Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ELISEO MALTOS and ROSITA P. MALTOS,	**G.R. No. 172720**
Petitioners,	Present:
-versus-	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
HEIRS OF EUSEBIO BORROMEO,	**Promulgated:** SEP 14 2015
Respondents.	

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DECISION

LEONEN, *J.*:

The sale of a parcel of agricultural land covered by a free patent during the five-year prohibitory period under the Public Land Act is void. Reversion of the parcel of land is proper. However, reversion under Section 101 of the Public Land Act is not automatic. The Office of the Solicitor General must first file an action for reversion.

On February 13, 1979, Eusebio Borromeo was issued Free Patent No. 586681 over a piece of agricultural land located in San Francisco, Agusan del Sur, covered by Original Certificate of Title No. P-9053.[1]

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[1] *Rollo*, p. 22, Court of Appeals Decision.

On June 15, 1983, well within the five-year prohibitory period, Eusebio Borromeo sold the land to Eliseo Maltos.[2]

Eusebio Borromeo died on January 16, 1991. His heirs claimed that prior to his death, he allegedly told his wife, Norberta Borromeo,[3] and his children to nullify the sale made to Eliseo Maltos and have the Transfer Certificate of Title No. T-5477 cancelled because the sale was within the five-year prohibitory period.[4]

On June 23, 1993, Norberta Borromeo and her children (heirs of Borromeo) filed a Complaint for Nullity of Title and Reconveyance of Title against Eliseo Maltos, Rosita Maltos, and the Register of Deeds of Agusan del Sur.[5] The case was docketed as Civil Case No. 946.[6]

Eliseo Maltos and Rosita Maltos (Maltos Spouses) filed their Answer, arguing that the sale was made in good faith and that in purchasing the property, they relied on Eusebio Borromeo's title. Further, the parties were in pari delicto. Since the sale was made during the five-year prohibitory period, the land would revert to the public domain and the proper party to institute reversion proceedings was the Office of the Solicitor General.[7]

The Register of Deeds of Agusan del Sur also filed an Answer, arguing that the deed of sale was presented for registration after the five-year prohibitory period, thus, it was ministerial on its part to register the deed.[8]

The heirs of Borromeo countered that good faith was not a valid defense because the prohibitory period appeared on the face of the title of the property.[9]

The Regional Trial Court[10] of Prosperidad, Agusan del Sur narrowed down the issues to the following:

> 1. Whether or not the herein plaintiffs are the legal heirs of the late Eusebio Borromeo.

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2 Id.
3 Id. at 26.
4 Id. at 22.
5 Id.
6 Id. at 93, Regional Trial Court Decision. A copy of the trial court Decision is attached to the *rollo* on pages 93–118; however, the specific branch of the Regional Trial Court is not legible.
7 Id. at 22–23, Court of Appeals Decision.
8 Id. at 23.
9 Id.
10 Id. at 93–118, Regional Trial Court Decision. The Decision was promulgated on August 30, 2002 and was penned by Executive Judge Patricio D. Balite.

> 2. Whether or not the sale of the disputed property within the prohibitory period is valid or binding.[11]

The trial court dismissed the Complaint on the ground of failure to state a cause of action.[12] Also, the heirs of Borromeo did not have a right of action because they were unable to establish their status as heirs of the late Eusebio Borromeo.[13] They may have declared themselves the legal heirs of Eusebio Borromeo, but they did not present evidence to prove their allegation.[14] Further, the determination of their rights to succession must be established in special proceedings.[15]

The trial court also ruled that "[t]he sale was null and void because it was within the five (5) year prohibitionary [sic] period"[16] under the Public Land Act.[17] The defense of indefeasibility of title was unavailing because the title to the property stated that it was "subject to the provisions of Sections 118, 119, 121, 122 and 124"[18] of the Public Land Act.[19] Since the property was sold within the five-year prohibitory period, such transfer "result[ed] in the cancellation of the grant and the reversion of the land to the public domain."[20]

As to the defense of in pari delicto, the trial court ruled against its applicability,[21] citing *Egao v. Court of Appeals (Ninth Division)*.[22]

> The rule of *pari delicto non oritur action* (where two persons are equally at fault neither party may be entitled to relief under the law), admits of exceptions and does not apply to an inexistent contract, such as, a sale void *ab initio* under the Public Land Act, when its enforcement or application runs counter to the public policy of preserving the grantee's right to the land under the homestead law.[23] (Citation omitted)

The trial court further held that since the sale was null and void, no title passed from Eusebio Borromeo to Eliseo Maltos.[24] The dispositive portion of the trial court's Decision states:

> WHEREFORE, for lack of merit, the complaint under

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11 Id. at 112.
12 Id.
13 Id.
14 Id. at 112–113.
15 Id. at 113–114.
16 Id. at 114.
17 Id. at 114–115. The Public Land Act referred to is Com. Act No. 141 (1936).
18 Id. at 115.
19 Id.
20 Id. at 116.
21 Id. at 117.
22 256 Phil. 243 (1989) [Per J. Padilla, Second Division].
23 Id. at 252.
24 *Rollo*, p. 118, Regional Trial Court Decision.

