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SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and *Ynares-Santiago, JJ.,* concur.

EN BANC

[G.R. No. 130876. January 31, 2002]

FRANCISCO M. ALONSO, substituted by his heirs, *petitioners, vs.* **CEBU COUNTRY CLUB, INC.,** *respondent.*

SYNOPSIS

Petitioner Francisco Alonso, who died *pendente lite* and substituted by his legal heirs, was the only son and sole heir of the late Tomas Alonso and Asuncion Medalle. Sometime in 1992, petitioner discovered documents and records showing that his father acquired Lot No. 727 of the Banilad Friar Lands Estate from the Government of the Philippine Islands in or about the year 1911 in accordance with the Friar Lands Act (Act No. 1120). The documents showed that the original vendee of the subject lot assigned his sales certificate to petitioner's father, who completed the required installment payments thereon under Act No. 1120 and was consequently issued a patent. The Director of Lands executed a final deed of sale in favor of petitioner's father. However, the deed was not registered with the Register of Deeds because of lack of technical requirements as required by law. Upon investigation of the status of the land, petitioner found out that the title of Lot No. 727 had been administratively reconstituted from the owner's duplicate under a Transfer Certificate of Title in the name of United Service Country Club, Inc., predecessor of Cebu Country Club, Inc. Upon order of the court, the name of the registered owner in the said TCT was changed to Cebu Country Club, Inc. Petitioner filed with

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the Regional Trial Court, a complaint for declaration of nullity and non-existence of deed/title, cancellation of certificates of title and recovery of property against defendant Cebu Country Club, Inc. which the trial court decided in favor of the defendant. On appeal, the Court of Appeals affirmed the decision of the lower court.

The Supreme Court ruled that neither Tomas Alonso nor his son petitioner Francisco Alonso, or the latter's heirs, are the lawful owners of Lot No. 727 in dispute. Neither has the respondent Cebu Country Club, Inc. been able to establish a clear title over the contested estate. The reconstitution of a title is simply the re-issuance of a lost duplicate certificate of title in its original form and condition. It does not determine or resolve the ownership of the land covered by the lost or destroyed title. A reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby.

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION ACT (ACT NO. 496); REGISTRATION OF DEED OF CONVEYANCE SERVES AS OPERATIVE ACT TO CONVEY LAND UNDER TORRENS SYSTEM.**— "Under the law, it is the act of registration of the deed of conveyance that serves as the operative act to convey the land registered under the Torrens system. The act of registration creates constructive notice to the whole world of the fact of such conveyance."

2. **REMEDIAL LAW; ACTIONS; RECONVEYANCE BASED ON FRAUD; IMPUTATIONS OF FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE; CASE AT BAR.**— Imputations of fraud must be proved by clear and convincing evidence. Petitioner failed to adduce evidence of fraud. In an action for re-conveyance based on fraud, he who charges fraud must prove such fraud in obtaining a title. "In this jurisdiction, fraud is never presumed." The strongest suspicion cannot sway judgment or overcome the presumption of regularity. "The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass." Worse, the imputation of fraud was so tardily brought, some forty-four (44) years or sixty-one (61) years after its supposed

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occurrence, that is, from the administrative reconstitution of title on July 26, 1948, or from the issuance of the original title on November 19, 1931, that verification is rendered extremely difficult, if not impossible, especially due to the supervening event of the second world war during which practically all public records were lost or destroyed, or no longer available.

3. **CIVIL LAW; REPUBLIC ACT NO. 26; RECONSTITUTION OF TITLE; NOT BARRED BY LACK OF TECHNICAL DESCRIPTION INSCRIBED IN THE RECONSTITUTED TITLE.**— Petitioners next question the lack of technical description inscribed in the reconstituted title in Cebu Country Club, Inc.'s name. This is not a bar to reconstitution of the title nor will it affect the validity of the reconstituted title. A registered owner is given two (2) years to file a plan of such land with the Chief of the General Land Registration Office. The two-year period is directory, not jurisdictional. In other words, the failure to submit the technical description within two (2) years would not invalidate the title. At most, the failure to file such technical description within the two-year period would bar a transfer of the title to a third party in a voluntary transaction.

4. **ID.; POSSESSION; TAX DECLARATIONS AND REALTY TAX PAYMENTS; GOOD INDICIA OF POSSESSION IN THE CONCEPT OF OWNER.**— This Court has ruled that although tax declarations or realty tax payments are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of owner for no one in his right mind will be paying taxes for a property that is not in his actual or constructive possession.

5. **REMEDIAL LAW; ACTIONS; PRESCRIPTION OF ACTIONS; IMPLIED OR CONSTRUCTED TRUST; ACTION BASED THEREON PRESCRIBES IN TEN YEARS; CASE AT BAR.**— "An action based on implied or constructed trust prescribes in ten (10) years... from the time of its creation or upon the alleged fraudulent registration of the property." Petitioner Francisco's action in the court below was basically one of re-conveyance. It was filed on September 25, 1992, sixty-one (61) years after the title was issued on November 19, 1931, and forty-four (44) years after its reconstitution on July 26, 1948. Thus, the failure of petitioner Francisco and his father to assert ownership of the land for

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over sixty (60) years during which the Cebu Country Club, Inc. was in possession is simply contrary to their claim of ownership. Petitioner Francisco's and his father's "long inaction or passivity in asserting their rights over disputed property will preclude them from recovering the same."

6. **ID.; ID.; ACTION FOR RECONVEYANCE; MUST BE FILED WITHIN TEN YEARS FROM DISCOVERY OF FRAUD.—** [A]ction for re-conveyance based on fraud must be filed within ten (10) years from discovery of the fraud which as to titled lands referred to the registration of the title with the register of deeds. "An action for re-conveyance is a legal remedy granted to a landowner whose property has been wrongfully or erroneously registered in another's name, but then the action must be filed within ten years from the issuance of the title since such issuance operates as a constructive notice." In addition, the action is barred by laches because of the long delay before the filing of the case.

7. **ID.; ID.; JUDGMENT *IN REM, IN PERSONAM* AND *QUASI IN REM,* DEFINED.—** [T]he rule is that: (1) a judgment *in rem* is binding upon the whole world, such as a judgment in a land registration case or probate of a will; (2) a judgment *in personam* is binding upon the parties and their successors in interest but not upon strangers. A judgment directing a party to deliver possession of a property to another is *in personam;* it is *binding only against the parties* and their successors in interest by title subsequent to the commencement of the action. "Suits to quiet title are not technically suits *in rem,* nor are they, strictly speaking, *in personam,* but being against the person in respect of the *res,* these proceedings are characterized as *quasi in rem.* The *judgment* in such proceedings *is conclusive only between the parties."* In this case, the action below is basically one for declaration of nullity of title and recovery of ownership of real property, or re-conveyance. "An action to recover a parcel of land is a real action but it is an action *in personam,* for it binds a particular individual only although it concerns the right to a tangible thing." "Any judgment therein is binding only upon the parties properly impleaded."

8. **CIVIL LAW; DAMAGES; AWARD OF ATTORNEY'S FEES AND EXPENSES OF LITIGATION, WHEN PROPER.—** An award of attorney's fees and expenses of litigation is proper under the circumstances provided for in Article 2208 of the

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Civil Code, one of which is when the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered and when the civil action or proceeding is clearly unfounded and where defendant acted in gross and evident bad faith.

MELO, *J., dissenting opinion:*

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE COURT OF APPEALS, GENERALLY BINDING UPON THE SUPREME COURT; EXCEPTION; CASE AT BAR.**— The supposed parent title, TCT No. 1021, has not been shown to be a transfer from the mother titles, OCTs No. 251, 252, and 253. And while private respondent alleged in its answer to the complaint below that it had acquired Lot No. 727 in good faith and for value, it failed to prove that it did so. Neither did it allege from whom it bought the property. To my mind, the evidence of fraud is clear and convincing. The rule that factual findings of the Court of Appeals are binding upon this Court finds no application here, there being material facts and circumstances which, plainly, have been overlooked but which, when taken into account, will alter the result (*Morales vs. Court of Appeals,* 197 SCRA 391 [1991]).

2. **CIVIL LAW; REPUBLIC ACT NO. 26; RECONSTITUTION OF TITLE; JUDICIAL AND ADMINISTRATIVE RECONSTITUTION, DISTINGUISHED.**— As regards the issue of nullity due to want of jurisdiction, it is essential to note the difference in law between judicial and administrative reconstitution under Republic Act No. 26. The authority granted by said law to the Register of Deeds to make an administrative reconstitution of a lost or destroyed transfer certificate of title is limited by Section 5 to only two kinds of source documents: (a) the owner's duplicate of the certificate of title, and (b) the co-owner's, mortgagee's, or lessee's duplicate of the certificate of title. These two kinds are mentioned in paragraphs (a) and (b) of Section 3, Republic Act No. 26. On the other hand, the power of a court to effect a judicial reconstitution of a lost or destroyed transfer certificate of title encompasses all the six (6) kinds of source documents enumerated by Section 3.

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3. **ID.; LAND REGISTRATION ACT (ACT NO. 496); TECHNICAL DESCRIPTION OF LAND AS DETERMINED BY LAND REGISTRATION COURT SHALL BE INSCRIBED UPON DECREE OF REGISTRATION; CASE AT BAR.**— The owner's duplicate of the certificate of title, if authentic, cannot be without a technical description of the covered lot, in view of the provisions of Sections 40, 41, and 42 of Act No. 496. The clear mandate of these provisions is that the technical description of the land as determined by the land registration court shall be inscribed upon the decree of registration, which in turn shall be transcribed upon the original certificate of title and, in the event of a transfer, upon the transfer certificate of title. To make a sweeping pronouncement that the lack of a technical description in a reconstituted title is not a bar to reconstitution of the title is to be imprecise. It may be correct in the case of a judicial, but wrong in the case of an administrative, reconstitution of a lost or destroyed transfer certificate of title.

