

**ST. PETER MEMORIAL PARK, INC. (NOW HIMLAYANG PILIPINO, INC.)
AND BANCO FILIPINO SAVINGS & MORTGAGE BANK,
PETITIONERS, VS. REGINO CLEOFAS AND LUCIA DE LA CRUZ,
RESPONDENTS.**

G.R. No. L-47385. July 30, 1979

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an appeal on questions of law from the decision of the Court of First Instance of Rizal, Branch IV, Quezon City, in Civil Case No. Q-15001 entitled "Regino Cleofas and Lucia de la Cruz, Plaintiffs, versus, St. Peter Memorial Park, Inc., et al." dated March 19, 1977 reviving and reinstating the decision in said case dated May 2, 1973 and ordering the defendant corporation, St. Peter Memorial Park, Inc., to pay to the plaintiffs the amount of P40,000.00 as damages and the amount of P10,000.00 as attorney's fees, and the costs.[1]

In an amended complaint filed in the Court of First Instance of Rizal at Quezon City by Regino Cleofas and his mother, Lucia de la Cruz, against the St. Peter Memorial Park, Inc., Basilisa Roque, Francisco Bautista, Araceli Wijangco del Rosario, National Investment and Development Corporation, Banco Filipino, Register of Deeds of Rizal, Register of Deeds of Quezon City and the Sheriff of Quezon City, the plaintiffs prayed that they be declared the rightful owners and entitled to the possession of Lot 719 of the Piedad Estate located in Quezon City, and sought the cancellation of the titles thereto now appearing in the name of defendant St. Peter Memorial Park, Inc., as well as the titles from which the same were derived, and sought to recover damages.

The defendants contended that the title to the property in question in the name of defendant St. Peter Memorial Park, Inc. is unassailable, the antecedent ownership thereof being traceable to Original Certificate of Title No. 614 in the name of the Government of the Philippine Islands.

The plaintiffs, respondents herein, also filed a petition for reconstitution of the title of Antonio Cleofas to Lot No. 719. The petition was consolidated with the action to recover possession of said lot.

The evidence of the plaintiffs, respondents herein, shows that a certificate of title was issued over Lot No. 719 in favor of Antonio Cleofas, who together with his wife, possessed and occupied the said land until 1945 when Antonio Cleofas died; that the certificate of title in the name of Antonio Cleofas was burned; and that the efforts of the plaintiffs, respondents herein, to reconstitute said title, resulted in the discovery of the existence of Transfer Certificate of Title No. 21893 over the same property the names of Aniceto Martin and Trino Narciso.

After trial on the merits, Judge Jose Campos rendered a decision dated May 2, 1973, the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING, it is hereby declared that the plaintiffs are the rightful owners of Lot 719 of the Piedad Estate and are en-titled to possession of the same; that Transfer Certificate of Title No. 21893 issued by the defendant Register of Deeds of Rizal is declared null and void, and the following Transfer

Certificates of Title Nos. 32258 issued by defendant Register of Deeds of Rizal cancelling TCT No. 21893; 12360 issued by defendants Register of Deeds of Quezon City, cancelling TCT No. 32258; 74978 in the name of defendant Araceli Wijangco del Rosario issued by defendant Register of Deeds of Quezon City and a transfer from TCT No. 12360; 98115, 130328 and 131768 in the name of defendant Basilisa Roque-Bautista and in the name of defendant corporation which are all mortgaged to the defendant Bank, and all issued by defendant Register of Deeds of Quezon City; are hereby declared null and void and are deemed cancelled and of no effect. The plaintiffs' petition for reconstitution of their lost title having been consolidated with this case, the same is hereby granted, and the Register of Deeds of Quezon City is directed to reconstitute plaintiffs' title on Lot 719, Piedad Estate, based on all available records and other data appearing in said registry of property.

It is further ordered that as prayed for the defendant corporation St. Peter Memorial Park, Inc., and the defendants Francisco M. Bautista and Basilisa Roque pay jointly and severally to the plaintiffs the amount of P40,000.00 as damages and the amount of P10,000.00 as Attorney's fees; plus costs.

SO ORDERED.

Quezon City, Philippines, May 2, 1973."[2]

The defendants filed a motion for new trial on the ground of newly discovered evidence consisting of documents to show that Exhibit "A", Sheet 15 of Original Certificate of Title No. 614, referred to Lot No. 640 and not to the land in question, Lot No. 719.

The motion for new trial was denied.

The St. Peter Memorial Park, Inc. filed with the Supreme Court a petition for certiorari and prohibition to set aside the order of the trial court denying the motion for new trial and to direct the said court to conduct a new trial. The petition was docketed as G.R. No. L-38280 which was consolidated with G.R. No. L-39905.

