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undeniable. The view cannot be accepted, as petitioner would insist both here and in the lower court, that the obligation of respondent Compania Maritima from the contract entered into by it with the petitioner had ceased the moment the goods were discharged in the port of destination. It was still under duty to deliver the same to the consignees. Until there be compliance therewith, it cannot be said that the contract of affreightment was at an end. That remained the basis of whatever liability, a point not passed upon in this proceeding, would attach to respondent Compania Maritima. That is why it would not be in consonance with the settled law if under the above specific facts the matter would not be considered as falling within the admiralty jurisdiction of a court of first instance.

WHEREFORE, the decision of the lower court of June 16, 1966 is affirmed. With costs against petitioner-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Teehankee and *Barredo, JJ.*, concur.

[G.R. No. L-26775. October 31, 1969]

MAMERTO IRIOLA, plaintiff-appellant, *vs.* SILVERIO FELICES, defendant-appellee.

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICE; GENUINENESS AND DUE EXECUTION OF WRITTEN INSTRUMENT DEEMED ADMITTED IF NOT DENIED SPECIFICALLY.— Appellant who did not deny specifically under oath the genuineness and due execution of the deed of conditional sale, a copy of which was annexed by the defendant in his "reply to objection," is deemed to have admitted the same, such deed being not merely evidentiary or a collateral matter but the basis of the affirmative defense of estoppel as set forth in the answer.

2. ID.; ID.; DECLARATION WITHOUT ADMISSION AGAINST SELF-INTEREST NOT CONSTITUTIVE OF ESTOPPEL.— An appellant

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cannot be estopped from filing his action for reconveyance of 3 hectares of land allegedly included in appellee's homestead application where in his reply to appellee's counterclaim, he merely pleaded that said 3 hectares lay outside of the parcel he purchased *a retro*. For nowhere in said reply did he recognized aforesaid land as belonging to the appellee.

3. ID.; ID.; ADMISSIONS IN THE DEED OF SALE, NOT SUFFICIENT TO PREDICATE ESTOPPEL THEREON.— An admission by the appellant in a deed of sale *a retro* that the "above described" parcel of land belongs to appellee, where it is not definite whether the same refers to the 4 1/4 hectares covered by the sale or to the entirety of the land included in the homestead patent, is not sufficient to predicate estoppel thereon.

4. ID.; ID.; ADMISSION OF GRANTOR'S TITLE, LIMITED TO SUBJECT OF CONVEYANCE.— The rule that a grantee is estopped to deny the title of his grantor is correct only if limited to the property actually conveyed, to the time of conveyance, and does not apply to an appellant whose subject of complaint is not the parcel of land he bought from appellee under the deed of sale *a retro*.

APPEARANCES OF COUNSEL

Ezekiel S. Grageda for plaintiff-appellant.
Reyes & Dy-Liacco for defendant-appellee.

DECISION

REYES, J.B.L., *J.*:

This is an appeal by the above-named plaintiff-appellant Mamerto Iriola, from an order of the Court of First Instance of Camarines Sur, Branch I, in a suit for the declaration of ownership and reconveyance of a parcel of land against the defendant-appellee, Silverio Felices, and docketed as Civil Case No. 2667, ordering the said plaintiff-appellant to stop, in the course of a trial, from presenting evidence of ownership over the contested land on the ground of estoppel.

The complaint that the plaintiff-appellant filed with the court *a quo* on 2 June 1954 alleges ownership and actual, quiet, peaceful, public, continuous and adverse possession for more than ten years by him and his predecessors-in-interest of a parcel of

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land, which is described in paragraph 2 of the complaint, as follows:

"A parcel of land located in the Barrio of Bagong Sirang, Pili, Camarines Sur, bounded on the North, before, Fulgencio Moreno now, Mariano Rodriguez; on the East by Himaano River; on the South by Silverio Felices before, now Mamerto Iriola; and on the West by Silverio Felices before, now Teodora Casano or Igmidio Casano. Area: 2 has., 11 ares and 50 centares. Declared under Tax No. 3937 in the name of Mamerto Iriola." (R.A., page 2);

that "on or about 25 February 1949" the defendant obtained a homestead patent, covered by Certificate of Title No. 104 of the Province of Camarines Sur, for an 8-hectare-and-28-are parcel of land, which parcel of land included the first-described parcel of land; and that the defendant, after having fraudulently secured the said certificate of title, is now attempting to assert ownership over the said first-described smaller parcel, "the same being on the northwestern part of the land covered by the patent." Plaintiff prayed for judgment, declaring him as the owner of the first-described smaller parcel of land and ordering the defendant to execute a deed of reconveyance.

The defendant filed, on 23 June 1954, his answer to the complaint, with affirmative defenses and counterclaim. He denied the plaintiff's allegations of ownership and possession and alleged, among several other allegations, that he is the registered owner of the whole parcel of land which includes the smaller one as an integral part; that the defendant "was in the exclusive possession of the parcel of land covered by the said O.C.T. No. 104, including the portion thereof described under paragraph 2 of the complaint, until 24 February 1949 when the defendant conditionally sold to the plaintiff a portion of the aforesaid property covered by the said O.C.T. No. 104 but instead of taking possession of the portion thus conditionally sold to him, the plaintiff unlawfully took possession also of the parcel of land described in the complaint"; that his title is incontrovertible; that "plaintiff is estopped from asserting title" to the contested portion of land "as he knew that such portion forms part of the registered bigger parcel of land" and the defendant "delivered to the plaintiff the

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owner's duplicate of said O.C.T. No. 104"; that although on 24 February 1949 the defendant sold to the plaintiff, subject to the defendant's right to repurchase, only a portion of four and one-fourth (4 1/4) hectares of the land covered by the title, the plaintiff took possession of more than seven hectares and thus deprived the defendant of the possession of more than 3 hectares. This 3-hectare portion is described in the answer with counterclaim, as follows:

"North — the remainder of the property of the defendant, Silverio Felices;

East — by the Himaano river;

South — by the property of the heirs of Felipe Felices; and

West — by the Lagundi Creek." (R.A., page 9)

The defendant prayed for the dismissal of the complaint and for the plaintiff to vacate the portion of 3 hectares.

Plaintiff Iriola answered, on 26 June 1954, the counterclaim with denials and alleged that the portion of 3 hectares that the defendant claims to have been deprived of is the very land which is the subject-matter of his complaint.

About a year after the defendant had filed his answer and counterclaim, he filed, on 20 June 1955, a motion to dismiss the complaint on the grounds of lack of cause of action and estoppel by the plaintiff from claiming ownership (R.A., page 15). The plaintiff objected to the motion, to which the defendant interposed a reply, filed on 9 July 1955. Annexed to this reply was a "Deed of Conditional Sale," purportedly executed on 24 February 1949 by the defendant in favor of the plaintiff, of a parcel of land with an area of four and one-fourth (4 1/4) hectares which is an integral part of the land described in Homestead Patent No. V2117, issued on 26 January 1949. One of the paragraphs of this deed states that the vendor has been in continuous possession of the land "since 1921 up to the present"; another paragraph states that the vendee, Mamerto Iriola, agrees to all and every stipulation or condition stated in the deed. Both vendor and vendee signed the deed.

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On 18 July 1955, plaintiff Iriola filed an "Answer to Reply." In this pleading, he admitted that the title of the land is in the name of the defendant and that the land in question is included in the titled land; that although he was in possession of the certificate of title on 24 February 1949 he denied "actual knowledge that the land in question was included in the title." (R.A., pages 44-45)

On 19 July 1955, the lower court issued an order denying the motion to dismiss (R.A., pages 45-46).

On 11 February 1957, defendant Felices, together with a certain Cecilia Nelayan, who does not appear to be a party in the case (Civil Case No. 2667), again filed a motion to dismiss, asking for the reconsideration of the denial of his previous motion to dismiss on the grounds of lack of cause of action and lack of jurisdiction for the court to annul the Certificate of Title. Plaintiff Iriola again filed an objection. The court denied the motion.

