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adopted by the Court,[35] the loss of earning capacity shall be computed as follows:

Net Earning Capacity (X) = Life Expectancy x (Gross Annual Income – Living Expenses e.g. 50% of annual gross income)

$$= \frac{2\,(80 - 64)}{3} \times (156{,}000.00 - 78{,}000.00)$$

$$= 10.667 \times 78{,}000.00$$

$$= ₱832{,}026.00$$

WHEREFORE, the Decision of the Regional Trial Court of Roxas, Isabela, Branch 23, convicting appellant Pedro R. Pascual of the crime of murder and imposing the penalty of *reclusion perpetua* is hereby *AFFIRMED* subject to the *MODIFICATION* that the civil liability of the appellant in favor of the forced heirs of the victim shall be as follows: ₱50,000.00 representing civil indemnity *ex delicto*; ₱50,000.00 by way of moral damages; and ₱832,026.00 as damages for the loss of earning capacity of the deceased victim, Dr. Maximino P. Picio, Jr.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *Buena, JJ.*, concur.

SECOND DIVISION

[G.R. No. 129471. April 28, 2000]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **COURT OF APPEALS and CARLOS CAJES,** *respondents.*

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[35] *People vs. Verde,* G.R. No. 119077, February 10, 1999.

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SYNOPSIS

The land in dispute consists of 19.4 hectares originally owned by Ulpiano Mumar since 1917. Mumar sold the land to Carlos Cajes in 1950 who then occupied and cultivated the same. In 1969, however, Jose Alvarez succeeded in obtaining registration of a parcel of land in his name which included the subject 19.4 hectares of land. Later, Alvarez sold the land to the spouses Gaudencio and Rosario Beduya to whom TCT No. 10101 was issued. The spouses Beduya then mortgaged the land to the DBP, to whom ownership of the land was eventually consolidated. Cajes was asked to vacate the land, but refused to do so. Hence, this case.

From 1917 to 1969, when the land was registered by Alvarez in his name, more than 30 years had elapsed. The uninterrupted adverse possession of the land by Cajes and his predecessor-in-interest could only ripen into ownership of the land through acquisitive prescription which is a mode of acquiring ownership and other real rights over immovable property. On the other hand, neither Alvarez nor spouses Beduya were at any time in possession of the land. Hence, it can be concluded that neither Alvarez nor spouses Beduya ever exercised any right of ownership over the land. The fact of registration in their favor never vested in them the ownership of the land in dispute. The inclusion of the 19.4 hectares of land in OCT No. 546 and later TCT No. 10101, was erroneous. Accordingly, the land in question must be reconveyed in favor of Cajes.

SYLLABUS

1. CIVIL LAW; LAND TITLES; DECREE OF REGISTRATION; NOT A MODE OF ACQUIRING OWNERSHIP OVER IMMOVABLE PROPERTY. — A consideration of the cases shows that a decree of registration cut off or extinguished a right acquired by a person when such right refers to a lien or encumbrance on the land — not to the right of ownership thereof — which was not annotated on the certificate of title issued thereon. Indeed, registration has never been a mode of acquiring ownership over immovable property. In the case of *Reyes v. Court of Appeals*, we ruled that the fact that a party was able to secure a title in his favor did not operate to vest ownership

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upon her of the property. Here, neither Jose Alvarez nor the spouses Beduya ever exercised any right of ownership over the land. The fact of registration in their favor never vested in them the ownership of the land in dispute. "If a person obtains a title under the Torrens system, which includes by mistake or oversight land which can no longer be registered under the system, he does not, by virtue of the said certificate alone, become the owner of the lands illegally included."

2. ID.; PROPERTY; OWNERSHIP; ACTUAL POSSESSION AND TAX DECLARATIONS IN HIS NAME ARE STRONG EVIDENCE OF OWNERSHIP OF LAND OCCUPIED. — Private respondent has been in actual, open, peaceful and continuous possession of the property since 1950. Together with his actual possession of the land, several tax declarations issued in his name constitute strong evidence of ownership of the land occupied by him.

3. ID.; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF OWNERSHIP AND OTHER REAL RIGHTS; ACQUISITIVE PRESCRIPTION; APPRECIATED IN CASE AT BAR. — It was established that private respondent, having been in possession of the land since 1950, was the owner of the property when it was registered by Jose Alvarez in 1969, his possession tacked to that of his predecessor-in-interest, Ulpiano Mumar, which dates back to 1917. Clearly, more than 30 years had elapsed before a decree of registration was issued in favor of Jose Alvarez. This uninterrupted adverse possession of the land for more than 30 years could only ripen into ownership of the land through acquisitive prescription which is a mode of acquiring ownership and other real rights over immovable property. Prescription requires public, peaceful, uninterrupted and adverse possession of the property in the concept of an owner for ten (10) years, in case the possession is in good faith and with a just title. Such prescription is called ordinary prescription, as distinguished from extraordinary prescription which requires possession for 30 years in case possession is without just title or is not in good faith.