On March 21, 1975, the Supreme Court promulgated a decision in G.R. No. L-38280 and G.R. No. L-39905, the dispositive part of which reads:

"WHEREFORE, PREMISES CONSIDERED, the petitions in L-38280 and L-39905 are granted, the orders of February 5, 1974 and July 8, 1974 are hereby declared null and void and set aside, and both cases are remanded to the trial court for new trial, pursuant to the motion to that effect of both Banco Filipino and Memorial Park, dated June 30, 1973, which is hereby granted. Costs against private respondents."[3]

Pursuant to the foregoing decision of the Supreme Court, the defendants in Civil Case No. Q-15001 introduced the newly discovered evidence tending to show that Sheet 15 of Original Certificate of Title No. 614 (Exhibit "A") referred to Lot No. 640 and not to Lot No. 719.

After the termination of the new trial, the Court of First Instance of Rizal, Branch IV, Quezon City, then presided by Judge Ricardo P. Tensuan, rendered a decision dated March 19, 1977, the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING, the Decision dated May 2, 1973 is hereby revived and reinstated, and it is hereby declared that the (1) plaintiffs are the rightful owners of Lot 719 of the Piedad Estate and are entitled to possession of the same; that Transfer Certificate of Title No. 21893 issued by the defendant Register of Deeds of Rizal is declared null and void, and the following Transfer Certificate of Title Nos. 32258 issued by defendant Register of Deeds of Rizal cancelling TCT Nos. 21893; 12360 issued by defendant Register of Deeds of Quezon City, cancelling TCT Nos. 32258; 74978 in the name of the defendant Araceli Wijangco del Rosario issued by defendant Register of Deeds of Quezon City and a transfer from T.C.T. Nos. 12360, 98115, 130328 and 131768 in the name of defendant Basilisa Roque-Bautista and in the name of defendant corporation which are all mortgaged to the defendant Bank, and all issued by defendant Register of Deeds of Quezon City; are hereby declared null and void and are deemed cancelled and of no effect. The plaintiffs'

petition for reconstitution of their lost title having been consolidated with this case, the same is hereby granted and the Register of Deeds of Quezon City is directed to reconstitute plaintiffs' title on Lot 719, Piedad Estate, based on all available records and other data appearing in said registry of property.

(2) It is further ordered that as prayed for, the defendant corporation St. Peter Memorial Park, Inc., pay to the plaintiffs the amount of P40,000.00 as damages and the amount of P10,000.00 as attorney's fees; plus costs.

SO ORDERED.

Quezon City, Metro Manila, March 19, 1977."[4]

The defendants in Civil Case No. Q-15001 filed a motion for reconsideration dated April 27, 1977 which was opposed by the plaintiffs. The trial court denied the motion for reconsideration in the following order:

"Considering the Motion for Reconsideration dated April 27, 1977 and the Opposition thereto dated May 12, 1977 as well as the Reply to Opposition to Motion for Reconsideration dated June 27, 1977, the Court reiterates that:

a) Actions for the recovery of possession of property registered under the Torrens system are imprescriptible and not barred by laches, and the doctrine with respect to constructive trusts, as stated in the J. M. Tuazon and Alzona cases, does not apply to the case herein.

b) 'If it is, indeed, true that Antonio Cleofas has never been awarded Lot 719, no assignment thereof by the same Antonio Cleofas can be said to have the effect of now vesting ownership of Lot 719 in defendant Memorial Park. Nemo dat quod non habet.' (Decision, p. 10, 1st paragraph).

WHEREFORE, for LACK OF MERIT, the Motion for Reconsideration dated April 27, 1977 is hereby DENIED.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1977.

RICARDO P. TENSUAN

Judge "[5]

The defendants, St. Peter Memorial Park, Inc. (now Himlayang Pilipino) and Banco Filipino, Savings and Mortgage Bank, filed with the trial court the following notice of appeal:

"COME NOW the defendants, ST. PETER MEMORIAL PARK, INC. (now HIMLAYANG PILIPINO, INC.) and BANCO FILIPINO, Savings & Mortgage Bank through undersigned counsel and to this Honorable Court most respectfully manifest their intention to appeal, as they hereby appeal the Decision dated March 19, 1977, as well as the Order dated June 30, 1977, of this Honorable Court to the Supreme Court on the ground that only errors of law are involved, and that the value in controversy is P11,727,466.37 (Annex 'D', Petition for Certiorari & Prohibition With Preliminary Injunction, G.R. No. L-38280, 63 SCRA 180).

That a cash appeal bond of P120.00 is herein posted as evidenced by Official Receipt No. 2072346-W dated July 25, 1977.