> consideration is hereby ordered DISMISSED. No pronouncement as to costs.
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> SO ORDERED.[25]

On appeal, the heirs of Borromeo argued that they were able to prove their status as heirs through the testimony of their mother, Norberta Borromeo.[26]

The heirs of Borromeo also argued that the trial court should have ordered the "revival of [Original Certificate of Title] No. P-9053 in the name of the Heirs of EUSEBIO BORROMEO."[27]

The Court of Appeals[28] reversed the Decision of the trial court and held that since Eusebio Borromeo sold his property within the five-year prohibitory period, the property should revert to the state.[29] However, the government has to file an action for reversion because "reversion is not automatic."[30] While there is yet no action for reversion instituted by the Office of the Solicitor General, the property should be returned to the heirs of Borromeo.[31] The dispositive portion of the Court of Appeals' Decision states:

> **WHEREFORE,** premises considered, the instant Appeal is **GRANTED.** The Decision of the court *a quo* in Civil Case No. 946 is hereby **SET ASIDE** and another one is entered (1) ordering Appellee ELISEO MALTOS to reconvey the property subject matter of this litigation to Appellants upon the refund by the latter to Appellee ELISEO MALTOS the sum of P36,863.00, all expenses for the reconveyance to be borne by the buyer, ELISEO MALTOS, herein Appellee and (2) ordering the Register of Deeds of Prosperidad, Agusan del Sur to cancel TCT No. T-5477 and revive OCT No. P-9053.
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> Let a copy of this Decision be furnished the Office of the Solicitor General (OSG) for its information and appropriate action and to inform this court within a period of thirty (30) days from receipt hereof of the action done under the premises.
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> SO ORDERED.[32] (Emphasis supplied)

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25 Id.
26 Id. at 26–28, Court of Appeals Decision.
27 Id. at 30.
28 Id. at 21–35. The Decision was penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Romulo V. Borja (Chair) and Ricardo R. Rosario of the Court of Appeals Mindanao Station, Cagayan de Oro City, Twenty-second Division.
29 Id. at 31.
30 Id.
31 Id. at 32.
32 Id. at 33–34.

The Maltos Spouses filed a Motion for Reconsideration, arguing that since the prohibition on transfers of property is provided by law, only the heirs of Borromeo should be punished.[33] Punishment, in this case, would come in the form of preventing the heirs of Borromeo from re-acquiring the land.[34] Instead, the land should revert back to the state.[35] The Maltos Spouses also prayed that they be reimbursed for the improvements they introduced on the land.[36] Assuming that they would be found to be also at fault, the principle of in pari delicto should apply.[37]

The Court of Appeals[38] denied the Motion for Reconsideration,[39] reasoning that it could not rule on the issue of who between the parties had the better right to the property.[40] Also, it was the government who should decide whether the heirs of Borromeo "should retain ownership of the land."[41] With regard to the applicability of the in pari delicto doctrine, the Court of Appeals held that in pari delicto does not apply in cases where its application will violate the policy of the state.[42]

On May 10, 2006, the Maltos Spouses filed a Petition[43] for Review before this court, questioning the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 77142.[44]

This court, in a Resolution[45] dated July 5, 2006, required the heirs of Borromeo to file their Comment.

The heirs of Borromeo filed their Comment,[46] which was noted by this court in a Resolution[47] dated September 25, 2006. In the same Resolution, this court required the Maltos Spouses to file their Reply.[48]

In a Resolution[49] dated March 28, 2007, this court required Attys. Ma. Cherell L. De Castro and Gener C. Sansaet, counsels for the Maltos Spouses,

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33 Id. at 36, Court of Appeals Resolution.
34 Id.
35 Id.
36 Id. at 38.
37 Id. at 36–37.
38 Id. at 36–38. The Resolution was penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Romulo V. Borja (Chair) and Ricardo R. Rosario of the Court of Appeals Mindanao Station, Cagayan de Oro City, Twenty-second Division.
39 Id. at 38.
40 Id. at 37.
41 Id.
42 Id., *citing Arsenal v. Intermediate Appellate Court*, 227 Phil. 36, 51 (1986) [Per J. Gutierrez, Jr., Second Division].
43 Id. at 3–20.
44 Id. at 18.
45 Id. at 41.
46 Id. at 42–46.
47 Id. at 48.
48 Id.
49 Id. at 50.

to show cause why they should not be disciplinarily dealt with for their failure to file a Reply. They were also required to comply with the Resolution dated September 25, 2006.[50]

Counsels for the Maltos Spouses filed a Compliance,[51] together with the Reply.[52] In a Resolution[53] dated August 15, 2007, this court noted and accepted the Compliance, and also noted the Reply.

I

The Maltos Spouses argue that the heirs of Borromeo did not present evidence to prove that they are indeed the heirs of Eusebio Borromeo. The heirs of Borromeo did not present the death certificate of Eusebio Borromeo, the marriage certificate of Eusebio Borromeo and Norberta Borromeo, or any of the birth certificates of the children of Eusebio.[54] While Norberta Borromeo and two of her children testified,[55] their testimonies should be considered as self-serving.[56] The Maltos Spouses cite Article 172[57] of the Family Code, which enumerates how filiation may be established.[58]

The Maltos Spouses also contest the Court of Appeals' ruling stating that they did not rebut the testimonies of the heirs of Borromeo because they continuously argued that the heirs of Borromeo were unable to prove their status as heirs.[59]

The Maltos Spouses further argue that it was error for the Court of Appeals not to apply the in pari delicto rule, considering that the sale violated Section 118[60] of the Public Land Act.[61] Since both parties are at fault, it follows that Article 1412[62] of the Civil Code applies.[63]

