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"We hold that the Court of Appeals erred in considering appellant-petitioner Diwata Vargas only subsidiarily liable under Article 103 of the Revised Penal Code. This court, in previous decisions, has always considered the registered owner/operator of a passenger vehicle, jointly and severally liable with the driver, for damages incurred by passengers or third persons as a consequence of injuries (or death) sustained in the operation of said vehicles. (*Montoya vs. Ignacio*, 94 Phil., 182; *Timbol vs. Osias*, G.R. No. L-7547, April 30, 1955; *Vda. de Medina vs. Cresencia*, 99 Phil., 506; *Necesito vs. Paras*, 104 Phil., 75; *Erezo vs. Jepte*, 102 Phil., 103; *Tamayo vs. Aquino and Rayos vs. Tamayo*, 105 Phil., 949; 56 Off. Gaz. [36] 5617.) In the case of *Erezo vs. Jepte*, *Supra*, We held:

> "* * * In synthesis, we hold that the registered owner, the defendant-appellant herein, is primarily responsible for the damage caused * * *" (Italics supplied)

In the case of *Tamayo vs. Aquino, supra*, We said:

> "* * * As Tamayo is the registered owner of the truck, his responsibility to the public or to any passenger riding in the vehicle or truck must be direct * * *. (Italics supplied)

WHEREFORE, the petition is hereby DENIED. With costs against the petitioner.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Paras, and *Sarmiento, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-33261. September 30, 1987]

LIWALUG AMEROL, MACATANTO AMEROL, TAIB AMEROL, DIBARATUN AMEROL, DIBARATUN MATABALAO, MINDANAO DIBARATUN, DIPUNDUGUN MORO, and MANUCAO MORO, *petitioners, vs.* **MOLOK BAGUMBARAN,** *respondent.*

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SYLLABUS

1. **CIVIL LAW; LAND TITLES AND DEEDS; TRUST; A PROPERTY PATENTED AND TITLED IN FAVOR OF ANOTHER PERSON THROUGH FALSE PRETENSES CREATED AN IMPLIED TRUST IN FAVOR OF THE ACTUAL POSSESSOR.**— Indubitably, the act of respondent in misrepresenting that he was in actual possession and occupation of the property in question, obtaining a patent and Original Certificate of Title No. P-466 in his name, created an implied trust in favor of the actual possessor of the said property.

2. **ID.; ID.; TORRENS SYSTEM WAS NOT DESIGNED TO SHIELD AND PROTECT ONE WHIO HAD COMMITTED FRAUD OR MISREPRESENTATION.**— [T]he land in question was patented and titled in respondent's name by and through his false pretenses. Molok Bagumbaran fraudulently misrepresented that he was the occupant and actual possessor of the land in question when he was not because it was Liwalug Datumanong Bagumbaran falsely pretended that there was no prior applicant for a free patent over the land but there was — Liwalug Datomanong. By such fraudulent acts, Molok Bagumbaran is deemed to hold the title of the property in trust and for the benefit of petitioner Liwalug Datomanong. Notwithstanding the irrevocability of the Torrens title already issued in the name of respondent, he, even being already the registered owner under the Torrens system, may still be compelled under the law to reconvey the subject property to Liwalug Datomanong. After all, the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds title in bad faith.

3. **ID.; ID.; RECONVEYANCE DOES NOT WORK TO SET ASIDE AND PUT UNDER REVIEW ANEW THE FINDINGS OF FACTS OF THE BUREAU OF LANDS.**— [C]ontrary to the erroneous claim of the respondent, reconveyance does not work to set aside and put under review anew the findings of facts of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, in this case the title thereof, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to

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one with a better right. That is what reconveyance is all about. Yet, the right to seek reconveyance based on an implied or constructive trust is not absolute. It is subject to extinctive prescription

