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is now asking petitioners to surrender their titles, and petitioners may not properly refuse, because they received their titles from the Register upon their undertaking to respect the outcome of the litigation, the title being expressly subject thereto, by the annotation of *lis pendens* (*Selph v. Vda. de Aguilar*, 107 Phil. 443 [1960]).

PREMISES CONSIDERED, this Petition is hereby DISMISSED for lack of merit and the writ of preliminary injunction issued by the Court on July 28, 1969 restraining the execution and implementation of respondent Court's orders of June 25 and July 3, 1968 and the writ of possession of May 29, 1969 in Civil Case No. 8077 are hereby lifted permanently.

SO ORDERED.

Teehankee, C.J., Narvasa, and *Cruz, JJ.*, concur.

Gancayco, J., on leave.

SECOND DIVISION

[G.R. No. L-40858. September 15, 1987]

SPOUSES FEDERICO SERFINO and LORNA BACHAR, *petitioners, vs.* **THE COURT OF APPEALS and LOPEZ SUGAR CENTRAL MILL CO., INC.,** *respondents.*

[G.R. No. L-40751. September 15, 1987]

PHILIPPINE NATIONAL BANK, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, LOPEZ SUGAR CENTRAL MILL COMPANY, INC., SPOUSES FEDERICO SERFINO and LORNA BACHAR,** *respondents.*

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SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; HOMESTEAD PATENT; SALE OF HOMESTEAD LOT BY GRANTEE AFTER 8 YEARS, VALID IN CASE AT BAR.** — It is not disputed that the original grantee was Pacifico Casamayor who obtained a Homestead Patent and later an original certificate of title in his name. Later it was this original grantee who sold the land in question to Nemesia Baltazar on December 14, 1945 or more than eight (8) years after he obtained his homestead patent on August 25, 1937. On these facts, We now apply Sec. 118 of Commonwealth Act No. 141 which prohibits the alienation of homestead lots to private individual within five (5) years from the date of the issuance of the patent and not Sec. 121 which governs sale to corporation. Since the grant was more than five (5) years before, the transfer to Nemesia Baltazar was valid and legal. Nemesia Baltazar who became the titled or registered owner as evidenced by TCT No, 57-N. could exercise acts of ownership over the land such as disposing of it to private respondent by a deed of sale.

2. **TAXATION; TAX SALE; STRICT COMPLIANCE WITH THE PRESCRIBED PROCEDURE IN AUCTION SALES OF PROPERTY FOR TAX DELIQUENCY IS ESSENTIAL FOR VALIDITY.**— The assailed decision of the appellate court declares that the prescribed procedure in auction sales of property for tax delinquency being in derogation of property rights should be followed punctiliously. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay possible suspicion of collusion between the buyer and the public officials called upon to enforce such laws. Notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the sale.

3. **ID.; ID.; ID.; ID.; ID.; CASE AT BAR.** — In the case at bar, there is no evidence that Nemesia Baltazar, who had obtained a transfer certificate of title in her name on January 18, 1946, was notified of the auction sale which was scheduled on October 30, 1956. Neither was she furnished as the owner of the delinquent real

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property with the certificate of sale as prescribed by Sec. 37 of Commonwealth Act No. 470. These infirmities are fatal.

4. **CIVIL LAW; SALES; *CAVEAT EMPTOR*; PRINCIPLE APPLICABLE TO REAL ESTATE BUYERS AT TAX SALE; CASE AT BAR.** — Worth mentioning also is the fact that Lopez Sugar Central was not entirely negligent in its payment of land taxes. The record shows that taxes were paid for the years 1950 and a receipt therefore was obtained in its name. The sale therefore by the province of Negros Occidental of the land in dispute to the spouses Serfinos was void since the Province of Negros Occidental was not the real owner of the property thus sold. In turn, the spouses Serfinos' title which has been derived from that of the Province of Negros Occidental is likewise void. A purchaser of real estate at the tax sale obtains only such title as that held by the taxpayer, the principle of *caveat emptor* applies. Where land is sold for delinquency taxes under the provisions of the Provincial Assessment Law, rights of registered but undeclared owners of the land are not affected by the proceedings and the sale conveys only such interest as the person who has declared the property for taxation has therein.

