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FIRST DIVISION

[G.R. No. L-34404. June 25, 1980]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **THE HON. COURT OF APPEALS (SPECIAL FIRST *DIVISION*), *PEDRO BITANGA, FERNANDO* BITANGA, GREGORIO BITANGA, GUILLERMO BITANGA, CLARITA BITANGA together with her husband AGRIPINO L. RABAGO and MELITONA LAGPACAN, assisted by her husband JORGE MALACAS,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; EFFECT THEREOF WITH RESPECT WITH THE CO-OWNER.— But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

2. ID.; ID.; ID.; ID.; CASE AT BAR.— Hence, We fully agree with the trial court and the respondent Court and affirm the holding that "what the Philippine National Bank had acquired from Rosa Ver by virtue of the mortgage was simply one-half (1/2) of the entire property, for this was all she had in her power to convey — the other half being, as it still is, the lawful share of the plaintiffs-appellees as inheritance from their father, Iñigo Bitanga. *Nemo dat quod non habet* — One cannot give what is not his." Applying the provisions of the Old Civil Code, the law in force at the time of Iñigo Bitanga's death in 1935, Rosa Ver, as surviving spouse, cannot take part legally in the sharing of the estate left by her deceased husband (one-half (1/2) of Lot 9068) with respect to which she only had usufructuary rights. "The usufructuary not being an owner, cannot alienate or dispose of the objects included in the usufruct. Thus, he cannot . . . mortgage or pledge the thing . . ."

3. ID.; LAND REGISTRATION; A DECREE OF REGISTRATION NOT CONTESTED WITHIN ONE YEAR BECAME INCONTROVERTIBLE; CASE AT BAR.— Since a clean title was issued in the name of the spouses Iñigo Bitanga and Rosa

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Ver by virtue of the decree of registration entered on September 14, 1937, and said decree not having been contested or reopened for a period of one year, the same became incontrovertible. Upon the clear and explicit provisions of the Land Registration Act and the jurisprudence on the indefeasibility of the Torrens title after the lapse of one year as reiterated and emphasized in the unbroken line of authorities, We hold that the respondent court committed no error in holding that "the lien by reason or on account of the mortgage executed by Rosa Ver over the entire parcel on October 20, 1936, which was not annotated on the original certificate of title, could not have attached to the land. Otherwise stated, the failure of the interested party to appear during the registration proceeding and claim such interest in the land barred him from thereafter having such interest annotated on the certificate of title."

4. ID.; SPECIAL CONTRACTS; MORTGAGE; A CO-OWNER WHO SIGNED IN A DEED OF MORTGAGE AS A WITNESS CANNOT BE BOUND THEREBY AS A MORTGAGOR.— We cannot hold Guillermo Bitanga in estoppel by declaring that he bound himself to the mortgage as effectively as the mortgagor Rosa Ver when he signed the mortgage deed as a witness in the absence of clear proof that he was in fact aware of the contents of the document at the time of its execution. We can only go as far as stating that the deed was signed by the parties thereto in his presence.

5. ID.; ESTOPPEL; NOT A CASE OF.— Consequently, there is no estoppel where there is no reliance upon representations and where there is no deliberate misleading of another. Intention to mislead is an important element of estoppel, as well as the mislead party's reliance upon the declaration, act or omission of the party sought to be estopped. Both elements have not been proved in the instant case, hence again, estoppel does not lie against Guillermo Bitanga.

6. LEGAL AND JUDICIAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; THE RULE THAT A CLIENT IS BOUND BY THE MISTAKES OR NEGLIGENCE OF HIS LAWYER PRESUPPOSES THE EXISTENCE OF A PENDING LITIGATION, IT DOES NOT APPLY TO AN INDEPENDENT TRANSACTION SUCH AS A DEED OF MORTGAGE.— The settled rule in Philippine jurisprudence that a client is bound

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by his counsel's actions, negligence, mistakes and/or shortcomings enunciated in a number of cases presupposes the existence of a pending litigation whether in court or in an administrative body, and refers only to matters pertaining to the conduct of such case. Precisely said rule requires the existence of an attorney-client relationship, while herein, there is merely a single, independent transaction, that of a mortgage, which was in no way connected with any pending litigation at the time of its execution. Therefore, the above stated rule finds no application in the instant case.

DECISION

GUERRERO, *J.*:

This is a petition for review of the decision of the Court of Appeals, promulgated on September 30, 1971 in CA-G.R. No. 29868-R entitled "*Pedro Bitanga, et al., Plaintiffs-Appellees, versus Philippine National Bank, et al., Defendants-Appellants, Melitona Lagpacan, assisted by her husband, Jorge Malacas, Intervenors-Appellees,*" which decision[1] affirmed with certain modifications the judgment of the Court of First Instance of Ilocos Norte in favor of plaintiffs-appellants, now the herein respondents.

This case was commenced on May 17, 1954 when herein respondents Pedro, Fernando, Gregorio, Guillermo and Clarita, all surnamed Bitanga, filed a complaint before the Court of First Instance of Ilocos Norte against the Philippine National Bank, the Register of Deeds of Ilocos Norte and Felizardo Reyes, for reconveyance of real property and damages, with a prayer for the issuance of an *ex-parte* writ of preliminary injunction restraining and enjoining the PNB and Felizardo Reyes from consummating the sale of the property in question and prohibiting the Register of Deeds from registering the sale in favor of Felizardo Reyes. As prayed for, the writ of preliminary

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[1] Special First Division, penned by Justice Lourdes P. San Diego, concurred in by Justices Salvador V. Esguerra and Edilberto Soriano.

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injunction was issued. All three of the defendants named in the complaint filed their respective Answers. During the pendency of the case, herein respondent-spouses, Melitona Lagpacan and Jorge Malacas, filed a Motion to admit their complaint in intervention, alleging that they had a legal interest in the subject matter of the case, and the same was granted.

