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We find nothing disagreeable with the action of the Court of Appeals to give due course to the petition considering that the issue affected a matter of public concern which is the disposition of the lands of our patrimony. No less than the Constitution protects this policy.

We therefore find no compelling reason to disturb the findings of the appellate court, in the absence of a clear showing that the Court of Appeals has decided a question of substance in a manner inconsistent with jurisprudence, or that the respondent Court has departed from the accepted and usual course of judicial proceedings. In sum, no reversible error has been committed by the respondent court.[18]

WHEREFORE, the petition is *DENIED* and the decision of the Court of Appeals is affirmed. Costs against the petitioners.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, and *Regalado, JJ.*, concur.

FIRST DIVISION

[G.R. No. 52491. January 29, 1990]

DIRECTOR OF LANDS, *petitioner, vs.* **COURT OF APPEALS and GLORIA CABRAL FRANCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF COURT OF APPEALS, CONCLUSIVE. — No rule is more settled than that only questions of law may be raised in a petition of this

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[18] *Rollo*, 67.

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nature brought to this Court. The findings of the appellate court on questions of fact are conclusive and binding in this proceeding. This is the rule of thumb that the court has sustained then and again.

2. CIVIL LAW; LAND REGISTRATION; UNDER SECTION 48 (b) COMMONWEALTH ACT NO. 141; REQUISITES THEREOF, COMPLIED WITH IN THE CASE AT BAR. — In this case the appellate court upheld the factual finding of the lower court that respondent has established her right of ownership over the so-called MOROLAND and thus should be entitled to have it registered in her name. Indeed, an examination of the decision of the trial court which was sustained by the appellate court shows clearly as follows: x x x The evidence is clear and convincing that applicant Gloria Cabral Franco is in open, continuous, exclusive, adverse, notorious and public possession of the land under a *bona fide* claim of ownership from time immemorial, personally and her predecessors-in-interest. Section 48(b) of Commonwealth Act No. 141, as amended by Republic Act No. 1942, provides: '(b) Those who by themselves or through their predecessor-in-interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.' x x x it has been established by evidence that applicant Gloria Cabral Franco and her predecessors-in-interest have complied with the necessary requirements of law for a grant by the government through actual physical, possession and occupation openly, continuously, adversely and publicly. Where all the necessary requirements for a grant by the government are complied with, the possessor is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the courts x x x. No sufficient evidence on the part of the government has been presented to destroy or disprove the presumption that subject parcel of land is applicant's private property by operation of law. So it stands

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uncontroverted that the applicant has acquired a vested right over the land subject of these proceedings."

APPEARANCES OF COUNSEL

Augusto O. Cabral for private respondent.

D E C I S I O N

GANCAYCO, *J.*:

This is a petition for review of the decision of the Court of Appeals in CA-G.R. No. 48663-R dated January 15, 1980.[1]

The facts of the case are succinctly related in the appealed decision as follows:

"In Land Registration Case No. N-32, L.R.C. No. 37146 of the Court of First Instance of Zamboanga del Norte, Gloria Cabral-Franco ("APPLICANT" for short),sought to register a 104.9231 hectare parcel of land situated at Sta. Maria, Siocon, Zamboanga. The Republic of the Philippines was the sole oppositor.

The record discloses that before 1921, two natives named Ulungkaya Isla (TD 855) and Maud Calibugan (TDs 910 and 1328) had inherited from their ancestors, a 45-hectare parcel of land (hereinafter referred to as "MOROLAND"), situated at Sta. Maria, Siocon, Zamboanga. On October 31, 1934, the Governor General of the Philippines issued Proclamation No. 745 declaring and creating an approximate area of 1,064 hectares, situated at Sirawai, Zamboanga, the Port Sta. Maria Teak Forest Reserve. Whether MOROLAND was within this forest reserve or not cannot be definitely determined from the record.

Ulungkaya and Maud sold MOROLAND to Antonio PICHEL sometime in 1940. TDs 855, 910 and 1328 were cancelled and TD 1344 was issued in PICHEL's name (Exh. I). Subsequently, PICHEL occupied and took possession of 59.9231 hectares of public land, located east of MOROLAND, which he used as a PASTURE LAND. There is no concrete evidence as to the date he started occupying the same.

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[1] Madame Justice Corazon Juliano Agrava was the *ponente*, concurred in by Justices Guillermo P. Villasor and Juan A. Sison.

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On March 24, 1948, PICHEL sold MOROLAND to APPLICANT. Later, or on December 20, 1950, the heirs of PICHEL, for ₱640.00, sold and assigned their rights and interests over the 59.9231 hectare PASTURE LAND to APPLICANT. It is worth noting that in the sale, what was transferred to APPLICANT was the tramferor's rights over the PASTURE LAND and not the land itself. In other words, the heirs of PICHEL, as sellers, did not consider themselves as the absolute owners in fee simple of the PASTURE LAND.

