she had brought for the purpose of asking the Court to fix the reasonable rental and the period of extension of the lease contract, the rental demanded by the plaintiff being speculative and excessive (civil case No. 21897); that the parcel of land the possession of which the plaintiff seeks to recover is part of the Hacienda of Santa Mesa and Diliman; and that pursuant to Republic Act No. 1162 all detainer cases had to be suspended until expropriation proceedings are terminated, provided the current rentals are paid by the tenant. Upon these premises she prayed for the dismissal of the complaint or suspension of the proceedings in the detainer case and for any other just and equitable relief. After trial, on 1 October 1955 the Court of First Instance of Manila rendered judgment which, aside from reiterating what the Municipal Court had adjudged, ordered the defendant Carmen Preysler vda. de Garriz to remove from the parcel of land her improvement or construction thereon. Her motion for reconsideration and/or new trial having been denied on 27 October 1955, she appealed to the Court of Appeals. The appeal was certified to this Court, because the appellee Teresa Realty, Inc., in objecting to the appellant's motion to suspend the detainer proceedings under the provisions of Republic Act No. 1599, had raised the question of constitutionality and applicability of the statute. On 7 November 1956 this Court returned the case to the Court of Appeals for the latter to ascertain the number of houses built on the leased parcel of land which was necessary for the determination as to whether the case would come under Republic Act No. 1599. Pursuant to this directive, the Court of Appeals designated its Deputy Clerk Esperidion M. Ventura as commissioner to receive evidence on such number of houses built thereon. On 5 August 1958 the commissioner rendered a report that more than 50 houses were on the tract of land belonging to the plaintiff, or, as admitted by the assistant manager of the Teresa Realty, Inc., there were about 460 tenants, and that 53 tenants, he had interviewed, had, in their own right or together with their predecessors-in-interest, occupied their respective parts of the tract of land for more than ten years before Republic Act No. 1599 was approved. On November 1958 the Court of Appeals again certified the case to this Court.

The appellant contends that the trial court erred in not suspending the detainer proceedings against her and in ordering her to vacate the lot leased by her and predecessors-in-interest since 3 June 1910 and to pay a monthly rental equivalent to 12% of assessed value of the parcel of land. According to her, the requisites of section 1 of Republic At No. 1599, namely, that the parcel of land in litigation (1) be part of a landed estate or hacienda—the former Hacienda de Santa Mesa y Diliman in Manila; (2) had been leased for at least ten years; and (3) that the landed estate had more than fifty houses of tenants, are present; hence the law invoked by her applies and the detainer proceedings against her should have been suspended as provided for in section 5 of Republic Act No. 1599. Said section partly provides:

> From the approval of this Act, and even before the commencement of the expropriation herein provided, ejectment proceedings against any tenant or occupant of any landed estates or haciendas or lands herein authorized to be expropriated, shall be suspended for a period of two years, upon motion of the defendant, if he pays his current rentals, x x x.

The appellant"s contention cannot be sustained. The authority granted by section 1 of Republic Act No. 1599, approved on 17 June 1956, amending Republic Act No. 1162, which took effect on 18 June 1954, to expropriate "landed estates or haciendas, or lands which formerly formed part thereof, in the City of Manila, which are and have been leased to tenants for at least ten years," "Provided, That such lands shall have at least fifty houses of tenants erected thereon," does not mean that once these conditions or requisites are present, Republic Act No. 1599 or Republic Act No. 1162 would readily be applied. Before either Act together with the remedies therein provided, such as suspension of detainer proceedings, installment payment of rentals, or maximization of rentals, could be availed of, it is necessary that proceedings for the expropriation of the parcel of land must have been instituted.(1) Otherwise, the law could not be availed of. In the case at bar, the parcel of land subject of the litigation is not being expropriated.

The rental of ₱225.40 a month, which is 12% per annum of the assessed value of the parcel of land involved herein, is reasonable.(2)

The judgment appealed from is affirmed, with costs against th appellant.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

J.B.L. Reyes, J., took no part.

VIII

Godofredo Navera, petitioner vs. Hon. Perfecto Quicho, etc., et al., respondents G. R. No. L-18339, June 29, 1962, Bautista Angelo, J.

