LAND REGISTRATION

FELIPE C. AMORES*

For more than half of a century from 1903 up to the present, three principal laws on land registration have reflected the pulse beat of the system of land registration in the Philippines. First of these laws is the Land Registration Act, otherwise known as Act No. 496, which took effect on February 1, 1903; the second is the Cadastral Law (Act No. 2259), which took effect on February 11, 1913; and the third is the Public Land Law (Commonwealth Act No. 141), which took effect on November 7, 1936.

Acts which are supplementary to the above-mentioned laws are Republic Act No. 26, which provides for the "reconstitution of Torrens certificate of title lost or destroyed;" Republic Act No. 1151 creating the Land Registration Commission; and others which govern special situations.

This survey shows, however, that the bulk of the 1965 decisions of the Supreme Court on land registration is focused on cases closely connected with the principal laws mentioned above, more particularly the Land Registration Act and the Public Land Law. There is one case involving the Cadastral Law. The other Acts are not involved at all except Republic Act No. 26 referred to above. The rulings laid down by the decisions are mostly amplifications, clarifications or restatements of rules of law or of well-established principles of law.

THE LAND REGISTRATION ACT

CERTIFICATE OF TITLE —

1. *When to claim indefeasibility of title*

Section 55 of the Land Registration Act provides that 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: 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,*

* Member, Student Editorial Board (Recent Documents).

however, to the rights of any innocent holder for value of a certificate of title." (Italics supplied) Under this provision, may an innocent mortgagee, relying on a Torrens title in good faith and unaware that fraud had been committed by forgery in procuring it, be entitled to protection? In *Register of Deeds v. Philippine National Bank*,[1] the Court held that the theory of indefeasibility of title under the Torrens System could be claimed only if a previous valid title evidenced by a Torrens certificate of title to the same parcel of land does not exist. Where issuance of the title was attended by fraud, the same cannot vest in the registered owner any valid legal title to the land covered by it; and the person in whose name the certificate was issued cannot transmit any right, for he is not the owner thereof. In other words, where the owner, as in this case, procured a certificate of title over a parcel of land and sold it, and later by false representation succeeded in obtaining another certificate of title over the same land and mortgaged it on the strength of the second certificate, the mortgagee though an "innocent holder for value of a certificate of title" is not covered by the protection of Section 55 of Act No. 496, as amended.

Putting it in another way, where the land is already covered by a valid Torrens certificate of title in the name of one person, the issuance of another certificate of title on the same property in the name of another person who did not derive his title from the first registered owner will not render the second certificate of title indefeasible.[2]

2. *Effect of certificate on previous sale of unregistered land*

In *Dagupan Trading Company v. Rustico Macam*,[3] one Sammy Maron and his seven brothers and sisters applied for the registration of a parcel of land. One June 19 and September 21, 1955, while the case was pending, they executed two deeds of sale conveying the land to Rustico Macam, the defendant in this case. Thereupon Macam took possession of the land and proceeded to introduce substantial improvements therein. On October 14, 1955, an Original Certificate of Title on the property was issued in the name of SM and his seven brothers and sisters. On August 4, 1956, a judgment against SM and in favor of the Manila Trading & Supply Company was rendered by a court. SM's alleged one-eighth interest in the land was levied upon and sold at public auction to the Manila Trading & Supply Company, the judgment creditor. As nobody exercised the right of redemption the sheriff issued in favor of the said Company the certificate of final sale. On March 1, 1958 the Company

[1] G.R. No. 17641, January 30, 1965.
[2] Section 153, p. 237, William C. Niblack, "AN ANALYSIS OF THE TORRENS SYSTEM OF CONVEYING LAND", 1912 edition.
[3] G.R. No. L-18497, May 31, 1965.

sold all its rights and title to the land to the Dagupan Trading Company, the plaintiff in this action. *Issue*: Which has the better right to the one-eighth share in the property, the Dagupan Trading Company or Rustico Macam? *Held*: Macam has the better right. The sale in his favor was executed *before* the land subject matter thereof was registered, while the execution sale to the Manila Trading & Supply Company took place *after* the same property had been registered under the Torrens system. The issue should be determined by the last paragraph of Section 35, Rule 39 of the Rules of Court, to the effect that upon the execution and delivery of the final certificate of sale in favor of the purchaser of land sold in execution sale, such purchaser shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor to the property as of the time of the levy. But since SM had already conveyed to Macam his interest to the property for a considerable time prior to the levy, the levy in favor of the Manila Trading & Supply Company was void and of no effect.

