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Management & Development Corporation, et al.") promulgated on December 8, 1994 is hereby REVERSED AND SET ASIDE. Accordingly, registration of title over the subject parcels of land, described in Plan AS-04-000108, Lot Nos. 7231 and 7239, with an area of 3,461 and 10,674 square meters, respectively, as shown and supported by the corresponding technical descriptions now forming part of the Records of LRC No. TG-373, is awarded to herein petitioner Trinidad de Leon vda. de Roxas and her heirs, herein substituted as petitioners. Upon finality of this Decision, the Land Registration Authority is hereby directed to ISSUE with reasonable dispatch the corresponding decree of registration and certificate of title pursuant to Section 39 of Presidential Decree No. 1529.

SO ORDERED.

Regalado (Chairman), Puno, Mendoza, and *Torres, Jr.,* concur.

FIRST DIVISION

[G.R. No. 118836. March 21, 1997]

FEDERICO DORDAS, Substituted by his widow, **EXCELSA DELA FUENTE and CHILDREN, REMIGIO, EVELIO, WILLIAM, NONITO, ELDA, FEDERICO, ELMA, RICARDO and REYNALDO** all surnamed **DORDAS; and VILMA, LEONORA, FLORENTINA, PRAXIDES, POTENCIANA, PURIFICACION and TEOTIMO, all surnamed DIZON,** *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, FRANCISCO BORRES AND DIOSDADO BORRES,** *respondents.*

SYLLABUS

1. **LAND TITLES; RECONSTITUTION; R.A. 26; NON-COMPLIANCE WITH THE REQUIREMENT OF R.A. 26**

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BARS THE VESTING IN THE TRIAL COURT OF THE JURISDICTION OVER THE RECONSTITUTION PROCEEDINGS.— Petitioners do not deny that in the reconstitution proceedings, they only presented the tracing cloth and blueprint plan and none of any of the documents required under R.A. No. 26. Non-compliance with the strict requirements of R.A. No. 26 bars the vesting in the trial court of the jurisdiction over the reconstitution proceedings. "x x x [T]he jurisdiction or authority of the CFI [now the RTC] is conferred upon it by RA No. 26 x x x The Act specifically provides the special requirements and mode of procedure that must be followed before the court can act on the petition and grant to the petitioner the remedy sought for. These requirements and procedure are mandatory."

2. **ID.; ID.; ID.; RATIONALE OF THE RULE.**— The rationale underlying this rule concerns the nature of the conferment in the trial court of the authority to undertake reconstitution proceedings. In all cases where the authority to proceed is conferred by a statute and the manner of obtaining jurisdiction is mandatory, the same must be strictly complied with, or the proceedings will be utterly void.

3. **ID.; ID.; IN PETITION FOR RECONSTITUTION OF TITLES, ACTUAL OWNERS AND POSSESSORS OF THE LAND INVOLVED MUST BE DULY SERVED WITH ACTUAL AND PERSONAL NOTICE OF THE PETITION.**— Notice of hearing of the petition for reconstitution of title must be served on the actual possessors of the property. Notice thereof by publication is insufficient. Jurisprudence is to the effect settled that in petitions for reconstitution of titles, actual owners and possessors of the land involved must be duly served with actual and personal notice of the petition.

APPEARANCES OF COUNSEL

Jaso Pampilo & Salgado Law Office for petitioners.
Victor A. Azagra for private respondents.

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DECISION

HERMOSISIMA, JR., *J.*:

Before us is a petition for review of the decision on appeal[1] rendered by respondent Court of Appeals[2] in an action for reconveyance[3] filed by private respondents Francisco and Diosdado Borres against petitioner, Federico Dordas, now deceased and substituted herein by his heirs.

The object of the action for reconveyance is a parcel of land situated in the Poblacion, Municipality of Maayon, Province of Capiz, containing an area of 6,097 square meters.