4. **ID.; REPUBLIC ACT NO. 26; RECONSTITUTION OF TITLE; RECONSTITUTED TITLE MERELY REPRODUCES THE CONTENTS OF THE SOURCE DOCUMENT USED.**— [T]he absence of the technical description from the face of the reconstituted title, TCT No. RT-1310 (T-11351), unmistakably establishes the spuriousness of the "missing" source document used in its administrative reconstitution. The reason is simple: the source document itself also did not have it. Reconstitution denotes the restoration of a lost or destroyed certificate of title in its original form or condition (*Zafra Vda. De Anciano vs. Caballes,* 93 Phil. 876). In other words, the reconstituted title merely reproduces the contents of the source document used; it mirrors the latter document. Indubitably, the source document used in the administrative reconstitution of private respondent's title was not a genuine owner's duplicate for lack of a technical description of the land. Consequently, the Register of Deeds had no authority at all to effect an administrative reconstitution of this particular title.

5. **ID.; ID.; ID.; IF BASED ON SPURIOUS OWNER'S DUPLICATE, CONSIDERED A VOID ACT.**— Acts executed against the provisions of mandatory or prohibitory laws shall be void unless the law itself authorizes their validity (Article 5, Civil Code). The administrative reconstitution of title on

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the basis of a fake or spurious owner's duplicate is thus undoubtedly a void act. The infirmity goes into the very authority of the Register of Deeds to act upon an application for reconstitution anchored upon a fake or spurious owner's duplicate of a lost or destroyed certificate of title.

6. **ID.; PUBLIC LAND ACT; PUBLIC LANDS; GOVERNMENT'S FAILURE TO ISSUE A DEED OF FINAL CONVEYANCE AFTER FULL PAYMENT OF THE PRICE DOES NOT PRECLUDE PURCHASER FROM ACQUIRING OWNERSHIP OF THE PROPERTY.**— This Court has been consistent in holding that the only interest left with the government upon the issuance of the certificate of sale is that of a lien holder or mortgagee, and only to secure payment of the balance of the price. Thus we held in *De la Torre vs. CA* (325 SCRA 11 [2000]), that "the non-payment of the full purchase price *is the only recognized resolutory condition* in the case of friar lands" (See also *Pugeda vs. Trias, supra; Jovellanos vs. CA,* 210 SCRA 126 [1992]). Outside of the protection given by this lone resolutory condition, the government retains no right as an owner (*Alvarez vs. Espiritu, supra*). It was thus correctly held in *Bacalzo vs. Pacada* and in *De la Torre vs. CA that the government's failure to issue a deed of final conveyance after full payment of the price does not preclude the purchaser from acquiring the ownership of the property. Such full payment extinguishes totally all interest of the government in the property.*

7. **ID.; ID.; ID.; REVERSION OF OWNERSHIP THEREOF, POSSIBLE ONLY UPON PROOF OF FRAUDULENT ISSUANCE OF PATENT OR CERTIFICATE OF TITLE; CASE AT BAR.**— [T]he Solicitor General, in his Comment, expressly declared that "it can no longer be disputed that petitioner's father, Tomas Alonso, *had validly acquired* the disputed Lot 727 by virtue of a conveyance from the Government way back in 1926." That admission binds the government. If, therefore, Lot No. 727 was validly acquired from the government way back in 1926, as admitted by the counsel for the State, or — to be more precise — on March 19, 1919, the date of full compliance by Tomas Alonso with the legal requirements as held in *Bacalzo,* then unquestionably the government's interest in Lot No. 727 had long ago disappeared or been extinguished. Reversion of ownership over public lands is legally possible

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only upon proof of fraudulent issuance of a patent or certificate of title (*Republic vs. CA,* 258 SCRA 223 [1996]). The record of this case shows that fraud in the issuance of the certificate of sale, patent, and deed of final conveyance to Tomas Alonso has neither been alleged nor made the subject of evidence. In fine, it is not the sale of Tomas Alonso that has been assailed in this action on grounds of fraud or any other cause of invalidity, but the fraud and jurisdictional infirmity afflicting the private respondent's reconstituted title.

8. **REMEDIAL LAW; ACTIONS; PRESCRIPTION OF ACTIONS; ACTION AGAINST VOID TITLE WHERE NULLITY SPRINGS FROM WANT OF JURISDICTION NEVER PRESCRIBES.**— The right to bring an action against a void title where the nullity springs from want of jurisdiction as in the case of the reconstituted title involved here never prescribes (*Ferrer vs. Bautista,* 231 SCRA 257 [1994]; *Agne vs. Director of Lands,* 181 SCRA 793 [1990]).

9. **ID.; ID.; LACHES; A DOCTRINE OF EQUITY WHICH THE COURT SHOULD NOT ALLOW TO BE USED AS SHIELD FOR FRAUD; CASE AT BAR.**— [L]aches is a doctrine of equity which the Court should not allow to be used as a shield for fraud or wrongdoing by one who is shown to have been responsible therefor, like private respondent (*Raneses vs. IAC,* 187 SCRA 397 [1990]). Neither should laches be applied when manifest wrong or injustice will result (*Santiago vs. CA,* 278 SCRA 98 [1997]). And in *Vergara vs. Vergara* (5 SCRA 53 [1962]), we held that the second element of laches — namely, "delay in asserting plaintiff's rights, he having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit" — is absent where plaintiff had no knowledge of the doing of the act complained of; hence, the delay in asserting such right, occasioned by such lack of knowledge, cannot give rise to the defense of laches. This element is not present in the case at bar. Neither Tomas Alonso nor his son, petitioner Francisco Alonso, knew about the fraudulent reconstitution of title effected by Cebu Country Club. Moreover, the requirement that plaintiff must have been afforded an opportunity to file a suit, has not been met. It is clear from the record that the opportunity to file suit arose only upon the discovery of the official documents that unequivocally established the fact that Lot No. 727 had indeed been fully

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acquired by Tomas Alonso, and such discovery was, precisely, what triggered the filing of the present suit.

10. **CIVIL LAW; LAND REGISTRATION ACT (ACT NO. 496); INCOMPLETE REGISTRATION LEGALLY PRODUCES ALL THE EFFECTS OF REGISTRATION DESPITE NON-ISSUANCE OF TRANSFER CERTIFICATE OF TITLE.—** [T]here is authority for the view that such incomplete registration legally produces all the effects of registration despite the non-issuance of a TCT in Tomas Alonso's name (*Government vs. Aballe,* 60 Phil. 986 [1934]; *DBP vs. Actg. Register of Deeds of Nueva Ecija,* 162 SCRA 450 [1988]). Consequently, Tomas Alonso became the registered owner of Lot No. 727 in contemplation of law (*Potenciano vs. Dineros,* 97 Phil. 196 [1955]). Despite not having been issued a certificate of title, he thereafter had ownership rights of which the entire world had notice (*Levin vs. Bass,* 91 Phil. 420 [1952]). Against those rights, acquisitive prescription never ran (Section 46, Act No. 496) both as regards Tomas Alonso and his son, Francisco Alonso, petitioner in this case; for if prescription is unavailing against the registered owner, it is equally unavailing against his hereditary successors (*Atun vs. Nunez,* 97 Phil. 762 [1955]; *Guinoo vs. Court of Appeals,* 97 Phil. 235 [1955]; *Barcelona vs. Barcelona,* 100 Phil. 251 [1956]).

11. **ID.; REPUBLIC ACT NO. 26; RECONSTITUTION OF TITLE; RECONSTITUTION NEITHER CONFIRMS OR ADJUDICATES OWNERSHIP.—** [R]eliance on the reconstituted title is legally improper as the settled rule is that reconstitution neither confirms nor adjudicates ownership (*Serra Serra vs. Court of Appeals,* 195 SCRA 482 [1991]), more so because private respondent's reconstituted title appears to have been issued without any showing, here or elsewhere, that the Original Certificates of Title No. 251, 252, and 253 from which the reconstituted title is supposed to have descended have been duly cancelled — another cogent reason for declaring it void (*Alabang Development Corporation vs. Valenzuela,* 116 SCRA 261 [1982]) and for declaring the petitioner's heirs as still the lawful owners of Lot 727.

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APPEARANCES OF COUNSEL

Benitez Parlade Africa Herrera Parlade & Panga Law Offices (PABLAW) for petitioners.

The Solicitor General for respondent.

D E C I S I O N

PARDO, *J.*:

The Case

The case is an appeal via *certiorari* from a decision of the Court of Appeals[1] affirming *in toto* that of the Regional Trial Court, Branch 8, Cebu City,[2] declaring that the title to the contested Lot No. 727, Banilad Friar Lands Estate, Cebu City, was validly re-constituted in the name of the Cebu Country Club, Inc. and ordering petitioners to pay attorney's fees of ₱400,000.00, and litigation expenses of ₱51,000.00, and costs.

In an appeal via *certiorari,* petitioners may raise only questions of law, which shall be distinctly set forth.[3] The jurisdiction of the Supreme Court in cases brought before it from the Court of Appeals is limited to the review of errors of law and not to analyze or weigh the evidence all over again, as its findings of facts are deemed final and conclusive.[4]

In this appeal, petitioners raise five (5) issues, all of which involve questions of fact that have been resolved by the trial court and the Court of Appeals in favor of the Cebu Country Club, Inc.

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[1] In CA-G.R. CV No. 41918, promulgated on March 31, 1997.

[2] In Civil Case No. CEB-12926, Decision, dated May 7, 1993, Original Record, pp. 569-596.

[3] Rule 45, Section 1, Revised Rules of Court.

[4] *De la Cruz v. Court of Appeals,* 333 Phil. 126, 136 [1996], citing *Gobonseng, Jr. v. Court of Appeals,* 316 Phil. 570 [1995]; *Co v. Court of Appeals*, 317 Phil. 230 [1995].

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The Facts

The facts, as found by the Court of Appeals, are as follows:

(1) Petitioner Francisco M. Alonso, who died *pendente lite* and substituted by his legal heirs, a lawyer by profession, the only son and sole heir of the late Tomas N. Alonso and Asuncion Medalle, who died on June 16, 1962 and August 18, 1963, respectively (Exhibits "P" and "P-1"). Cebu Country Club, Inc. is a non-stock, non-profit corporation duly organized and existing under Philippine Laws the purpose of which is to cater to the recreation and leisure of its members.

