LAND REGISTRATION—1958

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A survey of the decisions on Land Registration for the year 1958 shows only one discernible trend, i.e., that our Supreme Court merely reiterated its previous rulings and well-settled doctrines in Land Registration, which is a clear sign that our Supreme Court has maintained and is maintaining the state's avowed public policy of protecting and maintaining the stability and security of ownership as regards real property.

In this survey, the writer did not attempt to discuss each case in a detailed and critical manner; but rather, an honest endeavor was made to present them merely in an objective manner. Nevertheless, the writer has always made it a point to refer the reader in his footnotes to his previous works found in the previous issues of this *Journal* in order that one interested in details and in some instances, the critical manner in which a certain case in this subject is discussed, may benefit therefrom. Also, endeavor was made to give the citations of the cases as they are found, not only in the *G.R.s.*, but also, whenever they have already been published in the *Official Gazette*.

I. REGISTRATION UNDER THE TORRENS SYSTEM

A. VOLUNTARY REGISTRATION

1. *Nature and Effect of Registration.*

It is settled law that a decree of registration is conclusive upon and against all persons and that upon the expiration of one year after its issuance it becomes incontrovertible.[1] This doctrine was applied in the case of *Mistica et al v. Caldito, et al.*[2] In this case, plaintiffs aver that they were the owners of a certain parcel of land by inheritance from their deceased father and that they were unjustly deprived thereof when defendants succeeded in having it registered in their names without conclusive or satisfactory proof of ownership, for which plaintiffs pray that the land be reconveyed to them. The defendants controvert plaintiffs' claim and invoked the conclusiveness and incontrovertibility of registration in defendants' favor. Our Supreme Court, speaking through Justice Alex Reyes, said that it is settled law that a decree of registration is conclusive upon and against all persons and that upon the expiration of one year after its issuance it becomes incontrovertible. It further said, that, but while an action for reconveyance is viable in certain cases where registration has been obtained through fraud or violation of trust, the trial court found, and we think rightly, that no such fraud or breach of trust was proved in the present case. The claim that the registration was decreed without conclusive or sufficient proof of ownership is but an imputation of judicial error which it is now too late to correct. On the other hand, there is a legal presumption of regularity in favor of judicial proceeding, and that presumption is not rebutted by the appellants.

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[1] Sec. 38, Act No. 496; Reyes, *et al.* v. Borbon, *et al.*, 50 Phil. 791 (1927); Asurin, *et al.* v. Quitoriano, *et al.*, 46 O.G. (Supp.) No. 1, 44 (1950).

[2] G.R. No. L-11218, May 26, 1958; for details, see XXXIII PHIL. L. J. No. 5, 745.

In the case of *Avecilla v. Yatco, et al.*,[3] it was held that a registration of a document in the registry office operates, not only to the parties to the same but also against the whole world.[4]

2. *Alteration or Amendment Refers to a Certificate of Title.*

In the case of *Abad, et al. v. Government (The Director of Lands)*,[5] Section 112 of the Land Registration Act[6] was construed. It was said that "the alteration or amendment authorized in Section 112 of the Land Registration Act only refers to a certificate of title or to a memorandum thereof, and not to a decree of registration, for otherwise a contrary interpretation would have a derogatory effect upon Section 38 of the same law x x x." The Supreme Court, referring to the case,[7] observed that the mistake which is now advanced as basis for the relocation is not a mistake committed in entering the certificate of title issued in favor of the owners of the Hacienda Esperanza which may be the subject of correction under Section 112. It is merely a mistake committed in the survey which served as basis of the decree of registration pursuant to which the title was issued for, unquestionably, the alleged mitake, if any, was committed by the former surveyors of the Bureau of Lands who undertook the survey of Lot. No. 2959 with a view to its subdivision in line with the decision of this Court rendered on March 10, 1925. And this is the mistake which said Bureau now attempts to correct about twenty-one years after said decree had become final, which as we have stated, can no longer be questioned, the same being under the law *incontrovertible*.[8]

3. *Non-Prescriptibility of Title.*

Section 46 of Act No. 496 provides that no title to registered land in derogation to that of the registered owner may be acquired by prescription or adverse possession.[9] This principle was applied in a case[10] wherein our Government took a parcel of land belonging to a registered owner covered by a Torrens Title for the purpose of widening a certain road in Caloocan, Rizal. After so many years, our Government now claims title to said land through prescription. It was held that said land is non-prescriptible, and that therefore, our Govern-

[3] G.R. No. L-11578, May 14, 1958; 54 O.G. No. 25, 6415; for details, see XXXIII PHIL. L. J. No. 5, 746.