In other words, the unregistered sale and the consequent conveyance of title and ownership of unregistered land in favor of a vendee "could not have been cancelled and rendered of no effect upon the subsequent issuance of the Torrens title"[4] to the vendor covering the same parcel of land sold and described in the title issued as "free from all liens and encumbrance." Moreover, the plaintiff did not acquire the property in a voluntary transaction from the registered owner, so as to enable him to invoke the protection of the Land Registration Act given to innocent purchasers for value.

Very aptly in this case[5] did the Court state that to deprive the defendant who took possession of the land and proceeded to introduce substantial improvements therein after the same was sold to him "by sheer force of technicality would be against both justice and equity."[6]

3. *Effect of notation of notice of lis pendens on certificate*

In the case of a person who purchased a parcel of land and accepted the transfer certificate of title issued in his name, subject to the notice of *lis pendens* filed in a civil case covering the same land, the Court in *Bijis, et al. v. Court of Appeals, et al.*[7] held that

---

[4] *Ibid.*

[5] *Ibid.*

[6] In this case the Supreme Court adopted the following ruling of the Court of Appeals: " 'x x x we believe that in the inevitable conflict between a right of ownership already fixed and established under the civil law and/or the Spanish Mortgage Law — which cannot be affected by any subsequent levy or attachment or execution — and a new law or system which would make possible the overthrowing of such ownership on admittedly artificial and technical grounds, the former must be upheld and applied.' "

[7] G.R. No. L-18944, October 29, 1965.

such a person was *bound to accept and respect* whatever may be the outcome of the said case.

4. *Cancellation of condition annotated on certificate*

Although courts in general have manifested some disfavor of agreements restricting the use of property[8] in view of the general rule of law that an owner of a property has the right to enjoy and dispose of it, without other limitations than those established by law,[9] where the restriction is reasonable and not contrary to law, public policy or public order agreements embodying such restriction have been sustained.[10]

Illustrative of this is *Trias v. Gregorio Araneta, Inc.*,[11] where the Court in effect ruled that where the seller of real estate imposed a limitation on the free use of the parcel of land being sold and the purchaser agreed to accept such limitation which was not contrary to law, public policy or public order, the court could not order the cancellation of the annotation of such limitation or restriction found on the back of the Torrens certificate of title. In this case[12] the restriction found on the back of the certificate reads: "5. That no factories will be permitted in this section." The lot "in this section" was a part of a subdivision and originally belonged to J. M. Tuason & Co., Inc. This corporation upon selling it (thru Gregorio Araneta, Inc.) to a purchaser imposed the condition as annotated on the certificate referred to. After several transfers, always subject to the same condition which was repeated on the back of each certificate, Trias acquired it and found the condition on the certificate which restricted her use of the lot. In answering the contention of Trias that it infringed on the owner's right to use her property, the Court said that the prohibition "is in reality an easement[13] which every owner of real estate may validly impose under Article 594 of the Civil Code or under Article 688 of the new Civil Code,"[14] it being reasonable and not contrary to law, public policy or public order.

5. *Certificate is void insofar as it covers lands devoted to general public use*

Under the scheme of the general Torrens system when a title is registered in the first instance, or under a transfer from the last

---

[8] 14 *Am. Jur.*, p. 616.
[9] *See* Article 428 of New Civil Code.
[10] 14 *Am. Jur.*, p. 616.
[11] G.R. No. L-20786, October 30, 1965.
[12] *Ibid.*
[13] For that reason it was annotated, as it should, in all subsequent transfer certificates.
[14] Article 688: "Every owner of a tenement or piece of land may establish thereon the easements which he may deem suitable, and in the manner and form which he may deem best, provided he does not contravene the laws, public policy or public order."

registered owner, the statutes declare the certificate to be evidence of an indefeasible title to the interest or estate registered, and the effect of this is that the issue of the certificate, *ipso facto,* divests any interest or estate which may exist in any other person and vests it in the person registered as owner.[15] This general rule admits of exceptions however.

One of these exceptions was laid down many decades ago when the Court enunciated the principle in *Ker & Co. v. Cauden*[16] that lands devoted to general public use, as public roads, streets, plazas, parks, canals, rivers, banks and shore banks of navigable streams and playas, and foreshores formed by deposits due to the action of the sea are not registrable.