Trial at last started, but, in the course of the initial hearing, counsel for the defendant moved to strike out the testimony of the first witness for the plaintiff on the ground that the plaintiff is estopped from proving ownership of the contested land (R.A., page 60).

On 5 July 1963, the court issued the order that the plaintiff has elevated, by way of appeal, to this Supreme Court. In the appealed order, the plaintiff was held in estoppel from proving ownership because he had recognized that the land in question forms an integral part of titled land and also, in the conditional sale, that the land in question, which was north of the portion that he bought, is the property of the defendant. The order did not order the dismissal of the complaint.

It is true that the plaintiff-appellant should be deemed to have admitted the genuineness and due execution of the deed of conditional sale: the defendant-appellee alleged the deed and its recitals and annexed a copy thereto in his "reply to objection," but the plaintiff-appellant did not deny it under oath (Answer to Reply, R.A., pages 40-45). The genuineness and due execution

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of a written instrument copied in or attached to a pleading should be denied specifically under oath, otherwise they are deemed admitted (Section 8, Rule 8, Rules of Court; Songco *vs.* Sellner, 37 Phil. 254). The deed is not merely evidentiary, as it is not a collateral matter, for it is the basis of the affirmative defense of estoppel of the defendant-appellee, as set forth in his answer (R.A., page 8).

Nevertheless, we are of the opinion that the import of the alleged admissions of appellant Iriola made in the 1949 deed of sale *a retro,* Exhibit "A" (R.A., page 37), are not sufficiently precise and specific to predicate an estoppel thereon. By the aforecited deed the appellant agreed to the following:

"..... have sold, conveyed and transferred and by these presents, do sell, convey and transfer unto said Mamerto Iriola, his heirs, successors and assigns, subject to the terms and conditions stipulated below, a parcel of riceland described as follows:

'A parcel of irrigated rice land covering four (4) and one-fourth hectares situated in barrio Curry, municipality of Pili, province of Camarines Sur, Philippines, bounded on the North, by the property of Silverio Felices; on the East, by the Himaano River; and the South, by the property of the Hrs. of Felipe Felices, and West, by the Lagundi Creek.

This parcel of land is an integral part of the land described under Homestead Patent No. V2117 issued on January 26, 1949, and declared for taxation under Tax Dec. No. 2820, assessed at ₱3,105.00 in the name of Silverio Felices.'

"That since 1921 up to the present, I have been in the continuous and peaceful possession of the above-described parcel of land, first in my own initiative and in concept of an owner, and later on by virtue of a homestead application."

It will be noticed that there are three pertinent statements of fact made in the deed:

(1) That the parcel of land sold (4-1/4 hectares) was bounded on the *north* by the property of Silverio Felices (the vendor), appellee herein;

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(2) That said parcel is an integral part of the land described in the Homestead Patent No. V2117 issued on 26 January 1949, declared and assessed for taxation in the name of Silverio Felices;

(3) That since 1921 up to the present (1949, when the deed was executed) Felices had been in continuous possession of the above-described parcel of land.

None of these propositions are incompatible with the present claims of appellant herein, to the effect that he and his *causantes* owned the *northwestern* (not northern) portion of the land covered by the homestead patent of Felices, and that the latter fraudulently included that part in his homestead application, for which reason he filed the action for reconveyance. The latter suit is precisely predicated upon the fact that this disputed portion was included in Felices' homestead patent.

It is claimed that in the deed aforementioned Iriola admitted that Felices had been in possession as owner of the "above described parcel of land" since 1921. But it is not definite whether the parcel of land "above described" refers to the 4-1/4 hectares covered by the deed of sale (and which lay southeast of the parcel claimed by Iriola) or to the entirety of the land included in the homestead patent of Felices. In truth, the probabilities are that "above-described parcel of land" refers only to the 4-1/4-hectares portion sold *a retro* to herein appellant, for it is the boundaries of that land which are specified in the deed. The limits of the entire area covered by the patent are not specified.