4. ID.; ID.; PRESCRIPTION OF ACTIONS; ACTION FOR RECONVEYANCE BASED ON IMPLIED TRUST PRESCRIBES IN 10 YEARS FROM THE DATE OF ISSUANCE OF DECREE OF REGISTRATION; NOT APPLICABLE WHEN THERE IS ACTUAL POSSESSION OF THE LAND. — Generally, an action

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for reconveyance based on an implied or constructive trust, such as the instant case, prescribes in 10 years from the date of issuance of decree of registration. However, this rule does not apply when the plaintiff is in actual possession of the land.

5. ID.; LAND TITLES; COUNTERCLAIM FOR OWNERSHIP OVER THE LAND CONSIDERED DIRECT ATTACK ON THE TCT; DETERMINATION OF VALIDITY, PROPER. — There is no obstacle to the determination of the validity of TCT No. 10101. It is true that the indefeasibility of torrens titles cannot be collaterally attacked. In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101 on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. However, it should not be overlooked that private respondent filed a counterclaim against petitioner, claiming ownership over the land and seeking damages. Hence, we could rule on the question of the validity of TCT No. 10101 for the counterclaim can be considered a direct attack on the same. "A counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. . . . It stands on the same footing and is to be tested by the same rules as if it were an independent action." In an analogous case, we ruled on the validity of a certificate of title despite the fact that the original action instituted before the lower court was a case for recovery of possession. The Court reasoned that since all the facts of the case are before it, to direct the party to institute cancellation proceedings would be needlessly circuitious and would unnecessarily delay the termination of the controversy which has already dragged on for 20 years.

6. ID.; ID.; ACTION FOR RECONVEYANCE PROPER AGAINST MORTGAGEE/BUYER WHO IS NOT IN GOOD FAITH. — Section 38 of the Land Registration Act provides that a certificate of title is conclusive and binding upon the whole world. Consequently, a buyer need not look behind the certificate of title in order to determine who is the actual owner of the land. However, this is subject to the right of a person deprived of land through fraud to bring an action for reconveyance, provided that it does not prejudice the rights of an innocent purchaser for value and in good faith. "It is a condition *sine qua non* for an action for reconveyance to prosper that the

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property should not have passed to the hands of an innocent purchaser for value." The same rule applies to mortgagees, like petitioner. The evidence before us, however, indicates that petitioner is not a mortgagee in good faith. To be sure, an innocent mortgagee is not expected to conduct an exhaustive investigation on the history of the mortgagor's title. Nonetheless, especially in the case of a banking institution, a mortgagee must exercise due diligence before entering into said contract. Judicial notice is taken of the standard practice for banks, before approving a loan, to send representatives to the premises of the land offered as collateral and to investigate who are the real owners thereof. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands. Petitioner here was already aware that a person other than the registered owner was in actual possession of the land when it bought the same at the foreclosure sale. A person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value. "It is a well-settled rule that a purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor."

7. ID.; OBLIGATIONS AND CONTRACTS; ESTOPPEL *IN PAIS*; NOT APPRECIATED. — As to the question of estoppel, we do not find petitioner to be estopped from questioning private respondentís title. "Estoppel *in pais* arises when one, by his acts, representations or admission, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts." In the case at bar, nothing in record indicates that petitioner impliedly acquisced to the validity of private respondent's title when it found out that the latter was occupying a portion of the land covered by TCT No. 10101.

APPEARANCES OF COUNSEL

Jorge T. Salise, Jr. for petitioner.
Roberto C. Cajes for private respondent.

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DECISION

MENDOZA, *J.*:

This is a petition for *certiorari* seeking to reverse the decision[1] and resolution[2] of the Court of Appeals dated August 30, 1996 and April 23, 1997, respectively, declaring private respondent Carlos Cajes the owner of 19.4 hectares of land embraced in TCT No. 10101 and ordering the segregation and reconveyance of said portion to him.

The antecedent facts are as follows:

The land in dispute consisting of 19.4 hectares located in San Miguel, Province of Bohol, was originally owned by Ulpiano Mumar, whose ownership since 1917 was evidenced by Tax Declaration No. 3840.[3] In 1950,[4] Mumar sold the land to private respondent who was issued Tax Declaration No. R-1475 that same year.[5] The tax declaration was later superseded by Tax Declaration Nos. R-799 issued in 1961[6] and D-2247 issued in 1974.[7] Private respondent occupied and cultivated the said land,[8] planting cassava and camote in certain portions of the land.[9]

In 1969, unknown to private respondent, Jose Alvarez succeeded in obtaining the registration of a parcel of land with

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[1] Per Justice Ruben T. Reyes and concurred in by Justices Fidel P. Purisima (now Associate Justice of the Supreme Court) and Conrado M. Vasquez, Jr.