(2) Sometime in 1992, petitioner discovered documents and records — Friar Lands Sale Certificate Register/Installment Record Certificate No. 734, Sales Certificate No. 734 and Assignment of Sales Certificate (Exhs. "A", "J" and "K") — showing that his father acquired Lot No. 727 of the Banilad Friar Lands Estate from the Government of the Philippine Islands in or about the year 1911 in accordance with the Friar Lands Act (Act No. 1120). The documents show that one Leoncio Alburo, the original vendee of Lot No. 727, assigned his sales certificate to petitioner's father on December 18, 1911, who completed the required installment payments thereon under Act No. 1120 and was consequently issued Patent No. 14353 on March 24, 1926. On March 27, 1926, the Director of Lands, acting for and in behalf of the government, executed a final deed of sale in favor of petitioner's father Tomas N. Alonso (Exh. "C"). It appears, however, that the deed was not registered with the Register of Deeds because of lack of technical requirements, among them the approval of the deed of sale by the Secretary of Agriculture and Natural Resources, as required by law.

(3) Upon investigation of the status of the land, petitioner found out from the office of the Registrar of Deeds of Cebu City that title to Lot No. 727 of the Banilad Friar Lands Estate had been "administratively reconstituted from the owner's duplicate" on July 26, 1948 under Transfer Certificate of Title (TCT) No. RT-1310 (T-11351) in the name of United Service Country Club, Inc., predecessor of Cebu Country Club, Inc.

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On March 8, 1960, upon order of the Court of First Instance, the name of the registered owner in TCT No. RT-1310 (T-11531) was changed to Cebu Country Club, Inc. Moreover, the TCT provides that the reconstituted title was a transfer from TCT No. 1021 (Exh. "D" and sub-markings).

(4) At present, TCT No. RT-1310 (T-11351) has been partially cancelled when Lot No. 727 was subdivided in accordance with the Memorandum of Agreement entered into by Cebu Country Club, Inc. and Susana Ingles Marquiso and Simeon Ingles, Jr. by virtue of the ruling of the Court of Appeals in the case of *Heirs of Ramon Cabrera and Graciano Ingles v. Cebu Country Club, Inc.*[5] and affirmed by the Supreme Court in G.R. No. 60392, per resolution dated August 29, 1983. Lot 727-D-2 covered by TCT No. 94905 remains registered in the name of Cebu Country Club, Inc. (Exh. "D-2").

(5) In the firm belief that petitioner's father is still the rightful owner of Lot No. 727 of the Banilad Friar Lands Estate since there are no records showing that he ever sold or conveyed the disputed property to anyone, on July 7, 1992, petitioner made a formal demand upon Cebu Country Club, Inc. to restore to him the ownership and possession of said lot within fifteen (15) days from receipt thereof. He indicated that his claim was analogous to that of the heirs of the late Ramon Cabrera and Graciano Ingles which was upheld by the Court of Appeals (Exh. "H"). Cebu Country Club, Inc., however, denied petitioner's claim and refused to deliver possession to him.

(6) Left with no other recourse, on September 25, 1992, petitioner filed with the Regional Trial Court, Cebu City,[6] a complaint for declaration of nullity and non existence of deed/title, cancellation of certificates of title and recovery of property against defendant Cebu Country Club, Inc.[7] He alleged that the Cebu Country Club, Inc. fraudulently and illegally managed to secure in its name the administrative reconstitution of TCT

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[5] CA-G.R. CV No. 65559-R, promulgated on October 30, 1981.

[6] Assigned to Branch 8.

[7] Docketed as Civil Case No. CEB-12926.

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No. RT-13 10 (T-11351) despite the absence of any transaction of specific land dealing that would show how Lot No. 727 had come to pass to Cebu Country Club, Inc.; that TCT No. 11351 which is the source title of TCT No. RT-1310 (T-11351) does not pertain to Lot No. 727; that the reconstituted title which was issued on July 26, 1948, did not contain the technical description of the registered land which was inserted only on March 8, 1960, twenty-eight (28) years after the issuance of TCT No. RT-1310 (T-11351), hence, Cebu Country Club, Inc.'s title is null and void. Petitioner thus prayed for the cancellation of TCT No. RT-1310 (T-11351) and the issuance of another title in his name as the sole heir of Tomas Alonso, for Cebu Country Club, Inc. to deliver possession of the property to petitioner, and render an accounting of the fruits and income of the land. Petitioner likewise prayed for the sum of ₱100,000.00 by way of attorney's fees plus ₱500.00 per hearing as appearance fee, and ₱10,000.00 as reasonable litigation expenses.

(7) On November 5, 1992, Cebu Country Club, Inc. filed with the trial court its answer with counterclaim. It alleged that petitioner had no cause of action against Cebu Country Club, Inc. since the same had prescribed and was barred by laches, Cebu Country Club, Inc. having been in possession of the land since 1935 until the present in the concept of an owner, openly, publicly, peacefully, exclusively, adversely, continuously, paying regularly the real estate taxes thereon; that Cebu Country Club, Inc. acquired the lot in good faith and for value; that it caused the administrative reconstitution of Lot No. 727 in 1948 from the owner's duplicate, the original of TCT No. 11351 having been lost or destroyed during the war, pursuant to Republic Act No. 26, its implementing Circular, GLRO Circular No. 17[8] and Circular No. 6 of the General Land Registration Office;[9] that unlike Cebu Country Club, Inc., petitioner's father never had any registered title under the Land Registration Act No. 496 nor did he pay the necessary taxes on Lot No. 727 during his lifetime; that petitioner's father knew that the United Service

[8] Dated February 19, 1947.

[9] Dated August 5, 1946.

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Country Club, Inc., predecessor of Cebu Country Club, Inc. was occupying Lot No. 727 as owner; that petitioner's father never reconstituted his alleged title to Lot No. 727 but did so over Lot No. 810 of the Banilad Friar Lands Estate, a lot adjacent to the disputed property, in 1946; that petitioner himself lived in Cebu City, a few kilometers away from the land in litigation; that petitioner's father or petitioner himself, both of whom are lawyers and the former a congressman as well, for more than sixty (60) years, never made any demand on Cebu Country Club, Inc. for the recovery of the property knowing fully well that said land was owned and utilized by Cebu Country Club, Inc. as its main golf course. By way of counterclaim, Cebu Country Club, Inc. prayed for the award of attorney's fees in the amount of ₱900,000.00 and litigation expenses of ₱100,000.00, moral damages of ₱500,000.00 and exemplary damages of ₱2,000,000.00.[10]

(8) In the course of the trial, Cebu Country Club, Inc. to disprove petitioner's allegation that its title, TCT No. RT-1310 (T-11351), was obtained illegally and fraudulently, submitted the deposition of an expert witness, Atty. Benjamin Bustos, Chief of the Reconstitution Division, Land Registration Authority, Central Office, Metro Manila (Exh. "8"). He testified that pursuant to GLRO Circular No. 17 dated February 19, 1947 and Circular No. 6 (RD-3) dated August 5, 1946 (Exhs "2" and "3"), titles issued before the inauguration of the Republic of the Philippines were numbered consecutively, and titles issued after the inauguration of the Republic were likewise numbered consecutively, starting with the number one (1). Eventually, therefore, the title numbers issued before the inauguration would be duplicated by the title numbers issued after the inauguration of the Republic.[11]

(9) On May 7, 1993, the trial court rendered a decision, the dispositive portion of which reads:

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[10] Original RTC Record, pp. 59-69.

[11] Court of Appeals Decision, promulgated on March 31, 1997, *Rollo*, p. 76.

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"THE FOREGOING CONSIDERED, judgment is hereby rendered in favor of the defendant and against the plaintiff: declaring the contested property or Lot 727 as legally belonging to the defendant; directing the plaintiff to pay attorney'' fee of ₱400,000.00; and litigation expenses of ₱51,000.00; and finally, with costs against the plaintiff.

"SO ORDERED.

"Cebu City, May 7, 1993.

"(s/t) BERNARDO LL. SALAS
"Judge"[12]

(10) In due time, both parties appealed to the Court of Appeals.[13]

After proceedings on appeal, on March 31, 1997, the Court of Appeals promulgated a decision, the dispositive portion of which reads:

"WHEREFORE, IN VIEW OF THE FOREGOING, the appeals interposed by both parties are hereby DENIED, and the lower court's Decision dated May 7, 1993 is AFFIRMED *in toto*. No pronouncement as to costs."

"SO ORDERED."[14]

On April 30, 1997, petitioner filed a motion for reconsideration; however, on October 2, 1997, the Court of Appeals denied the motion.[15]

Hence, this appeal.[16]

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[12] Original Record, RTC Decision, on pp. 595-596.

[13] Docketed as CA-G.R. CV No. 41918.

[14] *Rollo,* pp. 72-109. Martin, Jr., *J.*, *ponente*, Carpio-Morales and Amin, *JJ.* concurring.

[15] *Rollo*, pp. 111-116.

[16] Petition filed on November 28, 1997, *Rollo*, pp. 12-70. On April 22, 1998, we gave due course to the petition (*Rollo*, pp. 268-A-268-B).

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On October 24, 2000, we required the Solicitor General to file comment on the issue of the validity of the re-constituted title in dispute.[17]

On November 8, 2000, the Solicitor General submitted a comment stating that on the basis of information received from the Land Registration Authority (LRA) and the Land Management Bureau (LMB), the Cebu Country Club, Inc. had been occupying the disputed property even before the Second World War and developed it into a golf course and must have acquired the property in a proper and valid manner.[18] Nonetheless, the Solicitor General emphasized that the Cebu Country Club's certificate of title is a reconstituted title. A reconstituted title does not confirm or adjudicate ownership of land covered by lost or destroyed title.[19] And the Government's right to file reversion proceedings cannot be barred by prescription that does not run against the State.[20]

The Issues

Petitioners raise the following issues:

1. Whether the Court of Appeals erred in affirming the validity of TCT No. RT-1310 (T-11351).
2. Whether the Court of Appeals erred in sustaining respondent's claim of ownership over Lot No. 727;
3. Whether the Court of Appeals erred in holding that the present action is barred by prescription and/or by laches;
4. Whether the Court of Appeals erred in not applying the doctrine of *stare decisis;*

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[17] *Rollo,* p. 584.

[18] *Rollo*, pp. 651-679.

[19] *Serra v. Court of Appeals*, 195 SCRA 482, 490 [1991]; *Strait Times, Inc. v. Court of Appeals*, 356 Phil. 217, 230 [1998].

[20] *Reyes v. Court of Appeals*, 356 Phil. 605, 624-625 [1998], citing *Republic v. Court of Appeals,* 171 SCRA 721 [1989].

