register of Deeds in the province or city where the land is located, as a duplicate original, and as an authorized source or basis for reconstitution together with the sources enumerated in Sections 2 and 3 of Republic Act No. 26.

SEC. 5. After reconstitution, said owner's duplicate or co-owner's duplicate exhibited as basis for the reconstitution shall be surrendered to the Register of Deeds and a new certificate of title issued in lieu thereof, the original of which shall be kept by the Register of Deeds and the owners duplicate delivered to the registered owner.

SEC. 6. Section 6 of Republic Act No. 26 is hereby declared inoperative.

SEC. 7. Section 19 of Republic Act No. 26 is hereby amended to read as follows:

"Sec. 19. If the certificate of title considered lost or destroyed, and subsequently found or recovered, is not in the name of the same person in whose favor the reconsti-

tuted certificate of title has been issued, the Register of Deeds or the party concerned should bring the matter to the attention of the proper regional trial court, which, after due notice and hearing, shall order the cancellation of the reconstituted certificate of title and render, with respect to the memoranda of new liens and encumbrances, if any, made in the reconstituted certificate of title, after its reconstitution, such judgment as justice and equity may require: *Provided, however,* That if the reconstituted certificate of title has been cancelled by virtue of any deed or instrument, whether voluntary or involuntary, or by an order of the court, and a new certificate of title has been issued, the procedure prescribed above, with respect to the memorandum of new liens and encumbrances made on the reconstituted certificate of title, after its reconstitution, shall be followed with respect to the new certificate of title, and to such new liens and encumbrances, if any, as may have been on the latter, after the issuance thereof."

SEC. 8. The Administrator of the Land Registration Authority, with the approval of the Secretary of Justice, shall issue rules, regulations, and circulars as may be necessary and appropriate to implement this Act, including but not limited to the following:

(1) The temporary designation of a reconstituting officer or another Register of Deeds;

(2) The submission of monthly periodic status reports on reconstitution proceedings and reconstituted titles to the Secretary of Justice and the governor or city mayor concerned; and

(3) The immediate reporting by the reconstituting officer or Register of Deeds to the Secretary of Justice and the governor or city mayor concerned on any verified complaint presented to him.

SEC. 9. The Land Registration Authority Administrator may review, revise, reverse, modify or affirm any decision of the reconstituting officer or Register of Deeds. Any appeal shall be filed within fifteen days from the receipt of the judgment or order by the aggrieved party.

SEC. 10. Any interested party who by fraud, accident, mistake or excusable negligence has been unjustly deprived or prevented from taking part in the proceedings may file a petition in the proper court to set aside the decision and to reopen the proceedings. The petition

shall be verified and must be filed within sixty days after the petitioner learns of the decision but not more than six months from the promulgation thereof.

SEC. 11. A reconstituted title obtained by means of fraud, deceit or other machination is void *ab initio* as against the party obtaining the same and all persons having knowledge thereof.

SEC. 12. Any person who by means of fraud, deceit or other machination obtains or attempts to obtain a reconstituted title shall be subject to criminal prosecution and, upon conviction, shall be liable for imprisonment for a period of not less than two years but not exceeding five years or the payment of a fine of not less than Twenty thousand pesos but not exceeding Two hundred thousand pesos or both at the discretion of the court.

Any public officer or employee who knowingly approves or assists in securing a decision allowing reconstitution in favor of any person not entitled thereto shall be subject to criminal prosecution and, upon conviction, shall be liable for imprisonment of not less than five years but not exceeding ten years or payment of a fine of not less than Fifty thousand pesos but not exceeding One hundred thousand pesos or both at the discretion of the court and perpetual disqualification from holding public office.

SEC. 13. All acts, laws, decrees, executive orders, or parts thereof which are inconsistent with any of the provisions of this Act are hereby repealed or modified accordingly.

SEC. 14. This Act shall likewise cover administrative reconstitution of copies of original certificates of titles destroyed by fire, flood or other *force majeure* within a period of fifteen years before the effectivity of this Act.

SEC. 15. This Act shall take effect upon its publication in three newspapers of general circulation.

Approved: July 17, 1989.