1. REGISTRATION OF LANDS; PUBLIC HIGHWAY IS EXCLUDED FROM THE TITLE.— Under Section 39, Act No. 496, Land Registration Law, any public highway, even if not noted on a title, is deemed excluded as a legal lien or encumbrance in the registered land.

2. ID.; INCLUSION BY MISTAKE OF A LAND WHICH CANNOT LEGALLY BE REGISTERED DOES NOT MAKE APPLICANT OWNER THEREOF.— A person who obtains a title which includes by mistake a land which cannot legally be registered does not by virtue of such inclusion become the owner of the land erroneously included therein. But this theory only holds true if there is no dispute that the portion to be excluded is really part of a public highway. This principle only applies if there is unanimity as to the issue of fact involved.

3. ID.; CORRECTION OF CERTIFICATE OF TITLE UNDER SECTION 112 OF ACT 496 (Land Registration Act); WHEN PETITION CANNOT BE GRANTED.— The claim of the municipality that an error has been committed in the survey of the lot recorded in respondent's name by including a portion of the Natera Street is not agreed to by petitioner. In fact, he claims that that is a question of fact that needs to be proven because it is controversial. There being dissension as to an important question of fact, the petition cannot be granted under Section 112 of Act No. 496.

4' ID.; ID.; JURISDICTION OF LAND REGISTRATION COURT TO MAKE CORRECTION IN CERTIFICATE OF TITLE; ORDINARY COURT.—While Section 112 of Act No. 496, among other things, authorizes a person in interest to ask for any erasure, alteration, or amendment of a certificate of title "upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased', and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs.

DECISION

On January 24, 1961, the municipality of Ligao filed with the Court of First Instance of Albay a petition under Section 112 of Act No. 496, as amended, for the correction of Transfer Certificate of Title No. T-9304 issued in the name of Godofredo Navera, covering Lot No. 2793-A, on the ground that a portion of 123 sq. m. was erroneously included in said title during the cadastral survey of Ligao.

Navera filed a motion to dismiss based on the ground that the relief which petitioner seeks to obtain cannot be granted under Section 112 of Act 496 because the same would involve the opening of the original decree of registration. He contends that, under

(1) Teresa Realty, Inc. vs. Maxima Blouse de Potenciano, G.R. No. L-17588, 30 May 1962.
(2) Id.

said section, the court can only authorize an alteration which may not impair the rights recorded in the decree, or one which will not prejudice such rights, or one which is consented to by all parties concerned, or can authorize the correction of any error or mistakes which would not involve the reopening of the original decree of registration. Here the petition will have such effect, for it will involve the correction of the technical description of the land covered by the certificate of title in question, segregating therefrom the portion alleged to have been erroneously included, which eventually will cause the amendment of the original decree of registration. This cannot be done at this stage after the lapse of 23 years from the issuance of the certificate of title.

After hearing both parties, the court a quo issued an order denying the motion to dismiss and requiring Navera to answer the petition within the reglementary period. After this motion for reconsideration was denied, Navera filed the present petition for certiorari disputing the jurisdiction of the court *a quo*.

It is alleged by the municipality of Ligao that in the course of the construction or repair of Natera street of said municipality it was ascertained by a duly licensed surveyor that Lot No. 2793-A of the cadastral survey of Ligao has encroached upon said street by depriving the street of an area amounting to 123 sq. m. which was erroneously included in Lot No. 2793-A now covered by Transfer Certificate of Title No. T-9304 issued in the name of Godofredo Navera. Hence, the municipality prays for the correction of such error in the technical description of the lot, as well as in the certificate of title, with a view to excluding therefrom the portion of 123 sq. m. erroneously included therein.

