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Abad Santos, J., is abroad.

De Castro, J., Concurs. Was designated to sit in the Second Division.

SECOND DIVISION

[G.R. No. L-35787. April 11, 1980]

FAUSTA FRANCISCO, *petitioner, vs.* **COURT OF APPEALS, ALEJANDRO F. SANTOS and RAMONA FRANCISCO (Substituted by: JOSE SAN DIEGO; CELSO GARROVILLAS, HONORIO GARROVILLAS, EDILBERTO GARROVILLAS, AMALIA GARROVILLAS; VIRGINIA GARROVILAS, PACITA GARROVILLAS and LOPE GARROVILLAS),** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; LAND REGISTRATION PROCEEDINGS IS ONE *IN REM* AND NOTICE THEREOF BY PUBLICATION BINDS THE WHOLE WORLD.— In *Grey Alba vs. De la Cruz*, 17 Phil. 49, by Justice Trent. Therein, it was declared definitely that a land registration proceeding is one *in rem* and notice thereof by publication binds the whole world, inclusive of those who may be adversely affected thereby, innocent factually as they might have been of such publication. Understandably, such a rule could be the only way to give meaning to the finality and indisputability of the Torrens title to be issued. It may be said that to a certain degree such a strict rule could result in actual injustice, considering not only the rather irregular publication of the Official Gazette and other publications, and, of course, the illiteracy, not to speak, of the inaccessability to those concerned of such publications.

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2. ID.; ID.; APPLICATION; REQUIREMENT.— Thus, *Grey Alba* should not be read, as the majority in the Court of Appeals decision under review, did as entirely depriving victims of obvious fraudulent intent of the remedy of having a decree reopened. This is clear in that decision itself. As the present Chief Justice, Hon. Enrique M. Fernando, pointed out in *Minlay vs. Sandoval,* 53 SCRA 1, "all that is required is a showing according to this leading *Grey Alba* decision" of intention to deprive another of (his) just rights, which constitutes the essential characteristic of actual fraud." And in this connection, the Chief Justice went on thus: "It is to be stressed likewise that the Land Registration Act commands that the applicant 'shall also state the name in full and the address of the applicant, and also the names and addresses of all occupants of the land and of all adjoining owners, if known; and, if not known, it shall state what search has been made to find them.' (Section 21 of Act No. 496 [1902].) What can be clearer, therefore, than that the lower court was not sufficiently mindful of what the law ordains when it refused to hear petitioner on his claim that appellee Sandoval was guilty of fraud in including in his application the disputed lot."

3. ID.; ID.; ID.; "FRAUD"; MEANING THEREOF.— In *Grey Alba* itself, We find the following significant pronouncements at p. 50, (Vol. 17, Phil.) "By fraud is meant actual fraud, dishonesty of some sort. This meaning should be given to the word 'fraud' in Section 38 of the Land Registration Act. Proof of constructive fraud is not sufficient to authorize the Court of Land Registration to reopen a case and modify its decree. Specific acts intended to deceive and deprive another of his right, or to in some manner injure him, must be alleged and proved."

APPEARANCES OF COUNSEL

Sumulong Law Office for petitioner.
Candido G. del Rosario & Associates for private respondents.

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DECISION

BARREDO, *J.*:

Petition for review of the judgment rendered by a vote of 3 to 2 of the Court of Appeals in CA-G.R. No. 37818-R, entitled *Alejandro F. Santos and Ramona Francisco, applicants-respondents, vs. Fausta Francisco, petitioner-appellee,* reversing the decision of the Court of First Instance of Rizal in Land Registration Case No. N-4383, L.R.C. Record No. N-25140, wherein said trial court granted the petition for review of the decree of registration earlier issued by it, after a virtually *ex parte* hearing and judgment, and ordered said previous decision and decree set aside and the land in question registered instead in the name of now herein petitioner Fausta Francisco.

As recounted in the original decision of the Court of Appeals, on May 23, 1964, the aforementioned trial court rendered a decision ordering the registration of the land in dispute situated in Barrio Singalong, Antipolo, Rizal, in the names of herein private respondents Alejandro F. Santos and Ramona Francisco, which decision became final and executory, and on June 27, 1964 the order was issued to the Land Registration Commission to issue the corresponding decree, which it did, No. N- 99323 on July 13, 1964, followed by the issuance of Original Certificate of Title No. 4064 in their names.

