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SO ORDERED.

Makasiar and *De Castro, JJ.*, concur.
Teehankee and *Melencio-Herrera, JJ.*, concur in the result.

FIRST DIVISION

[G.R. No. L-47847. July 31, 1981]

DIRECTOR OF LANDS, petitioner, *vs.* COURT OF APPEALS and MANUELA PASTOR, respondents.

SYNOPSIS

In 1974, Manuela Pastor filed an application for confirmation of her imperfect title over 7 lots which she allegedly inherited from her father who died in 1938, and over 6 lots which she allegedly inherited from an aunt who died in 1950. Manuela testified and presented evidence showing that she has remained the owner and possessor of the lots in question; that her possession has been peaceful, public, continuous, adverse and in the concept of an owner; and that she has paid the taxes thereon. Manuela also presented 2 certifications from the Land Registration Commissioner, one stating that 2 of the lots were declared public land in a cadastral case, and another to the effect that the other lots were the subject of a decision in another cadastral case although no decree of registration has yet been issued. The Court of First Instance, acting as a land registration court, decreed the registration of the lots in favor of Manuela. On appeal to the Court of Appeals, the lone oppositor, the Director of Lands, interposed for the first time the defense that the decisions in the earlier cadastral cases constituted *res adjudicata* and that the 30-year prior possession required by law has not been sufficiently shown. The Court of Appeals, however, affirmed the decision *in toto*. Hence, this petition.

The Supreme Court held that the defense of *res adjudicata* cannot be pleaded for the first time on appeal; that a judicial declaration that a parcel of land is public land does not preclude even the same applicant from subsequently seeking judicial confirmation of his title to the same land under certain conditions; and that the evidence presented by the applicant in this case are unmistakable indicia that she has performed and complied with all the conditions essential to entitle her to a confirmation of her imperfect title.

Decision of the Court of Appeals affirmed.

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SYLLABUS

1. REMEDIAL LAW; PLEADING AND PRACTICE; DEFENSE OF *RES ADJUDICATA* MAY NOT BE PLEADED FOR THE FIRST TIME ON APPEAL; CASE AT BAR.— It is clear from the evidence on record that in the proceedings had before the Court of First Instance of Batangas, acting as a land registration court, the oppositor Director of Lands, petitioner herein, did not interpose any objection nor set up the defense of *res adjudicata* with respect to the lots in question. Such failure on the part of oppositor Director of Lands, to Our mind, is a procedural infirmity which cannot be cured on appeal. All defenses not interposed in a motion to dismiss or in an answer are deemed waived.

2. CIVIL LAW; LAND TITLES AND DEEDS; PUBLIC LAND LAW; CADASTRAL PROCEEDINGS; JUDICIAL DECLARATION THAT LAND IS PUBLIC LAND, NOT A BAR TO SUBSEQUENT APPLICATION FOR JUDICIAL CONFIRMATION OF IMPERFECT TITLE OVER SAME LAND.— The decision in Cadastral Case No. 41 does not constitute a bar to the application of respondent Manuela Pastor; because a decision in a cadastral proceeding declaring a lot public land is not the final decree contemplated in Sections 38 and 40 of the Land Registration Act. A judicial declaration that a parcel of land is public, does not preclude even the same applicant from subsequently seeking a judicial confirmation of his title to the same land, provided he thereafter complies with the provisions of Section 48 of Commonwealth Act No. 141, as amended, and as long as said public land remains alienable and disposable (now sections 3 and 4, P.D. No. 1073).

3. ID.; ID.; ID.; CONFIRMATION OF IMPERFECT TITLE; CONDITIONS THEREFOR.— The uncontradicted testimony of private respondent Manuela Pastor, which was further corroborated by the testimony of Antonio Pastor, conclusively established beyond doubt that the respondent, together with her predecessors-in-interest since the year 1913 and up to the present, had been in open, continuous, exclusive, and notorious possession and occupation of the lots in question under a *bona fide* claim of ownership. Moreover, the documentary evidence submitted by private respondent also show that the lots have been declared for taxation purposes in the name of respondent Manuela Pastor (Exhibit 'I'), and the taxes thereon have been paid by said respondent herein (Exhibits 'J', 'J-1' to 'J-5', 'K', 'K-1' and 'K-2'). And finally, Geodetic Engineer Quirino Clemeneo, who conducted the survey of some of the lots and verified the survey

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conducted by the Bureau of Lands, testified that the thirteen (13) lots in question did not encroach upon public or private lands. All these are unmistakable indicia that respondent Manuela Pastor has performed and complied with all the conditions essential to entitle her to a confirmation of her imperfect title over the thirteen (13) lots subject of her application.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jesus Montalbo for respondents.

