in a registration or cadastral case does not become final and incontrovertible until the expiration of one year after the entry of the final decree; that as long as the final decree is not issued and the period of one year within which it may be reviewed has not elapsed, the decision remains under the control and sound discretion of the court rendering the decree, which court after hearing, may set aside the decision or decree and adjudicate the land to another party.

Jose C. Colayco for oppositor-appellant.
Jesus V. Arboleda and Ildefonso M. Bleza for petitioner-appellee.

D E C I S I O N

MONTEMAYOR, J.

The Court of First Instance of Mindoro acting as cadastral court and after hearing Cadastral Case No. 2 G.L.R.O. Cad. Record No. 216, rendered a decision dated April 29, 1921, adjudicating cadastral lots to those entitled thereto. Lot No. 768 with its improvements was adjudicated to the brothers, Victoriano, Felix and Agustin, all surnamed CAPIO, in equal parts.

On January 7, 1947, about twenty-six years later, Victoriano Capio, one of the three brothers filed in the Mindoro court a petition asking for the reopening of the cadastral case and the setting aside of that part of the decision adjucating Lot No. 768 to him and to this two brothers Felix and Agustin for the reason that according to him, said lot was, during the cadastral hearing, claimed only by himself and by no others, not even by his two brothers; that the lot really belonged to him and his wife exclusively and that the adjudication made by the cadastral court was through an error. After considering said petition as well as the opposition thereto filed by Fernando Capio, the only heir of petitioner's brother, Felix and inasmuch the trial court found that the decree for said lot 768 was not issued until November 1, 1949, and also because the oppositor did not deny the allegations of the petition for the reopening of the case, the lower court, according to it, to avoid the miscarriage of justice, ordered the reopening of the case at the same time declaring null and void the decision of April 29, 1921, with respect to lot No. 768. It set the hearing on said lot during the May calendar. All this was contained in the court order dated February 28, 1950.

Oppositor Fernando Capio filed a motion for reconsideration of the order. Acting upon said motion and the answer thereto filed by Victoriano, the Mindoro court set the said motion for reconsideration for hearing stating that at the hearing evidence may be presented in order to properly establish the issues and also for the parties to support their allegations.

On September 2, 1950, the lower court issued an order which we reproduce below.

"O R D E R

"This is a motion for the reconsideration of the order of this Court dated February 28, 1950.

"This motion was set for hearing in order to receive any evidence which the parties might present in support of their contentions. The movant did not appear while the oppositor was allowed to present his evidence.

"Considering the motion for reconsideration and the opposition thereto together with the evidence presented by the oppositors, the court finds no justification in reconsidering its order of February 28, 1950 and therefore denies the same for lack of sufficient merits.

"IT IS ORDERED."

The order of February 28, 1950, above referred to is the order declaring null and void the decision of the cadastral court dated April 29, 1921, as regards lot No. 768 and setting said lot for hearing. Later, on October 20, 1950, the trial court finally issued the following order.

"O R D E R

"Petition for postponement of the hearing of this case set for the 28th instant is hereby granted. The court, however, believes that there is no necessity of having this case set for hearing anew because the records of this case clearly show that on September 2, 1950, when the motion for reconsideration was called for hearing in order to receive any evidence which the parties might present in support of their contentions, the petitioner did not appear while the oppositor was allowed to present his evidence.

"The Court after considering the motion for reconsideration and the opposition thereto together with the evidence presented by the oppositor, finds no justification in reconsidering its order of February 28, 1950 and therefore denied the same for lack of sufficient merits.

"WHEREFORE, the order of this Court dated September 2, 1950, denying the motion for reconsideration of the order of this court dated February 28, 1950, is hereby affirmed and maintained.

"IT IS SO ORDERED."

Appellant Fernando Capio is now appealing from this last order of October 20, 1950.

In numerous decisions, some of the latest being Afallo and Pinaroc v. Rosauro, 60 Phil. 622 and Valmonte v. Nable, G. R. No. L-2842, December 29, 1949, 47 O. G. 2917, we have held that the adjudication of land in a registration or cadastral case does not become final and incontrovertible until the expiration of one year after the entry of the final decree; that as long as the final decree is not issued and the period of one year within which it may be reviewed has not elapsed, the decision remains under the control and sound discretion of the court rendering the decree, which court after hearing, may set aside the decision or decree and adjudicate the land to another party.