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50 Id.
51 Id. at 51–52.
52 Id. at 51–63.
53 Id. at 66.
54 Id. at 8, Petition.
55 Id. at 99–105, Regional Trial Court Decision. The trial court states that Norberta Borromeo, Armando Borromeo, and Susan Borromeo Morales testified.
56 Id. at 8, Petition.
57 FAMILY CODE, art. 172 provides:
ARTICLE 172. The filiation of legitimate children is established by any of the following:
(1) The record of birth appearing in the civil register or a final judgment; or
(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.
In the absence of the foregoing evidence, the legitimate filiation shall be proved by:
(1) The open and continuous possession of the status of a legitimate child; or
(2) Any other means allowed by the Rules of Court and special laws.
58 *Rollo*, p. 55, Compliance.
59 Id. at 10, Petition.
60 Com. Act No. 141 (1936), sec. 118 provides:
SECTION 118. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become

In addition, the Maltos Spouses pray for the reimbursement of the value of the improvements on the property to prevent unjust enrichment on the part of the heirs of Borromeo.[64] The Maltos Spouses enumerate the following circumstances to show why they should be reimbursed:

> a. EUSEBIO has already long received and enjoyed the amount of the purchase price of the subject land from petitioners.
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> b. The value of the purchase price of PHP36,863.00 paid in 1983 have since then greatly depreciated. If petitioners had deposited that money in bank or loaned it to another person instead of purchasing EUSEBIO's property, it would have at least earned some interest. However, the Court of Appeals incorrectly assumed that the return of the purchase price would be sufficient compensation to the petitioners.
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> c. The value of the improvements introduced by petitioners on the subject property is much greater than the purchase price that they initially paid on the land. Petitioners estimate the value of the improvements, including hundreds of various fruit-bearing trees and four residential houses, to be at least PHP900,000.00. Because of these improvements, not only can respondents sell the land at a much higher price, they can even sell the improvements and profit from them. It would be the height of injustice if all the petitioners would receive in turning over the subject property to the respondents is the purchase price that was previously paid EUSEBIO under the deed of sale.[65]

On the other hand, the heirs of Borromeo argue that the testimonies of Norberta Borromeo and Susan Borromeo Morales on their relationship to Eusebio Borromeo were not refuted by the Maltos Spouses. Thus, they were able to prove their status as heirs.[66]

The heirs of Borromeo also argue that the in pari delicto rule is not applicable because in *Santos v. Roman Catholic Church of Midsayap, et*

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liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

61 *Rollo*, p. 13, Petition.

62 CIVIL CODE, art. 1412 provides:
ART. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:
(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

63 *Rollo*, p. 13, Petition.

64 Id. at 17–18.

65 Id.

66 Id. at 42–43, Comment.

al.,[67] this court stated that the in pari delicto rule does not apply if its application will have the effect of violating public policy.[68]

With regard to the claim for reimbursements, the heirs of Borromeo argue that the Maltos Spouses did not raise their claim for reimbursement in their Answer to the Complaint. They are now barred from claiming reimbursement since this was not raised at the first instance.[69]

Based on the arguments of the parties, the issues for resolution are:

First, whether the Court of Appeals erred in reversing the Decision of the trial court and ordering the reconveyance of the property from petitioners Spouses Eliseo Maltos and Rosita Maltos to respondents heirs of Eusebio Borromeo;

Second, whether the Court of Appeals erred in not applying the doctrine of in pari delicto; and

Finally, whether the Court of Appeals erred in ruling that petitioners Spouses Eliseo Maltos and Rosita Maltos are not entitled to reimbursement for the improvements they introduced on the land.

II

The five-year period prohibiting the sale of land obtained under homestead or free patent is provided under Section 118 of the Public Land Act, which states:

> SECTION 118. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

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67 94 Phil. 405, 410–411 (1954) [Per J. Bautista Angelo, En Banc].
68 *Rollo*, pp. 43–44, Comment.
69 Id. at 44.

The reason for prohibiting the alienation or encumbrance of properties covered by patent or grant was explained in *Metropolitan Bank and Trust Company v. Viray*.[70]

In *Metropolitan Bank,* Edgardo D. Viray and his wife contracted several loans with Metrobank which they failed to pay.[71] Metrobank filed a Complaint for sum of money before the Regional Trial Court in Manila.[72] In 1982, during the pendency of the case, free patents over three parcels of land were issued in favor of Viray.[73] The Complaint for sum of money was decided in 1983 in favor of Metrobank.[74] In 1984, the trial court issued a writ of execution over the parcels of land.[75] An auction sale was held, and Metrobank emerged as the winning bidder.[76] Viray filed an action for annulment of sale.[77] This court ruled that the auction sale was made within the five-year prohibitory period[78] and explained that:

> [T]he main purpose in the grant of a free patent of homestead is to preserve and keep in the family of the homesteader that portion of public land which the State has given to him so he may have a place to live with his family and become a happy citizen and a useful member of the society. In *Jocson v. Soriano*, we held that the conservation of a family home is the purpose of homestead laws. The policy of the state is to foster families as the foundation of society, and thus promote general welfare. . . .
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> Section 118 of CA 141, therefore, is predicated on public policy. Its violation gives rise to the cancellation of the grant and the reversion of the land and its improvements to the government at the instance of the latter. The provision that "nor shall they become liable to the satisfaction of any debt contracted prior to that expiration of the five-year period" is mandatory and any sale made in violation of such provision is void and produces no effect whatsoever, just like what transpired in this case. Clearly, it is not within the competence of any citizen to barter away what public policy by law seeks to preserve.[79] (Citations omitted)