In *Republic of the Philippines v. Ayala y Cia, et al.,*[17] the Court restated the above principle when it held that "it is an elementary principle of law that" portion of the foreshore, beach, or of the navigable water itself "not being capable of registration, their inclusion in a certificate of title does not convert the same into properties of private ownership or confer title on the registrant." In other words, the certificate of title is void insofar as it covers lands which are not registrable, as in the case of those devoted to general public use.

REGISTRATION PROCEEDINGS —

Section 38 of Act No. 496, as amended, provides that "if the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim 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. . . . 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 competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest."

To justify the review of the decree of registration under the above quoted provision[18] it is essential (1) that a decree of registra-

---

[15] Section 5, p. 6, William C. Niblack, "AN ANALYSIS OF THE TORRENS SYSTEM OF CONVEYING LANDS", 1912 edition.

[16] 6 Phil. 732 (1906).

[17] G.R. No. L-20950, May 31, 1965.

[18] Section 38, Act No. 496, as amended by Sec. 3, Act No. 3621 and Sec. 1, Act No. 3630.

tion has been secured through fraud; (2) that a person has been deprived of his land or of any estate or interest therein by such decree; (3) that after the decree the property has not been transferred to an innocent purchaser for value; and (4) that the action has been filed within one year from the date of the "entry of the decree" of registration.

1. *Effect of want of any of the essential requisites on petition for review of the decree of registration*

Any want of any of the four essential requisites mentioned in the foregoing, like the failure of the allegations of the complaint filed to make out any case of fraud, will not justify the reopening of the decree of registration as held by the Court in *Baldoz v. Papa, et al.*[19]

2. *Form of petition for review of the decree of registration*

In the above case[20] the Court also held that any petition to set aside the decree and reopen the registration proceedings must be filed within one year from the issuance thereof, not in the form of a separate action but *in the form of a motion* filed in the same registration proceeding where the decree was issued.[21]

RELIEF UNDER SECTION 112 OF ACT 496, AS AMENDED

1. *In general*

Section 112 provides, among other things, that "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 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...."

The proceedings contemplated by this provision, as held by the Court in *Almirañez v. Devera,*[22] "are intended to grant relief to parties whose title to the property that is covered by a certificate

[19] G.R. No. L-18150, July 30, 1965.
[20] *Ibid.*
[21] This is in conformity with Sec. 112, Act No. 496, which provides in its last paragraph: "Any petition filed under this section and all petitions and motions filed under the provision of this Act after original registration shall be filed and entitled in the original case in which the decree of registration was entered."
[22] G.R. No. L-19496, February 27, 1965.

of title is clearly established... It is not enough that the petition of a party for relief under Section 112 is opposed for one reason or another. The opposition must be serious enough as to place in grave doubt the title over the registered property of the person who seeks relief under that section. Otherwise, the efficacy of the remedy contemplated in this Section 112 would be frustrated by the filing of any protest or claim, more or less baseless, which is merely intended to harass or prejudice the movant. What should matter is not the allegation in the opposition to the motion filed in Court under Section 112 but the real nature of the title the movant over the registered property as found by the court after hearing, of which the parties had been duly notified.[23] In other words, it is the ruling of the Court in this case that mere opposition to a motion praying for relief under Section 112 will not defeat such motion where the title of the movant over the property is found by the court to be clearly established after due and proper hearing on the motion.

2. *Relief in the form of consolidation of ownership*

In *Almirañez v. Devera,*[24] the question as to whether or not the judgment in the cadastral proceeding constituted a bar or operated as *res judicata* against the motion for consolidation presented therein was raised. In this case Gaspara Devera sold to Julian Villabona a lot on August 10, 1931 with the right of redemption after two years from August 10, 1931. Thereupon JV took possession thereof and enjoyed its fruits. After JV's death, the lot passed on to his son and then to his son's daughter Nimfa Villabona by inheritance. NV sold the lot on December 10, 1956 to Silverio Almirañez and Isidra Villabona, hereinafter called the plaintiffs. Before December 10, 1956 but some years after August 10, 1931 the lot was adjudicated by the Court of First Instance in cadastral proceedings to Gaspara Devera, subject to the following lien:

> "Este lote Num. 1563 esta sujeto al gravamen de venta con pacto de retro a favor de Julian Villabona, por la suma de ₱800.00 por el termino de retracto de los años, a contar desde Agosto 10, 1931, fecha en que se otorgo el documento de venta con pacto de retro...."