According to the Record on Appeal, on July 31, 1964, herein petitioner Fausta Francisco, filed a petition for review alleging under oath *inter alia* that:

"2. She is the absolute owner in fee simple of the land applied for in this case, which is situated in Barrio Singalong. Municipality of Antipolo, Province of Rizal and covered by Plan Psu-1992781 and now embraced in Original Certificate of Title No. 4064 of the Register of Deeds of the Province of Rizal.

"3. She and her predecessors in interest have been in continuous, open, adverse, peaceful and uninterrupted possession of the land in dispute since time in memorial.

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"4. Alejandro F. Santos and Ramona Francisco obtained a Decree of Registration No. N-99332 for the parcel of land in question through fraud. In their application dated October 29, 1963, they claimed to be the owners of this parcel of land by possession. This is not true. Alejandro F. Santos and Ramona Francisco have never been in possession of the parcel of land in question.

"5. Petitioner and her five (5) brothers and sisters namely, Anastacia, Leoncio, Paula, Perfecta, all surnamed Francisco, with residence in Morong, Rizal and Venancia Francisco Nepomuceno, residing in Calumpang, Marikina, Rizal, who are the adjacent registered owners of the land in question, were not notified of any alleged survey of this land nor of the present application for registration.

"6. Neither petitioner nor her tenant was notified of the alleged survey nor of the present application for registration as actual occupant and possession of the land in question.

"7. Notice of this land registration proceedings was published in The Official Gazette but herein petitioner does not read it.

"8. The land in question was never actually surveyed by or for the applicants for reason among others that when petitioner caused the recent survey of the same there were no monuments found on this land."

Herein private respondents opposed the above petition for review maintaining principally that:

"4. That in her petition for review, petitioner claims to be the owner of the land covered by the decree of registration but failed to state in said petition how she became the owner thereof and under what color of title does she claim to be owner of the land; neither did petitioner attached any instrument supporting her claim other than a supposed affidavit of merit signed by her alone containing allegations amounting to the existence of intrinsic fraud only; that assuming without admitting that there was indeed intrinsic fraud, nevertheless said allegations even if true is not sufficient ground for reopening and review of the corresponding decree of registration;

"5. That petitioner's petition is not sufficient in form and substance and therefore should be dismissed by the Honorable Court. In support of this contention, we most respectfully quote the following doctrine:

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'The essential requisite for a valid petition for the reopening and review of a decree under Sec. 38 of Act 496 is that it be made only by a person who has been deprived of land or of any interest therein by virtue of the decree sought to be reconsidered. A mere claim of ownership is not sufficient and the petition of any person whose interest in the land is short of absolute ownership, lacks the essential requisite, and for that reason should not be considered. Thus in the case of *Broce vs. Apurado*, 26 Phil. 581, 586, the Supreme Court clearly and unequivocably said: "In order to obtain the benefits of Section 38 the applicant (1) must have an estate or interest in the land, and (2) must show fraud in the procurement of the decree of registration. A mere claim of ownership is not sufficient to avoid a certificate of title obtained under the Land Registration Act.' (Philippine Land Registration Law, Vargas, Mañalac & Mañalac, p. 284)." (Rec. on Appeal, pp. 20-22.)

It may be noted at this point that because the Bureau of Lands withdrew its opposition to herein respondents' application, Judge Guillermo Torres, the trial judge, commissioned the clerk of court to receive their evidence and subsequently rendered his original favorable decision. In contrast, when Judge Torres gave due course to herein petitioner's petition for review, he held a trial and heard the evidence of the parties himself, with private respondent Alejandro F. Santos and his former witnesses Lauro Cruz and Eugenio Francisco as well as petitioners and her witnesses testifying in open court. After such trial, on April 5, 1966, the same judge, the Honorable Guillermo Torres, rendered the new decision now in dispute reversing that of May 23, 1964, thus setting aside the latter, the decree of registration and original certificate of title of private respondents issued pursuant thereto and ordering instead that the land under litigation be registered in the name of petitioner. When Justice Mateo Canonoy prepared the first draft of the decision, the other two members of the Division, Justices Antonio Lucero and Eulogio Serrano disagreed with him. Justices Juan F. Enriquez and Manuel P. Barcelona were designated to join to form the division of five required by law, and on March 17, 1972, with Justice Canonoy as *ponente* and Justices Enriquez and Barcelona concurring, the decision favorable to herein private respondents was promulgated. Justice

