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2) On March 28, 1977, the appellate court issued a Resolution denying the motion for reconsideration of its January 31, 1977 decision;

3) The decision in the main case became final and executory on March 30, 1977 as reflected in an "ENTRY OF JUDGMENT" issued by the clerk of court of the Court of Appeals; and

4) The records of the case (CA-G.R. No. 42740-R, No. 67385 in the lower Court) were remanded by the Court of Appeals to the Clerk of Court, Court of First Instance, Manila in a transmittal Order dated May 13, 1977.

The remand of records of Civil Case No. 67385 is the last entry in the rollo retained by the Court of Appeals.

Under the circumstances, therefore, the issue as to whether or not the execution pending appeal of the judgment in Civil Case No. 67385 constituted grave abuse of discretion has become moot and academic.

WHEREFORE, the instant petition is hereby DISMISSED for being moot and academic. No costs.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Plana, Vasquez and *Relova, JJ.,* concur.

Melencio-Herrera, JJ., is on leave.

FIRST DIVISION

[G.R. No. L-32694. July 16, 1982]

FIDEL SILVESTRE, petitioner, *vs.* COURT OF APPEALS and RUFINO DIMSON (deceased), Substituted by MARIA CAILLES VDA. DE DIMSON, et al., respondents.

[G.R. No. L-33119. July 16, 1982]

SECRETARY OF AGRICULTURE and NATURAL RESOURCES, petitioner, *vs.* COURT OF APPEALS and RUFINO DIMSON (deceased), Substituted by MARIA CAILLES VDA. DE DIMSON, et al., respondents.

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SYNOPSIS

In 1958, respondent Dimson filed an action in the Court of First Instance for reconveyance of Lot No. 1185 and for the cancellation of the homestead patent issued by the Secretary of Agriculture in favor of petitioner Silvestre on the ground that said land was private land and could not be the subject of a homestead patent, having been adjudicated in favor of his predecessors-in-interest in a decision in a cadastral proceeding. Dimson alleged that by virtue of a "Compromiso de Venta" executed by the owners of said land, he took possession of said land and that since 1927, he paid all real estate taxes due thereon. Petitioner Silvestre maintained that he is the true owner of the lot in question, having acquired the same through homestead patent issued by the Secretary of Agriculture after a declaration of the Director of Lands that said land was public land; and that he has been in actual and open possession of the same since 1927 and has been paying realty taxes thereon. The trial court dismissed the complaint, declaring the Original Certificate of Title in the name of Silvestre valid and subsisting. However, the Court of Appeals, reversed the trial court's decision holding that the land was private land, consequently, the homestead patent in favor of petitioner was void *ab initio*. Hence, this appeal by Certiorari.

The Supreme Court set aside the decision of the Court of Appeals and reinstated the decision of the Court of First Instance. It held that the decision rendered by the cadastral court in favor of respondent's predecessors-in-interest did not settle once and for all the ownership of the lot in question because no decree of registration and/or original title was issued in favor of respondent's predecessors-in-interest; that consequently the promise to sell executed in respondent's favor by his predecessor-in-interest did not ripen into a consummated sale; and that respondent's cause of action has already prescribed, one year having expired after the registration of the lot under the Torrens System in 1956.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DEGREE OF PROOF IN ANNULMENT OF TITLE TO LAND.— The trial court correctly applied the established legal principle that in cases of annulment and/or reconveyance of title, a party seeking it should establish not merely by preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his.

2. LAND REGISTRATION; LAND REGISTRATION ACT; REGISTRATION DEFINED.— The decision of the trial court in a land registration case, ordering the issuance of a decree, is not in itself

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a decree of registration within the meaning of Section 38 of the Land Registration Law (Land Titles and Deeds, Noblejas, page 85, Revised Edition, 1968). It is expressly required by law that all patents or certificates for lands of the public domain that may be granted be registered in accordance with Section 122 of the Land Registration Act. Actual conveyance of such land is to be effective only upon registration which shall be the operative act to convey and affect the land (Section 107, Commonwealth Act 141).