In the present case, at the time the petition for review was filed, the decree had not yet been issued. It is, therefore, clear that the petition was filed well within the period prescribed by law (Section 38, Land Registration Act). As to the merits of the petition, it would appear that during the hearing of the motion for reconsideration at which the oppositor did not appear and where petitioner Victoriano presented evidence, Victoriano testified and presented documents to show that this lot No. 768 was previously bought by Pedro Capio, father of the three brothers Victoriano, Felix and Agustin from one Mamerta Atienza who, before the sale had held it for about thirty years; that on April 26, 1920, his father Pedro sold the same land to one Alejandro Dris for ₱800.00; that on May 5, 1920, Victoriano Capio purchased from the vendee Dris 3/4 of the land for ₱600.00; and on October 29 of the same year Victoriano again bought the remainder from Dris for ₱350.00; that Victoriano was the only one who filed his claim in the cadastral proceedings for lot No. 768, and that at the hearing he was the only one who appeared and claimed the land. Furthermore, the petition for reopening of the case filed by Victoriano on January 7, 1947, bears the written conformity of his brother Agustin Capio, so that the only one opposing this petition is Fernando Capio, the only heir of his brother Felix Capio.

Finding the order appealed from to be in conformity with law, the same is hereby affirmed with costs against the appellant. We notice however from the order of the trial court of October 20, 1950, which we have reproduced above that it entertained the belief that there was no further need for a hearing as to the ownership of the lot No. 768, because said hearing had already been held and presumably the court was convinced that the lot properly belonged to petitioner Victoriano Capio. The record, however, shows that this hearing was held in connection with the motion for reconsideration. Moreover, said hearing was held in the absence of oppositor Fernando Capio, he perhaps believing that it was not a trial on the merits of the case. The trial court is therefore directed to hold a regular and formal hearing of the case with notice to both parties where evidence as to the ownership, possession, etc. of the lot and its improvements may be presented and thereafter a decision shall be rendered.

Paras, C.J., Pablo, Bengzon, Pudilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, J.J., concur.

XIII

Flaviana Acuña and Eusebia Diaz, plaintiffs-appellants, vs. Furukawa Plantation Company, dependant-appellee, G. R. No. L-5833, October 22, 1953

1. CIVIL PROCEDURE; DECLARATORY RELIEF; IMPROPER ACTION. — F company is the registered owner of a large tract of land in the province of Davao. This tract of land was turned over to the NAFCO for administration and disposition. Among those favored with an allocation were A and her daughter, two homesteaders within the area covered by F company's

plantation title. They however turned down their allocation, claiming that they were entitled to the whole area occupied by them — some 31 hectares. When this claim was denied they brought action against the company in the Court of First Instance of Davao. What A and her daughter appear to claim is that while the land occupied by them as homestead is embraced in F company's torrens title the improvements thereon are expressly excluded therefrom, being among those noted down in the Torrens certificate as properties belonging to other persons. HELD: A and daughter are not merely asking for a determination of defendant's certificate of titles. What they want is to have that certificate amended by having their names inscribed thereon as owners of the improvements existing on the homestead occupied by them but registered in defendant's name. This is a remedy that can be granted only under the Land Registration Act and is, therefore, not within the scope and purpose of an action for declaratory relief as contemplated in Rule 66. If plaintiffs' first cause of action is to succeed, it must be formulated by proper petition in the original case where the decree of registration was entered, and with notice to all persons whose rights might be affected by the proposed amendment to the certificate of title.

It may be stated that an amendment of that kind is not barred by the incontestability of defendant's Torren's title, since this contains a special reservation with respect to improvements to the persons.

II. CIVIL CODE; RIGHT OF OWNER OF IMPROVEMENTS MADE IN OTHER'S LAND. — Since A and daughter are asking the defendants be compelled to cede to them the land covered by their homestead it should be noted that Article 361 of the Civil Code (Art. 448) of the new Civil Code gives "the owner of land on which anything has been built, sown, or planted, in good faith," the right "to appropriate the thing so built, sown, or planted, upon paying the compensation mentioned in Articles 453 and 454, or to compel the person who has built or planted to pay him the proper rent therefor." But the article invoked does not give plaintiffs, as owners of the improvements, the right to compel defendant, as registered owner of the land, to cede to them, by sale or otherwise, the land in question. Under the article, it is the owner of the land that has the right to choose between acquiring the improvements and selling the land. An action predicated on the assumption that the option may be exercised by the owner of the improvements is clearly without legal basis.

