Republic of the Philippines
Supreme Court
Baguio City

**FIRST DIVISION**

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| **AZNAR BROTHERS REALTY COMPANY,** Petitioner, | **G.R. No. 161380** Present: |
| *-versus-* | SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and *PEREZ, *JJ.* |
| **SPOUSES JOSE AND MAGDALENA YBAÑEZ,** Respondents. | Promulgated: APR 2 1 2014 |

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**D E C I S I O N**

**BERSAMIN, *J.*:**

The ownership of a sizable parcel of land is the subject of this dispute between the buyer of its recognized owner and the buyer of the successors-in-interest of the recognized owner. The land has since been registered under the Torrens system in the name of the latter buyer who had meanwhile obtained a free patent on the premise that the land belonged to the public domain.

## The Case

Aznar Brothers Realty Company (Aznar Brothers) is on appeal to review and undo the adverse decision promulgated on October 10, 2002,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on March 8, 1996 by the Regional Trial Court (RTC), Branch 10, in Cebu City[2] insofar as the RTC: (*a*) dismissed for lack of merit Aznar Brothers'

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* Vice Associate Justice Bienvenido L. Reyes, who took part in the Court of Appeals, per the raffle of January 22, 2014.

1 *Rollo*, pp. 28-36; penned by Associate Justice Hilarion L. Aquino (retired) and concurred in by Associate Justice Reyes (now a Member of the Court) and Associate Justice Mario L. Guariña III (retired).

2 Id. at 24-27; penned by Judge Leonardo B. Cañares.

complaint for the declaration of the nullity of the extrajudicial declaration of heirs with extrajudicial settlement of estate and deed of absolute sale, and (*b*) declared Lot No. 18563 as legally owned by defendants Spouses Jose and Magdalena Ybañez (Spouses Ybañez), but modified the decision of the RTC by deleting the awards of moral and exemplary damages, attorney's fees, litigation expenses and costs of suit.

## Antecedents

On March 21, 1964, Casimiro Ybañez (Casimiro), with the marital consent of Maria Daclan, executed a *Deed of Absolute Sale* in favor of Aznar Brothers conveying for ₱2,500.00 the 17,575-square-meter unregistered agricultural land planted with 17 coconut trees situated in Banika-Bulacao, Pardo, Cebu City, and covered by Tax Declaration No. IV-00128.[3] The Deed of Absolute Sale described the property as bounded on the North by Aznar Brothers; on the East by Angel Sabellano; on the South by Bernardo Sabellano; and on the West by Agaton Bacalso. The parties agreed to register the sale under Act No. 3344.[4]

On February 17, 1967, Saturnino Tanuco sold to Aznar Brothers for ₱2,528.00 the 15,760-square-meter parcel of corn and cogon land planted with 17 coconut trees situated in Candawawan, Pardo, Cebu City, bounded on the North by Alfonso Pacaña; on the East by Tecla Cabales; on the South by Angel Abellana; and on the West by Castor Sabellano. Tax Declaration No. IV-004787 was issued for the property. The parties agreed to register the parcel of land under Act No. 3344.[5]

In his affidavit of confirmation executed on April 11, 1967, Angel Abellana declared that during the lifetime of his daughter, Rosa, he had given to her husband, Tanuco, a parcel of land "known as Lot No. 18563" with an area of 15,760 square meters located in Pardo, Cebu City; that the land was bounded on the North by Alfonso Pacaña; on the East by Tecla Cabales; on the South by Lot No. 5316 of Angel Abellana; and on the West by Castor Sabellano; that the property assessed at ₱300.00 was declared under Tax Declaration No. IV-004787; and that on February 17, 1967 Tanuco had sold the parcel of land to Aznar Brothers for ₱4,728.00.[6]

On July 3, 1968, Casimiro died intestate leaving as heirs his wife Maria, and their children, namely, Fabian and Adriano, both surnamed

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[3] Records, 6.

[4] *An Act to Amend Section One Hundred and Ninety-Four of the Administrative Code, as Amended by Act Numbered Two Thousand Eight Hundred and Thirty-Seven, Concerning the Recording of Instruments Relating to Land Not Registered under Act Numbered Four Hundred Ninety-Six, entitled "The Land Registration Act," and Fixing the Fees to be Collected by the Register of Deeds for Instruments Recorded under said Act.*

[5] Records, 158.

[6] Id. at 252; Exh. J.

Ybañez, and Carmen Ybañez-Tagimacruz, Fe Ybañez-Alison, and Dulcisima Ybañez-Tagimacruz. On August 29, 1977, the heirs of Casimiro executed a document entitled *Extrajudicial Declaration of Heirs with an Extrajudicial Settlement of Estate of Deceased Person and Deed of Absolute Sale*, whereby they divided and adjudicated among themselves Lot No. 18563 with an area of 16,050 square meters situated in Banika, Bulacao, Pardo Cebu City. By the same document, they sold the entire lot for ₱1,000.00 to their co-heir, Adriano D. Ybañez (Adriano).[7]

On June 21, 1978, Adriano sold Lot No. 18563 to Jose R. Ybañez for ₱60,000.00. Lot No. 18563 is described in their deed of sale as containing an area of 16,050 square meters, and was bounded on the North by the lot of Eusebia Bacalso; on the East by a lot of Aznar Brothers; on the South by a lot of Angel Abellana; and on the West by a lot of Teofila C. Leona.[8]

On January 15, 1979, Jose R. Ybañez filed Free Patent Application No. (VII-I) 18980 in respect of the land he had bought from Adriano.[9] In due course, on July 20, 1979, Original Certificate of Title (OCT) No. 2150 was issued to Jose R. Ybañez. The 16,050-square-meter land is particularly described in OCT No. 2150 as –

> situated in the Barrio of Bulacao-Pardo, City of Cebu x x x. Bounded on the NorthEast, along lines 1-2-3 by Lot No. 1811, on the SouthEast, along lines 3-4 by Lot No. 5316; on the SouthWest, along lines 4-5-6-7-8-9-10-11 by Lot No. 18565; on the NorthWest, along line 11-12 by Lot No. 18566; along line 12-1 by Lot No. 18114, all of Cebu City.[10]

