

VIRGINIA CALALANG, PETITIONER, VS. REGISTER OF DEEDS OF QUEZON CITY, ADMINISTRATOR OF NATIONAL LAND TITLES AND DEEDS REGISTRATION, LUCIA DE LA CRUZ, CONSTANCIO SIMANGAN, AND IGL...

G.R. No. 76265. March 11, 1994

Ponente: MELO, J.

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MELO, J.:

The Decision of the Second Division of this Court promulgated April 22, 1992 (208 SCRA 215) dismissing, for lack of merit, these two (2) consolidated petitions, is assailed by petitioners in their separate motions for reconsideration.

The assailed Decision states:

With this Court's ruling promulgated in 1984, it is our considered view that the petitioners can not raise anew the question of ownership of Lucia de la Cruz over Lot 671 which had been determined by the Court of Appeals and affirmed by the Supreme Court in the de la Cruz case. Well-settled is the rule enunciated in *Church Assistance Program, Inc. v. Sibulo*, 171 SCRA 408 [1989] that:

"When a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them in law or estate."

The Court's ruling has long been final and the issue on ownership of Lot 671 finally disposed of several years ago. This declaration must be respected and followed in the instant case applying the principle of *res judicata* or, otherwise, the rule on conclusiveness of judgment. The less familiar concept of less terminological usage of *res judicata* as a rule on conclusiveness of judgment refers to the situation where the judgment in the prior action operates as an estoppel only as to the matters actually determined therein or which were necessarily included therein. (*De la Cruz v. Court of Appeals*, 187 SCRA 165 [1990]).

Inevitably, the de la Cruz ruling should be applied to the present petitions since the facts on which such decision was predicated continue to be the facts of the case before us now (See *Rivas v. SEC*, 190 SCRA 295 [1990]). Even the petitioners substantially adopt the same findings of facts in their pleadings. The factual inquiry with regards to the history of Lot 671 has already been laid to rest and may no longer be disturbed ...

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In our capacity as the court of last resort, the petitioners try to convince us to look or inquire into the validity of the reconstitution proceedings initiated by Lucia dela Cruz, contending that the implementation of de la Cruz ruling would deprive them of their properties without due process of law. We have looked long and hard into the records of the case but the facts and circumstances plus law and jurisprudence on the matter do not warrant

such action from the Court. INK's title over Lot 671 which necessarily included Lot 671-A had already become incontrovertible and indefeasible. To reopen or to question the legality of INK's title would defeat the purpose of our Torrens system which seeks to insure stability by quieting titled lands and putting to a stop forever any question of the legality of the registration in the certificate or questions which may arise therefrom. (*de la Cruz v. de la Cruz*, supra.) In fairness to INK, as registered owner it is entitled to rest secure in its land title.

In view of all the foregoing, it would be for the public interest and the maintenance of the integrity and stability of the Torrens system of land registration that all transfer certificates of title derived from the reconstituted title of Eugenia de la Paz and Dorotea de la Cruz be annulled in order to prevent the proliferation of derivative titles which are null and void. The legality or validity of INK's title over Lot 671 has been settled. The Court has spoken and it has done so with finality, logically and rightly so as to assure stability in legal relations and avoid confusion. (See *Ver v. Quetulio*, 163 SCRA 80 [1988]).

(pp. 224-225; 229-230.)

In G.R. No. 76265, petitioners seek a reconsideration of the aforesaid decision because allegedly, the same is contrary to the following settled principles of law and doctrines laid down by this Court, to wit:

1. That a judgment rendered in an action in personam binds only the parties to the action;
2. That a petition for "reconstitution" of a certificate of title filed in 1971, thirty years after the sale to respondent Lucia de la Cruz in 1941, without personal notice to petitioners and other title holders of Lot 671-A, whose titles date from 1952, is void and can be collaterally attacked;
3. That the registration of the sale to respondent Lucia de la Cruz in the Primary Entry Book of the Register of Deeds of Manila in 1943 of a land located in Caloocan, Rizal, cannot be the operative act to convey said property to the vendee, as the record of the title to said property was then in Pasig, Rizal and then transferred to Quezon City, after the war;
4. That the indefeasibility of a Torrens title after one year from issuance, refers to the indefeasibility of a decree of registration after one year from entry thereof in an original registration or cadastral proceeding, and by analogy, the principle is extended to a patent issued in an administrative proceeding, but not to a reconstitution of a certificate of title allegedly lost, nor to the issuance of subsequent transfer certificate of title; and
5. That respondent Iglesia ni Kristo cannot be considered as an innocent purchaser for value as far as petitioners and other title holders to Lot 671-A are concerned, because the titles of respondent Iglesia ni Kristo are derived from the "reconstituted" title of respondent Lucia de la Cruz issued in 1971. Respondent Iglesia ni Kristo is deemed to have actual and constructive knowledge of the rights of more than 80 buyers of Lot 671-A who were issued transfer certificates of title dating from 1952.

In G.R. No. 83280, petitioners assail the decision on the following grounds:

1. The decision in the *de la Cruz* case does not bind the petitioners.
2. The Iglesia ni Kristo, represented by public respondent, is not an innocent purchaser for value of the parcels of land in dispute.
3. Petitioners, as duly registered owners of land under the Torrens system, are purchasers in good faith whose titles have become indefeasible.

Aware of the importance of the case, the Court granted the request of petitioners to have their motions for reconsideration be considered by the Court en banc.

At the core of the controversy is the case of Agustina de la Cruz et al. vs. Lucia de la Cruz, Iglesia ni Kristo and Hon. Court of Appeals (130 SCRA 666 [1984]) which has settled once and for all the question of ownership of Lot 671 of the Piedad Estate in Barrio Culiati, Quezon City. A portion of this lot, Lot 671-A, is the subject of these two (2) consolidated petitions at bar.

In said de la Cruz case, the Court found and held:

1. The mother title of Lot 671 is OCT No. 614 registered on March 12, 1912 in the name of the Philippine Government. When Lot 671, with an area of 184,268 square meters, more or less, was segregated the original title was partially cancelled and TCT-40355 T-201 was issued to Eugenia de la Paz and Dorotea de la Cruz by virtue of Entry No. 3241 which reads:

.... Vendido a Eugenia de la Paz y Dorotea de la Paz y Dorotea de la Cruz el Lote NO. 671 del terreno en este certificado de titulo, mediante escritura ratificada al 27 de Julio de 1931 en Manila, ante Vicente Garcia, Notario Publico; se cancela parcialmente al presente certificado de titulo, en cuanto al lote mencionado y se expide otro a nombre de las compradoras con el No. 40355, folio 5, Tomo T-201 del libro de transferencias; archivandose la escritura de que se ha hecho referencia en el Legajo T-No. 40355.

2. On November 29, 1941, Eugenia de la Paz and Dorotea de la Cruz sold Lot 671 to Lucia de la Cruz and TCT No. 40355 T-201 was cancelled by virtue of Entry No. 258, Page 7, Volume 7, Primary Entry Book of the Registry of Deeds of Manila. Said entry reads as follows:

1. Number of Entry..... 258
2. Date of filing:
Month, day & year..... July 17, 1943
Hour and Minute..... 10:15 A.M.
3. Nature of Contract Sale
4. Executed by Doroteo (sic) de la Cruz, et al.
5. In favor of Lucia de la Cruz
6. Date of Instrument 11-29-41
7. Relative to:
Certificate of
Title No. 40355
Book T-201
8. Papers presented by:
Name Regino Cleofas
Address Pasong Tamo, Quezon City
9. Contract Value P2,500.00
10. Remark Caloocan

3. In 1971, Lucia de la Cruz petitioned for the reconstitution of her title in the Court of First Instance of Manila.

The court granted the petition and the Register of Deeds of Manila issued to her TCT No. RT-58, thereby cancelling TCT 40355 T-201. (at p. 698.)

4. The petition for reconstitution was duly published and proper notices posted in accordance with law; and after due hearing, was granted by the court in the exercise of its authority and jurisdiction. "Hence, We reject petitioners' assignment of error that the Court of Appeals erred in not declaring that the reconstituted title of Lucia de la Cruz is absolutely null and void." (at p. 698.)