DECISION

MAKASIAR, *J.*:

By this petition for review on certiorari, the Director of Lands seeks to set aside the decision of the Court of Appeals in C.A.-G.R. No. 59853-R affirming the decision of the Court of First Instance of Batangas in LRC Case No. N-893 granting the application for registration under R.A. 496 of thirteen (13) parcels of land in the name of herein private respondent Manuela Pastor.

It appears that on May 8, 1974, respondent Manuela Pastor filed with the Court of First Instance of Batangas LRC Case No. N-893, an application for confirmation of imperfect title over thirteen (13) lots situated in Gulod and Pallocan, Batangas City.

The application shows that seven (7) of the lots, specifically Lots Nos. 9186-A, 9186-B, 9186-D, 9330-A, 9330-C, 9402-A and 9402-D were allegedly inherited by respondent Manuela Pastor from her parents Rafael Pastor and Natalia Quinio who died on July 1, 1938 and July 12, 1908, respectively. The other six (6) lots, namely Lots Nos. 9402-B, 9402-E, 9397-B, 9397-D, 9367 and 9360 were allegedly inherited by respondent from her aunt Rosario Pastor who died on January 13, 1950 without any surviving heir except respondent herein. In her application, the respondent claims that she and her predecessors-in-interest had been in continuous, uninterrupted, open, public, adverse and notorious possession of the lots under claim of ownership for more than thirty (30) years.

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On June 24, 1974 the application was amended to correct the description of two lots.

The Director of Lands filed an opposition to the application on the ground that applicant Manuela Pastor and her predecessors-in-interest neither had title in fee simple nor imperfect title under Section 48 of the Public Land Law, as amended, over the lots in question.

No other persons filed opposition to the application.

Accordingly, the Court of First Instance of Batangas, acting as a land registration court, issued an order of general default with the exception of the Director of Lands, and then proceeded to hear the applicant, her witnesses, and oppositor Director of Lands.

During the hearings, the applicant presented as her witnesses her nephew Antonio M. Pastor, and Géodetic Engineer Quirino P. Clemeneo. Applicant Manuela Pastor testified on her behalf that she has remained the owner and possessor of the lots in question; that her possession has been peaceful, public, open, continuous, adverse against the whole world and in the concept of owner; that she had paid the taxes thereon; and that the said lots were planted to sugar cane.

Witness Antonio M. Pastor corroborated in all material respects the testimony of his aunt Manuela Pastor.

The Geodetic Engineer, Quirino P. Clemeneo, testified that he conducted the survey of some of the lots and verified the survey conducted by the Bureau of Lands on the others. He found that the lots did not encroach upon private and public lands.

As part of her documentary evidence, applicant Manuela Pastor presented the certifications of the Treasurer of Batangas City showing payments of the real estate tax on the lots from 1965 to 1974 (Exhibits J, J-1, J-2, J-3, J-4 and J-5) and official receipts of payments of real estate tax on the same lots for 1975 (Exhibits K, K-1 and K-2).

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Apart from the foregoing, applicant presented, however, a certification from the Land Registration Commission (Exhibit L) stating that Lot No. 9330 of the Cadastral Survey of Batangas, Province of Batangas, was declared public land in Cadastral Case No. 41, LRC Cad. Record No. 1706. She likewise submitted another certification from the Land Registration Commission (Exhibit L-1) to the effect that Lots Nos. 9186, 9360, 9367, 9397 and 9402 of the Cadastral Survey of Batangas, Province of Batangas, were the subject of a decision in Cad. Case No. 43, LRC Cad. Record No. 1712, although no decree of registration has as yet been issued.