Aforesaid parcel of land was originally owned by one Rafael Dizon. On February 8, 1927, Dizon sold the lot to one Francisco Contreras. Contreras, in turn, sold the lot to private respondents Diosdado and Federico Borres on December 27, 1957. Respondents have had actual possession of the lot since 1957 up to the present. Since 1957 also, after declaring the lot for taxation purposes, respondents have been paying the realty taxes on the lot.

In 1961, the heirs of Rafael Dizon and petitioner Federico Dordas filed a petition for judicial reconstitution of the title of the lot. The court ordered the reconstitution of the title upon the ground that the title was lost or destroyed during the last world war. This, notwithstanding the fact that the only documents submitted by petitioner was a tracing cloth and blueprint plan which are not among the documents recognized by Republic Act No. 26 that warrant judicial reconstitution of title. Furthermore, petitioner Dordas failed to serve notice of the reconstitution proceedings on private respondents who were

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Jaime M. Lantin and Ma. Alicia Austria-Martinez, and dated November 11, 1994, *Rollo*, pp. 37-46.

[2] Tenth Division.

[3] Civil Case No. V-2608 filed before the Court of First Instance (now Regional Trial Court) of Capiz, Roxas City.

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the actual occupants of the subject lot. This is clearly violative of the notice requirement mandated by R.A. No. 26.

Private respondents filed an action for reconveyance against petitioner in the Court of First Instance (now the Regional Trial Court), Branch 15, Roxas City. The trial court ruled that since private respondents filed the case on March 27, 1962, prescription has set in and on this ground, the trial court dismissed the action. The lower court said:

"But the records of this case show that the ancient document executed by Rafael Dizon ceding Lot 1574 to Francisco Contreras and Lucy Contreras by way of *pacto de retro*, February 8, 1927, (Exhibit B) and the deed of sale (Exhibit "A") of Francisco Contreras to Francisco Borres and spouses Diosdado Borres and Remedios Espinosa dated December 27, 1957, were not registered within the reglementary period as required in Act No. 496, so title to Lot 1574 cannot pass to plaintiffs in this case. The Supreme Court in the case of *Viacrucis v. Court of Appeals, et al.*, stated:

> 'The title to a land registered under Act No. 496 cannot pass where the deed of conveyance has not been registered, for according to said Act, the act of registration shall be the operative act to convey and affect the land.' (44 SCRA, p. 176)

Significantly, after the expiration of the four (4) year period, within which, Rafael Dizon, may repurchase the property in question, in accordance with their document of February 8, 1927 (Exhibit B), Act 190 (Code of Civil Procedure), is applicable in this case. It is not disputed that the herein plaintiffs' cause of action accrued on February 9, 1931, when Rafael Dizon and his heirs failed to exercise his right [of] repurchase. Article 116 of the New Civil Code provides:

> 'Art. 116. *Prescription already running before the effectivity of this Code shall be governed by laws previously in force*; but if since the time this code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable even though by the former laws a longer period might be required.' (*Peralta, et al. v. Alipio*, G.R. No. L-8273, Prom. October 1955).

Since the prescriptive period applicable in this case is governed by the laws enforced prior to the effectivity of the New Civil Code,

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(on August 30, 1950) then the prescriptive period provided in Act 190 (Code of Civil Procedure), the law enforced in 1931, is the one applicable in the present case. Section 40 of the said Act states:

> 'Sec. 40 of the Code of Civil Procedure fixes ten years as the period of prescription for actions to recover real property, counted from the time the cause of action accrued. This is the applicable law because Article 116 of the New Civil Code provides that 'prescription already running before the effectivity of this Code (August 30, 1950) shall be governed by laws previously in force. The suit herein having been filed only on April 22, 1961, or more than ten (10) years from April 24, 1950, has prescribed.' (*Carillo v. de Paz*, 18 SCRA 467-468)

This present action for reconveyance was filed on March 27, 1962, or more than twenty (20) years x x x from February 9, 1931 is surely barred by the statutes of limitation."[4]

Private respondents appealed to the respondent Court of Appeals. The respondent court reversed the trial court and declared null and void the reconstituted title obtained by petitioner. The respondent appellate court held:

"Art. 1139 of the New Civil Code provides that actions prescribe by mere lapse of time fixed by law. In the case of *Talle v. CA*, 208 SCRA 266, it was ruled that actions for reconveyance based on fraud or on implied or constructive trusts prescribe in ten (10) years. But it is unsafe to assume that plaintiff's cause of action in this case accrued on February 9, 1931 or after the expiration of the four (4) year repurchase period in the Deed of Sale between Rafael Dizon and Francisco Contreras. The *pacto de retro* period is a personal prerogative of Rafael Dizon to exercise and is not applicable to herein plaintiff's who acquired the lot from Rafael Dizon's vendee (Francisco Contreras) only in December 27, 1957. In other words, the computation as to when herein plaintiff's cause of action accrued should not be counted from February 9, 1931.

Nonetheless, what seems to be the crucial point in this case is the Reconstituted Title No. RT-2063 (Exh. B) issued in the name of the heirs of Rafael Dizon. In the Amended Complaint, appellants question the validity of this title as having been issued out of an illegal reconstitution proceedings thus making said title null and

[4] The RTC Decision as quoted by the Court of Appeals in its Decision dated November 11, 1994, pp. 5-6, *Rollo*, pp. 41-42.

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void. Conversely, appellees maintain that the reconstitution of RT-2063 was done all in accordance with the procedure laid down by law.

We agree with the appellants.

Republic Act No. 26, is "THE ACT PROVIDING FOR A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS TITLE WHICH WERE LOST OR DESTROYED." As the title of the law suggests, it covers reconstitution of previously issued but lost or destroyed title over any parcel of land. In other words it presupposes that the lot had already been brought under the provisions of the Torrens System or Act 496. In obtaining a new title *in lieu* of the lost or destroyed one, the same Republic Act. No. 26 laid down procedures which must strictly be followed because it could be the source of anomalous titles or unscrupulously availed of as an easy substitute for original registration of title proceedings.

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In the same petition, Federico Dordas claimed that the lot has actually been in this possession and that all improvements thereon belong to him with no one having any adverse interests whatsoever. This fact is re-echoed in the order granting the reconstitution (pp. 72-73, RTC Records) saying that Dordas is the sole occupant of the lot. Notably, these allegations were overpowered and belied by the unrebutted testimonies of plaintiff's witnesses and Exhs. C, D, E, F & G, which are the pictures of the houses of Filomeno, Celoria, Remedios Tinsay, Rosalina Banilla, the Liberal Party Headquarters and Diosdado Borres all standing within the lot, all establishing [that] the appellants are, in fact, in possession of the lot.

Moreover, Section 3 of Republic Act 26 provide:

'Sec. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, *in the following order*:

(a) The owner's duplicate of the certificate of titles;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property,

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or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said documents, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other documents which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost destroyed certificate of title.'

As the law mandates using the phrase "in the following order", the enumerated items become the only sources whereby a title may be reconstituted. When none of these itemized sources was submitted by Dordas in the reconstitution proceedings and instead relied heavily on tracing cloth and blueprint plan of Lot 1474 and its technical description which are not among those mentioned under Section 3 of Republic Act No. 26 the reconstitution suffers fatally. The two (2) pieces of documents plan and technical description, are mere additional requirements of the law in case reconstitution is to be made from sources in Section 2F or 3F of the act, that is, any other document, which in the judgment of the court is sufficient and proper basis for reconstituting the lost or destroyed certificate of title (Sec. 12. RA 26). But, in themselves, such plan and technical description of the lot are not recognized sources for reconstitution of title under Section 3 of Republic Act No. 26.