[4] Sec. 51, Act No. 496; De Guinoo v. The Court of Appeals, G.R. No. L-5541, June 25, 1955.

[5] G.R. No. L-10676, March 29, 1958; 54 O.G. No. 28, 6871.

[6] Sec. 112 of the Land Registration Act, provides: "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 any 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 and ceased; 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, 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 as 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."

[7] Abad, *et al.* v. Government, *supra*, note 5.

[8] Sec. 38, Act No. 496; see, also, Reyes *et al* v. Borbon *et al.*, 50 Phil. 791 (1927), Director of Lands v. Gutierrez David, 50 Phil. 797 (1927). Lichauco *et al.* v. Director of Lands *et al.*, 70 Phil. 69 (1940).

[9] Corporacion de PP. Augustinos v. Crisostomo, 32 Phil. 427 (1915); VENTURA, LAND TITLES AND DEEDS, p. 180 (4th. ed 1955.

[10] Herrera v. The Auditor General, G.R. No. L-10776, Jan. 23, 1958.

ment cannot claim title to said land without paying for the value of the land so appropriated by it.

4. *Fraud in the Registration.*

a. Fraud Contemplated in Section 38.

It is an admitted principle that the fraud contemplated by Section 38 of the Land Registration Law is actual fraud.[11] Hence, the claim that the decision did not conform to the evidence presented during the hearing, that it was confusing and was subject to various interpretations, if true, might be considered judicial error subject to correction by the trial court itself, but surely is not fraud within the meaning of Section 38 of the Land Registration Act, so as to warrant the reopening of the case and a review of the decision now long final.[12]

b. To Whom Operative.

It was held in a case,[13] that the setting aside of the original decree was operative only between the parties to the fraud and the parties defrauded or their privies; but not against acquirers in good faith and for value. Hence, in the instant case,[14] where absolute ownership of the land in question was obtained in a public auction sale in the foreclosure of mortgage, and not by virtue of the sale with pacto de retro whose original certificate of title was declared by the Court as obtained by fraud, and said foreclosure proceedings having been declared by the Court valid upon reversal of the decision of the Court of First Instance of Tarlac rendered in the case of *Allingag v. Valle Cruz*, it is quite evident that the validity of the transfer certificate of title cannot be disputed because the plaintif herein was the lawful successor of Lucia F. de Vallee Cruz over the land in question. Furthermore, the Court observed that one of the herein appellants, Julio Sudaria, was one of the plaintiffs-appellants in a previous case wherein the validity of the title issued in the name of Lucia F. de Valle Cruz and the validity of the Transfer Certificate of Title issued in favor of the plaintiff were involved. The Supreme Court, therefore, concluded that the original decree could not be set aside because Lucia F. de Valle Cruz acquired said land in good faith and for value in the public auction sale; and the Mayon Realty Corporation being her successor in interest, the same holds true also as regards said Corporation.

c. Remedies of Aggrieved Party.

(i) Recovery of Damages.

It is settled law that in all cases of registration procured by fraud, the remedy of the persons prejudiced thereby is to bring an action for damages against the persons responsible therefor, within four years after discovery of the deception, without prejudice to the rights of an innocent purchaser for value.[15] In *Avecilla v. Yatco, et al*,[16] it is alleged in the complaint that the spouses Placido Alfonso and Agueda Santos owned a parcel of land covered by a certificate of title which was conjugal in nature; that Pdacido died in 1947 without any issue; the Agueda, alleging fraudulently that she was the sole heir of her deceased husband, executed an extrajudicial deed of settlement and

[11] Grey Alba v. De la Cruz, 17 Phil. 49 (1910); Rivera v. Moran, 48 Phil. 836 (1926); Gov't. v. Court of First Instance, 49 Phil. 483 (1927).

[12] Director of Lands v. Agodo and Centino, G.R. No. L-11264, Feb. 10, 1958.

[13] Mayon Realty Corp. v. Sudaria, *et al.*, G.R. No. L-11398, Dec. 23, 1958; to the same effect is the ruling in the case of Register of Deeds of Tarlac v. Mayon Realty Corp., G.R. No. L-11155, Dec. 27, 1958.

[14] *Ibid.*

[15] Sec. 55, Act No. 496; Raymundo *et al.* v. Afable *et al.*, G.R. No. L-7651, Feb. 28, 1955; see also, Sec. 48 of Act No. 190.

