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EN BANC

[G.R. No. L-27594. November 28, 1975]

THE DIRECTOR OF LANDS, THE DIRECTOR OF FORESTRY, and the ARMED FORCES OF THE PHILIPPINES, *petitioners, vs.* **HON. SALVADOR C. REYES, as Judge of the Court of First Instance of Nueva Ecija, Branch III, PARAÑAQUE INVESTMENT & DEVELOPMENT CORPORATION, ROMAN C. TAMAYO, THE COMMISSIONER OF THE LAND REGISTRATION COMMISSION and the REGISTER OF DEEDS OF NUEVA ECIJA,** *respondents.*

[G.R. No. L-28144. November 28, 1975]

ALIPIO ALINSUNURIN, now substituted by PARAÑAQUE INVESTMENT & DEVELOPMENT CORPORATION, *petitioners, vs.* **THE DIRECTOR OF LANDS, THE DIRECTOR OF FORESTRY and the ARMED FORCES OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; NOTICE OF APPEAL; FAILURE TO SERVE APPELLEE WITH NOTICE OF APPEAL CANNOT IMPAIR RIGHT OF APPEAL, IF APPELLEE WAS SERVED WITH COPY OF RECORD ON APPEAL.** — The failure of appellants to serve a copy of their Notice of Appeal to the counsel for one of the several appellees is not fatal to the appeal, where admittedly, he was served with a copy of the original, as well as the Amended Record on Appeal in both of which the Notice of Appeal is embodied. Such failure cannot impair the right of appeal, especially if the substantial rights of the adverse party is not impaired and the appeal taken was from the entire decision which is not severable.

2. **ID.; ID.; ID.; EXECUTION PENDING APPEAL; NOT APPLICABLE IN LAND REGISTRATION PROCEEDINGS.** — Execution pending appeal is not applicable in land registration proceedings.

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It is fraught with dangerous consequences. Innocent purchasers may be misled into purchasing real properties upon reliance on a judgment which may be reversed on appeal.

3. CIVIL LAW; LAND REGISTRATION; TORRENS TITLE ISSUED BASED ON JUDGMENT THAT IS NOT FINAL IS A NULLITY. — A Torrens Title issued on the basis of a judgment that is not final, the judgment being on appeal, is a nullity, as it is violative of the explicit provisions of the Land Registration Act, which requires that a decree shall be issued only after the decision adjudicating the title becomes final and executory, and it is on the basis of said decree that the register of deeds concerned issues the corresponding certificate of title.

4. ID.; ID.; ID.; ISSUANCE OF DECREE OF REGISTRATION DESPITE TIMELY APPEAL IS ERRONEOUS. — The lower court acted without jurisdiction or exceeded its jurisdiction in ordering the issuance of a decree of registration despite the appeal timely taken from the entire decision *a quo*.

5. ID.; ID.; ID.; *LIS PENDENS*, INSCRIBED IN THE TITLE PENDING AN APPEAL, EFFECT OF. — Where the oppositors in a land registration case caused the notice of *lis pendens* to be duly inscribed in the Original Certificate of Title pending an appeal from the decision granting the registration, such inscription keeps the whole land subject matter of the appeal within the power of the court until the litigation is terminated. Such entry of *lis pendens* cannot be cancelled until the final termination of the litigation, and the notice must be carried over in all titles subsequently issued, which will yield to the ultimate result of the appeal.

6. ID.; ID.; DECREE OF REGISTRATION; EFFECT OF ACTION FOR RECONVEYANCE PENDING APPEAL OF JUDGMENT IN REGISTRATION CASE. — Where during the pendency of an appeal by the government from a decision of the land registration court, decreeing the registration of a parcel of land, a complaint for reconveyance of the same land was filed against the adjudicatee, and the trial court after deciding the same on the merits in favor of the plaintiff, despite the writ of injunction issued by this Court and the inscription of a notice of *lis pendens* in the primary entry book of the Register of Deeds and annotated on the title, directed the Register of Deeds to cancel the original certificate of title and to issue new titles to the plaintiffs free

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from all liens and encumbrances, such orders of the court cancelling the original title and issuing new ones are null and void.

7. ID.; ID.; REGISTER OF DEEDS; DUTY TO CARRY OVER NOTICE OF *LIS PENDENS* ON ALL TITLES SUBSEQUENTLY ISSUED. — The register of deeds is duty bound to carry over a notice of *lis pendens* on all title subsequently issued. The act of a register of deeds in erasing the notice of *lis pendens*, in plain violation of his duty, constitutes misfeasance in the performance of his duties for which he may be held civilly and even criminally liable for any prejudice caused to innocent third parties, and cannot affect those who are protected by the notice inscribed in the original title.

8. CIVIL LAW; LAND REGISTRATION; ACTION FOR RECONVEYANCE BARRED BY PENDENCY OF AN APPEAL FROM LAND REGISTRATION DECREE INVOLVING THE SAME LAND. — An action *in personam* for reconveyance of a portion of land, adjudicated in a land registration case to defendants, which registration case is subject to the outcome of appeal by the Government (which was not a party to the action for reconveyance) is barred by the pendency of the appeal, and the trial court in such action *in personam* is without jurisdiction to order the register of deeds to cancel the original Certificate of Title and to issue titles to the transferees "free from all liens and encumbrances," nor can such be construed to authorize the register of deeds to cancel the notice of *lis pendens*, which was not entered by virtue of the reconveyance case.