On December 7, 1954 the Commissioner of Land Registration issued the decree of registration, and pursuant to this decree the original certificate of title covering the lots was issued on February 18, 1955 by the Register of Deeds in the name of GD and with the annotation as stated above of the right of GD to repurchase from JV the said lot. But GD did not repurchase the lot from JV nor from his successors

[23] This answers the contention in this case by counsel for the defendant that the granting of relief to a party in a cadastral proceeding is only true when there is "unanimity among the parties" and not where there is opposition to the granting of relief.

[24] G.R. No. L-19496, February 27, 1965.

in interest. On June 15, 1960 the plaintiffs in this action, seeing that the annotation on the original certificate of title remained uncancelled, filed a motion with the court in the cadastral case for consolidation of ownership of the lot in question. They asked that GD be ordered to deposit with the clerk of court the owner's copy of the original certificate of title, and that the original certificate of title in the name of GD be cancelled and a new one in the name of the plaintiffs be issued by the Register of Deeds.

In affirming the decision of the lower court which granted the motion referred to above, the Supreme Court said that "what the appellees had done, in filing the motion for consolidation on June 15, 1960 was not a collateral attack against the decree of registration... The appellees simply asked the court to give effect to that lien which was already mentioned in the decision, in the decree of registration and in the original certificate of title... When the Court of First Instance of Quezon granted said motion for consolidation and ordered the cancellation of original certificate of title No. O-1738, it did not thereby revoke the Decree of Registration... and reopen the registration case.[25] The lower court simply made effective the very terms of the certificate of title which was issued pursuant to the decree of registration.[26]

3. *Relief in the form of issuance of new certificate of title*

In *Bijis, et al. v. Court of Appeals, et al.*[27] a purchaser of a parcel of land accepted the transfer certificate of title issued in his name, subject to the notice of *lis pendens* filed in a civil case covering the land he bought. The Court held that under Section 112 of Act 496, as amended, the Court of First Instance, acting as a court of land registration, had jurisdiction to consider a motion seeking to cancel the certificate of title and issue another certificate of title to the party adjudged in the civil case as the rightful owner (despite the fact that the present holder of the certificate of title was not a party to the civil case wherein the *lis pendens* was issued.)

PRESCRIPTION OF ACTION FOR RECONVEYANCE

In *Gonzales v. Jimenez*,[28] defendant Jimenez executed a deed of sale of a parcel of land in 1930 in favor of Gonzales and delivered

[25] Section 112, Act No. 496, provides: "x x x this section shall not be construed to give the court authority to open the original decree of registration, . . ."

[26] The Court also made this observation: "x x x The statement in the decision of the cadastral court . . . that the period of redemption was two years from the date of the execution of the contract must be corrected, because what the contract really recites is that the repurchase must be made after the expiration of two years from the date of the execution of the contract."

[27] G.R. No. L-18944, October 29, 1965.

[28] G.R. No. L-19073, January 30, 1965.

to the latter the possession thereof. Later Jimenez through fraudulent representation obtained a free patent from the Director of Lands in favor of his son on February 4, 1953 and an original certificate of title for the same parcel of land on March 16, 1953. In October 1956 Jimenez fenced in, and asserted proprietary rights over the land. Gonzales instituted this action for reconveyance on July 26, 1957. *Issue*: Had the action for reconveyance prescribed as held by the lower court, four years having elapsed from the issuance of a certificate of title on March 16, 1953 to the institution of this action on July 26, 1957?

The Supreme Court answered no. "Since it appears that the land in question was obtained by defendants through fraudulent representation by means of which a patent and title were issued in their names, they are deemed to hold it in trust for the benefits of the person prejudiced by it. x x x There being an implied trust[29] in this transaction, the action to recover the property prescribes after the lapse of 10 years."

The Court further said that the "prescriptibility of an action for reconveyance[30] based on an implied or constructive trust is now a settled question in this jurisdiction. It prescribes in ten (10) years."[31] Whether March 16, 1953, the date of the improper acquisition by Jimenez of the certificate of title over the land, or October 1955, the time when Jimenez took adverse possession of, and publicly asserted against Gonzales his proprietary right over the land in question, would be the starting point of the ten-year period the Court did not specify in this case. It simply said in this case that "here this period has not yet elapsed". This writer is of the opinion, however, that the implication of this decision is that the counting should start from the date the title to the property was registered in the name of Jimenez through fraud as evidenced by the improperly issued certificate of title, for it was then that Jimenez acquired the property as against all other persons under the scheme of the Torrens system and, in the words of Article 1456, New Civil Code, "by force of law" Jimenez came to be considered as "a trustee of an implied trust for the benefit of the person from

---

[29] Court cited here Article 1456 of New Civil Code: "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."

[30] Professor F. Ventura is of the opinion that "if the law had intended that the real owner may ask for the reconveyance after the expiration of the one-year period it should have so provided expressly," but it did not. He said that the remedy of reconveyance was a modification of Section 38 of Act No. 496 made by the Court on the basis of broad principles of law and equity. *See* Ventura, Land Titles and Deeds (1955), pp. 189-190.

[31] Banega v. Soler, et al., G.R. No. L-15717, June 30, 1961; J.M. Tuason & Co., Inc. v. Magdangal, G.R. No. L-15539, Jan. 30, 1962.

whom the property comes." Hence the prescriptive period should start from March 16, 1953.

THE CADASTRAL ACT

To expedite the registration of lands under the Torrens system as established by the Land Registration Act (Act No. 496, as amended), the Philippine Legislature passed Act No. 2259, known as the Cadastral Law.[32]

While under the Torrens system proper whether the action to obtain title shall or shall not be taken is optional with the individual owner, under the Cadastral system the titles for all the land within a stated area are adjudicated whether or not the people living within the said area desire to have titles issued. The purpose, as stated in Section 1 of the Cadastral Act is, to serve the public interests, by requiring that titles to any lands "be settled and adjudicated."[33]

1. *When court in cadastral proceedings has no authority to issue order for registration*

May the court in a cadastral proceedings order the Register of Deeds to register a deed of sale of a registered parcel of land after an *ex parte* consideration of the petition therefor and in the face of a pending separate civil action contesting the validity of the said deed of sale? This question was raised and answered in the negative by the Supreme Court in *Ledesma v. Villaseñor.*[34] In this case Villaseflor, as special administrator of his deceased father, filed a petition (Civil Case No. 5662) before the Court of First Instance to enjoin the Register of Deeds from registering a deed of sale, allegedly executed by his deceased father, conveying to Ledesma two lots registered in his father's name. Villaseñor alleged that the deed of sale was fictitious and the signature of the vendor was forged. Pursuant to his petition a writ of preliminary injunction was issued to restrain the Register of Deeds from registering the deed of sale. Later, upon the intervention of Ledesma, the court on October 3, 1960 lifted the injunction and dismissed the petition of Villaseñor. Ledesma now filed his own petition on October 5, 1960 in the cadastral record of the lots in question. Ledesma asked that the Register of Deeds be ordered to register the deed of sale on the ground that in the Civil Case No. 5662 the injunction was lifted and the petition dismissed. Solely on this ground, and although the dismissal of Civil Case No. 5662 had not yet become final, as there was a motion for reconsideration and a perfected appeal, the Court, without notice either to the Register of Deeds or to Villaseñor, issued

---

[32] Ventura, p. 126.
[33] Francisco, LAND REGISTRATION AND MORTGAGES (1961), p. 502.
[34] G.R. No. L-18725, March 31, 1965.

the order for registration. *Issue*: In the face of the pending separate civil action contesting the validity of the deed of sale, had the court in the cadastral proceeding the right to order the Register of Deeds to register such deed of sale without affording proper notice to, and hearing the side of Villaseñor?

Held: "The lifting of the injunction, however, or even the dismissal of the petition, was not authority for the court in the cadastral proceeding to issue the order complained of without notice to the Register of Deeds or to appellant, considering that the dismissal of Civil Case No. 5662 was not yet final. The court knew of the pendency of that case and of the fact that the relief sought therein was precisely to prevent registration. x x x The least that the court *a quo* should have done was to afford appellant proper notice and hearing, so that he could reiterate his objection to the registration and present evidence to substantiate them and/or call attention to the fact that the question had not yet been definitely settled in the civil action since the order dismissing it was not yet final."

PUBLIC LAND LAW

The Public Land Law, otherwise known as Commonwealth Act No. 141, as amended, governs the disposition and administration of alienable public lands only.[35]

By express provision of this law the Secretary of Agriculture and Natural Resources 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.[36] 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 Natural Resources.[37]

1. *Power of Secretary of Agriculture and Natural Resources to affirm, reverse or modify the decision of the Director of Lands*

Since by express provision of law[38] the Director of Lands is under the immediate control of the Secretary, as head of the department, the Court has no alternative but to rule, as it did in *Calibo, et al. v. Ballesteros, et al.*,[39] that the said Secretary "has the power to review, reverse, modify or affirm the decision" of the Director of Lands.