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Serrano dissented in an extended opinion pointing out the existence of actual fraud committed by private respondents in securing the judgment in their favor and sustaining, with a careful analysis of the relevant and material evidence, the contention of petitioner that she, by herself and thru her predecessor in interest has been the one, instead of respondents, in continuous, open, adverse possession of the land in issue, under a claim of title. In due time, petitioner filed a motion for reconsideration, which was denied with the same votation.

In reversing himself in the light of the evidence he himself had subsequently heard, instead of his clerk of court, unlike in the original proceeding, Judge Torres reasoned out and made his findings thus:

"Petitioner alleges in her petition for review that applicants Alejandro F. Santos and Ramona Francisco obtained through fraud Decree No. N-99332; that she is the absolute owner in fee simple of that parcel of land in question situated in Barrio Singalong, Municipality of Antipolo, Province of Rizal, described in Plan Psu-1992791 and embraced in Original Certificate of Title No. 4064 of the Registry of Deeds of the Province of Rizal; that she has been in possession of said land, together with her father who is her predecessor in interest, openly, peacefully, adversely and continuously since time immemorial. On the other hand, applicants-respondents contend in their application for registration that the land in question was owned by applicant Alejandro Santos' father, Toribio Santos, and that upon the latter's death in 1922, he inherited the said parcel of land. However in the presentation of his evidence in this petition for review, Alejandro F. Santos testified that this land had no previous owner; that he merely occupied this land sometime in 1920 and had been in possession of the same for more than thirty years.

"The main issues in this case are: (a) Whether or not the applicant secured thru fraud Decree No. N-99332 and (b) Who is the true and absolute owner of the land in question.

"It appears clearly from the evidence that since 1918, Diego Francisco, father of petitioner, had occupied the parcel of land in question; that this land is a portion of a bigger parcel of land with an area of fifty hectares which was occupied and possessed by Diego Francisco since 1918. Comprising this fifty-hectare parcel of land are

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the land in question described in Plan Psu-199278, Exhibit A, the land described in Plan Psu-199277, Exhibit B, and the land described in plan H-114240, Exhibit C, embraced in Transfer Certificate of Title No. 23434, Exhibit J, formerly the homestead patent of Diego Francisco. The whole area of fifty hectares is fenced with barbed wire and planted with mango trees, a portion planted to palay and a bigger portion devoted to pasturing of carabaos. All these improvements were introduced by petitioner's father, Diego Francisco, during his lifetime. In 1940, Diego Francisco, was able to obtain a title on a portion of this big parcel of land, now embraced in Transfer Certificate of Title No. 23434, Exhibit J, in the names of petitioner Fausta Francisco and her sister and brother, Anastacia, Leoncio, Venancia, Perfecta and Paula, all surnamed Francisco.

"The petitioner's father, Diego Francisco, died in the year 1941 and after his death, petitioner continued to possess the land in question which was not embraced in Transfer Certificate of Title No. 23434, Exhibit J, and her possession over said portion of the land is open, public, peaceful continuous, adverse against the whole world, and in the concept of an owner. In 1964, petitioner had the land in question surveyed by a private land surveyor, Jose de Guzman, who, upon inquiry from the Bureau of Lands, discovered that there was already a survey plan in the name of the applicant in this case, Alejandro F. Santos. Petitioner likewise discovered that this land is already titled in the name of the said Alejandro F. Santos.