5. **ID.; MORTGAGE; MORTGAGEE IN GOOD FAITH IS ENTITLED TO PAYMENT OF THE MORTGAGE LOAN IN CASE AT BAR.**— After the execution of a real estate mortgage in favor of the Philippine National Bank duly annotated on the title of the Serfinos' TCT No. 38985, the bank actually loaned Serfino the amount of ₱5,000.00 which amounted to ₱5,261.11 as of August 17, 1965. Petitioner Philippine National Bank relied on TCT No. 38985, the genuineness of which is not in issue as it was really issued by the Register of deeds of Negros Occidental. Philippine National Bank had every right to rely on TCT No. 38985 as it was a sufficient evidence of ownership of the mortgagor. The Philippine National Bank at that time had no way of knowing of the existence of another genuine title covering the same land in question. Petitioner Philippine National Bank is therefore entitled to the payment of the mortgage loan as ruled by the trial court and exempted from the payment of costs.

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DECISION

PARAS, *J.*:

Before Us are two (2) Petitions for *Certiorari* to review the decision[1] of the Court of Appeals in CA-G.R. No. 37748-R, consolidated for Our disposition since they arose from the same factual background.

The records of the case show that on August 25, 1937, a parcel of land consisting of 21.1676 hectares situated in the Municipality of Sagay, Province of Negros Occidental, was patented in the name of Pacifico Casamayor, under Homestead Patent No. 44139. Upon registration of said patent in the office of the Register of Deeds of Negros Occidental, OCT No. 1839 was issued by said office in the name of Pacifico Casamayor. On December 14, 1945, the latter sold said land in favor of Nemesia D. Baltazar.

Apparently, OCT No. 1839 was lost during the war and upon petition of Nemesia Baltazar, the Court of First Instance of Negros Occidental ordered[2] the reconstitution thereof. Pursuant thereto, OCT No. 14-R (1839) was issued on January 18, 1946 in the name of Pacifico Casamayor. On that same day, TCT No. 57-N was issued in the name of Nemesia Baltazar but after the cancellation of OCT No. 14-R (1839).

On August 25, 1951, Nemesia Baltazar, sold said property to Lopez Sugar Central Mill Co., Inc. (Lopez Sugar Central, for brevity). The latter, however did not present the documents for registration until December 17, 1964 to the Office of the Registry of Deeds. Said office refused registration upon its discovery that the same property was covered by another certificate of title, TCT No. 38985, in the name of Federico Serfino.

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[1] Penned by Justice Venicio Escolin concurred in by Justices Ramon C. Fernandez and Efren I. Plana.

[2] The order was penned by Judge Lope Consing.

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An inquiry into this discrepancy reveals that the Provincial Treasurer of Negros Occidental on October 30, 1956 had conducted a public auction sale of this property for tax delinquency for the period starting the year 1950. Notice of this public auction sale was sent to Pacifico Casamayor but none to Nemesia Baltazar and Lopez Sugar Mill. There being no public bidders on the scheduled date of sale, the Provincial Treasurer of Negros Occidental issued a Certification of Sale of Delinquent Real Property over the disputed land to the Province of Negros Occidental. On May 14, 1964, upon payment of the amount of ₱1,838.49 by Federico Serfino, a Certificate of Repurchase of Real Property was issued and executed by the Provincial Treasurer in favor of Federico Serfino, for and in behalf of Pacifico Casamayor.

On May 28, 1964, Serfino filed a petition with the Court of First Instance of Negros Occidental for the Reconstitution of OCT No. 1839 in the name of Pacifico Casamayor, upon the allegation that said title was lost. After due publication and hearing, said OCT was ordered reconstituted and thus OCT No. RP-1304 (1839) was issued by the Registry of Deeds in the name of Casamayor.

On October 30, 1964, Serfino petitioned the court for confirmation of his title to the land as purchaser in the auction sale. On October 31, 1964, court granted the petition and on November 2, 1964, OCT No. RP-1304 (1839) was cancelled and TCT No. 38985 was issued in the name of Federico Serfino, married to Lorna Bachar.

