



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PHILIPPINE BANK OF
COMMUNICATIONS,

Petitioner,

- versus -

THE REGISTER OF DEEDS FOR
THE PROVINCE OF BENGUET,
Respondent.

G.R. No. 222958

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

Promulgated:

MAR 11 2020

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DECISION

CAGUIOA, J.:

This is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the February 23, 2015 Decision² (Assailed Decision) and February 12, 2016 Resolution³ (Assailed Resolution) of the Court of Appeals⁴ (CA) in CA-G.R. SP No. 126081. The CA dismissed petitioner Philippine Bank of Communications' (PBCOM) Rule 65 petition for *certiorari* and affirmed *in toto* the April 27, 2012⁵ and June 7, 2012⁶ Orders of the Regional Trial Court, Branch 63, La Trinidad, Benguet (RTC-Branch 63) in LRC Admin. Case No. 12-AD-1401.⁷

The Facts and Antecedent Proceedings

The instant dispute involves two successive petitions for replacement of lost owner's duplicate Transfer Certificate of Title (TCT) No. 21320. The first petition was dismissed by the Regional Trial Court, Branch 62, La

¹ Rollo, pp. 10-40.

² Id. at 42-52. Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a Member of this Court).

³ Id. at 54-56.

⁴ Thirteenth Division and Former Thirteenth Division.

⁵ Rollo, pp. 81-86. Penned by Presiding Judge Jennifer P. Humiding.

⁶ Id. at 87-90.

⁷ Id. at 51.

Trinidad, Benguet (RTC-Branch 62) in LRC Case No. 11-AD-1335 (first petition) for insufficiency of evidence, *i.e.*, for failure to prove the fact of loss, while the second petition was dismissed by the RTC-Branch 63 in LRC Adm. Case No. 12-AD-1401 (second petition) on the ground of *res judicata*.⁸ The instant case is an offshoot of the second petition. The CA summarized the facts as follows:

On January 28, 2011, PBCOM filed a petition for issuance of the owner's duplicate copy of TCT No. 21320 in lieu of the lost one (first petition), docketed as LRC Case No. 11-AD-1335, raffled to RTC, Branch 62, La Trinidad, Benguet. PBCOM claimed to be the registered owner of the subject property, having acquired it on March 2, 1985 through an extrajudicial foreclosure sale. The property was allegedly not included in PBCOM's inventory of assets because the bank's La Union branch failed to forward all the pertinent records of its acquisition to the Makati head office. Although the property was registered in the bank's name, it only "got wind" of its existence when it received a May 2010 Notice and Reminder to Real Property Tax Payers from the Office of the Municipal Treasurer of La Trinidad, Benguet. It allegedly exerted all possible efforts to locate the owner's duplicate copy of TCT No. 21320, but to no avail. It then filed an affidavit of loss with the Registry of Deeds of Benguet.

After PBCOM's *ex parte* presentation of evidence, the RTC, Branch 62 issued its July 29, 2011 Order dismissing the first petition for insufficiency of evidence. It held that PBCOM failed to prove that it had "exerted all efforts to determine the actual whereabouts of TCT No. 21320 from all its available records and the bank's past and present officers or employees and legal counsel who could and should have knowledge of the bank's acquired property and the documents relative thereto." Noting the testimony of one (1) of PBCOM's witnesses that it is possible that the previous accountable officer did not turn over the title to the property or the lawyer who handled the foreclosure proceeding failed to include the owner's copy of TCT No. 21320 in the documents forwarded to their main office, the RTC, Branch 62 stressed that PBCOM should have exerted efforts to verify from these persons the whereabouts of the missing title because if any other person is known or suspected to be in possession of the copy of the title, either lawfully or unlawfully, the petition would not be the appropriate legal remedy.

PBCOM filed an omnibus motion for reconsideration of the July 29, 2011 Order and prayed that it be allowed to present additional evidence to prove the allegations in its first petition. It also filed a Manifestation suggesting the publication in a newspaper of general circulation of the fact of loss and the pending proceedings for the issuance of a new one. The RTC, Branch 62 gave PBCOM five (5) days to file a supplemental motion but failed to comply and did not bother to set its foregoing motions for hearing. Thus, in its February 9, 2012 Order, the RTC, Branch 62 considered the omnibus motion for reconsideration as well [as] the Manifestation as abandoned.