[16] G.R. No. L-11578, May 14, 1958; 54 O.G. No. 25, 6415; see also, XXXIII PHIL. L. J. No.

secured a transfer certificate in her name; that thereafter she sold the land to Santiago Cruz who fraudulently secured a transfer certificate of title; that Santiago in turn conveyed the property to Susana Realty, Inc. Our Supreme Court, speaking through Justice Angelo Bautista, held: "Indeed, there is nothing alleged therein which may implicate Susana Realty, Inc. in the commission of the alleged fraud in the transfer made by Agueda Santos of the land to Santiago Cruz although the allegation therein is clear that both Santos and Cruz have acted fraudulently. Being an innocent purchaser for value of the land, its right is protected by law and the remedy of the persons prejudiced is to bring an action for damages against the persons responsible therefor."

(ii) Reconveyance of Property Registered Through Fraud.

The cases decided by the Supreme Court have modified, on the broad principles of law and equity, the provision of Section 38 of Act No. 496 [17] by holding that the aggrieved party whose land is registered through fraud in the name of another may file an ordinary civil action for the reconveyance of his property when special circumstances attend the registration of the land in the name of the offending party, provided that the same has not been transferred to an innocent purchaser for value.[18] In *Aban, et al. v. Cendaña*,[19] it was held that an action for reconveyance is available whenever land is registered through fraud or mistake in the name of one who is not the true owner, the registrant is regarded in the eyes of the law as a mere trustee,[20] not in the technical sense, but for want of a better term. In such capacity he is under oblivation to execute the deed of transfer in favor of the true owner in keeping with the primary priciple of law and equity that "one should not unjustly enrich himself at the expense of another." The one year limitation provided in Section 38 of the Land Registration Act for the review of a decree does not bind this remedy. It can be resorted to even after the expiration of this period, the only condition being that the property concerned not passed to an innocent purchaser for value. Thus, in the instant case,[21] where the plaintiffs have since time immemorial been in possession of a parcel of land through inheritance discovers only in 1953 that the defendants are in possession of a portion of land covered by plaintiffs' title, which according to the defendants are theirs only that it was erroneously included in plaintiffs' title, the Court gave judgment in favor of the defendant even against the allegation of the plaintiffs who invoked the one-year period to challenge a Torrens title on the ground of fraud. The Court held that said portion of land owned by the defendants was erroneously included in the title of the plaintiffs; and hence, the plaintiffs should relinquish this in favor of the defendants.

In *Roco et als. v. Gemida*,[22] where the defendant was able to obtain a patent without notice to the plaintiffs who were in actual possession of said land through inheritance, and which through their ignorance was declared public land, it was held that an action for reconveyance can be maintained by the plaintiffs even though the action was filed more than two years after the issuance of the patent, beyond the one-year period provided by law.

5, 746.

[17] Sec. 38 of Act No. 496, provides: "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."

[18] Castillan v. Espartero *et al.*, G.R. No. L-6902; 50 O.G. 4183 as cited in VENTURA, LAND TITLES AND DEEDS, p. 190 (4th ed. 1955).

[19] G.R. No. L-11989, May 23, 1958; see also, XXXIII Phil. L.J. No. 5, 742.

[20] This principle is found in the New Civil Code. Article 1456 of which, provides: "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."

[21] *Supra* at note 19.

[22] G.R. No. L-11651, Dec. 27, 1958.

However, it should be noted, that an action for reconveyance of a property, that is already covered by a Torrens Title, under the Land Registration Act, *may only be maintained by the owner of the property* who has been prejudiced by the actual fraud imputed to one, who suceeded in securing the registration of the said property in his name.[23] Thus, in *Nebrada v. Heirs of Alvio et al.*,[24] Justice Angelo Bautista, speaking for the Supreme Court, said. ". . . in order that the heirs of Cobalan may claim reconveyance of the property in their favor there is need for them to show *that they are the owners thereof* but that they had been deprived of its ownership and possession through fraud practised by defendants. The complaint does not show nor claim that they are the owners of the property, for it merely alleges that their father Cobalan applied for the property as homestead from the Bureau of Lands and that after complying with the requirements of the law an order was issued directing the issuance of patent to Cobalan. But the complaint also shows that this order was later set aside by the Bureau of Lands in view of an alleged misrepresentation made by one Perfecto Diray in behalf of the heirs of Felix Alivio, and that said order became final when plaintiff withdrew the motion for reconsideration he had filed when he learned of the existence of such order...".

