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FIRST DIVISION

[G.R. Nos. L-29182-83. July 25, 1983]

ESSO STANDARD EASTERN INC., plaintiff-appellee, *vs.* ALFONSO LIM, defendant-appellant. ALFONSO LIM, plaintiff-appellant, *vs.* STANDARD VACUUM OIL COMPANY, defendant-appellee, REPUBLIC OF THE PHILIPPINES, intervenor-appellant.

SYLLABUS

1. LAND REGISTRATION; TORRENS CERTIFICATE OF TITLE; RECONSTITUTION PROCEDURE; TITLE TO BE RECONSTITUTED VALIDLY EXISTED; CASE AT BAR.— It is clear from the records that in the reconstitution proceeding, Esso was able to show its valid title over the property in question. It was able to prove that it lost its owner's duplicate certificate of title when its building was burned in Manila while the original thereof was lost or destroyed in the custody of the Register of Deeds of La Union when its offices were also burned. Both destructions were during World War II.

2. ID.; ID.; ID.; NATURE OF PROCEEDING.— Furthermore, the order in the reconstitution proceedings, being in rem in nature, has long become final and unassailable. The findings of the court therein can no longer be opened for review especially with the kind of speculative challenge posed by the appellant.

3. ID.; ID.; ID.; SMALL DISCREPANCY IN AREA CANNOT UNDO A DECISION LONG FINAL AND EXECUTORY.— During the trial of these cases, Atty. Villalon (counsel for Lim) and Atty. Laurea (counsel for Esso) stipulated that the subject matter of the reconstitution parcel 4 is the same parcel 4 of the Land Registration Case No. 259 GLRO Record No. 40942 with the only difference that the reconstituted title had covered a bigger area because they made a separate survey. The foregoing admission should be binding on Lim. A court decision long final and executory cannot be undone on the basis of such a minute and inconsequential detail as the 57 square meter discrepancy in a 2 hectare parcel of land.

4. ID.; ID.; ID.; LACK OF NOTICE DOES NOT RENDER RECONSTITUTION PROCEEDINGS VOID AND OF NO EFFECT; NO EFFECT ON APPELLANT WHO HAD NO VALID RIGHT OVER DISPUTED LAND.— Appellant alleges that lack of

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notice, in violation of the express mandate of Sec. 13, R.A. No. 26, is fatal and renders the reconstitution proceedings as well as the resulting title void and of no effect. Appellant Lim cannot assail the reconstitution of Esso's title on this ground. In his petition docketed as Civil Case No. 2162, he averred that he was the absolute owner of the disputed land. During the trial, however, he did not introduce any evidence as to how he acquired ownership. On the contrary, he admitted that he merely occupied the land when he was told that there was no occupant. In short, he was a mere squatter or usurper whose only basis for the possession is alleged occupation but with no showing of ownership. The appellant wants the title of the appellee set aside but he has absolutely no showing of a better title in himself. There would have been no difference if he had been notified. He could not have objected to the reconstitution by asserting his own rights over the property. Having no valid rights over the disputed lot, he suffered no damage as a result of the reconstitution of title.

5. ID.; ID.; ID.; LACHES NOT CONSIDERED A BAR TO AN ACTION FOR RECONSTITUTION; DELAY COUNTED FROM TIME OF KNOWLEDGE OF THE UNLAWFUL OCCUPANCY.— While the complaint in Civil Case No. 1868 was filed only in 1963, the records show that several demands to vacate the property were already made long before that date. Furthermore, the appellant is hardly the person to assert laches. As pointed out by the appellee mere possession without claim of title either legal or equitable does not place the occupant in a position to assert the defense of stale claim. For laches to exist, there should be a showing of delay in asserting the complainant's right, the complainant having had knowledge or notice, of the defendant's conduct and having had an opportunity to institute a suit. Delay is not counted from the date the lot was sold to the buyer but from the time Lim entered the premises, if known to the owner or from the time Esso came to know of Lim's occupancy for that is the only time it could possibly have demanded that he get out of the premises or it could have instituted a suit. While the appellant claims to have occupied the land for 17 years, knowledge of such occupancy by the appellee was much later.