Instead of filing a[n] appeal from the July 29, 2011 Order, PBCOM filed the second petition, docketed as LRC Case No. 12-AD-1401 [second petition], raffled to RTC, Branch 63. The allegations in the second petition

⁸ Id. at 13-18.



were essentially the same as that contained in the first petition.⁹ (*Italics and underscoring supplied*)

In its April 27, 2012 Order, the RTC-Branch 63 dismissed the second petition, *motu proprio*, on the ground of *res judicata*.¹⁰ As the first petition was dismissed for insufficiency of evidence, *i.e.*, an adjudication on the merits, the RTC-Branch 63 held that the second petition involving the same parties and cause of action was barred by prior judgment.¹¹

PBCOM sought reconsideration of the aforementioned Order, which was, however, denied.¹² It then filed a notice of appeal, which it later withdrew.¹³ Thereafter, it filed a petition for *certiorari* with the CA, claiming that the respondent judge therein committed grave abuse of discretion (1) in dismissing the second petition on the ground of *res judicata* and (2) in dismissing, without first determining, whether the evidence presented in the first petition was identical to the evidence intended to be presented in the second petition.¹⁴ PBCOM claimed that the dismissal of the first petition did not bar the filing of a second petition, for otherwise, it would be forever barred from securing a “replacement copy of the missing title.”¹⁵

The CA dismissed the petition for *certiorari* and held that: (1) PBCOM availed of the wrong remedy as the dismissal of the second petition on the ground of *res judicata* was a complete disposition and was thus reviewable *via* appeal;¹⁶ and (2) all elements of *res judicata* were attendant, given that PBCOM sought the issuance of the owner’s duplicate copy of TCT No. 21320 in both petitions.¹⁷

PBCOM thus filed the instant Petition under Rule 45 of the Rules of Court alleging, among others, that: (1) the Rules of Court and the concept of *res judicata* do not apply to land registration;¹⁸ and (2) it availed of the correct remedy.¹⁹

In its Comment,²⁰ respondent Register of Deeds through the Office of the Solicitor General, argued that: (1) the RTC-Branch 63 correctly dismissed the petition on the ground of *res judicata*;²¹ and (2) PBCOM availed of the wrong remedy.²²

⁹ Id. at 43-44.

¹⁰ Id. at 44-45.

¹¹ Id.

¹² Id. at 46.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 46-47.

¹⁶ Id. at 47-48.

¹⁷ Id. at 50.

¹⁸ Id. at 19-25.

¹⁹ Id. at 25-29.

²⁰ Id. at 263-276.

²¹ Id. at 266-271.

²² Id. at 271-274.



Issues

The issues pending before the Court may be summarized as follows: (1) whether PBCOM availed of the correct remedy to challenge the dismissal of the second petition; and (2) whether the RTC-Branch 63 correctly dismissed the second petition on the ground of *res judicata*.

The Court's Ruling

The Petition has partial merit.

PBCOM availed of the wrong remedy when it filed a Rule 65 petition for certiorari to challenge the dismissal of the second petition on the ground of res judicata

A Rule 65 petition for *certiorari* is not the correct remedy to challenge the dismissal of the second petition.

Rule 41 of the Rules of Court governs ordinary appeals from the Regional Trial Courts, *viz.*:

SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (b) An interlocutory order;
- (c) An order disallowing or dismissing an appeal;
- (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (e) An order of execution;
- (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- (g) An order dismissing an action without prejudice.