(iii) Reopening of Decree After Lapse of One Year.

After the expiration of the one-year period provided for review of the decree, the right of the owner of the land registered in the name of another is forever barred. This means that the land should remain with the party who procured the fraudulent registration and the person deprived of his land or interest therein is accorded by law the corresponding relief. The purpose of the law in providing one year within which to review the decree on the ground of fraud is to put a limit to the time within which the true owner of the property may have a chance to have the decree revoked, thereby enabling him to retain his title to the property.[25] This, in effect, was the ruling of the Supreme Court in the case of *Dizon v. Banues*.[26] It appears that plaintiffs and defendant are the instituted heirs of Catalino Dizon. Their attorneys entered into a "convenio y proyecto de particion" dividing the property into two, adjudicating one-half to the plaintiffs and the other half to the defendant. Subsequently, defendant commenced proceeding in the land registration court to have her title confirmed under Act No. 496. Plaintiffs objectied, but the land registration court confirmed her title. Plaintiffs did not appeal. Subsequently, plaintiffs brought an action to have the "convenio y proyecto de particion" declared null and void because it was entered by the attorney without their consent. The Supreme Court, through Justice Padilla, held that the legality and validity of the "convenio y proyecto de particion" should have been assailed in the land registration proceedings by the appellants. This they failed to do. And when the land registration court entered a decree confirming the appellee's title to the parcel of land applied for and directing its registration in her name, the decree thus entered was conclusive not only on the questions actually contested and decided in the land registration proceedings. The appellants did not appeal from the decree entered by the court allowing it to become final. To permit them to question the legality of the partition and to secure a declaration of its nullity in this action, if successful, would result in the setting aside of the decree of registration in favor of the appellee, which cannot be reopened after the lapse of one year from the entry thereof.

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[23] Sec. 55 of the Land Registration Act in its pertinent provisions reads as follows: "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."

[24] G.R. No. L-11650, June 30, 1958; *see also*, XXXIII PHIL. L. J. No. 5, 744.

[25] Sec. 38, Act No. 496; VENTURA, LAND TITLES AND DEEDS, p. 189 (4th ed. 1955).

[26] G.R. No. L-10222, Aug. 29, 1958.

B. SUBSEQUENT REGISTRATION.

1. *Purchaser Charged With Knowledge of Possible Defect of Title.*

It is a well-settled rule in this jurisdiction that a purchaser of registered lands who had knowledge of facts which should put him upon inquiry and to investigate as to the possible defects of the title of the vendor and fails to make such inquiry and investigation cannot claim that he is a purchaser in good faith for value and he had acquired a valid title thereto.[27] Thus in *Sampilo et al. v. The Court of Appeals, et al,*[28] where it appears that decedent left a widow and several nieces and nephews, but in the affidavit executed by his widow she claims that she is the only heir and therefore was able to claim the four parcels of land left by her husband; and these parcels of land she sold to one Sampilo who later sold it to one Salacup, our Supreme Court held that the appellants are not innocent purchasers for value and therefore the other heirs could recover their share in the inheritance. Justice Labrador, speaking for the Supreme Court, said: "The Court of Appeals correctly rejected the claim that appellants are innocent purchasers for value. Said Court found that Benny Sampilo is a nephew of the widow and has been living with the later. It is hard, therefore, to believe that he did not know of the existence of the other heirs of the deceased. As regards Honorato Salacup, while it is true that no notice of *lis pendens* appeared annotated in the title issued to Sampilo when he acquired the property and the notice of *lis pendens* was noted only after the sale to him of the property, nevertheless, he cannot claim that he was a purchaser in good faith for value of the property x x x".