On November 19, 1964, the spouses Serfinos mortgaged the land to the Philippine National Bank (PNB) to secure a loan in the amount of ₱5,000.00. Said mortgage in favor of PNB was inscribed in TCT No. 38985. Hence, this was the situation of the land when the Office of the Register of Deeds refused registration of the property in question requested by the Lopez Sugar Central.

The lower court in its Order, dated January 16, 1965 in the Petition of the Office of the Register of Deeds seeking the cancellation of either TCT No. 57-N (in the name of Nemesia

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Baltazar) or TCT No. 38985 (in the name of Lopez Sugar Central), ordered Lopez Sugar Central and spouses Serfino to take the necessary steps towards the clearing of their respective titles before a court of general jurisdiction. Pursuant thereto, Lopez Sugar Central, on May 5, 1965, instituted an action for 1) annulment of OCT No. RP-1304 (1839), of TCT No. 38985 and of the mortgage executed by the Serfinos in favor of PNB, 2) for the registration of the Deed of Sale, 3) for the issuance of a TCT in its name and 4) for recovery of possession of the disputed land from the Serfinos.

On February 4, 1966, the lower court rendered its decision,[3] the dispositive portion reading as follows:

"WHEREFORE, and considering the conclusions and opinion set forth above, judgment is hereby rendered as follows:

"1. The Register of Deeds of Negros Occidental is hereby ordered to cancel Transfer Certificate of Title No. 38985;

"2. The same Register of Deeds is ordered to register the deed of sale executed by Nemesia D. Baltazar on August 25, 1951, and after cancelling Transfer Certificate of Title No. 57-N and other titles issued prior thereto, to issue a new transfer certificate of title in the name of Lopez Sugar Central Mill Co., Inc., upon previous payments of the legal fees;

"3. The Lopez Sugar Central Mill Co., Inc., shall pay the Philippine National Bank, Bacolod Branch, the sum of ₱5,261.11 secured by a real estate mortgaged registered and annotated on Transfer Certificate of Title 38985 which shall be carried over in the new transfer certificate of title to be issued to the Lopez Sugar Central Mill Co., Inc. with the right of recourse to the Assurance Fund; and

"4. The defendant, Federico Serfino, is hereby ordered to vacate the land in question and to deliver the possession thereof to the plaintiff;

"5. The plaintiff is exempt from reimbursing the defendant, Federico Serfino, for the sum of ₱602.94 which the latter paid for the repurchase of the land in question for the reason that the former is

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[3] Penned by Judge Jose C. Divinagracia.

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already burdened with the payment of the mortgage indebtedness with the Philippine National Bank in the amount of ₱5,261.11; and

"6. The Court makes no award for damages and costs.

"SO ORDERED." (*Rollo* — L-40751, pp. 117 & 118, Joint Record on Appeal, Annex "D", p. 50)

Both parties appealed from this decision of the trial court. Ruling on the assignment of errors, the appellate court affirmed the judgment of the trial court with modification in its decision, the pertinent portion reading as follows:

"Plaintiff contends that the mortgage executed by the Serfinos in favor of PNB is null and void, because the property conveyed in mortgage did not belong to them. The contention is meritorious. That the mortgagor should be the absolute owner of the property mortgaged is an essential requisite for the validity of a contract of mortgage (Art. 2085, Civil Code); and a mortgage constituted by one not the owner of the property mortgaged is null and void, the registration of the mortgage notwithstanding (*Parqui vs. PNB*, 96 Phil. 157). Thus, the mortgage lien of PNB in the contract executed in its favor by the Serfinos did not attach to the property in question.

"The argument advanced by appellee PNB that it is a mortgagee in good faith deserves scant consideration. Note that when the mortgage was constituted, the disputed land was covered by a valid and existing title, TCT No. 57-N, in the name of Nemesia D. Baltazar. Indeed, the whole world, including appellee PNB, is charged with notice thereof. Consequently, that portion of the trial court's decision declaring plaintiff liable to the PNB for payment of the sum of ₱5,261.11 should be set aside.

"As to the plaintiff's claim for damages against the Serfinos, We find the same devoid of merit. Whatever injury plaintiff may have suffered was occasioned by the faulty and defective indexing and filing system in the office of the Register of Deeds of Negros Occidental, and not by any intentional act on the part of the Serfino spouses. Anyway, the evidence fails to show that they deliberately intended to cause damage to plaintiff.

"However, equity dictates that plaintiff should reimburse the Serfino spouses of the sum of ₱1,839.49, representing the unpaid taxes and penalties paid by the latter when they repurchased the property from the province of Negros Occidental.

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"WHEREFORE, with the modifications above indicated, the judgment appealed from is hereby affirmed. No costs.

"SO ORDERED." (Decision, Annex "A", pp. 40-42, *Rollo* - L-40751).

From the aforesaid ruling, the spouses Serfino and the Philippine National Bank appealed to Us by way of *certiorari*. Petitioners, spouses-Serfinos[4] assign the following errors:

I. The Purchase by plaintiff-appellant corporation (Lopez Sugar Central) of the lot in question was null and void from the beginning.

II. Petitioners are proper parties to challenge the legality of the sale of the land in question to private respondent.

III. Notice to Nemesia Baltazar of the Tax Sale of the land in question was not essential to the validity of the sale.

IV. The legality of the auction sale of the property in question was not in issue before the court *a quo*.

Petitioner Philippine National Bank[5] submits the following:

ASSIGNMENT OF ERRORS

I. The Court of Appeals erred in holding that the auction sale of the disputed property was null and void.

II. The Court of Appeals erred in not holding that petitioner is a mortgagee in good faith.

Petitioners spouses Serfinos maintain that sale of a land covered by homestead to be valid must have the following requisites: 1) consent of the grantee 2) approval of the Secretary of Agriculture and Natural Resources 3) sale is solely for educational, religious, or charitable purposes or for a right of way (Sec. 121, CA No. 141).

Petitioner spouses Serfinos in support of their first assignment of error cited Sec. 121, CA No. 141 reading as follows:

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[4] Petitioner in L-40858.

[5] Petitioner in L-40751.

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"SEC. 121. Except with the consent of the grantee and the approval of the Secretary of Agriculture and Commerce, and solely for commercial, industrial, educational, religious or charitable purposes or for a right of way, no corporation, association, or partnership may acquire or have any right, title, interest, or property right whatsoever to any land granted under the free patent, homestead or individual sale provisions of this Act or to any permanent improvement on such land."

They argue that since private respondent is a corporation, it is barred from owning land granted under the free patent if the aforementioned requisites are not present. Such contentions do not merit our approval. It is not disputed that the original grantee was Pacifico Casamayor who obtained a Homestead Patent and later an original certificate of title in his name. Later it was this original grantee who sold the land in question to Nemesia Baltazar on December 14, 1945 or more than eight (8) years after he obtained his homestead patent on August 25, 1937. On these facts, We now apply Sec. 118 of Commonwealth Act No. 141 which prohibits the alienation of homestead lots to private individual within five (5) years from the date of the issuance of the patent and not Sec. 121 which governs sale to corporation. Since the grant was more than five (5) years before, the transfer to Nemesia Baltazar was valid and legal. Nemesia Baltazar who became the titled or registered owner as evidenced by TCT No. 57-N, could exercise acts of ownership over the land such as disposing of it to private respondent by a deed of sale.

The assailed decision of the appellate court declares that the prescribed procedure in auction sales of property for tax delinquency being in derogation of property rights should be followed punctiliously. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the tax payers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce such laws. Notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the sale.

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We give our stamp of approval on the aforementioned ruling of the respondent court. In the case at bar, there is no evidence that Nemesia Baltazar, who had obtained a transfer certificate of title in her name on January 18, 1946, was notified of the auction sale which was scheduled on October 30, 1956. Neither was she furnished as the owner of the delinquent real property with the certificate of sale as prescribed by Sec. 37 of Commonwealth Act No. 470. These infirmities are fatal. Worth mentioning also is the fact that Lopez Sugar Central was not entirely negligent in its payment of land taxes. The record shows that taxes were paid for the years 1950 to 1953 and a receipt therefor was obtained in its name. The sale therefore by the Province of Negros Occidental of the land in dispute to the spouses Serfinos was void since the Province of Negros Occidental was not the real owner of the property thus sold. In turn, the spouses Serfinos title which has been derived from that of the Province of Negros Occidental is likewise void. A purchaser of real estate at the tax sale obtains only such title as that held by the taxpayer, the principle of caveat emptor applies. Where land is sold for delinquency taxes under the provisions of the Provincial Assessment Law, rights of registered but undeclared owners of the land are not affected by the proceedings and the sale conveys only such interest as the person who has declared the property for taxation has therein.