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65. (*As amended by A.M. No. 07-7-12-SC, December 4, 2007.*) (Underscoring supplied)



In *Medina v. Spouses Lozada*,²³ the Court explained:

An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the plaintiff[, except when otherwise provided,] is to appeal the order.²⁴

Applying the foregoing, there is no question that (1) a dismissal on the ground of *res judicata* is a final order that completely disposes of the case and leaves nothing more to be done in the RTC,²⁵ and (2) such dismissal does not fall within the enumeration of orders from which no appeal may be taken. In fact, a dismissal on the ground of *res judicata* is expressly declared to be appealable under Rule 16, Section 1 in relation to Section 5, viz.:

SECTION 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

X X X X

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

X X X X

SEC. 5. *Effect of dismissal*. — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of Section 1 hereof shall bar the refiling of the same action or claim. (n) (Underscoring supplied)

Evidently therefore, appeal — and not a special civil action for *certiorari* — was the correct remedy to challenge the dismissal of the second petition on the ground of *res judicata*. *United Alloy Phils. Corp. v. United Coconut Planters Bank*²⁶ has unequivocally stated, “if the reason for the dismissal is based on paragraphs (f), (h), or (i) (i.e., *res judicata*, prescription, extinguishment of the claim or demand, or unenforceability under the Statute of Frauds) the dismissal, under Section 5 of Rule 16, is *with prejudice* and the remedy of the aggrieved party is to appeal the order granting the motion to dismiss.”²⁷

As appeal was available, PBCOM’s Rule 65 petition would not prosper even if the ground therefor was grave abuse of discretion.²⁸ In *Chingkie v. Republic*,²⁹ the Court explained:

²³ G.R. No. 185303, August 1, 2018.

²⁴ Id.

²⁵ See *Medina v. Spouses Lozada*, id.

²⁶ 773 Phil. 242 (2015).

²⁷ Id. at 254-255. Underscoring supplied.

²⁸ *Medina v. Spouses Lozada*, supra note 23.

²⁹ 715 Phil. 651 (2013).

x x x Pursuant to Rule 65 of the Rules of Court, a special civil action for *certiorari* could only be availed of when a tribunal “acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of [its] judgment as to be said to be equivalent to lack of jurisdiction” or when it acted without or in excess of its x x x jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.

It is settled that the Rules precludes recourse to the special civil action of *certiorari* if appeal by way of a [Notice of Appeal or a] Petition for Review is available, as the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.³⁰ (Underscoring supplied)

PBCOM admitted as much when it filed an ordinary appeal of the April 27, 2012 Order but subsequently withdrew the same.³¹

In view of the foregoing, the CA cannot be faulted for having dismissed the petition for *certiorari*. PBCOM’s contention that a Rule 65 petition was proper as the Order dismissing the second petition was void for lack of due process is untenable. Rule 9, Section 1 of the Rules of Court expressly allows the *motu proprio* dismissal of cases on the ground, among others, of *res judicata*, viz.:

SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

In *Katon v. Palanca, Jr.*,³² citing *Gumabon v. Larin*,³³ the Court explained:

“x x x [T]he *motu proprio* dismissal of a case was traditionally limited to instances when the court clearly had no jurisdiction over the subject matter and when the plaintiff did not appear during trial, *failed to prosecute his action for an unreasonable length of time* or neglected to comply with the rules or with any order of the court. Outside of these instances, any *motu proprio* dismissal would amount to a violation of the right of the plaintiff to be heard. Except for qualifying and expanding Section 2, Rule 9, and Section 3, Rule 17, of the Revised Rules of Court, the amendatory 1997 Rules of Civil Procedure brought about no radical change. Under the new rules, a court may *motu proprio* dismiss a claim when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter; when there is another cause of action pending between the same parties for the same cause, or where the action is

³⁰ Id. at 659.

³¹ *Rollo*, p. 48.

³² 481 Phil. 168 (2004).

³³ 422 Phil. 222, 230 (2001).

barred by a prior judgment or by statute of limitations x x x.³⁴
(Underscoring supplied)

Nevertheless, in the interest of substantial justice, the Court finds it proper to relax the technical rules of procedure if only to resolve the novel issue presented before the Court.