9. REMEDIAL LAW.; PROVISIONAL REMEDIES; INJUNCTION; VIOLATION BY REGISTER OF DEEDS OF COURT INJUNCTION, EFFECT OF. — Where the Supreme Court, in its injunction order, restrained the register of deeds from accepting for registration documents referring to the subject land until the petitioners shall have filed a notice of *lis pendens* as to the title certificates of the adjudicatees under Section 24, Rule 14, Rules of Court, subject matter of the appealed land registration case, its plain meaning is to enjoin registration of documents and transactions unless the notice of *lis pendens* is annotated and so subject the same to the outcome of the litigation. In such case, subsequent transferees cannot be considered innocent purchasers for value.

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10. **ID.; ID.; ID.; LOWER COURTS CANNOT OVERRULE INJUNCTION ISSUED BY SUPREME COURTS.** — A lower court cannot overrule injunctions issued by the Supreme Court.

11. **CIVIL LAW; LAND REGISTRATION; NOTICE OF *LIS PENDENS;* EFFECT.** — The entry of the notice of lis pendens in the day book (primary entry book) is sufficient to constitute registration and such entry is notice to all persons of such adverse claim.

12. **ID.; ID.; DECREE OF REGISTRATION; EFFECT OF FAILURE TO SUBMIT TRACING PLAN.** — The original tracing cloth plan of the land applied for, approved by the Director of Lands, must be submitted in evidence. The submission of such plan is a statutory requirement of mandatory character. Unless a plan and its technical description are duly approved by the Director of Lands, the same are not of much value. The applicant is not relieved from submitting in evidence the original tracing cloth plan approved by the Director of Lands as required by law. One of the distinguishing marks of the Torrens System is the absolute certainty of the identity of a registered land. Consequently, the primary purpose of the aforesaid requirement is to fix the exact or definite identity of the land as shown in the plan and technical descriptions. Hence, the applicant is not relieved of his duty of submitting the acreage.

13. **ID.; ID.; ID.; LANDS ACQUIRED UNDER *INFORMACION POSSESSORIA* LIMITED TO 1,000 HECTARES.** — Where the claim of an applicant is based on an alleged informacion possessoria but the alleged *informacion possessoria* covers an area of "*sies mil quinones, poco mas o menos*" or an equivalent of 16,800 hectares, while under the Royal Decrees in force at the time of the supposed acquisition, no one could acquire public land in excess of 1,000 hectares, since the Royal Decrees of November 25, 1880 and October 26, 1881, prohibited any grant of public land in excess of 1,000 hectares, such a factor would weigh heavily against the applicant's claim.

14. **ID.; ID.; ID.; *INFORMACION POSSESSORIA*, NATURE OF.** — A document which states: "*en su virtud habieno examinado el Registro nuevamente formado por la perdida o destruccion del mismo y no hallando en ningun asiento contrario a lo relacionado reinscribe la posesion de la finca de este numero a favor de Don Melecio Padilla sin perjuico de tercero que*

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puede tener mejor derecho de la propiedad" is not *a titulo de informacion possessoria*, because it was merely a certification of possession over the property, and was issued without prejudice to a third party or parties having a better right. Under Spanish Law, in order that an *informacion possessoria* may be considered as title of ownership, it must be proven that the holder thereof has complied with the provisions of Article 393 of the Spanish Mortgage Law.

15. **ID.; ID.; ID.; CONVERSION OF *INFORMACION POSSESSORIA* INTO RECORD OF OWNERSHIP.** — Where the supposed holder of an *informacion possessoria* died 5 years after the inscription of the *informacion*, he could not have converted the same into a record of ownership 20 years after such inscription, pursuant to Art, 393 of the Spanish Mortgage Law. One year after the promulgation of the Maura Law, or on April 17, 1895, the right to perfect possessory information title under the law expired. After that date, full property right of the land reverted to the government and the right of the cultivator and possessor to obtain gratuitous title was extinguished.

16. **ID.; ID.; ID.; REQUIRES OPEN AND CONTINUOUS POSSESSION.** — Where the evidence shows that before the military reservation on the land applied for was established, the land involved was largely mountainous and forested; that approximately 13,957 hectares of said land consist of public forest; that during the lifetime of applicant's predecessors-in-interest only a small portion thereof was cleared and cultivated under the "*kaingin*" system, while some portions were used as grazing land; that the succeeding possessors caused the planting of vegetables thereon by 40 tenants, that when the applicants took possession of the land, they had to abandon the place due to the unsettled peace and order conditions in the area, and that when they tried to reoccupy the land they were prevented by the army, it is obvious, on the basis of said facts, that neither the applicant nor his predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the property in question under bona fide claim of acquisition of ownership for at least thirty years immediately preceding the filing of the application for confirmation of title.

17. **ID.; ID.; ID.; ID.; CASUAL CULTIVATION OF PORTIONS OF LAND DOES NOT CONSTITUTE POSSESSION UNDER**

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CLAIM OF OWNERSHIP. — A mere casual cultivation of portions of a public land by the claimant, and the raising thereon of cattle, do not constitute possession under claim of ownership. In that sense possession is not exclusive and notorious so as to give rise to a presumptive grant from the State. While grazing livestock over the land is of course to be considered with other acts of dominion to show possession, the mere occupancy thereof by grazing livestock upon it, without substantial inclosures or other permanent improvements, is not sufficient to support a claim of title through acquisitive prescription. The possession of public land, however long the period may have extended, never confers title thereto upon the possessor because the statute of limitations with regard to public land does not operate against the State, unless the occupant can prove possession and occupation of the same under claim of ownership for the required number of years to constitute a grant from the State.