We now come to the arguments of petitioner Philippine National Bank. The appellate court in modifying the trial court's decision nullified the mortgage in favor of Philippine National Bank and exempted Lopez Sugar Central from the payment to PNB of the amount of the mortgage loan. Petitioner Philippine National Bank now questions this maintaining that it is a mortgagee in good faith and as such is entitled to the protection of the law.

We find merit in petitioner's contention. The findings of fact by the trial court which were undisputed by the contending parties show that after TCT No. 38985 had been issued in the name of Federico Serfino, he declared the property in his name for the year 1965 under T.D. No. 9382, continuously paid the taxes and introduced improvements thereon in the nature of

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feeder roads and sugar cane plants. It was under these circumstances that PNB extended a loan to Serfino, secured by the land in question on the strength of TCT No. 38985 in the name of the Serfinos and after a spot investigation by one of the bank inspectors who made a report of his investigation. After the execution of a real estate mortgage in favor of the Philippine National Bank duly annotated on the title of the Serfinos' TCT No. 38985, the bank actually loaned Serfino the amount of ₱5,000.00 which amounted to ₱5,261.11 as of August 17, 1965. Petitioner Philippine National Bank relied on TCT No. 38985, the genuineness of which is not in issue as it was really issued by the Register of Deeds of Negros Occidental. Philippine National Bank had every right to rely on TCT No. 38985 as it was a sufficient evidence of ownership of the mortgagor. The Philippine National Bank at that time had no way of knowing of the existence of another genuine title covering the same land in question.

The fact that the public auction sale of the disputed property was not valid (for lack of notice of the auction sale to the actual owner) can not in any way be attributed to the mortgagee's (PNB's) fault. The fact remains that in spite of the lack of notice to the actual registered owner at that time (who was Nemesia Baltazar) the Register of Deeds issued a TCT in the name of Federico Serfino married to Lorna Bachar which title was relied upon by petitioner Philippine National Bank. The Register of Deeds disowned liability and negligence or connivance claiming that existence of TCT No. 57-N in the name of Nemesia Baltazar was not found in the records of the Register of Deeds for the reason that it did not exist in the index card as the land was not designated by cadastral lot number. Thus the discrepancy was due to the faulty system of indexing the parcels of land. Be it noted that the inability of the Register of Deeds to notify the actual owner or Lopez Sugar Central of the scheduled public auction sale was partly due to the failure of Lopez Sugar Central to declare the land in its name for a number of years and to pay the complete taxes thereon. Petitioner Philippine National Bank is therefore entitled to the payment of the mortgage loan as ruled by the trial court and exempted from the payment of costs.

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WHEREFORE, premises considered, with the slight modification that the PNB mortgage credit must be paid by Lopez Sugar Central, the assailed decision is hereby AFFIRMED.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 69619. September 15, 1987]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SALVADOR FERNANDEZ, ERNESTO FERNANDEZ**, *defendants-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; POSITIVE IDENTIFICATION BY EYEWITNESSES ESTABLISHED GUILT OF ACCUSED IN CASE AT BAR.— The guilt of the accused was proven beyond reasonable doubt. They were positively identified by prosecution witnesses Victor Romero and Epifanio Peñalosa as the perpetrators of the crime. Both testified that Ernesto Fernandez shot Porfirio Cananea while his brothers Salvador and Herman hacked the victim. There is no reason to believe that they may have been mistaken in their identification of accused-appellants, Victor Romero was the driver of the jeepney hired by Salvador at Polangui in the morning of October 20, 1959 to take him and his co-accused brothers Ernesto and Herman to Bo. San Jose, Libon, Albay. They were his only passengers from Polangui to San Jose. Undisputedly he was in the scene of the crime. Epifanio Peñalosa,