6. CIVIL PROCEDURE; MOTION TO RECEIVE ADDITIONAL EVIDENCE; DISALLOWED WHERE NEW EVIDENCE COULD HAVE BEEN PRODUCED DURING PENDENCY OF CASE WITH THE EXERCISE OF REASONABLE DILIGENCE; ORAL TESTIMONY; UNRELIABILITY; CASE AT BAR.— The Supreme Court upheld the ruling of the lower court in disallowing appellant

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Lim from introducing additional evidence on grounds of newly discovered evidence. It agrees with the findings that the testimony of Atty. Matias Vergara could have been discovered and produced during the several years that the case had been pending (from 1963-1967) if only Lim had exercised reasonable diligence.

7. REMEDIAL LAW; JUDGMENTS; RELIEFS AWARDED BY LOWER COURT UPHELD AS FAIR AND REASONABLE.— The Supreme Court finds the ₱100.00 a month rental for the appellant's use of 20,057 square meters of urban land at Poro Point, San Fernando, La Union valued at ₱2,000,000.00 in 1967, to be more than fair and reasonable insofar as he is concerned. No reason to disturb the lower court's judgment in this respect. The same thing is true of the award of ₱10,000.00 attorney's fees considering the protracted nature of the litigation.

8. CIVIL LAW; PROPERTY; APPELLANT NOT BEING A POSSESSOR IN GOOD FAITH IS NOT ENTITLED TO REIMBURSEMENT FOR IMPROVEMENTS ON THE LAND IN DISPUTE.— Appellant Alfonso Lim is not a possessor in good faith and is not entitled to the ₱150,000.00 he claims for alleged improvements on the lot. His use of the valuable property more than compensates for whatever he may have put on the land.

9. ID.; ID.; ID.; DESTRUCTION OF THE TITLE NOT AN ABANDONMENT.— The intervenor-appellant's argument that the land was abandoned and therefore belongs to the public domain has no merit. The land was titled in 1933. The burning of the Standard Vacuum building in Manila during World War II and the destruction of the title did not constitute abandonment.

APPEARANCES OF COUNSEL

The Solicitor General for intervenor-appellant.
Martin Laurea for plaintiff-appellee ESSO Standard Inc.
Villalon for defendant-appellant Lim.

DECISION

GUTIERREZ, JR., *J.*:

This is an appeal from a decision of the Court of First Instance of La Union in Civil Cases No. 1868 and No. 2162 declaring Esso Standard Eastern, Inc., now Petrophil Corporation, as the registered owner of the disputed property and ordering Alfonso Lim to vacate the land and pay rentals, attorney's fees, and costs.

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The subject matter of litigation in the above-mentioned cases is a parcel of urban land, with an approximate area of 20,000 square meters, valued at Two Million Pesos more or less at the time the cases were filed, and located at Poro Point, San Fernando, La Union.

The said parcel of land was originally owned by one Miguel Flores who sold it to Leon Rivera on December 6, 1926. By a document executed by Leon Rivera himself in 1926, he and Angel Salanga were jointly invested in common ownership over the property.

The parcel of land was brought under the Torrens System in Land Registration Case No. 259 (Exhibit "J") sometime in 1933. In said case, the Court issued Decree No. 503752 covering lots 1, 2, and 3 of Plan Ps-15087 which were then owned by Salanga and Rivera. According to Angel Salanga, Standard Vacuum Oil Company secured title over lot 4, the land in question. (Exhibits "O" and "O-1") This was evidenced by Decree No. 593753, as explained by the Commissioner of Land Registration in his report dated November 17, 1955, (Exhibit "2"; Appellee's Brief, p. 12, Rollo, p. 214) to wit:

"Acting upon the verified petition dated August 26, 1955, filed in the above-entitled case for the reconstitution of the alleged lost or destroyed Original Certificate of Title No. (N.A.) covering Lot No. 4, Ps-15087, now described on plan Psu-148885, this Commission has the honor to report that:

"In the salvaged index cards kept in this Office, it appears that certain Angel Salanga and Leon Rivera of Poro, San Fernando, La Union, filed an application for the registration of four (4) parcels of land described on plan Ps-15087-Amd. for which Decree Nos. 503752 and 503753 were issued on March 6, 1933 in Court Case No. 125, GLRO Record No. 503752 filed in this commission reveals that the same covers Lots Nos. 1, 2 and 3, Ps-15087-Amd. in the name of the aforesaid applicants. It is believed, therefore, that Lot No. 4, Ps-15087-Amd. is the parcel covered by Decree No. 503753.