The factual background of this case as recited in the decision of respondent court under review is as follows:

"It is not disputed that the property in question originally belonged to the spouses Iñigo Bitanga and Rosa Ver as their conjugal property. At the cadastral proceedings during which the said property was submitted for adjudication, the Cadastral Court rendered a decision dated December 27, 1934, by virtue of which a decree of registration of the said lot bearing date of September 14, 1937 was issued. Thereafter, a corresponding title in the name of the spouses Iñigo Bitanga and Rosa Ver was likewise issued and inserted in the Registry Books of the Register of Deeds of Ilocos Norte on December 15, 1937 (Exhibit "A").

"Before the issuance of the said original certificate of title (Exhibit "A"), however, death came to Iñigo Bitanga on September 25, 1935, and was survived by his wife, Rosa Ver, and his children, the plaintiffs herein. A little over a year from the death of her husband, or on October 20, 1936, to be exact, Rosa Ver mortgaged the entire property covered by Exhibit "A" (also known as Exhibit 1-Lagpacan), in favor of the Philippine National Bank for the sum of FIVE HUNDRED PESOS (₱500.00) as shown in Exhibit 1-Lagpacan. The mortgage document was registered in the day book of the Register of Deeds of Ilocos Norte on November 12, 1936; this said mortgage lien was, however, not annotated in the day book of the Register of Deeds, when the original certificate of title (Exhibit "A"), was issued. Nevertheless, the power of attorney dated October 20, 1936 in favor of the mortgagee Philippine National Bank 'to take possession of, and retain the property herein mortgaged, to sell or lease the same or any part thereof, and to do such other acts as necessary in the performance of the power granted to the mortgagee should the mortgagor fail or violate the term of the mortgage' was annotated on said Exhibit "A" some five years from October 20, 1936, *i.e.* on February 27, 1941, to be precise (Exhibit "A").

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"In the meantime, Rosa Ver had defaulted in the fulfillment of her obligation with the Manila Trading Company. So the said company levied upon her share in the lot in question on December 13, 1939, and had the attachment annotated on the title on February 14, 1940 (Exhibit "A-3"). Rosa Ver's interest in the lot in question was afterwards sold at public auction, at which the Manila Trading Company was the highest bidder; that was on March 19, 1940, and the deed of sale in favor of the Manila Trading Company was annotated on the title on May 25, 1940 (Exhibit "A-4").

"On November 14, 1940, the Manila Trading Company sold its rights over the lot in question to Santiago Sambrano, who secured the annotation of the said sale on the title on March 20, 1941 (Exhibit "A-5"). Thereafter, as stated, one-half of the said property passed into the hands of the intervenors as a result of Civil Case No. 1846 (Exhibits 7, 8, 9, and 9-A).

"Because Rosa Ver failed to settle her obligation with the Philippine National Bank, the latter sold at public auction the whole lot that the former had mortgaged to it, and in the same auction sale, the Philippine National Bank emerged as the highest bidder (Exhibits 2, 3, 4 and 5); and, after the period of redemption had expired without the property having been redeemed, the Philippine National Bank consolidated its title over it. The document of consolidation was, however, not annotated upon the owner's duplicate certificate of title as Rosa Ver failed to surrender the same.

"So it was that on November 25, 1950, the Philippine National Bank presented a petition before the trial court (Exhibit 14) asking, on the one hand, that the owner's certificate of title No. 7683 (Exhibit A), be declared null and void, and praying, on the other, that a new certificate of title be issued in its name. Acting favorably on the petition, the Court, in an order dated October 2, 1951 (Exhibit 19-A), ordered the Register of Deeds of the Province of Ilocos Norte to cancel the owner's duplicate certificate of title No. 7683 (Exhibit A), and to issue a new owner's duplicate certificate of title in the name of the petitioner Philippine National Bank. As issued, the new owner's duplicate certificate of title carried the number-description T-2701 (Exhibit B or 23).

"Sometime later, that is, on May 24, 1954, the Philippine National Bank sold the property in question to Felizardo Reyes (Exhibit 16-

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A), as a result of which a new owner's duplicate certificate of title, No. T-3944 (Exhibit 6), was issued in the latter's name."[2]

It further appears from the evidence that by virtue of the judgment obtained by the Manila Trading and Supply Company against the defendants Rosa Ver and Guillermo Bitanga in Civil Case No. 121519 in the Municipal Court of the City of Manila (Exhibit "2-Lagpacan"), the property in question was sold by the Provincial Sheriff per Certificate of Sale (Exhibit 4-Lagpacan) to the Manila Trading and Supply Company as the highest and only bidder at the auction sale, the latter acquiring therefor "all the rights, title, interest and participation which the defendants Guillermo Bitanga and Rosa Ver de Bitanga have or might have in the property." The sale was registered in the back of the Certificate of Title No. 7683 (Exhibit 4-A Lagpacan) under Entry No. 5100 dated May 25, 1940.

On November 16, 1960, the trial court rendered a decision in favor of the plaintiffs and intervenors below, the Court finding and holding that: (a) The lot in question is a conjugal partnership property, one-half of which must go to the heirs of the late Iñigo Bitanga, the plaintiffs herein; (b) The other half goes to Rosa Ver as her share. The mortgage executed by her of her one-half portion in favor of the Philippine National Bank is not an existing lien on the said portion because it did not have a "special mention in the decree of registration." It follows, therefore, that the acquisition of the said portion by the Manila Trading Company in the manner above-described, was valid and legal. Consequently, the sale made by the said Company to Santiago Sambrano over the one-half portion must also be valid and legal. In connection with Civil Case No. 1846 in which the intervenors were the plaintiffs and Santiago Sambrano was the defendant, what the intervenors had attached and sold in a public auction in which they (intervenors) were the highest bidders was the very said portion sold by the Manila Trading Company to Santiago Sambrano; (c) That Felizardo Reyes is not a purchaser of a registered land for value and in good faith;

[2] *Rollo*, pp. 33-37.