In *Republic v. Court of Appeals*,[80] Josefina L. Morato applied for free patent over a parcel which was granted.[81] Morato mortgaged and leased a portion of the land within the five-year prohibitory period.[82] Later on, it

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70 627 Phil. 398 (2010) [Per J. Carpio, Second Division].
71 Id. at 400–401.
72 Id. at 401.
73 Id. at 402.
74 Id. at 401–402.
75 Id. at 403.
76 Id.
77 Id.
78 Id. at 406.
79 Id. at 407–408.
80 346 Phil. 637 (1997) [Per J. Panganiban, Third Division].
81 Id. at 641–642.
82 Id. at 642.

would also be discovered that Morato's land formed part of Calauag Bay.[83] The Republic filed a Complaint for cancellation of title and reversion of the parcel of land.[84] This court held that "lease" and "mortgage" were encumbrances on the parcel of land.[85] This court also discussed the policy behind the five-year prohibitory period:

> It is well-known that the homestead laws were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation. Pursuant to such benevolent intention the State prohibits the sale or encumbrance of the homestead (Section 116) within five years after the grant of the patent. After that five-year period the law impliedly permits alienation of the homestead; but in line with the primordial purpose to favor the homesteader and his family the statute provides that such alienation or conveyance (Section 117) shall be subject to the right of repurchase by the homesteader, his widow or heirs within five years. This section 117 is undoubtedly a complement of Section 116. It aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him. It would, therefore, be in keeping with this fundamental idea to hold, as we hold, that the right to repurchase exists not only when the original homesteader makes the conveyance, but also when it is made by his widow or heirs. This construction is clearly deducible from the terms of the statute.[86]

The effect of violating the five-year prohibitory period is provided under Section 124 of the Public Land Act, which provides:

> SECTION 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.

In this case, Section 101[87] of the Public Land Act is applicable since title already vested in Eusebio Borromeo's name. Both the trial court and the Court of Appeals found that the sale was made within the five-year prohibitory period. Thus, there is sufficient cause to revert the property in favor of the state. However, this court cannot declare reversion of the property in favor of the state in view of the limitation imposed by Section

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83 Id.
84 Id.
85 Id. at 647–649.
86 Id. at 649, *citing Pascua v. Talens*, 80 Phil. 792, 793–794 (1948) [Per J. Bengzon, En Banc].
87 Com. Act No. 141 (1936), sec. 101 provides:
SECTION 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth of the Philippines.

101 that an action for reversion must first be filed by the Office of the Solicitor General.

III

The doctrine of in pari delicto non oritur actio is inapplicable when public policy will be violated.

The in pari delicto rule is provided under Articles 1411 and 1412 of the Civil Code. Article 1411 pertains to acts that constitute criminal offenses, while Article 1412 pertains to acts that do not constitute criminal offenses. These provisions state:

> ART. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in pari delicto, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.
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> This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.
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> ART. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:
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> (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
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> (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfilment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

Santos involved the sale of a parcel of land within the five-year prohibitory period.[88] The Roman Catholic Church raised the defense of in pari delicto.[89] It was also argued by the Roman Catholic Church that the effect of the sale would be the reversion of the property to the state.[90] This court held that:

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88 *Santos v. Roman Catholic Church of Midsayap, et al.*, 94 Phil. 405, 406–407 (1954) [Per J. Bautista Angelo, En Banc].

89 Id. at 407.

90 Id.

> Section 124 of the Public Land Act indeed provides that any acquisition, conveyance or transfer executed in violation of any of its provisions shall be null and void and shall produce the effect of annulling and cancelling the grant or patent and cause the reversion of the property to the State, and the principle of *pari delicto* has been applied by this Court in a number of cases wherein the parties to a transaction have proven to be guilty of effected the transaction with knowledge of the cause of its invalidity. But we doubt if these principles can now be invoked considering the philosophy and the policy behind the approval of the Public Land Act. The principle underlying *pari delicto* as known here and in the United States is not absolute in its application. It recognizes certain exceptions one of them being when its enforcement or application runs counter to an avowed fundamental policy or to public interest. As stated by us in the Rellosa case, "*This doctrine is subject to one important limitation, namely, [']whenever public policy is considered advanced by allowing either party to sue for relief against the transaction.[']"*
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> The case under consideration comes within the exception above adverted to. Here appellee desires to nullify a transaction which was done in violation of the law. *Ordinarily the principle of pari delicto would apply to her because her predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality, but because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated. This right cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve."* We are, therefore, constrained to hold that appellee can maintain the present action it being in furtherance of this fundamental aim of our homestead law.[91] (Emphasis supplied, citations omitted)

The non-application of the in pari delicto rule where public policy would be violated has also been applied in other cases.

In *Pajuyo v. Court of Appeals*,[92] this court held that in pari delicto "is not [a]pplicable to [e]jectment [c]ases"[93] and cited *Drilon v. Gaurana*,[94] which discussed the policy behind ejectment cases:

> It must be stated that the purpose of an action of forcible entry and detainer is that, regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by

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91 Id. at 410–411. *See Eugenio v. Perdido, et al.*, 97 Phil. 41, 45 (1955) [Per J. Bengzon, En Banc], *Arsenal v. Intermediate Appellate Court*, 227 Phil. 36, 51–52 (1986) [Per J. Gutierrez, Jr., Second Division], *Egao v. Court of Appeals (Ninth Division)*, 256 Phil. 243, 252 (1989) [Per J. Padilla, Second Division], and *Binayug v. Ugaddan*, G.R. No. 181623, December 5, 2012, 687 SCRA 260, 274–275 [Per J. Leonardo-De Castro, First Division].