A registered owner who fails to prove the loss or destruction of his/her owner's duplicate certificate of title may not be barred from refiling a new petition to replace the same

It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.³⁵ It is conclusive evidence with respect to the ownership of the land described therein.³⁶ In *The Heirs of Alfredo Cullado v. Gutierrez*,³⁷ the Court explained:

Indeed, the bedrock of the Torrens system is the indefeasibility and incontrovertibility of a land title where there can be full faith reliance thereon. Verily, the Government has adopted the Torrens system due to its being the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. To the registered owner, the Torrens system gives him complete peace of mind, in order that he will be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land. On the part of a person transacting with a registered land, like a purchaser, he can rely on the registered owner's title and he should not run the risk of being told later that his acquisition or transaction was ineffectual after all, which will not only be unfair to him, but will also erode public confidence in the system and will force land transactions to be attended by complicated and not necessarily conclusive investigations and proof of ownership.³⁸
(Underscoring supplied)

In other words, ownership of registered land is evidenced by the certificate of title, which is indefeasible and incontrovertible. Presidential Decree No. (P.D.) 1529³⁹ or the "Property Registration Decree" mandates the issuance of this certificate of title in **duplicates** — the original certificate of title, which is either an original certificate of title or TCT to be kept by the Register of Deeds and an owner's duplicate certificate of title to be kept by the registered owner. P.D. 1529 provides:

³⁴ *Katon v. Palanca, Jr.*, supra note 32 at 180.

³⁵ *Catindig v. Vda. de Meneses*, 656 Phil. 361, 373 (2011).

³⁶ *Id.* at 373.

³⁷ G.R. No. 212938, July 30, 2019.

³⁸ *Id.* at 17-18.

³⁹ AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES, June 11, 1978.



CHAPTER IV
CERTIFICATE OF TITLE

SEC. 39. *Preparation of decree and Certificate of Title.* – After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. The original certificate of title shall be a true copy of the decree of registration. The decree of registration shall be signed by the Commissioner, entered and filed in the Land Registration Commission. The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book.

SEC. 40. *Entry of Original Certificate of Title.* – Upon receipt by the Register of Deeds of the original and duplicate copies of the original certificate of title the same shall be entered in his record book and shall be numbered, dated, signed and sealed by the Register of Deeds with the seal of his office. Said certificate of title shall take effect upon the date of entry thereof. The Register of Deeds shall forthwith send notice by mail to the registered owner that his owner's duplicate is ready for delivery to him upon payment of legal fees.

SEC. 41. *Owner's duplicate certificate of title.* – **The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative.** If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued.

SEC. 42. *Registration Books.* – The original copy of the original certificate of title shall be filed in the Registry of Deeds. The same shall be bound in consecutive order together with similar certificates of title and shall constitute the registration book for titled properties.

SEC. 43. *Transfer Certificate of Title.* – The subsequent certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the same land shall be in like form, entitled "Transfer Certificate of Title", and likewise issued in duplicate. The certificate shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found. (Emphasis and underscoring supplied)

Based on the foregoing, there is no doubt that the owner's duplicate certificate of title is a fundamental aspect of the Torrens system. While a registered owner is free to exercise and enjoy all manner of rights over his/her property [i.e., (1) *Jus possidendi* or the right to possess; (2) *Jus utendi* or the right to use and enjoy; (3) *Jus fruendi* or the right to the fruits; (4) *Jus accessionis* or right to accessories; (5) *Jus abutendi* or the right to consume the thing by its use; (6) *Jus disponendi* or the right to dispose or alienate; and (7) *Jus vindicandi* or the right to vindicate or recover]⁴⁰ and non-registration thereof does not affect the validity of said acts as between the parties, no voluntary transaction affecting the land will be registered (and thus bind third persons) without the presentation of the owner's duplicate certificate of title as mandated by P.D. 1529, viz.:

CHAPTER V SUBSEQUENT REGISTRATION

I. VOLUNTARY DEALINGS WITH REGISTERED LANDS GENERAL PROVISIONS

SEC. 51. *Conveyance and other dealings by registered owner.* – An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

SEC. 52. *Constructive notice upon registration.* – Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

SEC. 53. *Presentation of owner's duplicate upon entry of new certificate.* – No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with

⁴⁰ *The Heirs of Alfredo Cullado v. Gutierrez*, supra note 37 at 7. See also *Philippine Banking Corp. v. Lui She*, 128 Phil. 53, 68 (1967).