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and (d) Since the issuance of Transfer Certificate of Title No. 3944 in favor of the Philippine National Bank, Exhibit "B", and Owner's Duplicate Certificate of Title No. 3944, Exhibit "16", in favor of Felizardo Reyes were without legal basis, they are, therefore, declared null and void and cancelled. With costs against the defendants.[3]

On appeal by PNB and Felizardo Reyes to the Court of Appeals, respondent Court affirmed the judgment appealed from in all respects except letter (d) thereof which was modified to read as follows:

"(d) Since the issuance of Transfer Certificate of Title No. T-2701, Exhibit "B" in favor of the Philippine National Bank, and Transfer Certificate of Title No. T-3944, Exhibit "16", in favor of Felizardo Reyes, was without legal basis, they are, therefore, declared null and void and cancelled. The Register of Deeds is hereby ordered to issue in lieu of the foregoing transfer certificate of titles another certificate of title in the names of the plaintiffs and intervenors as follows:

"Undivided one-half (1/2) share to Pedro Bitanga, married to Agripina Purisima, Fernando Bitanga, single, Gregorio Bitanga, single, Guillermo Bitanga, single, Clarita Bitanga, married to Agripino L. Rabago, all of legal age, Filipino citizens, and residents of Laoag, Ilocos Norte, and the remaining undivided one-half (½) share to the spouses Jorge Malacas and Melitona Lagpacan, both of legal age, Filipino citizens, and residents of Burgos, Ilocos Norte, free from incumbrance regarding the claims of the Philippine National Bank and Felizardo Reyes, after payment of lawful fees."[4]

Petitioner, not satisfied with the Decision of respondent Court of Appeals and its Resolution denying the motion for its reconsideration, now comes to Us and submits the following assignment of errors:

I. The Court of Appeals erred in holding that the mortgage deed (Exhibit 1-Bank) is valid and existing only with respect to the one-half portion of the lot in question allegedly

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[3] *Ibid.*, pp. 89-90.

[4] *Rollo*, p. 46.

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belonging to the mortgagor Rosa Ver as her share in the conjugal partnership with her husband Iñigo Bitanga.

II. The Court of Appeals erred in holding that the mortgage deed (Exhibit 1-Bank) executed by Rosa Ver was no longer subsisting simply because the same was not annotated on the face of original certificate of title No. 7683 (Exhibit A).

III. The Court of Appeals erred in holding that estoppel and/or laches has not stepped in to defeat the right of respondents Bitangas and Rabago over the lot in question, specifically to the one-half portion thereof representing their undivided share of the lot as their inheritance from their father Iñigo Bitanga.

IV. The Court of Appeals erred in holding that the acquisition of the other half portion of the lot in question by the intervenors spouses Melitona Lagpacan and Jorge Malacas bears the earmarks of validity and regularity.

Upon being required to comment on this petition, respondents filed a Motion to Dismiss on the grounds that the decision of respondent court sought to be reviewed had become final and executory on account of the failure of Felizardo Reyes, the real party in interest, to join the PNB in this petition, and that the issues presented are questions of fact and not of law, hence, not proper for review by this Court.

By Resolution of January 10, 1972, this Court denied the petition for lack of merit.

On January 25, 1972, the PNB moved to reconsider the denial contending that at least the validity of the mortgage deed as to the share of herein respondent-heirs should be upheld because of their acquiescence thereto, and that the bank still has an interest over the case for the reason that although it had already sold its interests over the property which is the subject matter of this litigation to Felizardo Reyes, it still stands to be affected in the event that this case is finally decided in favor of respondents. In other words, it is the contention of PNB that it has the personality to bring this petition, even without Felizardo Reyes, since it still has an interest in the final outcome of this case.

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On March 2, 1972, this Court reconsidered the Resolution of January 10, 1972 and resolved to give due course to the petition.

On the first assigned error, PNB contends that the mortgage constituted by Rosa Ver in its favor on October 20, 1936 is valid and covers the entire property known as Lot 9068 for the reasons that: (1) the valid execution, existence and registration of said real estate mortgage under Act No. 3344 are not denied; and (2) the fact that Tax Declaration No. 120225-A then covering the mortgaged property was issued in the exclusive name of mortgagor Rosa Ver was likewise not denied but in fact admitted by herein respondents, and, therefore, the latter in effect admitted the genuineness and due execution of said Tax Declaration.

There is no dispute that the document of mortgage executed by Rosa Ver was in accordance with the formalities required by law and that same was registered in the day book of the Register of Deeds of Ilocos Norte within a month after its execution. What is here contested is whether Rosa Ver could, as she did in fact, mortgage the entire Lot 9068 to petitioner PNB. In other words, the issue refers to the intrinsic validity of the mortgage, as distinguished from its formal sufficiency.

The trial court found and so held that Lot 9068 belonged to the conjugal partnership of the spouses Iñigo Bitanga and Rosa Ver. Therefore, when Iñigo died on September 25, 1935, his one-half share in said lot was transmitted to his heirs (Article 777, New Civil Code; Article 657, Old Civil Code),[5] and a co-ownership was established between them and Iñigo's surviving spouse Rosa Ver. Hence, on October 20, 1936, a little over a year after Iñigo's death, Rosa Ver, by herself alone, could not have validly mortgaged the whole of Lot 9068 to PNB.

Under Article 2085, New Civil Code (Art. 1857, Old Civil Code), one of the essential requisites to the contract of pledge and mortgage is that the pledgor or mortgagor be the absolute

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[5] *Osorio vs. Osorio, et al.*, 41 Phil. 531; *Baun vs. Heirs of Baun*, 53 Phil. 654; *Uson vs. Del Rosario*, 92 Phil. 530.