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5. Whether the Court of Appeals erred in sustaining the trial court's award for damages in the form of attorney's fees and litigation expenses.[21]

We resolve the issues *in seriatim*.

First Issue: Validity of Cebu Country Club, Inc.'s Title

The first issue is whether the Court of Appeals lawfully adjudged the validity of the administrative reconstitution of the title of Cebu Country Club, Inc. over the OCT of the Government of the Philippine Islands and Sales Patent No. 14353 on Lot No. 727 in the name of Tomas N. Alonso.

The issue is factual, which, as aforesaid, cannot be reviewed in this appeal. Nevertheless, petitioners assail the validity of the administrative reconstitution of Cebu Country Club, Inc.'s title No. RT-1310 (T-11351) on three (3) grounds:

1. Its source title bears the same number as another title which refers to another parcel of land;
2. There is no recorded transaction of the land from Tomas Alonso in favor of Cebu Country Club, Inc.; and
3. The technical description was not transcribed in the title within two (2) years from the date of its reconstitution.

None of the grounds has any basis or merit.

On the question that TCT No. RT-1310 (T-11351) bears the same number as another title to another land, we agree with the Court of Appeals that there is nothing fraudulent with the fact that Cebu Country Club, Inc.'s reconstituted title bears the same number as the title of another parcel of land. This came about because under General Land Registration Office (GLRO) Circular No. 17, dated February 19, 1947, and Republic Act No. 26 and Circular No. 6, RD 3, dated August 5, 1946, which were in force at the time the title was reconstituted on July 26, 1948, the titles issued before the inauguration of the Philippine Republic were numbered consecutively and the titles

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[21] Memorandum for Petitioner, *Rollo*, pp. 417-483, at p. 437.

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issued after the inauguration were numbered also consecutively starting with No. 1, so that eventually, the titles issued before the inauguration were duplicated by titles issued after the inauguration of the Philippine Republic. This was testified to by Atty. Benjamin Bustos, Chief of the Reconstitution Division, Land Registration Authority, Central Office, Metro Manila, and by Atty. Dindo Nuñez, Deputy Register of Deeds of Cebu City, who declared that several titles in the record of the Register of Deeds which were reconstituted after the inauguration of the Philippine Republic had the same numbers as the titles issued before the Second World War, due to the operation of the circulars referred to.

Said the Court of Appeals:

"As a third argument, plaintiff avers that the lower court erred in declaring defendant as the owner of Lot 727 when it has a void title because it was fraudulently acquired. Specifically, plaintiff points out that on the face of defendant's administratively reconstituted title— TCT No. RT-1310 (T-11351), it would appear that its source title is TCT No. 11351. Going over the said title further, it can be gleaned that the parent title of TCT No. 11351 is TCT No. 1021. However, plaintiff claims that defendant failed to present said source titles. It appears likewise that the Register of Deeds of Cebu City does not have a copy thereof.

"On the other hand, plaintiff presented TCT No. 11351 issued on June 18, 1954 in the name of Pacita Raffinan covering Lot 925 of the Cadastral Survey of Cebu with an area of 310 square meters, more or less, (Exh. "L") and TCT No. 1021 issued on July 12, 1947 in the name of Rosario Rubio covering Lot No. 51-D of the subdivision plan being a portion of Lot No. 576 of the Banilad Friar lands Estate with an area of 230 sq. m., more or less (Exh. "E"). In his motion for new trial, he likewise presented as one of his newly discovered evidence a copy of TCT No. RT-1325 (T-1021) (Annex "B", Motion for New Trial, p. 60, *Rollo*) whose source title was presumably TCT No. 1021, which apparently is the parent title of defendant's TCT. Said TCT No. RT-1325 (T-1021) was administratively reconstituted on July 27, 1948 and covers Lot No. 1314 of the Cadastral Survey of Cebu with an area of 110 sq. m., more or less, and registered in the name of Spouses Andres Borres and Emiliana Enriquez. As stated

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in TCT No. RT-1325 (T-1021), its parent title, TCT No. 1021, was entered in the record book on May 17, 1939.

"Plaintiff concludes then that considering that TCT Nos. 11351 and 1021 as well as RT-1325 (T-1021), which were purportedly the parent titles of TCT No. RT-1310 (T-11351), do not cover Lot. 727, defendant's TCT was void having been obtained from a spurious or non-existent source (Citing the case of *Ramon Cabrera, et. al., vs. Cebu Country Club, Inc.* CA-G.R. No. 65559-R, Exh. "F").

"That there seems to be no record on file of the existence of either TCT No. 11351 or 1021 covering Lot 727 of the Banilad Friar Lands Estate containing an area of 377,622 sq. m., does not invalidate defendant's title. As defendant counters, which was corroborated by Atty. Dindo Nuñez, Deputy Register of Deeds for Cebu City, copies of these titles were lost and could not be found despite diligent search thereof.

"Moreover, the absence of said titles and the existence of TCT Nos. 11351 and 1021, which do not cover Lot 727, do not render TCT No. RT-1310 (T-11351) invalid in the light of Circular No. 6 Exh. "3") — re: numbering of certificates of title, entries in the day book and registration books, and GLRO Circular No. 17 (Exh. "2")— the rules and regulations governing the reconstitution of lost or destroyed certificates of title."[22]

Petitioners next argue that the reconstituted title of Cebu Country Club, Inc. had no lawful source to speak of; it was reconstituted through extrinsic and intrinsic fraud in the absence of a deed of conveyance in its favor. In truth, however, reconstitution was based on the owner's duplicate of the title, hence, there was no need for the covering deed of sale or other modes of conveyance. Cebu Country Club, Inc. was admittedly in possession of the land since long before the Second World War, or since 1931. In fact, the original title (TCT No. 11351) was issued to the United Service Country Club, Inc. on November 19, 1931 as a transfer from Transfer Certificate of Title No. 1021 (Exh. "D-6"). More importantly, Cebu Country Club, Inc. paid the realty taxes on the land even before the war, and tax

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[22] Decision, Court of Appeals, promulgated on March 31, 1997, *Rollo*, pp. 87-88.

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declarations covering the property showed the number of the TCT of the land. Cebu Country Club, Inc. produced receipts showing real estate tax payments since 1949 (Exhs. 27 to 100-B). On the other hand, petitioner failed to produce a single receipt of real estate tax payment ever made by his father since the sales patent was issued to his father on March 24, 1926. Worse, admittedly petitioner could not show any torrens title ever issued to Tomas N. Alonso, because, as said, the deed of sale executed on March 27, 1926 by the Director of Lands was not approved by the Secretary of Agriculture and Natural Resources and could not be registered. "Under the law, it is the act of registration of the deed of conveyance that serves as the operative act to convey the land registered under the Torrens system. The act of registration creates constructive notice to the whole world of the fact of such conveyance."[23] On this point, petitioner alleges that Cebu Country Club, Inc. obtained its title by fraud in connivance with personnel of the Register of Deeds in 1941 or in 1948, when the title was administratively reconstituted. Imputations of fraud must be proved by clear and convincing evidence.[24] Petitioner failed to adduce evidence of fraud. In an action for re-conveyance based on fraud, he who charges fraud must prove such fraud in obtaining a title. "In this jurisdiction, fraud is never presumed."[25] The strongest suspicion cannot sway judgment or overcome the presumption of regularity. "The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass."[26] Worse, the imputation of fraud was so tardily brought, some

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[23] *Calalang v. Register of Deeds of Quezon City*, 231 SCRA 88, 103 [1994], citing *Quilisadio v. Court of Appeals*, 182 SCRA 401 [1990]; *De la Calzada-Cierras v. Court of Appeals*, 212 SCRA 390 [1992].

[24] *Periquet, Jr. v. Intermediate Appellate Court*, 238 SCRA 697, 710 [1994], citing *Centenera v. Palicio*, 29 Phil. 470 [1915]; *Tenio-Obsequio v. Court of Appeals*, 230 SCRA 550, 558 [1994].

[25] *Cosiquien v. Court of Appeals*, 188 SCRA 619, 626 [1990], citing *Benitez v. Intermediate Appellate Court*, 154 SCRA 41 [1987]; *Cuison v. Court of Appeals*, 329 Phil. 456 [1996].

[26] *People v. Geron*, 346 Phil. 14, 29 [1997].

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forty-four (44) years or sixty-one (61) years after its supposed occurrence, that is, from the administrative reconstitution of title on July 26, 1948, or from the issuance of the original title on November 19, 1931, that verification is rendered extremely difficult, if not impossible, especially due to the supervening event of the second world war during which practically all public records were lost or destroyed, or no longer available.

Petitioners next question the lack of technical description inscribed in the reconstituted title in Cebu Country Club, Inc.'s name. This is not a bar to reconstitution of the title nor will it affect the validity of the reconstituted title. A registered owner is given two (2) years to file a plan of such land with the Chief of the General Land Registration Office.[27] The two-year period is directory, not jurisdictional. In other words, the failure to submit the technical description within two (2) years would not invalidate the title. At most, the failure to file such technical description within the two-year period would bar a transfer of the title to a third party in a voluntary transaction.

Second Issue: Whether Francisco Alonso is owner of the land

The second issue is whether the Court of Appeals erred in ruling that the Cebu Country Club, Inc. is owner of Lot No. 727.

Admittedly, neither petitioners nor their predecessor had any title to the land in question. The most that petitioners could claim was that the Director of Lands issued a sales patent in the name of Tomas N. Alonso. The sales patent, however, and even the corresponding deed of sale were not registered with the Register of Deeds and no title was ever issued in the name of the latter. This is because there were basic requirements not complied with, the most important of which was that the deed of sale executed by the Director of Lands was not approved by the Secretary of Agriculture and Natural Resources. Hence, the deed of sale was void.[28] "Approval by the Secretary of

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[27] Republic Act No. 26, Section 21.

[28] *Solid State Multi-Products Corp. v. Court of Appeals*, 274 Phil. 30 [1991].