On May 26, 1989, Aznar Brothers filed in the RTC a complaint against Jose R. Ybañez claiming absolute ownership of Lot No. 18563 by virtue of the *Deed of Absolute Sale* dated March 21, 1964 executed in its favor by Casimiro (Civil Case No. CEB-7887). Alleging that the free patent issued in favor of Jose R. Ybañez covered the same property "already adjudicated as private property," Aznar Brothers sought judgment to compel Jose R. Ybañez to surrender all the documents pertaining to the free patent for cancellation, and to order him to pay attorney's fees of ₱5,000.00 and litigation expenses of ₱3,000.00.[11]

Jose R. Ybañez moved to dismiss the complaint of Aznar Brothers on the ground of lack of cause of action, lack of jurisdiction over the nature of the action, and estoppel by laches.[12] After Aznar Brothers opposed,[13] the

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7 Id. at 36-37.
8 Id. at 20.
9 Id. at 43 & 44.
10 Id. at 21.
11 Id. at 1-3.
12 Id. at 13-18.
13 Id. at 27-31.

RTC denied the motion to dismiss.[14] Thereafter, Jose R. Ybañez filed his answer to the complaint.

In his answer, Jose R. Ybañez reiterated the grounds of his motion to dismiss (*i.e.*, lack of cause of action, lack of jurisdiction over the nature of the action, and the bar by estoppel by laches); and prayed that Aznar Brothers be ordered to pay moral damages of ₱100,000.00; exemplary damages in an amount to be determined by the court; attorney's fees of ₱20,000.00; and litigation expenses of ₱5,000.00, plus costs of suit.[15]

In its reply, Aznar Brothers averred that Jose R. Ybañez did not present "records or certification as to the ownership of the land at the time of the application for free patent xxx to prove that the land xxx is not a private land."[16]

In the course of the case, Aznar Brothers amended its complaint to allege the sale executed on February 17, 1967 by Tanuco and confirmed by Angel Abellana on April 11, 1967.[17]

In his amended answer, Jose R. Ybañez contended that Aznar Brothers had offered to buy the property from him, requesting him to update and prepare all the documents relevant to the sale, but Aznar Brothers later opted to claim the property as its own when the sale could not be finalized.[18]

Aznar Brothers amended its complaint a second time to implead Jose R. Ybañez's wife Magdalena Marcos-Ybañez as defendant, averring that both defendants held "no legal right nor just title to apply for free patent over the lot in question," for the land was "no longer a public disposable agricultural land but a private residential land" that it already owned; that the issuance of OCT No. 2150 was erroneous and without factual and legal bases; that it learned about the registration of the land in the name of Jose R. Ybañez only when his agent offered to sell the land to it; that it refused the offer because it was already the owner of the land; and that consequently OCT No. 2150 should be cancelled, and Jose R. Ybañez should be ousted from the land.[19]

Aznar Brothers sought a restraining order or a writ of preliminary injunction to prevent the Spouses Ybañez from disposing of the land. It further sought the declaration as null and void *ab initio* the *Extrajudicial Declaration of Heirs with Extrajudicial Settlement of Estate of Deceased*

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14 Id. at 56.
15 Id. at 60-66.
16 Id. at 74-75.
17 Id. at 108-110.
18 Id. at 116-123.
19 Id. at 150-155.

*Person and Deed of Absolute Sale* dated August 29, 1977, and of the *Deed of Absolute Sale* dated June 21, 1978; the cancellation of OCT No. 2150; an order directing the Register of Deeds to issue another title in its name; the ouster of the Spouses Ybañez from the property; the permanent injunction to prevent Spouses Ybañez from interfering with or disturbing its possession and ownership of Lot No. 18563; and judgment ordering the Spouses Ybañez to pay moral damages of ₱50,000.00, attorney's fees of ₱30,000.00, and litigation expenses of ₱20,000.00.

The Ybañez Spouses opposed the admission of the second amended complaint, claiming that the cause of action would thereby be changed from *accion publiciana* to *accion reivindicatoria*; that while Magdalena Marcos-Ybañez was thereby being impleaded, the heirs named in the *Extrajudicial Declaration of Heirs with Extrajudicial Settlement of Estate of Deceased Person and Deed of Absolute Sale*, specifically Adriano, were not being impleaded; and that the declaration of nullity of OCT No. 2150 was a prohibited collateral attack on their title to the property.[20]

The RTC admitted the second amended complaint, emphasizing that the original cause of action of *accion publiciana* would not be changed because the second amended complaint would incorporate additional but related causes of action, a change permitted only during the pre-trial stage.[21]

The Ybañez Spouses then amended their answer by reiterating the allegations in their previous answers, and, in addition, pleaded that they had religiously paid the taxes on the land; that the claim of ownership of Aznar Brothers had been based only on tax declarations; that their application for free patent had been granted more than ten years prior to the filing of the complaint by Aznar Brothers, who were all too aware of the land registration case; that Aznar Brothers did not question their title within one year from its issuance; that a decree of registration being binding on the whole world, the filing of the complaint ten years after the title had been issued left the complaint without any cause of action; that the action for recovery of possession constituted a collateral attack on their title to the property; and that adverse, notorious and continuous possession of the property under a claim of ownership was ineffective against a Torrens title. They sought the dismissal of the second amended complaint for lack of cause of action, lack of jurisdiction, estoppel by laches, and lack of proper parties; and prayed for moral damages of ₱100,000.00; exemplary damages in such amount as the court would award in the exercise of discretion; attorney's fees of ₱20,000.00; and litigation expenses of ₱5,000.00 plus costs of suit.[22]

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20 Id. at 177-178.
21 Id. at 179-180.
22 Id. at 184-191.