[2] Per Justice Ruben T. Reyes and concurred in by Justices Romeo A. Brawner and Conrado M. Vasquez, Jr.

[3] Exh. 4.

[4] TSN, p. 8, Jan. 19, 1989.

[5] Exh. 4.

[6] Exh. 2.

[7] Exh. 3.

[8] TSN, p. 7, April 6, 1989.

[9] Exh. C.

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an area of 1,512, 468.00 square meters,[10] in his name for which he was issued OCT No. 546 on June 16, 1969.[11] The parcel of land included the 19.4 hectares occupied by private respondent. Alvarez never occupied nor introduced improvements on said land.[12]

In 1972, Alvarez sold the land to the spouses Gaudencio and Rosario Beduya to whom TCT No. 10101 was issued.[13] That same year, the spouses Beduya obtained a loan from petitioner Development Bank of the Philippines for ₱526,000.00 and, as security, mortgaged the land covered by TCT No. 10101 to the bank.[14] In 1978, the SAAD Investment Corp., and the SAAD Agro-Industries, Inc., represented by Gaudencio Beduya, and the spouses Beduya personally executed another mortgage over the land in favor of petitioner to secure a loan of ₱1,430,000.00.[15]

The spouses Beduya later failed to pay their loans, as a result of which, the mortgage on the property was foreclosed.[16] In the resulting foreclosure sale held on January 31, 1985, petitioner was the highest bidder.[17] As the spouses Beduya failed to redeem the property, petitioner consolidated its ownership.[18]

It appears that private respondent had also applied for a loan from petitioner in 1978, offering his 19.4 hectare property under Tax Declaration No. D-2247 as security for the loan. As part of the processing of the application, a representative of petitioner, Patton R. Olano, inspected the land and appraised its value.

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[10] TSN, p. 28, Oct. 7, 1988.

[11] TSN, p. 5, April 6, 1989; Exh. A.

[12] TSN, p. 6, April 6, 1989.

[13] Exh. A.

[14] Exh. A-2.

[15] Exh. A-3.

[16] TSN, p. 6, Oct. 7, 1988.

[17] Exh. B.

[18] TSN, p. 7, Oct. 7, 1988.

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Private respondent's loan application was later approved by petitioner.[19] However, after releasing the amount of the loan to private respondent, petitioner found that the land mortgaged by private respondent was included in the land covered by TCT No. 10101 in the name of the spouses Beduya. Petitioner, therefore, cancelled the loan and demanded immediate payment of the amount.[20] Private respondent paid the loan to petitioner for which the former was issued a Cancellation of Mortgage, dated March 18, 1981, releasing the property in question from encumbrance.[21]

Sometime in April of 1986, more than a year after the foreclosure sale, a re-appraisal of the property covered by TCT No. 10101 was conducted by petitioner's representatives. It was then discovered that private respondent was occupying a portion of said land. Private respondent was informed that petitioner had become the owner of the land he was occupying, and he was asked to vacate the property. As private respondent refused to do so,[22] petitioner filed a complaint for recovery of possession with damages against him. The case was assigned to Branch 1 of the Regional Trial Court, Tagbilaran City,[23] which after trial, rendered a decision, dated August 22, 1989, declaring petitioner the lawful owner of the entire land covered by TCT No. 10101 on the ground that the decree of registration was binding upon the land.[24] The dispositive portion of the decision reads:

WHEREFORE, foregoing considered, the court renders judgment:

1. Declaring plaintiff bank Development Bank of the Philippines the true and legal owner of the land in question covered by TCT No. 10101 farm of Gaudencio Beduya;

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[19] *Id.*, pp. 9-11.

[20] Brief for the Appellant, p. 3; CA *Rollo*, p. 22.

[21] Exh. 5.

[22] TSN, pp. 17-18, Oct. 7, 1988.

[23] Records, pp. 1-3.

[24] Decision, pp. 2-3; Records, pp. 69-70.

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2. Dismissing defendant's counterclaim;

3. Ordering defendant to vacate from the land in question; the portion of which he claims to belong to him for without basis in fact and law;

4. Ordering defendant, his agents or any person representing him or those who may claim substantial rights on the land to vacate therefrom, cease and desist from disturbing, molesting and interfering plaintiff's possession of the land in question and from committing any such act as would tend to mitigate, deny or deprive plaintiff of its ownership and possession over said land.

SO ORDERED.