Before the execution of the said assignment of rights in 1950, APPLICANT, from December 27 to 29, 1948, had caused the survey of MOROLAND and the PASTURE LAND. Plan PSU-123283 was made where it appeared that APPLICANT'S entire property had an area of 104.9231 hectares, which is the subject matter of the Land Registration Case (hereinafter to be referred to as the "SUBJECT PROPERTY"). The APPLICANT subsequently caused the subdivision of the SUBJECT PROPERTY into five lots, as follows:

(1) Lot A – with an area of 23.8534 hectares;
(2) Lot B – with an area of 23.9977 hectares;
(3) Lot C – with an area of 23.9998 hectares;
(4) Lot D – with an area of 23.6360 hectares; and
(5) Lot E – with an area of 9.4162 hectares;
TOTAL ..... 104.9231 hectares;*

There is no evidence as to whether or not the subdivision was approved judicially or extrajudicially, but the fact remains that it was so subdivided.

On June 29, 1961, APPLICANT executed an 'Affidavit of Quitclaim,' waiving all her *rights and interests* over Lot B to her son Augusto Cabral; and another 'Affidavit of Quitclaim' of the same import over Lot E to her son Silvestre Cabral, Jr. On June 30, 1961, APPLICANT executed another 'Affidavit of Quitclaim' of the same import over Lot A to her daughter Rosa Cabral. Subsequently, the transferees filed for patent and/or homestead applications over their respective Lots A, B and E, with the Bureau of Lands; while Lot C was applied for by APPLICANT's husband, Wenceslao Franco, and Lot D was applied for by APPLICANT herself.

It later developed that plan PSU-123283 had overlapped lands surveyed by F.F. Cruz Survey of Public Lands Subdivision No. 542-D,

* The total area should read 104.9031 hectares.

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Siocon Public Land Subdivision. About 13 lots of Pls-542-D were found inside PSU-123283; three of which were already patented, and eight covered by subsisting public land applications.

Upon the foregoing facts, the court *a quo* rendered judgment, the dispositive portion of which reads:

> 'WHEREFORE, the Court finds that the applicant has established an imperfect title to the land subject of these registration proceedings, containing an area of 104 hectares, 92 areas and 31 centares, as described in Exhs. A & B, and the same is hereby adjudicated and ordered registered in the name of Gloria Cabral Franco, of Zamboanga City, Philippines.
>
> Thirty days after this decision shall have become final let the corresponding final decree be issued.
>
> Notify all interested parties of this decision in conformity with the Regulations of the Land Registration Commission.' (ROA, p. 44)"[2]

The government appealed from the said decision of the trial court based on the following assigned errors:

"I

THE TRIAL COURT ERRED IN NOT HOLDING THAT APPLICANT FAILED TO ESTABLISH THE IDENTITY OF THE LAND.

II

THE TRIAL COURT ERRED IN NOT FINDING THAT THE LAND APPLIED FOR IS WITHIN THE FOREST RESERVATION.

III

THE TRIAL COURT ERRED IN NOT FINDING ADVERSE TO APPLICANT'S CAUSE HER FILING OF AN APPLICATION FOR HOMESTEAD ON THE LANDS IN QUESTION."[3]

In disposing of the appeal the appellate court made the following findings and conclusions:

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[2] Pages 15-17, *Rollo*.

[3] Brief for the appellant, p. 1.

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"*Firstly*. The PASTURE LAND should have been excluded from the SUBJECT PROPERTY ordered registered in APPLICANT's favor. APPLICANT was not able to prove that the PASTURE LAND had been possessed by PICHEL and by herself for 30 years or more. Even conceding that PICHEL had taken possession of the PASTURE LAND under a claim of ownership, it could not have been earlier than September 10, 1940, the date he bought MOROLAND. As the present application was filed only on January 1, 1969, the 30-year period had not yet elapsed and the PASTURE LAND was not yet registerable.

Moreover, it appears from Exhibits A and 5 that no improvement whatsoever was introduced in the PASTURE LAND and PICHEL used it purely as pasture land (Exh. E). Casual cultivation of portions of the land by a claimant, and the pasturing thereon of cattle, do not constitute possession under claim of ownership. In that sense, possession is not the exclusive and notorious kind which gives rise to a presumptive grant from the state (*Director of Lands vs. Reyes*, 65 SCRA 177, citing *Ramirez vs. Director of Lands*, 60 Phil. 114). With more reason, registration should be denied to those portions which have not at all been cultivated. Specially should the PASTURE LAND not be held owned by APPLICANT if it had formed part of the Teak Forest Reserve.