## Judgment of the RTC

On March 8, 1996,[23] the RTC rendered judgment after trial, declaring that the identity of the land sold to Aznar Brothers by Casimiro and the land sold by the heirs of Casimiro to Jose R. Ybañez was "not an issue anymore" because it was "not raised as an issue" during the pre-trial conference; that the issue remaining for resolution concerned which of the conflicting claims of ownership – that of Aznar Brothers based on Tax Declaration No. GR-07-049-00694 or that of the Spouses Ybañez based on OCT No. 2150 – should prevail; that the Spouses Ybañez with their OCT No. 2150 should prevail, rendering Aznar Brothers' complaint dismissible for lack of merit; that Lot No. 18563 was "legally owned by the defendants;" and Aznar Brothers was liable to pay the Spouses Ybañez moral damages of ₱100,000.00, exemplary damages of ₱50,000.00, attorney's fees of ₱20,000.00, and litigation expenses of ₱5,000.00, plus costs of suit.

## Decision of the CA

Aznar Brothers appealed to the CA, assailing the judgment of the RTC for not sustaining the sale by Casimiro in its favor of Lot No. 18563 despite the sale being registered under Act No. 3344, as amended; and for awarding moral damages, exemplary damages, attorney's fees and litigation expenses to the Spouses Ybañez.

As earlier mentioned, the CA promulgated its adverse decision on October 10, 2002,[24] decreeing thusly:

> **WHEREFORE**, premises considered, the Court **AFFIRMS** the appealed judgment but **DELETES** the award of attorney's fees, litigation expenses, costs of the suit, moral and exemplary damages.
>
> **SO ORDERED.**

The CA denied the motion for reconsideration of Aznar Brothers.

## Issues

Only Aznar Brothers has come to the Court for review, raising the following issues for consideration and resolution, to wit:

1. THE CONCLUSION OF THE HONORABLE COURT OF APPEALS THAT PETITIONER IS BARRED BY ESTOPPEL BY LACHES, IS NOT IN ACCORD WITH LAW AND/OR WITH APPLICABLE

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23 Supra note 2.
24 Supra note 1.

DECISIONS OF THE SUPREME COURT THEREBY COMMITTING A REVERSIBLE ERROR OF LAW WHICH IS GRAVELY PREJUDICIAL TO THE RIGHT OF THE PETITIONER OVER THE SUBJECT LOT NO. 18563. SAID CONCLUSION IS NOT SUPPORTED BY FACTS ON RECORDS (sic).

2. THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT DECLARING SUBJECT LOT AS LEGALLY OWNED BY THE RESPONDENTS DESPITE OF ITS OWN FINDING THAT: RESPONDENTS WERE BUYERS IN BAD FAITH AND THAT THEIR SELLERS WERE NOT OWNERS OF THE PROPERTY IN QUESTION AND THEREFORE, THERE WAS NOTHING THAT THEY COULD HAVE SOLD TO THE RESPONDENTS.[25]

## Ruling of the Court

The appeal is meritorious.

### 1.
### Identity of the lot *in litis* is no longer a proper issue herein

The CA and the RTC both held that the identity of the property *in litis* was no longer an issue to be considered and determined because the parties did not raise it at the pre-trial. The Spouses Ybañez insist herein, however, that the RTC and the CA should have made such a finding nonetheless in view of the materiality of whether the land claimed by Aznar Brothers was different from Lot No. 18563, the land subject of their OCT No. 2150.

We clarify that although the Spouses Ybañez's non-appeal barred them from assigning errors for purposes of this review, they are not prevented from now insisting, if only to uphold the judgment of the CA against Aznar Brothers,[26] that the property *in litis* was not the same as Lot No. 18563, but they would not be accorded any relief upon those reasons,[27] even if the Court should find Aznar Brother's appeal unmeritorious or utterly frivolous.[28]

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[25] *Rollo*, p. 9.

[26] Bersamin, *Appeal and Review in the Philippines*, Central Professional Books, Inc., Quezon City, Second Edition, p. 197, citing Justice Thurgood Marshall, *The Federal Appeal, in Counsel on Appeal*, 141, 152: (A. Charpentier, ed., 1968).

[27] Id., citing *Aparri v. Court of Appeals*, No. L-15947, April 30, 1965, 13 SCRA 611; *Makati Haberdashery, Inc. v. NLRC*, G.R. Nos. 83380-81, November 15, 1999, 179 SCRA 448; *Bella v. Court of Appeals*, G.R. No. 105997, September 26, 1997, 279 SCRA 497; *Cabral v. Court of Appeals*, G.R. No. 50702, September 29, 1989, 178 SCRA 91; *Franco v. Intermediate Appellate Court*, G.R. No. 71137, October 5, 1989, 178 SCRA 331.

[28] Id., citing *Enecilla v. Magsaysay*, L-21568, May 19, 1966, 63 OG 9627.

Regardless, the holding by both lower courts was proper and correct. The non-inclusion in the pre-trial order barred the identity of the property *in litis* as an issue, for it is basic that any factual issue not included in the pre-trial order will not be heard and considered at the trial,[29] much less, on appeal. The parties had the obligation to disclose during the pre-trial all the issues they intended to raise during the trial, except those involving privileged or impeaching matters, for the rule is that the definition of issues during the pre-trial conference will bar the consideration of others, whether during trial or on appeal. The basis of the exclusion is that the parties are concluded by the delimitation of the issues in the pre-trial order because they themselves agreed to it.[30]

The waiver of the identity of the property *in litis* as an issue did not violate the right of any of the parties herein due to the *Rules of Court* having forewarned them in Section 7, Rule 18 of the *Rules of Court* that should the action proceed to trial, the pre-trial order would explicitly *define* and *limit* the issues to be tried, and its contents would control the subsequent course of the action, *unless modified before trial to prevent manifest injustice*.

In reality, the parties could still have reversed the waiver had they so wanted. Towards that end, they had three opportunities after the issuance of the pre-trial order to submit the identity of the property *in litis* as an issue for trial and decision. The first was for either of them to seek the modification of the pre-trial order prior to the trial in order to prevent manifest injustice,[31] but neither did so. The second was for either of them to have the trial court consider the identity of the property *in litis* as an issue proper for the trial, but such party must give a special reason to justify the trial court in doing so. This would have been authorized under Section 5, Rule 30 of the *Rules of*

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[29] Section 7, Rule 18, *Rules of Court*, which states:

Section 7. *Record of pre-trial*. — The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. **Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice**. (5a, R20)

[30] *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.*, G.R. No. 171406, April 4, 2011, 647 SCRA 111, 122 citing *Villanueva v. Court of Appeals*, G.R. No. 143286, April 14, 2004, 427 SCRA 439, 447.