On appeal, the Court of Appeals reversed and gave judgment for private respondent, declaring him the owner of the 19.4 hectares of land erroneously included in TCT No. 10101. The dispositive portion of the appellate court's decision reads:

WHEREFORE, the appealed decision is hereby REVERSED AND SET ASIDE. A new decision is hereby rendered:

1. Dismissing the complaint.

2. Declaring the disputed 19.4000 hectares of land embraced in TCT 10101 as exclusively belonging to defendant-appellant, ordering its segregation from plaintiff-appellee's title and its reconveyance to appellant.

No pronouncement as to costs.

SO ORDERED.[25]

Petitioner moved for a reconsideration but its motion was denied in a resolution dated April 23, 1997.[26] Hence this petition.

Petitioner contends that:

I. THE DECISION OF THE RESPONDENT COURT IS NOT IN ACCORD WITH THE APPLICABLE PROVISIONS OF LAW (Sections 38 and 46 of ACT 496) AND THE APPLICABLE

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[25] CA Decision, p. 11; *Rollo*, p. 51.

[26] *Rollo*, p. 59.

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DECISIONS OF THE SUPREME COURT, PARTICULARLY IN THE CASE OF *BENIN VS. TUASON*, 57 SCRA 531.

II. THE RESPONDENT COURT OVERLOOKED THE ISSUES ABOUT THE DBP BEING AN INNOCENT MORTGAGEE FOR VALUE OF THE LAND IN QUESTION AND OF HAVING PURCHASED LATER THE SAME DURING A PUBLIC AUCTION SALE.

III. THE RESPONDENT COURT'S RULING DECLARING DBP IN ESTOPPEL IS ILLOGICAL.[27]

First. Petitioner invokes the ruling of this Court in *Benin v. Tuason*[28] in support of its claim that its predecessor-in-interest, Jose Alvarez, became the owner of the land by virtue of the decree of registration issued in his name. In *Benin*, three sets of plaintiffs filed separate complaints against Mariano Severo Tuason and J.M. Tuason & Co. Inc., praying for the cancellation of OCT No. 735 covering two parcels of land called the Sta. Mesa Estate, or Parcel 1, with an area of 8,798,617.00 square meters, and the Diliman Estate, or Parcel 2, with an area of 15,961,246.00 square meters. They asked that they be declared the owners and lawful possessors of said lands.

Benin is distinguished from this case. In the first place, *Benin* involve vast tracts of lands which had already been subdivided and bought by innocent purchasers for value and in good faith at the time the claimants obtained registration. Secondly, when the claimants' ancestors occupied the lands in question and declared them for tax purposes in 1944, the lands were already covered by the tax declarations in the name of J.M. Tuason & Co., Inc. In 1914, OCT No. 735 was issued in the name of Tuason so that, from that time on, no possession could defeat the title of the registered owners of the land. Thirdly, the validity of OCT No. 735 had already been recognized by this Court in several cases[29] and, as a result thereof, the transfer certificates

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[27] *Id.*, p. 8.

[28] 57 SCRA 531(1974).

[29] *Bank of the Philippine Islands v. Acuña*, 59 Phil. 183(1933); *Alcantara v. Tuason*, 92 Phil. 796 (1953); *Santiago v. J.M. Tuason & Co., Inc.*, 110 Phil. 16(1960).

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of title acquired by the innocent purchasers for value were also declared valid. It was held that neither could the claimants file an action to annul these titles for not only had these actions prescribed, but the fact was that the claimants were also barred from doing so by laches, having filed the complaint only in 1955, or 41 years after the issuance of OCT No. 735 to J.M. Tuason & Co., Inc. Thus, it was not solely the decree of registration which was considered in resolving the *Benin* case. What was considered decisive was the valid title or right of ownership of J.M. Tuason & Co., Inc. and that of the other innocent purchasers for value and in good faith compared to the failure of the claimants to show their right to own or possess the questioned properties.

Petitioner maintains that the possession by private respondent and his predecessor-in-interest of the 19.4 hectares of land for more than 30 years cannot overcome the decree of registration issued in favor of its predecessor-in-interest Jose Alvarez. Petitioner quotes the following statement in *Benin* case:

> It follows also that the allegation of prescriptive title in favor of plaintiffs does not suffice to establish a cause of action. If such prescription was completed *before* the registration of the land in favor of the Tuasons, the resulting prescriptive title was cut off and extinguished by the decree of registration. If, on the contrary, the prescription was either begun or completed *after* the decree of registration, it conferred no title because, by express provision of law, prescription can not operate against the registered owner (Act 496).[30]

Petitioner would thus insist that, by virtue of the decree of registration, Jose Alvarez and those claiming title from him (*i.e.*, the spouses Beduya) acquired ownership of the 19.4 hectares of land, despite the fact that they neither possessed nor occupied these lands.