such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

SEC. 54. *Dealings less than ownership, how registered.* – No new certificate shall be entered or issued pursuant to any instrument which does not divest the ownership or title from the owner or from the transferee of the registered owners. All interests in registered land less than ownership shall be registered by filing with the Register of Deeds the instrument which creates or transfers or claims such interests and by a brief memorandum thereof made by the Register of Deeds upon the certificate of title, and signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner. (Underscoring supplied)

The requirement that the owner's duplicate certificate of title be presented for voluntary transactions is precisely what gives the registered owner "security" and "peace of mind" under the Torrens system. Without the owner's duplicate certificate of title, transfers and conveyances^{40a} like sales

^{40a} P.D. 1529 states:

(A) CONVEYANCES AND TRANSFERS

SEC. 57. *Procedure in registration of conveyances.* – An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "cancelled". The deed of conveyance shall be filed and indorsed with the number and the place of registration of the certificate of title of the land conveyed.

SEC. 58. *Procedure where conveyance involves portion of land.* – If a deed or conveyance is for a part only of the land described in a certificate of title, the Register of Deeds shall not enter any transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided and the corresponding technical descriptions shall have been verified and approved pursuant to Section 50 of this Decree. Meanwhile, such deed may only be annotated by way of memorandum upon the grantor's certificate of title, original and duplicate, said memorandum to serve as a notice to third persons of the fact that certain unsegregated portion of the land described therein has been conveyed, and every certificate with such memorandum shall be effectual for the purpose of showing the grantee's title to the portion conveyed to him, pending the actual issuance of the corresponding certificate in his name.

Upon the approval of the plan and technical descriptions, the original of the plan, together with a certified copy of the technical descriptions shall be filed with the Register of Deeds for annotation in the corresponding certificate of title and thereupon said officer shall issue a new certificate of title to the grantee for the portion conveyed, and at the same time cancel the grantor's certificate partially with respect only to said portion conveyed, or, if the grantor so desires, his certificate may be cancelled totally and a new one issued to him describing therein the remaining portion: Provided, however, that pending approval of said plan, no further registration or annotation of any subsequent deed or other voluntary instrument involving the unsegregated portion conveyed shall be effected by the Register of Deeds, except where such unsegregated portion was purchased from the Government or any of its instrumentalities. If the land has been subdivided into several lots, designated by numbers or letters, the Register of Deeds may, if desired by the grantor, instead of canceling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said certificate and on its owner's

and donations, mortgages and leases,⁴¹ and agencies and trusts⁴² while valid, will not bind the registered land. As such, the owner's duplicate certificate of

duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is cancelled as to such lot or lots.

SEC. 59. *Carry over of encumbrances.* – If, at the time of any transfer, subsisting encumbrances or annotations appear in the registration book, they shall be carried over and stated in the new certificate or certificates; except so far as they may be simultaneously released or discharged.

⁴¹ P.D. 1529 provides:

(B) MORTGAGES AND LEASES

SEC. 60. *Mortgage or lease of registered land.* – Mortgage and leases shall be registered in the manner provided in Section 54 of this Decree. The owner of registered land may mortgage or lease it by executing the deed in a form sufficient in law. Such deed of mortgage or lease and all instruments which assign, extend, discharge or otherwise deal with the mortgage or lease shall be registered, and shall take effect upon the title only from time of registration.

No mortgagee's or lessee's duplicate certificate of title shall hereafter be issued by the Registers of Deeds, and those issued prior to the effectivity of this Decree are hereby deemed cancelled and the holders thereof shall immediately surrender the same to the Register of Deeds concerned.

SEC. 61. *Registration.* – Upon presentation for registration of the deed of mortgage or lease together with the owner's duplicate, the Register of Deeds shall enter upon the original of the certificate of title and also upon the owner's duplicate certificate a memorandum thereof, the date and time of filing and the file number assigned to the deed, and shall sign the said memorandum. He shall also note on the deed the date and time of filing and a reference to the volume and page of the registration book in which it is registered.

SEC. 62. *Discharge or cancellation.* – A mortgage or lease on registered land may be discharge or cancelled by means of an instrument executed by the mortgage or lessee in a form sufficient in law, which shall be filed with the Register of Deeds who shall make the appropriate memorandum upon the certificate of title.