92 474 Phil. 557 (2004) [Per J. Carpio, First Division].

93 Id. at 584.

94 233 Phil. 350, 356 (1987) [Per J. Paras, Second Division].

> strong hand, violence or terror. In affording this remedy of restitution the object of the statute is to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims.[95]

This court elucidated that:

> Clearly, the application of the principle of *pari delicto* to a case of ejectment between squatters is fraught with danger. To shut out relief to squatters on the ground of *pari delicto* would openly invite mayhem and lawlessness. A squatter would oust another squatter from possession of the lot that the latter had illegally occupied, emboldened by the knowledge that the courts would leave them where they are. Nothing would then stand in the way of the ousted squatter from re-claiming his prior possession at all cost.
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> Petty warfare over possession of properties is precisely what ejectment cases or actions for recovery of possession seek to prevent. Even the owner who has title over the disputed property cannot take the law into his own hands to regain possession of his property. The owner must go to court.[96] (Citation omitted)

In *Loria v. Muñoz, Jr.*,[97] Carlos Loria asked Ludolfo Muñoz, Jr. "to advance [₱]2,000,000.00 for a subcontract of a [₱]50,000,000.00 river-dredging project in Guinobatan."[98] Loria informed Muñoz that the project would be awarded to Sunwest Construction and Development Corporation, and Sunwest would subcontract to Muñoz.[99] Muñoz agreed to Loria's proposal.[100] When the river-dredging project was finished, Loria did not return the ₱2,000,000.00 despite Muñoz's demand.[101] Muñoz filed a Complaint for sum of money.[102] Loria raised the argument that Muñoz "should not be allowed to recover the money"[103] since they were in pari delicto.[104] This court held that under the principle of unjust enrichment, the sum of money should be returned.[105] In so ruling, this court cited *Gonzalo v. Tarnate, Jr.*[106] where it was explained that:

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95 *Pajuyo v. Court of Appeals*, 474 Phil. 557, 585 (2004) [Per J. Carpio, First Division].
96 Id.
97 G.R. No. 187240, October 15, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/187240.pdf> [Per J. Leonen, Second Division].
98 Id. at 2.
99 Id.
100 Id.
101 Id. at 3.
102 Id.
103 Id. at 5.
104 Id.
105 Id. at 8–12.
106 G.R. No. 160600, January 15, 2014, 713 SCRA 224 [Per J. Bersamin, First Division].

> . . . the application of the doctrine of *in pari delicto* is not always rigid. An accepted exception arises when its application contravenes well-established public policy. In this jurisdiction, public policy has been defined as "that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good."
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> Unjust enrichment exists, according to *Hulst v. PR Builders, Inc.*, "when a person unjustly retains a benefit at the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The prevention of unjust enrichment is a recognized public policy of the State, for Article 22 of the Civil Code explicitly provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." It is well to note that Article 22 "is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as basic principles to be observed for the rightful relationship between human beings and for the stability of the social order; designed to indicate certain norms that spring from the fountain of good conscience; guides for human conduct that should run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice."[107]

As the in pari delicto rule is not applicable, the question now arises as to who between the parties have a better right to possess the subject parcel of land. This issue was addressed in *Santos*:

> What is important to consider now is who of the parties is the better entitled to the possession of the land while the government does not take steps to assert its title to the homestead. *Upon annulment of the sale, the purchaser's claim is reduced to the purchase price and its interest. As against the vendor or his heirs, the purchaser is no more entitled to keep the land than any intruder.* Such is the situation of the appellants. Their right to remain in possession of the land is no better than that of appellee and, therefore, they should not be allowed to remain in it to the prejudice of appellee during and until the government takes steps toward its reversion to the State.[108] (Emphasis supplied, citation omitted)

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[107] *Loria v. Muñoz, Jr.*, G.R. No. 187240, October 15, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/187240.pdf> 11 [Per J. Leonen, Second Division], *citing Gonzalo v. Tarnate, Jr.*, G.R. No. 160600, January 15, 2014, 713 SCRA 224, 233–234 [Per J. Bersamin, First Division].

[108] *Santos v. Roman Catholic Church of Midsayap, et al.*, 94 Phil. 405, 412 (1954) [Per J. Bautista Angelo, En Banc]. *See Eugenio v. Perdido, et al.*, 97 Phil. 41, 45 (1955) [Per J. Bengzon, En Banc], *Arsenal v. Intermediate Appellate Court*, 227 Phil. 36, 50–52 (1986) [Per J. Gutierrez, Jr., Second Division], *Egao v. Court of Appeals (Ninth Division)*, 256 Phil. 243, 253 (1989) [Per J. Padilla, Second Division], and *Binayug v. Ugaddan*, G.R. No. 181623, December 5, 2012, 687 SCRA 260, 275 [Per J. Leonardo-De Castro, First Division].

In *Binayug v. Ugaddan*,[109] which involved the sale of two properties covered by a homestead patent,[110] this court cited jurisprudence showing that in cases involving the sale of a property covered by the five-year prohibitory period, the property should be returned to the grantee.[111]

Applying the ruling in *Santos* and *Binayug*, this court makes it clear that petitioners have no better right to remain in possession of the property against respondents.

Hence, the Court of Appeals did not err in ruling that while there is yet no action for reversion filed by the Office of the Solicitor General, the property should be conveyed by petitioners to respondents.