Secondly. The subdivision of the SUBJECT PROPERTY into five lots need not be taken into account. It can be presumed that APPLICANT'S three children, to whom three of the subdivision lots have been quitclaimed by APPLICANT, have subsequently waived their rights in favor of their mother.

Thirdly. APPLICANT's right to MOROLAND, even if the whole or part thereof has been included in the Port Sta. Maria Teak Forest Reserve, has to be sustained as held by the lower court. However, if portions of MOROLAND have been registered in the names of other persons through patents issued by the Bureau of Lands, such portions should be excluded from what can be registered in APPLICANT's favor. The lower court cannot invalidate the certificates of title based on homestead, free, or sales patents in the land registration case. The possible invalidity of those certificates should be litigated in a separate action or actions which the APPLICANT could institute against the Bureau of Lands and the patentees.

Fourthly. The fact that APPLICANT, her husband and children had applied for patents over part of MOROLAND with the Bureau of Lands should not be considered as conclusive evidence against

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APPLICANT that MOROLAND had not become her private property because the applications for the patents had to be based on MOROLAND being part of the public domain. The applications for the patents were conceivably submitted to the Bureau of Lands merely as easy procedure for registration, considering specially that the lands applied for included the PASTURE LAND.

On the basis of the foregoing factors, what should have been done in the court below was to require APPLICANT to have the land she was seeking to register in her name re-surveyed such that the land shall be limited to MOROLAND, but with the exclusion therefrom of such portions thereof as may be covered by patents already issued by the Bureau of Lands. Thereafter, the land covered by the new survey can be ordered registered in APPLICANT's favor.

WHEREFORE, the Decision appealed from is hereby SET ASIDE, and the records of this case are hereby ordered remanded to the lower court, which is directed to take action in the registration case as hereinabove indicated."[4]

Not satisfied therewith, the government through the Director of Lands filed this petition for review raising the following issues:

"I

WHETHER OR NOT THERE WAS *BONA FIDE* CLAIM OF OWNERSHIP.

II

WHETHER OR NOT THERE IS CLEAR AND CONVINCING EVIDENCE TO ESTABLISH POSSESSION.

III

WHETHER OR NOT THE SURVEYOR WOULD BE THE ONE TO FINALLY DECIDE THAT MOROLAND BE REGISTERED IN THE NAME OF APPLICANT."[5]

The main thrust of the petition is that the portion of the decision of the appellate court directing that MOROLAND containing

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[4] Pages 18-19, *Rollo*.

[5] Pages 7-8, *Rollo*.

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about 45 hectares after a resurvey should be registered in favor of the respondents is without cogent basis. Petitioner alleges that respondent had not established a *bona fide* claim of ownership over said portion of the public land in accordance with Section 4(b) of Commonwealth Act No. 141, as amended; that there is no clear and convincing evidence to establish respondent's claim of such portion as in fact there are other occupants in the area who secured patents from the Bureau of Lands; and that the appellate court in effect gave the surveyor unlimited discretion in conducting a resurvey.

The petition is devoid of merit.

No rule is more settled than that only questions of law may be raised in a petition of this nature brought to this Court. The findings of the appellate court on questions of fact are conclusive and binding in this proceeding. This is the rule of thumb that the court has sustained then and again.

In this case the appellate court upheld the factual finding of the lower court that respondent has established her right of ownership over the so-called MOROLAND and thus should be entitled to have it registered in her name.[6]

Indeed, an examination of the decision of the trial court which was sustained by the appellate court shows clearly as follows:

"The issues now to be resolved are: (1) Whether the parcel of land subject of this Land Registration proceeding is private property; (2) Whether the applicant has acquired a vested right over said land; and (3) Whether the applicant with a vested right over the land can be deprived of such right by a subsequent proclamation of a land as a forest reserve including in its area a part of the land over which such vested right was acquired by her, or by subsequent claims of adverse claimants.

As to the first issue, the evidence is clear and convincing that applicant Gloria Cabral Franco is in open, continuous, exclusive, adverse, notorious and public possession of the land under a *bona fide* claim of ownership from time immemorial, personally and her

[6] Page 18, *Rollo*.