This view is mistaken. A consideration of the cases shows that a decree of registration cut off or extinguished a right acquired by a person when such right refers to a lien or

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[30] *Benin v. Tuason, supra* at 597, citing *Santiago v. J.M. Tuason & Co., Inc, supra.*

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encumbrance on the land — not to the right of ownership thereof — which was not annotated on the certificate of title issued thereon. Thus, Act No. 496 provides:

> SEC. 39. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same *free of all encumbrances* except those noted on said certificate, and any of the following encumbrances which may be subsisting, namely:
>
> *First.* Liens, claims, or rights arising or existing under the laws of Constitution of the United States or of the Philippine Islands which the statutes of the Philippine Islands cannot require to appear of record in the Registry.
>
> *Second.* Taxes within two years after the same became due and payable.
>
> *Third.* Any public highway, way, private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.
>
> But if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner.

Hence, in *Cid v. Javier*,[31] it was held:

> . . . Consequently, even conceding *arguendo* that *such an easement* has been acquired, it had been cut off and extinguished by the registration of the servient estate under the Torrens system without the easement being annotated on the corresponding certificate of title, pursuant to Section 39 of the Land Registration Act.

This principle was reiterated in *Purugganan v. Paredes*[32] which also involved an easement of light and view that was not annotated on the certificate of title of the servient estate.

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[31] 108 Phil. 850, 853(1960). (Italics added)

[32] 161 Phil. 91(1976).

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But to make this principle applicable to a situation wherein title acquired by a person through acquisitive prescription would be considered cut off and extinguished by a decree of registration would run counter to established jurisprudence before and after the ruling in *Benin*. Indeed, registration has never been a mode of acquiring ownership over immovable property. As early as 1911, in the case of *City of Manila v. Lack*,[33] the Court already ruled on the purpose of registration of lands, *viz.*:

> The Court of Land Registration was created for a single purpose. The Act is entitled "An Act to provide for the adjudication and registration of titles to lands in the Philippine Islands." The sole purpose of the Legislature in its creation was to bring the land titles of the Philippine Islands under one comprehensive and harmonious system, the cardinal features of which are indefeasibility of title and the intervention of the State as a prerequisite to the creation and transfer of titles and interest, with the resultant increase in the use of land as a business asset by reason of the greater certainty and security of title. It does not *create* a title nor *vest* one. It simply *confirms* a title *already created and already vested*, rendering it forever indefeasible. . .

Again, in the case of *Angeles v. Samia*[34] where land was erroneously registered in favor of persons who neither possessed nor occupied the same, to the prejudice of the actual occupant, the Court held:

> . . . The purpose of the Land Registration Act, as this court has had occasion to so state more than once, is not to create or vest title, but to confirm and register title already created and already vested, and of course, said original certificate of Title No. 8995 could not have vested in the defendant more title than what was rightfully due her and her co-owners. It appearing that said certificate granted her much more than she expected, naturally to the prejudice of another, it is but just that the error, which gave rise to said anomaly, be corrected (*City of Manila vs. Lack,* 19 Phil. 324). The defendant and her co-owners knew or, or at least, came to know that it was through error that the original certificate of title in question was issued by

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[33] 19 Phil. 324, 328 (1911).

[34] 66 Phil. 444 (1938).

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the court which heard cadastral case No. 11 of Bacolor, not only in or prior to March, 1993, but from the time said certificate was issued in their favor, that is, from December 15, 1921. This is evidenced by the fact that, ever since, they remained passive without even attempting to make the least showing of ownership over the land in question until after the lapse of more than eleven years. The Land Registration Act as well as the Cadastral Act protects only the holders of a title in good faith and does not permit its provisions to be used as a shield for the commission of fraud, or that one should enrich himself at the expense of another (*Gustilo vs. Maravilla*, 48 Phil., 442; *Angelo vs. Directors of Lands*, 49 Phil. 838). The above-stated Acts do not give anybody, who resorts to the provisions thereof, a better title than he really and lawfully has. If he happened to obtain it by mistake or to secure, to the prejudice of his neighbor, more land than he really owns, with or without bad faith on his part, the certificate of title, which may have been issued to him under the circumstances, may and should be cancelled or corrected (*Legarda and Prieto vs. Saleeby,* 31 Phil. 590). This is permitted by section 112 of Act No. 496, which is applicable to the Cadastral Act because it is so provided expressly by the provisions of Section 11 of the latter Act. It cannot be otherwise because, as stated in the case of *Domingo vs. Santos, Ongsiako, Lim y Cia.* (55 Phil. 361), errors in the plans of lands sought to be registered in the registry and reproduced in the certificate of title issued later, do not annul the decree of registration on the ground that it is not the plan but the land itself which is registered in the registry. In other words, if the plan of an applicant for registration or claimant in a cadastral case alleges that the land referred to in said plan is 100 or 1,000 hectares, and the land which he really owns and desires to register in the registry is only 80 hectares, he cannot claim to be the owner of the existing difference if afterwards he issued a certificate of title granting him said area of 100 or 1,000 hectares.[35]

The principle laid down in this 1938 case remains the prevailing doctrine, its latest application being in the case of *Reyes v. Court of Appeals*[36] wherein we ruled that the fact that a party was able to secure a title in his favor did not operate to vest ownership upon her of the property.