"Considering, however, the loss or destruction caused by the last war of all other records filed in this Office relative to said case, including all copies of Decree No. 503753, we have no way of determining in whose favor Lot 4 in question was originally decreed. But for purposes of Section 12

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of Republic Act No. 26, the plan Psu-148885 submitted by the petitioner has been verified correct by this Commission to represent Lot No. 4 being claimed by said petitioner."

Earlier on January 28, 1930, in a deed of sale duly executed, notarized, and registered, Leon Rivera and Angel Salanga for and in consideration of the amount of Four Thousand Eight Hundred Pesos sold the land in question to the Standard Oil Company of New York which was the predecessor corporation of Standard Vacuum Oil Company which in turn was the predecessor corporation of Esso Standard Eastern, Inc.

On August 26, 1955, the appellee's predecessor-in-interest, Standard Vacuum Oil Co., filed a petition for the reconstitution of title covering Lot 4, which petition for reconstitution was docketed as Administrative Case No. 316-R, Special Proceeding Record No. 145. The Standard Vacuum Oil Co., alleged that the Original Certificate of Title No. 503753 covering Lot 4 was lost and destroyed during the last world war.

The appellee, in the course of the reconstitution proceedings, submitted an alleged plan of the property, designated as Plan Psu-148885, together with the technical description, showing an area of 20,057 square meters although the plan mentioned in the notice of hearing dated August 29, 1955 was plan Ps-15087-Amd., and the area appearing in said plan was exactly 20,000 square meters as compared with the area appearing in the alleged plan Psu-148885 which was 20,057 square meters.

The petition for reconstitution was granted by the Court of First Instance of La Union. The Standard Vacuum Oil Co., was issued a reconstituted Original Certificate of Title No. RO-2321 (N.A.).

On July 2, 1963, appellee Esso Standard Eastern, Inc., now named Petrophil, formerly known under the corporate name Standard Vacuum Oil Co. (successor-in-interest of Standard Oil Co. of New York) filed a complaint against appellant Alfonso Lim for *accion publiciana* which was docketed as Civil Case No. 1868, CFI, La Union. In the complaint, the appellee anchored

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its cause of action upon the alleged fact that in or prior to 1955, without its knowledge and consent, the appellant began occupying a portion measuring three-fourths (3/4), more or less, of that parcel of land in question situated in the Barrio of Poro, Municipality of San Fernando, Province of La Union, belonging to and registered in the name of the appellee pursuant to Original Certificate of Title No. RO-2321 (N.A.) which had been reconstituted under the petition filed by the appellee on August 26, 1955, using as basis thereof plan Psu-148885 and its corresponding technical description. The appellee also asserted that the appellant had unlawfully withheld possession of the property to its damage and prejudice.

During the pre-trial in Civil Case No. 1868, the following were admitted and made of record:

1. Original Certificate of Title No. 2321 is not forged;
2. Said title covers a parcel of land with an area of 20,057 square meters; and was issued on November 19, 1955 in the name of Standard Vacuum Oil Co., but subsequently was changed to Esso Standard Eastern, Inc., said title appears to be a reconstituted title pursuant to Court order dated 1955;
3. Scrap iron of assorted nature could be found there today and that the area is being used by the defendant and under his control.

The defendant Alfonso Lim interposed the following allegations which were denied by the plaintiff Esso;

1. The title secured by plaintiff over the parcel of land described in Original Certificate of Title No. RO-2321 (NA) of La Union is null and void because:
   a. it was registered through mistake, if not fraud;
   b. defendant was never notified of the survey and registration thereof in the manner provided by law;
   c. plaintiff does not appear to fulfill the qualifications required for corporations with stockholders who are citizens of the United States to hold and own real estate of the Philippines;
2. Plaintiff is guilty of laches.

While Civil Case No. 1868 was pending, appellant Alfonso Lim filed Civil Case No. 2162 for the annulment of the reconstituted

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Original Certificate of Title No. RO-2321 issued in favor of the appellee and for declaration as the lawful and rightful owner of the property in question by prescriptive acquisition. It was the position of the appellant that:

. . . . . .