"It was clearly established that petitioner, as adjacent owner of the land in question was not notified of the alleged survey. The Surveyor's Certificate, Exhibit 6, with respect to notices of adjoining owners cannot be given any credence. It could be seen from Exhibit 6 that Jose P. Cruz, who is no longer the adjoining owner of the land in litigation and who is admittedly dead was notified on October 29, 1962 and that said Jose P. Cruz appeared on the date of the survey, although being dead, it was, impossible for him to appear on the date of the survey. The Santol Creek was also allegedly notified but that it did not appear. This is ridiculous. The Santol Creeks is not a person or entity, and the one notified should have been the proper government official or office. Similarly, it was made to appear by applicants-respondents that Diego Francisco, petitioner's father, an adjoining owner, was notified of the survey. Diego Francisco has been long dead, since 1941, and neither petitioner nor any of her brother or sisters received the purported notice. By thus avoiding the sending of actual notices to the petitioner and other interested

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parties, applicants were able to have the land in question surveyed, Plan Psu-1992791. It is likewise admitted that neither petitioner nor any of her brother or sisters as adjacent owners were notified of the registration proceedings in this case. It was established thru the testimony of the petitioner that she does not read the Official Gazette, the publication where the notice of initial hearing was published. By thus avoiding the sending of actual notice of initial hearing to petitioner as adjoining owner and as actual owner and possessor of the land in question, the applicants were able to obtain the decision dated May 23, 1964 in their favor. Furthermore, the Court is convinced by the evidence that it is petitioner and her father before her, who have actually possessed and occupied the land in question, and not the applicants Alejandro F. Santos and Ramona Francisco. It was shown thru the testimony of Quiterio San Jose, former Mayor of Teresa, Rizal, who is an adjacent owner across the Santol Creek, that Alejandro F. Santos was never in possession of this land in question and that it was Diego Francisco who was the one in possession of this parcel of land during his lifetime and after his death, his heirs. By virtue of this continuous, adverse, and open possession of the land in question for forty-seven (47) years now, Fausta Francisco has become the absolute owner of this parcel of land." (Pp. 26-31, Record on Appeal.)

To the foregoing, We only need to add by adoption the following well taken discussion by distinguished counsel of petitioner in his memorandum of December 13, 1973:

"The true adjoining owners at the time of the filing of application.

"When the applicants, the spouses Alejandro Santos and Ramona Francisco, filed their application for registration on October 29, 1963, they did not state the true adjoining owners at the North, East, and West, of the land in question.

"At the North, they stated that the adjoining owner was Diego Francisco, when in truth and in fact, as they knew full well, Diego Francisco died in 1942 and his homestead patent title over the land at the North had been cancelled and transferred to his children-heirs, namely Fausta (petitioner herein), Anastacia, Paula, Perfecta, Venancia, and Leoncio, all surnamed Francisco (see TCT No. 23434 issued to the latter and marked as Exh. 'J').

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"At the East, they stated that the adjoining owner was Jose P. Cruz, when in truth and in fact, as they knew full well, Jose P. Cruz died in 1952 and his homestead patent title over the land at the East had been cancelled and transferred to Estela Angeles to whom his children (Lauro Cruz and two others sold on January 1, 1954 (see TCT No. 32697 issued to Estela Angeles marked as Exh. 'L-2'). On November 7, 1957, Estela Angeles sold the land to Vicente Antonio who issued TCT No. 32697 (Exh. 'L-3'). On August 31, 1959, Vicente Antonio sold the land in favor of Antonio Astudillo (TCT No. 96527 (Exh. 'L-4'). who in turn sold the land to Arturo Rojas (TCT No. 100145 (Exh. 'L-5') who on May 22, 1962 sold the land to Pilar V. Romack who was issued TCT No. 100146 on June 7, 1962.

"At the West, they stated that the adjoining owner was Eugenio Francisco, when in truth and in fact, as they knew full well, at the time of the filing of their application, Paula Francisco (sister of petitioner Fausta Francisco) was the actual occupant and possessor of the said parcel of land. The application for registration of the said land filed by Eugenio Francisco in the Court of First Instance of Rizal was opposed by Paula Francisco and is to be noted that Eugenio Francisco was not even present during the hearing and did not continue presenting evidence. After Paula Francisco had presented her evidence, the Court of First Instance decided that the said land at the West should be registered and decreed in the name of Paula Francisco, which decision became final as Eugenio Francisco did not appeal therefrom, resulting in the issuance of decree and OCT No. 6945 to Paula Francisco (see the said decision of the CFI Rizal attached to our motion for reconsideration dated August 26, 1966 filed with the respondent Court of Appeals, Annex 'B' of Petition).