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owner of the thing pledged or mortgaged. And under Article 493, New Civil Code (Art. 399, Old Civil Code), each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Hence, We fully agree with the trial court and the respondent Court and affirm the holding that "what the Philippine National Bank had acquired from Rosa Ver by virtue of the mortgage was simply one-half (1/2) of the entire property, for this was all she had in her power to convey — the other half being, as it still is, the lawful share of the plaintiffs-appellees as inheritance from their father, Iñigo Bitanga. *Nemo dat quod non habet* — One cannot give what is not his."[6]

Applying the provisions of the Old Civil Code,[7] the law in force at the time of Iñigo Bitanga's death in 1935, Rosa Ver, as surviving spouse, cannot take part legally in the sharing of the estate left by her deceased husband (one-half (1/2) of Lot 9068) with respect to which she only had usufructuary rights. "The usufructuary not being an owner, cannot alienate or dispose of the objects included in the usufruct. Thus, he cannot x x x mortgage or pledge the thing x x x."[8]

It is not disputed that Tax Declaration No. 120225-A, then covering Lot 9068, was in the exclusive name of Rosa Ver. Such fact, however, even if expressly admitted by herein respondent-heirs, does not and cannot alter the conjugal character of the lot in question, much less would it affect the mortgage in favor of petitioner PNB. We have already held in several

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[6] Decision, CA, p. 44, *Rollo*.

[7] Articles 834 *et seq.*, Old Civil Code.

[8] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 1972 ed., Volume II, p. 310.

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cases that declarations of ownership for purposes of taxation are not sufficient evidence of title.[9] If petitioner relied upon Tax Declaration No. 120225-A in assuming that the whole property belonged exclusively to mortgagor Rosa Ver, such erroneous assumption should not prejudice the rights of the other co-owners, herein respondent-heirs. As far as the latter are concerned, their respective shares were not included in the mortgage in favor of PNB.

We, therefore, reject PNB's contention that the mortgage constituted by Rosa Ver in its favor on October 20, 1936 is valid and covers the entire property known as Lot 9068.

In the second assignment of error, petitioner maintains that the respondent appellate court erred in holding that the mortgage deed (Exhibit 1-Bank) executed by Rosa Ver was no longer subsisting simply because the same was not annotated on the face of original certificate of title No. 7683 (Exhibit A).

Petitioner argues that Rosa Ver, being the one who constituted the mortgage deed and has full knowledge of the existence of the same as well as the respondent Bitangas and Rabago in their capacity as heirs, subscribing witnesses and as notary public, respectively, having also full knowledge of the existence of the mortgage contract, have the legal duty to apprise petitioner Philippine National Bank of the impending registration proceedings covering the lot in question as well as to the issuance of the original certificate of title No. 7683, in line with Section 19 of the Land Registration Act, paragraph 2 (b) that the mortgagor shall not make application without the consent in writing of the mortgagee, and paragraph 3 which requires that the decree of registration in case the mortgagor does not consent to the making of the application shall state that registration is made subject to such mortgage, describing it x x x. Petitioner further argues that no notice whatsoever, either verbal or in writing, having been made by the mortgagor Rosa Ver and/or the respondents Bitangas and Rabago, petitioner could not have taken any action

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[9] *Elumbaring vs. Elumbaring*, 12 Phil. 384, 389, citing *Casimiro vs. Fernandez*, 9 Phil. 562, and *Evangelista vs. Tabayuyong*, 7 Phil. 607.

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to annotate its mortgage lien on the lot in question on the face of original certificate of title No. 7683 and, therefore, should not be blamed for its failure to annotate the mortgage lien on the lot within a period of one (1) year from the issuance of the decree on September 14, 1937 since under Section 19 of Act 496, it is specifically provided that the decree of registration in such a case shall state that the registration is subject to such mortgage. Petitioner concludes that if the mortgage is not so annotated on the face of original certificate of title No. 7683 within a period of one (1) year from September 14, 1937, then it is not a fatal defect for the enforcement of the said mortgage lien.

Petitioner further buttresses its stand in distinguishing the requirements of the law as embodied in Sections 19 and 21 of the Land Registration Act from the "general notice" contemplated under Section 31 in relation to Section 35 of the same Act in that the notice required in Sections 19 and 21 are specific while in the latter, the notice is merely constructive. And to cap his argument, petitioner contends that mortgagor Rosa Ver and her heirs had already benefitted from the loan and the mortgage transaction and that they should not be allowed to enrich themselves at the expense of the petitioner.

Petitioner's theory is clearly untenable and cannot be sustained for otherwise it would do violence to the fundamental and basic foundation of the Torrens system, which is the indefeasibility of a Torrens title under Sections 38, 39 and 47 of Act 496, which provide as follows:

"Sec. 38. If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in

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any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. *Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible.* If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided: Provided, however, That no decree or certificate of title issued to persons not parties to the appeal shall be cancelled or annulled. But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. Whenever the phrase "innocent purchaser for value" or all equivalent phrase occurs in this Act, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value." (As amended by Sec. 3, Act No. 3621; and Sec. 1, Act No. 3630).

"Sec. 39. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith *shall hold the same free of all encumbrance* except those noted on said certificate and any of the following encumbrances which may be subsisting, namely:

First. Liens, claims or rights arising or existing under the laws or Constitution of the United States or of the Philippine Islands which the statues of the Philippine Islands cannot require to appear of record *in the registry.*

Second. Taxes within two years after the same become due and payable.

Third. Any public highway, way, private way established by law, *or any Government irrigation canal or lateral thereof, where the* certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.

But if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or

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extinguished by the registration of the servient estate, or in any other manner." (As amended by Act No. 2011, and Sec. 4, Act No. 3621).

"Sec. 47. The original certificate in the registration book, any copy thereof duly certified under the signature of the clerk, or of the register of deeds of the province or city where the land is situated and the seal of the court, and also the owner's duplicate certificate shall be received as evidence in all the courts of the Philippine Islands and *shall be conclusive as to all matters contained therein* except so far as otherwise provided in this Act."

Parenthetically, it may be stated that Presidential Decree No. 1529 which amends and codifies the laws relative to registration of property reiterates the provisions cited above under the Land Registration Act, Act No. 496. Thus, Section 38 of Act 496 is reiterated by Sections 29, 30, 31 and 32 of P.D. No. 1529, while Section 39 of Act 496 is repeated under Section 44 of P.D. No. 1529. Section 47 of Act 496 is substantially repeated in paragraph 2 of Sec. 31 of the Presidential Decree.

It is well-settled in Our jurisprudence that a decree of registration, after the lapse of the one-year period from its entry, becomes indefeasible and conclusive. (*Garcia, et al. vs. Bello, et al.*, L-21355, April 30, 1965, 13 SCRA 769, 770; *Baldoz vs. Papa, et al.*, L-18150, July 30, 1965, 14 SCRA 691; *Ylarde, et al. vs. Lichauco, et al.*, L-22115, Dec. 29, 1971, 42 SCRA 641, 650). The reason for the rule is succinctly stated in *Gestosani, et al. vs. Insular Development Company, et al.*, L-21166, September 15, 1967, 21 SCRA 114 by the Supreme Court, speaking through Justice Dizon, thus:

"At the risk of stating what is obvious, We say that land registration proceedings under Act 496 are *in rem* and that such proceedings, as well as the title issued as a result thereof, are binding and conclusive upon the whole world. Upon the expiration of one year within which a petition to review the decree of registration may be filed, said decree and the title issued pursuant thereto become incontrovertible (Sec. 38, Act 496), and the same may no longer be changed, altered or modified, much less set aside (*Director of Lands vs. Gutierrez David*, 50 Phil. 797). This has to be the rule, for if even after the ownership of a property has been decreed by a land registration court in favor of a particular person, the title issued may still be annulled, changed,

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altered or modified after the lapse of the one year period fixed by the legal provision mentioned above, the object of the Torrens system, namely, to guarantee the indefeasibility of the title to the property, would be defeated (*Cabaños vs. Register of Deeds*, 40 Phil. 620)."

We agree with the ruling of both the trial and the appellate courts in their adherence to the doctrine laid down by Us in *Snyder vs. the Provincial Fiscal of Cebu and Jose Avila,* No. 17132, February 8, 1922, 42 Phil. 761, which presented a nearly identical situation as that in the case at bar, where the issue decided was whether or not a lease contract entered into prior to the original registration of the land subject of the lease and existing pending the registration proceedings could be registered or recorded after such original registration. Like the mortgage executed by Rosa Ver in the instant petition, the contract of lease was entered into prior to the issuance of the decree of registration and the Supreme Court held, thus:

"It will be noted from the provisions of Section 33, above quoted, that the decree of registration cannot be opened or altered even by reason of the absence, infancy, or other disability of any person affected thereby; and it can only be reviewed or modified upon the petition, filed within one year after the entry of the decree, of any person who has been deprived of land or of any estate or interest therein through fraud.

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If, under the Land Registration Act, an owner of land, as against third parties, and after the lapse of one year, by failing to appear and claim such ownership during the registration proceeding, thereby loses the same, *with equal or greater reason does a lessee, mortgagee*, or other person having an interest in said land *lose such interest or right so far as the land is concerned, by not claiming the same during the registration proceeding and by allowing said land to be registered free of all incumbrances.* x x x" (Italics Ours)

Since a clean title was issued in the name of the spouses Iñigo Bitanga and Rosa Ver by virtue of the decree of registration entered on September 14, 1937, and said decree not having been contested or reopened for a period of one year, the same became incontrovertible. We must reiterate here the rationale

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of the doctrine We laid down in *William H. Anderson and Co. vs. Garcia*, 64 Phil. 506, 514-515, after an analysis of the apparently conflicting decisions in the cases of *Worcester vs. Ocampo and Ocampo*, 34 Phil. 646; *Lanci vs. Yangco*, 52 Phil. 563; and *Laxamana vs. Carlos*, 57 Phil. 722 thus:

"Whatever might have been generally or unqualifiedly stated in the cases heretofore decided by this court, We hold that under the Torrens system registration is the operative act that gives validity to the transfer or creates a lien upon the land (Secs. 50 and 51, Land Registration Act). A person dealing with registered land is not required to go behind the register to determine the condition of the property. He is only charged with notice of the burdens on the property which are noted on the face of the register or the certificate of title. To require him to do more is to defeat one of the primary objects of the Torrens system. A *bona fide* purchaser for value of such property at an auction sale acquires good title as against a prior transferee of the same property if such transfer was unrecorded at the time of the auction sale. x x x"

In the instant case, there is no showing that the Manila Trading Company (MTC) had any knowledge or notice of the prior mortgage in favor of the PNB, hence, it may be safely presumed that it (MTC) acquired the rights of Rosa Ver and Guillermo Bitanga as an innocent purchaser for value and free from all incumbrances. From the MTC, the aforesaid rights of Rosa and Guillermo passed to Santiago Sambrano, and from the latter, to herein intervenors. There is no question, therefore, as to intervenors' rights over the property, as against the PNB or its transferee, Felizardo Reyes. The intervenors merely stepped into the shoes of MTC, a prior purchaser in good faith, and thereby became entitled to all the defenses available to said Company, including those arising from the acquisition of the property in good faith and for value. (*Granados vs. Monton*, L-1698, April 8, 1950, 86 Phil. 42).

Upon the clear and explicit provisions of the Land Registration Act and the jurisprudence on the indefeasibility of the Torrens title after the lapse of one year as reiterated and emphasized in the unbroken line of authorities, We hold that the respondent court committed no error in holding that "the lien by reason or

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on account of the mortgage executed by Rosa Ver over the entire parcel on October 20, 1936, which was not annotated on the original certificate of title, could not have attached to the land. Otherwise stated, the failure of the interested party to appear during the registration proceeding and claim such interest in the land barred him from thereafter having such interest annotated on the certificate of title."

The third assignment of error assails the respondent court in holding that estoppel and/or laches has not stepped in to defeat the right of respondents Bitangas and Rabago over the lot in question, specifically to the one-half (½) portion thereof representing their undivided share of the lot as their inheritance from their father, Iñigo Bitanga.

In rejecting appellant's defense of estoppel or laches, the respondent Court of Appeals ruled:

"Corollary to the foregoing, appellants cannot maintain that estoppel or laches has stepped in to defeat the right of the plaintiffs-appellees to institute an action to indicate their right. And the reason is basic in its simplicity: the mortgage contract entered into by Rosa Ver respecting the other half of the lot in question having been null and void *ab initio*, lapse of time could not have validated or ratified it, and an action, predicated upon the indubitable nullity of the contract constituted may always be maintained by the aggrieved party to set it aside." (pp. 13-14, CA Decision).

Petitioner argues that respondents Bitangas and Rabago, as heirs and/or successors-in-interest of Rosa Ver are bound by the mortgage and may not be permitted to question the validity of the same, and assuming that Rosa Ver does not have any right to constitute a mortgage on the other half of the lot in question, petitioner contends that nonetheless the validity of the mortgage deed constituted by her over the share of her husband should be upheld as well as its acquisition by the petitioner because respondents Bitangas and Rabago are likewise estopped to question the validity of the same by reason of acquiescence on their part in that Guillermo Bitanga together with Mary Bitanga Castillo signed as witnesses to the mortgage deed executed by their mother on the whole portion of the lot in

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question on October 20, 1936 while respondent Atty. Agripino L. Rabago, the son-in-law of the mortgagor Rosa Ver, notarized the said mortgage deed. Petitioner also points to the fact that respondent Pedro Bitanga offered to repurchase the whole portion of the property from the petitioner, which offer is an admission, conclusive upon him that the PNB is the absolute and legal owner of the lot in question and have the right to dispose of the same. And citing the case of *Cruz vs. Ilagan*, 81 Phil. 554, and authority quoted from 21 Am. Jur. 756, petitioner concludes that respondents Bitangas and Rabago, as heirs of the deceased husband, by their conduct, in effect bound themselves to the real estate mortgage contract over the share of the husband, as completely and effectively as though they *themselves signed the document as mortgagors over the share* of the husband.

Petitioner also stresses that respondents Bitangas and Rabago filed the complaint for reconveyance and annulment of mortgage on May 17, 1954, after nineteen (19) solid years have already elapsed from the time the mortgage was executed on October 20, 1936 by Rosa Ver, and the lot in question had been the subject of several transactions during which time said respondents never did anything in asserting or vindicating their right to institute a suit against the petitioner though with ample opportunity to do so and, therefore, said respondents slept on or neglected in asserting their right, hence they are guilty of laches.

Petitioner's contention is without merit. First, it must be clarified that not all the respondent heirs signed the mortgage deed as instrumental witnesses. An examination of the mortgage contract (Exhibit "1") shows that of the five (5) Bitanga respondents, namely, Pedro, Fernando, Gregorio, Guillermo and Clarita, only Guillermo Bitanga signed as one of the instrumental witnesses, the first being Mary B. Castillo.

Even as regards Guillermo Bitanga, who signed as witness of the deed of mortgage, PNB's reliance upon the case of *Vda. de de la Cruz vs. Ilagan* is unavailing. In the *De la Cruz case*, *the heirs of the decedent, who were the parties* sought to be estopped from questioning the validity of the sale

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made by their co-heir and the administrator of the decedent's estate, did not merely sign as witnesses to the deed of sale. In the words of Justice Zaldivar who penned the decision, they "gave their approval and conformity to the sale and to the administrator's motion by signing with appropriate expressions both papers." (*Cruz vs. Ilagan*, 81 Phil. 554, 556). Thus, that the heirs gave their consent to the sale could not be doubted, as in fact it was expressed in words in the deed itself and in the motion submitted to the court for judicial approval of the sale, and on the basis of this express approval and conformity, the Court held them in estoppel and bound as co-vendors. In the instant case, on the other hand, the party sought to be estopped signed merely as an instrumental witness. A distinction should be made, as indeed there is, between one who signs a document merely as an instrumental witness, and, one who affixes his signature as proof of his consent to, approval of, and conformity with, the contents of the deed or document. The former simply attests that the party or parties to the instrument signed the same in his presence, so that he is frequently referred to as a "Witness to the signature," and he is not bound to know or be aware of the contents of the document; while the latter is not only presumed to know the subject matter of the deed, but more importantly, binds himself thereto as effectively as the party himself would be bound thereby.

The foregoing distinction makes clear the inapplicability of the ruling in *Vda. de de la Cruz vs. Ilagan* to the facts obtaining in the case at bar. We cannot hold Guillermo Bitanga in estoppel by declaring that he bound himself to the mortgage as effectively as the mortgagor Rosa Ver when he signed the mortgage deed as a witness in the absence of clear proof that he was in fact aware of the contents of the document at the time of its execution. We can only go as far as stating that the deed was signed by the parties thereto in his presence.

Moreover, there is no allegation nor evidence on record to show that petitioner-mortgagee relied upon the signature of Guillermo Bitanga on the mortgage deed, or that he made any representations with the PNB for the acceptance of the mortgage. On the contrary, PNB states that Rosa Ver mortgaged the

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entire lot "on the basis and strength of Tax Declaration No. 120225-A" which "was issued and declared in her exclusive name."[10] As held by this Court, speaking through Justice Zaldivar, in the case of *Kalalo vs. Luz*, L-27782, July 31, 1970, 34 SCRA 337, 346-347:

"An essential element of estoppel is that the person invoking it has been influenced and has relied on the representations or conduct of the person sought to be estopped, and this element is wanting in the instant case. x x x And in *Republic of the Philippines vs. Garcia, et al.* (91 Phil. 46, 49), this Court ruled that there is no estoppel where the statement or action invoked as its basis did not mislead the adverse party. Estoppel has been characterized as harsh or odious, and not favored by law (*Coronel, et al. vs. C.I.R., et al.*, 24 SCRA 990, 996). x x x Estoppel cannot be sustained by mere argument or doubtful inference; it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence (*Rivers vs. Metropolitan Life Ins. Co. of New York,* 6 N.Y., 2d, 3, 5) x x x."

Consequently, there is no estoppel where there is no reliance upon representations and where there is no deliberate misleading of another. Intention to mislead is an important element of estoppel, as well as the mislead party's reliance upon the declaration, act or omission of the party sought to be estopped. Both elements have not been proved in the instant case, hence again, estoppel does not lie against Guillermo Bitanga.

Under this same ground of estoppel, petitioner makes capital of the fact that it was Atty. Agripino L. Rabago, son-in-law of mortgagor Rosa Ver and husband of one of herein respondent-heirs, Clarita Bitanga Rabago, who notarized the mortgage deed. It is contended that since Atty. Rabago acted as the judicial administrator and lawyer of the Bitanga family estate at the time of the execution of the mortgage, he should have prevailed upon his mother-in-law Rosa Ver not to mortgage the entire lot but only half thereof to PNB when he was approached to notarize the "*Hipoteca de Bienes Inmuebles*" (Exhibit 1). Furthermore, knowing that the property was already the subject

[10] Petition, p. 11; *Rollo*, p. 18.

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of original registration proceedings under Act No. 496, he should have informed the bank thereof.

Again, this contention of petitioner is untenable. Assuming that Atty. Rabago was the lawyer for the Bitanga family and administrator of its estate of which the trial and appellate courts made no such finding, his acts, declarations and omissions in the performance of his duties as such, whether deliberate or not, cannot adversely affect herein respondent heirs as to deprive them of their right to impugn a contract which was prejudicial to their interests. Under the circumstances of the case at bar, that Atty. Rabago could have or should have done a particular thing which he did not do is his own responsibility. The settled rule in Philippine jurisprudence that a client is bound by his counsel's actions, negligence, mistakes and/or shortcomings enunciated in a number of cases[11] presupposes the existence of a pending litigation whether in court or in an administrative body, and refers only to matters pertaining to the conduct of such case. Precisely said rule requires the existence of an attorney-client relationship, while herein, there is merely a single, independent transaction, that of a mortgage, which was in no way connected with any pending litigation at the time of its execution. Therefore, the above-stated rule finds no application in the instant case.

We likewise disagree with the contention that Pedro Bitanga's offer to buy the lot in question, as contained in his letter to the PNB dated September 14, 1949 (Exhibit 10), is a conclusive admission on his part that the bank was the absolute and legal owner of the property so as to estop him from contesting the validity of the mortgage (Exhibit 1) and the title (TCT T-2701) procured by the bank over the property. For in the aforesaid

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[11] *Fernandez vs. Tan*, 1 SCRA 1138; *Gordulan vs. Gordulan*, 3 SCRA 205; *Valerio vs. Secretary*, 7 SCRA 719; *Mina vs. Pecson*, 8 SCRA 774; *Ramos vs. Potenciano*, 9 SCRA 589; *Cabalag vs. Rosas Cia.*, 18 SCRA 1099; *Ocampo vs. Caluag*, 19 SCRA 971; *Manila Pest Control vs. WCC*, 25 SCRA 700; *Rivera vs. V'da. de de la Cruz*, 26 SCRA 58; *Macavinta vs. People*, 54 SCRA 420; *Malipol vs. Tan*, 55 SCRA 202; *Gutierrez and Sons vs. CA*, 61 SCRA 87.

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letter, Bitanga categorically wrote: "1. That I offer the amount of ₱800.00 to buy said lot, and please consider that the rights which the bank had purchased was the property and shares of my mother and brother, Guillermo, and that my rights as well as the rights of my other brothers and sisters were not sold to the bank"; There can be no estoppel arising from said vehement and assertive claim. If he offered to buy the entire property despite such expressed claim, his purpose may well be that he wished to avoid a long-drawn, expensive litigation and not necessarily to admit that petitioner was the absolute and legal owner of the property.

As to petitioner's contention that respondents are guilty of laches for having slept on or neglected in asserting their right to the land after the lapse of more than nineteen (19) years from the time the mortgage was executed on October 20, 1936 by Rosa Ver, the ruling in *Angeles, et al. vs. Court of Appeals, et al.*, 102 Phil. 1006, declares that "where the sale of a homestead is null and void, the action to recover the same does not prescribe because mere lapse of the time cannot give efficacy to the contracts that are null and void and inexistent." This is a principle recognized since *Tipton vs. Velasco*, 6 Phil. 67, that "mere lapse of time cannot give efficacy to contracts that are null and void," cited in *Eugenio vs. Perdido, et al.*, 97 Phil. 41.

As to the fourth assignment of error faulting the respondent appellate court in holding that the acquisition of the other half portion of the lot in question by the intervenors-spouses Melitona Lagpacan and Jorge Malacas bears the earmarks of validity and regularity, petitioner theorizes that the mortgage executed by Rosa Ver on the lot in question in its entirety was valid and that said mortgage was very much ahead than that of the levy made by the Manila Trading & Supply Co. since the mortgage was registered on November 12, 1936 under Act 3344 as then the property mortgaged was still an unregistered land. On the other hand, the levy made by the Manila Trading & Supply Co. was noted in the first Torrens title of the land after its registration under the Torrens system, on February 14, 1940. And being first in time, herein petitioner maintains it should be first in right and the mortgage should enjoy preference over the levy.

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It must be noted, however, that in Our resolution of the first assignment of error, We ruled that the mortgage deed was valid and existing only with respect to the one-half portion of the lot in question belonging to the mortgagor Rosa Ver as her share in the conjugal partnership with her husband Iñigo Bitanga. Hence, petitioner's assumption that the mortgage of the whole lot was valid, is erroneous. What this Court held is that the mortgagor, Rosa Ver, as surviving spouse, could convey in mortgage to the petitioner bank one-half (½) of the entire property being her share in the conjugal partnership with her deceased husband, the other half being the lawful share of the respondent heirs as inheritance from their deceased father, Iñigo Bitanga.

And resolving the second assignment of error, We have ruled likewise that the respondent court committed no error in holding that the mortgage lien executed by Rosa Ver over the entire parcel of land on October 20, 1936 which was not annotated on the original certificate of title could not have attached to the land. Stated otherwise, the failure of the petitioner bank to appear during the registration proceedings and claim such interest in the land, and further to do so after more than a year after the issuance of the decree of registration which rendered the title indefeasible and free from any collateral attack by any person claiming title to or interest in the land prior to registration proceedings, has resulted into the petitioner bank being virtually deprived of its mortgage. It follows, therefore, that the acquisition of the other half portion of the lot in question by the intervenors-spouses Melitona Lagpacan and Jorge Macalas into whose hands said one-half (½) passed as a result of Civil Case No. 1846 of the Court of First Instance of Ilocos Norte entitled "*Jorge Malacas, et al. vs. Alfredo Formoso, et al.*" was valid and regular, which holding of the Court of Appeals is correct and We affirm the same.