Manila for Quezon City, July 22, 1977."[6]

Upon receipt of the records of the case, the Supreme Court issued a resolution dated November 21, 1977 which reads:

"UDK-3345 (St. Peter Memorial Park, Inc., et al. vs. Regino Cleofas, et al.). - It appearing that the records of this case were forwarded to this Court by the Court of First Instance of Rizal, Branch IV, in view of the appeal

interposed by the defendants and that R.A. 5440 is applicable as only questions of law are raised, the Court Resolved to require the defendants to PAY the docket and legal research fund fees and to FILE petition for review on certiorari, filing and serving the same in the form required for petitions for review on certiorari of the decisions of the Court of Appeals, both within fifteen (15) days from notice hereof."[7]

It is clear that only questions of law may be raised in the present appeal.

St. Peter Memorial Park, Inc. assigns the following errors:

"I

THE TRIAL COURT ERRED IN DISREGARDING THE DECISION OF THE HONORABLE COURT IN G.R. NOS. L-38280 AND 39905.

"II

THE CONCLUSIONS DRAWN BY THE TRIAL COURT FROM THE EVIDENCE OF RECORD ARE ERRONEOUS.

"III

THE TRIAL COURT ERRED IN SHIFTING THE BURDEN OF PROOF ON PETITIONER-APPELLANT ST. PETER MEMORIAL PARK, INC.

"IV

THE TRIAL COURT ERRED IN HOLDING THAT EXHIBIT 'A' (SHEET 15 OF OCT NO. 614) PREVAILS OVER THE TCT OF PETITIONER-APPELLANT ST. PETER MEMORIAL PARK, INC.

"V

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE CAUSE OF ACTION OF RESPONDENTS-APPELLEES CLEOFAS HAD ALREADY PRESCRIBED.

"VI

THE TRIAL COURT ERRED IN NOT HOLDING THAT RESPONDENTS-APPELLEES CLEOFAS ARE GUILTY OF LACHES AND BARRED BY ESTOPPEL; AND

"VII

THE TRIAL COURT ERRED IN AWARDING DAMAGES AND ATTORNEY'S FEES TO RESPONDENTS-APPELLEES CLEOFAS."[8]

The facts, as found by the trial court after the new trial, are:

"A review of the evidence initially adduced before the court then presided over by the former trial judge, in relation with the newly discovered evidence introduced during new trial, would now be in order.

The single undisputed fact is that Lot 719 of the Piedad Estate forms part of the land covered by Original Transfer Certificate of Title No. 614 of the Registry of Deeds of Rizal, in the name of the Government of the Philippine Islands. Plaintiffs have been consistent in their contention that Lot 719 belongs to them in ownership, as heirs of Antonio Cleofas, original awardee of said lot the title to which in the name of said predecessor in interest is said to have been burnt in a fire in 1933. Defendant Memorial Park, however, claims

to have derived its title to Lot 719 through a series of transfers ultimately traced back to an alleged assignment made by Antonio Cleofas on July 15, 1921 over Sales Certificate No. 923 in favor of Aniceto Martin and Trino Narciso. Otherwise stated, defendant Memorial Park initially seems to have anchored the validity of its title to Lot 719, on antecedent ownership thereof by Antonio Cleofas, on the strength of Sales Certificate No. 923 in favor of said Antonio Cleofas dated March 20, 1909.

In the newly discovered evidence adduced by defendant Memorial Park during new trial, however, said defendant appears to have drastically shifted its position, in that the main thrust of said newly discovered evidence would tend to establish that Antonio Cleofas is the awardee of Lot 640 of the Piedad Estate as evidenced by Deed No. 18562 dated August 10, 1929, as well as by the resultant Transfer Certificate of Title No. 15694 covering the same Lot 640. As a corollary, it is argued that Sheet 15 of Original Certificate of Title No. 614, must have referred not to Lot 719 as claimed by plaintiffs, but to Lot 640, as allegedly fortified by the notarial register of Vicente Garcia (Exh. '10') and Deed No. 18652 (Exh. '11'). Pursued to its logical conclusion, defendant Memorial Park's stance during the new trial, which parenthetically is incompatible with its material allegations in its Answer, would undermine not only plaintiffs' claim to Lot 719, but also its claim thereto, since the validity of its claim to said Lot 719 is clearly predicated on a series of transactions traced back to an alleged assignment thereof purportedly made by Antonio Cleofas to Aniceto Martin and Trino Narciso in 1921. If it is, indeed, true that Antonio Cleofas has never been awarded Lot 719, no assignment thereof by the same Antonio Cleofas can be said to have the effect of now vesting ownership of Lot 719 in defendant Memorial Park. *Nemo dat quod non habet*.