5. "With respect to the reconstituted title of Dorotea de la Cruz which was granted by the Court of First Instance of Rizal on December 14, 1945 and TCT 5284 of the Register of Deeds of Quezon City was issued in substitution and/or reconstitution of TCT 40355 of the Register of Deeds of Rizal, ... it may be true that the order granting reconstitution was null and void by reason of the failure to cause the necessary publication of the petition, and, therefore, the reconstituted title was ineffective. More than that, it is established that Dorotea de la Cruz and Eugenia de la Paz had previously sold the land to Lucia de la Cruz on November 29, 1941 as indicated in Entry No. 258 so that Dorotea de la Cruz was no longer the owner at the time she petitioned for reconstitution." (at pp. 298-699.)

6. "Nonetheless, it is not disputed that Dorotea de la Cruz together with Eugenia de la Paz were the registered owners of Lot 671 under TCT 40355, T-201 of the Register of Deeds of Rizal and they could legally transfer the same to Lucia de la Cruz who thereafter sold in favor of Iglesia ni Kristo." (at p. 699.)

7. Under Section 38 of the Land Registration Act, "the registered title of Lucia de la Cruz reconstituted as TCT No. RT-58 in 1971 became indefeasible and incontrovertible one year from its issuance. As registered owner, Lucia de la Cruz had the perfect and legal right to sell, assign, and convey the property to respondent Iglesia ni Kristo who as purchaser for value in good faith holds the same free from all encumbrances except those noted in said certificate (Sec. 39 Land Registration Act). The Iglesia may then safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property". (at p. 703.)

The rule is well-settled that once a decision becomes final, the Court can no longer amend, modify, much less, set aside the same (*Adez Realty Inc. vs. Court of Appeals*, 212 SCRA 625 [1992]); otherwise, endless litigation will result (*Fabular vs. Court of Appeals*, 119 SCRA 329 [1982]).

In fact, in *Duenas vs. Mandi* (151 SCRA 530 [1987]) cited in *Adez*, we held that the trial court and the appellate court may have committed error in the assignment or partition of the eight (8) parcels of land to the parties in said case, but considering that their judgments are already final, the error, assuming one was committed, can no longer be amended or corrected.

In *Icao vs. Apalisok* (180 SCRA 680 [1989]), likewise cited in *Adez*, we ruled that even the subsequent discovery of an erroneous imposition of a penalty will not justify correction of the judgment after it has become final.

Our decision in these two consolidated petitions is an application of this well-established rule, that once a decision becomes final, the Court can no longer modify, amend, much less, set aside the same. To grant a reconsideration of this decision would also reconsider, reverse, and set aside our 1984 decision which has long become final. For, while the 1984 decision declared the reconstituted title RT-58 of Lucia de la Cruz valid and legal, petitioners would want us to reach 10 years back and declare the same title null and void; while the 1984 decision declared the Iglesia ni Kristo a purchaser in good faith and for value, petitioners would want us to do a complete turn around and find the Iglesia ni Kristo a purchaser in bad faith.

In the case of *Legarda vs. Savellano* (158 SCRA 194 [1988]) the Court stated:

... It is a general rule common to all civilized system of jurisprudence, that the solemn and deliberate sentence of the law, pronounced by its appointed organs, upon a disputed fact or a state of facts, should be regarded as a final and conclusive determination of the question litigated, and should forever set the controversy at rest. Indeed, it has been well said that this maxim is more than a mere rule of law, more than an important principle of public policy; and that it is not too much to say that it is a fundamental concept in the organization of every jural system. Public policy and sound practice demand that at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were constituted was to put an end to controversies.

If we were to allow repeated suits seeking to nullify OCT Nos. 1348-1355 issued to Benito Legarda, Sr. in 1907, the indefeasibility of titles issued under the Torrens system and land registration, which the Philippines has adopted, will be defeated and set to naught. (at p. 200.)

The Court, speaking through Justice Nocon, in *Swan vs. Court of Appeals* (212 SCRA 114 [1992]) stated:

It is high time that we write finis to a litigation that has been pending for years not only to the prejudice of the prevailing parties, but also to the prompt determination of controversies, and in violation of the fundamental concept that public policy and sound practice demand that judgments of courts shall become final at some definite date fixed by law. (at p. 124.)

Petitioners contend that the *de la Cruz* case is not applicable and that the doctrine of *res judicata* should not have been applied. We do not agree.

The doctrine *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.

The second concept -- conclusiveness of judgment -- states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus vs. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issues.

Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. vs. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez vs. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having

settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself ...

(at pp. 186-187.)

The issue of the validity of the reconstituted title of Lucia de la Cruz over Lot 671 of the Piedad Estate, the issue of whether or not the Iglesia ni Kristo was an innocent purchaser for value and in good faith, and the issue of the validity of the reconstituted title of Dorotea de la Cruz and Eugenia de la Paz (herein petitioners' predecessors-in-interest) were actually, directly, and expressly raised, controverted, litigated and resolved in our 1984 decision. Applying the rule on conclusiveness of judgment, these issues may no longer be relitigated in these present petitions.

Petitioners cannot evade the conclusive effect of the 1984 decision, merely because they were not impleaded parties in the said case. It has been said that the foundation principle upon which the doctrine of res judicata rests is that parties ought not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate. (*Nabus vs. Court of Appeals*, supra).

In the case of *Vda. de Medina vs. Cruz* (161 SCRA 36 [1988]), the Court stated:

The crucial issue in this case is whether or not the decision in Civil Case No. C-120 which has long become final and executory can be enforced against the petitioner who is not a party to the aforementioned case.

Petitioner alleged in her memorandum that she is not affected by the decision in C-120 as persons who are not parties to a suit are not bound by the judgment and that she purchased the lot in good faith from an entirely different person -- the Heirs of Don Mariano San Pedro y Esteban and not from either the plaintiffs or defendants of the aforesaid case.

It is a generally accepted principle "that no man shall be affected by any proceeding to which he is a stranger ..."

[but] being a privy, the petitioner can be reached by the order of execution and Writ of Demolition.

(at pp. 43-44.)

Also, in the case of *Varsity Hills, Inc. vs. Navarro* (43 SCRA 503 [1972]), the Court ruled:

In the face of these declarations in a final decision of the highest Court of the land, it becomes indubitable that the action in the court below was definitely barred: for while present private respondents were not parties in the 1993 cause, their predecessor-in-interest Quintin Mejia was such a party and the final judgment against him concludes and bars his successors and privies as well.

(at pp. 510-511.)

Admittedly, petitioners derived their title from Amando Clemente and/or Clemville Subdivision. Amando Clemente derived his title from Dorotea de la Cruz and Eugenia de la Paz. Being privies and/or successors in interest to the parties in the 1984 decision, petitioners are bound by said decision.

Likewise untenable is petitioners' contention that the reconstituted title of Lucia de la Cruz, RT-58, is void.

Proceedings for judicial reconstitution or certificates of title are proceedings in rem. Thus, notice of hearing by proper publication is sufficient to clothe the Court with jurisdiction and the mere fact that a person purporting to have a legitimate claim in the property did not receive personal notice is not sufficient ground to invalidate the

proceedings.

In *Adez Realty, Inc. vs. Court of Appeals* (212 SCRA 625 [1992]), the Court, through Justice Bellosillo, held:

Besides, as early as 1910, in *Grey Alba v. de la Cruz* (17 Phil. 41) We already ruled that land registration proceedings are proceedings in rem, not in personam, and therefore it is not necessary to give personal notice to the owners or claimants of the land sought to be registered, in order to vest the courts with power and authority over the res. Thus, while, it may be true that no notice was sent by registered mail to petitioners when the judicial reconstitution of title was sought, such failure, however, did not amount to a jurisdictional defect. (See *PNR v. De la Vina & Zamacona*, 109 Phil. 342). In *Register of Deeds of Malabon vs. RTC, Malabon, Metro Manila*, Br. 170 (G.R. No. 88623, February 5, 1990, 181 SCRA 788), We said that "the purpose of the publication of the notice of the petition for reconstitution in the Official Gazette is to apprise the whole world that such a petition has been filed and that whoever is minded to oppose it for good cause may do so within thirty (30) days before the date set by the court for hearing the petition. It is the publication of such notice that brings in the whole word as a party in the case and vests the court with jurisdiction to hear and decide it." Thus, notice of hearing by proper publication in the Official Gazette is sufficient to clothe the court with jurisdiction, and the mere fact that a person purporting to have a legitimate claim in the property did not receive personal notice is not sufficient ground to invalidate the proceedings. (at p. 628.)