4. ID.; TRUST; AN ACTION FOR RECONVEYANCE BASED ON AN IMPLIED OR CONSTRUCTIVE TRUST PRESCRIBES IN TEN YEARS.— An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years and not otherwise. A long line of decisions of this Court, and of very recent vintage at that, illustrates this rule. Undoubtedly, it is now well-settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property. The only discordant note, it seems, is *Balbin vs. Medalla*, which states that the prescriptive period for *a reconveyance* action is four years. However, this variance can be explained by the erroneous reliance on *Gerona vs. de Guzman*. But in *Gerona*, the fraud was discovered on June 25, 1948, hence Section 43(3) of Act No. 190, was applied, the new Civil Code not coming into effect until August 30, 1950 as mentioned earlier. It must be stressed, at this juncture, that Article 1144 and Article 1456, are *new* provisions. They have no counterparts in the old Civil Code or in the old Code of Civil Procedure, the latter being then resorted to as legal basis of the four-year prescriptive period for an action for reconveyance of title of real property acquired under false pretenses.

PADILLA, *J.*, *concurring and dissenting:*

CIVIL LAW; PRESCRIPTION OF ACTIONS; DISTINCTION WHETHER AN ACTION FOR RECONVEYANCE BASED ON FRAUD WILL PRESCRIBE IN TEN YEARS OR FOUR YEARS, EXPLAINED.— I do not however agree with the sweeping proposition that all actions for reconveyance, based upon the ground of fraud, prescribed in ten (10) years. A distinction should be made. Fraud, or *dolo*, it should be recalled, is of two (2) kinds: *dolo causante*, or that which determines or is the essential cause of the consent; and *dolo incidente*, or that which does not have such decisive influence and by itself cannot cause the giving of consent, but refers only to some particular or accident of obligation. (Tolentino, *Civil Code of the*

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Philippines, 1956 ed., Vol. IV, p. 463). If the fraud committed was but an incident to the registration of land (*dolo incidente*), as in the case at bar, then I would agree that the action for reconveyance prescribes in ten (10) years. But, where it is necessary to annul a deed or title before relief could be granted, as when fraud, which vitiates consent(*dolo causante*), is alleged to have been committed in the execution of the deed which became the basis for the registration of a parcel of land, the action for reconveyance should be filed within four (4) years from the discovery of the fraud.

D E C I S I O N

SARMIENTO, *J.*:

This is a petition for review on *certiorari* of the decision[1] of the then Court of First Instance of Lanao del Sur, Branch III, Marawi City, in Civil Case No. 1354, entitled, "*Molok Bagumbaran vs. Liwalug Amerol, et al.*," under Republic Act No. 5400, "as only question of law is raised."[2]

The only issue for resolution is the prescriptive period of an action for reconveyance of real property which has been wrongfully or erroneously registered under the Torrens System in another's name. In other words, what is the prescriptive period for the action to reconvey the title to real property arising from an implied or constructive trust and, corrolarily, its point of reference. The petitioners herein, defendants in the trial court, assert that they have ten years to bring the action, while the respondent, plaintiff in the court below, claims the prescriptive period is four years. The trial court ruled for the plaintiff, now respondent.

We reverse. We hold that the prescriptive period for such an action for reconveyance, as this case, is ten years. The point of reference is, or the ten-year prescriptive period

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[1] Penned by Judge Demetrio B. Benitez.

[2] *Rollo*, 15.

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commences to run from, the date of the issuance of the certificate of title over the real property.

There is no issue as to the facts, this case having been elevated to this Court, as aforestated, on purely a question of law. Be that as it may, in order to satisfy constitutional requirements as well as to place the question of law in proper perspective, there is need to state the facts of the case. On this regard, the findings of the trial court would best serve the stated purposes.

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From the evidence submitted during the trial, there is no dispute concerning the fact relative to the identity of the land in litigation. It is commonly known as Lot No. 524, Pls-126 and technically described and bounded in the sketch (Exh. "7"). This is the very tract of land alleged by the plaintiff to have been forcibly entered into by the defendants and which plaintiff now seeks to recover possession thereof. It has also been proven that the same lot was covered by two free patent applications: — (1) that of defendant Liwalug Datomanong (erroneously surnamed Amerol) which he filed on the 4th day of September, 1953, and (2) that of Molok Bagumbaran which was filed on December 27, 1954. There is also no question regarding the fact that as to these two free patent applications, that of plaintiff Molok Bagumbaran was given due course as a result of which Free Patent No. V-19050 was issued on August 16, 1955 by authority of the President of the Philippines Ramon Magsaysay, by Jaime Ferrer, Undersecretary of Agriculture and Natural Resources and duly registered with the office of the Register of Deeds of the Province of Lanao (now Lanao del Sur) in the same year whereupon Original Certificate of Title No. P-466 was duly issued owner's duplicate certificate having been furnished the herein plaintiff.

