

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

*G.R. No. L-47385. March 28, 1983*

Ponente: VASQUEZ, J.

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**VASQUEZ, J.:**

Both petitioners St. Peter Memorial Park, Inc. (hereinafter referred to as MEMORIAL PARK) and Banco Filipino Savings & Mortgage Bank (hereinafter referred to as BANCO FILIPINO) filed separate motions for the reconsideration of the decision promulgated on July 30, 1979. While the said motions for reconsideration had been filed since October 15, 1979 and September 12, 1979, respectively, their resolutions had been delayed by several incidents that had transpired in the meanwhile. Among them was the failure of the First Division which rendered the subject decision to arrive at a consensus on the aforesaid motions for reconsideration, which eventually led to the referral of this case to the Court in banc en consulta pursuant to the Resolution of October 28, 1981.

During the pendency of the motions for reconsideration filed by the petitioners, the latter filed a "Supplemental Motion For Reconsideration" on December 14, 1979. They prayed therein, alternatively, (a) that their motions for reconsideration be considered in the light of the additional documentary evidence attached thereto which they ask this Court to take judicial notice of; or, (b) if this Court is not inclined to do so on procedural or technical grounds, that the case be remanded to the trial court for new trial in order to afford petitioners the opportunity to present newly discovered evidence.

It will be recalled that the petitioners had previously asked for a new trial which, although denied by the trial court, was subsequently allowed to be conducted pursuant to the ruling of the Supreme Court in *St. Peter Memorial Park vs. Campos, Jr.*, 63 SCRA 180. The principal purpose of said new trial was to show that the evidence relied upon by the respondents as proof of their claim that Lot No. 719 of the Piedad Estate was sold by the government to Antonio Cleofas in July 1929, to wit, Sheet 15 of OCT No. 614 of the Piedad Estate which had been marked as Exhibit "A", does not refer to Lot No. 719 but to Lot No. 640 of the Piedad Estate. Such contention of the petitioners was established during the said new trial. In the decision of the trial court rendered thereafter, it was opined, nonetheless, that the showing of the sale to Antonio Cleofas of Lot No. 640 does not rule out the possibility that Antonio Cleofas also acquired Lot No. 719. This conclusion was based on the alleged circumstance that, while it is not denied that Lot No. 719 was awarded to Antonio Cleofas under Sale Certificate No. 923, the petitioners' evidence to show that Lot No. 719 was assigned by Antonio Cleofas to Aniceto Martin, petitioners' predecessor-in-interest, consisting of the Deed of Assignment of Certificate of Sale No. 923 (Exhibit "1") is a spurious document and may not be accorded any evidentiary value. This finding was drawn from the following circumstances:

(a) The Assignment of Certificate of Sale (Exhibit "1") and the Deed of Conveyance No. 25874 (Exhibit "2") are not found in the possession of the proper custodian thereof but instead in the possession of the petitioners; and

(b) The deed of assignment bears only the thumbmark of Antonio Cleofas, although there is proof of his competence to sign his name.

Another circumstance mentioned in the decision herein sought to be reconsidered is that the deed of assignment was executed not only by Antonio Cleofas but also by one Ruperto Cleofas who does not appear to be a co-owner of Lot No. 719.

The Deed of Assignment of Sale Certificate No. 923 executed on July 15, 1921 by Ruperto Cleofas and Antonio Cleofas of Lot No. 719 of the Piedad Estate in favor of Aniceto Martin constitutes the bedrock of the petitioners' claim of ownership over Lot No. 719 of the Piedad Estate. The validity of the transactions had with respect to Lot No. 719 subsequent thereto is dependent on the genuineness and authenticity of the said deed of assignment. It is to be noted that the alleged spuriousness of the said deed of assignment constituted the principal reason for the adverse decision rendered against the petitioners by the trial court which was upheld in the decision herein sought to be reconsidered. For, indeed, if Lot No. 719 was not finally sold to Antonio Cleofas, there must be some convincing evidence to show that Antonio Cleofas did not pursue his acquisition of Lot No. 719 but assigned his rights and interests over the same to Aniceto Martin. The trial court's decision and the subject decision of the Supreme Court did not consider Exhibit "1" as adequate proof of such assignment, it having been held to be a spurious document.