". . . he is the absolute owner and possessor to the present of that property, more or less described as follows:

" 'A parcel of land (Lot No. 4), plan Ps-15087-Amd. Bounded on the SE. by Lot 2; on the SW. by Poro Provincial Road; on the W. by property of Pantaleon Pimentel; and on the NW. by property of Manila Railroad Company. Point '1' is S. 58 deg. 45 min. W., 1820.88 m. from B.L.L.M. No. 1, San Fernando, La Union, Area 20,000 Square Meters.' (pp. 2-3, Record on Appeal)

". . . appellant has been in actual possession and occupation of the above-described parcel of land for more than seventeen (17) years and has religiously and faithfully paid the real estate taxes due on said land under Tax Declaration No. 43431 of the Provincial Assessor of the Province of La Union. .. the issuance of the Original Certificate of Title No. RO-2321 was erroneous, fraudulent and irregular, and therefore null and void, as the basis for its issuance was plan Psu-148885 and the corresponding technical description, and not the original plan, Lot 4, plan Psu-15087-Amd. and technical description which should be the basis of the reconstitution, ...

". . . from the publication in the Official Gazette dated January 7, 1932 (Vol. XXX, No. 3, page 32), the original lot described and embraced in ordinary Land Registration Record No. 40942, is Lot No. 4, plan Ps-15087-Amd. and not plan Psu-14885 which was approved by the Bureau of Lands only on October 19, 1955.

. . . . . .

". . .from the records available in Ordinary Land Registration Record No. 40942, the applicant for registration of Lot No. 4, Plan Ps-15087-Amd. are Angel Salanga and Leon Rivera, and not the herein Esso Standard Eastern, Inc.. . ..

". . . appellee has intentionally and deliberately through fraud, misrepresentation and under a cloud of secrecy, caused the reconstitution of Lot No. 4, plan Ps-15087-Amd. by using plan Psu-148885 and its corresponding technical description which was only approved long after the war, that is, October 19, 1955, and in spite of the clear showing that both lots are not identical with each other, as there was a difference of FIFTY

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SEVEN (57) SQUARE METERS in the area of plan Psu-148885. In other words, reconstitution of the said title under plan Psu-148885 was highly impossible . . ..

". . . appellee or its predecessors-in-interest never acquired title over the parcel of land now covered by Original Certificate of Title No. RO-2321 (La Union) because it never applied for the original registration in accordance with the provisions of Act No. 496, as amended, and was never issued a title (Record on Appeal, Civil Case No. 2162, pp. 45, 55 and 56).

". . . appellee or its predecessors-in-interest have no interest whatsoever in the parcel of land covered by Original Certificate of Title No. RO-2321 (La Union) because sometime in the year 1936 it exchanged the same for another parcel of land then owned by the North American Trading and Export Company (Record on Appeal, Civil Case No. 2162, pp. 45 and 56)."

On May 31, 1967, the Republic of the Philippines filed a motion and a complaint in intervention which was duly admitted by the lower court. The Government contended that it is the owner of the disputed parcel of land because in the Report of the Commissioner of Land Registration Commission, there was a variance in the basis of the petition for reconstitution of Original Certificate of Title No. RO-2321 (N.A.) which embraced Lot 4 of plan Ps-15087-Amd. The report stated:

"That according to the records available in this Commission and upon re-verification of the status of Lot 4, plan Ps-15087-Amd., it shows that the said lot was among the four (4) parcels under plan Ps-15087-Amd. applied for registration in the Ordinary Registration Case No. 259, LRC (GIRO) Record No. C-40942, for which Angel Salanga and Leon Rivera were applicants. However, in view of the loss of pertinent records during the war, this Commission cannot determine whether or not decree of registration was issued for Lot 4, plan Ps-15087-Amd.

"That upon re-examination of the petition for reconstitution of the Original Certificate of Title for said Lot 4, Ps-15087-Amd. we have found out and discovered that the plan Psu-148885 and corresponding technical description used as basis of the said petition for reconstitution was not one and the same identical plan for Lot, 4, Ps-15087-Amd., supposed to be the basis of the said petition for reconstitution, there being a difference of fifty-seven (57) square meters in area with that of the new Psu-148885."

Without objection on the part of the appellee and the appellant, the two complaints for intervention were admitted by the lower court.

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After the cases were submitted for decisions, appellant Alfonso Lim filed a motion to receive additional evidence on the ground of newly discovered evidence. The alleged newly discovered evidence consists of the testimony of Atty. Matias E. Vergara who claimed to have prepared the two documents of exchange between Standard Vacuum Oil Co., and the North American Trading and Import Co. in the year 1936.