This court is also inclined to believe that defendant Liwalug Datomanong had never known of plaintiff's free patent application on the land in question nor was he ever notified or participated in the administrative proceedings relative to plaintiff's free patent application. In the meantime, since the date he purchased the land from Mandal Tando, said defendant has been and up to the present in continuous occupation and cultivation of the same. His co-defendants named in the complaint are merely his tenants.

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It is also incontrovertible fact that said defendant did not take appropriate action to annul the patent and title of the plaintiff within one year from issuance thereof and that the first step taken by him to contest said patent and title was a formal protest (Exh. "12", p. 408, Record) dated April 24, 1964, filed before the Bureau of Lands after the lapse of Nine (9) long years from the issuance of patent in favor of the plaintiff. The second step be took was his counterclaim contained in his answer to the complaint in the above entitled case, which answer was filed with this court on December 4, 1964. *In said counterclaim, defendant reiterated his stand that plaintiff secured patent on the land by means of deceit and fraud, wherefore, defendant prayed that said title be annulled, or, alternatively, plaintiff be ordered to reconvey the said land to the said defendant Liwalug Datomanong.*

First question to be resolved is whether or not the plaintiff is guilty of fraud or misrepresentation in securing the Free Patent No. V-19050 covering the land in question.

Upon a thorough examination of the evidence, proofs are sufficient to support defendant's contention that plaintiff is guilty of fraud and misrepresentation. In the first place, proofs are abundant tending to show that since 1952 when Mandal Tando transferred the land to said defendant, the latter occupied, took possession thereof and cultivated the same continuously, publicly, adversely against any claimant and in the concept of owner up to the present; that said defendant had introduced considerable improvements such as coconut and coffee plantations and other fruit trees besides his farm house, a mosque, cassava plantation and clearing and full cultivation of the entire area. The fact of possession on the part of said defendant has been attested to by competent and creditable witnesses like Mandal Tando who conveyed the land to the defendant; Hadji Sirad Gomandang, the barrio captain of Montay, Malabang, Lanao del Sur; Hadji Rasol Maruhom and Hadji Abdulcadir Pagayawan, both of Pialot, Malabang, Lanao del Sur who are farmers and barrio-mates of said defendant; and also Disomnong Dimna Macabuat, an employee in the office of the District Land Officer at Marawi City who had officially conducted occular inspection and investigation of the premises in connection with the protest of said defendant found thereon the above-mentioned improvements introduced by the said defendant.

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What is more, on or before filing his free patent application, plaintiff knew that the land in question which was covered by his free patent application was then actually occupied and cultivated by defendant Liwalug Datomanong if not by Mandal Tando, the original occupant. Be it remembered that Mandal Tando had transferred to defendant Liwalug Datomanong Twenty Four (24) hectares, more than eleven hectares of which is (sic) outside the military reservation and designated as Lot No. 524, Pls-126 and the rest which is in the southern portion lies within the military reservation. Now, immediately adjacent thereto on the south is the land claimed and occupied by the herein plaintiff also consisting of Twenty Four (24) hectares but wholly within the military reservation. It appears that plaintiff declared this Twenty four hectares for the first time on October 24, 1950 for taxation purposes (Tax Declaration No. 1529, Record) and stated in said tax declaration (Exhs. "8" and "8-A", p. 414, Record) regarding the boundaries that the adjacent owner on the north is Mandal Tando. In other words, plaintiff had expressly recognized the fact that Mandal Tando is an adjacent land owner north of plaintiff's property. On February 19, 1951 herein plaintiff revised the above-stated tax declaration and secured another (Tax Declaration No. 1794, Exh. "9" and "9-A", p. 413, Record) and still plaintiff stated therein that his boundary land owner on the north is Hadji Abdul Gani.[3] [*a.k.a.* Liwalug Datomanong (Amerol].[4]