On August 6, 1975 the Court of First Instance of Batangas rendered a decision pertinent portions of which read as follows:

"From the evidence presented, it has been established that as early as in the year 1913, the original owners of the seven (7) parcels of land located in the barrio of Gulod, Batangas City, designated as Lots Nos. 9330-A, 9330-C, 9186-A, 9186-B, 9186-D, 9402-A and 9402-D, as reflected in the plan Csd-12122 Sheet 1 (Exhibit 'E'), were spouses Rafael Pastor and Natalia Quinio. Natalia Quinio died on July 12, 1908. Since then, Rafael Pastor possessed the said lots peacefully, openly, continuously, adversely against the whole world and in the concept of owner up to his death in 1938. After the death of Rafael Pastor on July 1, 1938, Manuela Pastor, the applicant herein, being the only child and sole heiress, came into possession and ownership thereof by way of inheritance. From 1938 when the applicant inherited the said lots from her deceased parents and up to the present, she has remained the owner and possessor thereof; that her possession over the said lots has been peaceful, public, open, continuous, adverse against the whole world and in the concept of owner up to the present; that the applicant had paid the estate and inheritance taxes thereon before the Japanese Occupation; that the said lots were planted with sugar cane, and since the year 1964 there were no tenants but paid workers were provided with huts for their use therein; that there were no buildings, houses or other improvements thereon. The other six (6) lots located in the barrio of Pallocan, Batangas City, designated as Lots Nos. 9397-B, 9397-D, 9367, 9360, 9402-B and 9402-E, as reflected in the plans marked as Exhibits 'E', 'G', 'H', 'H-1', 'H-1-a' and 'H-2', were originally owned by the applicant's aunt, Dra. Rosario Pastor; that the latter possessed the said lots peacefully, openly, continuously, adversely against the whole world and in the concept of owner up to her death in 1950; that after the death of Dra. Rosario Pastor on

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January 13, 1950, the applicant, Manuela Pastor, being the only niece and sole heiress, came into possession and ownership thereof by way of inheritance. From 1950 when the said applicant inherited the said lots from her deceased aunt and up to the present, she has remained the owner and possessor thereof; that her possession over the said lots has been peaceful, public, open, continuous, adverse against the whole world and in the concept of owner up to the present; that the applicant had paid the estate and inheritance taxes thereon; that the said lots were planted with sugar cane, and since the year 1964 there were no tenants but paid workers were provided with huts for their use therein; that there were no buildings, houses or other improvements thereon.

"Evidence further shows that the late Rafael Pastor and Dra. Rosario Pastor, are brother and sister. Dra. Pastor died single and without issue; that applicant, Manuela Pastor, together with her predecessors-in-interest since the year 1913 and up to the present have been in open, public, peaceful, continuous, adverse and uninterrupted possession over the said thirteen (13) lots in question; that said lots were covered by tax declarations in the name of herein applicant, as shown in the Assessment Certificate issued by the City Assessor of Batangas (Exhibit '1'), and the taxes thereon have been paid by the applicant (Exhibits 'J', 'J-1' 'J-5','K', 'K-1' and 'K-2'); that there were no lien or incumbrance affecting said lots. Futhermore, applicant testified that she did not claim any portion of the road which bounded the lots in question, nor the portion of the creeks or river; that any of the said lots were not within any reservation of any kind.

"As required by this Court, the applicant submitted the following:

"(a) a certification of the Land Registration Commission that Lot No. 9330 of the Cadastral Survey of Batangas Record No. 1706 was declared 'public land' in the decision rendered thereon. It is further certified that copy of said decision relative to the aforementioned lot is not available in this Commission (Exhibit 'L'); (b) a certification of the Land Registration Commission, that no decrees of registration have as yet been issued to lots Nos. 9186, 9360, 9367 and 9397 and 9402 of the Cadastral Survey of Batangas (Exh. 'L-1'); and (c) a certification issued by officer-in-charge Records Division of the Bureau of Lands to the effect that the thirteen (13) lots situated in Barrios Gulod and Pallocan, Batangas City, are not covered by any kind of public land, application or patent (Exh. 'M').

"All the documentary exhibits of applicant were submitted in evidence as offered, there being no objection on the part of the oppositor. Oppositor Director of Lands through City Fiscal of Batangas did not offer any contradictory evidence.

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"Indisputably and by highly credible evidence, the applicant gave more than ample proof of her rights to the grant of title over the properties in question. By herself and through her predecessors-in-interest, the applicant has been in open, public, peaceful, continuous, uninterrupted and adverse possession of the thirteen (13) parcels of land up to the present—all for the requisite period of time and under a bona fide claim of ownership which entitle her to confirmation of title over the properties subject of this application.

"x x x finding the application for confirmation and grant to title under Act 496 as amended, to be well-founded and fully substantiated by evidence sufficient and requisite under the law, the Court hereby decrees the registration of:

"x x x x x x x x x x

"in favor of applicant, MANUELA PASTOR x x x" (pp. 49-60, Record on Appeal, p. 45, rec.).