The abrupt shift in the legal position of defendant Memorial Park, if taken at face value, could very well result in the perhaps absurd conclusion that neither plaintiffs, as heirs of Antonio Cleofas, nor defendant Memorial Park, as successor in interest of the same Antonio Cleofas, own the subject Lot 719 of the Piedad Estate. Whereas this Court accepts without reservation the observation of the Supreme Court that the newly discovered evidence constitutes 'documentary and official' proof of the sale to Antonio Cleofas of Lot 640 of the Piedad Estate, the exclusion thereby of the award and sale to him of Lot 719 under Sales Certificate No. 923 may not necessarily follow as an equally inescapable conclusion.

With no small measure of trepidation, this Court would venture the opinion that the apparent finding in the Supreme Court's decision of March 21, 1975 of the sale to Antonio Cleofas of Lot 640 but not of Lot 719 of the Piedad Estate would apply in a situation where said Antonio Cleofas can be or has been shown to have been sold only one lot from said estate. There is nothing in the evidence which would support such a situation. On the contrary, the possibility of Antonio Cleofas having been awarded and sold more than one lot from the Piedad Estate cannot be discounted from the testimony of Magno Francisco Mateo to the effect that there are several entries in the index card for names surnamed Cleofas, that he is not sure whether there are other titles in the name of Cleofas in volumes other than T-63 covering property likewise deriving from Original Certificate of Title No. 614; and that he has made a search for titles numbered only in five digits and beginning with 156. No less significant is the testimony of vault keeper Prospero Ponciano that even volume T-63 is incomplete, with almost all pre-war titles missing therefrom.

It behooves this Court, therefore, to further scrutinize the evidence on hand for adequate and satisfactory indicia of whether or not Antonio Cleofas has been awarded and sold both Lot 640 and Lot 719 of the Piedad Estate.

From the evidence can be gleaned the following: (a) The award to Antonio Cleofas of Lot 719 is covered by Sales Certificate No. 923; whereas Deed No. 18562 of Lot 640 in favor of Antonio Cleofas and four others, makes specific reference to 'S.C. 924', being an indubitable reference to Sales Certificate No. 924; (b) Sales Certificate No. 923 for Lot 719 is for an area of 21 hectares; whereas Deed No. 18562 for Lot 640 specifies an area of '1 hectare, 51 ares, and 13 centares'; (c) Sales Certificate No. 923 for Lot 719 is for a consideration of P676.00; whereas Deed No. 18562 sets forth a value of only P57.00. This constitutes compelling reason to conclude that Antonio Cleofas has, in fact, been awarded and sold not only Lot 640 but also Lot 719 of the

Piedad Estate. Moreover, the validity of defendant Memorial Park's title to said Lot 719, unequivocally stressed by witness Magno Francisco Mateo even during the new trial thereto, must hinge on the authenticity of the title thereto of Antonio Cleofas. The claimed assignment by Antonio Cleofas of Lot 719 to Aniceto Martin and Trino Narciso on July 15, 1921, and the resultant transfer culminating in title to Lot 719 now vested in defendant Memorial Park, can only serve to fortify a conclusion that Lot 640 is another parcel awarded to Antonio, Ruperto, Quintin, Romana and Dionisia, all surnamed Cleofas, as distinct and separate from Lot 719 awarded to Antonio Cleofas alone as evidenced by Sales Certificate No. 923. Finally, issuance of Transfer Certificate of Title No. 15694 covering Lot 640 in the names of Antonio Cleofas and four others, and the issuance of Transfer Certificate of Title No. 21893 in the names of Aniceto Martin and Trino Narciso as assignees of Antonio Cleofas in respect of Lot 719, are strongly confirmatory of the award and sale of Lot 719 to Antonio Cleofas as being separate and distinct from the award and sale of Lot 640 to Antonio Cleofas and four others. Whether Sheet 15 of Original Certificate of Title No. 614 containing an entry in the name of Antonio Cleofas relates to Lot 640 or to Lot 719, does not strike this Court as a matter of pivotal value, given the finding that Lot 640 appears to have been awarded to Antonio Cleofas as evidenced by Sales Certificate No. 924 as indicated in Deed No. 18562, and that Lot 719 likewise appears to have been awarded to the same Antonio Cleofas as evidenced by Sales Certificate No. 923.

While Sheet 15 of O.C.T. No. 614 has, in the opinion of this Court, lost much of its impact in terms of probative value, the Court is not prepared to disturb the findings of the then trial court that said sheet has reference to Lot 719 as awarded to Antonio Cleofas. More to the point, this Court is not convinced by the theory advanced by defendants during the new trial, the same being predicated on the assumption that Antonio Cleofas has been awarded only one lot, in the absence of a clear showing that such is the case. Additionally, assuming this Court were so inclined, a finding that the aforesaid Sheet 15 of O.C.T. No. 614 relates to Lot 640, which is not in dispute, would not be relevant to the determination of the ownership of Lot 719 of the Piedad Estate, which is and must remain the issue in this case.