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Notwithstanding the aforequoted findings, very unequivocal to be sure, the trial court denied the counterclaim of the defendants, now petitioners, for the affirmative relief of reconveyance on the ground of prescription, Said the court:

x x x x x x x x x

The patent of the plaintiff having been registered back in 1955 and in contemplation of law registration thereof is notice to the whole world and yet defendant exerted no effort whatsoever either to annul the title or institute proceedings for reconveyance except in his counterclaim contained in his answer to the complaint in this case

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[3] Decision, 11-14; *Rollo*, 44-47; italics supplied.

[4] *Id.*, 5; *Rollo*, 38.

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at bar which answer and counter-claim was filed on December 4, 1964, *some nine long years from the date of registration of the patent, defendant unfortunately lost his right to reconveyance within the period of four (4) years from the date of registration of said patent.*[5]

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Thus, the dispositive portion of the assailed decision stated:

x x x x x x x x x

PREMISES CONSIDERED, judgment is hereby rendered as follows: (1) declaring the herein plaintiff the registered owner of Lot No. 524, Pls-126 and sustaining and respecting the validity of the plaintiff's Original Certificate of Title No. P-466 covering the said land; (2) ordering the defendants to vacate the premises of Lot No. 524, Pls-126 and deliver possession thereof to the herein plaintiff under certain terms and conditions herein below stated; (3) denying and hereby dismissing the counterclaim of the herein defendants and consequently the prayer to annul the title and/or for reconveyance of the land to said defendant Liwalug Datomanong must likewise be denied; (4) that before plaintiff could take possession of said premises he must reimburse defendant Liwalug Datomanong the total sum of Six Thousand Seven Hundred Fifty-Two Pesos and Sixty-Two Centavos (₱6,752.62) which he incurred for the necessary and useful expenses on the land in question with the right of said defendant to retain possession of the premises if said reimbursement be not completely made. No pronouncement as to costs.[6]

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Hence, this petition.[7]

The petitioners in their Brief[8] assign the following two errors allegedly committed by the trial court:

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[5] *Id.*, 18: *Rollo*, 52; italics supplied.

[6] *Id.*, 21-22; *Rollo*, 55-56; italics supplied.

[7] Filed on November 24, 1970.

[8] *Rollo*, 104.

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I.

THE COURT ERRED IN ITS CONCLUSION OF LAW TO THE EFFECT THAT PETITIONERS' RIGHT OF ACTION FOR RECONVEYANCE FOR VIOLATION OF AN IMPLIED TRUST PRESCRIBED AFTER FOUR YEARS FROM THE REGISTRATION OF THE PATENT OF RESPONDENT.

II.

THE COURT ERRED IN NOT REQUIRING THE INTRODUCTION OF EVIDENCE AS BASIS IN THE ASSESSMENT OF THE FAIR MARKET VALUE OF THE IMPROVEMENT INTRODUCED ON THE LAND IN GOOD FAITH BY PETITIONERS INSTEAD OF BASING SUCH ASSESSMENT UPON PURE AND SIMPLE GUESS WORKS AND WILD ESTIMATIONS.

The first assignment of error is well-taken as adverted to at the outset.

Indubitably, the act of respondent in misrepresenting that he was in actual possession and occupation of the property in question, obtaining a patent and Original Certificate of Title No. P-466 in his name, created an implied trust in favor of the actual possessor of the said property. The Civil Code provides:

> ARTICLE 1456. If property is acquired through mistake or fraud; the person obtaining it is by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

In this case, the land in question was patented and titled in respondent's name by and through his false pretenses. Molok Bagumbaran fraudulently misrepresented that he was the occupant and actual possessor of the land in question when he was not because it was Liwalug Datomanong Bagumbaran falsely pretended that there was no prior applicant for a free patent over the land but there was — Liwalug Datomanong. By such fraudulent acts, Molok Bagumbaran is deemed to hold the title of the property in trust and for the benefit of petitioner Liwalug Datomanong. Notwithstanding the irrevocability of the Torrens

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title already issued in the name of respondent, he, even being already the registered owner under the Torrens system, may still be compelled under the law to reconvey the subject property to Liwalug Datomanong. After all, the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds title in bad faith. Further, contrary to the erroneous claim of the respondent,[9] reconveyance does not work to set aside and put under review anew the findings of facts of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, in this case the title thereof, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner,[10] or to one with a better right. That is what reconveyance is all about.

Yet, the right to seek reconveyance based on an implied or constructive trust is not absolute. It is subject to extinctive prescription.[11] Happily, both parties agree on this point. The seeming impediment however, is that while the petitioners assert that the action prescribes in ten years, the respondent avers that it does in only four years.

In support of his submission, the respondent invokes several cases. We have examined the invocations and find them inapplicable. For instance, the case of *Fabian v. Fabian*,[12]

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[9] Brief for the respondent, 3; *Rollo*, 130.

[10] *Director of Lands, et al. vs. Register of Deeds of Rizal, et al.*, 92 Phil. 826 (1953).

[11] *Diaz, et al. vs. Gorricho and Aguado*, 103 Phil. 261 (1958); *Candelaria, etc. v. Romero, et al.*, 109 Phil. 500 (1960); *J.M. Tuazon Co., Inc. vs. Magdangal*, 114 Phil. 42 (1962); *Alzona, et al. vs. Capunitan and Reyes*, 114 Phil. 377 (1962); *Gerona vs. De Guzman*, No. L-19060, May 29, 1964, 11 SCRA 153 (1964); *Gonzales vs. Jimenez, Sr.*, No. L-19073, January 30, 1965, 13 SCRA 80 (1965); *Cuaycong, et al. vs. Cuaycong, et al.*, No. L-21616, December 11, 1967, 21 SCRA 1192 (1967); *Armamento vs. Guerrero*, No. L-34228, February 21, 1980, 96 SCRA 178 (1980); and *Ramos v. Court of Appeals*, No. L-52741, March 15, 1982, 112 SCRA 542 (1982).

[12] No. L-20449, January 29, 1968, 22 SCRA 231 (1968).

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relied on by the respondent, does not square with the present case. In *Fabian*, the party who prayed for reconveyance was not in actual possession and occupation of the property. It was instead the party to whom title over the property had been issued who occupied and possessed it. Further, the litigated property had been in the adverse possession of the registered owner for well-nigh over twenty-nine big years, hence, reconveyance had been irretrievably lost.

Miguel v. Court of Appeals,[13] is, likewise, inapplicable. In *Miguel*, the actual occupant and possessor of the controverted parcel of land, after having been enticed by Leonor Reyes, an ambulatory notary public, with promise of help, engaged and retained the services of the latter to facilitate the issuance of a patent for the said land in his (Miguel's) favor. Thus, there existed between the parties a relationship very much akin to that of lawyer-client and which is similarly fiduciary in character. But Reyes, inspite of his compensation of one-fifth of the yearly produce of the property, still violated the trust reposed on him and instead worked for the issuance of the patent in the name of his own wife. So, after the demise of Leonor Reyes, the property was fraudulently patented and titled in his widow's favor. The reconveyance of the property was decreed by the Court based on "*breach of fiduciary relations and/or fraud.*" It was shown that the parties were legally bound to each other by a bond of fiduciary trust, a bond lacking in the case at bar.

Finally, the case of *Ramirez vs. Court of Appeals*[14] can not be availed of because the period of prescription was not there definitely and squarely settled. In fact, Ramirez underscores a vacillation between the four-year and the ten-year rule. There it was stated that "an action for relief on the ground of fraud — to which class the remedy prayed for by Paguia belongs — can only be brought within four years after accrual of the right of action, or from the discovery of the fraud." If the decision

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[13] No. L-20274, October 30, 1969, 29 SCRA 760 (1969).

[14] No. L-28591, October 31, 1969, 30 SCRA 297 (1969).

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just stayed pat on that statement, there would be merit in the respondent's presentation. But *Ramirez* continues: "(I)ndepedently, however, of the alleged fraud on the part of Ramirez, *the right to demand a reconveyance prescribes after 10 years from accrual of the cause of action*, June 22, 1944, the date of registration of the patent and of the issuance of OCT No. 282-A in his name."[15]

Significantly, the three cases cited by the respondent to buttress his position and support the ruling of the trial court have a common denominator, so to speak. The cause of action assailing the frauds committed and impugning the Torrens titles issued in those cases, all accrued prior to the effectivity of the present Civil Code. The accrual of the cause of action in *Fabian* was in 1928, in *Miguel*, February, 1950, and in *Ramirez*, 1944. It must be remembered that before August 30, 1950, the date of the effectivity of the new Civil Code, the old Code of Civil Procedure (Act No. 190) governed prescription. It provided:

SEC. 43. Other civil actions; how limited. — Civil actions other than for the recovery of real property can only be brought within the following periods after the right of action accrues:

x x x x x x x x x

3. Within four years: x x x An action for relief on the ground of fraud, but the right of action in such case shall not be deemed to have accrued until the discovery of the fraud;.

x x x x x x x x x

In contrast, under the present Civil Code, we find that just as an implied or constructive trust is an offspring of the law (Art. 1456, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and *vis-a-vis* prescription, Article 1144 of the Civil Code is applicable.

Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

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[15] *Supra*, 307.

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(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment.

x x x x x x x x x

(Italics supplied)

An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years and not otherwise. A long line of decisions of this Court, and of very recent vintage at that, illustrates this rule. Undoubtedly, it is now well-settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property.[16] The only discordant note, it seems, is *Balbin vs. Medalla*,[17] which states that the prescriptive period for a *reconveyance* action is four years. However, this variance can be explained by the erroneous reliance on *Gerona vs. de Guzman*.[18] But in Gerona, the fraud was discovered on June 25, 1948, hence Section 43(3) of Act No. 190, was applied, the new Civil Code not coming into effect until August 30, 1950 as mentioned earlier. It must be stressed, at this juncture, that Article 1144 and Article 1456, are *new* provisions. They have no counterparts in the old Civil Code or in the old Code of Civil Procedure, the latter being then resorted to as legal basis of the four-year prescriptive period for an action for reconveyance of title of real property acquired under false pretenses.

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[16] *Gonzales vs. Jimenez, supra*; *Cuaycong vs. Cuaycong, supra*; *De la Cerna vs. Dela Cerna*, No. L-28838, August 31, 1976, 72 SCRA 514 (1976); *Carantes vs. Court of Appeals*, No. L-33360, April 25, 1977, 76 SCRA 514 (1977), *Jaramil vs. Court of Appeals*, No. L-31858, August 31, 1977, 78 SCRA 420 (1977); *Ruiz vs. Court of Appeals*, No. L-29213, October 21, 1977, 79 SCRA 525 (1977); *Vda. de Nacalaban vs. Court of Appeals*, No. L-39478, November 29, 1977, 80 SCRA 428 (1977); *Duque vs. Domingo*, No. L-33762, December 29, 1977, 80 SCRA 654 (1977); *Armamento vs. Guerrero, supra*; *Amansec vs. Melendez*, No. L-25422, July 23, 1980; 98 SCRA 639 (1980); *Heirs of Tamak Pangawaran Patiwayan vs. Martinez*, No. L-49027, June 10, 1986, 142 SCRA 252 (1986).

[17] No. L-46410, October 30, 1981, 108 SCRA 666 (1981).

[18] No. L-19060, May 29, 1964, 11 SCRA 153 (1964).

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It is abundantly clear from all the foregoing that the action of petitioner Datomanong for reconveyance, in the nature of a counterclaim interposed in his Answer, filed on December 4, 1964, to the complaint for recovery of possession instituted by the respondent, has not yet prescribed. Between August 16, 1955, the date of reference, being the date of the issuance of the Original Certificate of Title in the name of the respondent, and December 4, 1964, when the period of prescription was interrupted by the filing of the Answer cum Counterclaim, is less than ten years.