SEC. 63. *Foreclosure of Mortgage.* – (a) If the mortgage was foreclosed judicially, a certified copy of the final order of the court confirming the sale shall be registered with the Register of Deeds. If no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.

Where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by a brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title of the mortgagor.

If the property is not redeemed, the final deed of sale executed by the sheriff in favor of the purchaser at a foreclosure sale shall be registered with the Register of Deeds; whereupon the title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.

(b) If the mortgage was foreclosed extrajudicially, a certificate of sale executed by the officer who conducted the sale shall be filed with the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.

In the event of redemption by the mortgagor, the same rule provided for in the second paragraph of this section shall apply.


In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed of mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled.

⁴² P.D. 1529 states:

(C) POWERS OF ATTORNEY; TRUSTS

SEC. 64. *Power of attorney.* – Any person may, by power of attorney, convey or otherwise deal with registered land and the same shall be registered with the Register of Deeds of the province or city where the land lies. Any instrument revoking such power of attorney shall be registered in like manner.

SEC. 65. *Trusts in registered land.* – If a deed or other instrument is filed in order to transfer registered land in trust, or upon any equitable condition or limitation expressed therein, or to create or declare a trust or other equitable interests in such land without transfer, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate; but only a memorandum thereof shall be entered by the words "in trust", or "upon condition", or other apt words, and by a reference by number to the instrument authorizing or creating the same. A similar memorandum shall be made upon the original instrument creating or declaring the trust or other equitable interest with a reference by number to the certificate of title to which it relates and to the volume and page in the registration book in which it is registered.



title safeguards ownership. At the same time, the owner's duplicate certificate of title is also crucial to the full and effective exercise of ownership rights over registered land. Hence, a registered owner has a substantive right to own and possess the owner's duplicate certificate of title and to replace the same in case of loss or destruction.⁴³

In view of the foregoing, the Court finds that PBCOM, as the undisputed registered owner of the land covered by TCT No. 21320 on file with the Register of Deeds,⁴⁴ cannot be barred by *res judicata* from filing a second petition to replace its owner's duplicate certificate of title in case of loss or destruction of the original duplicate.

Rule 1, Section 4 of the Rules of Court expressly provides that the Rules of Court apply to land registration cases only by analogy, in a suppletory character, and whenever practicable and convenient —

SEC. 4. *In what cases not applicable.* — These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient. (Underscoring supplied)

As already explained, the nature and purpose of the Torrens system and the absolute indispensability of the owner's duplicate certificate of title mandates that the Court give primacy to the registered owner's substantive right to possess and accordingly, to seek a replacement of an owner's

SEC. 66. *Trust with power of sale, etc., how expressed.* — If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage or deal with the land in any manner, such power shall be stated in the certificate of title by the words "with power to sell", or "power to mortgage", or by apt words of description in case of other powers. No instrument which transfers, mortgages or in any way deals with registered land in trust shall be registered, unless the enabling power thereto is expressly conferred in the trust instrument, or unless a final judgment or order of a court of competent jurisdiction has construed the instrument in favor of the power, in which case a certified copy of such judgment or order may be registered.

SEC. 67. *Judicial appointment of new trustee.* — If a new trustee of registered land is appointed by a court of competent jurisdiction, a new certificate may be issued to him upon presentation to the Register of Deeds of a certified copy of the order or judicial appointment and the surrender for cancellation of the duplicate certificate.

SEC. 68. *Implied, trusts, how established.* — Whoever claims an interest in registered land by reason of any implied or constructive trust shall file for registration with the Register of Deeds a sworn statement thereof containing a description of the land, the name of the registered owner and a reference to the number of the certificate of title. Such claim shall not affect the title of a purchaser for value and in good faith before its registration.

⁴³ SEC. 109. *Notice and replacement of lost duplicate certificate.* — In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

⁴⁴ *Rollo*, p. 13.

duplicate certificate of title that has been lost or destroyed. When there is a right, there must be a remedy.

