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reconveyance is based on a ground which can be a ground for reopening. It seems to me incongruous that a party should sue for reconveyance of a title which, after all, he may still secure for himself in a more appropriate proceeding within the land registration case itself. Accordingly, I would rather reserve my opinion on these two questions. Nevertheless, I concur in the judgment in this case because to my mind, the two points of doubt I have just mentioned have been made academic by the resolution of this Court in G. R. No. L-20690 which, although it denied the petition of appellants to review the decision of the Court of Appeals upholding appellee's claim of title and allowed the registration thereof, it made said denial subject to the express reservation of being "without prejudice to a separate action, if proper, against Santiago Agreda." With that reservation which, whether properly or improperly made, is now final and irrevocable, any discussion of *res adjudicata* or *lis pendens*, is out of the question. So also the timeliness of an action of reconveyance filed before the period of reopening has expired has become insignificant in this case. I take it that such reservation constitutes nothing less than a permission to have the conflict of title between appellants and appellee settled in a separate action independently of what might have been held in respect thereto in the cadastral proceedings, and since it does not appear that appellee took any steps to have such reservation removed, it is now too late for him to complain.

[G.R. No. L-22315. May 31, 1971]

IN THE MATTER OF THE PETITION OF LUCIO LIM YEO TO BE ADMITTED A CITIZEN OF THE PHILIPPINES. LUCIO LIM YEO, *petitioner-appellee, vs.* REPUBLIC OF THE PHILIPPINES, *oppositor-appellant.*

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SYLLABUS

1. **CIVIL LAW; DOMICILE; TEMPORARY STAY FOR PARTICULAR PURPOSE IN ANOTHER LOCALITY DOES NOT IMPLY ABANDONMENT OF RESIDENCE.—** It is a fact that appellee was born on October 17, 1939 and grew up in Naga-Naga (now Alicia), Zamboanga del Sur. While it is true that from 1957 to 1961 he lived in Manila, it is nonetheless true that his stay in said city was merely temporary and was due to the fact that he spent those four years studying Chemical Engineering at the Mapua Institute of Technology. Such temporary stay in the City of Manila for that particular purpose did not imply that appellee had abandoned his residence in the municipality of his birth.

2. **CONSTITUTIONAL LAW; CITIZENSHIP; NATURALIZATION; IN CASE AT BAR, CHARACTER WITNESSES DID NOT HAVE OPPORTUNITY TO OBSERVE PETITIONER'S CONDUCT AND DEMEANOR.—** "Petitioner left Zamboanga City for Manila in 1957 (Annex "A"). Since that year up to the time of the hearing in 1962, he has always been in Manila by reason of his employment and studies at the Mapua Institute of Technology. His witnesses Leon Uro and Marciano Montojo, both of whom are residents of Zamboanga City, never had contacts with petitioner in Manila. They therefore cannot be said to have the opportunity to observe the conduct and demeanor of petitioner, much less can they be said to have such a close personal association with him as to consider themselves to be intimates (Chong Pong *v.* Republic, L-9153, May 17, 1957; Dy Suat *v.* Republic, G.R. No. L-9224, May 29, 1957)."

APPEARANCES OF COUNSEL

Felix F. Catts for petitioner-appellee.

Solicitor General Arturo A. Alafriz, Assistant Solicitor General Pacifico P. de Castro and *Solicitor Augusto M. Amores* for oppositor-appellant.

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DECISION

DIZON, *J.*:

On May 16, 1960, petitioner filed his petition for naturalization in the Court of First Instance of Zamboanga, to which were attached the affidavits of his character witnesses, Leon Uro and Marciano Montojo.

On June 14, 1961, the Republic of the Philippines opposed the petition on the ground that petitioner had no lucrative employment.

On September 27, 1962, after hearing the parties, the trial court rendered the appealed decision declaring Lucio Lim Yao "eligible for naturalization as a citizen of the Republic of the Philippines" and granting his application, with the understanding, however, that pursuant to the provisions of Republic Act No. 530, the decision shall not become final and executory until after the lapse of two years from its promulgation.

The Republic of the Philippines appealed.

The Solicitor General agrees that the evidence presented by petitioner shows that:

"x x x he is a citizen of the Republic of China (p. 10 t.s.n., Directo; Exh. "S"); he is single (pp. 3, 11, t.s.n., Directo); he was born in Naga-Naga (now Alicia), Zamboanga del Sur on October 17, 1939 (p. 10, t.s.n., Directo; p. 22, t.s.n., Cabato; Exh. "G"); he has resided in the Philippines continuously since birth (p. 11, t.s.n., Directo).

Since April, 1960, he is employed as General Clerk of the State Glass Supply located at 681 Sto. Cristo Street, Manila where he receives a yearly salary of P3,000.00 effective January, 1962. In 1961, he received an annual salary of P2,400.00 only (Exh. "A"; pp. 5-7, 30, t.s.n., Directo; pp. 9-10, 60-61, t.s.n., Cabato). Before 1961, he was given only a monthly salary of P150.00 (pp. 4-5 t.s.n., Directo).

He also has a part-time job at the Jabo Trading where he receives P2,600.00 annually as his commission as casual salesman (Exh. "B"; pp. 8, 33, t.s.n., Directo; pp. 27-28, 51, 61, t.s.n., Cabato).

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He filed his income tax returns for the years 1960 and 1961 (Exh. "C", pp. 10, 37, t.s.n., Directo; p. 27, t.s.n., Cabato). He has paid the corresponding tax thereon (pp. 37-38, t.s.n., Directo, Exhs. "C-1", "V").

He has filed a statement of assets and liabilities in 1961 (Exh. "D").

He resides in Manila (p. 5, t.s.n., Directo; Exhs. "C", "V", & "W").

He is registered as an alien with the Bureau of Immigration (Exh. "T", p. 28, t.s.n., Directo).

He finished his primary grades at the Zamboanga Chinese High School, his intermediate grades at the Isabela Chinese School and the Zamboanga Chinese High School, and his secondary course also at the Zamboanga Chinese High School, (pp. 23-24, t.s.n., Directo; Exh. "Z"; pp. 25-26, 91, t.s.n., Cabato). He claims that said schools are recognized by the Government and teach English, Philippine History, Civics and Government (p. 91, t.s.n., Directo), but he did not present any documentary evidence to that effect. At present, he is a fourth year student of engineering in the Mapua Institute of Technology (pp. 26, 53, t.s.n., Cabato; pp. 24, 38-39, t.s.n., Directo).

He can speak and write Chavacano and the English language (pp. 12-14, t.s.n., Directo; pp. 7-9, 62-64, t.s.n., Cabato; Exh. "E").

He believes in the principles underlying the Philippine Constitution (pp. 15-16, 42-45, t.s.n., Directo); has mingled socially with the Filipinos; has embraced Filipino customs, ideals and traditions; and has conducted himself in a proper and irreproachable manner during his entire period of residence in the Philippines (pp. 13, 29-38, 61-71, 96-99, t.sn., Cabato; pp. 16-21, t.s.n., Directo).

He alleged that he is not opposed to organized government; that he is not affiliated with any subversive group which upholds and teaches doctrines opposed to organized government (pp. 20-21, t.s.n., *id.*); that he has not been convicted of any crime involving moral turpitude (p. 21, t.s.n., *id.*; Exh. "J", "L" to "W").

Marciano R. Montojo, a character witness, testified that he is a bookkeeper and a resident of Zamboanga City (p. 3, t.s.n, Cabato); that he has known petitioner since 1941 (p. 4, t.s.n., *id.*); and has attached himself to the principles underlying the Philippine Constitution (pp. 6-7, t.s.n., *id.*); that the petitioner conversed with him in Chavacano and in the English language (pp. 8-9, t.s.n., *id.*); that he mixes with Filipinos whose customs and traditions he is desirous to learn (pp. 13, 31-38 t.s.n., *id.*); and that he has signed the affidavit (Exh. "X") (pp. 17-18, t.s.n., *id.*).

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Leon Uro, 68 years old, married, proprietor, and resident of Baliwasan, Zamboanga City (p. 57, t.s.n., *id.*), declared as the second character witness. He testified that he came to know petitioner since the latter was a small boy (pp. 58-59, t.s.n., *id.*); that he thinks petitioner is now working in Manila (pp. 59-60, t.s.n., *id.*), that petitioner speaks and writes Chavacano and English (pp. 62-64, t.s.n., *id.*); that he is of good moral character (p. 67, t.s.n., *id.*); that petitioner cooperated in community activities such as July 4 parades and contributes to the Red Cross, the Boy Scouts and Girl Scouts (pp. 68-69, t.s.n., *id.*); that petitioner attends fiestas and dances (pp. 69-70, t.s.n., *id.*); that he is not a member of the Communist party (p. 72, t.s.n., *id.*); that he came to know petitioner through his father when they lived in the same house during the early days of the Japanese Occupation (p. 94, t.s.n., *id.*); that petitioner is qualified to become a Filipino citizen (p. 75, t.s.n., *id.*)."

In spite of the facts established by petitioner's evidence, as above summarized, the Solicitor General contends that the appealed decision should be reversed because the trial court committed the following errors:

"I

THE TRIAL COURT ERRED IN ASSUMING JURISDICTION TO TRY AND IN ACTUALLY TRYING THE CASE NOTWITHSTANDING THE FACT THAT (a) PETITIONER HAS NOT RESIDED IN ZAMBOANGA AT LEAST ONE YEAR IMMEDIATELY PRECEDING THE FILING OF THE PETITION AND (b) THE PETITION AND NOTICE OF HEARING WERE NOT PUBLISHED FOR THREE CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION.

II

THE TRIAL COURT ERRED IN FINDING THAT PETITIONER HAS A LUCRATIVE EMPLOYMENT OR OCCUPATION.

III

THE TRIAL COURT ERRED IN NOT FINDING THAT THE CHARACTER WITNESSES WERE NOT CREDIBLE PERSONS WITHIN THE MEANING OF THE LAW.

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IV

THE TRIAL COURT ERRED IN GRANTING THE PRESENT PETITION FOR NATURALIZATION."

We find the first assignment of error to be without merit.

It is a fact that appellee was born on October 17, 1939 and grew up in Naga-Naga (now Alicia), Zamboanga del Sur. While it is true that from 1957 to 1961 he lived in Manila, it is nonetheless true that his stay in said city was merely temporary and was due to the fact that he spent those four years studying Chemical Engineering at the Mapua Institute of Technology. Such temporary stay in the City of Manila for that particular purpose did not imply that appellee had abandoned his residence in the municipality of his birth.

As regards the State's contention that the petition and notice of hearing were not published for three consecutive weeks in a newspaper of general circulation, We find that, according to Exh. "I", the same were published consecutively on May 21 and 28 and June 4, of 1960, in the local newspaper "EL SUR," which was of general circulation in the City of Zamboanga and other parts of Mindanao. Moreover, the certificate issued by the Bureau of Printing (Exh. "H") shows that the petition was also published in three consecutive issues of the Official Gazette.

Anent the question of whether or not appellee had a lucrative employment (second assignment of error), the latter's evidence shows that he was at first an employee of the State Glass Supply at a monthly salary of P150.00; that in 1962 his total income went up to P5,600.00 because his yearly salary at the State Glass Supply had been increased to P3,000.00, and besides, he earned around P2,600.00 a year doing a salesman's work for Jaba Trading.

The Solicitor General argues that this unusual increase in appellee's income is highly suspicious and that it is not improbable that he and his employers had resorted to fictitious or deceptive arrangements to show that he had a lucrative employment. While We agree with the Solicitor General that these fictitious or deceptive arrangements are a *possibility*, still We cannot definitely say that it is a fact

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in the instant case because, at the time appellee claims he had such yearly income, he was already in the senior year of Chemical Engineering in the Mapua Institute of Technology and it is at least probable that, due to his training and qualifications, his yearly salary as General Clerk of the State Glass Supply located at 681 Sto. Cristo, Manila had been increased to P3,000.00, and that during his spare time he earned annual commissions amounting to P2,600.00 as a casual salesman of Jaba Trading also of the City of Manila (See Exhs. "A" & "B"). Moreover, the trial court found in this connection that "this income of the petitioner for 1961 had been declared by him in his income tax returns (Exh. "C") and in his statement of assets and liabilities (Exh. "D").

In relation to the third assingment of error, the Solicitor General says the following in his brief:

"Petitioner left Zamboanga City for Manila in 1957 (Annex "A"). Since that year up to the time of the hearing in 1962, he has always been in Manila by reason of his employment and studies at the Mapua Institute of Technology.

His witnesses Leon Uro and Marciano Montojo, both of whom are residents of Zamboanga City, never had contacts with petitioner in Manila. They therefore cannot be said to have the opportunity to observe the conduct and demeanor of petitioner, much less can they be said to have such a close personal association with him as to consider themselves to be intimates (Chong Pong *v.* Republic, L-9153, May 17, 1957; Dy Suat *v.* Republic, G.R. No. L-9224, May 29, 1957)"

We are inclined to agree with the Solicitor General. It seems obvious that, for a period of four years (1957-61), appellee's character witnesses — both of whom resided in Zamboanga City during that period of time — did not have sufficient contact with him because he spent that period of time in Manila. That for this reason they had no reasonable opportunity to observe his conduct during that period is quite easy to see. On the other hand, appellee presented no witness to testify regarding his conduct while studying in Manila — which was for quite a long period of time.

IN VIEW OF ALL THE FOREGOING, the decision appealed from is reversed and set aside on the sole ground that appellee's character witnesses were not qualified to say — and their testimony did not

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prove—that during *all the period* of his residence in the Philippines he had observed good and irreproachable conduct. With Costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, and *Villamor, JJ.*, concur.

Barredo, J., I concur but I reserve my opinion as to the matter of lucrative income.

Ruiz Castro, J., took no part.

[G.R. No. L-22404. May 31, 1971]

PASTOR B. CONSTANTINO, *plaintiff-appellant*, *vs.* HERMINIA ESPIRITU, *defendant-appellee.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; STIPULATION *POUR AUTRUI*; DEMAND FOR FULFILLMENT BY THIRD PERON BENEFITED BY CONTRACT.**— That one of the parties to a contract is entitled to bring an action for its enforcement or to prevent its breach is too clear to need any extensive discussion. Upon the other hand, that the contract involved contained a stipulation *pour atrui* amplifies this settled rule only in the sense that the third person for whose benefit the contract was entered into may also demand its fulfillment provided he had communicated his acceptance thereof to the obligor before the stipulation in his favor is revoked.

2. **ID.; ID.; STATUTE OF FRAUDS; PARTIALLY PERFORMED CONTRACTS EXCLUDED FROM APPLICATION THEREOF.**— The contention that the contract in question is not enforceable by action by reason of the provisions of the Statute of Frauds does not appear to be indubitable, it being clear upon the facts alleged in the amended complaint that the contract between the parties had already been *partially* performed by the execution of the deed of sale, the action brought below being only for the enforcement of another phase thereof, namely, the execution by appellee of a deed of conveyance in favor of the beneficiary thereunder.