18. **ID.; ID.; LAND REGISTRATION COMMISSION, NO AUTHORITY TO APPROVE ORIGINAL SURVEY PLANS.** — The applicant may not justify the non-submission of the original tracing cloth plan by claiming that the same may be with the Land Registration Commission (LRC) which checked or verified the survey plan and the technical descriptions thereof, for it is not the function of the LRC to check the original survey plan as it has no authority to approve original survey plans.

19. **ID.; ID.; ID.; TAX DECLARATION, PROOF THAT HOLDER HAD A CLAIM OVER THE PROPERTY.** — While tax receipts and declarations of ownership for taxation purposes are not incontrovertible evidence of ownership, they constitutes at least proof that the holder had a claim of title over the property.

20. **ID.; ID.; ID.; PUBLIC LAND ACT EXCLUDES FORESTS.** — Section 48(b) of Com. Act No. 141, as amended, applies exclusively to public agricultural land. Forest lands or areas covered with forest are excluded, and are incapable of registration, and its inclusion in a title, whether such title be one issued during the Spanish sovereignty or under the present Torrens system of registration, nullifies the title.

21. **ID.; ID.; MILITARY RESERVATIONS; CLAIMANT MUST SHOW TITLE.** — Under presidential proclamation reserving an area for military purposes which states that the same is subject to

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"private rights, if any there be," the applicant must prove its private rights over the property. For it is well settled that unless the applicant has shown by clear and convincing evidence that the property in question was ever acquired by him or his ancestors either by composition title from the Spanish Government or by possessory information title, or any other means for the acquisition of lands, the property must be held to be part of the public domain.

APPEARANCES OF COUNSEL

Acting Solicitor General Hugo E. Gutierrez, Jr. and *Assistant Solicitor General Reynato S. Puno* for The Director of Lands, etc.

Jaime B. Lumasag, Jr. and *Jose J. Roy & Associates Law Office* for Roman C. Tamayo.

Nemesio P. Diaz and Celso B. Fernandez, Jr. for Alipio Alinsunurin, etc.

D E C I S I O N

ANTONIO, *J.*:

These cases are interrelated, and so are decided jointly.

In his application originally filed on February 24, 1964 with the Court of First Instance of Nueva Ecija, the applicant Alipio Alinsunurin, claiming ownership in fee simple by inheritance from the late Maria Padilla, sought the registration of title under Act 496, as amended, of a vast tract of land, containing an area of 16,800 hectares, more or less, situated at the municipality of Laur, province of Nueva Ecija, admittedly inside the boundary of the military reservation of Fort Magsaysay.[1]

On May 5, 1966, the Director of Lands, Director of Forestry, and the Armed Forces of the Philippines opposed the application, claiming that the applicant was without sufficient title and was

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[1] LRC Case No. N-675, LRC Rec. No. N-25545, pp. 320-323, Vol. II, Rec. on Appeal.

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not in open, exclusive, continuous and notorious possession and occupation of the land in question for at least thirty (30) years immediately preceding the filing of the application; that approximately 13,957 hectares of said land consist of the military reservation of Fort Magsaysay established under Proclamation No. 237, dated December 10, 1955 of the President.[2]

On May 10, 1966, the applicant Alipio Alinsunurin filed a motion for substitution of parties, requesting that the Parañaque Investment and Development Corporation be considered as the applicant in his place, it having acquired all his rights, interests, ownership and dominion over the property subject matter of the application.[3] The motion was granted by the lower court in its order dated June 10, 1966.[4]

It is beyond dispute that the land subject of the application is included within the area reserved for military purposes under Proclamation No. 237, dated December 19, 1955, of the President. The land is largely uncultivated, mountainous and thickly forested with a heavy growth of timber of commercial quantities.[5] Except for a small area cultivated for vegetation by homesteaders issued patents by the Director of Lands, there were no occupants on the land.[6]

It is claimed by the applicant that Melecio Padilla acquired the land by virtue of a possessory information title issued during the Spanish regime on March 5, 1895, and upon his death in 1900, he transmitted the ownership and possession thereof to his daughter and sole heir, Maria Padilla. The latter in turn continued to cultivate the land thru tenants and utilized portions for pasture, until her death sometime in 1944.

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[2] Vol. II, Record on Appeal, pp. 333-339.

[3] *Ibid.*, pp. 346-350.

[4] *Ibid.*, pp. 365-366.

[5] Exhs. 6, 6-A-4, 10, 10-B, 11, 11-A to 11-J, pp. 15-32, Exhs. of Oppositors; also Exhibits 12, 12-B, pp. 33-37, Exhibits of Oppositors; pp. 926-944, 1012-1029, 1044-1054, t.s.n. A. Yango.

[6] T s.n., A. Yango, pp. 974-976.

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On November 19, 1966, the lower court rendered decision holding that the parcel of land applied for, described in the technical description Plan II-6752, is adjudicated to and ordered to be registered in favor of (a) Parañaque Investment and Development Corporation, a Philippine corporation wholly owned by Filipino citizens, with address at Manila, Philippines two-thirds (2/3) portion, subject to the rights of Ariosto Santos per Joint Manifestation of Alipio Alinsunurin and Encarnacion Caballero-Alinsunurin, Ariosto Santos and Parañaque Investment and Development Corporation dated July 19, 1966 and marked as Exhibit "AA-4,"[7] and (b) Roman C. Tamayo, Filipino citizen, married, resident of Cullit, Lallo, Cagayan, one-third (1/3) portion of the said property.