2. *Effect of Registering Forged Instruments; Innocent Purchaser for Value.*

Section 55 of the Land Registration Law provides that any subsequent registration procured by the presentation of a forged deed shall be null and void and that the owner of the land may pursue all his legal and equitable remedies against the parties to the fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title. This provision was applied in the case of *Adams, et al. v. De Jesus, et al.*[29] It appears that Mrs. Adams became the sole owner in fee simple of two parcels of land, described in Transfer Certificate of Titles No. 25802 and 25803, the coresponding owner's duplicate certificates having ben received on April 20, 1951 by her attorney-in-fact Mr. Hill. Subsequently, Mr. Hill was authorized by Mrs. Adams to sell said lands and she gave Mr. Hill the owner's duplicate certificate of title. Mr. Hill looked for prospecive buyers, among whom was one James Rogers. The latter was allowed to have possession of said owner's duplicate certificate of title for which a receipt was issued. There is, however, a controversy as to whether Mr. Rogers again took possession of said owner's duplicate certificates of title and returned them accordingly. Nevertheless, said duplicate certificates of title disappeared from the desk of Mr. Hill. Subsequently, two men and a woman, presumably Americans, appeared before Atty. Emiliano Calma, a notary public. The woman impersonating Mrs. Adams, requested said attorney to notarize a power of attorney in favor of her husband. After this, one Joseph Doepker impersonated Mr. Adams, and misrepresented himself to Mrs. de Jesus. Through the intermediation of Mrs. Atienza, a mortgage in favor of Mrs. de Jesus was executed on the lots covered by said certificates of title for a certain sum. The owner's duplicate certificates of title were produced and the mortgage duly recorded with the Register of Deeds of Manila. Ten days later, the same impostor executed a

[27] Leung Yee v. Strong Machinery Co., 37 Phil. 644 (1918); Dayao v. Diaz, G.R. No. L-41906, May 26, 1952

[28] G.R. No. L-10474, Feb. 28, 1958.

[29] G.R. No. L-8658, Dec. 29, 1958.

deed of sale covering said lot. *Held*: It has been proved in this case that the transactions (the mortgage and sale of the lots in controversy) and the registration of the same in the name of the appellant Mrs. de Jesus were realized through forgery perpetrated by an impostor. The deed of mortgage and the deed of sale drawn up by said swindler were thus all forged, aside from the fact that the former owner's duplicate transfer certificates of title and the originals thereof in the office of the Register of Deeds were tampered with and therefore may be considered also as forged.

The registration consequent upon the presentation of a forged deed or other instruments, or a forged certificates of title is null and void. A certificate of title issued by virtue of said fraudulent and void registration is also null and void. [30]

C. INVOLUNTARY DEALINGS WITH LAND

1. *When notice of* lis pendens *and* adverse claim *cancelled.*

In *Ty Sin Tei v. Lee Dy Piao,* [31] the Court explained when a notice of *lis pendens* and a registered adverse claim may be cancelled. It said that while notice of *lis pendens* remains during the pendency of the action although the same may be cancellled under certain circumstances as where the case is prolonged unnecessarily or for failure of the plaintiff to introduce evidence bearing out the allegations of the complaint; [32] and it has even been held that a court, in the absence of a statute, has the inherent power to cancel a *lis pendens* notice in a proper case [33] the same is not true in a registered adverse claim, for it may be cancelled only in one instance, i.e., after the claim is adjudged invalid or unmeritorious by the Court, acting either as a land registration court or one of general jurisdiction while passing upon a case before it where the subject of the litigation is the same interest or right which is being secured by the adverse claim. Justice Felix, speaking for the Supreme Court, went on by saying that it would not only be unreasonable but also oppressive to hold that the subsequent institution of an ordinary civil action would work to divest the adverse claim of its validity, for a notice of *lis pendens* may be cancelled even before the action is finally terminated for causes which may not be attributable to the claimant. And it would similarly be beyond reason to confine a claimant to the remedy afforded by section 110 of Act 496 if there are other recourses in law which such claimant may avail of. But if any of the registrations should be considered unnecessary or superfluous, it would be the notice of *lis pendens* and not the annotations of the adverse claim as the latter annotations are more permanent and cannot be cancelled without adequate hearing and proper disposition of the claim.

2. *Adverse claim and Court's duty to determine conflicting interest.*

In the case of *Ng Sam Bok v. Director of Lands,* [34] Ng Sam Bok filed with the court an application for registration of certain lots. The Director of Lands

[30] Citing the cases of Dir. of Lands v. Addison, 49 Phil. 19 (1926) and Ong Chua v. Carr, 53 Phil. 975 (1929) applying section 55 of the Land Registration Act.
Speaking through Chief Justice Paras, our Supreme Court, also said: "Persons dealing with an assumed attorney-in-fact are required to observe extraordinary diligence in determining not only the fact of agency but also the nature and extent of his authority (Dean vs. Pacific Commercial Co., 42 Phil. 738; Harry E. Keeler Electric Co. vs. Rodriguez, 44 Phil. 19). An inquiry from the known broker by appellant Mrs. de Jesus would have revealed that the real attorney-in-fact was Alva J. Hill. The prompt registration, all in one day, of the deed of sale, cancellation of the certificates of title of appellant Mrs. de Jesus in lieu thereof based on admittedly tampered certificates of title, all through the efforts of appellants' own agent, justify the conclusion of the lower court that Mrs. de Jesus was not an innocent purchaser."