In order to resolve the main issue of ownership of Lot 719 of the Piedad Estate, this Court must address its attention to the validity of the alleged assignment by Antonio Cleofas of Lot 719 to Aniceto Martin and Trino Narciso. This Court takes particular notice of the testimony of Bernardo Cantoria, an employee of the Registry of Deeds of Quezon City cited to appear before the court by virtue of a subpoena duces tecum. The records disclose that witness Cantoria has informed the court as follows:

'According to our available records in our office, we don't have those records called for in the subpoena duces tecum.'

Testifying under oath as directed by the then trial judge, witness Cantoria is on record as declaring:

ATTY. PICO:

Q - 'May we know if the documents also stated in the subpoena is with the Register of Deeds, namely the new declaration of real property dated March 12, 1935, and the deed of sale dated May 1, 1937 by Trino Narciso?'

A - 'We don't have those records 2 and 3.'

Q - 'We respectfully submit to this Honorable Court the originals of those documents under the subpoena duces tecum.'

COURT:

'How did it happen that you have them while the Register of Deeds don't have them?'

ATTY. PICO:

'Sometimes the Register of Deeds might have mislaid them. As in the case of Exh. 1-St. Peter Memorial Park,

Inc., your Honor, we have the original of Assignment Certificate of Sale No. 923 which we request that it be examined by the other party and we request that it be marked Exh. 1-St. Peter Memorial Park, Inc.'

COURT:

'Mark it Exhibit 1-St. Peter Memorial Park, Inc.' (pp. 158, 165, 166, T.S.N., Dec. 19, 1972).

From the foregoing, it is evident that defendants' evidence consists of original documents alleged to have been executed way back in 1921 and 1937, all in the possession of defendant Memorial Park and not in custody by the offices where these should ordinarily be.

Cited to bring the folder for Lot 719, Buensuceso Guido, an employee of the Bureau of Lands would have been dispensed with for non-availability of the document desired from the folder produced by him. On the stand to testify as to such non-availability of the document sought in the subpoena, witness Guido appears to have been unable to produce from the pertinent folder therefor, the subpoenaed Assignment of Sales Certificate No. 923 by Antonio Cleofas in favor of Martin and Narciso. Instead, the folder brought by witness Guido appears to have contained the original of Sales Certificate No. 923 for Lot 719 of Piedad Estate in favor of Antonio Cleofas. Significantly, the Assignment not found in the proper folder therefor, appears to have been in the possession, again, of defendant Memorial Park.

Yet another document not found in the proper office therefor, is Deed No. 25874 executed by the Bureau of Lands in favor of Aniceto Martin and Trino Narciso on May 9, 1932. So it is that of the vital documents supporting the chain of transactions leading to the title by defendant Memorial Park for Lot 719 of the Piedad Estate, the following appear not to have been with the proper custodians or repositories thereof, but rather in the possession of said defendant, namely: (a) the Assignment by Antonio Cleofas in favor of Aniceto Martin and Trino Narciso of Sales Certificate No. 923, dated July 15, 1921, covering Lot 719; (b) Deed No. 25874 executed by the Director of Lands in favor of Martin and Narciso, conveying Lot 719 to the latter, dated May 9, 1932; and (c) the Deed of Sale executed by Martin and Narciso in favor of Nazario Roque on May 1, 1937, in respect of said lot. These are facts of record which do not inspire the confidence of this court in respect to the reliability of the said document. Moreover, the established fact that the alleged assignment purportedly made by Antonio Cleofas on July 15, 1921 bears only a thumbmark although there is proof of his competence to sign, constitutes strong basis to support a conclusion that said alleged assignment is of spurious origin."^[9]

Inasmuch as this appeal is only on questions of law in accordance with Republic Act 5440, the petitioners may no longer assail the foregoing facts found by the trial court.

Thus, in Republic of the Philippines versus Director of Lands,^[10] the Supreme Court ruled:

"Those raising questions of fact are here and now dismissed summarily for the same reasons this Court had said before: ' . . . a direct appeal from the Court of First Instance to this Court binds appellants to the findings of fact of the trial court. Because he is deemed to have accepted the facts as found by the lower court. He may only raise questions of law.' Accordingly, the findings of fact of the court below in this case are final. They are not now open to questions."

Again, in National Brewery and Allied Industries Labor Union of the Philippines (PAFLU) versus San Miguel Brewery, Inc.,^[11] this Court said:

"1. The difficulty faced by appellant San Miguel Brewery, Inc. is obvious from the lone assignment of error, which would impugn the finding by the lower court that the suspension of appellee Sagarbarria was not for a just and proper cause. Even its phraseology would indicate that it is essentially factual. From the facts as found, it certainly is highly implausible and farfetched to characterize the suspension as being based on a just and proper cause. Rather, what is apparent is its arbitrary character. The facts simply cannot bear out the contention of appellant. What cannot be ignored is that the rule in direct appeals, as was reiterated in the recent

case of *City of Zamboanga v. Alvarez*, is that 'only questions of law may be raised.' The opinion goes on further to state: 'That was made clear in *Perez v. Araneta*. It cited thirty decisions to that effect. Then came *Flores v. Flores* which referred to twelve additional cases. A reaffirmance of such a doctrine last appeared in *Encinares v. Catig-hod*.' To the extent, therefore, that the lone assignment of error carries factual overtones, it need not be considered further by this Court."