Quimpo & Kimpo and *Remedios A. Ponferrada* for appelants.
Antonio Habana, Jr. for appellee.

D E C I S I O N

REYES, J.:

The Furukawa Plantation Company, a Philippine corporation, is the registered owner of large tract of land in the province of Davao, as evidenced by Original Certificate of Title No. 2768 (now Transfer Certificate of Title No. 276) of the land records of that province, issued more than 30 years ago. As a result of the last war, this tract of land was turned over to the NAFCO (National Abaca and Other Fibers Corporation) for administration and disposition and, together with other Japanese-owned properties in the province, distributed among war veterans and deserving civilians, each of whom was allocated five hectares pursuant to the directives of the President of the Philippines and the agreement entered into between the Philippine Veterans Legion and the NAFCO.

Among those favored with an allocation were Flaviana Acuña and her daughter Eusebia Diaz, two homesteaders within the area covered by the Furukawa Plantation Company's title, who, however, turned down their allocation, claiming that they were entitled to the whole area occupied by them — some 31 hectares — and, on this claim being denied, brought the present action against the company in the Court of First Instance of Davao. The complaint sets up three causes of action and alleges that plaintiffs are the widow and daughter, respectively of Roman Diaz, deceased, who, as a homestead applicant, was, on August 18, 1914, granted by the Director of Lands a provisional permit to occupy and clear 31.79 hectares of public land in sitio Calanitoi, municipality of Santa Cruz, Davao province; that since then, Roman Diaz and (after his death) plaintiffs themselves have been cultivating and improving the said land, planting it to coconut and other fruit trees and food crops, and building thereon two residential houses; that, through fraud and strategy, defendant was able to include the said land and the improvements thereon in its certificate of title, though acknowledging plaintiffs' right thereto under a general annotation on the certificate which says: "Except those herein expressly noted as belonging to other persons;" that as defendant's certificate of title does not give the names of those "other persons," it is necessary that plaintiffs "be expressly declared and (their names) annotated" as among the persons referred to; and that defendant and its agents have been abetting its overseer and other persons in occupying plaintiffs' coconut plantation and committing depredations thereon to the damage and prejudice of said plaintiffs. Plaintiffs, therefore, pray that they be declared to be "among those persons noted as owners of the improvements included in (defendant's) Transfer Certificate of Title No. 276;" that defendant be made to cede to them the 31.79 hectares of land on which the improvements owned by them stand; and that defendant be made to pay damages and, together with those acting under its authority, enjoined from "committing further acts of dispossession and despoliation" on the homestead.

Before answering the complaint, defendant moved that it be dismissed, and the court granted the motion on the grounds that the complaint did not state a cause of action, that plaintiffs' action had already prescribed, and that the court had no jurisdiction over the subject matter thereof. From the order of dismissal plaintiffs appealed to the Court of Appeals, but that court has certified the case here because of the nature of the questions involved.

For a proper resolution of these questions, it should be stated at the outset that despite the allegation of "fraud and strategy" in the procurement of defendant's title, the validity or incontestability of that title does not appear to be in issue, and in any event the title has already become indefeasible because of the more than 30 years that have elapsed since the decree of registration was entered. What plaintiffs appear to claim is that, while the land occupied by them as homestead is embraced in defendant's Torrens title, the improvements thereon are expressly excluded therefrom, being among those noted down in the Torrens certificate as properties belonging to other persons. On this hypothesis, plaintiffs are asking for three specific remedies, namely: (1) to have their names inscribed in defendant's certificate of title as owners of said improvements; (2) to have defendant cede to them the land on which the improvements stand; and (3) to have defendant pay damages for depredations committed on plaintiffs' coconut plantation by persons acting under defendant's authority and to have a writ issue to enjoin "further acts of dispossession and despoliation."