With regards to notices, Republic Act No. 26 requires that the petition be posted on the entrance of the provincial building and/or the municipal building of the municipality in which the land is situated, at least thirty (30) days prior to the date of hearing. The law also proscribes that copy of the notice sent by registered mail or otherwise at the expense of the petitioner which notice must state, among other things, *the names of the occupants or persons in possession of the property.* Again, Dordas miserably failed to comply with these requirements because notices were posted at the municipal hall of Ponteverde, Capiz when the property is already part of and located at the Municipality of Maayon, Capiz; and the certificate of posting was issued by the Chief of Police of Ponteverde, Capiz when it should have been the Chief of Police of Maayon, Capiz. The lame excuse given by Dordas in his amended answer in

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the case that he did not know that Diosdado Borres has a house on the lot because he was a full-time employee of Pila, Pres. Roxas, Capiz, or that, he had not in any way participated in the wrong posting of notices of the reconstitution proceedings all but prove the nullity, illegality and questionable character of the reconstitution proceedings, ultimately, leading to an irrefutable conclusion that reconstituted title No. RT-2063 is a farce. It established, furthermore, his bad faith in filing the reconstitution proceedings.

Eventually, if prescription must commence to run then it must be counted, at the very least, from the issuance of the order of reconstitution x x x. In effect, when this case was filed on March 27, 1962, barely a year from the order granting the reconstitution or from the issuance of reconstituted title No. RT-2063, plaintiff's cause of action has not prescribed, as yet."[5]

We agree with the foregoing disquisition of respondent Court of Appeals and accordingly deny the instant petition for utter lack of merit.

Against private respondents' claim of ownership over the subject parcel of land, petitioners marshall their reconstituted title and adamantly claim the same to be superior to private respondents' title. We perceive, however, overwhelmingly credible findings by the respondent appellate court as to the fatal flows in the reconstitution proceedings which greatly erode the validity of petitioners' reconstituted title. Significantly, petitioners do not deny that in the reconstitution proceedings, they only presented the tracing cloth and blueprint plan and none of any of the documents required under R.A. No. 26. Non-compliance with the strict requirements of R.A. No. 26 bars the vesting in the trial court of the jurisdiction over the reconstitution proceedings.

"x x x [T]he jurisdiction or authority of the CFI [now the RTC] is conferred upon it by RA No. 26 x x x. The Act specifically provides the special requirements and mode of procedure that must be followed before the court can act on the petition and grant to the petitioner

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[5] Decision of the Court of Appeals dated November 11, 1994, pp. 6-10; *Rollo*, pp. 42-46.

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the remedy sought for. These requirements and procedure are mandatory."[6]

The rationale underlying this rule concerns the nature of the conferment in the trial court of the authority to undertake reconstitution proceedings. In all cases where the authority to proceed is conferred by a statute and the manner of obtaining jurisdiction is mandatory, the same must be strictly complied with, or the proceedings will be utterly void.[7]

The foregoing principle applies in the instant case not only because of the non-compliance by petitioners with the documentary prerequisites in judicial reconstitution of title but also because petitioners failed to satisfy the publication requirement under R.A. No. 26. Private respondents who are in actual possession of the properties were not properly notified.

Notice of hearing of the petition for reconstitution of title must be served on the actual possessors of the property. Notice thereof by publication is insufficient. Jurisprudence is to the effect settled that in petitions for reconstitution of titles, actual owners and possessors of the land involved must be duly served with actual and personal notice of the petition.[8]

In view of all the foregoing, we uphold the ruling of respondent Court of Appeals as regards the fact that private respondents have a better right to the ownership of the real property in question, respondent Court of Appeals having correctly nullified and set aside petitioners' reconstituted TCT No. RT-2063.

WHEREFORE, the instant petition is HEREBY DENIED for utter lack of merit.

Costs against petitioners.

SO ORDERED.

Padilla (Chairman), Vitug, and *Kapunan, JJ.,* concur.
Bellosillo, J., took no part. Related to parties.

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[6] Director of Lands *vs.* Court of Appeals, 102 SCRA 370, 435.

[7] *Director v. CA, et al.*, 102 SCRA 370; *Register of Deeds of Malabon v. RTC, Malabon, M.M., Br.*, 181 SCRA 788.

[8] *Alabang v. Valenzuela*, 116 SCRA 277; *Serra Serra v. CA*, 195 SCRA 482.