3. CIVIL LAW; CONTRACTS; A MERE PROMISE TO SELL DOES NOT PASS TITLE.— The "Compromiso de Venta" which is a mere promise by the spouses Mariano Batungbakal and Hilaria Vergara to sell to respondent the lot in question, in effect did not materialize. The Batungbakal spouses' failure to register the lot in question prevented the alleged promise to sell from ripening into a consummated sale. With the non-fulfillment of this condition, the transaction never progressed beyond being a mere promise and respondent never acquired the interest he attributes to himself, for a promise to sell or buy real estate does not pass title therein but merely give the contracting parties the right to demand fulfillment of the contract in proper cases (Mas *vs.* Lanuza, 5 Phil. 457).

4. LAND REGISTRATION; REGISTRATION OF HOMESTEAD PATENTS UNDER LAND REGISTRATION ACT; EFFECT THEREOF.— The homestead patent having been registered, it was brought under the operation of the Land Registration Act which provides, under Section 38 thereof, that upon the expiration of one year, within which a petition to review the decree of registration may be filed, said decree and title issued pursuant thereto became incontrovertible and may no longer be changed, altered or modified, much less set aside (Lahora *vs.* Dayanhirang, 39 SCRA 346; Firmado *vs.* Tutaan, 53 SCRA 505).

APPEARANCES OF COUNSEL

Restituto G. Martinez for petitioner Silvestre.
The Solicitor General for petitioner Sec. of Agriculture.
Arturo Castillo Reyes for private respondents.

DECISION

TEEHANKEE, *Acting C.J.*:

In separate but consolidated appeals by certiorari, private petitioner Fidel Silvestre (in Case No. L-32694) and petitioner

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Secretary of Agriculture and Natural Resources (in Case No. L-33119) both seek the reversal of the decision of respondent Court of Appeals* which set aside the decision of the Court of First Instance of Bataan** dismissing the complaint filed by respondent Rufino Dimson (now deceased and substituted by his Heirs)+ to declare null and void Homestead Patent No. 72493 and Original Certificate of Title No. 292, granted by petitioner Secretary in favor of petitioner Fidel Silvestre and instead rendered judgment as prayed for by respondent Dimson in his complaint.

The antecedent facts follow:

On May 2, 1959, respondent Rufino Dimson as plaintiff, filed an action in the Court of First Instance of Bataan against herein petitioner for the reconveyance of Lot No. 1185 of the Cadastral Survey of Hermosa, Bataan, containing an area of 124,135 square meters and for the cancellation of the homestead patent and certificate of title issued in favor of defendant (now petitioner) Fidel Silvestre on the ground that the property was private land and not a disposable or alienable public land which could be granted as homestead patent by the Secretary of Agriculture and Natural Resources. Respondent-plaintiff alleged, among other things that the lot in question was, before World War II adjudicated in a cadastral case in favor of the spouses Mariano Batungbakal and Hilaria Vergara; that by virtue of a "Compromiso de Venta" executed by the said spouses sometime in 1927 over several properties, including the lot in question, he took possession of said Lot No. 1185; and has since 1927 paid all the real estate taxes due thereon. He further alleged that no decree of registration was issued due to the outbreak of war.

Petitioner, in his answer, maintained that he is the true owner of the lot in question, having acquired the same through

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* Sixth Division, then composed of Hermogenes Concepcion, Jr., Eulogio S. Serrano and Lourdes P. San Diego in CA-G.R. 28696-R.

** Presided by then Judge Ambrosio T. Dolete.

\+ Resolution of March 17, 1975.

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Homestead Patent No. 72493 issued by the Secretary of Agriculture and Natural Resources and that he has been in actual and open possession of the same since 1927 and has been paying the realty taxes thereon. As special defenses, petitioner alleged:

"1. That assuming, without admitting, a decision was rendered adjudicating Lot 1185 allegedly to the spouses Mariano Batungbakal and Hilaria Vergara, it did not and could not have had the effect of a valid conveyance as no decree or title was ever issued for the property;

2. That consequently, assuming, without admitting, that the Batungbakal spouses sold Lot 1185 to herein plaintiff, the latter never acquired title thereto as the spouses did not possess title themselves;

3. That assuming, without admitting, that the alleged cadastral decision was rendered, it cannot prevail over the title of the defendant which was issued in accordance with law."