[31] G.R. No. L-11271, May 28, 1958; 54 O.G. No. 34, 7904; for a detailed discussion, see XXXIII Phil. L.J. No. 5, 740.

[32] Citing the cases of Victoriano v. Rovira, 55 Phil. 1000; Municipal Council of Parañaque v. Court of First Instance of Rizal, 40 O.G. (8th Supp.), 196.

[33] Victoriano v. Rovira, *supra* at note 32.

[34] G.R. No. L-11988, Dec. 22, 1959.

filed an opposition, claiming that the lots form part of the public domain. After the parties have presented their respective evidence and while the case was pending the decision, the applicant-appellee filed a motion for dismissal without prejudice, alleging that some 20 hectares of sugar land belonging to him were inadvertently or otherwise omitted in the survey. The lower court, over the opposition of the provincial fiscal, issued an order dismissing the case without prejudice. The Director of Lands appealed. Held: As the Director of Lands has registered herein an adverse claim, the lower court was bound to determine the conflicting interest of said claimants and the applicant appellee; and in case neither succeeds, under the evidence in showing proper title for registration it may dismiss the case. The alleged omission in the survey of a certain area would of course not bar the applicant-appellee from filing another application for registration covering said area.[35]

II. CADASTRAL SYSTEM.

A. JURISDICTION OF THE COURT.

Where there is a petition concerning the cancellation of any encumbrance noted on a Torrens certificate of title within the record of the Land Registration case in which the basic decree was entered and there is no substantial controversy in regard thereto between the petitioner and any interested party, such petition may be considered in the cadastral case in which the decree of registration was entered.[36] This principle was applied in the case of *In re Geonanga*.[37] It appears that the spouses Raymundo Robles and Margarita Mondejar borrowed from the Agricultural and Industrial Bank a sum of money, and, to guarantee its payment, they constituted, in favor of said bank a real estate mortgage on their two lots. The owner's duplicate copy of title was held by the Bank. Sometime in 1954, respondent C.N. Hodges, plaintiff in a civil case, secured a writ of attachment, which was levied upon the lots in question, by filing the corresponding papers with the Register of Deeds, who made the corresponding entry of the attachment on the original of the aforementioned Transfer Certificate. Subsequently, with the express consent of the Rehabilitation Finance Corporation, the legal successor of the Agricultural and Industrial Bank, petitioners Geonanga and Gotera paid the obligation of Robles and Mondejar and bought the lots from them. Consequently, the Register of Deeds cancelled the original Transfer Certificate and issued a new certificate of title to Geonanga and Gotera with the corresponding memorandum of the attachment in favor of Hodges. Geonanga and Gotera asked that the annotation be cancelled on the ground that it was illegal, null and void, pursuant to section 26 of Com. Act No. 459.[38]

The petition was filed in the cadastral case in which the decree for the registration of said lots had been entered. Hodges contested the jurisdiction of

[35] The legal provision involved is Sec. 37, Act No. 496, which provides: "If in any case without adverse claim the court finds that the applicant has no 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 interest 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. . . ."

[36] Florp v. Granada, 46 O.G. 11, 5484 (1950); NOBLEJAS, REGISTRATION OF LAND TITLES AND DEEDS, 31 (1st ed. 1957)

[37] G.R. L-11323, April 21, 1958; see also, XXXIII Phil. L.J. No. 4, 577.

[38] Sec. 26, Com. Act No. 459, provides: "Securities on loans granted by the Agricultural and Industrial Bank shall not be subject to attachment nor can they be included in the property of the insolvent persons or institutions, unless all debts and obligations of the debtor to the Agricultural and Industrial Bank have been previously paid, including accrued interest, collection expenses and other charges."

the lower court, sitting as a court of land registration,[39] to grant said petition, upon the ground that the issue therein raised is a controversial one and should be threshed out, either in an ordinary civil action or in the civil case.[40] The trial court overruled said opposition, and the case is now in the Supreme Court for review. The Court, speaking through Justice Concepcion, said that it is not disputed that, under section 112 of Act No. 496,[41] petitioners-appellees, as registered owners of the lots in question, may petition the court having jurisdiction over the cadastral case in which the decree of registration of said lots was entered for such relief as may be proper against "any error x x x or mistake x x x made in entering a certificate or any memorandum therein," provided that the original decree of registration is not thereby reopened and the title or other interest of a purchaser holding a certificate for value and in good faith is not impaired without his written consent. The Court, therefore, found the Register of Deeds in error, so clear and patent that not even appellant herein denies it, because the lots in question cannot be attached as disposed of in the second issue.