Considering that-

"To constitute an estoppel by deed, a distinct and precise assertion of a fact is necessary . . . . . Such estoppel should be certain to every intent" (Van Rensselaer *vs.* Kearney, 13 Law Ed. 703; 19 Am. Jur. 603),

and that, as ruled in Gilmer *vs.* Poindexter, 13 L. Ed. 411, estoppel by deed can not prevent the denial of an equitable title which is not identical with legal title, we conclude that no estoppel can be predicated on the 1949 deed of sale *a retro* executed by both parties.

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It is also claimed that appellant is estopped by his admission in paragraph 2 of his reply to appellee's counterclaim in the court below (R.A., pages 9 and 14). This claim is likewise untenable. Paragraph I of the counterclaim is as follows (R.A., page 9):

"That although on February 24, 1949, the defendant sold to the plaintiff, subject to the defendant's right to repurchase, only a portion of four and one fourth (4-1/4) hectares of a bigger parcel of land belonging to the defendant and covered by O.C.T. No. 104, the said plaintiff unlawfully took possession of more than seven hectares thereby wrongfully depriving the defendant of the possession of more than three (3) hectares of land and the products thereof."

Appellant replied to the preceding charge in the following terms (R.A., page 14):

"1. That plaintiff denies generally and specifically all of the allegations of the counterclaim and has no knowledge or information sufficient to form a belief as to the truth of paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the said counterclaim;

"2. That the portion of land of three (3) hectares which is mentioned in paragraph 1 of the counterclaim is the very land which is the subject-matter of the complaint and the truth of the matter is what appears in said complaint";

Clearly, defendant-appellant merely pleaded that the three hectares lay *outside* of the parcel purchased by him *a retro* from the appellee. Nowhere did he admit that these 3 hectares were a part of the parcel he had previously purchased, and, therefore, never recognized that the same was owned or possessed by Felices. This conduct of appellant is perfectly consistent with the theory of his complaint that Felices improperly included these three hectares in his homestead application, for which reason appellant demands its reconveyance.

The rule that a grantee is estopped to deny the title of his grantor is correct only if limited to the property actually conveyed and to the time of the conveyance. In this case, as the property subject of the complaint was not the parcel bought by Iriola under the deed, Exhibit "A", estoppel does not apply.

WHEREFORE, the order under review, declaring Mamerto Iriola estopped from proving his title to the land claimed in his

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complaint, is reversed and set aside; and the case is remanded to the court below for further proceedings, hearing and resolution. Costs against defendant-appellee.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Teehankee and *Barredo, JJ.*, concur.

[G.R. No. L-27033, October 31, 1969]

POLYTRADE CORPORATION, plaintiff-appellee, *vs.* VICTORIANO BLANCO, defendant-appellant.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VENUE; VENUE IN PERSONAL ACTIONS.— Section 2(b), Rule 4 of the Rules of Court on venue of personal actions triable by courts of first instance provides that "such actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff." Qualifying this provision is Sec. 3 of the same Rules which states that venue may be stipulated by written agreement of the parties.

2. ID.; ID.; ID.; ID.; VENUE PROPERLY LAID IN THE COURT WHERE DEFENDANT RESIDES WHERE THERE IS NO STIPULATION TO THE CONTRARY.— Where no such stipulation to sue and be sued exclusively in the Manila courts appears in the contracts covering the first two causes of action, the general rule set forth in Sec. 2(b), Rule 4 governs, and as to said two causes of action, venue was properly laid in Bulacan, the province of defendant's residence.

3. ID.; ID.; ID.; ID.; STIPULATION OF THE PARTIES IN INSTANT CASE, MERELY PERMISSIVE WHICH DOES NOT TRANSFER THE VENUE OF THE ACTION; REASON.— An accurate reading of the stipulation, " the parties agree to sue and be sued in the Courts of Manila," does not preclude the filing of suits in the residence of plaintiff or defendant. The plain meaning is that the parties merely consented to be sued in Manila. Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally