

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE MINDANAO MEDICAL CENTER, PETITIONER, VS. HON. COURT OF APPEALS AND ALEJANDRO Y. DE JESUS, RESPONDENTS.

G.R. No. L-40912. September 30, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

This is an appeal by certiorari from the decision of the Court of Appeals in its CA-G.R. No. 39577-R, raising the question of whether or not petitioner Mindanao Medical Center has registerable title over a full 12.8081-hectare land by virtue of an executive proclamation in 1956 reserving the area for medical center site purposes.

On January 22, 1921, Eugenio de Jesus, the father of respondent Alejandro de Jesus, applied with the Bureau of Lands for Sales Patent (Sales Application No. 5436) of a 33-hectare land situated in Barrio Libaron, Municipality of Davao (now Davao City).[1] The property applied for was a portion of what was then known as Lot 522 of the Davao Cadastre.

On January 23, 1934, the Bureau of Lands, through its Davao District Land Officer, accepted sealed bids for the purchase of the subject land. One Irineo Jose bidded for P20.00 per hectare, while a certain Dr. Jose Ebro submitted a bid of P100.50 per hectare. The Director of Lands, however, annulled the auction sale for the reason that the sales applicant, Eugenio de Jesus, failed to participate in the bidding for non-service of notice on him of the scheduled bidding.

In lieu of that sale, another bidding was held on October 4, 1934. Sales applicant Eugenio de Jesus was the lone bidder. He equalled the bid previously submitted by Dr. Jose Ebro and made a deposit of P221.00 representing 10% of the price of the land at P100.50 per hectare.

On November 23, 1934, the Director of Lands issued to Eugenio de Jesus an Order of Award, the dispositive portion of which reads:[2]

"In view of the foregoing, and it appearing that the proceedings had in connection with the Sales Application No. 5436 were in accordance with law and existing regulations, the land covered thereby is hereby awarded to the said applicant, Eugenio de Jesus, at P100.50 per hectare or P2,211.00 for the whole tract.

This application should be entered in the records of this office as Sales Application No. 3231, covering the tract herein awarded, which is more particularly described as follows:

Location: Central, Davao,

Davao

Area: 22 hectares

Boundaries:

N - Maria Villa Abrille and Arsenio Suazo;

SE - Provincial Road and Mary Gohn;

SW - Public Land;

W - Municipal Road."

Because the area conveyed had not been actually surveyed at the time Eugenio de Jesus filed his Sales Application, the Bureau of Lands conducted a survey under Plan Bsd-1514. On July 29, 1936, the plan was approved and the land awarded to Eugenio de Jesus was designated as Lot Nos. 1176-A, 1176-B-1-A and 1176-B-1-B with an aggregate area of 20.6400 hectares, Bsd-10153, City of Davao.

On August 28, 1936, the Director of Lands ordered an amendment of the Sales Application of Eugenio de Jesus stating that "a portion of the land covered by Sales Application No. 5436 (E -3231) of Eugenio de Jesus is needed by the Philippine Army for military camp site purposes, the said application is hereby amended so as to exclude therefrom portion "A" as shown in the sketch on the back thereof, and as thus amended, it will continue to be given due course." The area excluded was identified as Lot 1176-B-2, the very land in question, consisting of 12.8081 hectares.

On September 7, 1936, President Manuel L. Quezon issued Proclamation No. 85 withdrawing Lot No. 1176-B-2 from sale and settlement and reserving the same for military purposes, under the administration of the Chief of Staff, Philippine Army.

On November 29, 1939, Eugenio de Jesus paid P660.45 covering the 8th to 10th installment for 20.6400 hectares, the remaining area after his Sales Application was amended. This payment did not include the military camp site (Lot No. 1176-B-2) as the same had already been excluded from the Sales Application at the time the payment was made.[3] Thereafter, or on May 15, 1948, then Director of Lands Jose P. Dans ordered the issuance of patent to Eugenio de Jesus, pursuant to his Sales Application for "a tract of land having an area of 20.6400 hectares, situated in the barrio of Poblacion, City of Davao." [4] On the same date, then Secretary of Agriculture and Natural Resources Mariano Garchitorena granted a Sales Patent to Eugenio de Jesus for "a tract of agricultural public land situated in the City of Davao, Island of Mindanao, Philippines, containing an area of 20 hectares, 64 ares, and 00 centares." [5]

On August 11, 1956, President Ramon Magsaysay revoked Proclamation No. 85 and declared the disputed Lot 1176-B-2 open to disposition under the provisions of the Public Land Act for resettlement of the squatters in the Piapi Beach, Davao City. [6] In the following October 9, President Magsaysay revoked this Proclamation No. 328 and reserved the same Lot No. 1176-B-2 for medical center site purposes under the administration of the Director of Hospital. [7]

Whereupon, on December 6, 1969, petitioner Mindanao Medical Center applied for the Torrens registration of the 12.8081-hectare Lot 1176-B-2 with the Court of First Instance of Davao. The Medical Center claimed "fee simple" title to the land on the strength of Proclamation No. 350 reserving the area for medical center site purposes.