III

Petitioners' argument that respondents failed to establish their status as heirs is belied by their admissions during trial and in their pleadings. Petitioners t know the identity of Eusebio Borromeo's wife. As quoted in the trial court's Decision, petitioners alleged in their Answer that:

> [I]t was the late Eusebio Borromeo and his wife who came along in Bayugan 2, San Francisco, Agusan del Sur, requesting the said defendants to purchase their land because they badly need money and notwithstanding the fact that they have a little amount and out of pity bought the said land.[112]

In the Reply, respondents alleged:

> The allegation that the late Eusebio Borromeo and his wife went to Bayugan II, San Francisco, Agusan del Sur in order to sell the land to the defendant Eliseo Maltos has no factual basis, the truth of the matter is that the late Eusebio Borromeo, together with defendant Eliseo Maltos went to Esperanza, Sultan Kudarat to secure the signature of the wife.[113]

In addition, when petitioner Eliseo Maltos was presented in court, he identified the signatures of the witnesses on the deed of sale as the signatures

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109 G.R. No 181623, December 5, 2012, 687 SCRA 260, 274–275 [Per J. Leonardo-De Castro, First Division].

110 Id. at 262.

111 Id. at 275–276, *citing Arsenal v. Intermediate Appellate Court*, 227 Phil. 36, 53 (1986) [Per J. Gutierrez, Jr., Second Division], *Menil v. Court of Appeals*, 173 Phil. 584, 592 (1978) [Per J. Guerrero, First Division], and *Manzano, et al. v. Ocampo, et al.*, 111 Phil. 283, 291 (1961) [Per J. J. B. L. Reyes, En Banc].

112 *Rollo*, p. 95, Regional Trial Court Decision.

113 Id. at 98.

of Eusebio Borromeo's children, namely, Susan, Ana, and Nicolas Borromeo.[114]

Respondents' allegation that they are the heirs of Borromeo is admitted by petitioners. Thus, the Court of Appeals did not err in ruling that "the fact that Appellants [referring to respondents] are the spouse and children of the late EUSEBIO remains unrebutted."[115]

IV

With regard to the claim for reimbursement, respondents argue that it was not raised as a counterclaim in the Answer to the Complaint.

During trial, petitioner Eliseo Maltos testified that when he entered the land, there were around 100 trees, including coconut trees and a few banana trees. He then planted additional coconut trees which, at the time of the trial, were already bearing fruit.[116] Petitioner Eliseo Maltos' testimony was not rebutted by respondents.

The general rule is that "[a] compulsory counterclaim . . . not set up shall be barred."[117] Further, the computation of the value of the improvements on the land entails findings of fact.

In any case, the Court of Appeals did not err when it stated in its Resolution dated April 7, 2006 that:

> With respect to Appellees' claim for the reimbursement of the improvements on the land in question, they are hereby declared to have lost and forfeited the value of the necessary improvements that they made thereon in the same manner that Appellants should lose the value of the products gathered by the Appellees from the said land.[118]

The Court of Appeals cited *Angeles, et al. v. Court of Appeals, et al.*[119] and *Arsenal v. Intermediate Appellate Court.*[120] In *Angeles,* this court discussed that:

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114 Id. at 108.

115 Id. at 30, Court of Appeals Decision.

116 Id. at 109, Regional Trial Court Decision.

117 RULES OF COURT, Rule 9, sec. 2 provides:
Rule 9. Effect of Failure to Plead
. . . .
SECTION 2. Compulsory Counterclaim, or Cross-Claim Not Set up Barred. — A compulsory counterclaim, or a cross-claim, not set up shall be barred.

118 *Rollo*, p. 38, Court of Appeals Resolution, *citing Angeles, et al. v. Court of Appeals, et al.*, 102 Phil. 1006, 1012 (1958) [Per J. Labrador, En Banc] and *Arsenal v. Intermediate Appellate Court*, 227 Phil. 36, 53 (1986) [Per J. Gutierrez, Jr., Second Division].

119 102 Phil. 1006 (1958) [Per J. Labrador, En Banc].

> The question that now poses is whether the return of the value of the products gathered from the land by the defendants and the expenses incurred in the construction of the dike—all useful and necessary expenses—should be ordered to be returned by the defendants to the plaintiffs. While we believe that the rule of in pari delicto should not apply to the sale of the homestead, because such sale is contrary to the public policy enunciated in the homestead law, the loss of the products realized by the defendants and the value of the necessary improvements made by them on the land should not be excepted from the application of the said rule because no cause or reason can be cited to justify an exception. It has been held that the rule of in pari delicto is inapplicable only where the same violates a well-established public policy.
>
> . . . .
>
> We are constrained to hold that the heirs of the homesteader should be declared to have lost and forfeited the value of the products gathered from the land, and so should the defendants lose the value of the necessary improvements that they have made thereon.[121]

In *Arsenal*, the property covered by a homestead patent had been sold to Suralta in 1957,[122] while the Complaint was filed before the trial court in 1974.[123] The case was decided by this court in 1986.[124] Thus, Suralta had been in possession of the property for approximately 17 years before a Complaint was filed. This court held that:

> The value of any improvements made on the land and the interests on the purchase price are compensated by the fruits the respondent Suralta and his heirs received from their long possession of the homestead.[125]

Angeles and *Arsenal* both involved the sale of a parcel of land covered by a homestead patent within the five-year prohibitory period. These cases also involved the introduction of improvements on the parcel of land by the buyer.