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Agriculture and Commerce is indispensable for the validity of the sale."[29] Moreover, Cebu Country Club, Inc. was in possession of the land since 1931, and had been paying the real estate taxes thereon based on tax declarations in its name with the title number indicated thereon. Tax receipts and declarations of ownership for taxation purposes are strong evidence of ownership.[30] This Court has ruled that although tax declarations or realty tax payments are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of owner for no one in his right mind will be paying taxes for a property that is not in his actual or constructive possession.[31]

Notwithstanding this fatal defect, the Court of Appeals ruled that "there was substantial compliance with the requirement of Act No. 1120 to validly convey title to said lot to Tomas N. Alonso."[32]

On this point, the Court of Appeals erred.

Under Act No. 1120, which governs the administration and disposition of friar lands, the purchase by an actual and bona fide settler or occupant of any portion of friar land shall be "agreed upon between the purchaser and the Director of Lands, subject to the approval of the Secretary of Agriculture and Natural Resources (*mutatis mutandis*)."[33]

In his Memorandum filed on May 25, 2001, the Solicitor General submitted to this Court certified copies of Sale Certificate No. 734, in favor of Leoncio Alburo, and Assignment of Sale Certificate No. 734, in favor of Tomas N. Alonso. Conspicuously, both instruments do not bear the signature of the Director of Lands and the Secretary of the Interior. They also do not bear

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[29] *Solid State Multi-Products Corp. v. Court of Appeals, supra*, Note 28, on p. 41.

[30] *Heirs of Juan Oclarit v. Court of Appeals,* 233 SCRA 239, 249 [1994]; *Heirs of Placido Miranda, v. Court of Appeals,* 325 Phil. 674, 683 [1996].

[31] *Republic v. Court of Appeals,* 328 Phil. 238, 248 [1996].

[32] CA Decision, *Rollo*, on p. 82.

[33] Act No. 1120, Section 11.

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the approval of the Secretary of Agriculture and Natural Resources.

Only recently, in *Jesus P. Liao v. Court of Appeals*,[34] the Court has ruled categorically that approval by the Secretary of Agriculture and Commerce of the sale of friar lands is indispensable for its validity, hence, the absence of such approval made the sale *null and void ab-initio*.[35] Necessarily, there can be no valid titles issued on the basis of such sale or assignment.[36] Consequently, petitioner Francisco's father did not have any registerable title to the land in question. Having none, he could not transmit anything to his sole heir, petitioner Francisco Alonso or the latter's heirs.

In a vain attempt at showing that he had succeeded to the estate of his father, on May 4, 1991, petitioner Francisco Alonso executed an affidavit adjudicating the entire estate to himself (Exh. "Q"), duly published in a newspaper of general circulation in the province and city of Cebu (Exh. "Q-1"). Such affidavit of self-adjudication is inoperative, if not void, not only because there was nothing to adjudicate, but equally important because petitioner Francisco did not show proof of payment of the estate tax and submit a certificate of clearance from the Commissioner of Internal Revenue.[37] Obviously, petitioner Francisco has not paid the estate taxes.

Consequently, we rule that neither Tomas N. Alonso nor his son Francisco M. Alonso or the latter's heirs are the lawful owners of Lot No. 727 in dispute. Neither has the respondent Cebu Country Club, Inc. been able to establish a clear title over the contested estate. The reconstitution of a title is simply

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[34] 323 SCRA 430, 442 [2000].

[35] *Solid State Multi-Products, Corp. v. Court of Appeals, supra*, Note 28.

[36] *Liao v. Court of Appeals, supra,* Note 34.

[37] Sections 90 *et seq*., R.A. No. 8424, National Internal Revenue Code, formerly Section 83, *et seq*., P.D. No. 1158, National Internal Revenue Code of 1977, as amended.

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the re-issuance of a lost duplicate certificate of title in its original form and condition. It does not determine or resolve the ownership of the land covered by the lost or destroyed title. A reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby.[38]

Third Issue: Action has prescribed or is barred by laches

The third issue is whether petitioners' action for re-conveyance has prescribed or is barred by laches.

"An action based on implied or constructed trust prescribes in ten (10) years... from the time of its creation or upon the alleged fraudulent registration of the property."[39] Petitioner Francisco's action in the court below was basically one of re-conveyance. It was filed on September 25, 1992, sixty-one (61) years after the title was issued on November 19, 1931, and forty-four (44) years after its reconstitution on July 26, 1948. Thus, the failure of petitioner Francisco and his father to assert ownership of the land for over sixty (60) years during which the Cebu Country Club, Inc. was in possession is simply contrary to their claim of ownership.[40] Petitioner Francisco's and his father's "long inaction or passivity in asserting their rights over disputed property will preclude them from recovering the same."[41]

Aside from the fact that, as herein-above stated, neither petitioner Francisco nor his father held a valid title over the land, and that there was no showing that his father owned the land at the time of his demise so as to bequeath the same to petitioner Francisco as his sole heir, by now, the rule is firmly settled that an action for re-conveyance based on fraud must be filed within ten (10) years from discovery of the fraud which

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[38] *Strait Times, Inc. v. Court of Appeals, supra,* Note 19.

[39] *Bernardino Ramos v. Court of Appeals*, 362 Phil. 205, 218 [1999]; *Walstrom v. Mapa*, 181 SCRA 431, 442 [1990]; *Ramos v. Court of Appeals*, 198 Phil. 263, 272 [1982]; *Sta. Ana, Jr. v. Court of Appeals*, 346 Phil. 621, 626 [1997].

[40] *Heirs of de la Cruz v. Court of Appeals*, 358 Phil. 652, 660 [1998].

[41] *Ibid.*, at p. 661.

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as to titled lands referred to the registration of the title with the register of deeds.[42] "An action for re-conveyance is a legal remedy granted to a landowner whose property has been wrongfully or erroneously registered in another's name, but then the action must be filed within ten years from the issuance of the title since such issuance operates as a constructive notice."[43] In addition, the action is barred by laches because of the long delay before the filing of the case.[44]

Fourth Issue: No *stare decisis*

The next issue is whether the Court of Appeals erred in not ruling that the decision in *Ramon Cabrera-Graciano Ingles vs. Cebu Country Club, Inc.*, CA-G. R. No. 65559-R, October 31, 1981, was binding on respondent Cebu Country Club, Inc. as to the land in question.

Petitioners assert that as the Court of Appeals annulled Cebu Country Club, Inc.'s title in the Cabrera-Ingles case, so too must the title in this case be declared void. In the first place, there is no identity of parties; secondly, neither the titles to nor the parcels of land involved are the same. Consequently, the doctrine of *res-judicata* does not apply.[45] Momentarily casting aside the doctrine of *res-judicata*, there is an important moiety in the Cabrera-Ingles case. There, the Director of Lands, after the administrative reconstitution of the title, issued a directive

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[42] *Bernardino Ramos v. Court of Appeals, supra*, Note 39; *de los Reyes v. Court of Appeals*, 348 Phil. 868 [1998]; *Alarcon v. Bidin*, 120 SCRA 390 [1983]; *Caragay-Layno v. Court of Appeals*, 133 SCRA 718 [1984]; *Ferrer v. Court of Appeals*, 219 SCRA 308 [1993]; *Sta. Ana, Jr. v. Court of Appeals, supra*, Note 39.

[43] *Tenio-Obsequio vs. Court of Appeals, supra*, Note 24, on p. 561.

[44] *Victoriano v. Court of Appeals*, 194 SCRA 24 [1991]; *Claverias v. Quingco*, 207 SCRA 66 [1992]; *Gonzales v. Intermediate Appellate Court*, 157 SCRA 587, 589 [1988]; *Cabrera v. Court of Appeals*, 335 Phil. 19[1997]; *Españo, Sr. v. Court of Appeals*, 335 Phil. 983 [1997]; *Caltex (Philippines), Inc. v. Court of Appeals*, 354 Phil. 283 [1998]; *Ching v. Court of Appeals*, 181 SCRA 9, 17 [1990]; *Miguel v. Catalino*, 26 SCRA 236 [1968]; *Pabalete v. Echarri*, 37 SCRA 518 [1971].

[45] *Benin v. Tuason*, 156 Phil. 525 [1974].

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to the Register of Deeds to register the lot in question in favor of Graciano Ingles.[46] This superseded the administrative reconstitution, rendering allegations of fraud irrelevant. Here, the Director of Lands did not issue a directive to register the land in favor of Tomas N. Alonso. And worse, the sales patent and corresponding deed of sale executed in 1926 are now stale.[47]

Petitioners further contend that the Supreme Court's minute resolution refusing to review that decision is equivalent to a judgment on the merits. The minute resolution may amount to a final action on the case but it is not a precedent.[48] It can not bind non-parties to the action. To restate, the rule is that: (1) a judgment *in rem* is binding upon the whole world, such as a judgment in a land registration case or probate of a will; (2) a judgment *in personam* is binding upon the parties and their successors in interest but not upon strangers.[49] A judgment directing a party to deliver possession of a property to another is *in personam*; it is *binding only against the parties* and their successors in interest by title subsequent to the commencement of the action.[50] "Suits to quiet title are not technically suits *in rem*, nor are they, strictly speaking, *in personam*, but being against the person in respect of the *res*, these proceedings are characterized as *quasi in rem*. The *judgment* in such proceedings *is conclusive only between the parties.*"[51] In this case, the

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[46] See Decision, Court of Appeals, CA-G.R. No. 65559-R, October 30, 1981.

[47] Article 1144, par. (1) Civil Code; *Villamor v. Court of Appeals*, 202 SCRA 607, 617-618 [1991]; *Lebrilla v. Intermediate Appellate Court,* 180 SCRA 188, 193 [1989].

[48] *Komatsu Industries (Phils.), Inc. v. Court of Appeals*, 352 Phil. 440, 446 [1998].

[49] 2 Moran, *Comments on the Rules of Court*, 1996 Ed. p. 426.

[50] *Gatchalian v. Arlegui*, 75 SCRA 234 [1977].

[51] *Realty Sales Enterprise, Inc. v. Intermediate Appellate Court*, SCRA 328, 348 [1987], citing *McDaniel v. McElvy,* 108 So. 820 [1926]; *Sandejas v. Robles*, 81 Phil. 421 [1948]; *Jagualing v. Court of Appeals*, 194 SCRA 607 [1991].