---

[35] Ventura, *op. cit.*, p. 243.
[36] Sec. 3, Commonwealth Act No. 141, as amended.
[37] Sec. 4, Commonwealth Act No. 141, as amended.
[38] Notes 36 and 37, *supra*.
[39] G.R. No. L-17466, September 18, 1965.

2. *When Secretary's procedure not a violation of "due process of law"*

Also in this case[40] it was held that where the Secretary gave the parties to a case "sufficient time within which to answer, certainly it cannot be said that the procedure adopted by the Secretary for the expeditious resolution of cases before his Department, was so lacking in the fundamentals of fair play that it infringed on appellant's right to due process of law." In other words, where before administratively deciding a case he gave both parties thereto sufficient opportunity to be heard and to present their respective evidences, the court would not disturb his decision on the alleged ground that his procedure violated the "due process of law."

3. *Acquisition of public land by municipal corporation subject to prescribed regulations*

May a city be given title over a particular portion of public land without filing an application to acquire title thereto? Under pertinent laws, rules, and regulations, a city cannot be given a title over an area of public land if it has not previously taken proper steps to acquire title thereto. This ruling is enunciated in *City of Cebu v. Padilla, et al.*[41] In this case Emilio Padilla and others, through and as heirs of the late Juan Padilla, obtained from the Director of Lands a homestead patent on December 16, 1952. The homestead covered an area of 53,773 square meters for which application, which was approved on March 17, 1949, was filed way back on February 28, 1939 by Juan Padilla. Since as far back as June 21, 1932, however, a portion of the homestead had been leased by the Bureau of Forestry under a Saltwork Lease Agreement to a lessee who, on June 2, 1941, assigned the lease to the City of Cebu. It was stipulated in the compromise agreement entered into by and between Emilio Padilla and the City of Cebu that the latter "would interpose no objection to the granting of title to a portion or portions of ... Lot No. 3986 ... provided that the other portions or areas thereof marked and set aside as sites (1) for the proposed City abattoir, (2) for the proposed extension of Salvador street, and (3) for the proposed channelization of Kinalumsan River be first excluded from the said title that may be so granted...; and *provided further that a separate title or titles should first be issued* to the City of Cebu" (Italics supplied) covering each of the three sites mentioned.

In holding that the City of Cebu could not be issued title to the three sites mentioned, notwithstanding that the defendants in this case whose homestead patent included the sites agreed and

---

[40] *Ibid.*

[41] G.R. No. L-20393, January 30, 1965.

gave their consent to the taking thereof by the City of Cebu, the Court said that ". . . we specifically refer to Section 83 of the Public Land Law which the City of Cebu can avail of by resolution of its municipal board requesting the Secretary of Agriculture and Natural Resources to recommend a proclamation by the President of the Philippines withdrawing from sale or settlement and preserving for its use, the three sites aforementioned. Such prerequisites under the law should be followed before the City of Cebu may be granted exclusive use of the sites in question."

4. *Alienation of homestead in favor of a municipality not prohibited*

In *Vismanos, et al. v. Municipality of Tagum, et al.*,[42] the plaintiffs secured from the government on August 29, 1949 a homestead patent covering two parcels of land with more than 58,000 square meters. This patent was duly recorded and the corresponding original certificate of title therefor was issued to them. But before the issuance of the said patent or certificate, the Municipality of Tagum and the plaintiffs entered on June 18, 1948 into a contract captioned as Quitclaim Deed whereby the plaintiffs relinquished all their shares, interest and participation in the controverted lot of about a hectare in favor of the said Municipality. *Issue*: Was the execution of quitclaim deed in 1948, which was prior even to the issuance of the patent on August 29, 1949, a violation of Sections 118[43] and 20[44] of the Public Land Law? The Supreme Court affirmed the decision of the lower court that ". . . even if the deed were executed prior to the issuance of the homestead patent, since the same was in favor of a municipality, the same was valid as being within the exceptions of Section 118 of the Public Land Act, as amended, prohibiting alienation of land acquired under homestead or free patent, 'except in favor of the government, or any of its branches, units or institutions'."

The court added that while the patent issued in 1949 was for the entirety of the homestead, including the portion already quitclaimed in favor of the Municipality of Tagum, the patent did not nullify the quitclaim, at least as between the parties thereto or their privies. On the contrary, the issuance of the patent in favor of

[42] G.R. No. L-20685, August 31, 1965.

[43] 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. . ."