In their prayer for another new trial contained in the Supplemental Motion For Reconsideration, the petitioners have manifested that in view of the aforementioned adverse finding as to the genuineness of the deed of assignment (Exhibit "1"), they continued their search for evidence to bolster their contention that the deed of assignment of Sale Certificate No. 923 (Exhibit "1") was a genuine document properly filed in a government office and confirmed by entries in the records of the same. The result of their continued inquiry is set forth in their aforesaid Supplemental Motion For Reconsideration as follows:

"5. The absence from the Bureau of Lands' folder of documents relating to Lot 719 of copies of Antonio Cleofas assignment of his sale certificate over Lot 719 to Trino Narciso and Aniceto Martin and the deed of conveyance executed by the Directors of Lands in favor of Martin and Narciso was taken by the Court a quo against petitioner, the copies in defendant's possession being irrationally branded by it as spurious. What the Court a quo failed to take into account was the certification of the Directors of Lands, who was the custodian of documents pertaining to the friar lands, including the lot in question, presented in the reconstitution proceedings to the effect that many of the documents in its custody had been lost during the last war. (Please see pp. 14-17 of Motion for Reconsideration).

6. Be that as it may, defendant-petitioner St. Peter's Memorial Park's present counsel, although a hundred per cent convinced of the authenticity of its client's abovementioned documents, was puzzled by one circumstance: the absence of any entry regarding two documents—the deed of conveyance Exhibit "2" and TCT No. 21893 dated June 17, 1932 Exhibit "3" issued pursuant thereto—in the memorandum sheets of the mother title of Piedad Estate. Was there an answer to this deficiency? Could there be nothing in the records of the Register of Deeds or the Bureau of Lands or anywhere else, for that matter, that could clear this missing link?

7. These considerations moved petitioner-defendant St. Peter's Memorial Park to make further inquiries in the Bureau of Lands and the Registries of Deeds for Pasig and Quezon City, as well as the Registry of Deeds for Caloocan City to which, some of the records originally in the custody of the Registry of Deeds for Rizal, had been transferred, in the same manner that other records had been transferred to the Registry of Deeds of Quezon City.

8. The search bore fruit, yielding incontestable proof of the authenticity of the abovementioned exhibits "2" and "3" of 1932 vintage and demolishing the Court a quo's conclusion that they were spurious. Undersigned counsel now beg leave to bring the findings of this inquiry before this Honorable Court. There in the Registry of Deeds for Caloocan City petitioner's investigator, Atty. Roberto F. de Leon, came upon this vital, most decisive discovery in one of the sheets making up the original certificate of title covering another Friar Lands estate—called the Tala Estate: entries concerning a document of sale executed in favor of Trino Narciso and Aniceto Martin covering Lot 719 of the Piedad Estate, the property here in question. Photocopies of this sheet—page 10 of OCT No. 543 of the Tala Estate—and the accompanying authentication of the Register of Deeds are attached hereto and respectively marked as Annexes "A" and "A-1" hereof, and the pertinent entries in "A-1" enclosed in a red rectangle and identified as "A-1-a".[\*]

9. As may be seen, the said entries, in Spanish, reflect the following:

(i) The registration on page 10 of OCT No. 543 (the mother title of Tala Estate) of a document numbered 14776 and described as a sale, executed in favor of Trino Narciso and Aniceto Martin, of Lot 719, of 215264 square meters, for the price of P676.00, by virtue of which the certificate of title is partially cancelled as to the said lot and for which another is issued with No. 21893, sheet 193, Volume T-88 of the book of transfers, containing the lot sold.

(ii) Reference made to the corresponding instrument, ratified in Manila, before Notary Jose Ma. Delgado, Reg. 828, Page 67, Book II, Series of 1932.