[31] Section 7, Rule 18 of the *Rules of Court*.

*Court*.[32] Again, neither of them seized such opportunity. And the third was for the Spouses Ybañez to adduce evidence on Lot No. 18563 being different from the land claimed by Aznar Brothers. Had they done so, Aznar Brothers could have either allowed such evidence without objection, or objected to such evidence on the ground of its not being relevant to any issue raised in the pleadings or in the pre-trial order. The RTC could then have proceeded as it deemed fit, including allowing such evidence. This procedure would have been authorized by Section 5, Rule 10 of the *Rules of Court, viz*:

> Section 5. *Amendment to conform to or authorize presentation of evidence*. — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made. (5a)

Moreover, for the Spouses Ybañez to call upon the Court now to analyze or weigh evidence all over again upon such a factual matter would be impermissible considering that the Court is not a trier of facts.[33]

There are exceptional instances in which the Court has held itself competent to make its own appreciation of the facts, and not be concluded by the findings of fact of the trial and appellate courts, namely: (1) when the factual findings of the CA and those of the trial court were contradictory; (2) when the findings are grounded entirely on speculation, surmises, or conjectures; (3) when the inference made by the CA from its findings of fact

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[32] Section 5. *Order of trial*. — Subject to the provisions of section 2 of Rule 31, and **unless the court for special reasons otherwise directs**, **the trial shall be limited to the issues stated in the pre-trial order** and shall proceed as follows:

(a) The plaintiff shall adduce evidence in support of his complaint;

(b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaint;

(c) The third-party defendant, if any, shall adduce evidence of his defense, counterclaim, cross-claim and fourth-party complaint;

(d) The fourth-party, and so forth, if any, shall adduce evidence of the material facts pleaded by them;

(e) The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court;

(f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; and

(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

If several defendants or third-party defendants, and so forth, having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence. (1a, R30)

[33] *Heirs of Margarito Pabaus v. Heirs of Amanda Yutiamco,* G.R. No. 164356, July 27, 2011, 654 SCRA 521, 531-532.

was manifestly mistaken, absurd, or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the CA, in making its findings, went beyond the issues of the case, and such findings were contrary to the admissions of both appellant and appellee; (6) when the judgment of the CA was premised on a misapprehension of facts; (7) when the CA failed to notice certain relevant facts that, if properly considered, would justify a different conclusion; (8) when the findings of facts were themselves conflicting; (9) when the findings of fact were conclusions without citation of the specific evidence on which they were based; and (10) when the findings of fact of the CA were premised on the absence of evidence but such findings were contradicted by the evidence on record. [34] None of the aforementioned exceptions obtains in this case.

Accordingly, the Court, just as the lower courts have been bound, shall proceed upon the assumption that the property *in litis* and Lot No. 18563 were one and the same realty.

**2.**
**CA correctly concluded that Aznar Brothers owned Lot No. 18563; and that the Spouses Ybañez were not buyers in good faith**

In its assailed judgment, the CA concluded that the RTC erred in holding in favor of the Spouses Ybañez, observing as follows:

> The trial court however erred when it held:
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> > Nevertheless, from the totality of the evidence adduced by the parties, there is no preponderant evidence that the defendants had prior knowledge of the previous sale of subject property to the plaintiff when they bought the same from Adriano D. Ybañez on June 21, 1978. And there is neither any showing that defendant had prior knowledge of such sale when they applied for and was issued Original Certificate of Title No. 2150 on August 14, 1979. Thus, defendants can very well be considered as purchasers to the protection of the provisions of P.D. 1529. While plaintiff has shown to have acquired or was issued tax declaration No. GR-07-049-00694 and had paid taxes on the property, said tax declaration and realty tax payments are not conclusive evidence of ownership (Ferrer-Lopez vs. Court of Appeals, 150 SCRA 393). It cannot prevail over Original Certificate of Title No. 2150 in the name of the defendants, as a torrens title concludes all controversies over ownership of land covered by a final decree of registration (PNB vs. Court of Appeals, 153 SCRA 435).

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[34] *E.Y. Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co., Ltd.*, G.R. No. 184850, October 20, 2010, 634 SCRA 363, 382.

> The Deed of Absolute Sale (Exhibit F) in favor of plaintiff-appellant Aznar was registered under Act 3344, as amended on March 23, 1964 with the Register of Deeds of Cebu City. The registration of said deed gave constructive notice to the whole world including defendant-appellees of the existence of said deed of conveyance. (**Gerona v. Guzman, 11 SCRA 153**) Defendant-appellees cannot, therefore, claim to be buyers in good faith of the land in question. Resultantly, they merely stepped into the shoes of their sellers **vis a vis** said land. Since their sellers were not owners of the property in question, there was nothing that they could have sold to defendant-appellees.[35]

We sustain the CA's conclusion that the Spouses Ybañez were guilty of bad faith, and that they acquired Lot No. 18563 from sellers who were not the owners. Accordingly, we resolve the second error raised herein in favor of Aznar Brothers.

The records and evidence fully substantiated the CA's conclusion. The Spouses Ybañez acquired Lot No. 18563 through the deed of sale executed on June 21, 1978 by Adriano in favor of Jose R. Ybañez. Together with his siblings Fabian Ybañez, Carmen Ybañez-Tagimacruz, Fe Ybañez-Alison, and Dulcisima Ybañez-Tagimacruz, Adriano had supposedly inherited Lot No. 18563 from Casimiro, their father, who had died intestate on July 3, 1968. Holding themselves as the heirs and successors-in-interest of Casimiro, they had then executed on August 29, 1977 the *Extrajudicial Declaration of Heirs with an Extrajudicial Settlement of Estate of Deceased Person and Deed of Absolute Sale,* whereby they divided and adjudicated Lot No. 18563 among themselves, and then sold the entire lot to Adriano.