And lately, on February 28, 1978, this Court held:

"The other point raised by the appellant - that the decision is not supported by competent evidence - refers to a question of fact. Considering that the amount demanded by the plaintiff, as appearing in his complaint, did not exceed P200,000.00 in order to vest jurisdiction in this Court to pass upon factual issues, the defendant, in bringing this case directly to this Court, is deemed to have waived his right to dispute the findings of fact of the court of origin which are final and binding upon this Court." [12]

The trial court did not disregard the decision of the Supreme Court in G.R. Nos. L-38280 and L-39905. What the Supreme Court said in its decision in the two (2) cases is:

"x x x Based on the incomplete data appearing on Exh. 'A', petitioner conducted a new search and discovered the evidence it now seeks to present in a new trial, indubitably showing that sheet 15 of OCT No. 614 refers to a title to Lot No. 640, and not to Lot 719 in the name of petitioner. If admitted in a new trial, these newly discovered evidence will probably alter the judgment of the trial court." [13]

This Court, however, immediately added that "In making the foregoing conclusions, we do not by any means intend to prejudge the effect of such evidence on the outcome of the case. We are confining ourselves to the conclusion that the evidence intended to be submitted, 'would probably alter the result.' " [14]

The ruling in *Libudan vs. Palma Gil*, 45 SCRA 17, cited by the petitioner, *St. Peter Memorial Park, Inc.*, in its brief is not applicable to the instant case. In *Libudan* there was a categorical finding that the 3-hectare land, the title to which was decreed on September 7, 1940 by the Court of First Instance of Davao in Registration Case No. 281, G.L.R.O. Rec. No. 51986, is the same parcel involved in Civil Case No. 458.

The trial court, in reinstating the original decision of Judge Jose Campos, made a painstaking review of the original evidence and the additional evidence. The trial court summarized and analyzed the newly discovered evidence thus:

"Remanded to this Court for new trial pursuant to the Supreme Court's decision in the two petitions aforementioned, defendants introduced the newly discovered evidence tending to establish that while Antonio Cleofas, plaintiff's predecessor in interest, did indeed own a parcel of land in the Piedad Estate, it was not Lot 719 but rather Lot 640 of the same Piedad Estate, which belonged in ownership to said Antonio Cleofas.

Witness Magno Francisco Mateo, Senior Vice-President of defendant Memorial Park, testified on why and how the intensive search for additional evidence was mounted after receipt of the decision adverse to defendant Memorial Park. He declared that during a series of discussions with company lawyers, an assumption was formulated that pertinent entries on Sheet 15 of Original Certificate of Title No. 614 (Exh. 'A'), a major portion of which was missing, referred to property other than Lot 719; that on this premise, they anchored their exhaustive research on three vital clues appearing on said sheet, namely:

- a. 'tary Vicente Garcia ..', believed to refer to Notary Public Vicente Garcia,
- b. 'Book T-63 ..', and
- c. 'and filed in T-No. 156 ..', believed to have two missing digits and to refer to the number of a transfer certificate of title;

that with Atty. Cris Valeriano of the National Bureau of Investigation, he located the notarial Registry of Vicente Garcia for 1929 at the Bureau of Archives; that he found an entry on page 97, No. 1977 relative to a sale between the government and 'Antonio Cleofas y hermanos' (Exh. '10' and '10-A'), and likewise located Deed No. 18562 (Exh. '11'), wherein for and in consideration of P57.00, the Friar Lands Division of the Bureau of Lands sold Lot 640 with an area of 1.5113 hectares to Antonio Cleofas, Ruperto Cleofas, Quintin Cleofas, Romana Cleofas and Dionisia Cleofas. Both Exhibits '10' and '11' were duly identified by witness Rosalina Concepcion, Chief of the Division of Archives, as exact xerox copies of their originals extant and on file in the National Archives. Witness Mateo further testified that a trip to the Registry of Deeds in Pasig, Rizal resulted in the location of ticklers for entry book T-63 involving a number of transfer certificates of title; that he found in a volume for title certificates numbered from 15600 to 15700, Transfer Certificate of Title No. 15694 (Exhibit '12') in the names of Antonio Cleofas, Ruperto Cleofas, Quintin Cleofas, Romana Cleofas and Dionisia Cleofas, covering Lot No. 640 of the Piedad Estate Subdivision. On cross-examination, witness Mateo reiterated the contention of validity of their title to Lot 719; he admitted, however, that after getting the tickler referring to T-63, he did not consider the other contents thereof and was not certain if there were other references similar to T-63 in the Cleofas index card. He admitted, further, that there were other writings in the Cleofas index card for Ruperto Cleofas and other names with the Cleofas surname; that he was not sure whether there were volumes other than entry book T-64; that the title search was limited to certificates of title with five digits, on the assumption that only two digits were missing. He did not secure either copy or a certification of any other Cleofas title other than that in book T-63. Finally, witness Mateo could not confirm whether the only titles derived from Original Certificate of Title No. 614 of the Piedad Estate were those contained in book T-63.