Respondent Alejandro de Jesus, the son and successor-in-interest of sales applicant Eugenio de Jesus, opposed the registration on the ground that his father, Eugenio de Jesus, had acquired a vested right on the subject lot by virtue of the Order of Award issued to him by the Director of Lands.

A certain Arsenio Suazo likewise filed his opposition to the registration on the claim that the 2-hectare portion on the northeastern part of Lot 1176-B-2 belongs to him.

After due hearing, the Court of First Instance of Davao rendered judgment on September 2, 1966, directing "the

registration of the title to Lot No. 1176-B-2 of Subdivision Plan Bsd-5134, shown on Plan Ap-6512, situated in the Barrio of Central, City of Davao, and containing an area of 128,081 square meters in the name of the Mindanao Medical Center, Bureau of Medical Services, Department of Health."

The two oppositors, Alejandro de Jesus and Arsenio Suazo, excepted from this judgment of the trial court and appealed the case to the respondent Court of Appeals.

On July 2, 1974, the Appellate Court held:

"WHEREFORE, the appealed judgment is hereby modified insofar as it denies the claim of appellant Arsenio Suazo, the same is hereby affirmed, in regard the appeal of appellant Alejandro Y. de Jesus, registration Lot 1176-B-2, situated in Barrio Central, Davao City, and containing an area of 12.8081 square meters, is hereby decreed in the name of said appellants, but said appellant is hereby ordered to relinquish to the appellee that portion of Lot 1176-B-2 which is occupied by the medical center and nervous disease pavilion and their reasonable appurtenances, no costs."

On July 5, 1974, petitioner Mindanao Medical Center moved for reconsideration, maintaining ownership over the entire area of 12.8081 hectares, but the Appellate Court in a Special Division of Five denied the motion on June 17, 1975.[8]

Forthwith, petitioner Mindanao Medical Center elevated the matter to Us thru the present appeal.

We find petitioner's appeal to be meritorious.

1. Petitioner Mindanao Medical Center has re-gisterable title over the whole contested area of 12.8081 hectares, designated as Lot No. 1176-B-2, and not only on a portion thereof occupied by the Medical Center, its nervous disease pavilion and their reasonable appurtenances. Proclamation No. 350, dated October 9, 1956, of President Magsaysay legally effected a land grant to the Mindanao Medical Center, Bureau of Medical Services, Department of Health, of the whole lot, validly sufficient for initial registration under the Land Registration Act. Such land grant is constitutive of a "fee simple" title or absolute title in favor of petitioner Mindanao Medical Center. Thus, Section 122 of the Act, which governs the registration of grants or patents involving public lands, provides that "Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippines are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forth-with under the operation of this Act [Land Registration Act, Act 496] and shall become registered lands." [9] It would be completely absurd to rule that, on the basis of Proclamation No. 350, the Medical Center has registerable title on the portion occupied by it, its nervous disease pavilion and the reasonable appurtenances, and not on the full extent of the reservation, when the Proclamation explicitly reserved the entire Lot 1176-B-2 of 12.8081 hectares to the Center.

Certainly, Proclamation No. 350 is free of any legal infirmity. It proceeds from the recognized competence of the President to reserve by executive proclamation alienable lands of the public domain for a specific public use or service.[11] Section 64 (e) of the Revised Administrative Code empowers the President "(t)o reserve from sale or other disposition and for specific public uses or service, any land belonging to the private domain of the Government of the Philippines, the use of which is not otherwise directed by law." The land reserved "shall be used for the specific purposes directed by such executive order until otherwise provided by law." Similarly Section 83 of the Public Land Act (CA 141) authorizes the President to "designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Commonwealth of the Philippines or of any of its branches, or of the inhabitants thereof, * * * or for quasi-public uses or purposes when the public interest requires it, including reservations for * * * other improvements for the public benefit."