But, as the CA correctly found, the Spouses Ybañez held no right to Lot No. 18563 because Adriano, their seller, and his siblings were not the owners of Lot No. 18563. Indeed, Casimiro had absolutely conveyed his interest in Lot No. 18563 to Aznar Brothers under the *Deed of Absolute Sale* of March 21, 1964 with the marital consent of Maria Daclan, Casimiro's surviving spouse and the mother of Adriano and his siblings. Considering that such conveyance was effective and binding on Adriano and his siblings, there was no valid transmission of Lot No. 18563 upon Casimiro's death to any of said heirs, and they could not legally adjudicate Lot No. 18563 unto themselves, and validly transfer it to Adriano. The conveyance by Adriano to Jose R. Ybañez on June 21, 1978 was absolutely void and ineffectual.

There is also no question that the Spouses Ybañez were aware of the conveyance of Lot No. 18563 by Casimiro to Aznar Brothers considering that the *Deed of Absolute Sale* of March 21, 1964 between Casimiro and Aznar Brothers was registered in the book of registry of unregistered land on the same day pursuant to their agreement. Such registration constituted a constructive notice of the conveyance on the part of the Spouses Ybañez

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[35] Supra note 1 at 33.

pursuant to Section 194 of the *Revised Administrative Code of 1917*, as amended by Act No. 3344, which provided as follows:

> Section 194. **Recording of instruments or deeds relating to real estate not registered under Act Numbered Four hundred and ninety-six or under the Spanish Mortgage Law. – No instrument or deed** establishing, transmitting, acknowledging, modifying or extinguishing rights with respect to real estate not registered under the provisions of Act Numbered Four hundred and ninety-six, entitled "The Land Registration Act," and its amendments, or under the Spanish Mortgage Law, **shall be valid, except as between the parties thereto, until such instrument or deed has been registered, in the manner hereinafter prescribed, in the office of the register of deeds for the province or city where the real estate lies**.
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> It shall be the duty of the register of deeds for each province or city to keep a day book and a register book of unregistered real estate, in accordance with a form to be prepared by the Chief of the General Land Registration Office, with the approval of the Secretary of Justice. The day book shall contain the names of the parties, the nature of the instrument or deed for which registration is requested, the hour and minute, date and month of the year when the instrument was received. The register book shall contain, among other particulars, the names, age, civil status, and the residences of the parties interested in the act or contract registered and in case of marriage, the name of the wife, or husband, as the case may be, the character of the contract and its conditions, the nature of each piece of land and its improvements only, and not any other kind of real estate or properties, its situation, boundaries, area in square meters, whether or not the boundaries of the property are visible on the land by means of monuments or otherwise, and in the affirmative case, in what they consist; the permanent improvements existing on the property; the page number of the assessment of each property in the year when the entry is made, and the assessed value of the property for that year; the notary or the officer who acknowledged, issued, or certified the instrument or deed; the name of the person or persons who, according to the instrument, are in present possession of each property; a note that the land has not been registered under Act Numbered Four hundred and ninety-six nor under the Spanish Mortgage Law; that the parties have agreed to register said instrument under the provisions of this Act, and that the original instrument has been filed in the office of the register of deeds, indicating the file number, and that the duplicate has been delivered to the person concerned; the exact year, month, day, hour, and minute when the original of the instrument was received for registration, as stated in the day book. It shall also be the duty of the register of deeds to keep an index-book of persons and an index-book of estates, respectively, in accordance with a form to be also prepared by the Chief of the General Land Registration Office, with the approval of the Secretary of Justice.
>
> Upon presentation of any instrument or deed relating to real estate not registered under Act Numbered Four hundred and ninety-six and its amendments or under the Spanish Mortgage Law, which shall be accompanied by as many duplicates as there are parties interested, it shall be the duty of the register of deeds to ascertain whether said instrument has all the requirements for proper registration. If the instrument is sufficient and there is no legitimate objection thereto, or in case of there

> having been one, if the same has been dismissed by final judgment of the courts, and if there does not appear in the register any valid previous entry that may be affected wholly or in part by the registration of the instrument or deed presented, and if the case does not come under the prohibition of section fourteen hundred and fifty-two of Act Numbered Twenty-seven hundred and eleven, the register of deeds shall register the instrument in the proper book. In case the instrument or deed presented has defects preventing its registration, said register of deeds shall refuse to register it until the defects have been removed, stating in writing his reasons for refusing to record said instrument as requested. **Any registration made under this section shall be understood to be without prejudice to a third-party with a better right.**
>
> The register of deeds shall be entitled to collect in advance as fees for the services to be rendered by him in accordance with this Act, the same fees established for similar services relating to instruments or deeds in connection with real estate in section one hundred fourteen of Act Numbered Four hundred ninety-six entitled "The Land Registration Act," as amended by Act Numbered Two thousand eight hundred and sixty-six. (Emphasis in the original; bold italics supplied.)

Although a deed or instrument affecting unregistered lands would be valid only between the parties thereto, third parties would also be affected by the registered deed or instrument on the theory of constructive notice once it was further registered in accordance with Section 194, *i.e.*, the deed or instrument was written or inscribed in the day book and the register book for unregistered lands in the Office of the Register of Deeds for the province or city where the realty was located. As ruled in *Gutierrez v. Mendoza-Plaza*:[36]

> The non-registration of the aforesaid deed does not also affect the validity thereof. Registration is not a requirement for validity of the contract as between the parties, for the effect of registration serves chiefly to bind third persons. **The principal purpose of registration is merely to notify other persons not parties to a contract that a transaction involving the property has been entered into**. The conveyance of unregistered land shall not be valid against any person unless registered, except (1) the grantor, (2) his heirs and devisees, and (3) third persons having actual notice or knowledge thereof. As held by the Court of Appeals, petitioners are the heirs of Ignacio, the grantor of the subject property. Thus, they are bound by the provisions of the deed of donation *inter vivos.*

The effect on third parties of the constructive notice by virtue of the registration of the deed or instrument was aptly illustrated in *Bautista v. Fule*,[37] where the Court pronounced that the subsequent buyer of unregistered land sold at an execution sale, which the purchaser at the public auction registered under Act No. 3344 seven days after that sale, was "deemed to have constructive notice" of the sale, and, therefore, could not be

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[36] G.R. No. 185477, December 4, 2009, 607 SCRA 807, 817, citing *Heirs of Eduardo Manlapat v. Court of Appeals*, G.R. No. 125585, June 8, 2005, 459 SCRA 412, 416.