Not satisfied with the decision of the Court of First Instance, petitioner Director of Lands appealed the same to the Court of Appeals assigning the following errors:

First Assignment of Error

'THE LOWER COURT ERRED IN GRANTING THE APPLICATION OF MANUELA PASTOR FOR CONFIRMATION OF HER ALLEGED IMPERFECT TITLE TO LOTS NO. 9330-A AND 9330-C DESPITE EVIDENCE ADDUCED BY APPLICANT HERSELF THAT SAID LOTS WERE DECLARED PUBLIC LAND IN A PREVIOUS CADASTRAL PROCEEDING.'

'Second Assignment of Error

'THE LOWER COURT ERRED IN GRANTING THE APPLICATION OF MANUELA PASTOR FOR CONFIRMATION OF HER ALLEGED IMPERFECT TITLE TO LOTS NO. 9186-A, 9186-B, 9186-D, 9402-A, 9402-B, 9402-D, 9402-E, 9397-B, 9397-D, 9367 and 9360 DESPITE EVIDENCE SUBMITTED BY APPLICANT HERSELF THAT A DECISION RESPECTING SAID LOTS HAD BEEN RENDERED IN A PREVIOUS CADASTRAL PROCEEDING.'

Third Assignment of Error

'THE LOWER COURT ERRED IN HOLDING THAT THERE IS ADEQUATE EVIDENCE OF THE ALLEGED IMPERFECT TITLE OF MANUELA PASTOR TO THE THIRTEEN (13) LOTS SUBJECT OF THE APPLICATION' (pp. 11-12, rec.).

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On February 9, 1978 the Court of Appeals rendered judgment affirming *in toto* the decision of the Court of First Instance of Batangas.

Hence, this petition.

I

Substantially, the same issues, as raised by petitioner in the Court of Appeals, are brought before US.

Petitioner asserts that the decision rendered in Cadastral Case No. 41 (Exhibit L) declaring Lot No. 9330—from which Lots Nos. 9330-A and 9330-C were derived—constitutes *res adjudicata* as to the nature of the lots in question and therefore, a bar to appellee's application.

Additionally, petitioner also argued that:

"Lots Nos. 9186-A, 9186-B and 9186-D of the Cadastral Survey of Batangas, were derived from Lot No. 9186. Lots Nos. 9402-A, 9402-B, 9402-D and 9402-E were derived from Lot No. 9402. Lots Nos. 9397-B and 9397-D were derived from Lot No. 9397.

"As shown by applicant's Exhibit L-1, Lots Nos. 9186, 9360, 9367, 9397 and 9402 were the subject of a decision rendered in Cad. Case No. 43, LRC Cad. Record No. 1712, although no decree of registration has as yet been issued therein.

"The certificate, Exhibit L-1, is dated June 4, 1975. The decision of the lower court was rendered more than two months later, on August 6, 1975. Thus, on the basis of Exhibit L, the decision of the cadastral court might already be final when the appealed decision was rendered. If such be the case, the decision of the cadastral court constitutes *res adjudicata* and it is a bar to the present land registration proceeding under Act No. 496 (Lopez *v.* Director of Lands, 48 Phil. 589; Section 1. paragraph (f), Rule 16, Rules of Court).

"Assuming that the decision of the cadastral court was not yet final when the appealed decision was rendered, it was nevertheless, *litis pendentia* which, under Section 1, paragraph (e), Rule 16 of the Rules of Court, is likewise a bar to the present proceeding for land registration case under Act No. 496.

"Either way, whether the decision of the cadastral court in Cad. Case No. 43 had become final or not, the present proceeding for land registration under

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Act No. 496 cannot prosper because of the principles of *res adjudicata* and *litis pendentia*" (pp. 15-16, rec.).

WE find no legal basis to uphold the foregoing contentions of petitioner. It is clear from the evidence on record that in the proceedings had before the Court of First Instance of Batangas, acting as a land registration court, the oppositor Director of Lands, petitioner herein, did not interpose any objection nor set up the defense of *res adjudicata* with respect to the lots in question. Such failure on the part of oppositor Director of Lands, to OUR mind, is a procedural infirmity which cannot be cured on appeal. Section 2, Rule 9, Revised Rules of Court of 1964, in no uncertain language, provides that:

"SEC. 2. Defenses and objections not pleaded deemed waived.— Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; x x x."

All defenses therefore not interposed in a motion to dismiss or in an answer are deemed waived (Santiago, et al. *vs.* Ramirez, et al., L-15237, May 31, 1963, 8 SCRA 157, 162; Torreda *vs.* Boncaros, L-39832, January 30, 1976, 69 SCRA 247, 253).