2. Respondent Appellate Court erroneously ruled that Alejandro's father, Eugenio de Jesus, had acquired ownership over the whole 12.8081-hectare Lot 1176-B-2 because the Sales Award issued to him on November 23, 1934 by then Director of Lands Simeon Ramos covered the 33 hectares applied for, including the 12.8081 hectares. We fail to see any reasonable basis on record for the Appellate Court to draw such conclusion. On the contrary, the very Sales Award describes the tract awarded as located in Central, Davao, Davao, with an area of 22 hectares, and bounded on the north by Maria Villa Abrille and Arsenio Suazo; on the southeast by a pro-vincial road and Mary Gohn; on the southwest by a public land; and on the west by a municipal road.[11] This area of 22 hectares was even reduced to 20.6400 hectares upon actual survey made by the Bureau of Lands. The same area was reckoned with by then Lands Director Jose P. Dans when he directed the issuance of a patent to Eugenio de Jesus on May 15, 1948 for his application filed on January 22, 1921 covering "a tract of land having an area of 20.6400 hectares, situated in the barrio of Poblacion, City of Davao." [12] In like manner, the Sales Patent issued to Eugenio de Jesus on the same date, May 15, 1948, by then Secretary of Agriculture and Natural Resources Mariano Garchitorena indicated therein the sale to Eugenio de Jesus of "a tract of agricultural public land situated in the City of Davao, Island of Mindanao, Phi-lippines, containing an area of 20 hectares, 64 ares, and 00 centares." Seen in the light of Patent, and Sales Award, Order for Issuance of Patent, and Sales Patent, invariably bearing the area awarded to sales applicant Eugenio de Jesus as 20.6400 hectares, it becomes imperative to conclude that what was really awarded to Eugenio de Jesus was only 20.6400 hectares and not 33 hectares as applied for by him.

However, We observe that in the public bidding of October 4, 1934, the successful bidder, submitted a bid of P100.50 per hectare and made a cash deposit of only P221.00, which amount represents 10% of the purchase price of the land.[13] At P100.50 per hectare, the purchase would be P2,221.00 for 22 hectares, 10% deposit of which amounts to P221.00. For 33 hectares, the total purchase price would be P3,316.50 at P100.50 per hectare and the 10% deposit would be P331.65, not P221.00, as what was actually deposited by sales appli-cant Eugenio de Jesus. Withal, if Eugenio de Jesus was really awarded 33 hectares in that public bidding, he should have made the required 10% deposit of P331.65. That he merely deposited P221.00 strongly suggests that what was bidden for and awarded to him was only 22 hectares and not 33 hectares as applied for. As a matter of fact, his last payment of P660.45 on Nov-ember 29, 1939 for the 8th to 10th installment intended only to cover 20.6400 hectares, the remaining area after the amendment of the Sales Application on August 28, 1936, excluding "the military camp site [Lot 1176-B-2 of 12.8081 hectares] for the reason that the said site, at the time of last installment was already excluded from Sale Application SA-5436 of Eugenio de Jesus, as ordered * * * by the Director of Lands." [14]

But, respondent Appellate Court reasons out that if the area bidden for and awarded in 1934 was only 22 hectares and since two years thereafter the Director of Lands ordered an amendment excluding the military camp site of 12.8081 hectares, then only 10 hectares would have been left to applicant Eugenio de Jesus and not 20.6400 hectares, as what was granted to him in the Sales Patent. The Appellate Court's reasoning is premised on wrong assumption. What was ordered amended was the Sales Application for 33 hectares and not the Order of 22 hectares or 20.6400 hectares. The Order states:

"Order: Amendment of Application." Necessarily so, because the amendment was already reflected in the Order of Award, since only an area of 22 hectares was awarded.

3. The phrase "whole tract" in the Sales Award[15] cannot be licitly seized upon as basis for the conclusion that the area awarded to applicant Eugenio de Jesus was the applied area of 33 hectares. Such general description of "whole tract" cannot prevail over the specific des-cription delineating the area in quantity and in boundaries. Thus, the Sales Award specifies the area awarded as 22 hectares, located at Central, Davao, Davao, and bounded on the north by the property of Maria Villa Abrille and Arsenio Suazo; on the southwest by a provincial road and

the property by Mary Gohn; on the southwest by a public land; and on the west by a municipal road.[16] Specific description is ordinarily preferred to general description, or that which is more certain to that which is less certain.[17] More so, when it is considered that the series of executive proclamations (Proclamation Nos. 85, 328, 350) continuously maintained the intent of the Government to reserve the subject land for a specific purpose or service.