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action below is basically one for declaration of nullity of title and recovery of ownership of real property, or re-conveyance. "An action to recover a parcel of land is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing."[52] "Any judgment therein is binding only upon the parties properly impleaded."[53]

What is more, the doctrine of *stare decisis* notwithstanding, the Court has abandoned or overruled precedents whenever it realized that the Court erred in the prior decisions. "After all, more important than anything else is that this Court should be right."[54]

Fifth Issue: Award of attorney's fees

The final issue raised is whether or not the Court of Appeals erred in awarding in favor of the Cebu Country Club, Inc. attorney's fees of ₱400,000.00 as damages and ₱51,000.00 as litigation expenses.[55]

An award of attorney's fees and expenses of litigation is proper under the circumstances provided for in Article 2208 of the Civil Code, one of which is when the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered[56] and when the civil action or proceeding is clearly unfounded and where defendant acted in gross and evident bad faith.[57] "The award of attorney's fees as damages

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[52] *Ching v. Court of Appeals, supra*, Note 44, on p. 16; *Philippine National Bank v. Court of Appeals,* 153 SCRA 435 [1987].

[53] *Paderanga v. Buissan*, 226 SCRA 786, 790 [1993], citing *Ching v. Court of Appeals, supra,* Note 44.

[54] *Urbano v. Chavez; Co v. Regional Trial Court, Pasig, Branch 165,* 183 SCRA 347 [1990]; *Olaguer v. Military Commission*, 150 SCRA 144, 146 [1987].

[55] *Benin v. Tuazon, supra*, Note 45.

[56] *People v. Bergante*, 350 Phil. 275, 292 [1998].

[57] *Lim v. Court of Appeals*, 331 Phil. 853, 868 [1996]; *Tumbiga v. NLRC,* 340 Phil. 451, 461 [1997], citing *Servicewide Specialist, Inc. v. Court of Appeals*, 326 Phil. 660 [1996].

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is the exception rather than the rule; it is not to be given to the defendant every time the latter prevails. The right to litigate is so precious that a penalty should not be charged on those who may exercise it erroneously, unless, of course such party acted in bad faith."[58] In this case, however, we would rather not award attorney's fees and expenses of litigation in the absence of showing of gross and evident bad faith in filing the action.[59]

The Judgment

WHEREFORE, we *DENY* the petition for review. However, we *SET ASIDE* the decision of the Court of Appeals[60] and that of the Regional Trial Court, Cebu City, Branch 08.[61]

IN LIEU THEREOF, we *DISMISS* the complaint and counterclaim of the parties in Civil Case No. CEB 12926 of the trial court. We declare that Lot No. 727 D-2 of the Banilad Friar Lands Estate covered by Original Certificate of Title Nos. 251, 232, and 253 legally belongs to the Government of the Philippines.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Buena, De Leon, Jr., and *Carpio, JJ.,* concur.

Melo, J., see dissenting opinion.

Panganiban, J., no part. Former partner of a party's counsel.

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[58] *Salazar v. Court of Appeals*, 327 Phil. 944, 964 [1996], citing *Tierra International Construction Corp. v. NLRC,* 211 SCRA 73, 81 [1992]; *Albenson Enterprises Corp. v. Court of Appeals,* 217 SCRA 16, 31 [1993]; *de la Pena v. Court of Appeals,* 231 SCRA 456, 462 [1994]; *Congregation of the Religious of the Virgin Mary v. Court of Appeals,* 353 Phil. 591, 603 [1998].

[59] *Trans-Asia Shipping Lines, Inc. v. Court of Appeals*, 324 Phil. 513 [1996]; *National Steel Corporation v. Court of Appeals*, 347 Phil. 345 [1997]; *Mirasol v. Court of Appeals*, G.R. No. 128448, February 1, 2001.

[60] In CA-G.R. CV No. 41918, promulgated on March 31, 1997.

[61] In Civil Case No. CEB 12926, decision, dated May 7, 1993.

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Ynares-Santiago, J., no part.

Sandoval-Gutierrez, J., joins Justice Melo in his Dissent.

DISSENTING OPINION

MELO, *J.*:

Assailed in the instant action is the validity of an administratively reconstituted title on grounds of fraud and want of jurisdiction. And lying at the core of the controversy is the question of who should be declared the owner of the disputed lot.

Both courts below upheld the validity of TCT No. RT- 1310 (T-11351), as well as respondent's ownership, mainly on the basis of the rather simplistic finding of duplication of title numbers affecting the source document used in the administrative reconstitution. But petitioner's attack against the title goes much deeper. In fact, during the oral argument and in the memoranda later filed, a good number of disturbing facts surfaced which, good conscience dictates, should neither be ignored nor simply glossed over.

But first the essential facts.

Petitioner Francisco Alonso was the plaintiff in Civil Case No. CEB-12926, for declaration of nullity of TCT No. RT-1310 (T-11351), a reconstituted title in the name of respondent Cebu Country Club, Inc., covering Lot No. 727 of the Banilad Friar Lands Estate in Cebu City. In his complaint, Alonso alleged, *inter alia*, that the source document used in the reconstitution was spurious as it does not pertain to Lot No. 727 and that the reconstituted title did not even contain a technical description of the lot.

The original vendee of Lot No. 727 was one Leoncio Alburo, who assigned his sale certificate to petitioner's father, Tomas Alonso, on December 18, 1911. On March 19, 1919, Tomas Alonso *completed the payment of the price*. He was issued Patent No. 14353 on March 24, 1926, and three days later, the

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Honorable Jorge B. Vargas, then Director of Lands, *executed a final deed of sale in his favor.*

Being part of the Banilad Friar Lands Estate, Lot No. 727 was covered by OCTs No. 251, 252, and 253 of the Register of Deeds of Cebu.

It appears that Tomas Alonso did not obtain a transfer certificate of title over the lot. However, the Court of Appeals found that the deed of sale was duly submitted for registration but for some reason no TCT was issued. In any case, Tomas Alonso did take possession of the lot on which he put up and operated a sugar mill in the 1930s. The Court of Appeals also held: "We do not entertain any doubt as to the possession of plaintiff's family over Lot 727 of the Banilad Friar Lands Estate from the time they purchased the same until sometime before the [second world] war."

During World War II, Tomas Alonso was among those arrested and jailed by Japanese military forces. He was kept in Manila and released only at the end of the war in 1945. That same year, a fire burned down his house. According to petitioner, Tomas Alonso not only became a changed, broken man; he also lost some papers and muniments of title.

In July 1948, private respondent, then bearing the name *United Service Club, Inc.*, applied for the administrative reconstitution of 15 land titles. On July 26, 1948, the reconstituted titles were issued and released in a single batch by the Office of the Register of Deeds of Cebu, as shown by pages 80 to 81 of the "Record Book of Administrative and Judicial Reconstitution." These two pages contain a list of 15 titles, all simultaneously reconstituted in private respondent's name and all released at the same time. Two of these bore the numbers RT-1310 (T-11351) and RT-1313 (T-14139).

One of these two reconstituted titles — TCT RT-1313 (T-14139) — was later nullified by final judgment of the Court of Appeals in CA-G.R. No. 65559-R, entitled Heirs of *Ramon Cabrera and Graciano Ingles vs. Cebu Country Club, Inc.*, decided on October 30, 1981. The basis for invalidation was

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fraud in the administrative reconstitution of the title. The Appellate Court observed therein that fake titles "are indeed common occurrences nowadays but the title of appellee under the suspicious circumstances disclosed by the evidence could be the notorious forerunner." I took part in resolving that case. Among the findings made was that the owner's duplicates of title that were used as source documents in the reconstitution were returned to the Cebu Country Club after the administrative reconstitution was completed, instead of being kept in the vault of the Office of the Register of Deeds as part of the record of the reconstitution. Two employees of that Office, one of whom was the Deputy Register of Deeds, testified to such unsavory fact. I now note from the factual findings in the *Cabrera-Ingles* decision, which has become a piece of evidence here (marked herein as Exh. "F"), that although only one reconstituted title was involved in that case, both witnesses used the plural form of the word *title* in referring to the illegally returned document. It now turns out, from the annexes to the Solicitor General's Comment, that there were 15 titles of the Cebu Country Club that were reconstituted at the same time, opening up the possibility that not just one but all of the source documents used in reconstituting the 15 titles were illegally returned. However, not all of those titles are on the dock here — only TCT No. RT-1310 (T-11351), covering Lot 727, is herein assailed.

Tomas Alonso died in 1962, followed shortly by his wife. Petitioner Francisco Alonso, their only son and heir who also recently died but has been substituted by his three heirs as petitioners, filed this case only in 1992, after discovering documents and official records showing that Lot No. 727 was indeed acquired by his late father from the Government of the Philippine Islands on December 18, 1911 by assignment from the original vendee.

Private respondent's defenses are anchored on specific denials, buttressed by special and affirmative defenses of prescription, estoppel by laches, and due acquisition of the property in good faith and for value as early as before the Second World War.

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On May 7, 1993, the trial court declared Lot No. 727 as "legally belonging" to the respondent and it ordered the petitioner to pay respondent "attorney's fee of ₱400,000.00 and litigation expenses of ₱51,000.00 with costs." This was affirmed *in toto* by the Court of Appeals on March 3, 1997. A motion for reconsideration was subsequently denied on October 2, 1997. Hence, the instant recourse.

As earlier indicated, two grounds are invoked against the validity of the reconstituted title: fraud and want of jurisdiction.

The issue of fraud rests on a number of facts and circumstances duly established by the evidence on record but simply ignored below. The first such circumstance is the total absence of proof of the due execution, existence, and contents of TCT No. 11351, the owner's duplicate which is supposed to be the source document used in the reconstitution. The same is true with regard to TCT No. 1021, which is supposed to be the parent title. The Court of Appeals admitted that there is no record of the existence of both documents. Assuming its innocent loss, then its contents should have been established by appropriate secondary evidence under Section 3, Rule 130, Revised Rules of Evidence. None was presented by private respondent. The net result is that the reconstituted title itself appears to be the *only* evidence available to prove *its own* existence, due execution, and contents.

In any case, I am convinced that the loss of the source documents is anything but innocent. The *Cabrera-Ingles* decision, made part of petitioner's evidence, sufficiently establishes the fraudulent character of their "disappearance" and the bogus nature of the reconstituted title. The handling of the source documents was not only irregular and improper but plainly illegal, being violative of the rule of irremovability of public records (Rule 132, Sec. 26, Revised Rules of Evidence) as well as constitutive of the crime of infidelity in the custody of official documents (Art. 226, par. 1, Revised Penal Code). The Register of Deeds and his subordinates had the duty of keeping safely in their vault all the documents used in the reconstitution, most especially the alleged owner's duplicate used as the sole basis for the administrative reconstitution. Instead of keeping that

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basic document safely, the Office of the Register of Deeds allowed its removal by giving it to the applicant! The act can only be viewed, in proper context, as part of a fraudulent conspiracy to conceal the spurious nature of the document.

This conclusion is not hard to reach if one examines with care the totality of circumstances petitioner points to as badges of fraud. Thus, the reconstituted title contains no technical description, yet it is not disputed that as early as 1913, Lot No. 727 was already registered, covered by OCTs Nos. 251, 252 and 253. Its technical description was already extant as of April 1, 1911. The fact that the reconstituted title contains no technical description can only mean that the source document itself, which private respondent claims to have existed since its alleged issuance in 1931, likewise contained no technical description. As pointed out by petitioner, there was no reason for a 1931 title like TCT No. 11351 not to contain the technical description of Lot No. 727, unless the title is a fraud. Considering that Act No. 496, the land registration law in force at the time, expressly required the technical description in the OCT to be copied into the TCT in case of a transfer, a 1931 title without such technical description cannot be a genuine, authentic title.

Moreover, the genealogy of the reconstituted title is actually in limbo. The supposed parent title, TCT No. 1021, has not been shown to be a transfer from the mother titles, OCTs No. 251, 252, and 253. And while private respondent alleged in its answer to the complaint below that it had acquired Lot No. 727 in good faith and for value, it failed to prove that it did so. Neither did it allege from whom it bought the property.

To my mind, the evidence of fraud is clear and convincing. The rule that factual findings of the Court of Appeals are binding upon this Court finds no application here, there being material facts and circumstances which, plainly, have been overlooked but which, when taken into account, will alter the result (*Morales vs. Court of Appeals*, 197 SCRA 391 [1991]).

As regards the issue of nullity due to want of jurisdiction, it is essential to note the difference in law between judicial and administrative reconstitution under Republic Act No. 26. The

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authority granted by said law to the Register of Deeds to make an administrative reconstitution of a lost or destroyed transfer certificate of title is limited by Section 5 to only two kinds of source documents: (a) the owner's duplicate of the certificate of title, and (b) the co-owner's, mortgagee's, or lessee's duplicate of the certificate of title. These two kinds are mentioned in paragraphs (a) and (b) of Section 3, Republic Act No. 26. On the other hand, the power of a court to effect a judicial reconstitution of a lost or destroyed transfer certificate of title encompasses all the six (6) kinds of source documents enumerated by Section 3.

The owner's duplicate of the certificate of title, if authentic, cannot be without a technical description of the covered lot, in view of the provisions of Sections 40, 41, and 42 of Act No. 496. The clear mandate of these provisions is that the technical description of the land as determined by the land registration court shall be inscribed upon the decree of registration, which in turn shall be transcribed upon the original certificate of title and, in the event of a transfer, upon the transfer certificate of title. To make a sweeping pronouncement that the lack of a technical description in a reconstituted title is not a bar to reconstitution of the title is to be imprecise. It may be correct in the case of a judicial, but wrong in the case of an administrative, reconstitution of a lost or destroyed transfer certificate of title.

I am, therefore, convinced that the absence of the technical description from the face of the reconstituted title, TCT No. RT-1310 (T-11351), unmistakably establishes the spuriousness of the "missing" source document used in its administrative reconstitution. The reason is simple: the source document itself also did not have it. Reconstitution denotes the restoration of a lost or destroyed certificate of title in its original form or condition (*Zafra Vda. De Anciano vs. Caballes*, 93 Phil. 876). In other words, the reconstituted title merely reproduces the contents of the source document used; it mirrors the latter document. Indubitably, the source document used in the administrative reconstitution of private respondent's title was not a genuine owner's duplicate for lack of a technical description of the land. Consequently, the Register of Deeds had no authority

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at all to effect an administrative reconstitution of this particular title.

Acts executed against the provisions of mandatory or prohibitory laws shall be void unless the law itself authorizes their validity (Article 5, Civil Code). The administrative reconstitution of title on the basis of a fake or spurious owner's duplicate is thus undoubtedly a void act. The infirmity goes into the very authority of the Register of Deeds to act upon an application for reconstitution anchored upon a fake or spurious owner's duplicate of a lost or destroyed certificate of title.

Withal, the nullity of TCT No. 1310 (T-11351) on the grounds of fraud and want of jurisdiction is beyond question. Its cancellation should be ordered.

Who then should be declared the owner?

I agree with the finding of respondent Appellate Court that petitioner's father, the late Tomas Alonso, did acquire ownership of Lot 727 of the Banilad Friar Lands Estate (CA Decision, pp. 10-11). The absence of the approval of the Secretary of Agriculture on the deed of conveyance (Exh. "C") did not necessarily mean that no such approval was given. Note that the deed of conveyance on record is merely a certified copy of the duplicate original existing in the archives. "Being merely an archive copy of the document, not the original," said respondent Court, "the Secretary's signature could not be expected to appear thereon."

Even assuming that the deed of final conveyance evidenced by its archived copy marked Exhibit "C" was not duly approved by the Secretary of Agriculture and Natural Resources or, even worse, assuming that the deed was never executed and is, therefore, legally non-existent, the validity of the transfer of ownership over Lot No. 727 from the government to Tomas Alonso remains legally intact and unassailable. This is because as held in *Pugeda vs. Trias* (4 SCRA 849 [1962]), it has long been settled law that the certificate of sale itself (as distinguished from the later deed of final conveyance) *is* a conveyance of the ownership of a piece of friar land with only one resolutory

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condition, namely, non-payment of the price by the buyer. To be precise, we declared therein that:

> A study of [Secs. 12 to 16 of Act 1120, the Friar Lands Act] clearly indicates that the conveyance executed in favor of a buyer or purchaser, or the so-called certificate of sale, *is a conveyance of the ownership of the property, subject only to the resolutory condition that the sale may be cancelled if the price agreed upon is not paid for in full.*" (At p. 859)

And in the earlier case of *Director of Lands vs. Rizal* (87 Phil. 806 [1950]), the accretion received by the lot before the full payment of the purchase price was held to belong to the buyer and not to the government despite the reservation of title in the latter's favor pending payment in full of the price. And this was because —

> Act No. 1120 itself, despite the reservation of title in the Government pending the payment of the full purchase price under Section 15 thereof, really considers the purchaser as the owner of the lot or parcel purchased even before the payment of the last installment. We reproduce Section 17 of said Act:
>
> x x x x x x x x x
>
> In case of a delinquent purchaser, section 17, above reproduced, speaks of the enforcement of the lien of the Government on the land, and the sale of the same in accordance with the law on foreclosure of mortagages. And what is more important, in case the proceeds of the sale is insufficient to pay all the delinquency as well as future installments, including costs of the litigation, then the purchaser remains liable for the deficit or balance; but if the proceeds exceed the full purchase price including interest and costs of suit then the excess will be given to the purchaser. *All this clearly and inevitably leads to the conclusion that the purchaser, even before the payment of the full price and before the execution of the final deed of conveyance, is considered by the law as the actual owner of the lot purchased, under obligation to pay in full the purchase price, the role or position of the Government being that of a mere lien holder or mortgagee.*

In *Alvarez vs. Espiritu* (14 SCRA 892 [1965]), we upheld the contention of the heirs of a deceased wife that the ownership

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of friar land which she purchased from the government vested in her upon the issuance to her in 1910 of a sales certificate, and not on any later date during her subsequent marriage, further declaring that —

> x x x The reservation of the title in favor of the government, which refers to the bare, naked title, is made merely for the protection of its interest so that the lot may not be disposed of by the purchaser before the price is paid in full. *But outside of this protection, the government retains no right as an owner.*

Even more in point, in *Bacalzo vs. Pacada* (107 Phil. 520 [1960]), we expressly declared that "[i]t is not the issuance of the deed of conveyance that vests ownership in the purchaser under the Friar Lands Act" but that upon full payment of the purchase price, the Government becomes legally bound to issue the proper instrument of final conveyance to the buyer.

> Petitioner's contention is that their deceased father Carmiano Bacalzo became the *actual owner* of the lot in question *upon full payment* during his lifetime of the purchase price thereof x x x. *We find merit in this contention.* It is not disputed that the original purchase price of ₱200.00 for the lot in question was fully paid on June 17, 1947, with a payment of shortage of interest on August 12, 1948 x x x. All the requirements of the law for the purchase of the lot having been complied with by said Carmiano Bacalzo on August 12, 1948, the Government on that date was legally bound to issue to him the proper instrument of conveyance' by reason of section 12 of the Friar Lands Act...
>
> *The fact that the Government failed to do so cannot, in our opinion, preclude the now deceased purchaser from acquiring during his lifetime ownership over the lot in question. It is not the issuance of the deed of conveyance that vests ownership in the purchaser under the Friar Lands Act.*

This Court has been consistent in holding that the only interest left with the government upon the issuance of the certificate of sale is that of a lien holder or mortgagee, and only to secure payment of the balance of the price. Thus we held in *De la Torre vs. CA* (325 SCRA 11 [2000]), that "the non-payment of the full purchase price is *the only recognized resolutory condition*

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in the case of friar lands" (See also *Pugeda vs. Trias, supra; Jovellanos vs. CA,* 210 SCRA 126 [1992]). Outside of the protection given by this lone resolutory condition, the government retains no right as an owner (*Alvarez vs. Espiritu, supra*). It was thus correctly held in *Bacalzo vs. Pacada* and in *De la Torre vs. CA that the government's failure to issue a deed of final conveyance after full payment of the price does not preclude the purchaser from acquiring the ownership of the property. Such full payment extinguishes totally all interest of the government in the property.*

It is undisputed from the evidence that Tomas Alonso paid in full the purchase price for Lot 727 on March 19, 1919. To paraphrase Bacalzo, all the requirements of the law for the purchase of the lot were complied with on that date, and the government was fully bound to issue the corresponding instrument of final conveyance from that date onward.

It goes without saying, then, that the execution of the corresponding deed of final conveyance by the Director of Lands and the approval thereof by the Secretary of Agriculture had become ministerial duties in view of the buyer's full compliance with all the requirements on the date of full payment of the price. In an analogous situation, we ruled that the issuance of the deed of conveyance had become ministerial on the part of the Director of Lands after consummation of the sales contract (*Heirs of Felino Santiago vs. Lazaro,* 166 SCRA 367 [1988]).

Careful note should be taken of the fact that in both *Bacalzo* and *De la Torre*, no deed of final conveyance was issued, yet we upheld the claim of ownership by the purchaser's legal heirs, since the payment of the final installment of the price took place in the lifetime of the buyer. And we ordered the issuance of the corresponding certificates of title to his heirs.

The ruling in *Solid State Multi-Products Corp. vs. CA* (196 SCRA 630 [1991]) to the effect that the absence of approval by the Secretary of Agriculture and Natural Resources "made the supposed sale null and void *ab initio*" is inapplicable here. That case involved two certificates of title spawned by two conflicting transactions involving the same friar land. One title

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was the result of a duly approved sales certificate and a final deed of conveyance, while the other was a reconstituted title whose antecedents showed that no certificate of sale was ever issued to the supposed buyer and no deed of conveyance was shown to have been executed such that the TCT appears to have been issued solely on the basis of a letter sent by an officer of the Bureau of Lands to the Register of Deeds of Cavite requesting the issuance of said certificate of title to Mabini Legaspi. Necessarily, the acquisition of the lot by Legaspi was held to be highly irregular and void. Unlike Legaspi, who had no sale certificate, Tomas Alonso's seller had one, and a certificate of assignment in favor of Tomas Alonso was executed and duly entered in the Friar Lands Sale Certificate Register. Tomas Alonso also had a patent duly issued, as well as a deed of final conveyance. There is, consequently, no parity whatsoever between this case and *Solid State*.

In contrast, the kinship between this case, on the one hand, and the cases of *Bacalzo* and *De la Torre*, on the other, cannot be gainsaid. In these 2 cases, there was compliance with all the requirements by virtue of full payment of the price. Moreover, the heirs of Tomas Alonso are even better situated, because Tomas Alonso not only paid in full the stipulated price on March 19, 1919, but he was also actually issued a patent and then a deed of final conveyance. The evidence, as assayed by the Court of Appeals, also clearly shows that he took possession of the land and held such possession until close to the outbreak of World War II — or a period of about twenty years from 1919 to 1941 — raising sugar cane there and building and operating a sugar mill. In the context of established doctrine already discussed, the two documents that were issued to him in 1926 — a patent and a deed of final conveyance — were neither essential nor indispensable to Tomas Alonso's taking full ownership of the land. Consequently, the question of whether the approval of the Secretary of Agriculture was obtained or not on the deed of final conveyance is likewise neither essential nor indispensable to a full, final, and judicious determination of the validity of the sale to Tomas Alonso.

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Be that as it may, the factual finding of the Court of Appeals that there was such approval is supported not only by presumption of regularity in the performance of official duty but also by secondary evidence other than the archive copy marked Exhibit "C" as well as an admission by the Solicitor General in his Comment. The Friar Lands Sale Certificate Register, page 227 of which contains the particulars of the sale to Tomas Alonso of Lot 727, marked Exh. "A", shows entries evidencing the existence of both the patent and the deed of final conveyance. These two documents were accomplished in Manila. The Friar Lands Sale Certificate Register has been part of the official land records in Cebu. The entries thereon could not have been made unless the two documents were duly issued and released by the head office in Manila of the then Bureau of Public Lands, which could not have done so without first determining that the documents were complete and in order, and which could not have sent them to the Cebu office for recording on the said Register had they been incomplete. Neither should it be presumed that the Cebu office simply recorded patents and deeds of final conveyance illegally — that is to say, even in the absence of the approval required by law. There is also the certification of the Lands Management Bureau director that a final deed of conveyance was in fact issued to Tomas Alonso such that "all subsequent instruments of conveyance and . . . certificates of title must have [their] provenance on Tomas Alonso's Deed of Conveyance" (See Annex "A" to the Solicitor General's Comment dated November 8, 2000). Even the Solicitor General, in his Comment, expressly declared that "it can no longer be disputed that petitioner's father, Tomas Alonso, *had validly acquired* the disputed Lot 727 by virtue of a conveyance from the Government way back in 1926." That admission binds the government.

If, therefore, Lot No. 727 was validly acquired from the government way back in 1926, as admitted by the counsel for the State, or — to be more precise — on March 19, 1919, the date of full compliance by Tomas Alonso with the legal requirements as held in *Bacalzo*, then unquestionably the government's interest in Lot No. 727 had long ago disappeared

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or been extinguished. Reversion of ownership over public lands is legally possible only upon proof of fraudulent issuance of a patent or certificate of title (*Republic vs. CA,* 258 SCRA 223 [1996]). The record of this case shows that fraud in the issuance of the certificate of sale, patent, and deed of final conveyance to Tomas Alonso has neither been alleged nor made the subject of evidence. In fine, it is not the sale of Tomas Alonso that has been assailed in this action on grounds of fraud or any other cause of invalidity, but the fraud and jurisdictional infirmity afflicting the private respondent's reconstituted title.

The inescapable conclusion from all of the foregoing is that there is absolutely no legal and factual basis for canceling the sale to Tomas Alonso or for ordering a reversion of Lot No. 727 to the government.

As regards prescription and laches, I am not convinced that Tomas Alonso's ownership has been extinguished by either of such causes, nor that petitioner's right of action has been effectively barred. The right to bring an action against a void title where the nullity springs from want of jurisdiction as in the case of the reconstituted title involved here never prescribes (*Ferrer vs. Bautista*, 231 SCRA 257 [1994]; *Agne vs. Director of Lands*, 181 SCRA 793 [1990]). And laches is a doctrine of equity which the Court should not allow to be used as a shield for fraud or wrongdoing by one who is shown to have been responsible therefor, like private respondent (*Raneses vs. IAC*, 187 SCRA 397 [1990]). Neither should laches be applied when manifest wrong or injustice will result (*Santiago vs. CA,* 278 SCRA 98 [1997]). And in *Vergara vs. Vergara* (5 SCRA 53 [1962]), we held that the second element of laches — namely, "delay in asserting plaintiff's rights, he having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit" — is absent where plaintiff had no knowledge of the doing of the act complained of; hence, the delay in asserting such right, occasioned by such lack of knowledge, cannot give rise to the defense of laches. This element is not present in the case at bar. Neither Tomas Alonso nor his son, petitioner Francisco Alonso, knew about the fraudulent reconstitution of title effected by Cebu Country Club. Moreover,

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the requirement that plaintiff must have been afforded an opportunity to file a suit, has not been met. It is clear from the record that the opportunity to file suit arose only upon the discovery of the official documents that unequivocally established the fact that Lot No. 727 had indeed been fully acquired by Tomas Alonso, and such discovery was, precisely, what triggered the filing of the present suit. Before the documents were discovered, the Alonsos were literally petrified by a total dearth of evidence from filing suit. Their predicament of utter helplessness negates the applicability of laches. In the balancing of interests, we should go slow in punishing the victim of a fraud instead of penalizing the culprit, no matter how long the time lapse may have lasted.

Even acquisitive prescription is no bar. As earlier noted, respondent Court of Appeals found as a fact that the instrument of sale was submitted for registration but for some unknown reason no transfer certificate of title was issued to Tomas Alonso. Such finding can only mean that, at the very least, upon its presentation to the Register of Deeds the deed was received and entered in the daybook pursuant to Section 56 of Act No. 496, albeit the issuance of the corresponding transfer certificate of title and the cancellation of OCTs No. 251, 252 and 253 in the name of the government failed to materialize. However, there is authority for the view that such incomplete registration legally produces all the effects of registration despite the non-issuance of a TCT in Tomas Alonso's name (*Government vs. Aballe*, 60 Phil. 986 [1934]; *DBP vs. Actg. Register of Deeds of Nueva Ecija,* 162 SCRA 450 [1988]). Consequently, Tomas Alonso became the registered owner of Lot No. 727 in contemplation of law (*Potenciano vs. Dineros,* 97 Phil. 196 [1955]). Despite not having been issued a certificate of title, he thereafter had ownership rights of which the entire world had notice (*Levin vs. Bass*, 91 Phil. 420 [1952]). Against those rights, acquisitive prescription never ran (Section 46, Act No. 496) both as regards Tomas Alonso and his son, Francisco Alonso, petitioner in this case; for if prescription is unavailing against the registered owner, it is equally unavailing against his hereditary successors (*Atun vs. Nunez*, 97 Phil. 762 [1955];

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Guinoo vs. Court of Appeals, 97 Phil. 235 [1955]; *Barcelona vs. Barcelona*, 100 Phil. 251 [1956]).

Did Tomas Alonso's ownership continue until his death in 1962? The answer can only be in the affirmative, because no adverse possession could defeat such ownership and because the presumption of continuity of ownership applies (Rule 131, Section 3(ee), Revised Rules of Evidence; 1 *Jones* on Evidence, §66,p. 117).

On the other hand, the record clearly discloses the fact that private respondent failed to substantiate its allegation (Par. 18, Answer to Complaint) that it had "acquired" the land "in good faith"; such failure is expressly admitted by respondent Court in its Decision (p. 15). Moreover, reliance on the reconstituted title is legally improper as the settled rule is that reconstitution neither confirms nor adjudicates ownership (*Serra Serra vs. Court of Appeals,* 195 SCRA 482 [1991]), more so because private respondent's reconstituted title appears to have been issued without any showing, here or elsewhere, that the Original Certificates of Title No. 251, 252, and 253 from which the reconstituted title is supposed to have descended have been duly cancelled — another cogent reason for declaring it void (*Alabang Development Corporation vs. Valenzuela*, 116 SCRA 261 [1982]) and for declaring the petitioner's heirs as still the lawful owners of Lot 727.

WHEREFORE, I vote to grant the petition by declaring null and of no effect, and ordering the cancellation of the reconstituted Transfer Certificate of Title No. 1310 (T-11351) of the Registry of Deeds of Cebu City; and declaring petitioner as the lawful owner of Lot No. 727 of the Banilad Friar Lands Estate situated in Cebu City; and ordering the Register of Deeds of Cebu City to issue a new transfer certificate of title to, and in the names of, the newly-substituted petitioners.