Thus, the defense of *res adjudicata* when not set up either in a motion to dismiss or in an answer, is deemed waived. It cannot be pleaded for the first time at the trial or on appeal (Phil. Coal Miner's Union *vs.* CEPOC, et al., L-19007, April 30, 1964, 10 SCRA 784, 789).

But granting for a moment, that the defenses, of *res adjudicata* was properly raised by petitioner herein, WE still hold that, factually, there is no prior final judgment at all to speak of. The decision in Cadastral Case No. 41 does not constitute a bar to the application of respondent Manuela Pastor; because a decision in a cadastral proceeding declaring a lot public land is not the final decree contemplated in Sections 38 and 40 of the Land Registration Act.

A judicial declaration that a parcel of land is public, does not preclude even the same applicant from subsequently seeking a judicial confirmation of his title to the same land, provided he thereafter complies with the provisions of Section 48 of

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Commonwealth Act No. 141, as amended, and as long as said public land remains alienable and disposable (now sections 3 and 4, P.D. No. 1073).

With respect to Cadastral Case No. 43, the evidence on record is too scanty to sustain the view of the petitioner that the decision rendered therein constitutes *res adjudicata,* or in the absence of finality thereof, *litis pendentia.* On the contrary, private respondent has amply shown that no final decree whatsoever was issued in connection with said cadastral case, even as it is not known in whose favor said decision was rendered. As found by the Court of Appeals:

"Again, we sustain the appellee. There is an ambiguity as to what was adjudicated in Case No. 43. If the lots in question were in that case awarded to a third party, the latter should have intervened in this case. But no private party has challenged the application for registration" (p. 30, rec.).

II

Finally, petitioner argues for the first time on appeal that "there is no substantial evidence to show that she (private respondent Manuela Pastor) and her predecessors-in-interest have been in possession of the lots sought to be titled for a period of at least thirty (30) years and in the manner provided in Section 48, as amended, of the Public Land Law."

WE find no merit in the foregoing argument of petitioner. The uncontradicted testimony of private respondent Manuela Pastor, which was further corroborated by the testimony of Antonio Pastor, conclusively established beyond doubt that the respondent, together with her predecessors-in-interest since the year 1913 and up to the present, had been in open, continuous, exclusive, and notorious possession and occupation of the lots in question under a *bona fide* claim of ownership. Moreover, the documentary evidence submitted by private respondent also show that the lots have been declared for taxation purposes in the name of respondent Manuela Pastor (Exhibit 'I'), and the taxes thereon have been paid by said respondent herein (Exhibits 'J', 'J-1' to 'J-5', 'K', 'K-1' and 'K-2'). And finally, Geodetic Engineer Quirino Clemeneo, who conducted the survey of some of the lots

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and verified the survey conducted by the Bureau of Lands, testified that the thirteen (13) lots in question did not encroach upon public or private lands. All these are unmistakable indicia that respondent Manuela Pastor has performed and complied with all the conditions essential to entitle her to a confirmation of her imperfect title over the thirteen (13) lots subject of her application.

WHEREFORE, the decision of the Court of Appeals is affirmed, and the petition is hereby dismissed. No costs.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero and *Melencio-Herrera, JJ.*, concur.

EN BANC

[G.R. No. 50044. July 31, 1981]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* ALEJANDRO PEREZ y LANA, defendant-appellant.

SYNOPSIS

Prosecution eye-witness Jose Cafugauan testified that he saw the accused stab the victim to death while he was hidden among young "talahib" grass at a distance about thirty meters only and because the scene of the gruesome slaying was of lower elevation than the place where he was digging of beetle larva, he could clearly see the occurrence. He reported the incident only after fifteen days thereafter because he was afraid of the appellant who was an ex-convict. Cafugauan's testimony was corroborated by two other prosecution witnesses, one who saw the appellant pass by in the vicinity of the crime at around the time of the slaying and the boatman who ferried appellant to the other side of the river, later. Based mainly on said eyewitness account of the killing, the Court of First Instance of Cagayan found the accused guilty of Murder and sentenced him to death.

On automatic review, the Supreme Court held that appellant having been positively identified by a wholly truthful eye-witness and strengthened by the corroborative testimony of equally unbiased and disinterested witnesses with no motive except to adhere to the truth, appellant's alibi is unavailing.

Judgment affirmed.