[44] Sec. 20: ". . . Every transfer made without the previous approval of the Director of Lands shall be null and void and shall result in the cancellation of the entry and the refusal of the patent. (As amended by Com. Act No. 456, and Rep. Act No. 1242.)"

the transferrors and that of the Transfer of Certificate of Title ... resulted in conferring upon the transferee the title to the contested portion by operation of law.[45]

5. *When homestead patent deemed issued*

Lands acquired under free patent or homestead provisions, under Section 118[46] "shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five (5) years from and after the date of issuance of the patent or grant..." In a number of cases[47] construing and applying this provision of law, it has been held that the sale of a land covered by a homestead patent within five years after the date of issuance of such patent is null and void. In *Recibido, et al. v. Refaso, et al.*[48] the Supreme Court ruled in effect that the date in which the patent is deemed issued is not the date of the actual issuance of a certificate of title by the Register of Deeds but the date of promulgation of the order for the issuance thereof by the Director of Lands. In this case the Director of Lands signed in 1941 an order for the issuance of a patent covering a homestead. After about eight years the Register of Deeds issued, on June 10, 1949, an original certificate of title in accordance with the signed-1941 order of the Director. The homestead, however, was sold before the issuance of the certificate of title. *Issue*: Was the sale of the homestead covered by the legal prohibition against sales of homestead within "five years from and after the issuance of the patent"? *Held*: No. "The patent is deemed issued upon promulgation of the order of the Director of Lands for the issuance thereof — in this case 1941 —" and not June 10, 1949 when the Register of Deeds actually issued the original certificate of title pursuant to the order.

6. *"Date of conveyance" means the date of "transfer of ownership"*

In *Abuan, et al. v. Garcia, et al.*,[49] the plaintiffs sold to the defendants on August 7, 1953 a homestead by a public instrument entitled "Deed of Absolute Sale". The full payment of the price of the land was alleged to have been effected only in May 1955. Under Section 119[50] "every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to

[45] Article 1434, New Civil Code: "When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee."

[46] Cf. Com. Act No. 141, as amended.

[47] Baje v. Court of Appeals, G.R. No. L-18783, May 25, 1964; De los Santos v. Roman Catholic Church of Midsayap, 50 O.G. No. 4, p. 1588 (1954); and Pascua v. Talens, 45 O.G. No. 9 (Supp), 413 (1948).

[48] G.R. No. L-16641, June 24, 1965.

[49] G.R. No. L-20091, July 30, 1965.

[50] Cf. Com. Act No. 141, as amended.

repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance." This action for redemption was commenced by plaintiffs on March 4, 1960. *Issue*: Did the five-year period within which repurchase could be done start from August 7, 1953 or May 1955?

Held: Conveyance means transfer of ownership; it means the date when the title to the land is transferred to another.[51] The five years should, therefore, be reckoned from the date that the defendants legally acquired ownership over the land. In this case this was on August 7, 1953 — "the date of the execution of the instruments of conveyance."[52] In the absence of an express stipulation, the Court said, "the payment of the price is not a condition precedent to the transfer of ownership, which passes by delivery of the thing to the buyer (Puatco v. Mendoza, 64 Phil. 467)."[53]

7. *Right of Director to ask for cancellation of patents and titles*

If at the time the free patents were issued the land covered thereby was already decreed by the Court as private property of another in a final judgment rendered in a civil action to quiet title to real property or remove clouds therefrom and, therefore, not a part of the disposable land of the public domain, then applicant patentees acquired no right or title to the land, and certainly the Director of Lands would have reason to ask for the cancellation of the patents and titles thus erroneously issued. This is the ruling in *Director of Lands v. Sisican, et al.*[54]

In this same case the Court observed that whatever rights applicants for homestead patents covering public land might have over the lots applied for was only derived from the government. Where the government, as represented by the Director of Lands, was a party in a civil case and was bound by the decision therein, applicants could not properly claim to be excluded from the enforcement and effect thereof on the ground of not having been parties thereto.

8. *When to make the Executive Secretary a party in a suit*

In *Castillo v. Rodriguez, et al.*,[55] the Court held that where the Office of the President of the Philippines through the Executive

---

[51] Court cited here 16 *Am. Jur.* 438.

[52] Citing Baradi v. Ignacio, et al., 52 O.G. 5172 (1956); Galasindo, et al. v. Austria, et al., May 25, 1955, 51 O.G. 2874, 51 O.G. No. 6, 2874 (1955); and others.