To recapitulate, the mortgage executed by Rosa Ver in favor of the PNB was valid only as regards her one-half (½) conjugal share in Lot 9068. On the other hand, the intervenors-spouses Melitona Lagpacan and Jorge Malacas acquired their right to the shares of Rosa Ver and Guillermo Bitanga in the same lot from the Manila Trading Co., another creditor of Rosa Ver,

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which acquired "all the rights, title, interests and participations which x x x Guillermo Bitanga and Rosa Ver de Bitanga have or might have" over Lot 9068 (Exh. 4-Lagpacan) more than two (2) years after the decree of registration was entered in the name of the Bitanga spouses on September 14, 1937. Since Original Certificate of Title No. 7683 covering the land in question was issued on December 15, 1937 free from any mortgage lien and no such lien was recorded thereafter even until May 25, 1940 when the certificate of sale in favor of the Manila Trading Co. as highest bidder of the shares of Rosa and Guillermo was annotated on the title (Exh. A-4), it is quite clear that as between the PNB and the Manila Trading Co., the latter had the better rights.

One further point that militates against the claim of the petitioner bank who now prosecutes its claim or mortgage lien in behalf of Felizardo Reyes to whom the bank sold the property on May 24, 1954, is the finding of the appellate court that said Felizardo Reyes is a purchaser in bad faith, a notice of *lis pendens* having been annotated on the certificate of title covering the property sometime before the sale thereof was made by the Philippine National Bank in favor of Felizardo Reyes. This finding of fact is conclusive and binding upon Us and bad faith We can neither condone nor reward.

The judgment of the Court of Appeals must, however, be modified. Paragraph (d) of the dispositive portion of the decision appealed from directed the Register of Deeds to issue in lieu of Transfer Certificate of Title Nos. T-2701 and T-3944 another certificate of title in the names of the plaintiffs and intervenors as follows:

"Undivided one-half (½) share to Pedro Bitanga, married to Agripina, Purisima, Fernando Bitanga, single, Gregorio Bitanga, single, Guillermo Bitanga, single, Clarita Bitanga, married to Agripino L. Rabago, all of legal age, Filipino citizens, and residents of Laoag, Ilocos Norte, and the remaining undivided one-half (½) share to the spouses Jorge Malacas and Melitona Lagpacan, both of legal age, Filipino citizens, and residents of Burgos, Ilocos Norte free from incumbrance regarding the claims of the Philippine National Bank and Felizardo Reyes, after payment of lawful fees."

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As We have hereinbefore ruled that the Manila Trading Company acquired not only the rights, title, interests and participation of Rosa Ver to one-half (½) of Lot 9068 but also that pertaining to Guillermo Bitanga or one-fifth (1/5) of the other half of the lot which the latter shared with his sister and three (3) brothers, each one having one-fifth (1/5) share each, the intervenor spouses as successors-in-interest of the Manila Trading Company are entitled to six-tenths (6/10) or three-fifths (3/5) of the entire lot, and not merely one-half (½) thereof as held by the lower court and the appellate court. The undivided two-fifths (2/5) share only should appertain to Pedro Bitanga, Fernando Bitanga, Gregorio Bitanga and Clarita Bitanga.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment of the Court of Appeals is hereby affirmed with modification in the sense that paragraph (d) is hereby amended to read as follows:

(d) Since the issuance of Transfer Certificate of Title No. T-2701, Exhibit "D" in favor of the Philippine National Bank, and Transfer Certificate of Title No. T-3944, Exhibit "16", in favor of Felizardo Reyes, was without legal basis, they are, therefore, declared null and void and cancelled. The Register of Deeds is hereby ordered to issue in lieu of the foregoing transfer certificates of title another certificate of title in the names of the private respondents as follows:

Undivided two-fifths (2/5) share to Pedro Bitanga, married to Agripina Purisima, Fernando Bitanga, single, Gregorio Bitanga, single, and Clarita Bitanga, married to Agripino L. Rabago, all of legal age, Filipino citizens, and residents of Laoag, Ilocos Norte, and the remaining undivided three-fifths (3/5) share to the spouses Jorge Malacas and Melitona Lagpacan, both of legal age, Filipino citizens, and residents of Burgos, Ilocos Norte, free from incumbrance regarding the claims of the Philippine National Bank and Felizardo Reyes, after payment of lawful fees.

Costs against the petitioner.

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SO ORDERED.

Makasiar, Fernandez, and *De Castro, JJ.*, concur.

Teehankee (Chairman), J., in the result.

Melencio-Herrera, J., took no part.

EN BANC

[G.R. No. L-35416. June 25, 1980]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HERHELITO DAYAG,** ***alias*** **DIEGO, JUAN MANALO (appeal withdrawn) and VICTOR DAYAG,** *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WITNESSES; CREDIBILITY; *ABSENCE OF CIRCUMSTANCE THAT DISCREDIT.*—** There is no conceivable reason, and none was intimated, why the state witnesses should point to Herhelito as the gunwielder, if Victor, by his own admission, did the killing. What the witnesses, particularly the widow of the victim, are concerned with, is to see that the culprits, specially the actual killer, is meted the proper punishment. It should make no difference to them who as between Herhelito and Victor shot the deceased, as long as the real culprit or culprits are brought to justice, for to them, the truth is of compelling force as a natural trait in every man. It is in the nature of man to adhere to the truth, and shun falsehood, where there is no overpowering reason to falsify the truth, as in the instant case.

2. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; NOT A CASE OF.—** The self-defense plea of Victor Dayag who owned the killing, likewise, necessarily becomes