The respondent also interposed as a deterrent to reconveyance the existence of a mortgage on the property. It is claimed by the respondent that reconveyance would not be legally possible because the property under litigation has already been mortgaged by him to the Development Bank of the Philippines.[19] This claim is untenable otherwise the judgment for reconveyance could be negated at the will of the holder of the title. By the simple expedient of constituting a mortgage or other encumbrance on the property, the remedy of reconveyance would become illusory. In the instant case, the respondent being doubly in bad faith — for applying for and obtaining a patent and the Original Certificate of Title therefor without being in possession of the land and for mortgaging it to the Development Bank knowing that his Original Certificate of Title was issued under false pretenses — must alone suffer the consequences.

Besides, given the undisputed facts, we cannot consider the mortgage contracted by the respondent in favor of the Development Bank of the Philippines as valid and binding against petitioner Liwalug Datomanong. It would be most unjust to saddle him, as owner of the land, with a mortgage lien not of his own making and from which he derived no benefit whatsoever. The consequences of the void mortgage must be left between the mortgagor and the mortgagee. In no small measure the Development Bank of the Philippines might even be faulted for not making the requisite investigation on the possession of the land mortgaged.

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[19] Brief for the Respondent, 4; *Rollo*, 130.

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Premises considered, we deemed it superfluous to rule on the second assignment of error raised by the petitioners.

WHEREFORE, the petition is GRANTED and the Decision dated June 3, 1970 of the then Court of First Instance of Lanao del Sur in Civil Case No. 1354 is hereby ANNULLED and SET ASIDE and a new one entered ORDERING the respondent to RECONVEY Original Certificate of Title No. P-466 in favor of petitioner Liwalug Datomanong, free of any encumbrance. Costs against the respondent.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, and *Paras, JJ.*, concur.

Padilla, J., see separate opinion.

PADILLA, *J.*, *concurring and dissenting*:

I concur in the result. I do not however agree with the sweeping proposition that all actions for reconveyance, based upon the ground of fraud, prescribed in ten (10) years. A distinction should be made. Fraud, or *dolo*, it should be recalled, is of two (2) kinds: *dolo causante*, or that which determines or is the essential cause of the consent; and *dolo incidente*, or that which does not have such decisive influence and by itself cannot cause the giving of consent, but refers only to some particular or accident of obligation. (Tolentino, *Civil Code of the Philippines*, 1956 ed., Vol. IV, p. 463).

If the fraud committed was but an incident to the registration of land (*dolo incidente*), as in the case at bar, then I would agree that the action for reconveyance prescribes in ten (10) years. But, where it is necessary to annul a deed or title before relief could be granted, as when fraud, which vitiates consent (*dolo causante*), is alleged to have been committed in the execution of the deed which became the basis for the registration of a parcel of land, the action for reconveyance should be filed within four (4) years from the discovery of the fraud.

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In *Rone vs. Claro and Baquiring* (91 Phil. 250, 251), the Court held that an action for the recovery of title to parcel of registered land, where it was alleged that the defendants or one of them, through fraud, deceit and breach of faith, succeeded in getting the original certificate of title from one of the plaintiffs, and then, again, with use of fraud, deceit, breach of faith, and other machinations, succeeded in having the plaintiffs execute a deed of sale of the lot in question in favor of the defendants, and, thereafter, obtained a certificate of title in their names: "It may be that the recovery of title and possession of the lot was the ultimate objective of plaintiffs, but to attain that goal, they must need first travel over the road of relief on the ground of fraud."

SECOND DIVISION

[G.R. No. L-39300. September 30, 1987]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **BERNIDO DETUYA, GREGORIO LOZANO, and FELICIANO NAVALES**, *accused-appellants*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DECENCY WOULD SURELY BE THE LEAST OF THE CONCERNS OF THE ONE WHO IS CAPABLE OF COMMITTING DESPICABLE CRIMES.— The appellant would have us believe that with this number of people inside the room it is impossible to have sex with anybody because one would naturally feel too self-conscious to have any erection, much less libido. But while that may be true to a normal person, one with a criminal mind is so bereft of inhibitions or of any sense of modesty or propriety as to be able, even if he wanted to, to depress a compelling sexual urge for then he turns into a craving animal.