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predecessors-in-interest. She had the land surveyed and the survey thereof was approved by the Director of Lands (Exh. A; its technical description is Exh. B); that in the exercise of her rights of ownership over the land, she appointed an overseer to supervise the work thereon, declared the land for taxation purposes (Exhs. G, H, I & J) and introduced thereon considerable improvements (Exhs. G to I); that as private property, the Deeds of Conveyance were registered in the register of Deeds (Exhs. C-1 & D-1); that applicant's open, continuous, adverse and public possession of the land since time immemorial in the concept of an owner is tacked to that of her precedessors-in-interest, namely, Ramon Pichel, then the Calibugan (Muslim) brothers Ulangkaya and Maud, then to their grandfather, as evidenced by Exhibits C, D & E; that Antonio Pichel obtained his rights over the land conveyed to the applicant either by purchase (Exh's. F & I) from the brothers Ulangkaya and Maud (see also testimony of Juan Mendiola 1, 5, tsn March 18, 1970) or by actual occupation and possession of the whole land in the concept of an owner, by himself from 1921 to 1948, after buying the land from the said brothers; that possession of Antonio Pichel is tacked to the Muslim brothers, Ulangkaya and Maud, by purchase, while the latter's possession is tacked to that of their father and grandfather by inheritance which therefor shows that the possession by the applicant and her predecessors-in-interest of the land subject of this proceeding was from time immemorial, or at least more than 30 years as of the year 1934, the year a certain area was proclaimed as forest reserve — this is evidenced by the testimony of Faustino Cabral that in 1939 the oldest coconut trees found on the land were about 40 years old and the mango trees in the same year about 50 years old (pp. 35-37, tsn, July 2, 1970), which testimony is corroborated by witnesses Juan Mendiola and Luis Demetillo on all its essential points as to the trees found on the land and the ages thereof. These strong testimonial and documentary evidence to establish occupation and possession of the land by the herein applicant and her predecessors-in-interest have not been discredited or destroyed.

Section 48(b) of Commonwealth Act No. 141, as amended by Republic Act No. 1942, provides:

> '(b) Those who by themselves or through their predecessor-in-interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least thirty years immediately preceding the

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filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.'

On the other hand, it was held in *Susi vs. Razon,* 48 Phil. 424:

'An open, continuous, adverse, and public possession of a land of the public domain from time immemorial by a private individual personally and through his predecessors confers an effective title on said possessor, whereby the land ceases to be public, to become private property. Such open, adverse, public and continuous possession from July 26, 1894, (now fixed for at least thirty years) is sufficient, provided the possessor makes proper application therefor. The possessor under such circumstances acquires by operation of law, not only a right to a grant of the government, and the actual issuance of a title is not necessary in order that said grant may be sanctioned by the courts.'

With respect to the second issue, it has been established by evidence that applicant Gloria Cabral Franco and her predecessors-in-interest have complied with the necessary requirements of law for a grant by the government through actual physical, possession and occupation openly, continuously, adversely and publicly. Where all the necessary requirements for a grant by the government are complied with, the possessor is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the courts ***. *Medina vs. Pineda Vda. de Sonza, et al.*, No. L-14722, May 25, 1960).

It has also been held that:

'A vested right is some right or interest in property that had become fixed and established, and is no longer open to doubt or controversy. Rights are vested when the right to enjoyment present or prospective, has become the property of some person as present interest.

'When a homesteader has complied with all the terms and conditions which entitle him to a patent for a particular tract of public land, he acquires a vested interest therein, as is to be regarded as the equitable owner thereof. Where the right to a patent to land has once become vested in a purchaser of

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public lands, it is equivalent to a patent actually issued. The execution and delivery of patent, after the right to a particular parcel of land has become complete, are the mere ministerial acts of the officer charged with that duty. Even without a patent, a perfected homestead is a property right in the fullest sense, unaffected by the fact that the paramount title to the land is still in the government. Such land may be conveyed or inherited. No subsequent law can deprive him of that vested right. (*Balboa vs. Farrales,* 51 Phil., 498) x x x.'

No sufficient evidence on the part of the government has been presented to destroy or disprove the presumption that subject parcel of land is applicant's private property by operation of law. So it stands uncontroverted that the applicant has acquired a vested right over the land subject of these proceedings."[7]

Of course, as stated by the appellate court, there is a need for a resurvey because portions of the property called MOROLAND appear to have been issued patents by the Bureau of Lands which should thus be excluded from the registration of the property in the name of the respondents. The validity of any such existing patent should be the subject of a separate litigation between the respondent and such registered patentees.

The court does not find any such unlimited authority granted the surveyor in the resurvey by the judgment of the appellate court as indeed it is subject to the parameters indicated therein.

WHEREFORE, the petition for review is hereby *DISMISSED* for lack of merit, without pronouncement as to costs.

SO ORDERED.

Narvasa (Chairman), Cruz, Griño-Aquino, and *Medialdia, JJ.*, concur.

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[7] Pages 35-39, Appellant's Brief; page 49, *Rollo.*