III. REGISTRATION UNDER ADMINISTRATIVE PROCEEDINGS.

A. PUBLIC AGRICULTURAL LANDS.

1. *When Jurisdiction is Lost by the Director of Lands.*

In *Diaz et al. v. Macalinao, et al,*[42] the contention that the Director of Lands has jurisdiction to determine which of the rival homesteaders should be entitled to possess was held to be without merit. The Court said that since a homestead entry was permitted by the Director of Lands, the homestead is segregated from the public domain and the Director of Land is divested of the control and possession thereof, except if the application is finally disapproved and the entry annulled or revoked.

2. *Sale of Homestead Within Five-Year Prohibitory Period.*

It has been the consistent ruling of our Supreme Court that the conveyance or sale of a homestead by the applicant within the five-year prohibitory period is null and void from its inception, and the land conveyed should be returned to the applicant upon the return to the purchaser of the amount of the purchase price or consideration.[43] This ruling were reiterated in the cases of *Cadiz, et*

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[39] Originally, the Court of Land Registration, created by section 2 of Act No. 496, was conferred exclusive jurisdiction over all applications for registration of title to land or building or interest therein, with power to hear and determine all questions as may come before it under the land registration act, subject of course to the right of appeal. By virtue, however of Act No. 2347, the Court of Land Registration was abolished and all the powers and jurisdiction therefore conferred upon said court were conferred upon the Court of First Instance of the respective provinces in which the land sought to be registered is situated. (NOBLEJAS, *op. cit. supra* note 36, at 25).

[40] Relief under Section 112, Act 496 can only be granted if there is unanimity among the parties, or 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 proper belongs. (Tangunan *et al.* v. Republic, G.R. No. L-5545, Dec. 29, 1953; Noblejas, *op. cit. supra* note 36, at 27).

[41] Sec. 112, Act No. 496, provides: "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 any 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;* . . ." (Italics supplied).

[42] G.R. L-10747, Jan. 31, 1958.

[43] Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955; Acierto v. de los Santos, G.R. No. L-5828, Sept. 29, 1954; De los Santos v. Roman Catholic Church of Midsayap, 50 O.G. 0, 1588 (1955); Register of Deeds v. Director of Lands, 72 Phil. 318 (1941); Villanueva v. Paras, 69 Phil. 884 (1940); Labrador v. de los Santos, 66 Phil. 479 (1938); Sabas v. Garma, 66 Phil. 471 (1938).

al. v. Nicolas,[44] *Santander, et al. v. Villanueva and Asuncion,*[45] and in *Felices v. Iriola.*[46]

In the *Cadiz case,*[47] one Domingo Cadiz obtained a homestead patent over a piece of land situated in Isabela on Feb. 3, 1937. On Dec. 26, 1939, Cadiz obtained a loan from Francisco Nicolas payable on Feb. 28, 1942. The parties agreed that should the loan be not paid on the date above stated, Cadiz shall convey to Nicolas by absolute sale the homestead covered by the patent. Having failed to pay the loan, Cadiz executed a deed of sale in favor of Nicolas which was approved by the Sec. of Agriculture, and a corresponding title was issued. Subsequently, Cadiz, claiming that the deed of sale was either fictitious or null and void, brought the present action. *Held*: Under Section 118 of Commonwealth Act No. 141, a parcel of land acquired under free patent or homestead provisions can not become liable to the satisfaction of any debt contracted prior to the expiration of 5 years from and after the date of the issuance of the patent, except in favor of the Government. This provision of law is mandatory. Its purpose is to give to the homesteader a place where to live with his family so that he may become a happy citizen and a useful member of society.[48] The deed of sale in question comes under this prohibition. The land was sold to Nicolas to satisfy a debt contracted before the expiration of the 5-year period from the issuance of the patent. It is immaterial whether the satisfaction of the debt be made either by a voluntary sale or through judicial process as when the property is levied upon and sold at public auction, because the spirit of the law may be defeated either way. That the sale of the homestead was made with the approval of the Secretary of Agriculture and Natural Resources could not affect the conclusion reached.