[37] No. L-1577, 85 Phil. 391, 393 (1950).

"entitled to the rights of a purchaser in good faith." The Court emphasized that as to lands not registered under either the *Spanish Mortgage Law* or the *Land Registration Act*, the registration under Act No. 3344 should produce its effects against third persons if the law was "to have utility at all."[38]

It is worth mentioning that Act No. 3344 (approved on December 8, 1926) was the governing law at the time of the execution of the deed of absolute sale of March 21, 1964 between Casimiro and Aznar Brothers, and the deed of absolute sale of February 17, 1967 between Tanuco and Aznar Brothers. Both deeds were registered pursuant to Section 194; while, on the other hand, the sale between Adriano and Jose R. Ybañez on June 21, 1978 was covered by the P.D. No. 1529, also known as the *Property Registration Decree* (whose effectivity was upon its approval on June 11, 1978).[39]

Section 3 of P.D. No. 1529, albeit expressly discontinuing the system of registration under the *Spanish Mortgage Law*, has considered lands recorded under that system as unregistered land that could still be recorded under Section 113 of P.D. No. 1529 "until the land shall have been brought under the operation of the Torrens system;" and has provided that "[t]he books of registration for unregistered lands provided under Section 194 of the Revised Administrative Code, as amended by Act No. 3344, shall continue to remain in force; provided, that all instruments dealing with unregistered lands shall henceforth be registered under Section 113 of this Decree." It is clear, therefore, that even with the effectivity of P.D. No. 1529, all unregistered lands may still be registered pursuant to Section 113 of P.D. No. 1529, which essentially replicates Section 194, as amended by Act No. 3344, to the effect that a deed or instrument conveying real estate *not* registered under the Torrens system[40] should affect only the parties thereto unless the deed or instrument was registered in accordance with the

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38 Id. at 393-394.

39 However, to conform with the pronouncement of the Court in *Tañada v. Tuvera*, G.R. No. 63915, April 24, 1985, 136 SCRA 27 & No. L-6391, December 29, 1986, 146 SCRA 446, to the effect that all laws should be published in full in the *Official Gazette* immediately upon their approval, P.D. No. 1529 became effective 15 days from its publication in the January 8, 1979 issue of the Official Gazette (75 O.G. No. 2, 185) as required under Article 2, *Civil Code*.

40 It is jurisprudentially settled, however, that registration under Act No. 3344 of real estate **registered** under the Torrens system does not constitute constructive notice to the whole world. In *Mactan-Cebu International Airport Authority v. Tirol* (G.R. No. 171535, June 5, 2009, 588 SCRA 635, 649), the Court held that the "registration of instruments must be done in the proper registry in order to effect and bind the land. Prior to the Property Registration Decree of 1978, Act No. 496 (or the Land Registration Act) governed the recording of transactions involving **registered** land, *i.e.*, land with a Torrens title. On the other hand, Act No. 3344, as amended, provided for the system of recording of transactions over **unregistered** real estate without prejudice to a third party with a better right. Accordingly, **if a parcel of land covered by a Torrens title is sold, but the sale is registered under Act No. 3344 and not under the Land Registration Act, the sale is not considered registered and the registration of the deed does not operate as constructive notice to the whole world**." (Bold italics supplied.)

same section.[41]

The only exception to the rule on constructive notice by registration of the deed or instrument affecting unregistered realty exists in favor of "a third party with a better right." This exception is provided in Section 194, as amended by Act No. 3344, to the effect that the registration "shall be understood to be without prejudice to a third party with a better right;" and in paragraph (*b*) of Section 113 of P.D. No. 1529, to the effect that "any recording made under this section shall be without prejudice to a third party with a better right." As to who is "a third party with better right" under these provisions is suitably explained in *Hanopol v. Pilapil*,[42] a case where the sale of unregistered land was registered under Act No. 3344 but the land was sold twice, as follows:

> It thus appears that the "better right" referred to in Act No. 3344 is much more than the mere prior deed of sale in favor of the first vendee. In the Lichauco case just mentioned, **it was the prescriptive right that had supervened.** Or, as also suggested in that case, **other facts and circumstances exist which, in addition to his deed of sale, the first vendee can be said to have better right than the second purchaser.**[43] (Bold emphasis supplied.)

The Court also observes in *Sales v. Court of Appeals*,[44] a case involving parties to a deed of donation who had agreed to register the instrument under

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41 The *Property Registration Decree* states:

Section 113. *Recording of instruments relating to unregistered lands.* – **No deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies.**

(a) The Register of Deeds for each province or city shall keep a Primary Entry Book and a Registration Book. The Primary Entry Book shall contain, among other particulars, the entry number, the names of the parties, the nature of the document, the date, hour and minute it was presented and received. The recording of the deed and other instruments relating to unregistered lands shall be effected by any of annotation on the space provided therefor in the Registration Book, after the same shall have been entered in the Primary Entry Book.

(b) If, on the face of the instrument, it appears that it is sufficient in law, the Register of Deeds shall forthwith record the instrument in the manner provided herein. In case the Register of Deeds refuses its admission to record, said official shall advise the party in interest in writing of the ground or grounds for his refusal, and the latter may appeal the matter to the Commissioner of Land Registration in accordance with the provisions of Section 117 of this Decree. **It shall be understood that any recording made under this section shall be without prejudice to a third party with a better right.**

(c) After recording on the Record Book, the Register of Deeds shall endorse, among other things, upon the original of the recorded instruments, the file number and the date as well as the hour and minute when the document was received for recording as shown in the Primary Entry Book, returning to the registrant or person in interest the duplicate of the instrument, with appropriate annotation, certifying that he has recorded the instrument after reserving one copy thereof to be furnished the provincial or city assessor as required by existing law.

(d) Tax sale, attachment and levy, notice of *lis pendens*, adverse claim and other instruments in the nature of involuntary dealings with respect to unregistered lands, if made in the form sufficient in law, shall likewise be admissible to record under this section.