Restating the rulings in *Angeles* and *Arsenal*, this court finds that while the rule on in pari delicto does not apply if its effect is to violate public policy, it is applicable with regard to the value of the improvements introduced by petitioner Eliseo Maltos. Petitioners had been in possession of the land for 20 years before the heirs of Borromeo filed a Complaint. The

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120 227 Phil. 36 (1986) [Per J. Gutierrez, Jr., Second Division].

121 *Angeles, et al. v. Court of Appeals, et al.*, 102 Phil. 1006, 1011–1012 (1958) [Per J. Labrador, En Banc].

122 *Arsenal v. Intermediate Appellate Court*, 227 Phil. 36, 40 (1986) [Per J. Gutierrez, Jr., Second Division].

123 Id. at 42.

124 Id. at 36.

125 Id. at 53.

expenses incurred by petitioners in introducing improvements on the land for which they seek reimbursement should already be compensated by the fruits they received from the improvements.

V

Reversion is a remedy provided under Section 101 of the Public Land Act:

> SECTION 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth of the Philippines.

The purpose of reversion is "to restore public land fraudulently awarded and disposed of to private individuals or corporations to the mass of public domain."[126]

The general rule is that reversion of lands to the state is not automatic, and the Office of the Solicitor General is the proper party to file an action for reversion.

In *Villacorta v. Ulanday*,[127] defendant-appellee Vicente Ulanday admitted that his purchase of a parcel of land covered by a homestead patent was made within the five-year prohibitory period, but argued that since the sale was in violation of law,[128] the property should automatically revert to the state.[129] This court held that reversion was not automatic, and government must file an appropriate action so that the land may be reverted to the state.[130]

Ortega v. Tan[131] involved the sale and mortgage of a parcel of land covered by a free patent.[132] The series of transactions for the sale and mortgage of the property had been initiated within the five-year prohibitory period but was finalized after the prohibitory period.[133] This court held that

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126 *Estate of the Late Jesus S. Yujuico v. Republic*, 563 Phil. 92, 109 (2007) [Per J. Velasco, Jr., Second Division].
127 73 Phil. 655 (1942) [Per J. Ozaeta, En Banc].
128 The Public Land Act referred to in this case is Act No. 2874, as amended by Act No. 3517. Act No. 2874 (1919), sec. 122 is reproduced as Com. Act No. 141 (1936), sec. 124.
129 *Villacorta v. Ulanday*, 73 Phil. 655, 656 (1942) [Per J. Ozaeta, En Banc].
130 Id.
131 260 Phil. 371 (1990) [Per J. Paras, Second Division].
132 Id. at 373–374.
133 Id. at 377.

the sale and mortgage violated Section 118 of the Public Land Act and that reversion was proper.[134] This court also clarified that:

> [Reversion] is not automatic. The government has to take action to cancel the patent and the certificate of title in order that the land involved may be reverted to it. Correspondingly, any new transaction would be subject to whatever steps the government may take for the reversion to it.[135] (Citation omitted)

Alvarico v. Sola[136] involved a miscellaneous sales application over a parcel of land by Fermina Lopez.[137] Subsequently, Lopez executed a deed of self-adjudication and transfer of rights in favor of Amelita Sola.[138] The Bureau of Lands approved the transfer of rights, and title was issued in Sola's name.[139] Castorio Alvarico then filed an action for reconveyance, claiming that the parcel of land was donated to him.[140] He also alleged that Sola acquired the property in bad faith.[141] This court held that Alvarico's allegation of bad faith was not supported by evidence and that in any case, "only the State can institute reversion proceedings under Sec[tion] 101 of the Public Land Act."[142] This court restated Section 101 of the Public Land Act:

> [A] private individual may not bring an action for reversion or any action which would have the effect of canceling a free patent and the corresponding certificate of title issued on the basis thereof, such that the land covered thereby will again form part of the public domain. Only the Solicitor General or the officer acting in his stead may do so. Since [the] title originated from a grant by the government, its cancellation is a matter between the grantor and the grantee.[143] (Citations omitted)

The rule in *Alvarico* was cited in *Cawis, et al. v. Hon. Cerilles, et al.*[144] In *Cawis,* the validity of a sales patent and original certificate of title over a parcel of land in Baguio was questioned.[145] This court denied the Petition[146] and ruled that the Complaint was actually a reversion suit, which can be filed only by the Office of the Solicitor General or a person acting in its stead.[147]

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134 Id.
135 Id. at 379.
136 432 Phil. 792 (2002) [Per J. Quisumbing, Second Division].
137 Id. at 794.
138 Id.
139 Id. at 795.
140 Id.
141 Id. at 799.
142 Id.
143 Id. at 800.
144 632 Phil. 367, 375 (2010) [Per J. Carpio, Second Division].
145 Id. at 370–372.
146 Id. at 377.
147 Id. at 375.

It was also discussed in *Cawis* that:

> The objective of an action for reversion of public land is the cancellation of the certificate of title and the resulting reversion of the land covered by the title to the State. This is why an action for reversion is oftentimes designated as an annulment suit or a cancellation suit.[148]

We clarify that the remedy of reversion is not the same as the remedy of declaration of nullity of free patents and certificate of title. In reversion, the "allegations in the complaint would admit State ownership of the disputed land[,]"[149] while in an action for the declaration of nullity of free patent and certificate of title, the allegations would include "plaintiff's ownership of the contested lot prior to the issuance of [the] free patent and certificate of title[.]"[150]

Since an action for reversion presupposes that the property in dispute is owned by the state, it is proper that the action be filed by the Office of the Solicitor General, being the real party-in-interest.