Petitioner Secretary of Agriculture and Natural Resources, on his part, answered that the homestead patent was duly issued in favor of petitioner by the Undersecretary of Agriculture and Natural Resources, when, after the corresponding investigation by the Director of Lands it was found to be public, disposable under the Homestead Law.

After trial, the trial court rendered judgment dismissing the complaint and declaring Original Certificate of Title 292 of the Register of Deeds of Bataan as valid, legal and subsisting in the name of petitioner Fidel Silvestre.

On appeal, respondent Court of Appeals reversed the trial Court's judgment per its decision dated August 17, 1970. The appellate court held that the property in question was private land since it was previously adjudged to the spouses Mariano Batungbakal and Hilaria Vergara in a cadastral proceeding even before the outbreak of World War II and ruled that the homestead patent as well as the certificate of title granted in favor of petitioner were null and void *ab initio*.

Hence, this petition of petitioner Silvestre (in Case No. L-32694) which was adopted as petitioner Secretary's own by the Solicitor

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General on his behalf (in Case No. L-33119).[1] Petitioner's brief on appeal was likewise adopted by the Solicitor General as petitioner Secretary's own brief.[2] The Court finds merit in the petition.

The trial court correctly applied the established legal principle that in cases of annulment and/or reconveyance of title, a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his. In the case at bar, respondent Dimson not only failed to establish by a preponderance of evidence that he has a better right over the land in dispute but even failed to establish private ownership of his alleged predecessor in interest. Although it is alleged that a decision was rendered in a cadastral case in favor of the spouses Mariano Batungbakal and Hilaria Vergara, respondent failed to produce a copy thereof, (certified or reconstituted) or to show when the alleged decision was rendered, but merely asserts that it was before the war.

On the contrary, petitioner fully established by convincing proofs that Lot 1185 was formerly public land, applied for under the homestead law, patented on November 27, 1956 and the corresponding certificate of title issued on December 8, 1956. As summarized succinctly by the trial court,[3]

"The evidence of the defendants in this case amply shows that defendant Fidel Silvestre has been occupying this parcel of land since 1923 and his occupation is coupled with a claim of ownership. An application for a homestead grant from the proper authorities has been filed. Exhibit 1 is *dated September 3, 1929* which is a *survey notification card given to* defendant *Fidel Silvestre.* It is a notice by an official of the Bureau of Lands who was conducting the cadastral survey of the area where defendant Silvestre was occupying a lot, that is Lot 1185, that said parcel of land is to be surveyed under the cadastral survey. This exhibit is *more than thirty*

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[1] Record, at page 23, Resolution of February 2, 1971.

[2] Record, at page 34, Resolution of March 25, 1971.

[3] Record on Appeal, at pages 92-94; italics supplied.

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(30) years old and bears the same Lot 1185, which is the same land involved in the present controversy. This piece of document is a strong corroborating evidence to the claim of Silvestre that he has been in possession of the land since the year 1923. To make his possession of a portion of the public domain ripen into ownership he filed an application for homestead. There are several pieces of documentary evidence presented by him and his co-defendants which show that he filed an application for homestead long before the war, since 1923 according to him. Exhibit 1-Silvestre is dated April 1, 1930 and unmistakably shows that Fidel Silvestre had *filed an application for homestead covering Lot 1185 before said date.* This exhibit is a decision of the Director of Lands which *settled the conflict of applications* for said Lot No. 1185 and another lot, Lot 1186. This is reinforced by his Exhibits 9, 10 and 11 and by Exhibits 1, 2, 3, 4 and 5 of defendant Undersecretary of Agriculture and Natural Resources. All these exhibits indicate that Fidel Silvestre has been in possession of the parcel of land for more than thirty (30) years already."