Although admittedly, it “is to the interest of the public that there should be an end to litigation by the same parties and their privies over a subject once fully and fairly adjudicated,”⁴⁵ it would be extremely impracticable, inconvenient, and unjust to perpetually preclude the registered owner from registering any voluntary transaction, *i.e.*, sale, donation, mortgage, lease, *etc.*, on his/her land simply because he/she failed to prove, to the satisfaction of the court, that he/she, in fact, lost his/her title. If the Court were to uphold the dismissal of the second petition on the ground of *res judicata*, PBCOM would be left with no other remedy under the law to exercise full ownership rights over its own property.

This finds more importance in this case because PBCOM is a bank and is thus bound to comply with Section 51 of Republic Act No. (R.A.) 8791 or the “General Banking Law,” to wit:

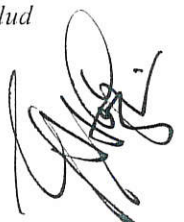
SECTION 51. *Ceiling on Investments in Certain Assets.* — Any bank may acquire real estate as shall be necessary for its own use in the conduct of its business: *Provided, however,* That the total investment in such real estate and improvements thereof, including bank equipment, shall not exceed fifty percent (50%) of combined capital accounts: *Provided, further,* That the equity investment of a bank in another corporation engaged primarily in real estate shall be considered as part of the bank’s total investment in real estate, unless otherwise provided by the Monetary Board. (25a)

SECTION 52. *Acquisition of Real Estate by Way of Satisfaction of Claims.* — Notwithstanding the limitations of the preceding Section, a bank may acquire, hold or convey real property under the following circumstances:

- 52.1. Such as shall be mortgaged to it in good faith by way of security for debts;
- 52.2. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or
- 52.3. Such as it shall purchase at sales under judgments, decrees, mortgages, or trust deeds held by it and such as it shall purchase to secure debts due it.

Any real property acquired or held under the circumstances enumerated in the above paragraph shall be disposed of by the bank within a period of five (5) years or as may be prescribed by the Monetary Board: *Provided, however,* That the bank may, after said period, continue to hold

⁴⁵ *Manila Electric Co. v. Philippine Consumers Foundation, Inc.*, 425 Phil. 65, 66 (2002). See also *Salud v. Court of Appeals*, 303 Phil. 397 (1994).



the property for its own use, subject to the limitations of the preceding Section. (25a) (Underscoring supplied)

In other words, sustaining the dismissal and upholding the applicability of *res judicata* in the instant case would not only perpetually prevent PBCOM from registering any voluntary transaction over the parcel of land, but also perpetually prevent it from complying with its obligations under the General Banking Law. This interpretation is absurd.

Res judicata has been defined as “‘a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.’ *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.”⁴⁶

As in proceedings for the reconstitution of original certificates of title⁴⁷ however, proceedings for the replacement of owner’s duplicate certificates of title only involve “the re-issuance of a new [owner’s duplicate] certificate of title lost or destroyed in its original form and condition. It does not pass upon the ownership of the land covered by the lost or destroyed title.”⁴⁸ **Strictly speaking therefore, there is no conclusive adjudication of rights between adversarial parties in a proceeding for the replacement of a lost or destroyed owner’s duplicate certificate of title.** Section 109 of P.D. 1529 pertinently provides:

SEC. 109. *Notice and replacement of lost duplicate certificate.* – In case of loss or theft of an owner’s duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree. (Underscoring supplied.)

The foregoing provision unequivocally shows that the Court’s authority in a petition for the replacement of a lost owner’s duplicate certificate of title

⁴⁶ *Spouses Layos v. Fil-Estate Golf and Development, Inc.*, 583 Phil. 72, 101-102 (2008).

⁴⁷ P.D. 1529, Section 110 in relation to R.A. 26.

⁴⁸ *Spouses Layos v. Fil-Estate Golf and Development, Inc.*, supra note 46 at 116.

is limited to determining: (1) whether the procedure prescribed in Section 109 has been complied with; and (2) whether the owner's duplicate certificate of title has, in fact, been lost/destroyed. If the requisites are satisfied, the court, after notice and hearing, should direct the issuance of a new duplicate certificate in its original form and condition, with a memorandum of the fact that it is being issued in place of the lost duplicate certificate. On the other hand, if the requisites are not satisfied, the court, after notice and hearing, should dismiss the petition **without prejudice** to the registered owner's subsequent compliance with the requisites prescribed by law.