Besides, the official records of the Quezon City Municipal Hall, as certified to by the Office of the City Assessor of Quezon City (pp. 456-556, Rollo of G.R. No. 83280) show that there are no improvements whatsoever on the property in question thus signifying that the property is unoccupied. Therefore, it would have been impossible for Lucia de la Cruz to notify petitioners.

Be this as it may, the issue of the validity of the 1971 reconstitution proceedings is no longer a valid issue in these petitions at bar, its validity having already been resolved with finality in the 1984 decision.

The contention that the registration of the November 29, 1941 sale by Dorotea de la Cruz and Eugenia de la Paz to Lucia de la Cruz, with the Register of Deeds of Manila is irregular deserves scant consideration.

As certified to by the Administrator of the Land Registration Authority (p. 448, Rollo of G.R. No. 83280) the City of Manila and the nearby towns and cities were treated as a single political unit, that is Greater Manila, during the Japanese Occupation. Thus, the Excerpts from Volume 7 of the Registry Book of Manila, year 1943 (p. 447, Rollo of G.R. No. 83280), show, among other things, the following entries:

(c) The sale of a parcel of land located in Quezon City executed by Magdalena Estates, Inc. in favor of Dionisio Bravo;

(b) The mortgage of a parcel of land in Quezon City by Antonio Zuzuaregui in favor of Elena Africa, et al.; and

(c) The sale of a parcel of land in Quezon City to Lucia de la Cruz by Dorotea de la Cruz, et al.

clearly indicating that transactions involving parcels of land located in Quezon City were indeed recorded and registered in the Registry of Manila.

Under the law, it is the act of registration of the deed of conveyance that serves as the operative act to convey the land registered under the Torrens system. The act of registration creates constructive notice to the whole world of the fact of such conveyance. (*Quilisadio vs. Court of Appeals*, 182 SCRA 401 [1990]; *De la Calzada-Cierras vs. Court of Appeals*, 212 SCRA 390 [1992]).

We cannot go along with petitioners' position that their titles, because they were issued in 1952, must prevail over the title of the Iglesia ni Kristo.

The titles issued to petitioners are derived from TCT No. 5284. This title, TCT No. 5284, is the reconstituted title of Dorotea de la Cruz which was declared null and void in the 1984 decision.

3. With respect to the reconstituted title of Dorotea de la Cruz which was granted by the Court of First Instance of Rizal on December 14, 1945 and TCT 5284 of the Register of Deeds of Quezon City was issued in substitution and/or reconstitution of TCT 40355 of the Register of Deeds of Rizal by virtue of the following inscription on TCT 40335, to wit:

Se expide otra copia para el dueño del presente certificado de título en sustitución del duplicado que se alega haberse quemado, en virtud de na orden del juzgado de Primera Instancia de Rizal dictada el 14 de Diciembre, 1945, en Expediente G.L.R.O. Rec. No. 5975, y en donde se declara nulo y ninguna valor dicho duplicado quemado.

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it may be true that the order granting reconstitution was null and void by reason of the failure to cause the necessary publication of the petition, and, therefore, the reconstituted title was ineffective. More than that, it is established that Dorotea de la Cruz and Eugenia de la Paz had previously sold the land to Lucia de la Cruz executed on November 29, 1941 as indicated in Entry No. 258 so that Dorotea de la Cruz was no longer the owner at the time she petitioned for reconstitution. Nonetheless, it is not disputed that Dorotea de la Cruz together with Eugenia de la Paz were the registered owners of Lot 671 under TCT 40355, T-201 of the Register of Deeds of Rizal, and they could legally transfer the same to Lucia de la Cruz who thereafter sold in favor of respondent Iglesia ni Kristo.

(at pp. 698-699.)

Needless to state, all subsequent certificates of title including petitioners' titles are also void because of the legal truism that the spring cannot rise higher than its source. (*De Santos vs. Intermediate Appellate Court*, 157 SCRA 295 [1988].) The law must protect and prefer the lawful holder of registered title over the transferee of a vendor bereft of any transmissible rights (*Baltazar vs. Court of Appeals*, 168 SCRA 354 [1988]).

Finally, both petitions are procedurally erroneous because certiorari is not the proper remedy.

G.R. No. 76265 stemmed from a letter in consulta addressed by the then Acting Register of Deeds of Quezon City to the Administrator of the National Land Titles and Deeds Registration Administration involving the registrability of a deed of sale presented for registration by Mr. Constancio Simangan.

The Administrator issued a resolution dated April 4, 1988 ordering the Register of Deeds to register the deed of sale subject of the consulta.

The Register of Deeds moved for reconsideration. Herein petitioner Virginia Calalang moved to intervene.

The Acting Administrator denied both motions. Calalang filed a motion for reconsideration but the same was denied, and forthwith, Calalang filed the present petition.

The proper remedy available to Calalang is an appeal to the Court of Appeals pursuant to Section 117 of Presidential Decree No. 1529 and Republic Act No. 5434, and not certiorari or prohibition.

Sec. 117, PD 1529 (Property Registration Decree) Procedure - x x x the party in interest who disagrees with the final resolution, ruling or order of the Commission relative to the consultas may appeal to the Court of Appeals within the period and in the manner provided in Republic Act No. 5434.

Sec. 2, RA 5434 (Uniform Procedure for Appeals) Appeals to Court of Appeals. - Appeals to the Court of Appeals shall be filed within fifteen (15) days from notice of the ruling, award, order, decision or judgment or from the date of its last publication, if publication is required by law for its effectivity; x x x. If no appeal is filed within the periods here fixed, the ruling, award, order, decision or judgment shall become final and may be executed as provided by existing law.

The other case, G.R. No. 83280, stemmed from an injunction suit filed by Augusto de Leon et al. against the Iglesia ni Kristo and Bishop Manalo.

The case was dismissed by the Regional Trial Court. Instead of appealing the order of dismissal, petitioners filed with the Court of Appeals the following.

1. A "Motion for Reconsideration Ad Cautelam"; and
2. An "Omnibus Motion Incident to Execution of the Decision"

The Court of Appeals denied both motions. Hence, the other herein petition.

It is elementary that a petition for certiorari can not substitute for a lost appeal. The order of the Regional Trial Court dismissing the case was appealable. Petitioners in the second petition failed to appeal the same, consequently the order has already become final and may no longer be reviewed on certiorari.

Moreover, these petitions amount to a collateral attack on the title of the Iglesia ni Kristo. Well-settled is the rule that a certificate of title cannot be altered, modified or cancelled except in a direct proceeding in accordance with law. (Section 48, PD No. 1529.)

IN VIEW OF THE FOREGOING, petitioners' Motion for Reconsiderations are hereby DENIED.

Narvasa, C.J., Cruz, Padilla, Bidin, Regalado, Nocon, Bellosillo, and Puno, JJ., concur.

Feliciano, J., joins in the dissenting opinions of Davide and Romero, JJ. and the dissenting part of Quiason J. opinion.

Davide, Jr., and Vitug, JJ., in their separate opinion.

Kapunan, J., join J. Quiason in his concurring and dissenting opinion.

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SEPARATE OPINION

DAVIDE, JR., J.:

Although I originally voted with the majority in the challenged Decision of 22 April 1992, in the light of the clearer presentation of the procedural and factual antecedents by the parties in the motion for reconsideration and the opposition thereto and the pleadings they thereafter filed, as well as in their expositions during the oral arguments on the said motion and opposition, I am convinced that cogent reasons exist for the reconsideration of the challenged decision and the rendition of another dismissing, nevertheless, these petitions on other grounds.

Lot No. 671 of the Piedad Estate, with an area of 184,268 sq. meters, was originally registered in the name of the Philippine Government which was issued Original Certificate of Title No. 614. Although Lot No. 671 was in the possession of Policarpio de la Cruz who was given priority or preference in its acquisition, it appears that he sold it to Eugenia de la Paz and Dorotea de la Cruz as evidenced by Entry No. 3241; accordingly, a new title, Transfer Certificate of Title (TCT) No. 40355, was issued to the said vendees.

On 29 November 1941, Dorotea and Eugenia sold Lot No. 671 to Lucia de la Cruz. Although Lucia appears to have filed with the Office of the Register of Deeds on 17 July 1943 the deed of sale in her favor, which was entered as Entry No. 258 on 17 July 1943 as shown on page 7, volume 7, Primary Entry Book of the Registry of Deeds of Manila, there is no showing at all that she also presented to the Register of Deeds the owner's duplicate copy of TCT No. 40355. On the contrary, the said owner's copy of the title remained in the possession of the vendors, Eugenia and Dorotea, because their deed of sale in favor of Amando Clemente for P178,556.40 of a portion of Lot No. 671, described as Lot No. 671-A with an area of 81,160 sq. meters, is the last inscription in the series of transactions annotated at the back of TCT No. 40355.