"Motive of the Applicants in not stating the true adjoining owners.

"The intent and motive of applicants in not stating that the true adjoining co-owners at the North were Fausta Francisco and her sisters and brother, was because they knew that Fausta was the one occupying the land in question or at least that Fausta was claiming the land in question to be hers, so if notice of their application for registration were sent to her as an adjoining co-owner at the North, she would surely oppose their application for registration.

"The intent and motive of the applicants in making it appear that the adjoining owner at the East was still Jose P. Cruz, when in truth it was already Estela Angeles, was because they were intending to

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utilize Lauro Cruz (son of Jose P. Cruz) as their witness to testify, as he did testify, before the Deputy Clerk of Court that he was the boundary owner at the East and as such knew that applicant Alejandro Santos had been in possession of the land in question since 1929 when the latter's father died.

"The intent and motive of the applicants in not stating the true fact that both Eugenio Francisco and Paula Francisco were claiming to be the owners of the land at the West, was because they knew that Paula was the sister of petitioner Fausta Francisco, so if notice of their application for registration were sent to Paula as one of the claimants to the land at the West, Paula would surely tell her sister Fausta about it, and the latter would surely oppose their application for registration. Moreover, applicants were intending to utilize Eugenio Francisco as their witness to testify, as he did testify, before the Deputy Clerk of Court that he was the boundary owner at the West and as such knew that the applicant Alejandro Santos had been in possession of the land in question since 1929 when the latter's father died.

"It will thus be seen that the applicants did not state the true adjoining owners with the deliberate intention of preventing notices of their application for registration to be sent to petitioner Fausta Francisco and to her sister Paula Francisco, and in that way prevent petitioner from appearing in the land registration case and file an opposition to their application for registration." (Pp. 198-201, Record.)

Indeed, how could two dead persons and a creek be legally upheld as having been separately properly notified of the application here under discussion? It is high time, the Court made it patently clear and emphasized that it is the inescapable duty of surveyors to find out by themselves who are the occupants and boundary owners of any land being surveyed by them for purposes of registration. Beyond doubt, had the surveyors of respondents complied with this simple and logical obligation imposed by the very nature of their professional undertaking, the obvious anomalies extant in the instant case would not have happened. No dead persons nor a creek could have been certified as duly notified by the Land Registration Office of the application!

Besides, as pointed out in the above-quoted portions of petitioner's memorandum, the boundary owner at the north in

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1963 when the application of respondents was filed could not have been Diego Francisco, for the simple reason that said person had died twenty-one years before or in 1942. Factually, under ordinary circumstances, if respondents were indeed in possession of the land in dispute, it stands to reason they would have known of their neighbor's long demise. More, legally speaking, Diego Francisco had a Torrens Title which was duly transferred subsequently in TCT 23434 (Exh. J) to the name of his children. Registration under the Torrens System constitutes, at the very least, constructive notice to any boundary owner of who is his neighbor.

The same observations may be made insofar as Jose P. Cruz, the alleged former boundary owner in the east. He had died in 1952, eleven years before the application, and the title he had acquired over his land had been transferred several times in the Office of the Register of Deeds to Estela Angeles, TCT 32697, Exh. L-2; to Vicente Antonio, TCT No. 32697 (sic) Exh. L-3; to Antonio Astudillo, TCT 96527, Exh. L-4; to Arturo Rojas, TCT 100145, Exh. L-5; to Pilar V. Romack, TCT 100146 on June 7, 1962. (See Petitioner's memo pp. 1-2.) These facts have never been denied in any pleading of respondents.

Again, respondents knew or ought to have known that the boundary owner in the west could not have been Eugenio Francisco, because it is judicial record that OCT No. 6945 was actually issued to Paula Francisco who had opposed Eugenio's attempt to have the land registered in his name. (See Annex B of the petition.)

In addition, it is admitted that petitioner was never notified of the application, let alone her not having had any chance to read or perhaps even know the Official Gazette.