(e) For the services to be rendered by the Register of Deeds under this section, he shall collect the same amount of fees prescribed for similar services for the registration of deeds or instruments concerning registered lands. (Italics in the original; emphasis supplied.)

42 No. L-19248, February 28, 1963, 7 SCRA 452.

43 Id. at 456.

44 G.R. No. 40145, July 29, 1992, 211 SCRA 858.

Act No. 3344 but failed to do so, that the "better right" of a third party relates to "other titles which a party might have acquired independently of the unregistered deed such as title by prescription."[45] But the exception does not obviously apply to the Spouses Ybañez because they acquired their right from Adriano who did not hold any legal or equitable interest in Lot No. 18563 that he could validly transfer to the Spouses Ybañez.

**3.**
**Estoppel by laches did not bar**
**Aznar Brothers' right over Lot No. 18563**

Unexpectedly, the CA disregarded its aforecited correct conclusion on Aznar Brothers' ownership of Lot No. 18563, and instead ruled that estoppel by laches had already barred Aznar Brothers' "dominical claim" over Lot No. 18563. It ratiocinated thusly:

> But then, there were pre-existing and supervening circumstances which effectively quashed the dominical claim of plaintiff-appellant over the subject land. Plaintiff-appellant was never in possession of the land which it bought. Even after buying the land from Casimiro Ybañez, plaintiff-appellant did not take possession of it. On the other hand, the heirs of Casimiro Ybañez took possession of said land upon the latter's death. Said heirs sold their shares on said land to one of their co-heirs, Adriano Ybañez, who in turn, sold the whole land to defendant appellees, the spouses Jose and Magdalena Ybañez. The latter continued possessing said land, tax declared it, paid realty taxes thereon and finally secured a free patent and title over it. Up to the present, defendant-appellees are in possession of the land as owners thereof.
>
> There is absolutely no doubt that in law, plaintiff-appellant had lost its dominical and possessory claim over the land for its inaction from 1964 when it bought the land up to 1989 when it filed the Complaint in the trial court – or a long period of 25 years. This is called **estoppel by laches**.[46]

Aznar Brothers now assails this adverse ruling under its first assigned error by pointing out that the CA erred in relying on estoppel by laches, a rule of equity, to bar its "dominical claim" over Lot No. 18563. It insists that its action to declare the nullity of the *Extrajudicial Declaration of Heirs with Extrajudicial Settlement of Estate of Deceased Person and Deed of Absolute Sale* dated August 29, 1977, and the *Deed of Absolute Sale* of June 21, 1978 was imprescriptible under Article 1410 of the *Civil Code*; and that on the assumption that *accion publiciana* would prescribe in ten years, its filing of the original complaint on May 26, 1989 was done within the 10-year period counted from August 14, 1979, the date of the issuance of OCT No. 2150 in the name of Jose R. Ybañez.

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45 Id. at 866-867.
46 Supra note 1, at 33-34.

The Spouses Ybañez counter that the CA was correct because Aznar Brothers did not assert possession and ownership over the land for 25 years; that it brought its complaint only in 1989 after they had undergone the proceedings *in rem* for the issuance of OCT No. 2150; that it did not challenge their application for the free patent or the proceedings for the issuance of OCT No. 2150; that it did not also oppose the conduct of the survey of the land relevant to the application for the free patent despite the notice of the survey given by the surveying engineer to the adjoining lot owners; that during the hearing of the case, Jose R. Ybañez testified that only three hectares of the land originally owned by Casimiro had been sold to it, the rest having been retained by Casimiro that became the subject of the extrajudicial settlement by his heirs, who had then sold that retained portion to Jose R. Ybañez; that the tax declarations presented by it described property distinct from that covered by OCT No. 2150, although it claimed that the same property had been sold to it twice by Casimiro and Tanuco; and that on at least three occasions, it had attempted to buy the lot from them but the negotiations did not push through.

We hold and declare that the CA's ruling in favor of the Spouses Ybañez was devoid of legal and factual support, and should be rightfully reversed.

Laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exerting due diligence a party could and should have done earlier.[47] A suit that is barred on the ground of laches is also called a stale demand. Laches is based on grounds of public policy that requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.[48] *Tempus enim modus tollendi obligationes et actiones, quia tempus currit contra desides et sui juris contemptores* (For time is a means of dissipating obligations and actions, because time runs against the slothful and careless of their own rights).[49] Truly, the law serves those who are vigilant and diligent, not those who sleep when the law requires them to act.[50]

For laches to bar a claim, four elements must be shown, namely: (1) conduct on the part of the defendant, or one under whom he claims, giving rise to a situation of which a complaint is made and for which the complainant seeks a remedy; (2) delay in asserting the complainant's right, the complainant having had knowledge or notice of defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge

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47 *La Campana Food Products, Inc. v. Court of Appeals*, G.R. No. 88246, June 4, 1993, 223 SCRA 151, 158.

48 *Pangilinan v. Court of Appeals*, G. R. No. 83588, September 29, 1997, 279 SCRA 590, 601.

49 Id.

50 *Marcelino v. Court of Appeals*, G.R. No. 94423, June 26, 1992, 210 SCRA 444, 447.

or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event that the relief is accorded to the complainant, or the suit is not held to be barred.[51]

The CA incorrectly barred the claim of Aznar Brothers to Lot No. 18563 because of laches. For one, Aznar Brothers immediately registered the purchase in accordance with Act No. 3344, the law then governing the registration of unregistered land. Its action in that regard ensured the protection of the law as to its ownership of the land, and evinced that it did not abandon its ownership. Verily, its maintaining Lot No. 18563 as an unregistered land from then on should not prejudice its rights; otherwise, its registration pursuant to law would be set at naught. Secondly, the supposed acts of possession of Lot No. 18563 exercised by the Spouses Ybañez from the time of their purchase from Adriano, including causing it to be surveyed for purposes of the application for free patent, did not prejudice Aznar Brothers' interest because the registration under Act No. 3344 had given constructive notice to the Spouses Ybañez of its prior acquisition of the land. Thereby, the Spouses Ybañez became bound by the sale from Casimiro to Aznar Brothers, and rendered them incapable of acquiring the land in good faith from Adriano. Consequently, Jose R. Ybañez's intervening application for the free patent, the grant of the free patent and the issuance of OCT No. 2150 thereafter did not supplant the superior rights and interest of Aznar Brothers in Lot No. 18563. And, lastly, the Spouses Ybañez would not suffer any prejudice should Aznar Brothers prevail herein, for Adriano, their predecessor-in-interest, did not transmit to them any kind or degree of right or interest in Lot No. 18563.