# PROPERTY REGISTRATION DECREE AND RELATED LAWS (LAND TITLES AND DEEDS)

**BY**


## OSWALDO D. AGCAOILI

*Formerly Associate Justice, Court of Appeals*
*(Chairman, 13th Division)*
*Assistant Solicitor General, Office of the Solicitor General*
*Solicitor, Office of the Solicitor General*
*Legal Officer and Chief of Section, Legal Division,*
*Bureau of Lands*
*Bachelor of Laws, University of Sto. Tomas*
*Basic Management, Asian Institute of Management*
*Participant, Academy of American and International Law,*
*Southwestern Legal Foundation, Dallas, Texas*
*Delegate, 20th Biennial Conference of the World Jurist Association*
*Dublin, Ireland, and World Jurist Conference,*
*New Delhi, India*
*Law Professor and Bar Reviewer*
*Lecturer, Philippine Judicial Academy*
*Lecturer, UP Institute of Judicial Administration*
*Member, World Jurist Association*
*Huwarang Ama Awardee for Law and Judiciary*
*Golden Scroll Awardee for Law and Justice*



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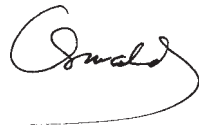
*To my wife Elo, children and grandchildren,*

*this book is affectionately dedicated*



# FOREWORD

The book *"Property Registration Decree and Related Laws (Land Titles and Deeds)"* by Justice Oswaldo D. Agcaoili is a handy compass in the labyrinth of land problems and cases. Pragmatic in approach and comprehensive in scope, it is an excellent reference for every law student and practitioner who wishes to derive a greater understanding of the intricacies of the land titling process and related incidents.

Authored by a magistrate whose knowledge of the subject has been honed by years of service in the Bureau of Lands and in the Office of the Solicitor General, this book indulges not only on theories but also on the application of the law to actual cases. A recognized authority on the subject of land registration, Justice Agcaoili traces the development of land ownership in the Philippines, adverting to the concept of *jura regalia* where the King was regarded as the original proprietor of all lands, and that private titles could only be acquired from the government under the various modes of land grant from the Crown. The book discusses in commendable fashion the modes of titling, through judicial proceedings or administrative legalization, voluntary and involuntary dealings over registered property, and all incidents related thereto.

The copious survey of Supreme Court decisions, the historical reporting of pertinent laws and principles, and the analytical study and explanation of the legal provisions render the book of immense value not only to the members of the bar but to the ordinary laymen as well. The concise and forthright style makes the book very accessible and readable. There is a good compromise between detail and generality. The careful analysis of the latest jurisprudence provides solid support to the comprehensive annotations and comments found in the book.

April 14, 2006.

SANTIAGO M. KAPUNAN
Associate Justice
Supreme Court

# PREFACE

The Property Registration Decree (PD No. 1529) finds its origin in the basic principle of private ownership as conferred and regulated by the sovereign. However, despite the law's wide application and far-reaching importance on property ownership, a basic understanding of its provisions remains elusive to the untrained eye.

Prompted by the gracious suggestions of his students and peers to come up with a book that would summarize his lectures in universities and review classes, the author ventured to write this humble contribution to the field. In the hope of espousing an appreciation of the law and a general understanding of the intricacies of its provisions, the author draws from his professional experience and specialization in property registration issues.

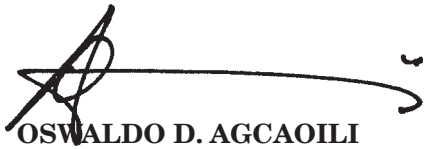
This maiden volume is borne of discussions leading to the enactment of the present Property Registration Decree while he was Chief of the Legislative and Research Section of the Bureau of Lands, his representation of the Republic and its agencies in litigations involving significant land cases in the Office of the Solicitor General and his *ponencias* in varying cases involving land registration and related incidents in the Court of Appeals. The volume walks the reader through the rationale and foundations of the law, the application of each provision to various factual situations and the jurisprudential interpretations of these provisions. In doing so, the author hopes to impart to the reader an appreciation of the fusion between theory and practice of property registration in the Philippines.

For clarity and facility of reference, the topical annotations are organized in accordance with the provisions of the Property Registration Decree. The volume begins with a discussion of the concept of *jura regalia* with specific reference to Section 2, Article XII of the Constitution which ordains that all lands and all other natural resources are owned by the State. An overview of pertinent laws relative to land registration and the government agencies tasked to implement same follows. An extensive disquisition on the titling process, from the filing of the application and issuance of the decree

to its transcription in the Registry of Property aims to provide the reader with a broad insight on the steps, formal requirements and the needed evidence for the bringing of land under the operation of the Torrens system. The discussion is complemented by a detailed consideration of the topics on the Indigenous Peoples Rights Act, voluntary and involuntary dealings with registered lands, conveyances and transfers, mortgages and leases, registration of land patents, emancipation patents and certificates of land ownership award, agrarian reform, chattel mortgages, *consultas*, reconstitution, subdivisions and condominiums, and the remedies available in property registration.

It is hoped that this work will provide a comprehensive reference to law students, professors and practitioners on the various aspects of land registration and related incidents.

Quezon City, Philippines, April 12, 2006.



**OSWALDO D. AGCAOILI**
*Associate Justice*
*Court of Appeals*

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