Prospero Ponciano, the vault-keeper in the office of the Register of Deeds of Rizal, was also presented as a witness for defendants. He produced a volume of transfer certificates of title for the series from No. 15501 to No. 15699. He admitted not having gone through the contents of said volume thoroughly and that the series of titles therein contained was not complete, and explained that being a new employee he had learned from older employees that almost all pre-war titles were lost. He did identify Transfer Certificate of Title No. 15694 (Exhibit '12'), in the names of Antonio, Ruperto, Quintin, Romana and Dionisia, all surnamed Cleofas.

Formally offered and admitted, together with the testimonies of Magno Francisco Mateo, Rosalina Concepcion and Prospero Ponciano, were the following additional documents, comprising the newly discovered evidence adduced during the new trial:

- a. Exh. '10' - page 97 of the Notarial Register of Vicente Garcia for the years 1929-1930;
- b. Exh. '10-A' - that portion of Exh. '10' covering document No. 1977 for Deed No. 18562, dated August 10, 1929;
- c. Exh. '11' - Deed No. 18562 of the Friar Lands Division of the Bureau of Lands, dated August 10, 1929, covering Lot 640 of the Piedad Estate; and
- d. Exh. '12' - Transfer Certificate of Title No. 15694 of the Registry of Deeds of Rizal, covering Lot 640 of the Piedad Estate Subdivision.

Defendant Banco Filipino adopted all the foregoing evidence offered and admitted for defendant Memorial Park."^[15]

As stated earlier, the findings of the trial court may not be assailed by the petitioners in the present appeal where only questions of law may be raised. The conclusions drawn by the trial court from the evidence on record are not erroneous.

The trial court did not shift the burden of proof to the petitioner-appellant, St. Peter Memorial Park, Inc.. In appreciating not only the newly discovered evidence but the original evidence of record, the trial court simply

found that the petitioners had failed to establish their affirmative allegation that Antonio Cleofas had assigned the Deed of Sale No. 923 to Lot 719 in favor of Aniceto Martin and Trino Narciso on July 15, 1921.

The conclusion of the trial court that the title of the respondents, successors in interest of Antonio Cleofas, prevails over the certificate of title of the petitioner-appellant St. Peter Memorial Park, Inc. is based on the finding that Antonio Cleofas did not make any assignment at all of Lot No. 719 to any person and that the purported assignment of the land in question bearing only the supposed thumb mark of Antonio Cleofas is spurious.

The finding of fact that the supposed deed of assignment of the Deed of Sale of Lot No. 719 is spurious cannot be reviewed in this appeal under R.A. 5440.

The contention of the petitioners that the Deed of Assignment of Lot No. 719 supposed to have been executed by Antonio Cleofas in favor of Aniceto Martin and Trino Narciso is an ancient document not requiring proof of due execution has no merit.

Section 22, Rule 132, Revised Rules of Court, provides:

"Sec. 22. Evidence of execution not necessary - Where a private writing is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its execution and authenticity need be given."

The deed of assignment in question of Lot No. 719, although more than thirty years old, was not produced from a custody in which it would naturally be found if genuine. It was found in the custody of the St. Peter Memorial Park, Inc., not in the folder of the Bureau of Lands for Lot No. 719. If, as contended by the petitioners, the said deed of assignment was the basis of the sale of Lot No. 719 by the Bureau of Lands in favor of Aniceto Martin and Trino Narciso, the deed of assignment should have been placed in the folder of the Bureau of Lands for Lot No. 719. No reason was given why the deed of assignment of Lot No. 719 in favor of Aniceto Martin and Trino Narciso was produced from the possession of St. Peter Memorial Park, Inc..

Moreover, the deed of assignment was principally signed by one Ruperto Cleofas who was not a co-owner of Lot No. 719. Antonio Cleofas, who was the sole owner of said lot, was only a co-assignor. Although he could write his name, Antonio Cleofas did not sign the deed of assignment. There appears only a thumb mark over the typewritten name of Antonio Cleofas. These suspicious circumstances were not explained by the petitioners. The deed of assignment cannot be presumed genuine and authentic under Sec. 22, Rule 132 of the Revised Rules of Court. It was not produced from a custody in which it would naturally be found if genuine and it is blemished by circumstances of suspicion.