These two cases were jointly tried and after hearing, the lower court rendered the questioned decision, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, and with a declaration that the Esso Standard Eastern Inc., plaintiff in 1868 and defendant in 2162 is the registered owner of the land in question covered by Original Certificate of Title No. RO-2321 (NA), Alfonso Lim defendant in 1868 and plaintiff in 2162 is now sentenced:

"1) to vacate and leave the possession and control of the land in question which is lot 4 of plan 148885 covered by said Original Certificate of Title No. RO-2321 (NA);

"(2) Alfonso Lim shall pay Esso Standard Eastern Inc., the amount of ₱100.00 a month by way of rental from July 1963 until complete possession shall have been delivered to the above registered owner;

"3) Alfonso Lim shall pay Esso Standard Eastern Inc., the amount of ₱10,000.00 by way of attorneys fees and litigation expenses;

"4) Alfonso Lim shall pay the costs in both cases.

The complaint of Alfonso Lim in 2162 is dismissed in its entirety.

"The complaint in intervention filed by the Republic of the Philippines is also dismissed in its entirety."

Moreover, in the same decision, the lower court passed upon the motion of appellant Alfonso Lim to receive additional evidence and ruled:

. . . . . .

"What is the new discovered evidence that Alfonso Lim and the Republic of the Philippines want to present in this case because according to them it will affect the decision that shall be rendered? During the numerous hearings had in this case with the testimonies of witnesses many of them

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on inadmissible hearsay version, Alfonso Lim maintained that the land in question had long ago ceased to be owned by Esso; it was transferred by Esso to the North American Trading; and that conveyance to the North American Trading, whether by sale or barter was done long before the war. On the foregoing statements the records are practically clogged with many hearsay statements from witnesses who brought this outside version of barter and conveyance. If only to allow a review done with full knowledge of the facts of the case such hearing evidence was allowed to be inserted. This Court, however, believes at this moment that hearsay evidence on the idea of barter is totally inadmissible in this case. Besides the North American Trading in authentic correspondence sent to the Philippines clearly said that the corporation had no property in the Philippines. The alleged newly discovered evidence that Lim and the Republic of the Philippines would like to present in the re-opening of the case would consist mainly of the testimony of Atty. Matias Vergara to the effect that he prepared two documents. On one document the North American Trading ceded a property to the Standard Vacuum Oil Company. This document is available for examination even now. In another document supposed to be a part of the transaction, the Standard Vacuum Oil Company ceded the land in question to the North American Trading. But this document according to Matias Vergara is not available, the original and the duplicate. There is no way of tracing its terms or existence in any registry or any government office.

"The least that the Court can say is that it should be the North American which is an existing corporation in the United States who should come forward and claim the land in question if truly the land had been validly acquired in pre-war days by said corporation. It is queer that the one pressuring the non-ownership of the land in question by the Esso Standard is not the North American Trading, the supposed owner, but Alfonso Lim who is a total stranger and the way to bring it out is by hearsay testimony of a lawyer on his memory of events in 1936.

"The Court rules now that the motion to receive additional evidence on the ground of newly discovered evidence filed on November 28, 1967, joined by the Republic of the Philippines must be, as it is now denied in its entirety."

. . . . . .

Appellant Alfonso Lim raised the following assignments of errors in his brief:

FIRST ASSIGNMENT OF ERROR.— The lower court gravely erred in holding that the reconstitution of title over Lot 4, Psu-148885, the property in question, was validly done in spite of the clear showing that there was absolutely no proven title to reconstitute.

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SECOND ASSIGNMENT OF ERROR.— The lower Court erred in declaring that Lot 4 of Plan Ps-15087-Amended is the same Lot 4 in Plan Psu-148885.

THIRD ASSIGNMENT OF ERROR.— The lower court gravely erred in declaring that the appellee Esso Standard Eastern, Inc., is the registered owner of the land in question allegedly covered by Original Certificate of Title No. RO-2321 (N.A) in spite of the clear showing that the issuance of said title was erroneous and irregular as the basis for its issuance was Plan-Psu-148885 and not the Original Plan Ps-15087 Amd. as manifested from the publication in the Official Gazette dated January 7, 1932, and that it was obtained through fraud without the requirements of the law being complied with.

FOURTH ASSIGNMENT OF ERROR.— The lower Court erred in overlooking and failing to apply the principle of laches against appellee Esso Standard Eastern, Inc.