The above specifics and particulars of the evidence showing that petitioner Silvestre had been occupying the land since 1923 and his occupation coupled with a claim of ownership, to legalize which, he filed an application for homestead long before the war as evidenced by authentic old records of the Bureau of Lands amply demonstrate the respondent appellate court's contrary finding that respondent Dimson "sufficiently established (his) possession—which commenced in the year 1927 with the execution of the Escritura—continued uninterruptedly until the action was commenced" [4] in 1959 is based on a gross misappreciation of the evidence as well as a gross error that the alleged execution in 1927 of the Escritura of "Compromiso de Venta" in favor of Dimson by the Batungbakal spouses was tantamount to "possession" of Dimson when per his own complaint it is admitted that "due to the outbreak of World War II—no decree of registration and/or no original title was issued" in favor of the said spouses.[5] If indeed respondent Dimson

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[4] Record, at page 18.

[5] Par. 10, Complaint, at page 4, Record on Appeal.

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had been in possesion, then he could have first asserted his alleged ownership and possession and waited for petitioner Silvestre to controvert his possession and seek recovery of the land, instead of belatedly suing to annul Silvestre's torrens title and to recover actual damages. This is further bolstered by the fact that respondent Dimson started paying taxes on the land only in 1958 apparently in preparation for his suit contrary to his allegation in his complaint that he had allegedly paid all the real estate taxes thereon before World War II. [6] As found by the trial court "plaintiff (Dimson) began paying these taxes on the land on May 31, 1958 and did *not* present any evidence of payment of taxes over the same parcel of land *prior to that date.* As regards the payment of real estate taxes by Fidel Silvestre only on *April 11 1957,* suffice it to say that a parcel of land which is *part of the public domain* is only declared for taxation purposes in the name of a person *once the same is patented* in the name of said person. The patent and the title in this case were issued sometime in November and December, 1956, respectively." [7]

Assuming even that the lot in question was adjudicated in a cadastral proceeding in favor of the spouses Mariano Batungbakal and Hilaria Vergara before World War II, this did not and could not have had the effect of a valid conveyance for it appears that no title or decree was ever issued for the property. The decision of the trial court in a land registration case, ordering the issuance of a decree, is not in itself a decree of registration within the meaning of Section 38 of the Land Registration Law.[8] It is expressly required by law that all patents or certificates for lands of the public domain that may be granted be registered in accordance with Section 122 of the Land Registration Act. Actual conveyance of such land is to be effective only upon registration which shall be the operative act to convey and affect the land.[9]

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[6] Par. 8, Complaint, at pages 3-4, Record on Appeal.

[7] Record on Appeal, at page 96; italics supplied.

[8] Land Title & Deeds, Noblejas, p. 85 Revised Edition, 1968.

[9] Section 107, Commonwealth Act 141.

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Section 122 of the Land Registration Act provides that the deed, grant or instrument of conveyance from the government to the grantee shall not take effect as a conveyance or bind the land, but shall operate only as contract between the government and the grantee and as evidence of authority to the clerk of register of deeds to make registration. The act of registration is the operative act which conveys and affects the land. The existence of a decision rendered by a court in a cadastral case does not settle once and for all the ownership of the property for the issuance of a decree is still necessary and such decree is still subject to review within one year from the date of its issuance. Thus, Rufino Dimson never acquired title to the property by virtue of the "Compromiso de Venta" as his alleged vendors, the Batungbakal spouses, themselves did not acquire title to the lot.

The "Compromiso de Venta" which is a mere promise by the spouses Mariano Batungbakal and Hilaria Vergara to sell to respondent the lot in question, in effect did not materialize. The Batungbakal spouses' failure to register the lot in question prevented the alleged promise to sell from ripening into a consummated sale. With the non-fulfillment of this condition, the transaction never progressed beyond being a mere promise and Dimson never acquired the interest he attributes to himself, for a promise to sell or buy real estate does not pass title therein but merely gives the contracting parties the right to demand the fulfillment of the contract in proper cases.[10]

Respondent Dimson who failed to file respondent's brief, has not disputed nor refuted petitioners' assertion in their brief that

"Note is to be taken at this point of the similar failure of private respondent Rufino Dimson to obtain for himself, assuming he is entitled to it, of a decree in the alleged cadastral case. Dimson is a land owner of note and as such well versed in the mechanics and intricacies of real estate ownership. As a matter of fact, he owns vast areas of land within the vicinity of Lot No. 1185. Why then, it may be asked did not even attempt to

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[10] Mas *vs.* Lanuza, 5 Phil. 457.