In the *Santander case,*[49] it appears that Vicente Santander, one of the plaintiffs herein, acquired a homestead patent over six hectares of land on July 29, 1937, and on July 8, 1938, Original Certificate of Title was issued to Santander. On Feb. 26, 1942, Santander signed a document purporting to be an absolute sale of a two-hectare portion of his homestead to Asuncion. It was expressly stipulated in the deed that the conveyance was to become effective only after the approval of the authorities concerned. Seven years later, the heirs of Santander commenced this action to recover the land on the claim that the contract was a mere mortgage of the homestead, and that the plaintiffs attempted to repay the debt but was refused by the defendants. The Supreme Court held, speaking through Justice J.B.L. Reyes, that "there is no question that the sale was made within five years from the issuance of appellant Santander's homestead patent on July 29, 1937. It has been the consistent ruling of this Court that conveyances of homestead of this nature are null and void from inception...; and in line with this precedent, the document Exh. 1 must be declared null and void, and the land conveyed ordered returned to appellants upon their return to appellees of the purchase price of ₱480,000."

In *Felices v. Iriola,*[50] the plaintiff obtained a homestead. The month following the issuance of his patent, he conveyed by a conditional saile to defendant a portion of his homestead. The conveyance expressly stipulates that the sale was subject to the provision of Sec. 119 of Act 141, as amended,[51] and to

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[44] G.R. No. L-9198, Feb. 18, 1958.
[45] G.R. No. L-6184, Feb. 28, 1958; see also XXXIII Phil L.J No 8, 442.
[46] G.R. No. L-11269, Feb. 28, 1958.
[47] *Supra* nat note 44.
[48] Citing the case of Jocson v. Soriano, 45 Phil. 375, 379 (1924).
[49] *Supra* at note 45.
[50] *Supra* at note 46.
[51] Sec. 119 of Com. Act No. 141, provides: "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."

the prohibitions spread on the vendor's patent; and that after the lapse of five years or as soon as may be allowed by law, the vendor or his succesors would execute in vendee's favor a deed of absolute sale over the land in question. Two years after the sale, appellee tried to recover the land from appellant, but the latter refused unless he was paid the value of improvements he had introduced on the property. Justice J.B.L. Reyes, speaking for the Supreme Court, said that at the outset, it must be made clear that as the sale in question was executed by the parties within the five-year prohibitive period under Sec. 118 of the Public Land Law, the same is absolutely null and void and ineffective from its inception. Consequently, appellee never lost his title or ownership over the land, and there was no need either for him to repurchase the same from appellant, or for the latter to execute a deed of reconveyance in his favor. The case is actually for mutual restitution, incident to the nullity *ab initio* of the conveyance.

3. *In Pari Delicto.*

Where a homestead was illegally sold in violation of the homestead law, the principle of *in pari delicto* is not applicable. Reason for the rule is that the policy of the law is to give land to a family for home and cultivation and the law allows the homesteader to reacquire the land even if it has been sold; hence the right may not be waived.[52] Thus, in *Angeles, et al. v. The Court of Appeals, et als,*[53] the sale of the homestead by the deceased homesteader within five years from the issuance of the patent was null and void and his heirs have the right to recover the homestead illegally disposed of. However, the Court emphasized, that, although the rule of *in pari delicto* should not apply to the sale of the homestead, because such sale is contrary to the public policy enunciated in the homestead law, the loss of the products realized by the defendants and the value of the necessary improvements made by them on the land should not be excepted from the application of said rule because no cause or reason can be cited to justify an exception. In the case at bar the heirs of the homesteaders should be declared to have lost and forfeited, the value of the products gathered from the land and so the defendants should lose the value of the necessary improvements that they have made thereon.

And, in the *Santander case,*[54] where a sale of homestead by applicant within five-year prohibitory period was declared void by the Court, the same Court refused to give any other relief to the appellees in this case, except the return of the sum of P480,000, the original purchase price, for they were themselves *in pari delicto* with homesteader Santander.

4. *Action to Recover Homestead.*

In the *Angeles case,*[55] it was also held that where the sale of a homestead is null and void, the action to recover the same does not prescribe because mere lapse of time cannot give efficacy to contracts that are null and void and inexistent.

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[52] De los Santos v. Roman Catholic Church of Midsayap, *et al.*, G.R. No. L-6088, Feb. 25, 1954; Acierto, *et al.* v. De los Santos, *et al.*, G.R. No. L 5828, Sept. 29, 1954.

[53] G.R. No. L-11024, Jan. 31, 1958; 54 O.G. No. 17, 4945 (1958); for a detailed discussion, see XXXIII Phil. L.J. No. 3, 440.

[54] *Supra* at note 45.

[55] *Supra* at note 53.