On December 12, 1966, the oppositors Director of Lands, Director of Forestry and the Armed Forces of the Philippines filed a Notice of Appeal from the said decision to the Supreme Court,[8] copy of which notice was furnished counsel for the applicant Parañaque Investment and Development Corporation; however, no copy was furnished to counsel for Roman C. Tamayo, to whom one-third (1/3) portion of the land was adjudicated.

On January 18, 1967, within the extended period granted by the court, the oppositors-appellants filed the corresponding Record on Appeal, copy of which was duly served upon appellees Parañaque Investment and Development Corporation and Roman C. Tamayo.

By an order dated March 8, 1967, the lower court required the Provincial Fiscal to file an Amended Record on Appeal, so as to include therein certain orders and pleadings, within ten (10) days from receipt of the order.[9]

On March 16, 1967, the Amended Record on Appeal was duly filed and copies served upon the appellees.

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[7] Original record, pp. 171-172.

[8] Record on Appeal, Vol. II, p. 463.

[9] *Ibid.*, pp. 471-472.

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Pending the approval of the Record on Appeal, the applicant Parañaque Investment and Development Corporation filed a motion for the issuance of a decree of registration pending appeal. Likewise, Roman C. Tamayo, thru counsel, filed a motion for the issuance of a decree of registration. Both motions were opposed by the Government.

On March 11, 1967, the lower court, ruling that its decision of November 19, 1966 had become final as to the share of Roman C. Tamayo, directed the issuance of a decree of registration of the entire land, one-third (1/3) *pro-indiviso* in favor of Roman C. Tamayo, and two-thirds (2/3) *pro-indiviso* in favor of Parañaque Investment and Development Corporation, subject to the final outcome of the appeal.

On March 14, 1967, the Commissioner of Land Registration forthwith issued Decree No. 113485 pursuant to the said order, and, on March 15, 1967, the Register of Deeds issued Original Certificate of Title No. 0-3151 of the Register of Deeds of the Province of Nueva Ecija.

On April 12, 1967, the lower court approved the Amended Record on Appeal which, together with the evidence and transcripts, was forwarded to this Court in due course of appeal.

As the lower court denied reconsideration of the order directing the issuance of a decree of registration, on May 29, 1967, the Director of Lands, Director of Forestry and the Armed Forces of the Philippines instituted before this Court a special civil action for *certiorari* and *mandamus* with preliminary injunction (L-27594), seeking to nullify the order dated March 11, 1967, the decree of registration issued pursuant thereto (Decree No. 113485 dated March 14, 1967) and Original Certificate of Title No. 0-3151 of the Register of Deeds for the province of Nueva Ecija, and to command the respondent court to certify the entire proceedings and to allow appeal to the Supreme Court from its decision *in toto* in LRC Case No. N-675, LRC Rec. No. N-25545.

On June 5, 1967, We issued a writ of preliminary injunction as follows:

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"NOW, THEREFORE, until further orders from this Court, You (respondent Judge) are hereby restrained from issuing a writ of possession in Land Registration Case No. N-675, LRC Rec. No. N-25545 of the Court of First Instance of Nueva Ecija, entitled '*Parañaque Investment and Development Corporation versus Director of Lands, et al.*'; You (respondent Parañaque Investment and Development Corporation and Roman C. Tamayo), your agents or representatives are hereby restrained from taking possession and/or exercising acts of ownership, occupancy or possession over the property in question subject matter of Land Registration Case No. N-675, LRC Rec. No. N-25545; and You (respondent Register of Deeds) are hereby restrained from accepting for registration documents referring to the subject land until petitioners shall have filed a notice of *lis pendens* as to the title certificates of Roman Tamayo and Parañaque Investment and Development Corporation, under Sec. 24, Rule 14, Rules of Court, subject of the above-mentioned Land Registration Case No. N-675, LRC Rec. No. N-25545."

Accordingly, petitioners-appellants caused the entry of a notice of *lis pendens* to be duly inscribed in the primary entry hook of the Registry of Deeds of Nueva Ecija and annotated in the memorandum of encumbrances in Original Certificate of Title No. 0-3151.

In due time, the respondents filed their answers to the petition for *certiorari*. The parties having filed their respective memoranda, the case is deemed submitted for decision.

At the outset, We shall resolve the petition for *certiorari* and *mandamus* (L-27594).

I

Under the circumstances of this case, the failure of the appellants to serve a copy of their Notice of Appeal to the counsel for adjudicatee Roman C. Tamayo is not fatal to the appeal because, admittedly, he was served with a copy of the original, as well as the Amended Record on Appeal in both of which the Notice of Appeal is embodied.[10] Hence, such failure cannot impair the right of appeal.[11]

[10] *Peralta. v. Solon*, 77 Phil. 611; *Lopez v. Lopez*, 77 Phil. 133.

[11] *Arcega v. Dizon*, 76 Phil. 164.

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What is more, the appeal taken by the Government was from the entire decision, which is not severable. Thus, the appeal affects the whole decision.[12]

In any event, We rule that execution pending appeal is not applicable in a land registration proceeding. It is fraught with dangerous consequences. Innocent purchasers may be misled into purchasing real properties upon reliance on a judgment which may be reversed on appeal.

A Torrens title issued on the basis of a judgment that is not final is a nullity, as it is violative of the explicit provisions of the Land Registration Act which requires that a decree shall be issued only after the decision adjudicating the title becomes final and executory, and it is on the basis of said decree that the Register of Deeds concerned issues the corresponding certificate of title.