In the light of the foregoing. the matters that require Our resolution in the instant case may be said to be one of mixed fact and law, but apparently more legal than factual. Did respondents commit fraud of the nature contemplated in Section 38 of the Land Registration Act, (Act 496) that would warrant the cancellation of the decree of registration and Torrens Title already issued to them? The pole star jurisprudential

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pronouncements in this respect are found, as every student of Land Registration knows, in *Grey Alba vs. De la Cruz*, 17 Phil. 49, by Justice Trent. Therein, it was declared definitely that a land registration proceeding is one *in rem* and notice thereof by publication binds the whole world, inclusive of those who may be adversely affected thereby, innocent factually as they might have been of such publication. Understandably, such a rule could be the only way to give meaning to the finality and indisputability of the Torrens title to be issued. It may be said that to a certain degree such a strict rule could result in actual injustice, considering not only the rather irregular publication of the Official Gazette and other publications, and, of course, the illiteracy, not to speak, of the inaccessability to those concerned of such publications.

Thus, *Grey Alba* should not be read, as the majority in the Court of Appeals decision under review, did as entirely depriving victims of obvious fraudulent intent of the remedy of having a decree reopened. This is clear in that decision itself. As the present Chief Justice, Hon. Enrique M. Fernando, pointed out in *Minlay vs. Sandoval*, 53 SCRA 1, "all that is required is a showing according to this leading Grey Alba decision" of intention to deprive another of (his) just rights, which constitutes the essential characteristic of actual fraud." And in this connection, the Chief Justice went on thus: "It is to be stressed likewise that the Land Registration Act commands that the applicant 'shall also state the name in full and the address of the applicant, and also the names and addresses of all occupants of the land and of all adjoining owners, if known; and, if not known, it shall state what search has been made to find them.' (Section 21 of Act No. 496 [1902].) What can be clearer, therefore, than that the lower court was not sufficiently mindful of what the law ordains when it refused to hear petitioner on his claim that appellee Sandoval was guilty of fraud in including in his application the disputed lot." The pertinent statutory provision reads thus:

"SEC. 21. The application shall be in writing, signed and sworn to by the applicant, or by some person duly authorized in his behalf. All oaths required by this Act may be administered by any officer authorized to administer oaths in the Philippine Islands. If there is

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more than one applicant, the application shall be signed and sworn to by and in behalf of each. It shall contain a description of the land and shall state whether the applicant is married; and, if married, the name of the wife or husband; and, if unmarried, whether he or she has been married, and, if so, when and how the married relation terminated. If by divorce, when, where, and by what court the divorce was granted. It shall also state the name in full and the address of the applicant, and also the names and addressee of all occupants of the land and of all adjoining owners, if known; and, if not known, it shall state what search has been made to find them. It may be in form as follows:

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

"To the Honorable Judge of the Court of Land Registration:

"I (or we) the undersigned, hereby apply to have the land hereinafter described brought under the operation of the Land Registration Act, and to have my (or our) title therein registered and confirmed. And I (or we) declare: (1) That I am (or we are) the owner (or owners) in fee simple (or by possessory information title) of a certain parcel of land with the buildings (if any, if not, strike out the words 'with the buildings'), situated in (here insert accurate description). (2) That said land at the last assessment for taxation was assessed at _____ dollars. (3) That I (or we) do not know of any mortgage or encumbrance affecting said land, or that any other person has any estate or interest therein, legal or equitable in possession, remainder reversion, or expectancy (if any, add 'other than as follows,' and set forth each clearly). (4) That I (or we) obtained title (if by deed, state name of grantor, date and place of record, and file the deed or state reason for not filing If any other way, state it). (5) That said land is _____ occupied (if occupied, state name in full and place of residence and post office address of occupant and the nature of this occupancy. If unoccupied, insert 'not'). (6) That the names and addresses so far as known to me (or us) of the owners of all lands adjoining the above land are as follows (same directions as above.) (7) That I am (or we are) married. (Follows literally the directions given in the prior portions of this section.) (8) That my (or our) full name (or names), residence, and post office address is (or are) as follows:

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"Dated this ____ day of _____ in the year nineteen hundred and _____

(Signature) _____

"(SCHEDULE OF DOCUMENTS)

"UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

"Province (or city) of _____ (date).