There is, however, an exception to the rule that reversion is not automatic. Section 29 of the Public Land Act provides:

> SECTION 29. After the cultivation of the land has begun, the purchaser, with the approval of the Secretary of Agriculture and Commerce, may convey or encumber his rights to any person, corporation, or association legally qualified under this Act to purchase agricultural public lands, provided such conveyance or encumbrance does not affect any right or interest of the Government in the land: And provided, further, That the transferee is not delinquent in the payment of any installment due and payable. *Any sale and encumbrance made without the previous approval of the Secretary of Agriculture and Commerce shall be null and void and shall produce the effect of annulling the acquisition and reverting the property and all rights to the State, and all payments on the purchase price theretofore made to the Government shall be forfeited.* After the sale has been approved, the vendor shall not lose his right to acquire agricultural public lands under the provisions of this Act, provided he has the necessary qualifications. (Emphasis supplied)

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148 Id.

149 *Heirs of Kionisala v. Heirs of Dacut*, 428 Phil. 249, 260 (2002) [Per J. Bellosillo, Second Division]. *See Tancuntian v. Gempesaw*, 483 Phil. 459, 467 (2004) [Per J. Corona, Third Division] and *Evangelista v. Santiago*, 497 Phil. 269, 289 (2005) [Per J. Chico-Nazario, Second Division].

150 Id.

In *Francisco v. Rodriguez, et al.*,[151] this court differentiated reversion under Sections 29 and 101 of the Public Land Act.[152] This court explained that reversion under Section 29 is self-operative, unlike Section 101 which requires the Office of the Solicitor General to institute reversion proceedings.[153] Also, Section 101 applies in cases where "title has already vested in the individual[.]"[154] The Director of Lands sought to execute the Decision in *Francisco v. Rodriguez* which petitioner Ursula Francisco opposed, arguing that only 29 hectares were reverted to the state since she was in possession of the remaining four hectares.[155] This court held that the entire property reverted to the state.[156] This court also explained why *Francisco v. Rodriguez* was covered by Section 29 and not Section 101 of the Public Land Act:

> By transgressing the law, i.e., allowing herself to be a dummy in the acquisition of the land and selling the same without the previous approval of the Secretary of Agriculture and Natural Resources, plaintiff-appellant herself [referring to Ursula Francisco] has eliminated the very source (Sales Application) of her claim to Lot No. 595, as a consequence of which, she cannot later assert any right or interest thereon. This is the imperative import of the pronouncements in G.R. No. L-8263 and in G.R. No. L-15605 that the invalidity of the conveyance by plaintiff-appellant "produced as a consequence the reversion of the property with all rights thereto to the State." As a matter of fact, Section 29 of the Public Land Law (Commonwealth Act No. 141) expressly ordains that any sale and encumbrance made without the previous approval of the Secretary of Agriculture and Natural Resources "shall be null and void and shall produce the effect of annulling the acquisition and reverting property and all rights thereto to the State, and all payments on the purchase price theretofore made to the Government shall be forfeited." . . . .
>
> In fact, even if a sales application were already given due course by the Director of Lands, the applicant is not thereby conferred any right over the land covered by the application. It is the award made by the Director to the applicant (if he is the highest bidder) that confers upon him a certain right over the land, namely, "to take possession of the land so that he could comply with the requirements prescribed by law." It is at this stage, when the award is made, that the land can be considered "disposed of by the

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151 116 Phil. 764 (1962) [Per J. Regala, En Banc]. This case involved the sales application of Ursula Francisco which was denied by the Bureau of Lands and the Secretary of Agriculture because she allowed herself to be used as a dummy. (Id. at 765) Francisco, through counsel Atty. Rodriguez, filed a motion for reconsideration. (Id.) It appears that during the pendency of the motion for reconsideration, Francisco conveyed a portion of the property to Atty. Rodriguez in exchange for a sum of money. (Id. at 766) This court held that the conveyance to Atty. Rodriguez was null and void and the property reverted to the state. (Id. at 769) The parties claimed that an action for reversion should first be instituted, as provided under Section 101. (Id. at 770) This court then clarified that reversion under Section 29 is self-operative. (Id.)

152 Id. at 769–770.

153 Id. at 770.

154 Id.

155 *Francisco v. Rodriguez*, 160-A Phil. 354, 360 (1975) [Per J. Martin, First Division].

156 Id. at 362.

> Government," since the aforestated right of the applicant has the effect of withdrawing the land from the public domain that is "disposable" by the Director of Lands under the provisions of the Public Land Act. . . . However, the disposition is merely provisional because the applicant has still to comply with the requirements prescribed by law before . . . any patent is issued. After the requisites of the law are complied with by the applicant to the satisfaction of the Director [of] Lands, the patent is issued. It is then that the land covered by the application may be considered "permanently disposed of by the Government."[157] (Citations omitted)

In this case, a free patent over the subject parcel of land was issued to Eusebio Borromeo. This shows that he already had title to the property when he sold it to petitioner Eliseo Maltos. Thus, Section 101 of the Public Land Act applies.

WHEREFORE, the Petition is denied, and the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 77142 are **AFFIRMED**, without prejudice to the appropriate institution of a case for reversion.

Let a copy of this Decision be furnished the Office of the Solicitor General for its appropriate action with respect to the reversion of the land in question.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

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[157] Id. at 362–364.

JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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