FIFTH ASSIGNMENT OF ERROR.— The lower Court gravely erred and/or abused its discretion in denying the motion to receive additional and newly discovered evidence filed by appellant Alfonso Lim and joined by intervenor-appellant, the Republic of the Philippines, and in so doing deprived appellants of the opportunity of proving that the property in question was sold and assigned by Standard Vacuum Oil Company (appellee's predecessor) to the North American Trading and Import Co. in exchange for the two properties owned by the latter through the testimony of Atty. Matias E. Vergara who directly participated in the preparation of the documents and worked for the exchange of properties.

SIXTH ASSIGNMENT OF ERROR.— The lower Court erred in not declaring appellant Alfonso Lim, the rightful owner of the property in question, having acquired the same by acquisitive prescription.

SEVENTH ASSIGNMENT OF ERROR.— The lower Court erred in holding that appellant Alfonso Lim was liable to pay appellee the amount of ₱100.00 a month by way of rentals.

EIGHTH ASSIGNMENT OF ERROR.— The lower Court erred in rendering judgment for attorney's fees in the amount of ₱10,000.00 in favor of appellee.

NINTH ASSIGNMENT OF ERROR.— The lower Court erred in holding that appellant Alfonso Lim is not a possessor in good faith and therefore not entitled to the amount of ₱150,000.00 as indemnity for the improvements introduced on the land in question.

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The Republic of the Philippines as intervernor-appellant raised the following assignments of errors:

First Assignment of Error

THE LOWER COURT ERRED IN DENYING APPELLANT LIM'S MOTION FOR NEW TRIAL AND MOTION TO TAKE DEPOSITION OF ATTY. MATIAS VERGARA AND IN HOLDING THAT NO EXCHANGE WAS EFFECTED INVOLVING THE LAND IN QUESTION.

Second Assignment of Error

THE LOWER COURT ERRED IN HOLDING THAT APPELLEE WAS ABLE TO SECURE A TITLE TO THE LAND.

Third Assignment of Error

THE LOWER COURT ERRED IN NOT HOLDING THAT THE LAND IN QUESTION WAS ABANDONED AND THEREFORE BELONGS TO THE PUBLIC DOMAIN.

The first, second, third, and fourth assignments of errors of appellant Lim coincide with the Republic's second assignment of error. We find them without merit.

To support his first assignment of error, the appellant argues that in a reconstitution proceeding, a valid record, document, title or other matter sought to be reconstituted must clearly be shown to exist for otherwise, no judicial or quasi-judicial body has the authority to render a decision or order for such reconstitution.

According to the appellant, the requirements of Section 15, Republic Act No. 26, that the destroyed or lost certificate of title which may be reconstituted is one that was in force at the time of loss or destruction was not complied with.

The assigned error has no merit. It is clear from the records that in the reconstitution proceeding, Esso was able to show its valid title over the property in question. It was able to prove that it lost its owner's duplicate certificate of title when its building was burned in Manila while the original thereof was lost or destroyed in the custody of the Register of Deeds of La Union when its offices were also burned. Both destructions were during

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World War II. Furthermore, the order in the reconstitution proceedings, being in rem in nature, has long become final and unassailable. The findings of the court therein can no longer be opened for review especially with the kind of speculative challenge posed by the appellant.

The salvaged index cards of the Commissioner of Land Registration show that Angel Salanga and Leon Rivera applied for the registration of four parcels of land and that Decrees 503752 and 503753 were issued for these parcels on March 6, 1933. The certified copy of Decree No. 503752 covers lots Numbered 1, 2, and 3 in the names of Salanga and Rivera. It logically follows that Decree No. 503753 covers Lot No. 4, the contested area. The records of the Land Registration Commission corroborate the other evidence for the appellee in this case.

The appellant points to a 57 square meter discrepancy in his second assignment of error. Plan Ps-15087-Amd. contains an area of 20,000 square meters, whereas Plan Psu-148885, relied upon as the basis for reconstitution contains a greater area of 20,057 square meters, which from the viewpoint of the appellant conclusively shows divergence in area and lack of identity between the lots respectively covered by the two plans.

During the trial of these cases, Atty. Villalon (counsel for Lim) and Atty. Laurea (counsel for Esso) stipulated that the subject matter of the reconstitution parcel 4 is the same parcel 4 of the Land Registration Case No. 259 GLRO Record No. 40942 with the only difference that the reconstituted title had covered a bigger area because they made a separate survey. The foregoing admission should be binding on Lim. A court decision long final and executory cannot be undone on the basis of such a minute and inconsequential detail as the 57 square meter discrepancy in a 2 hectare parcel of land.