Consequently, the lower court acted without jurisdiction or exceeded its jurisdiction in ordering the issuance of a decree of registration despite the appeal timely taken from the entire decision *a quo*.

II

In the instant case, as a precaution, oppositors-appellants caused notice of *lis pendens* to be duly inscribed in Original Certificate of Title No. 0-3151 of the Register of Deeds of Nueva Ecija, thereby keeping the whole land subject matter of the appeal within the power of the court until the litigation is terminated.[13]

Such entry of notice of *lis pendens* cannot be cancelled until the final termination of the litigation. The notice of *lis pendens* must be carried over in all titles subsequently issued, which will yield to the ultimate result of the appeal.[14]

During the pendency of the appeal, it appears that Honofre A. Andrada, et al., filed with the Court of First Instance of

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[12] *Municipality of Orion v. Concha*, 50 Phil. 679.

[13] *Blas v. Muñoz Palma*, 107 Phil. 1078.

[14] *Rivera v. Tirona*, 109 Phil. 505.

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Nueva Ecija (Branch I, not the land registration court), a complaint against the appellee Parañaque Investment and Development Corporation, Rodolfo A. Cenidoza and Roman C. Tamayo, for reconveyance of a portion of the land in question (Civil Case No. 4696). The trial court assumed jurisdiction over the case despite the pendency of the appeal involving the same land, and decided the case in favor of plaintiffs. In violation of Our injunction adverted to above, Parañaque Investment and Development Corporation executed a subdivision plan of the original single parcel of land subject of the land registration proceedings covered by Original Certificate of Title No. 0-3151, and deeded over six (6) lots of the subdivision plan to plaintiffs Honofre A. Andrada and Nemesio P. Diaz. By an order dated September 23, 1968, entered in Civil Case No. 4696, the Register of Deeds of Nueva Ecija was directed to cancel Original Certificate of title No. 0-3151 and to issue new titles to the above-named transferees "free from all liens and encumbrances." Immediately, transfer certificates of title were issued to them and other transferees in which the Register of Deeds of Nueva Ecija did not carry over the notice of *lis pendens* originally inscribed in Original Certificate of Title No. 0-3151. Subsequently, other transactions were entered into involving portions of the land reconveyed in Civil Case No. 4696, including a transfer of about 4,000 hectares to the Land Bank of the Philippines in consideration of ₱8,940,000.00.

We find the order to cancel Original Certificate of Title No. 0-3151 and to issue subsequent titles free from all liens and encumbrances to be void *ab initio*.

Civil Case No. 4696 is an action *in personam* to which the appellants are not parties; its object was to decree reconveyance to plaintiffs of a portion of the area adjudicated to the Parañaque Investment and Development Corporation and Roman C. Tamayo in Land Registration Case No. N-675, LRC Rec. No. N-25545, which is subject to the outcome of the appeal. Such action is barred by the pendency of the appeal. In that case, the court is without jurisdiction to order the Register of Deeds to cancel Original Certificate of title No. 0-3151 and to issue titles to

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transferees "free from all liens and encumbrances."[15] Nor can such order be construed to authorize the Register of Deeds to cancel the notice of *lis pendens*, which was not entered by virtue of the reconveyance case. Thus, the Register of Deeds was duty bound to carry over the said notice of *lis pendens* on all titles subsequently issued. But, in plain violation of *lis pendens* in said titles; such act constitutes misfeasance in the performance of his duties for which he may be held civilly and even criminally liable for any prejudice caused to innocent third parties, but cannot affect the petitioners-appellants who are protected by Our writ of injunction and the notice of *lis pendens* inscribed in the original title. It must be remembered that Our injunction restrained the Register of Deeds "from accepting for registration documents referring to the subject land until the petitioners shall have filed a notice of lis pendens as to the title certificates of Roman C. Tamayo and Parañaque Investment and Development Corporation under section 24, Rule 14, Rules of Court, subject of the above-mentioned Land Registration Case No. N-675, LRC Rec. No. 25545." Its plain meaning is to enjoin registration of documents and transactions unless the notice of *lis pendens* is annotated and so subject the same to the outcome of the litigation. In such case, subsequent transferees cannot be considered innocent purchasers for value.

On the other hand, the lower court's order dated September 23, 1968, in Civil Case No. 4696, cannot overrule an injunction of this Court (in L-27594). As a result, We consider the notice of *lis pendens* entered in virtue of this litigation to remain in full force and effect, and affects all subsequent transferees of the title of the land subject of this appeal.

At any rate, it is well-settled that entry of the notice of *lis pendens* in the day book (primary entry book) is sufficient to constitute registration and such entry is notice to all persons of such adverse claim.[16]

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[15] *Cavan v. Wislizenus*, 48 Phil. 632; *Luna v. Mons. P. P. Santos*, 102 Phil. 588.

[16] *Rivera v. Tirona, supra*; *Levin v. Bass*, 91 Phil. 419; *Villasor v. Camon*, 89 Phil. 404.

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III

We now consider the appeal on the merits.

1. To begin with, the original tracing cloth plan of the land applied for, which must be approved by the Director of Lands, was not submitted in evidence. The submission of such plan is a statutory requirement of mandatory character.[17] Unless a plan and its technical description are duly approved by the Director of Lands, the same are not of much value.[18]

It is true that blueprints of two survey plans were presented before the trial court (both marked Exhibit "D"). The first blueprint copy of a plan of land as surveyed for Maria Padilla (Exhibit "D", p. 4, Exhibits of Applicant), was not formally offered in evidence. The second plan of the land, as surveyed for Parañaque Investment and Development Corporation (also marked as Exhibit "D", p. 3, Exhibits of Applicant) was submitted by the said applicant, but it lacks the approval of the Director of Lands.