As a consequence of the registration of the deed of sale in favor of Clemente, and considering that Eugenia and Dorotea had earlier subdivided Lot No. 671 into Lot No. 671-A and Lot No. 671-B with the latter having an area of 103,108 sq. meters, TCT No. 40355 was cancelled and TCT No. 16212 and TCT No. 16213 were issued for Lot No. 671-A and Lot No. 671-B, respectively. Lot No. 671-B was later sold by Eugenia and Dorotea to Narcisa de Leon, as a consequence of which TCT No. 16213 was cancelled and a new TCT No. 2009 was issued to the vendee. On 6 May 1964, Narcisa de Leon sold Lot No. 671-B to Nieves Paz Ereña to whom was issued TCT No. 79971. The latter's action to quiet title against Lucia de la Cruz ended in a compromise settlement under which Lucia paid Nieves the sum of P25,000.00.

Amando Clemente further subdivided Lot No. 671-A and sold the subdivided lots in 1952 to various vendees, among whom are the petitioners.

In 1971, Lucia de la Cruz obtained a reconstituted title, RT-58, over Lot No. 671. She then sub-divided the lot into Lot No. 671-A with an area of 30,000 sq. meters, Lot No. 671-B with an area of 4,268 sq. meters, and Lot No. 671-C with an area of 150,000 sq. meters, as a consequence of which TCT Nos. 168320, 168321, and 168322 were issued for the subdivided lots, respectively. On 17 July 1975, Lucia de la Cruz sold to the Iglesia Ni Kristo (INK) a portion of Lot No. 671-C with an area of 103,108 sq. meters. Another deed of sale was executed by Lucia in favor of the INK for the remaining 84,356 sq. meters and the transaction was annotated in TCT No. 168322.

From the foregoing it would thus appear that there was a double sale of Lot No. 671 by Eugenia and Dorotea, first to Lucia de la Cruz and then to Amando Clemente (Lot No. 671-A) and Narcisa de Leon (Lot No. 671-B). The rights then of the two sets of vendees would be determined pursuant to Article 1544 of the Civil Code which reads:

"ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and in the absence thereof, to the person who presents the oldest title, provided there is good faith."

It may be presumed that both sets of vendees were in good faith in the purchase of the immovable in question. As to who of them first registered the sale in the Registry of Deeds is the more crucial issue. Although there is evidence that the sale in favor of Lucia de la Cruz was entered in the primary entry book of the Registry of Deeds of Manila on 17 July 1943, the owner's copy of TCT No. 40355 was not presented to the said office. For that reason, the sale was not annotated on TCT No. 40355 and, thus, no new TCT was issued to Lucia.

The rule in this jurisdiction under the Land Registration Act (Act No. 496) is that in voluntary dealings with registered lands, the mere entry of the document (e.g., deed of sale) does not operate to convey and affect the land

sold unless the owner's duplicate copy of the certificate of title is surrendered and the fees paid. Expounding thereon, in *Villasor vs. Camon* (89 Phil. 404, 407-412 [1951]), this Court, through Mr. Justice Felicisimo Feria, made the following enlightening disquisition on this rule and its non-applicability to involuntary dealings with registered lands:

"(a) The question raised in the third assignment of error which we have to decide, is whether the mere registration by the Register of Deeds in the entry or diary book of the exhibit "A" in which the defendant Camon sold or assigned all his rights and interests in the lot in question, without the presentation of the duplicate certificate of the owner for the annotation of such assignment thereon and on the original certificate, had the effect of a conveyance of the said lot to the plaintiff and a notice thereof to all other persons from the time of such registering, filing, or entering, under Sections 50 and 51 of Act No. 496. These two sections provide only for the effect of registration of deeds, mortgage, lease or other voluntary conveyance, as well as of lien, attachment, notice of lis pendens and other involuntary instruments on registered land. But they do not provide for the requisites or conditions for such registration in order to have that effect, which is provided for in the subsequent sections of the same Act, which we shall quote later on in their proper places depending upon whether the instrument to be registered is voluntary or involuntary one.

A cursory examination of the provisions of Sections 52, 57, 61, and 64 of Act No. 496 and the decisions of this Court in the cases of *Fidelity and Surety Co. vs. Pastora Conejero*, 41 Phil., 396; *Director of Lands vs. Addison*, 49 Phil., 19; and *Philippine National Bank vs. Fernandez*, 61 Phil., 448, clearly show that the answers to said questions must be in the negative. That is, that for the registration of voluntary instruments, such as the one under consideration, it is necessary, not only to register the deed, instrument of assignment, mortgage, or lease in the entry book of the Register of Deeds, but a memorandum thereof shall also be made by the Register of Deeds on the owner's duplicate certificate and its original.

'Section 52 provides that "all interests in registered land less than an estate in fee simple shall be registered by filing with the register of deeds the instrument creating or transferring or claiming such interest and by a brief memorandum thereof made by the register of deeds upon the certificate of title, signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner."

Section 57 prescribes that "An owner desiring to convey in fee his registered land or any portion thereof shall execute a deed of conveyance, which the grantor or grantee may present to the register of deeds in the province where the land lies. The grantor's duplicate certificate shall be produced and presented at the same time. * * * The register of deeds shall note upon the original and duplicate certificates the date of transfer, the volume and page of the registration book where the new certificate is registered, and a reference by number to the last prior certificate."

Section 61 provides that "Registration of a mortgage shall be made in the manner following, to wit: The owner's duplicate certificate shall be presented to the register of deeds with the mortgage deed, and he shall enter upon the original certificate of title and also upon the owner's duplicate certificate a memorandum of the purport of the mortgage deed, the time of filing and the file number of the deed, and shall sign the memorandum."

Section 64 prescribes that "Lease of registered land shall be registered in the manner provided in section fifty-two of this Act, in Lieu of recording."

This Supreme Court in the case of *Fidelity and Surety Co., vs. Pastora Conejero*, 41 Phil., 401, held that "The steps by which registration is accomplished are fully set out in section 57 of the same Act; and by reference thereto, it will be seen that registration of the transfer of registered land depends upon several vital conditions, among which is the requirement that the grantor's duplicate certificate, upon which the title is founded, shall be produced before the register of deeds for cancellation; and that he shall also have before him the original

certificate, likewise to be cancelled. This prerequisite condition was not complied with when the deed to Thomas was presented for registration. On the other hand, the conveyance of the land covered by certificate No. 194, by way of mortgage to the Fidelity and Surety Company, was effected in compliance with all legal requirements. As a consequence it must be held that the title acquired by the Fidelity and Surety Company is superior to that acquired by Samuel Thomas.'

In the case of the Director of Lands vs. Addison, 49 Phil., 19, 26, it was held that 'In fact the register of deeds has no authority to register a conveyance in fee without the presentation of the conveyor's duplicate certificate unless he is ordered to do so by a court of competent jurisdiction (see Land Registration Act, section 55).'

And in the case of Philippine National Bank vs. Fernandez, 61 Phil., 448, this Supreme Court ruled that, 'As to the share of Leonor Villaranda, appellant's deed from her could not prejudice third persons, because it was not registered on transfer certificate of title No. 2207 in the office of the register of deeds, and the reason therefor was the failure of the appellant to present the owner's duplicate of said certificate to the register of deeds, as required by section 55 of Act No. 496. The appellant did not therefore acquire any right to the issuance of a new transfer certificate of title in his favor with respect to the interest of Leonor Villaranda (Fidelity and Surety Co. vs. Conegero Vda. de Lizarraga, 41 Phil., 396; Director of Lands vs. Addison, 49 Phil., 19).'