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[35] *Supra* at 448-450.

[36] G.R. No. 127608, Sept. 30, 1999. See also *Santiago v. Court of Appeals,* 278 SCRA (1997).

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In the present case, private respondent has been in actual, open, peaceful and continuous possession of the property since 1950. This fact was corroborated by the testimony of Eleuterio Cambangay who personally knew that Ulpiano Mumar transferred the land covered by Tax Declaration No. 3840[37] in favor of private respondent in 1950.[38] Private respondent's claim based on actual occupation of the land is bolstered by Tax Declaration Nos. R-1475, R-799 and D-2247[39] which were issued in his name in 1950, 1961 and 1974, respectively. Together with his actual possession of the land, these tax declarations constitute strong evidence of ownership of the land occupied by him. As we said in the case of *Republic vs. Court of Appeals*.[40]

> Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.

More importantly, it was established that private respondent, having been in possession of the land since 1950, was the owner of the property when it was registered by Jose Alvarez in 1969, his possession tacked to that of his predecessor-in-interest, Ulpiano Mumar, which dates back to 1917.[41] Clearly, more than 30 years had elapsed before a decree of registration was

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[37] Exh. 4.

[38] TSN, pp. 25-26, January 19, 1999.

[39] Exh. 4; Exh. 2; Exh. 3.

[40] 328 Phil. 238, 248 (1996).

[41] Exh. 4.

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issued in favor of Jose Alvarez. This uninterrupted adverse possession of the land for more than 30 years could only ripen into ownership of the land through acquisitive prescription which is a mode of acquiring ownership and other real rights over immovable property. Prescription requires public, peaceful, uninterrupted and adverse possession of the property in the concept of an owner for ten (10) years, in case the possession is in good faith and with a just title. Such prescription is called ordinary prescription, as distinguished from extraordinary prescription which requires possession for 30 years in case possession is without just title or is not in good faith.[42]

In contrast to private respondent, it has been shown that neither Jose Alvarez nor the spouses Beduya were at any time in possession of the property in question. In fact, despite knowledge by Gaudencio Beduya that private respondent occupied this 19.4 hectares included in the area covered by TCT No. 10101,[43] he never instituted any action to eject or recover possession from the latter. Hence, it can be concluded that neither Jose Alvarez nor the spouses Beduya ever exercised any right of ownership over the land. The fact of registration in their favor never vested in them the ownership of the land in dispute. "If a person obtains a title under the Torrens system, which includes by mistake or oversight land which can no longer be registered under the system, he does not, by virtue of the said certificate alone, become the owner of the lands illegally included."[44]

Considering the circumstances pertaining in this case, therefore, we hold that ownership of the 19.4 hectares of land presently occupied by private respondent was already vested in him and that its inclusion in OCT No. 546 and, subsequently, in TCT No. 10101, was erroneous. Accordingly, the land in question must be reconveyed in favor of private respondent,

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[42] *Gesmundo v. Court of Appeals*, G.R. No. 119870, Dec. 23, 1999.

[43] TSN, p. 9, Oct. 7, 1988.

[44] *Avila v. Tapucar*, 201 SCRA 148, 155(1991).

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the true and actual owner thereof, reconveyance being clearly the proper remedy in this case.

"The true owner may bring an action to have the ownership or title to the land judicially settled and the Court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens title issued upon the patent, may direct the defendants, the registered owner to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof." (*Vital vs. Amore*, 90 Phil. 955) "The reconveyance is just and proper in order to terminate the intolerable anomaly that the patentees should have a torrens title for the land which they and their predecessors never possessed which has been possessed by Novo in the concept of owner." (*Bustarga v. Novo*, 129 SCRA 125)[45]

Second. Generally, an action for reconveyance based on an implied or constructive trust, such as the instant case, prescribes in 10 years from the date of issuance of decree of registration.[46] However, this rule does not apply when the plaintiff is in actual possession of the land. Thus, it has been held:

. . . [A]n actions for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property, but this rules applies only *when the plaintiff or the person enforcing the trust is not in possession of the property,* since if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third

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[45] *Linaza v. Intermediate Appellate Court*, 182 SCRA 855, 860-861 (1990).

[46] *Ramos v. Court of Appeals,* 302 SCRA 589 (1999).

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party and its effect on his own title, which right can be claimed only by one who is in possession.[47]

Having been the sole occupant of the land in question, private respondent may seek reconveyance of his property despite the lapse of more than 10 years.