Of course, the applicant attempts to justify the non-submission of the original tracing cloth plan by claiming that the same must be with the Land Registration Commission which checked or verified the survey plan and the technical descriptions thereof. It is not the function of the LRC to check the original survey plan as it has no authority to approve original survey plans. If, for any reason, the original tracing cloth plan was forwarded there, the applicant may easily retrieve the same therefrom and submit the same in evidence. This was not done.

It is also asserted that a blue print copy of the plan (Exhibit "D", p. 5, Exhibits of Applicant) was superimposed in the military plan of the reservation under Proclamation No. 231, which military plan was presented in evidence by the oppositors-appellants (Exhibit "6"), and it was agreed by the parties that the plan,

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[17] Secs. 1858 and 1864, Revised Administrative Code; Sec. 25, Act No. 496; *Aguillon v. Director of Lands,* 17 Phil. 506.

[18] *Flores v. Director,* 17 Phil. 512.

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Exhibit "D", superimposed in the plan of the area covered by the proclamation, is the plan of the land applied for (p. 15, Brief for Applicant-Appellee).

Obviously, the superimposition of the copy of the survey plan of land as surveyed for applicant in the military map of the area under Proclamation No. 237 was for the sole purpose of showing that the land applied for is situated within the area covered by the military reservation of Fort Magsaysay appropriately indicated in the perimeter map of said reservation (Exhibit "6"). But the applicant is not relieved from submitting in evidence the original tracing cloth plan approved by the Director of Lands as required by law. One of the distinguishing marks of the Torrens System is the absolute certainty of the identity of a registered land. Consequently, the primary purpose of the aforesaid requirement is to fix the exact or definite identity of the land as shown in the plan and technical descriptions. Hence, the applicant is not relieved of his duty of submitting the original tracing cloth of the survey plan of the land duly approved by the Director of Lands.

It will be noticed that the plan (Exhibit "D", p. 5, Exhibits of Applicant) does not bear the approval of any officer authorized by law.

In similar manner, the surveyor's certificate, also required in original land registration proceedings, was not offered in evidence.

2. We next consider the question of whether the applicant has a registerable title to the land applied for.

The applicant relies on a purported *titulo de informacion posesoria* issued in the name of Melecio Padilla (Exhibit "T", pp. 64-68, Exhibits of Applicant). However, neither the original of the said *titulo de informacion posesoria,* nor a duly authenticated copy thereof, was submitted in evidence, and there are serious flaws on the faces of the alleged copies of the document, as in the circumstances surrounding their execution. Thus, the two (2) purported photostat copies of the said informacion posesoria title materially differ on the date when said *informacion posesoria* was issued. One copy showed

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that the said document was issued on March 5, 1895 (Exhibit "T"), while the other indicated that it was issued twelve (12) years earlier, or on March 5, 1883 (Exhibit "2").

Moreover, according to the official records of the Register of Deeds of Nueva Ecija, on the basis of the "List of Possessory Information Titles (Spanish Titles) of Nueva Ecija," the corresponding supporting documents of which are kept in the vault of said office, the name of Melecio Padilla does not appear among those listed as holders of *informacion posesoria* titles as of the year 1898 covering lands situated in Santor (now Laur), Nueva Ecija. According to said document, the name Melecio Padilla appears only in the list of holders of possessory information titles over lands situated in Peñaranda, Nueva Ecija, but of a substantially smaller acreage.[19] Thus, the seven (7) parcels recorded in the name of Melecio Padilla covered only a total area of 49 hectares, 18 ares, and 325 centares.[20] In addition, the list of property owners in Santor (now Laur), Nueva Ecija existing in the Division of Archives does not include the name of Melecio Padilla.[21] It is true that an alleged copy of an *informacion posesoria*, in the name of Melecio Padilla, was recorded in the office of the Register of Deeds on November 10, 1942 by one Rodolfo Baltazar, Register of Deeds (Exhibit "H"), but the Register of Deeds of Nueva Ecija could not certify to its veracity, as the supposed document does not exist in their records.[22] There is another factor which weighs heavily against the claim of the applicant. The alleged *informacion posesoria* covers an area of "*seis mil quiñones, poco mas e menos*" or an equivalent of 16,800 hectares. Under the Royal

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[19] T.s.n., *A. Yango*, pp. 987-995, Exhibits 8, 8-A, 9, 9-A, 13, 13-A to 13-G, pp. 18, 19, 20, and 38, Exhibits of Oppositors.

[20] Exhibits 13, 13-A to 13-G, *Ibid.*

[21] T.s.n., A. Yango, pp. 1055-1059; Exhibit 14, "*Direccion General de Administracion Civil, Provincia de Nueva Ecija, Año de 1898, Estadistica de los terrenos agricolas de propiedad particular existentes en esta pueblo*"; Exbibits 14, 14-A to 14-D; 15, 15-A to 15-C, pp. 39-46, Exhibits of Oppositors.

[22] T.s.n., A. Yango, pp. 1006-1007.