Besides, patents and land grants are construed favorably to the Government, and most strongly against the grantee.[18] Any doubt as to the intention or extent of the grant, or the intention of the Government, is to be resolved in its favor.[19] In general, the quantity of the land granted must be ascertained from the description in the patent, because the description in the patent is exclusive evidence of the land conveyed.[20] And courts do not usually go beyond a description of a tract in a patent and determine the tract and quantity of land apart from the patent itself.[21]

4. We cannot share the view of respondent Appellate Court that Eugenio de Jesus's alleged occupation, cultivation and improvement of the 33-hectare land (including the 12-hectare camp site) since 1916 vested in him a right of preference or pre-emptive right in the acquisition of the land, which right was converted into "a special proprietary right" when the Sales Award was issued to him in 1934. Not only for the earlier reasons that the Sales Award was only for 22 hectares (later found to be 20.6400 hectares upon actual survey) and not for 33 hectares, the privilege of occupying public lands with a view to pre-emption confers no contractual or vested right in the lands occupied and the authority of the President to withdraw such lands from 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.[22] Lands covered by reservation are not subject to entry, and no lawful settlement on them can be acquired.[23] 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.[24] And patents for lands which have been previously granted, reserved from sale, or appropriated, are void.[25]

It is true that Proclamation No. 350 states that the same is subject to "private rights, if any there be," but Eugenio de Jesus or his son Alejandro de Jesus failed to prove any private rights over the property reserved. Well-settled is the rule that unless the applicant has shown by clear and convincing evidence that a certain portion of the public domain was acquired by him or his ancestors either by composition title from the Spanish Government or by possessory information title, or any other means for the acquisition of public lands, such as grants or patents, the property must be held to be part of the public domain.[26] Nor could respondent Alejandro de Jesus legitimately claim to have obtained title by prescription over the disputed 12.8081 hectares, inasmuch as by applying for the sale thereof (assuming hypothetically that the 12.8081-hectare lot was included in the original sales application for 33 hectares), his father, Eugenio de Jesus, necessarily admits that the portions applied for are part of the public domain, against which no acquisitive prescription may lie[27] except as provided in Section 48 (b) of C.A. 141, as amended.

5. Respondent Appellate Court mistakenly sustained Eugenio de Jesus's pretense that the military "camp site" (Lot 1176-B-2) had been donated by him to the Philippine Army, thru Secretary Serafin Marabut of the Department of National Defense, sometime in 1936 subject to the condition that it would be returned to him when the Philippine Army would no longer need it. As found by the trial court, in 1936, the Department of National Defense was not yet in existence, so that no Defense Secretary by the name of Serafin Marabut could have entered into a deed of donation with Eugenio de Jesus over Lot 1176-B-2 consisting of 12.8081 hectares. The Department

of National Defense was only organized in 1939. Nonetheless, respondent Alejandro de Jesus would prove by secondary evidence the existence of such donation thru the testimony of persons who supposedly saw it. In this regard, the Rules provides that before the terms of a transaction in realty may be established by secondary evidence, it is necessary that the due execution and subsequent loss of the original instrument evidencing the transaction be proved. For it is the due execution of the document and its subsequent loss that would constitute the foundation for the introduction of secondary evidence to prove the contents of such document. And the due execution of the document would be proved through the testimony of (1) the person or persons who executed it; (2) the person before whom its execution was acknowledged; or (3) any person who was present and saw it executed and delivered, or who, after its execution and delivery, saw it and recognized the signatures, or by a person to whom the parties to the instrument had previously confessed the execution thereof.[28] None of these modes of proof was execution ever followed by respondent Alejandro de Jesus. His predecessor-in-interest, Eugenio de Jesus, merely made a broad statement that he executed a deed of donation in 1936 with Defense Secretary Marabut when at that time the Defense Department was not yet in existence. The notary public who presumptively acknowledged the donation or the witnesses to the instrument were never presented. It has been ruled that the failure of the party to present the notary public and those persons who must have seen the signing of the document as witnesses to testify on its execution interdicts the admission of a secondary evidence of the terms of the deed.[29] This is especially true in realty donations where Art. 748 of the new Civil Code requires the accomplishment thereof in a public document in order to be valid. The testimony of Marcelo Belendres that Sesinando de Jesus, brother of Eugenio de Jesus, showed him a copy of the "paper" signed by Secretary Marabut and Eugenio de Jesus; of Jose Tinio, Acting Register of Deeds of Davao, that in May or June 1937, Col. Simeon de Jesus went to his office to register a "document" executed by Eugenio de Jesus and Secretary Marabut; of former Secretary Brigido Valencia that Col. Simeon de Jesus showed him a deed of donation signed by Eugenio de Jesus and Serafin Marabut, hardly suffice to satisfy the requisites of the Rules, as to which very strict compliance is imposed because of the importance of the document involved.[30] First, none of these persons was a witness to the instrument, nor any of them saw the document after its execution and delivery and recognized the signatures of the parties, nor to whom the parties to the instrument had previously confessed the execution; second, the reference to a "paper" or "document" is ambiguous as to be synonymous with a "deed of donation;" and third, the persons who showed the deed, Sesinando de Jesus and Col. Simeon de Jesus, were not parties to the instrument. Respondent Alejandro de Jesus's narration of the existence and loss of the document equally deserves no credence. As found by the trial court, he testified that the copy of the deed which his father kept was sent to him in Manila thru his uncle, Sesinando de Jesus, in July 1942, while his father himself, Eugenio de Jesus, declared that his copy of the deed was burned in Davao during the Japanese occupation. The replies of the Undersecretary of Agriculture and Natural Resources and the Acting Executive Secretary that the property was "still needed for military purposes" and may not therefore be released from the reservation cannot substitute the proof so required. These replies are not confirmatory of the existence of such donation much less official admissions thereof.

Even on the gratuitous assumption that a donation of the military "camp site" was executed between Eugenio de Jesus and Serafin Marabut, such donation would anyway be void, because Eugenio de Jesus held no dominical rights over the site when it was allegedly donated by him in 1936. In that year, Proclamation No. 85 of President Quezon already withdrew the area from sale or settlement and reserved it for military purposes. Respondent Appellate Court, however, rationalizes that the subject of the donation was not the land itself but "the possessory and special proprietary rights" of Eugenio de Jesus over it. We disagree. It is true that the gratuitous disposal in donation may consist of a thing or right.[31] But, the term "right" must be understood in a "proprietary" sense, over which the possessor has the *jus disponendi*. [32] This is because, in true donations, there results a consequent impoverishment of the donor or diminution of his assets.[33] Eugenio de Jesus cannot be said to be possessed of

that "proprietary" right over the whole 33 hectares in 1936 including the disputed 12.8081 hectares for at that time this 12.8081-hectare lot had already been severed from the mass of disposable public lands by Proclamation No. 85 and excluded in the Sales Award. Impoverishment of Eugenio's asset as a consequence of such donation is therefore farfetched. In fact, even if we were to assume in gratia argumenti that the 12.8081-hectare lot was included in the Sales Award, still the same may not be the subject of donation. In Sales Award, what is conferred on the applicant is merely the right "to take possession of the land so that he could comply with the requirements prescribed by law." [34] In other words, the right granted to the sales awardee is only "possessory right" as distinguished from "proprietary right," for the fundamental reason that prior to the issuance of the sales patent and registration thereof, title to the land is retained by the State. [35] Admittedly, the land applied for may be considered "disposed of by the Government" upon the issuance of the Sales Award, but this has the singular effect of withdrawing the land from the public domain that is "disposable" by the Director of Lands under the Public Land Act. Moreover, the disposition is merely provisional because the applicant has still to comply with the requirements of the law before any patent is issued. It is only after compliance with such requirements to the satisfaction of the Director of Lands that the patent is issued and the land applied for considered "permanently disposed of by the Government." This again is a circumstance that demeans the irrevocable nature of donation, because the mere desistance of the sales applicant to pursue the requirements called for would cause the virtual revocation of the donation.

ACCORDINGLY, the appealed judgment of the Court of Appeals, promulgated on July 2, 1974, and its resolution of June 17, 1975, denying petitioner's motion for reconsideration, are hereby reversed and set aside. The disputed Lot 1176-B-2, Plan Bsd-1514 of Davao Cadastre and containing an area of 12.8081 hectares, is hereby adjudicated in favor of petitioner Mindanao Medical Center. The urgent motion of the petitioner for leave to construct essential hospital buildings, namely: (a) communicable and contagious disease pavilion; (b) hospital motorpool; and (c) physician's quarters, is hereby granted. With costs against private respondent.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Concepcion, Jr., JJ., concur.

[1] Eugenio de Jesus previously applied for the purchase of 65.6374 hectares in 1918, but his application was unacted upon due to the prior application of natives, Marcelo Palmera and Pantaleon Palmera, for a portion of the property.

[2] Annex "C", Petition, petitioner's.

[3] Annex "E-", Petition, petitioner's.

[4] Annex "E-2", Petition, petitioner's.

[5] Annex "E-3", Petition, petitioner's.

[6] Proclamation No. 328, Annex "F", Petition, petitioner's.

[7] Proclamation No. 350, Annex "F-1", Petition, petitioner's.

[8] Reyes, A., ponente, Leuterio, Fernandez, Pascual, JJ., concurring. Chanco, J., dissented, voting for the reconsideration of the decision and awarding the whole Lot 1176-B-2 (12.8081 hectares) to Mindanao Medical Center. The decision of July 2, 1974 was penned by Reyes, A., J., with Pascual and Chanco, JJ., concurring.

[9] See also Sec. 87 of the Public Land Act which directs the registration of unregistered lands included in a

Presidential Proclamation.

[10] Republic v. Octubre, L-18867, April 30, 1966, 16 SCRA 848.

[11] Vide, dispositive part of Sales Award, quoted in this Decision.

[12] Annex "E-2", Petition, petitioner's.

[13] Sec. 25, CA 141, provides: "All bids must be sealed and addressed to the Director of Lands and must have inclosed therewith cash or certified check, Treasury warrant, or post-office money order, payable to the order of the Director of Lands, for ten per centum of the amount of the bid, which amount shall be retained in case the bid is accepted, as part payment of the purchase price * * *."

[14] Annex "E-1", Petition, petitioner's.

[15] Vide, dispositive part of Sales Award, quoted in this Decision.

[16] Idem.

[17] See 72 ALR 412, quoting Von Herff case, 133 SE 533.

[18] 63 Am Jur 2d 544; 73 C.J.S. 853.

[19] Leavenworth, L & R Co., 23 L ed 634.

[20] 63 Am Jur 2d 544; 73 C.J.S. 853; U.S. vs. Union Pacific R. Co., 1 L ed 2d 693.

[21] 63 Am Jur 2d 515.

[22] Idem, at 489-90.

[23] Sec. 87, Public Land Act (CA 141); Whitehill v. Victorio L and Cattle Co., 139 P. 187.

[24] 73 C.J.S. 720.

[25] Hennington v. State of Georgia, 41 L. ed 176; Lake Superior Ship Canal, R & I Co. v. Cunningham, 39 L. ed 190.

[26] Director of Lands v. Reyes, L-27594, Nov. 28, 1975, En Banc, per Antonio, J., 68 SCRA 177; Lee Hon Hok v. David, L-30389, December 27, 1972, 48 SCRA 378-79.

[27] Cano v. De Camacho, L-28172, Feb. 29, 1972, 43 SCRA 390; Kayaban v. Republic, L-33307, August 30, 1973, 52 SCRA 361; 55 ALR 2d 554.

[28] Sec. 4, Rule 130, Revised Rules of Court provides: "When the original writing has been lost or destroyed, or cannot be produced in court, upon proof of its execution and loss or destruction, or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of witnesses." See also Director of Lands v. Court of Appeals, L-29575, April 30, 1971, 38 SCRA 637-38.

[29] Government v. Martinez, 44 Phil. 817 (1918); Hernaez v. McGrath, 91 Phil. 565 (1952).

[30] See-Jones on Evidence, Vol. I, 5th ed., 459.

[31] "Art. 725. Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it."

[32] That is why, "future property" cannot be donated, because ownership does not yet reside in the donor (Art.

751, new Civil Code).

[33] An Outline of Philippine Civil Law, Reyes & Puno, Vol. II, 1967, ed., p. 225.

[34] Heirs of Francisco Parco v. Haw Pia, L-22478, May 30, 1972, 45 SCRA 175-76; Francisco v. Rodriguez, L-31083, Sept. 30, 1975, First Division, 67 SCRA 212. The requirements are: (1) full payment of the balance of the purchase price of the land, minus 10% deposit, if not paid in full upon the making of the award (Sec. 27, CA 141); (2) not less than 1/5 of the land awarded shall have been broken and cultivated by the awardee within 5 years after date of award; and before issuance of patent, actual occupancy, cultivation, and improvement of at least 1/5 of the land applied for until date of final payment (Sec. 28, Idem).

[35] Director of Lands v. Court of Appeals, L-17696, May 19, 1966, 17 SCRA 80.

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