"There personally appeared the above-named _____ known to me to be the signer (or signers) of the foregoing application, and made oath that the statements therein, so far as made of his (or their) own knowledge, are true, and so far as made upon information and belief, that he (or they) believe them to be true. The residence certificate _____ of the applicant (or applicants, or representative) was exhibited (or applicants, or representative) was exhibited to me, being No. _____ issued at ____ dated _____, 19 ____

BEFORE ME:

- - - - - - - - - - - - - - - - -

(Notary Public or other official authorized to administer oaths)"

As maybe readily noted, No. (6) of the suggested sufficient form says: "That the names and addresses so far as known to me (or us) of the owners of all lands adjoining the above land are as follows (same directions as above)." But more importantly, it should be borne in mind, the text of the law requires not mere statement of the lack of knowledge of the names of the occupants and adjoining owners by also "what search has been made to find them." As earlier indicated, respondents could not have escaped, if they had "search(es)" as the law definitely mandates, the names of their "*colindantes,*" it being a fact that the latter's lands were duly registered. Surely, they would have known, as it can be presumed they did, that Diego Francisco and Jose P. Cruz, whom they would name as boundary owners in their application is 1963 had already been long dead and buried. In Grey Alba, the reason found by the Court for the failure of the applicant to notify the acknowledged occupant

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of the land applied for was because, from the circumstances known to them, it was evident that they were no more than their lessees and could have had no registerable interest at all in the property, which is far from what happened in the instant case. Here, We cannot bring Ourselves to believe that the naming of Diego Francisco and Jose P. Cruz, two persons long dead, as boundary owners in their application, not to speak of the "creek," (who was also "proven" to have been notified) does not constitute actual fraud. Petitioner's evidence of her own occupancy, considering it is contradicted by respondents' evidence, need not be mentioned anymore. Anyway, the unrebuttable proof alone is to Us sufficient, by and large, to uphold not only the dissenters in the Court of Appeals but also the trial judge who had heard the respondent Alejandro Santos and his witness Lauro Cruz somehow deviate substantially and materially from their testimonies given before the clerk of court in the original proceeding.

In *Grey Alba* itself, We find the following significant pronouncements at p. 50, (Vol. 17, Phil.) "By fraud is meant actual fraud, dishonesty of some sort. This meaning should be given to the word 'fraud' in Section 38 of the Land Registration Act. Proof of constructive fraud is not sufficient to authorize the Court of Land Registration to reopen a case and modify its decree. Specific acts intended to deceive and deprive another of his right, or to in some manner injure him, must be alleged and prove."

We hold that as above discussed, the majority decision of the Court of Appeals under review, cannot be reconciled even with *Grey Alba*. The emphasis given in that decision to the *in rem* character of land registration proceedings and the broad legal significance of such kind of proceeding could not have by any degree minimized the paramouncy of truth and justice itself in any actual case before the court. As Our Chief Justice quoted from Justice Torres "The registration of (land) cannot serve as a protecting mantle to cover and shelter bad faith" (p. 12, 53 SCRA), just as it is reiterated therein what We said in *Estiva v. Alvero*, 37 Phil. 498, "it is fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third

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person." (taken from *Nicolas vs. Director of Lands*, 9 SCRA 934, at p. 938.) Accordingly, it is Our considered opinion that in law, the better view is that of the distinguished dissenters in the Court of Appeals, and We find no alternative but to uphold the same. Incidentally, the binding force of a finding of fact of the Court of Appeals, assuming the instant case were in any degree factual in nature, diminishes correspondingly according to the number and content of the dissent, when there is or are any. In the case at bar, it is Our conclusion that the majority's bases, much more its reliance in their purely literal understanding of Grey Alba do not conform with the dictates of truth and justice.

WHEREFORE, the decision of the Court of Appeals under review is reversed, and the second decision of Judge Guillermo Torres of April 5, 1966 is affirmed, without prejudice to petitioner and the trial court complying with the additional requirements for the issuance of the corresponding title in favor of petitioner. Costs against private respondents.

Antonio, Aquino, Concepcion Jr., Guerrero, and *De Castro, JJ.*, concur.

SECOND DIVISION

[G.R. No. 50184. April 11, 1980]

CITIBANK PHILS. EMPLOYEES UNION - NATU, *petitioner, vs.* **THE HONORABLE MINISTER OF LABOR and CITIBANK, N. A.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; THE TERMS AND