Nor is there any obstacle to the determination of the validity of TCT No. 10101. It is true that the indefeasibility of torrens titles cannot be collaterally attacked. In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101 on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. However, it should not he overlooked that private respondent filed a counterclaim against petitioner, claiming ownership over the land and seeking damages. Hence, we could rule on the question of the validity of TCT No. 10101 for the counterclaim can be considered a direct attack on the same. "A counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff . . . It stands on the same footing and is to be tested by the same rules as if it were an independent action."[48] In an analogous case,[49] we ruled on the validity of a certificate of title despite the fact that the original action instituted before the lower court was a case for recovery of possession. The Court reasoned that since all the facts of the case are before it, to direct the party to institute cancellation proceedings would be needlessly circuitous and would unnecessarily delay the termination of the controversy which has already dragged on for 20 years.

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[47] *Vda. de Cabrera v. Court of Appeals,* 335 SCRA 19, 32 (1997); *Heirs of Jose Olviga v. Court of Appeals*, 227 SCRA 330 (1993).

[48] *A. Francisco Realty and Development Corp. v. Court of Appeals*, 298 SCRA 349, 358 (1998).

[49] *Mendoza v. Court of Appeals*, 158 SCRA 508 (1988).

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Third. Petitioner nonetheless contends that an action for reconveyance does not lie against it, because it is an innocent purchaser for value in the foreclosure sale held in 1985.

This contention has no merit. Sec. 38 of Act No. 496, the Land Registration Act, provides:

> If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest. Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided: *Provided, however,* That no decree or certificate of title issued to persons not parties to the appeal shall be cancelled or annulled. But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occur in this Act, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value. (As amended by Sec. 3, Act 3621; and Sec. 1, Act No. 3630.)

Succinctly put, §38 provides that a certificate of title is conclusive and binding upon the whole world. Consequently, a buyer need not look behind the certificate of title in order to determine who is the actual owner of the land. However, this

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is subject to the right of a person deprived of land through fraud to bring an action for reconveyance, provided that it does not prejudice the rights of an innocent purchaser for value and in good faith. "It is a condition *sine qua non* for an action for reconveyance to prosper that the property should not have passed to the hands of an innocent purchaser for value."[50] The same rule applies to mortgagees, like petitioner. Thus, we held:

> Where the certificate of title is in the name of the mortgagor when the land is mortgaged, the innocent mortgagee for value has the right to rely on what appears on the certificate of title. In the absence of anything to excite suspicion, said mortgagee is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate. Although Article 2085 of the Civil Code provides that absolute ownership of the mortgaged property by the mortgagor is essential, the subsequent declaration of a title as null and void is not a ground for nullifying the mortgage right of a mortgagee in good faith.[51]

The evidence before us, however, indicates that petitioner is not a mortgagee in good faith. To be sure, an innocent mortgagee is not expected to conduct an exhaustive investigation on the history of the mortgagor's title. Nonetheless, especially in the case of a banking institution, a mortgagee must exercise due diligence before entering into said contract. Judicial notice is taken of the standard practice for banks, before approving a loan, to send representatives to the premises of the land offered as collateral and to investigate who are the real owners thereof. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands.[52]

In this case, petitioner's representative, Patton R. Olano, admitted that he came to know of the property for the first

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[50] *Lucena v. Court of Appeals*, G.R. No. L-77468, Aug. 25, 1999.

[51] *Rural Bank of Sariaya, Inc. v. Yacon*, 175 SCRA 62 (1989).

[52] *Cavite Development Bank v. Lim*, G.R. No. 13169, Feb. 1, 2000 citing *Tomas v. Tomas*, 98 SCRA 280 (1980).

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time in 1979 when he inspected it to determine whether the portion occupied by private respondent and mortgaged by the latter to petitioner was included in TCT No. 10101. This means that when the land was mortgaged by the spouses Beduya in 1972, no investigation had been made by petitioner. It is clear, therefore, that petitioner failed to exercise due care and diligence in establishing the condition of the land as regards its actual owners and possessors before it entered into the mortgage contract in 1972 with the Beduyas. Had it done so, it would not have failed to discover that private respondent was occupying the disputed portion of 19.4 hectares. For this reason, petitioner cannot be considered an innocent purchaser for value when it bought the land covered by TCT No. 10101 in 1985 at the foreclosure sale.

Indeed, two circumstances negate petitioner's claim that it was an innocent purchaser for value when it bought the land in question, including the portion occupied by private respondent: (1) petitioner was already informed by Gaudencio Beduya that private respondent occupied a portion of the property covered by TCT No. 10101; and (2) petitioner's representative conducted an investigation of the property in 1979 to ascertain whether the land mortgaged by private respondent was included in TCT No. 10101. In other words, petitioner was already aware that a person other than the registered owner was in actual possession of the land when it bought the same at the foreclosure sale. A person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value. "It is a well-settled rule that a purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor."[53]

Petitioner deliberately disregarded both the fact that private respondent already occupied the property and that he was claiming ownership over the same. It cannot feign ignorance of private

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[53] *Lucena v. Court of Appeals, supra* citing *Santiago v. Court of Appeals*, 247 SCRA 336 (1995).