With respect to the first remedy, which is the subject of the first cause of action and which plaintiffs seek to obtain through an action for declaratory relief under Rule 66 of the Rule of Court, we note that plaintiffs are not merely asking for a determination of their rights through a judicial interpretation of defendant's certificate of title. What they want is to have hat certificate amended by having their names inscribed thereon as owners of the improvements existing on the homestead occupied by them but registered in defendant's name. (1) This is a remedy that can be granted only under the Land Registration Act and is, therefore, not within the scope and purpose of an action for declaratory relief as contemplated in Rule 66. If plaintiffs' first cause of action is to succeed, it must be formulated by proper petition in the original case where the decree of registration was entered, and with notice to all persons whose rights might be affected by the proposed amendment to the certificate of title. (2) It may be stated that an amendment of that kind is not barred by the incontestability of defendant's Torren's title, since this contains a special reservation with respect to improvements belonging to other persons.

The second remedy — which is the objective of plaintiffs' second cause of action — is sought to be attained through an action for "specific performance." But it is obvious that an action of that kind will not lie, since plaintiffs are not seeking the fulfillment of any contract. What they ask for is that defendant be made to cede to them the land covered by their homestead and for that they invoke Article 361 of the old Civil Code (Article 448 of the new) which gives "the owner of land on which anything has been built, sown, or planted, in good faith," the right "to appropriate the thing so built, sown, or planted, upon paying the compensation mentioned in Articles

453 and 454, or to compel the person who has built or planted to pay him the value of the land, and the person who sowed thereon to pay the proper rent therefor." But the article invoked does not give plaintiffs, as owners of the improvements, the right to compel defendant, as registered owner of the land, to cede to them, by sale or otherwise, the land in question. Under the article, it is the owner of the land that has the right to choose between acquiring the improvements and selling the land. An action predicated on the assumption that the option may be exercised by the owner of the improvements is clearly without legal basis.

On the assumption that plaintiffs are the owners of the improvements on the land occupied by them and that defendant's men or those acting under its authority are committing depredations thereon, there can be no question that plaintiffs should be entitled to the remedy sought in their third cause of action, that is, to have the depredations stopped and indemnity paid for damages suffered. We note, however, that the complaint does not identify and delimit the land on which plaintiffs' improvements stand, the complaint being for that reason defective.

To summarize, it is our conclusion that (1) plaintiffs may not in the present case ask for the remedy sought in their first cause of action, for the reason that an amendment to a Torrens certificate of title may be had only in the original case where the decree of registration was entered; (2) plaintiffs' second cause of action is untenable; and (3) plaintiffs' complaint is defective with respect to the property sought to be protected by a writ of injunction.

Wherefore, the order of dismissal is affirmed with respect to the first and second causes of action, and modified as to the third in the sense that this cause of action shall be deemed definitely dismissed if the complaint is not properly amended within ten days from the time this decision becomes final. Without costs.

Paras, Bengzon, Tuazon, Jugo, Pablo, Padilla; Montemayor; Labrador and Bautista Angelo, concur.

XIV

Cebu Portland Cement Company, petitioner, vs. Hon. Vicente Varela et al., respondents, G. R. No. L-5438, September 29, 1953.

CIVIL PROCEDURE; UNLAWFUL DETAINER; EXECUTION OF JUDGMENT PENDING APPEAL FOR FAILURE TO DEPOSIT THE MONTHLY RENTS DUE TO FRAUD, ERROR OR EXCUSABLE NEGLIGENCE. — On November 16, 1950, V, General superintendent of C Co., was dismissed and retired with gratuity by the company's board of directors. The labor union to which he belonged took the case to the CIR which rendered a resolution finding his dismissal unjustifiable and ordering his reinstatement in office with full back pay. The resolution was brought before the Supreme Court for review. Because V refused to leave the company house which as the general superintendent he was entitled to occupy free of charge, the company brought a suit against him for illegal detainer in the JP court which rendered judgment ordering him to vacate the premises and pay a monthly rental of ₱100.00 from November 16 of that year. B appealed to the CFI. In the CFI the company had an order issued for a writ of execution but the order was lifted on October 8, 1951 following the filing of the supersedeas bond for ₱1,500.00 which answered not only the rents already due (₱1,000.00) but also those that were still to become due (*los alquileres devengados y los por devengar*")