The fact that the petitioner, St. Peter Memorial Park, Inc., was in possession of the deed of assignment of Lot No. 719 which the trial court found to be spurious is a badge of bad faith.

The trial court found that Antonio Cleofas was in the continuous and quiet possession of the land in question, Lot No. 719, until his death in 1945. This fact shows that he did not assign said land to any person.

The St. Peter Memorial Park, Inc. could not have failed to know or discover that the land, Lot No. 719, sold to it was in the adverse possession of Antonio Cleofas and his heirs. The said petitioner, St. Peter Memorial Park, Inc., is not a buyer in good faith of the land in question.

The action of the private respondents, Regino Cleofas and Lucia de la Cruz, has not prescribed. Anent this issue, the trial court found:

"There remains, finally, only the claim of defendant Memorial Park of a vested title on the subject property, as being an innocent purchaser for value, and a further claim of prescription as being operative as against herein

plaintiffs. In the final analysis, defendant Memorial Park's claim to Lot 719 is pinned on the validity, genuineness and authenticity of the alleged assignment purported to have been made by Antonio Cleofas over the said lot. The pretensions of defendant Memorial Park to innocence have been impaired and infirmed by its inexplicable possession of said vital assignment and of other documents derived therefrom, compelling this Court to conclude that the aforesaid assignment is of spurious origin. That principle underlying the Torrens System of indefeasibility of title, which in law does not yield to prescription or adverse possession (Sec. 46, Act 496, as amended), is applicable in the premises. Decisional jurisprudence is consistent to the effect that actions for recovery of possession of property registered under the Torrens System are imprescriptible and not barred by laches (J. M. Tuason and Co., vs. Aguirre, L-16827, January 31, 1963).[16]

This is not an action for reconveyance based on implied trust which prescribes in ten (10) years.

Antonio Cleofas had a title to Lot No. 719 which was found by the trial court to have been lost. Hence, the petition for reconstitution of the lost title which was consolidated with Civil Case No. Q-15001 was granted and the Register of Deeds of Quezon City has been directed to reconstitute said title on Lot No. 719, Piedad Estate, based on all available records and other data appearing in said registered property.[17]

In J. M. Tuason & Co. Inc. vs. Aguirre,[18] the Supreme Court held that "an action to recover possession of a registered land never prescribes in view of the provision of Section 44 of Act 496 to the effect that no title to registered land in derogation to that of a registered owner shall be acquired by prescription or adverse possession."

The private respondents are not guilty of laches. As soon as they discovered that the land in question was covered by a transfer certificate of title in the name of other persons, they immediately filed the present action in the Court of First Instance of Rizal at Quezon City.

The trial court awarded damages in the amount of P40,000.00 without stating the concept thereof. It appearing that the petitioner St. Peter Memorial Park, Inc. and the defendants Francisco M. Bautista and Basilisa Roque had acted in evident bad faith, the said amount may be considered as moral and exemplary damages.

By the same token, the award of P10,000.00 as attorney's fees is justified. The St. Peter Memorial Park, Inc. had disregarded in a wanton manner the rights of the respondents.

WHEREFORE, the decision dated March 19, 1977 appealed from is hereby affirmed, with the qualification that the amount of Forty Thousand Pesos (P40,000.00) is awarded as moral and exemplary damages, without pronouncement as to costs.

SO ORDERED.

Makasiar, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.
Teehankee, J., (Chairman), took no part.

[1] Annex "A", Rollo, pp. 69-85.

[2] Rollo, pp. 101-102.

[3] St. Peter Memorial Park, Inc. vs. Hon. Jose C. Campos, Jr., et al.; and Banco Filipino Savings & Mortgage Bank vs. Hon. Jose Campos, et al., 63 SCRA 180, 191.

[4] Rollo, pp. 84-85.

[5] Annex "B", Rollo, p. 86.

[6] Rollo, p. 4.

[7] Rollo, p. 13.

[8] Brief for Petitioner St. Peter Memorial Park, Inc., pp. 1-2, Rollo, p. 133.

[9] Rollo, pp. 77-83.

[10] 71 SCRA 426, 434.

[11] 71 SCRA 547, 551.

[12] T. J. Wolff & Co., Inc. vs. Moralde, et al., 81 SCRA 623, 628.

[13] Idem., 63 SCRA 190-191.

[14] Idem., 73 SCRA 191.

[15] Rollo, pp. 74-76.

[16] Rollo, p. 84.

[17] Rollo, p. 85.

[18] 7 SCRA 109.

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