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Decrees in force at the time of the supposed acquisition, no one could acquire public land in excess of 1,000 hectares. Thus, the Royal Decrees of November 25, 1880 and October 26, 1881, prohibited any grant of public land in excess of one thousand (1,000) hectares.[23]

Besides, the document described in Exhibit "H" is not the *titulo de informacion posesoria*, because it was merely a certification of possession of Melecio Padilla over the property, and was issued without prejudice to a third party or parties having a better right.[24] Thus, it states: "*En su virtud habiendo examinado el Registro nuevamente formado por la perdida o destruccion del mismo y no hallando en ningun asiento contrario a lo relacionado reinscribe la posesion de la finca de este numero a favor de Don Melecio Padilla sin perjuicio de tercero que puede tener mejor derecho a la propiedad.*" Under Spanish law, in order that an *informacion posesoria* may be considered as title of ownership, it must be proven that the holder thereof has complied with the provisions of Article 395 of the Spanish Mortgage Law.

It cannot be claimed that the registration of possession has been legally converted into a registration of ownership because Melecio Padilla had not complied with the requirements of Article 393 of the Spanish Mortgage Law, to wit: "that the applicant has been in open possession of the land; that an application to this effect be filed after the expiration of 20 years from the date of such registration; that such conversion be announced by means of a proclamation in a proper official bulletin; that the Court order the conversion of the registration of possession into a record of ownership; and that the Registrar make the proper record thereof in the Registry."[25] Evidently, Melecio

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[23] *Government v. Avila,* 46 Phil. 146; *Bayot v. Director of Lands*, 98 Phil. 935; *Director of Forestry v. Muñoz*, L-24796; *Pinagkamaligan v. Peralta,* L-25459, both decided on June 28, 1968, 23 SCRA 1183; *Sanchez v. Director of Lands*, 63 Phil. 378; *Valdez v. Director Lands,* 62 Phil. 362.

[24] *J.M. Tuason & Co., Inc. v. Santiago, et al.*, 99 Phil. 615, 628.

[25] *Fernandez Hermanos v. Director of Lands*, 57 Phil. 929, 936.

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Padilla, having died on February 9, 1900, barely five (5) years after the inscription of the *informacion posesoria*, could not have converted the same into a record of ownership twenty (20) years after such inscription, pursuant to Article 393 of the Spanish Mortgage Law.

One year after the promulgation of the Maura Law, or on April 17, 1895, the right to perfect possessory information title under the law expired. After that date, full property right of the land reverted to the government and the right of the cultivator and possessor to obtain gratuitous title was extinguished.[26]

Before the military reservation was established, the evidence is inconclusive as to possession, for it is shown by the evidence that the land involved is largely mountainous and forested. As a matter of fact, at the time of the hearing, it was conceded that approximately 13,957 hectares of said land consist of public forest. During the lifetime of Melecio Padilla, only a small portion thereof was cleared and cultivated under the "*kaingin*" system, while some portions were used as grazing land. After his death, his daughter, Maria Padilla, caused the planting of vegetables and had about forty (40) tenants for the purpose.[27] During the Japanese occupation, Maria Padilla died. Alipio Alinsunurin

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[26] *Baltazar v. Government*, 40 Phil. 267.

[27] According to Esteban de la Cruz, in 1881 to 1895, the land was mountainous; some people used to make clearings and plant a little quantity of palay in the clearings; that Melecio Padilla claimed the land to be his, and five (5) persons were pasturing his animals (pp. 109-111, t.s.n., A. Yango, Hearing of September 24, 1959). Cirilo Pangilinan declared that Melecio Padilla had some five (5) persons herding his ten (10) carabaos that were pasturing on the land in question; that those persons cultivated portions of the property, but the proceeds thereof were theirs, and they were not obligated to give or share said proceeds with Padilla (pp. 113-120, t.s.n., *Ibid.*). Lazaro Leodones stated that Melecio Padilla had many cows grazing on the property, and there were some improvements, such as mango trees and fields planted to rice; that Maria Padilla caused portions of the property to be planted with vegetables and she had around forty (40) to forty-five (45) tenants farming the land. He admitted, however, that he is related to Maria Padilla by affinity, as his wife is the sister of Maria's husband (pp. 570-573, t.s.n., *Ibid.*)

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and Encarnacion Caballero took possession of the land approximately in 1950, but they had to abandon the place due to the unsettled peace and order conditions in the area. In 1955, entry by them was prevented by the Army.

It seems obvious, on the basis of the facts in the record, that neither applicant Parañaque Investment and Development Corporation nor Alipio Alinsunurin nor the latter's predecessors-in-interest have been "in open, continuous, exclusive, and notorious possession and occupation" of the property in question, "under a *bona fide* claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title."[28]

A mere casual cultivation of portions of the land by the claimant, and the raising thereon of cattle, do not constitute possession under claim of ownership. In that sense, possession is not exclusive and notorious so as to give rise to a presumptive grant from the State.[29] While grazing livestock over land is of course to be considered with other acts of dominion to show possession, the mere occupancy of land by grazing livestock upon it, without substantial inclosures or other permanent improvements, is not sufficient to support a claim of title thru acquisitive prescription.[30] The possession of public land, however long the period may have extended, never confers title thereto upon the possessor because the statute of limitations with regard to public land does not operate against the State, unless the occupant can prove possession and occupation of the same under claim of ownership for the required number of years to constitute a grant from the State.[31]

Apart from the aforesaid inconclusive evidence of possession to support the applicant's claim of title, it does not appear that

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[28] Section 48[b], CA No. 141, as amended.

[29] *Ramirez v. Director of Lands,* 60 Phil. 114.

[30] *Province of Camarines Sur v. Director of Lands,* 64 Phil. 600.