Niblack, in his well known book 'An Analysis of the Torrens System of Conveying Land', has the following to say on the necessity of producing the certificate of title:

'Production of Certificate of Title with Instrument Affecting Title. -- Under the scheme of the Torrens system, and as a protection to the registered owner, the certificate of title must be produced with any voluntary instrument purporting to affect the title. In some acts it is expressly provided that no new certificate of title shall be entered, and no memorandum shall be made upon the register by the registrar, in pursuance of any voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases specifically provided for in the act, or upon the order of a court for cause shown. The other acts in this country provide that on the filing of such instrument and the production of the owner's duplicate certificate, the transfer or memorial may be registered. It is evident that under these acts the registrar has no authority to make registration without the production of the certificate of title with the voluntary instrument. Where there is no specific provision in an act that the production of the owner's duplicate certificate is to be a condition precedent to the right of the registrar to make a registration or a memorial, such provision may be inferred from the other requirements or statements of the act. A requirement that the owner's certificate shall be cancelled when a new registration is made, or that a memorial, when registered, shall be noted on the duplicate certificate, is an implication that the owner's duplicate must be presented before a new registration may be made.' (Italics ours.)

The appellant cannot invoke in support of her contention the ruling laid down in the case of Government of the Philippine Islands vs. Aballe, 60 Phil. 986, which was followed in Director of Lands vs. Abad, 61 Phil., 479, to the effect that an attachment entered upon the entry book is duly registered although the duplicate certificate is not presented at the time of registration to the register of deeds. Appellant cannot invoke said ruling, not because it has been abandoned by the Supreme Court during the Japanese occupation in the case of Bass vs. De la Rama, et al., (1, Off. Gaz., [12] p. 889), in which it was said that 'we are constrained to abandon the ruling in said two cases,' -- it was not abandoned for the decision was concurred by only two justices or less than a majority, and said statement was not necessary or an obiter dictum and against the law, as correctly stated by the two associate justices who dissented and only concurred in the result, but because said ruling, subsisting and in force, does not support appellant's contention, for it is only applicable to registration of involuntary instruments, such as attachment, or other liens and adverse claims of any description. This ruling is correct or in conformity with the provisions of section 72 of Act No. 496, which do not require the production by the registrant of the duplicate certificate of the land to be affected, and was also followed in the case of National Bank vs. Fernandez quoted supra, in which this Supreme Court in passing upon the second ground of

appellant's contention, held the following:'

x x x

The reason for the difference between the conditions required for the registration of a voluntary and that of an involuntary instrument, is obvious. The law requires the production of the owner's duplicate certificate by the registrant by a voluntary instrument together with the deed or instrument to be registered, because as a voluntary instrument is a willful act of the registered owner of the land to be affected by the registration, it is to be presumed that he is interested in registering the instrument, and would willingly surrender, present or produce his duplicate certificate of title to the register of deeds in order to accomplish such registration. And this is the reason why the second paragraph of Section 55 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.'

But in case of involuntary instrument such as an attachment, or other lien or adverse claim of any description, as the registration thereof is contrary to the interests of the registered owner or will affect him adversely, it is but natural that he will not willingly present or produce his duplicate certificate or at least delay his production as long as possible. For that reason, the law does not require its presentation together with the involuntary instrument, as in the case of voluntary instrument, and considers the annotation of such instrument upon the entry book as sufficient to affect the real estate to which it relates; x x x." (underscoring supplied)

In *Levin vs. Bass* (91 Phil. 419 [1952]), this Court, per Mr. Justice Sabino Padilla, elucidated again on the requirements of effective registration in voluntary dealings of registered land:

"We now take up the question between Eugenio Mintu and Rebecca Levin. Under the Torrens system the act of registration is the operative act to convey and affect the land. [Sec. 50, Act. 496]. Do the entry in the day book of a deed of sale which was presented and filed together with the owner's duplicate certificate of title with the office of the Registrar of Deeds and full payment of registration fees constitute a complete act of registration which operates to convey and affect the land? In voluntary registration, such as a sale, mortgage, lease and the like, if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within 15 days, entry in the day book of the deed of sale does not operate to convey and affect the land sold. [Sections 55 and 56, Act 496]. In involuntary registration, such as an attachment, levy upon execution, lis pendens and the like, entry thereof in the day book is a sufficient notice to all persons of such adverse claim. [*Villasor vs. Camon, et al.*, 89 Phil., 404]. x x x" (underscoring supplied)

Villasor was reiterated in *Barreto vs. Arevalo* (99 Phil. 771, 777-778 [1956]) where this Court, per Mr. Justice Alejo Labrador, stated:

"The fourth assignment of error has reference to the holding of the trial court that the registration of plaintiff's deed of sale is incomplete and cannot prevail over the rights of defendants who had secured registration of the deed of sale in their favor and the issuance of a certificate of title in their name. The above conclusion is also correct. In the first place, the act of registration is the operative act to convey and affect the land, an unregistered deed only operating as a contract between the parties and as evidence of authority to the register of deeds to make registration (Sec. 50, Land Registration Act.) The registration of defendants Padillas' deed affected the land conveying title thereto to them, as in fact a new certificate of title was issued in their favor. As to plaintiff's deed of sale, as to which registration is voluntary, not involuntary, its presentation and entry in the day book without surrender of the title, did not operate to convey and affect the land sold or conveyed (*Villasor vs. Cammon, et al.*, CA. G.R. No. 8551, prom. June 29, 1951)." (underscoring supplied)

To recapitulate, since Lucia de la Cruz was not able to present to the Register of Deeds the owner's duplicate copy of TCT No. 40355 which had all the time remained in the possession of her vendors until it was cancelled upon

the registration of the deed of sale in favor of Amando Clemente, she cannot claim any better right to the property against the second vendees simply because she was the first to present her deed of sale to the Register of Deeds. On the other hand, Clemente registered the deed of sale in his favor in August of 1951 or twenty (20) years before Lucia de la Cruz secured a reconstituted title over Lot No. 671. The compromise agreement between Ereña and Lucia de la Cruz under which the latter had to pay the former P250,000.00 for Lot No. 671-B with an area of 103,108 sq. meters, which is the very same area Lucia sold to INK on 17 July 1975, is further proof that Lucia had a weak claim over the property. If it were otherwise, she would not have parted with P250,000.00 to reacquire it. That was not at all a picayune sum.

Consequently, the second paragraph of Article 1544 of the Civil Code does not help the cause of Lucia de la Cruz.

Even granting that the claim of Lucia de la Cruz should prevail over that of Clemente by reason of the prior registration in good faith of the deed of sale in her favor, the fact remains that at the time she sold the 103,108 sq. meters and then later the remaining 84,356 sq. meters to the INK, the portion acquired earlier by Clemente had already been sold to different vendees to whom separate TCTs were regularly issued. These facts were readily available to the INK from the Office of the Register of Deeds of Quezon City which kept the original copies of the TCTs issued to the vendees of Clemente. It is interesting to note that the sale in favor of the INK over the remaining 84,346 sq. meters was annotated only in TCT No. 168322 for Lot No. 671-C. Such a sale could logically cover the lot purchased by Clemente because the earlier sale to INK of 103,108 sq. meters was taken from Lot No. 671-C which has an area of 150,000 sq. meters. It is then equally clear that the registration of the deeds of sale in favor of the INK were also posterior to that of the vendees of Clemente. As to who acted in good faith -- whether the INK or the said vendees -- is a question which should be threshed out in an appropriate action or proceeding.

Additionally, the petitioners claim that they are in possession of the property. The INK does not vehemently deny this claim. In any case, the issue of possession is thus raised, a crucial one in double sale.

It has also been shown that the petitioners were not parties in *De la Cruz vs. de la Cruz* (130 SCRA 666 [1984]). I fully agree with Madame Justice Florida Ruth P. Romero that the said case cannot operate as *res judicata* against them.

All the foregoing factual issues related to double sale must have to be resolved in an appropriate proceeding before a proper court.

ACCORDINGLY, I vote to grant the Motion for Reconsideration and set aside the challenged Decision of 22 April 1992, but to dismiss these cases without prejudice on the part of the petitioner in G.R. No. 76265 to institute the appropriate action to protect her rights and on the part of the petitioners in G.R. No. 83280 to prove their priority of rights in Civil Case No. Q--49900.

6 pt 6 pt 0 3

CONCURRING AND DISSENTING OPINION

QUIASON, J.:

I concur with the Resolution insofar as it dismisses the petition in G.R. No. 76265 and denies the petition in G.R. No. 83280. My reason is that the basic issue -- which of the conflicting duplicate transfer certificates of title shall prevail -- could not be raised, entertained and resolved in the proceedings (LRC 1978 and Civil Case No. 45767 of RTC, Branch 101, Quezon City) subject of the petitions.

The conflicting transfer certificates of title are TCT No. 16212 issued to Armando Clemente on August 9, 1951 and TCT No. RT-59 (purported to be a replacement of TCT No. 40355) issued to Lucia de la Cruz in 1971 after a reconstitution proceeding. Both duplicate transfer certificates of title trace their progeny from TCT No. 40355, which was issued in the names of Eugenia de la Paz and Dorotea de la Cruz in 1940.

G.R. No. 76265 is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court to reverse and set aside the decision of the Administrator of the National Land Titles and Deeds Registration Administration (NLTDRA) in Consulta Case LRC 1978. As held by the NLTDRA Administrator himself, he could not accede to petitioner's request for an investigation of the supposed anomaly in connection with the reconstitution of TCT No. RT--59 because the issue raised by petitioner was litigious in nature and cannot be decided in the consulta case. The Court agreed with the NLTDRA Administrator when he stated:

"Undeniably, the arguments and issues raised by petitioner require adjudication of facts which, under the circumstances of this case, we are not prepared to do so as this Court is not a trier of facts. Moreover, the present petition is not the proper remedy in challenging the validity of certificates of titles since the judicial action is a direct and not a collateral attack" (208 SCRA 229, 244).

G.R. No. 83280 is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to reverse and set aside the decision of the Court of Appeals (CA-G.R. SP No. 08146), affirming the dismissal of petitioners' complaint to enjoin private respondent Iglesia Ni Kristo from fencing the lots bought by petitioners from Armando Clemente. The Court quoted with approval the holding in *Natalia Realty Corporation v. Vallez*, 173 SCRA 534 (1989), that a certificate of title cannot be questioned collaterally since Section 48 of the Property Registration Decree provides that such title can be altered, modified or cancelled only in a direct proceeding in accordance with law (208 SCRA 229, 244).

I dissent insofar as the Resolution holds that the issue of the ownership of the title to the lots in question had been conclusively adjudged in favor of Lucia de la Cruz in *De la Cruz v. De la Cruz*, 130 SCRA 666 (1984) and could no longer be relitigated under the principle of *res judicata*.

Res judicata does not apply because there are no identity of parties and no identity of causes of action, both being indispensable requisites before said principle becomes operative (*Abes v. Rodil*, 17 SCRA 822 [1966]).

In 1969, the petitioners, who were the plaintiffs in Civil Case No. 20942 of the Court of First Instance of Rizal, were Augustina de la Cruz and the other heirs of Policarpio de la Cruz and Luciana Rafael; while the respondents, who were the defendants in said civil case, were Lucia de la Cruz and the Iglesia Ni Kristo.

In G.R. No. 76265, the party who sought to nullify the titles of respondents Lucia de la Cruz and the Iglesia Ni Kristo was petitioner Virginia Calalang. The latter is not a privy of Augustina de la Cruz nor is she an heir of Policarpio de la Cruz and Luciana Rafael. Neither are petitioners Augusto M. de Leon, et al., in G.R. No. 83280 privies of Augustina de la Cruz nor heirs of Policarpio de la Cruz and Luciana Rafael.

The plaintiffs in Civil Case No. 20942 of the Court of First Instance of Rizal and petitioners in L-61969 brought the action as heirs of Policarpio de la Cruz and Luciana Rafael to demand their rightful share in the inheritance allegedly usurped by Lucia de la Cruz.

The petitioners in G.R. Nos. 76265 and 83280 claim to have derived their titles from Armando Clemente, who in turn derived his title from Eugenia de la Cruz and Dorotea de la Cruz. The principle action was to enjoin the Iglesia Ni Kristo from fencing the lots occupied by the plaintiffs, the declaration of who of the parties had a superior title being incidental.

I wonder no end how the Court arrived at its conclusion that "the petitioners can not raise anew the question of

ownership of Lucia de la Cruz over lot 671 which had been determined by the Court of Appeals and affirmed by the Supreme Court in the de la Cruz Case," after it acknowledged that a judicial determination of a right or fact (citing Church Assistance Program, Inc. v. Sibulo, 171 SCRA 408 [1989]) is conclusive only "upon the parties and those in privity with them in law or estate" (208 SCRA 224, 225).

I can not accept the assertion of the Court that the De la Cruz decision should be applied to the present cases "since the facts on which such decision was predicated continue to be the facts of the case before us now," after it admitted that it could not pass upon the controversial facts raised by petitioners (*supra*, pp. 225 and 229).

It is markworthy that there was no mention in the De la Cruz decision of the cancellation of TCT No. 40355 and the issuance of a new transfer certificate of title in favor of Armando Clemente on August 9, 1951. Such vital facts were never brought to the attention of the Court in the De la Cruz case; otherwise, the Court could have made a determination of which certificate of title shall prevail – the title issued in 1951 to Armando Clemente or the one issued in 1971 to Lucia de la Cruz.

Indeed, there are so many other factual questions that have just been glossed over due to the facile application of the principle of *res judicata* in the Decision sought to be reconsidered and in the Resolution denying the motion for reconsideration.

We shall mention only the most intriguing ones:

- (1) If the parcel of land in question was in the possession of Policarpio de la Cruz and Luciana Rafael, why was it registered under the Torrens system on April 25, 1940 in the names of Eugenia de la Paz and Dorotea de la Cruz?
- (2) Who were Eugenia de la Paz and Dorotea de la Cruz?
- (3) Why did Augustina de la Cruz claim title from Policarpio de la Cruz and Luciana Rafael and not from Eugenia de la Paz and Dorotea de la Cruz?
- (4) If Lucia de la Cruz bought the parcel of land covered by TCT No. 40355 from Eugenia de la Cruz and Dorotea de la Cruz in 1941, did the vendors deliver to her the corresponding transfer certificate of title?
- (5) If the transfer certificate of title was delivered to Lucia de la Cruz, did she surrender the title to the Register of Deeds when she registered the deed of sale in her favor on July 15, 1943?
- (6) If she surrendered the transfer certificate of title, did the Register of Deeds cancel the original transfer certificate of title and issue a new transfer certificate of title to her?
- (7) Why was the proceeding instituted by Lucia de la Cruz in 1971 for the reconstitution of TCT No. 40355, if the parcel of land covered by such title had already been transferred to her in 1941?
- (8) Why was the transfer certificate of title issued to Armando Clemente in 1951 derived from TCT No. 40355 if the said title had been cancelled in 1943?
- (9) Were the lot buyers from Armando Clemente notified of the reconstitution proceedings instituted by Lucia de la Cruz in 1971?

All of these factual issues, and many more, have to be threshed out in the appropriate case before we can decide which of the conflicting transfer certificate of title shall prevail.

1 6 pt 6 pt 0 3

DISSENTING OPINION

ROMERO, J.:

In this motion for reconsideration filed by petitioners, we are again called upon to take a second look at our decision in *Calalang v. Register of Deeds of Quezon City* dated April 22, 1992,¹ which dismissed petitioners' action for lack of merit. In said decision, we re-applied the facts as settled in the earlier *De la Cruz v. De la Cruz* case dated July 25, 1984² since the facts of the latter case continue to be the facts before us now.

On May 13, 1992, petitioners filed the instant motion for reconsideration with the prayer that they be heard en banc. After requiring respondents to comment, we granted petitioner's prayer for oral argument before the Third Division and set the hearing on October 12, 1992. After hearing the arguments of all the parties, the Third Division resolved to require petitioners and respondent to file their respective memoranda.³ Subsequently, on February 10, 1993, the instant case was referred by the Third Division to the Court en banc;⁴ having been accepted by the Court en banc, the case became an en banc one.

Before we proceed to a re-examination of our decision, I wish to reiterate that the instant case was accepted by the Court en banc because it is high time that the Court, sitting en banc, definitively resolve the uncertain status of more than 100 Transfer Certificates of Title and their derivatives⁵ which were all traceable to TCT no. 16212 issued in favor of Amando Clemente.

It is my position that the doctrine of *res judicata* should not have been applied to the instant *Calalang* case vis-a-vis the earlier *De la Cruz* case as to bring about the dismissal of petitioner's action for lack of merit.

It is the contention of petitioners that the *De la Cruz* case is not applicable inasmuch as, being an action in personam, it is binding only upon the parties involved therein, namely, Agustina de la Cruz et al., Lucia de la Cruz and Iglesia Ni Kristo (INK).

To recall, the *De la Cruz* case was an action to recover possession and ownership filed by Agustina against Lucia de la Cruz as predecessor-in-interest of INK. With respect to the object against which the said action was directed, such action is classified as an action in personam because its objective was to establish a claim or liability against Lucia de la Cruz for conveying to INK, a parcel of land which Agustina and her co-plaintiffs claimed was a part of their inheritance in the estate of their grandfather, Policarpio de la Cruz.

Although an action to recover a parcel of land is a real action since it concerns a right over real property, such action is an action in personam in the sense that its judgment binds only particular parties, the latter having been the only ones heard before the Court.⁶ To repeat, a real action may at the same time be an action in personam and not necessarily an action in rem.⁷ An action to recover possession of real property is not an action in rem or an action against the whole world, like a land registration proceeding or probate of a will; it is an action in personam, such that a judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard.⁸ Accordingly, since the petitioners herein were not impleaded in the *De la Cruz* case, the same has no binding effect upon petitioners in this present controversy.

Our decision in *Calalang v. Register of Deeds* which heavily relied on the doctrine of *res judicata* in upholding INK's claim over Lot 671-C cannot be applied because for *res judicata* to apply, there must be, among other requisites, identity of parties and cause of action.⁹

This we fail to see in the instant case vis-a-vis the *De la Cruz* case. We cannot consider petitioners herein as "successors-in-interest by title subsequent to the commencement of action"¹⁰ because petitioners' transfer certificates of title were obtained prior to the institution of the action to recover ownership and possession by

Agustina de la Cruz in 1975. Note that petitioners obtained their respective titles after the 1952 sale by Dorotea de la Cruz to Amando Clemente, predecessor-in-interest of petitioners, who developed the lot into a subdivision.

The lack of identity of parties is underscored by the fact that not one of the petitioners in the instant case was joined as a party in the De la Cruz case, although they were already real parties in interest at the time, having constructed buildings on the disputed property after 1952 and before 1975. An action for recovery of possession and ownership should be maintained against the actual or legal possessors of the property, for such persons are real parties in interest bound by the judgment which may be rendered in that action.¹¹ In fact, had the 1984 suit of Agustina de la Cruz against properties of Lucia de la Cruz prospered, petitioners herein as actual possessors since 1952 would undeniably sustain damages. Clearly, petitioners, as real parties in interest, have a real, actual, material and substantial interest,¹² for they would have lost their lots and houses if the claim of Agustina had been sustained.

Furthermore, *res judicata* is not applicable to the case at bar because there is no identity of causes of action between the De la Cruz case and the instant petition. In the De la Cruz case, the cause of action was for the recovery of possession against Lucia which was anchored on the issue of whether or not a trust and/or co-ownership existed between Lucia de la Cruz and the heirs of Maximo and Filomeno de la Cruz. Thus, the Court principally examined the evidence presented by Agustina de la Cruz and her co-petitioners to prove their claim that they had been defrauded by Lucia de la Cruz of their inheritance from their grandfather, Policarpio de la Cruz.

On the other hand, in the present case, the cause of action is for the quieting of title, which arose from a consulta case wherein the Register of Deeds entertained doubts regarding the registrability of the Transfer Certificate of Title in the name of Constancio Simangan, the land involved being covered by two sets of titles issued in the names of different owners, one derived from Amando Clemente and the other from Lucia de la Cruz (RT-58).¹³

Moreover, conspicuous is the absence of any *lis pendens* annotated in petitioners' Certificates of Title. Any decision in a case involving any right to land registered under the Land Registration Law shall only bind parties thereto unless notice of *lis pendens* is recorded in the Certificate of Title.¹⁴

A major point to be considered in this reversal is the anomalous primary entry of the deed of sale relating to Lot 671 on July 17, 1943 which had been caused to be made by Lucia de la Cruz in the Day Book of the Register of Deeds of Manila (Entry No. 258, Page 7, Vol. 7).¹⁵ Such entry cannot be considered as the operative act that conveyed the property to her as vendee because the Deed of Sale was not registered in accordance with law. Section 50 of Act 496,¹⁶ then the law in force, provides that, "registration of all voluntary transactions affecting registered lands shall be made in the office of the Register of Deeds for the province or city where the land lies." It is but logical for transactions affecting registered lands to be inscribed in the Register of Deeds of the province or city where the same are located for accessibility and convenience to the parties involved.

In the case at bar, this requirement has been glaringly violated. Contrary to the above-cited provision, the inscription of the Deed of Sale was made in the Register of Deeds of the City of Manila instead of in the Province of Rizal. Thereby, Lucia de la Cruz disregarded the existence of TCT No. 40355 Book T-201 which had been in the custody of the Register of Deeds of Pasig, Rizal since April 25, 1940 until April 11, 1946 when it was transferred to the Register of Deeds of Quezon City.¹⁷

We cannot accept respondent's allegations that during the Japanese Occupation, registration of transactions, regardless of where the titles were kept, was undertaken by the Register of Deeds of Manila, for that would be tantamount to disregarding the existence of Act 496, a non-political law which continues in force until changed or abrogated by the rightful sovereign, i.e., the Commonwealth of the Philippines and later the Republic of the

Philippines.¹⁸ Administrators who are mandated by law to discharge certain ministerial duties may not, with impunity, violate the same law.

Moreover, the primary entry in the day book of the Register of Deeds in favor of Lucia De la Cruz cannot prevail over TCT 40355 because entry in the day book is only a preliminary step in registration while the issuance of a new certificate of title is the final step which produces the effect of registration. In practice, the first and the last steps are not completed within the same day. It is however, of no consequence when actual registration is finally accomplished, for when accomplished, its effect retroacts as of the date of the entry in the day book. But if the issuance of a new certificate of title could not be accomplished at all, the primary entry in the day book automatically loses its force and effect.¹⁹

No evidence is adduced to show that a Transfer Certificate of Title was ever issued to Lucia de la Cruz. The De la Cruz decision merely speculated that one must have been issued to her, thus:

"In due course of official business and duty, a new Transfer Certificate of Title must have been issued to the new owner, Lucia de la Cruz. The entire records do not disclose the number of the new Transfer Certificate of Title (TCT) in the name of Lucia de la Cruz. When in 1971, Lucia de la Cruz petitioned for the reconstitution of her title in the Court of First Instance of Manila, she alleged her title as No. (N.A.). The Court granted the petition and the Register of Deeds of Manila issued to her TCT No. RT-58, thereby cancelling TCT-40355, T201."²⁰ (Underscoring provided)

Thus since there was no certificate of title that was issued after the alleged sale in favor of Lucia de la Cruz, then the alleged inscription in the Primary Entry Book in the Registry of Deeds of Manila did not "ripen" into actual registration. As such, it cannot prevail over TCT 40355 then in the custody of the Register of Deeds of the Province of Rizal.

Article 1544 of the Civil Code relating to the provisions on double sale²¹ cannot be made to apply in favor of private respondent INK just because a new transfer certificate of title must have been issued after the sale on November 29, 1941 by Eugenia de la Cruz and Dorotea de la Cruz to Lucia de la Cruz (INK's predecessor-in-interest). This is because the preference supposed to be conferred by Article 1544 upon the inscription of the Deed of Sale in Lucia's favor in the Register of Deeds of Manila failed to materialize for reasons already discussed.

Hence, Amando Clemente's procurement in good faith of TCT No. 16212 issued over Lot 671-A on August 9, 1951 must be considered as the first inscription after TCT No. 40335.

It is settled that "when two certificates of title are issued to different persons covering the same land in whole or in part, the earlier in date must prevail, and, in case of successive registrations where more than one certificate is issued over the land, the person holding a prior certificate is entitled to the land as against a person who relies on a subsequent certificate."²² A closer examination of TCT No. 40355 discloses that it was signed by Register of Deeds Teodoro Gonzales on April 25, 1940.²³ The last inscription in the series of transactions at the back shows the sale of Lot 671-A to Amando Clemente on August 1, 1951 for the sum of P178,556.40. In lieu thereof, TCT No. 16212 in Clemente's name and TCT No. 16213 were issued, Clemente obtaining his TCT No. 16212 on August 9, 1951. On the other hand, INK obtained its TCT No. 168322 on July 17, 1975. Consequently, as between the title of Amando Clemente and Iglesia Ni Kristo, who are both claimants to part of the same land, Clemente's earlier certificate of title must prevail.