The court *a quo*, over the objection of Navera, granted the petition even if the same was filed under Section 112 of Act No. 496. The court predicates its ruling upon the following *rationale*;

> "It is a rule of law that lands brought under the operation of the Torrens System are deemed relieved from all claims and encumbrances not appearing on the title. However, the law excepts certain rights and liabilities from the rule, and there are certain burdens on the lands registered which continue to exist and remain in force, although not noted on the title, by express provisions of Section 39 of Act No. 496, as amended. Among the burdens on the land registered which continue to exist, pursuant to said Section 39, is 'any public highway, way, private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.' The principle involved here is that, if a person obtains a title under the Torrens System which includes by mistake or oversight a land which cannot be registered, he does not by virtue of such certificate alone become the owner of the land illegally included therein. In the case of Ledesma vs. Municipality of Iloilo, 49 Phil., 679, the Supreme Court laid down the doctrine that the inclusion of public highways in the certificate of title under the Torrens System does not thereby give to the holder of such certificate said public highways.' "

Petitioner Navera does not agree with this ruling, invoking in his favor what we stated in a recent case to the effect that, "the law authorizes only alterations which do not impair rights recorded in the decree, or alterations which, if they do not prejudice such rights, are consented to by all parties concerned, or alterations to correct obvious mistakes, without opening the original decree of registration" (Director of Lands v. Register of Deeds, G. R. No. L-4463, promulgated March 31, 1953). Navera contends that the purpose of the instant petition is not merely to correct a clerical error but to reopen the original decree of registration which was issued in 1937, and this is so because the petition seeks to direct the register of deeds to make the necessary correction in the technical description in order that the portion erroneously included may be returned to the municipality of Ligao. In effect, therefore, the petition does not seek merely the correction of a mistake but the return or reconveyance of a portion of a registered property to respondent. This cannot be done without opening the original decree of registration.

The theory entertained by the court *a quo* that if the portion to be segregated was *really* erroneously included in the title issued to petitioner because it is part of the Nadera street which belongs to the municipality of Ligao that portion may be excluded under Section 112 of Act 496 because under the law[1] any public highway, even if not noted on a title, is deemed excluded therefrom as a legal lien or encumbrance, is in our opinion correct. This is upon the principle that a person who obtains a title which includes by mistake a land which cannot legally be registered does not by virtue of such inclusion become the owner of the land erroneously included therein.[2] But this theory *only* holds true if there is no dispute that the portion to be excluded is really part of a public highway. This principle *only* applies if there is unanimity as to the issue of fact involved.

Here said unanimity is lacking. The claim of the municipality that an error has been committed in the survey of the lot recorded in respondent's name by including a portion of the Natera street is not agreed to by petitioner. In fact, he claims that that is a question of fact that needs to be proven because it is controversial. There being dissension as to an important question of fact, the petition cannot be granted under Section 112 of Act No. 496.

> "We are of the opinion that the lower court did not err in finding that it lacks jurisdiction to entertain the present petition for the simple reason that it involves a controversial issue which takes this case out of the scope of Section 112 of Act No. 496. While this section, among other things, authorizes a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title 'upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased, and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs. x x x" (Tangunan, et al. v. Republic of the Philippines, G. R. No. L-5545, December 29, 1953; *See also* Jimenez v. De Castro, 40 O.G. No. 3, 1st Supp. p. 80; Government of the Philippines v. Jalandoni, 44 O. G., 1837)

Wherefore, petition is granted. The order of respondent court dated March 8, 1961, as well as its order dated March 25, 1961, are hereby set aside. No costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

IX

People of the Philippines, Plaintiff-appellee vs. Emiterio Villanueva, Pedro Percal and Felix Jasmilona, Defendants-appellants, G.R. No. L-12687, July 31, 1962, Bengzon, C.J.

1. CRIMINAL LAW; CONSPIRACY; WHEN MAY EXTRA-JUDICIAL CONFESSION OF ONE CONSPIRATOR BE CONSIDERED AS PART OF THE EVIDENCE AGAINST PARTIES CONCERNED.—The rule is that where the recitals in the extra-judicial confession of one of the conspirators are corroborated in its important details by other proofs in the record, it may considered as part of the evidence against the parties concerned.

2. ID.; CONFESSION; AS EVIDENCE AGAINST THE ACCUSED MAKING THE CONFESSION; HEARSAY EVIDENCE AGAINST HIS CO-DEFENDANTS; EXCEPTIONS.—While a confession is against him but not against his co-defend-

[1] Section 39, Act 496.
[2] Ledesma v. Municipality of Iloilo, 49 Phil. 709.