As early as 1924, this Court ruled in *Smith Bell & Co., Ltd. v. Director of Lands* (50 Phil. 879) that discrepancies between old and new surveys in the Philippines are often found and are due to the fact that the areas and distances in the old surveys

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were usually estimated instead of computed and that care not to over-estimate seems generally to have been taken; and that taking into consideration that twenty-five years passed between two surveys and that the population in the locality where the surveys were made was of an unsettled character, the fact that the names of the boundary men differed widely in the two surveys does not necessarily indicate that the surveys did not embrace the same land.

In *Government of the Philippine Islands v. Isidoro Abaja, et al.* (52 Phil. 261) this Court stated that the fact that the Royal Decree of August 20, 1880, required that the sketch show the exact area and boundaries of the lands acquired by purchase or composition with the State was no guarantee against any fraud or error that might be committed in drawing the proper plans, because, considering the deficiency in the procedure adopted during the Spanish Government and the inexperience of the surveyors, many cases have been found in which great errors in calculation with respect to the area were committed, thus making the area of the lands vary greatly.

The appellant alleges fraud in his third assignment of error. He contends that in spite of the knowledge of the appellee that he was in actual possession and occupation of the property since 1949 and continuously without interruption, adversely and publicly up to the filing of the cases, no notice was given to him. This is alleged as manifest bad faith and in violation of the express mandate of Section 13, Republic Act No. 26 because lack of notice is fatal and renders the reconstitution proceedings as well as the resulting title void and of no effect. He cites *Santiago Syjuco, Inc. v. PNB* (86 Phil. 320) and *Pecson v. Reyes* (86 Phil 187-188) where this Court held that "lack of notice is fatal and renders the reconstitution proceedings as well as the resulting title void and of no legal effect."

Appellant Lim cannot assail the reconstitution of Esso's title on this ground. In his petition docketed as Civil Case No. 2162, he averred that he was the absolute owner of the disputed land.

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During the trial, however, he did not introduce any evidence as to how he acquired ownership. On the contrary, he admitted that he merely occupied the land when he was told that there was no occupant. In short, he was a mere squatter or usurper whose only basis for the possession is alleged occupation but with no showing of ownership.

We also note that the court acquired jurisdiction by publication in the Official Gazette (Exhibit "GG"). Under our ruling in *Municipality (Now City) of Legazpi v. A. L. Ammen Transportation Co., Inc.* (26 SCRA 218) lack of notice even to those with interest in the property, is not a jurisdictional defect because of such publication.

The appellant wants the title of the appellee set aside but he has absolutely no showing of a better title in himself. There would have been no difference if he had been notified. He could not have objected to the reconstitution by asserting his own rights over the property. Having no valid rights over the disputed lot, he suffered no damage as a result of the reconstitution of title.

The fourth assignment of error alleges that the lower court erred in overlooking and failing to apply the principle of laches against appellee Esso Standard Eastern, Inc. According to the appellant, from the time the lot was sold by Angel Salanga and Leon Rivera to Standard Vacuum Oil Co. up to the date appellee Esso Standard Eastern Inc., as successor-in-interest of Standard Vacuum Oil Co., filed the case for recovery of possession, more than 33 years had elapsed before the appellee thought of asserting its rights over the property in question. Therefore, the action should be barred by laches following the cases of *Miguel v. Catalino* (26 SCRA 234); *Buenaventura v. David* (37 Phil. 435); *Edralin v. Edralin* (1 SCRA 222) according to the appellant.

While the complaint in Civil Case No. 1868 was filed only in 1963, the records show that several demands to vacate the property were already made long before that date. Furthermore, the appellant is hardly the person to assert laches. As pointed out by the appellee mere possession without claim of title either legal

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or equitable does not place the occupant in a position to assert the defense of stale claim. For laches to exist, there should be a showing of delay in asserting the complainant's right, the complainant having had knowledge or notice, of the defendant's conduct and having had an opportunity to institute a suit. Delay is not counted from the date the lot was sold to the buyer but from the time Lim entered the premises, if known to the owner or from the time Esso came to know of Lim's occupancy for that is the only time it could possibly have demanded that he get out of the premises or it could have instituted a suit.

While the appellant claims to have occupied the land for 17 years, knowledge of such occupancy by the appellee was much later.

In the next assignment of error, both the appellant and the intervenor-appellant raised the issue whether or not the lower court committed error and/or abused its discretion in disallowing appellant Alfonso Lim from introducing additional evidences which are material and relevant to the matter in dispute.