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respondent's claim to the land since the latter mortgaged the same land to petitioner as security for the loan he contracted in 1978 on the strength of the tax declarations issued under his name. Instead of inquiring into private respondent's occupation over the land, petitioner simply proceeded with the foreclosure sale, pretending that no doubts surround the ownership of the land covered by TCT No. 10101. Considering these circumstances, petitioner cannot be deemed an innocent mortgagee/purchaser for value. As we ruled:

"The failure of appellees to take the ordinary precautions which a prudent man would have taken under the circumstances, specially in buying a piece of land in the actual, visible and public possession of another person, other than the vendor, constitutes gross negligence amounting to bad faith.

In this connection, it has been held that where, as in this case, the land sold is in the possession of a person other than the vendor, the purchaser is required to go beyond the certificates of title and ma[k]e inquiries concerning the rights of the actual possessor. (Citations omitted.)

xxx xxx xxx

One who purchases real property which is in the actual possession of another should, at least, make some inquiry concerning the right of those in possession. The actual possession by other than the vendor should, at least put the purchaser upon inquiry. He can scarcely, in the absence of such inquiry, be regarded as a *bona fide* purchaser as against such possessors."[54]

Fourth. From the foregoing, we find that the resolution of the issue of estoppel will not affect the outcome of this case. Petitioner claims that the fact that it approved a loan in favor of private respondent and executed a mortgage contract covering the 19.4 hectares covered by tax declarations issued under private respondent's name does not mean that it is estopped from questioning the latter's title. Petitioner accuses private respondent of having made misrepresentations which led it to believe in his valid title and ownership.

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[54] *Ibid.*

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The claim has no basis. Private respondent made no misrepresentation with regard to the land occupied by him as he is actually the real owner thereof. Moreover, when private respondent entered into a mortgage contract with petitioner, his claim of ownership was supported not only by the tax declarations but also by a certification of the Clerk of Court of the Court of First Instance of Bohol that no civil, land registration or cadastral case has been filed or instituted before the court affecting the validity of Tax Declaration No. D-2247 covering the land located in Bugang, San Miguel, Bohol and declared in the name of Carlos Cajes.[55] These documents were relied upon by private respondent in support of his claim of ownership. We cannot consider the submission of these documents as misrepresentations by private respondent as to the actual ownership of the land. Rather, private respondent believed in good faith and with good reason that he was the owner of the 19.4 hectares occupied by him.

As to the question of estoppel, we do not find petitioner to be estopped from questioning private respondent's title. "Estoppel *in pais* arises when one, by his acts, representations or admission, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts."[56] In the case at bar, upon learning that the land occupied by private respondent was also covered by TCT No. 10101, petitioner immediately demanded full payment of the loan and thereafter cancelled the mortgage contract, a fact that is admitted by private respondent himself.[57] Indeed, nothing in record indicates that petitioner impliedly acquiesced to the validity of private respondent's title when it found out that the latter was occupying a portion of the land covered by TCT No. 10101.

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[55] Exh. 8.

[56] *Ibaan Rural Bank, Inc. v. Court of Appeals*, G.R. No. 123817, Dec. 17, 1999.

[57] Brief for the Appellant, p. 3; CA *Rollo*, p. 22.

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However, for reasons aforestated, we uphold private respondent's ownership of 19.4 hectares occupied by him. As a necessary consequence thereof, such portion of land included in TCT No. 10101 must be segregated and reconveyed in his favor.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED *in toto*.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 135602. April 28, 2000]

HEIRS OF QUIRICO SERASPI AND PURIFICACION R. SERASPI, *petitioners, vs.* COURT OF APPEALS AND SIMEON RECASA, *respondents.*

SYNOPSIS

Marcelino Recasa was the owner of two parcels of land. As he contracted three marriages during his lifetime, his intestate estate was partitioned into three parts. The share to the estate of the heirs of the first marriage was sold to Dominador Recasa, an heir of the second marriage. Subsequently, Dominador, representing the heirs of the second marriage, in turn sold the share of the heirs to Quirico and Purificacion Seraspi. The Seraspis obtained a loan from the Kalibo Rural Bank with the lands as security. Unable to pay the loan, the mortgage was foreclosed and the lands were sold to KRBI as the highest bidder. Subsequently, the lands were sold to Manuel Rata. Quirico was allowed by Rata to administer the property but in 1974, Simeon Recasa, Marcelino's child by his third wife, entered the lands in question and took possession thereof. Later, in 1983, the Seraspis purchased the lands from Rata and in 1987, filed a