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consolidate the ownership he claims over Lot No. 1185 by securing a decree and registering his title thereto? It was alleged in the trial court that respondent Dimson has other properties adjoining Lot No. 1185 which are all titled. When petitioner Silvestre filed his homestead application for Lot No. 1185, respondent Dimson could have right then and there filed his objection or opposition on the ground of his alleged ownership of the lot. But up to the point when the petitioner made final proof and received his patent—which involved public notices—respondent Dimson never lifted a finger or raised a voice to dispute the government's action and petitioner Silvestre's continued possession and cultivation of Lot No. 1185. We contend that it would now be the height of injustice to take away from the petitioner Lot No. 1185 in the face of the inability of the opposing claimant to assert the dubious right he now belatedly claims. [11]

Moreover, respondent Dimson's action has already prescribed. Inasmuch as title to the land in dispute had already been registered under the Torrens System in the name of petitioner Fidel Silvestre since December 8, 1956, the decree of registration can no longer be impugned, even on ground of fraud, as more than one year had already elapsed when the complaint was filed on May 2, 1959. The homestead patent having been registered, it was brought under the operation of the Land Registration Act which provides, under Section 38 thereof, that upon the expiration of one year within which a petition to review the decree of registration may be filed, said decree and the title issued pursuant thereto become incontrovertible and may no longer be changed, altered or modified, much less set aside. [12] This is necessarily the rule in order to achieve the objectives of the Torrens System of guaranteeing the indefeasibility of a Torrens title to real property.[13]

Accordingly, the decision of the Court of Appeals in CA-G.R. No. 28696-R is hereby set aside and the decision of the Court of First Instance of Bataan in Civil Case No. 2593 is hereby reinstated *in toto,* with costs against private respondents.

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[11] Petitioner's brief, at pages 10-11.

[12] Lahora *vs.* Dayanhirang, Jr., 39 SCRA 346; Firmado *vs.* Tutaan, 53 SCRA 505.

[13] Cabaños *vs.* Register of Deeds, 40 Phil. 620.

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SO ORDERED.

Makasiar, Plana, Vasquez and *Relova, JJ.*, concur.
Gutierrez, Jr., J., took no part.
Melencio-Herrera, J., is on leave.

FIRST DIVISION

[G.R. No. L-36094. July 16, 1982]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* ANASTACIO DELASA, defendant-appellant.

SYNOPSIS

The victim, Anselmo Pondoyo who was on his way home with his wife and his son, was walking ahead when he was seen by his wife conversing with the accused who later stabbed him twice at the back with a bolo while the victim was crossing the bridge. This notwithstanding, the latter was able to crawl a short distance when his pants was slashed by the accused and the sum of ₱500.00 was taken away. The victim died because of his stab wounds. At the trial, the eyewitnesses of the prosecution were the wife and the son of the deceased who positively identified the accused. On the otherhand, the accused interposed the defense of alibi. The trial court found the accused guilty of robbery with homicide and sentenced him to *reclusion perpetua*. While pending appeal in the Supreme Court, the accused filed a motion for new trial on the ground of newly discovered evidence based on the retractions of the prosecution witnesses and a statement of an alleged actual witness.

The Supreme Court ruled that the defense of alibi does not merit consideration in view of the positive identification of the appellant as the killer while the retractions of the principal witnesses and the alleged new testimony cannot be considered as newly discovered evidence.

Appealed decision, affirmed.

SYLLABUS

1. REMEDIAL LAW; APPEAL; FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES WILL NOT BE