Prior to Clemente's inscription, there was no indication whatsoever of any sale by Eugenia and Dorotea de la Cruz to Lucia de la Cruz in 1941 which respondents claim to have effectively preempted any subsequent dealings on Lot 671, namely the sale in favor of Amando Clemente in 1951. INK's predecessor-in-interest, Lucia de la Cruz,

was never able to present a TCT of the land she claimed to have bought in 1941 from Dorotea de la Cruz and Eugenia de la Paz. Lucia merely caused the cancellation of the original TCT 40355 of her two vendors through the highly questionable entry in the Primary Entry Book (in 1943) of the Register of Deeds of Manila and not in the Register of Deeds of Rizal where the subject land is located, in violation of law. To remedy this anomaly, she got Reconstituted Title RT-58 some thirty (30) years later.

Furthermore, to disregard the inscription in favor of Amando Clemente would destroy the value and reliability of the Torrens System which prescribes conclusiveness of all matters contained in a certificate of title issued by the Register of Deeds. Amando Clemente, as an innocent purchaser in good faith, rightly relied on the correctness of the inscriptions at the back of TCT No. 40355. Under the Torrens System, every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property.²⁴ When there is nothing on the face of the title to indicate any cloud or vice in the ownership of the property or any encumbrances thereon, a purchaser is not required to explore further than what the Torrens Title upon its face indicates, in quest for any hidden defect or inchoate right that may subsequently defeat his right thereon.²⁵

Since the inscription of the Deed of Sale in the Registry of Manila was invalid, it follows that the reconstitution of the same document by Lucia de la Cruz in 1971, 30 years after the sale by Dorotea de la Cruz is perforce invalid, applying the legal maxim that a spring cannot rise higher than its source.

Moreover, it could not be given effect because it was attended with legal infirmities. Although the De la Cruz case mentions that the "reconstitution proceedings" in 1971 were "duly published,"²⁶ the case does not state that notices were given to adjoining owners as required by Republic Act No. 26.²⁷ Petitioners insist that they had never received any notice of the reconstitution proceedings. They further allege that it was only in 1986 when INK started putting up "No Trespassing" signs on their property, that they became aware of other claimants to their properties.

A reconstitution proceeding is an in rem proceeding. But before it can be treated as such, certain pre-requisites must first be complied with.²⁸ Sec. 12 of R.A. No. 26 expressly requires service of notice of the initial hearing to the adjoining owners and the actual occupants of the land.²⁹ Said section provides that a petition for reconstitution shall state or contain, among other things, "(e) the names and addresses of the occupants or persons in possession of the property, of the owners of adjoining properties and of all persons who may have interest in the property." The next section mandates the publication of said notice of the petition at the expense of the petitioner and the sending of copies of the notice to parties mentioned in Sec. 12.³⁰ Notice by publication is insufficient as regards actual possessors of the property. It cannot be overemphasized that notice is jurisdictional and lack of it deprives the court of authority to make a valid decree.³¹ In petitions for reconstitution of titles, actual owners and possessors of the lands must be duly served with actual and personal notice of the petition.³²

Needless to say, since publication, in and of itself is insufficient, the reconstitution of TCT RT No. 58 in favor of Lucia de la Cruz was necessarily invalid. Hence, when Lucia de la Cruz sold the disputed property on July 17, 1975, she was in no position to transmit any dominical rights to her vendee Iglesia ni Kristo.

ACCORDINGLY, I vote to GRANT the petitioners' motion for reconsideration, without prejudice to litigating anew in another appropriate proceeding the issues of overlapping of titles among various claimants and of good faith on the part of the Iglesia ni Kristo.

1 G.R. Nos. 76265 & 83280, 208 SCRA 215.

2 G.R. No. 61969, 130 SCRA 666.

3 Rollo, p. 732.

4 Rollo, p. 785.

5 See Rollo, pp. 120-136.

6 p. 123, Vol. 1, Moran, Rules of Court and p. 341, Vol. 1 Francisco, Rules of Court.

7 Hernandez v. Rural Bank of Lucena, Inc., L-29791, January 10, 1978, 81 SCRA 84.

8 Ang Lam v. Rosillosa and Santiago, 86 Phil. 447.

9 Mendoza v. Court of Appeals, G.R. No. 81909, September 5, -1991, 201 SCRA 343; Filipinas Investment and Finance Corp. v. IAC, G.R. Nos. 66059-60, December 4, 1989, 179 SCRA 728; Magdangal v. City of Olongapo, G.R. No. 83828, November 16, 1989, 179 SCRA 506; Asuncion v. Pineda, G.R. No. 47924, July 31, 1989, 175 SCRA 719.

10 Sec. 49 (b), Rule 39 of the Rules of Court.

11 p. 156, Vol. 1, Moran, Rules of Court.

12 p. 212, Vol. 1, Francisco, Rules of Court.

13 Footnote 1, pp. 218-219.

14 Felix Gochan & Sons Realty Corp. v. Cañada, 99686, August 31, 1988, 165 SCRA 207.

15 de la Cruz v. de la Cruz, supra, pp. 697-698.

16 Amended by Sec. 51 of P.D. 1529.

17 Footnote 1, p. 226; Rollo of G.R. No. 76265, p. 629.

18 Co Kim Chan v. Valdez Tan Kek and Dizon, 75 Phil. 113.

19 Peña, Registration of Land Titles and Deeds, 1988 Edition, pp. 209-210.

20 De la Cruz v. De la Cruz, G.R. No. 61969, July 25, 1984, 130 SCRA 666, 698.

21 Article 1544, second paragraph states:

"x x x x x x x x x

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

x x x x x x x x x."

22 Director of Lands v. Court of Appeals No. L-45168, January 27, 1981, 102 SCRA 370, citing Pajomayo v. Manipon, No. L-33676 June 30, 1971, 39 SCRA 676; De Villa v. Trinidad No. L-24918, March 20, 1968, 22 SCRA 1167; Alzate v. PNB, No. L-20068, June 26, 1967, 20 SCRA 422; Legarda v. Saleeby, 31 Phil 590

23 Annex "A," Rollo of G.R. No. 76265, p. 745.

24 Santos v. Court of Appeals, G.R. No. 90380, September 13, 1990, 189 SCRA 550; Davao Grains, Inc. v. IAC, G.R. No. 78209, March 31, 1989, 171 SCRA 612; Director of Lands v. Abache, et al., 73 Phil. 606 (1942).

25 Philippine National Bank v. Intermediate Appellate Court, G.R. No. 71753, August 25, 1989, 176 SCRA 736; National Grains Authority v. IAC, G.R. No. 68791, January 28, 1988, 157 SCRA 380.

26 p. 698, De la Cruz case.

27 Entitled, "An Act Providing A Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed."

28 Pena, supra at footnote no. 16, p. 408.

29 Republic v. Marasigan, G.R. No. 85515, June 6, 1991, 198 SCRA 219; Tahanan Development Corp. v. Court of Appeals, G.R. No. 55771, November 15, 1982, 118 SCRA 273.

30 Sec. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the municipality or city in which the land is situated, at the provincial building and of the municipal building at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

31 Adjap Allama v. Republic, G.R. No. 88226, February 26, 1992, 206 SCRA 600; Republic v. Marasigan, G.R. No. 85515, June 6, 1991, 198 SCRA 219; Serra Serra v. Court of Appeals, G.R. No. 34080, March 22, 1991, 195 SCRA 493; Republic v. IAC, G.R. No. 68303, January 15, 1988, 157 SCRA 62.

32 Alabang Development v. Valenzuela, No. 54904, August 30, 1982, 116 SCRA 277; Underscoring ours.

180 6 pt 6 pt 0 3

SEPARATE OPINION

VITUG, J.:

I share the views expressed by Mr. Justice Camilo Quiason in his concurring and dissenting opinion. I just should like to add, by way of clarification, that while, as Justice Quiason states, "a certificate of title cannot be questioned collaterally since Section 48 of the Property Registration Decree provides that such title can be altered, modified or cancelled only in a direct proceeding in accordance with law" (citing Natalia Realty Corporation vs. Vallez, 173 SCRA 534; Calalang vs. Register of Deeds of Quezon City, 208 SCRA 229, 244), when, however, the certificate of title is void ab initio (such as one that proceeds from a void judgment or from a free patent issued on land already privately owned), the title may also be attacked collaterally (Agne vs. Director of Lands, 181 SCRA 793; Estoesta, Sr. vs. Court of Appeals, 179 SCRA 203).

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