On December 7, 1951, the company was again able to secure a writ of execution because of V's failure to make a cash deposit for the rents corresponding to September and October of that year. V moved for a reconsideration, deposited ₱400 to cover four months rental and called attention to the fact that the question of his separation from the company was still pending with the CIR on December 29, 1951. The court issued an order suspending the writ of execution on the grounds that V's right to continue occupying the premises depended upon the result of the case in the CIR which had not yet been decided, that his bond for ₱1,500 was answerable for the rents up to the final determination of the case, and that the deposit of ₱400 to cover rents up to and including December 1951 negatived any intention on his part to enjoy the occupancy of that house without any rent. A motion to lift the order of suspension having been denied, the company petitioned for certiorari and mandamus asking that the said order be annulled as having been issued without jurisdiction and that a writ issue commanding the judge below to lift the stay of execution. HELD: Courts of the first instance in detainer cases are authorized to grant execution upon appellant's failure to deposit the monthly rents on time during the pendency of the appeal. But this Court has already ruled that execution may be denied where the delay in making the deposit was due to fraud, error or excusable negligence. (Bantug vs. Roxas, 73 Phil. 13; Gunaan vs. Rodas, 44 Off. Gaz., 4927; Yu Phi Khim vs. Amparo, 47 Off. Gaz., Supp. 12, 98). In the present case, the deposit was late, but the lower court has excused the delay as being due to an honest belief that the supersedeas bond covered both past and future rents — as therein expressly stipulated — and that, after all, appellant's right to remain in office and enjoy its emoluments, including free quarters, was still pending determination in the Court of Industrial Relations. The lower court, in our opinion, acted with justice and equity and only followed the precedent established in the cases above-cited when it rendered the resolution herein complained of.

Fortunato V. Borromeo and *Jesus N. Borromeo* for petitioner.
Alonso & Alonso and *Emilio Lumontad* for respondents.

D E C I S I O N

REYES, J.:

On November 16, 1950, Felix V. Valencia, general superintendent of the Cebu Portland Cement Company, was dismissed and retired with gratuity by the company's board of directors. Contesting his dismissal, the labor union to which he belonged took the case to the Court of Industrial Relations, and that court, under date of July 8, 1952, rendered its resolution, finding Valencia's dismissal unjustified and ordering his reinstatement in office with full backpay and "with all the privileges and emoluments thereunto attached x x x." That resolution is now before this Court for review, but it is not the subject of the present petition for certiorari and mandamus, and is here mentioned only because of its bearing on the case.

The present case arose as a consequence of the company's attempt to oust Valencia from the company house which as general superintendent he was entitled to occupy free of charge. Because Valencia refused to leave the house despite his removal from office, the company brought suit against him for illegal detainer in the Justice of the Peace Court of Naga, Cebu, and that court, on August 20, 1951, rendered judgment ordering him to vacate the premises and pay a monthly rental of ₱100.00 from November 16 of that year. Valencia appealed to the Court of First Instance, the appeal being perfected on September 12, 1951 with the filing of the appeal bond on that date.

Once the case was in the Court of First Instance, the company had an order issued for a writ of execution, but the order was lifted on October 8, 1951, following the filing of a supersedeas bond for ₱1,500.00. Ordinarily such bond answers only for rents due at the time of the perfection of the appeal. But in the present case the bond, in express terms, guarantees not only the rents already due (₱1,000.00), but also those that were still to become due ("*los alquileres devengados y los por devengar*").

On December 7, 1951, the company was again able to secure a writ of execution because of Valencia's failure to make a cash deposit for the rents corresponding to September and October of that year. Valencia moved for a reconsideration, deposited ₱400.00 to cover four months' rent and called attention to the fact that the question of his separation from the company was still pending in the Court of Industrial Relations. Acting on this motion, the court issued its order of December 29, 1951, suspending the writ of execution on the grounds that Valencia's right to continue occupying the premises depended upon the result of the case in the Industrial Court, which had not yet been decided, that his supersedeas bond for ₱1,500.00 was answerable for the rents up to the final determination of the case, and that the deposit of ₱400.00 to cover rents up to and including December, 1951, negatived any intention on his part to enjoy the occupancy of the house without paying any rent. A motion to lift this order of suspension having been denied, the company brought