**4.**
**Lot No. 18563, not being land of the public domain, was not subject to the free patent issued to the Spouses Ybañez**

The Spouses Ybañez's position rests on their having been issued the free patent and OCT No. 2150.

The records do not support the position of the Spouses Ybañez. Although Jose R. Ybañez declared in paragraph 4 of his application for the free patent that Lot No. 18563 was public land, and was not then claimed or

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[51] *Go Chi Gun v. Co Cho*, 96 Phil. 622, 637 (1955); *Maneclang v. Baun*, G.R. No. 27876, April 22, 1992, 208 SCRA 179, 193.

occupied by any other person;[52] and further declared under oath in the affidavit submitted to support his application for the free patent that he "recognize(d)" Lot No. 18563 "as public land," his declarations did not establish that Lot No. 18563 was land of the public domain. Nor did the Spouses Ybañez show that Jose R. Ybañez had acted in good faith in applying for the free patent pursuant to Commonwealth Act No. 141 (*The Public Land Act)*, as amended. Instead, they were fully aware of the nature and character of the land as private. In the *Deed of Absolute Sale* dated June 21, 1978, Adriano stated that he had been "the absolute owner in fee simple free from all liens and encumbrances whatsoever" of Lot No. 18563; and that he (Adriano) had held the "perfect right to convey the same (as) the purchaser of the same as per Extrajudicial Declaration of Heirs with extrajudicial settlement of estate of deceased person and deed of absolute sale."[53] In view of the privity between Adriano and the Spouses Ybañez as to the land, the former's statements concluded the latter.[54]

In contrast, Aznar Brothers acquired Lot No. 18563 as the private land of Casimiro. In their *Deed of Absolute Sale* of March 21, 1964, Casimiro expressly warranted that the land was his "own exclusive property."[55] With the ownership of Aznar Brothers being thus established, the free patent issued to Jose R. Ybañez by the Government was invalid for the reason that the Government had no authority to dispose of land already in private ownership.[56] The invalidity of the free patent necessarily left OCT No. 2150 a patent nullity. As ruled in *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago*:[57]

> The settled rule is that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. **Private ownership of land – as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants – is not affected by the issuance of a free patent over the same land, because the Public Land Law applies only to lands of the public domain. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character**

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52 Records, p. 311 (Exhibit M), to wit:

x x x x

4. The land described and applied for is **not claimed or occupied by any other person**, but is **public land.** I entered upon and began cultivation of the same on the 21 day of June 1978, and since that date I have continuously cultivated the land, and have made thereon the following improvements, viz: coconuts, fruit trees and seasonal crops.

x x x x

53 Records, p. 290 (Exhibit 2).

54 Rule 130, *Rules of Court*, states:

Section 31. *Admission by privies*. - Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former.

55 Exhibit F.

56 *Magistrado v. Esplana,* G.R. No. 54191, May 8, 1990, 185 SCRA 104, 109.

57 G.R. No. 151440, June 17, 2003, 404 SCRA 193, 199.

> **and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain**. (Bold emphasis supplied)

To the same effect was *Agne v. Director of Lands*,[58] where the Court declared that if land covered by free patent was already the private property of another and, therefore, not part of the disposable land of the public domain, the patentee did not acquire any right or title to the land.

The principle of indefeasibility of the Torrens title does not protect OCT No. 2150 because the free patent on which the issuance of the title was based was null and void. A direct attack as well as a collateral attack are proper, for, as the Court declared in *De Guzman v. Agbagala*:[59]

> x x x. An action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral, attack. OCT No. P-30187 was registered on the basis of a free patent which the RTC ruled was issued by the Director of Lands without authority. The petitioners falsely claimed that the land was public land when in fact it was not as it was private land previously owned by Carmen who inherited it from her parents. x x x.

Nonetheless, it appears that Aznar Brothers actually mounted a direct attack on the title of the Spouses Ybañez. In the original complaint, Aznar Brothers sought judgment ordering them to "[s]urrender all the documents pertaining to the Free Patent for cancellation." Such relief was predicated on the allegation that the land in question "was already adjudicated as private property of the plaintiff" through the *Deed of Absolute Sale* of March 21, 1964. Aznar Brothers reiterated the relief in the amended complaint. In its second amended complaint, it expressly prayed for the "cancellation and annulment" of OCT No. 2150. By such pleadings, it directly attacked OCT No. 2150, because their object was "to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed."[60]

**WHEREFORE**, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on October 10, 2002 by the Court of Appeals partially affirming the judgment rendered on March 8, 1996 by the Regional Trial Court, Branch 10, in Cebu City; **DECLARES** petitioner **AZNAR BROTHERS REALTY COMPANY** the sole and exclusive owner of the unregistered parcel of land known and described as Lot No. 18563;

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[58] G.R. No. 40399, February 6, 1990, 181 SCRA 793, 807; citing *Director of Lands v. Sisican,* Nos. L-20003-05, March 31, 1965, 13 SCRA 516.

[59] G.R. No. 163566, February 19, 2008, 546 SCRA 278, 285.

[60] *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago.* supra note 57 at 203.

**CANCELS** and **NULLIFIES** Free Patent No. VII-1118514 and Original Certificate of Title No. 2150 of the Registry of Deeds of the Province of Cebu in the name of respondent Jose R. Ybañez, married to Magdalena Marcos; and **ORDERS** respondents to pay the costs of suit.

**SO ORDERED.**

**LUCAS P. BERSAMIN**
Associate Justice

**WE CONCUR:**

**MARIA LOURDES P. A. SERENO**
Chief Justice

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice

**MARTIN S. VILLARAMA, JR.**
Associate Justice

**JOSE PORTUGAL PEREZ**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**
Chief Justice