In fact, a reading of RTC-Branch 62's dismissal of the first petition astutely indicates that the dismissal was actually without prejudice, *viz.*:

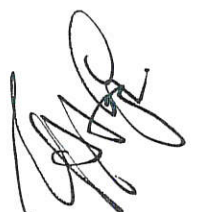
The petitioner, through its lone witness in the person of Orlando Rafael Cucueco, Jr., the head of its Acquired Property Management Unit, in charge of the inventory of all bank acquired properties, tried to establish the fact of loss of the owner's duplicate copy of TCT No. 21320. The following facts can be deduced from the testimony of the witness.

1. The property covered by the title is registered in the name of the petitioner and, from the documents secured by the witness from the Office of the Register of Deeds of Benguet, the property was acquired after the same was mortgaged to, and foreclosed and purchased at public auction by the La Union Branch of the petitioner.
2. The witness however cannot locate the owner's duplicate of title including all documents and records that should have been filed with it, in its vault at its central office and La Union Branch.
3. The bank does not have any record to who should or could have actual custody of the owner's duplicate copy of the title.

It appears that the witness for the petitioner has no personal knowledge of the existence and the fact of loss of the owner's duplicate copy of TCT No. T-21320. He only affirmed that the same cannot be located among its files in the central office as well as in their branch in La Union. The court believes that the petitioner must not only show that the copy of the title cannot be located but must also show that it is so despite its best efforts to locate the same, necessarily and reasonably leading to the conclusion that the missing title may be considered beyond recovery.

There was no showing that the petitioner exerted all its efforts to determine the actual whereabouts of the missing title from all its available records and from the bank's past and present officers or employees and legal counsel who could and should have knowledge of the bank's acquired property and the documents relative thereto.

It is altogether possible, as even mentioned by the petitioner's witness, that the previous accountable officer did not turn over the documents including the title to the property or that the lawyer who handled this predecessor in office might not have turned over all or any accountability regarding the subject property, considering that he just assumed his position two years ago. It is also possible that the lawyer who



handled the foreclosure proceeding failed to include the documents, including the title, in the documents that were forwarded to their main office. But petitioner, failed to show that it exerted efforts to verify from these persons as to the whereabouts of the missing documents. It must be clearly shown that the petitioner is convinced that the copy of the title sought to be replaced is not in the possession of any other person. If any other person is known or suspected to be in possession of the copy of the title, either lawfully or unlawfully, this petition is clearly not the appropriate legal remedy.⁴⁹ (Underscoring supplied)

In other words, the RTC-Branch 62 dismissed the first petition because PBCOM failed to show that it exerted its best efforts to locate the title. This dismissal is obviously without prejudice to the right of PBCOM, as the undisputed registered owner, to subsequently and sufficiently prove that the owner's duplicate of TCT No. 21320 has indeed been lost.

WHEREFORE, the Petition is **GRANTED**. The February 23, 2015 Decision and February 12, 2016 Resolution in CA-G.R. SP No. 126081 of the Court of Appeals are hereby **SET ASIDE**. The petition for replacement of the lost Owner's Duplicate Transfer Certificate of Title No. 21320 in LRC Adm. Case No. 12-AD-1401 is hereby **REINSTATED**. The Regional Trial Court, Branch 63, La Trinidad, Benguet is hereby **DIRECTED** to hear the petition with immediate dispatch.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson

⁴⁹ *Rollo*, pp. 198-199.

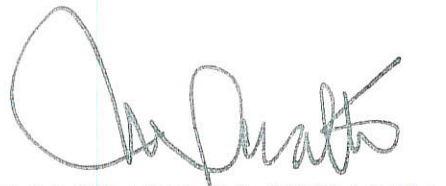

JOSE C. REYES, JR.
Associate Justice


AMY LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
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.


DIOSDADO M. PERALTA
Chief Justice