[53] The execution of the public instrument in this case by the plaintiff in favor of the defendants was considered by the court as "equivalent to the delivery of the thing which is the object of contract" pursuant to the provisions of Articles 1497 to 1501, New Civil Code, particularly Art. 1498.

[54] G.R. Nos. L-20003-04-05, March 31, 1965.

[55] G.R. No. L-17189, June 22, 1965.

Secretary acted on a case brought before it on appeal from the decision rendered by the Secretary of Agriculture and Natural Resources affirming that made by the Director of Lands, the decision of the Executive Secretary superseded that of the Director of Lands as well as that of the Secretary of Agriculture and Natural Resources, and in a suit for certiorari, the Executive Secretary must be made a party. Otherwise, he would not be bound by the decision.

RECONSTITUTION PROCEEDINGS

An original or transfer certificate of title, as well as liens and other encumbrances affecting a destroyed or lost certificate of title, may be reconstituted either administratively or judicially from the owner's duplicate certificate, mortgagee's or lessee's duplicate certificate, a copy of the decree of registration, a document on file in the registry property, and any other document which is sufficient and proper basis for reconstituting the lost title.[56]

1. *Summary in nature*

The special procedure prescribed by Republic Act No. 26 for the reconstitution of certificate of title lost or destroyed as held by the Court in *Arches v. Billanes*[57] is "summary in nature" and it does "not cover controversial issues." So where, as in this case, *supra,* the reconstituted title to a certain property and the different titles subsequently issued to different transferees who acquired the same property in good faith bear no annotation of the interest adjudicated in favor of one petitioning for the annotation of such interest, the petition praying for the annotation in the title as reconstituted as well as on titles issued subsequent thereto cannot be granted in the reconstitution proceedings. This, notwithstanding that the original title had the annotation of the interest adjudicated, in the face of the fact that the owner's duplicate of the certificate of title which served as the basis for the reconstitution did not have that annotation found in the original title. The remedy[58] in a case like this where controversial issues are involved would be "a separate (civil) action in court in order that the parties concerned may have an opportunity to defend their interest" in view of the presence of third parties who claim to have acquired the property in good faith.

2. *Lack of notice to parties with interest voids the entire proceedings*

A reading of Section 13 in relation with Section 12 (Republic Act No. 26) will show that before the start of the hearing in the

[56] Ventura, *op. cit.,* p. 188.
[57] G.R. No. L-20452, April 30, 1965.
[58] *Ibid.*

reconstitution proceedings, three notices of the petition are required. First is the notice of the petition by publication in the *Official Gazette;* second is the notice of the petition by posting on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated; and third is a copy of the notice to be sent, by registered mail or otherwise, to every person named in the petition whose address is known. In *Manila Railroad Company v. Moya*[59] the Court held that "if an order of reconstitution is issued without any previous publication as required by law, particularly Section 13 of Republic Act No. 26, such order of reconstitution is null and void and of no effect, and naturally anything done under said order is void."[60]

In this same case, *supra,* the Court also held that even "notice by publication" under Section 13 "is not sufficient under the circumstance. Notice must be actually sent or delivered to parties affected by the petition for reconstitution." In this case where the order of reconstitution was issued without actually sending or delivering to the parties affected by the petition a notice thereof, the order was considered null and void and hence could never become final.

What happened in this case, *supra,* was that the Court of First Instance entered an order on January 26, 1959 granting the Manila Railroad Company the reconstitution of its transfer of certificate of title for three parcels of land in Baao and Bula, Camarines Sur. Notice of hearing was published in the *Official Gazette* and posted on the Bulletin Board of the municipalities where the properties were located. Pursuant to the order of the court a new certificate was issued by the Register of Deeds covering Lots "1" and "2" of Plan II-3331. On June 28, 1960 Prieto, the co-defendant in this case, filed a motion to set aside the order on the ground that she was never served with notice of, nor had she known of, the petition filed by the Manila Railroad Company and the she and her husband had sold only Lot "1" of Plan II-3331 but not the adjoining Lot "2" of Plan II-3331. The lower court granted her motion. Hence the issue as to whether or not the notice by publication in the *Official Gazette* and by posting on the Bulletin Board of the municipalities where the properties were located was sufficient under Section 13 of Republic Act No. 26 arose, and the Supreme Court decided this issue, holding that in addition to such notice, notice *must* also "be actually sent or delivered to parties affected by the petition for reconstitution."

[59] G.R. No. L-17913, June 22, 1965.
[60] Citing S. Eyjuco., Inc. v. Philippine National Bank, 86 Phil. 320 (1950).