[31] *Province of Camarines Sur v. Director, Ibid.*; Section 48, CA No. 141, as amended.

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the said property has ever been declared for taxation purposes by either applicant or applicant's predecessors-in-interest. Thus, the only tax declarations submitted were those of Mamerto Garcia and Honofre Andrada, et al. (Exhibit "G", Tax Declaration No. 5676, covering an area of 7,340 hectares) and Mamerto Garcia, et al. (Exhibit "H-1", Tax Declaration No. 5577, over an area of 9,547 hectares) but both were filed only in 1958. The latter declaration contains an annotation that the property described therein is an unidentified property, as the declarant failed to identify the same, and it "was only through his insistence" that it was assessed. Neither applicant Parañaque Investment and Development Corporation nor its predecessor, Alipio Alinsunurin had submitted any tax declaration supporting its/his claim over the property. It is true that tax receipts and declarations of ownership for taxation purposes are not incontrovertible evidence of ownership, but they constitute at least proof that the holder had a claim of title over the property.

It is obvious that the applicant has failed to submit convincing proof of actual, peaceful and adverse possession in the concept of owner of the entire area in question during the period required by law. This is especially true in view of the basic presumption that lands of whatever classification belong to the State and evidence of a land grant must be "well-nigh incontrovertible."[32]

Even more important, Section 48[b] of CA No, 141, as amended, applies exclusively to public agricultural land. Forest lands or

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[32] *Santiago v. De los Santos,* L-20241, November 22, 1974, 61 SCRA 146.

"x x x Both under the 1935 and the present Constitutions the conservation no less than the utilization of the natural resources is ordained. There would be a failure to abide by its command if the judiciary does not scrutinize with care applications to private ownership of real estate. To be granted, *they must be grounded in well-nigh incontrovertible evidence.* Where, as in this case, no such proof would be forthcoming, there is no justification for viewing such claim with favor. It is a basic assumption of our polity that lands of whatever classification belong to the state. Unless alienated in accordance with law, it retains its rights over the same as *dominus.* Its disposition is justified only when shown that its utilization promotes the public welfare. x x x" (*Ibid.*, pp. 151-152, italics supplied.)

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areas covered with forest are excluded.[33] It is well-settled that forest land is incapable of registration; and its inclusion in a title, whether such title be one issued during the Spanish sovereignty or under the present Torrens system of registration, nullifies the title.[34]

Finally, the applicant urges that Proclamation No. 237 recognizes the existence of private property within the military reservation. It is true that the proclamation states that the same is subject "to private rights, if any there be," but applicant must prove its private rights over the property, which said party failed to do.[35] For it is well-settled that, unless the applicant has shown by clear and convincing evidence that the property in question was ever acquired by the applicant or his ancestors either by composition title from the Spanish Government or by possessory information title, or any other means for the acquisition of public lands, the property must be held to be part of the public domain.[36]

WHEREFORE, decision in the above case is hereby rendered:

(1) in G. R. No. L-27594, the petition for *certiorari* is granted; the order dated March 11, 1967 in LRC Case No. N-675, LRC Rec. No. N-25545, the decree of registration issued pursuant thereto (Decree No. 113485 dated March 14, 1967), and Original Certificate of Title No. 0-3151 of the Registry of Deeds of Nueva Ecija are all declared void; the Registry of Deeds of Nueva Ecija is ordered to recall and cancel all transfer certificates of title, including owners' duplicates and mortgagees' copies, if any, arising out of Original Certificate of Title No. 0-3151; the preliminary injunction issued on June 5, 1967 and the temporary restraining order issued on June 1, 1973 are made

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[33] *Li Seng Giap v. Director of Lands*, 55 Phil. 693.

[34] *Li Seng Giap v. Director of Lands, Ibid.; Director of Forestry v. Muñoz, supra; Dizon v. Rodriguez*, L-20300-01, and *Republic v. Court of Appeals*, L-20355-56, both promulgated on April 30, 1965, 13 SCRA 704; *Republic v. Ayala y Cia*, L-20950, May 31, 1965, 14 SCRA 259.

[35] *Director of Forestry v. Muñoz, supra.*

[36] *Lee Hong Hok v. David*, 48 SCRA 372, 378-379.

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final and permanent, with costs against respondents (except respondent Judge); and

(2) in G. R. No. L-28144, the appealed decision is hereby reversed and set aside, and judgment is rendered dismissing the application for registration. Costs against appellee.

Makalintal, C.J., Fernando, Teehankee, Esguerra, Muñoz Palma, Aquino, Concepcion Jr., and *Martin, JJ.*, concur.

Castro, J., concurs in the result.

Barredo and *Makasiar, JJ.*, did not take part.

FIRST DIVISION

[G.R. No. L-29587. November 28, 1975]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **LUZON SURETY CO., INC. and THE HONORABLE COURT APPEALS,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SURETYSHIP; EVIDENCE SHOWING THAT LIABILITY OF PARTY IS THAT OF SURETY AND NOT AS GUARANTOR. — Where the surety bond executed between the creditor on one hand and the debtor and the bonding company of the other stipulated that the debtor and the bonding company "are held and firmly bound unto" the creditor "in the sum of ten Thousand Pesos (₱10,000)" for payment of which sum, well and truly to be made, *we bind ourselves*, our heirs, executors, administrators, successors, and assigns *jointly and severally, firmly*," to *comply with all the terms and conditions stipulated in said crop loan contract which are hereby incorporated as essential parts hereof*" the liability of the bonding company to the creditor is