The appellant alleges that Esso Standard Eastern, Inc. has no valid and legal claim over the lot in question as appellee's predecessor-in-interest, Standard Vacuum Oil Co. had transferred and assigned all its rights, title and interests over the said property to the North American Trading and Import Co. sometime in 1936 in exchange for two properties owned by the latter. He states that Atty. Matias E. Vergara has personal knowledge of the transaction which led to the exchange of properties between Standard Vacuum Oil Co. and the North American Trading and Import Company because he was instrumental in the execution of the transaction, he being the one who prepared the two documents of exchange between the two companies in the year 1936 as an assistant attorney in the law firm of Ross, Laurence and Selph, then retained counsel of Standard Vacuum Oil Company.

The lower court's ruling on this issue has been mentioned earlier. We see no error in the court's ruling. We agree with the court that the testimony of Atty. Matias Vergara could have been

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discovered and produced during the several years that the case had been pending (from 1963-1967) if only Lim had exercised reasonable diligence.

Furthermore, the court could not have relied on the declaration of Atty. Vergara as to the contents of the alleged deed of sale, because the requirement that due execution and loss or destruction must first be proved was not followed. (Government *v.* Martinez, et al., 44 Phil. 817; Michael & Co. *v.* Enriquez, 33 Phil. 87, 89; Hernaez *v.* McGrath, 48 O.G.2686; Saldivar, et al. *v.* Mun. of Talisay, 18 Phil. 362; De Borja *v.* De Borja, 99 Phil 19)

There are other reasons why we find the alleged error of the lower court in not declaring appellant Alfonso Lim as the rightful owner of the property in question, without merit.

The appellee has summarized why Lim's possession of the land does not have the qualities claimed by him:

1. The property has been previously brought under the operation of the Land Registration Act, a fact that rendered the ownership thereof imprescriptible;

2. Lim failed to show a just title to the property;

3. Lim occupied part of the premises only after the title of Esso was reconstituted in 1955;

4. Lim's possession was not in good faith because he was not able to show reasonable belief that the person from whom he received the thing was the owner thereof and could transmit his ownership.

5. Lim's possession could not have been in the concept of an owner since he knew all along that he acquired no real or imaginary title to the property.

6. Lim's possession was not continuous since the filing of this case on July 1, 1963 had the effect of interrupting the same;

7. Lim expressly recognized the title to Esso in his conversation with Atty. Florentino (Tsn., August 9, 1957, p. 55);

8. Lim all along was clearly aware that Esso owned the property in question (TSN, July 1, 1963, pp. 36-57);

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9. Lim declared the property for taxation purposes only in 1960, and after extra-judicial demands had been made for him to vacate (Exhibit 1). The mere failure to declare land for taxation purposes indicates that the claimant did not believe himself to be the owner. (Cruzado *v.* Bustos, 34 Phil. 17);

10. Lim kept silent when a portion of the lot was expropriated. When the road to Poro Point was widened and improved, a portion was taken by the government (Exhibits "KK," "KK-1" to "KK-4); and

11. Lim claims that he has in his favor a legal presumption that he possesses under a just title and he cannot be obliged to show it. He apparently relies on Article 541 of the New Civil Code. He has conveniently closed his eyes to Art. 1131 of the New Civil Code which requires that "for purposes of prescription, just title must be proved; it is never presumed.

We find the ₱100.00 a month rental for the appellant's use of 20,057 square meters of urban land at Poro Point, San Fernando, La Union valued at ₱2,000,000.00 in 1967, to be more than fair and reasonable insofar as he is concerned. We see no reason to disturb the lower court's judgment in this respect. The same thing is true of the award of ₱10,000.00 attorney's fees considering the protracted nature of the litigation. Appellant Alfonso Lim is not a possessor in good faith and is not entitled to the ₱150,000.00 he claims for alleged improvements on the lot. His use of the valuable property more than compensates for whatever he may have put on the land.

The intervenor-appellant's argument that the land was abandoned and therefore belongs to the public domain has no merit. The land was titled in 1933. The burning of the Standard Vacuum building in Manila during World War II and the destruction of the title did not constitute abandonment.

WHEREFORE, the judgment of the lower court is AFFIRMED with costs against appellant Alfonso Lim.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Escolin and *Relova, JJ.*, concur.

Plana, J., no part.

Vasquez, J., on leave.