(iii) Date of the instrument: May 9, 1932; date of inscription: June 17, 1932, 11:30 a.m.

(iv) The registrar's signature: Jose Tupas.

10. It is readily evident that the abovementioned entries refer to the following:

a) A deed of sale executed in favor of Trino Narciso and Aniceto Martin;

b) Lot 719 of the Piedad Estate, covered by the aforesaid deed of conveyance;

c) TCT No. 21893 dated June 17, 1932, issued by the Register of Deeds in favor of Narciso and Martin, (the owner's duplicate of which is Exhibit "3").

11. To remove all doubt that the instrument in virtue of which TCT No. 21893 was issued is Deed No. 25874 executed by the Director of Lands in favor of Trino Narciso and Aniceto Martin, (copy of which is defendant-petitioner's Exhibit "2"), petitioner had its investigator undertake a search in the Archives for the notary's copy thereof as well as the notarial register where it was entered, with the help of the data furnished by entries on said page 10 of OCT No. 453 relative to the document, viz, Document No. 828, Page 67 of Book II, Series of 1932, of Notary Jose Ma. Delgado and dated May 9, 1932. This search resulted in its location of the notary's copy of Notarial Document No. 828 in the Archives, and the notarial register of Notary Delgado. Duly certified photocopies of the document and page 67 of the Notarial Register issued by the Chief of the Archives Division are attached hereto as Annexes "B" and "B-1", respectively.

12. As appears in black and white, this Notarial Document No. 828, ratified by Notary Jose Ma. Delgado—Annex "B" hereof—is none other than Deed No. 25874, executed on May 9, 1932, by the Asst. Director of Lands, whereby he granted and conveyed, in behalf of the Government, to Trino Narciso and Aniceto Martin Lot 719 of the Piedad Estate, while page 67 of the Notarial Register of Notary Delgado—Annex "B-1" contains the corresponding entries concerning the said document, enclosed in red rectangle and marked as "B-1-a" for identification.

13. It becomes apparent that when Deed No. 25874, copy of which is Exhibit "2", was presented for registration to

the Office of the Register of Deeds, the same was erroneously entered in a sheet pertaining to OCT 543 covering the Tala Estate, instead of being inscribed in a sheet pertaining to OCT 614 covering the Piedad Estate.

14. Why was such an error committed? The answer is found in the two preceding entries on page 10 of OCT 543 (Annex "A-1") which are enclosed in blue rectangles and marked as "A-1-b" and "A-1-c", respectively. It appears from these entries that the deed of conveyance of Lot 719 of the Piedad Estate was presented by Martin to the Register of Deeds together with two other deeds respectively covering Lots 552 and 544 of OCT 543 of the Tala Estate and that the Registrar, through oversight, entered all three documents on page 10 of OCT 543 of the Tala Estate. Judging by the sequence of the entries, the first and second documents entered referred to lots of Tala Estate, so that when the person making the entries came to the third document, apparently failing to notice that the same referred to a lot in the Piedad Estate, he entered the same in the same memorandum sheet of the mother title of the Tala Estate, as he did the first two. Certified photocopies of the notary's copies of the two documents relating to lots of the Tala Estate, which appear to have been ratified also by Notary Jose Ma. Delgado, have also been obtained from the Archives and are attached hereto as Annexes. "B-2" and "B-3", respectively. And a perusal of the aforementioned page 67 of Notary Delgado's Notarial Register—Annex "B-1"—discloses that it contains the corresponding entries relative to the said documents Annexes "B-2" and "B-3". These entries are also enclosed in red rectangles and marked as "B-1-b" and "B-1-c", respectively.

15. To complete proof of the authenticity of all the documents relied upon by your petitioner, it also had a search conducted in the Archives for the notary's copy of the deed of assignment of the sale certificate executed by Antonio Cleofas and Ruperto Cleofas in favor of Narciso and Martin, copy of which is petitioners Exhibit "1", and the same was found. Certified photocopy of the same is attached hereto as Annex "C".

16. Pursuing its research to the hilt, petitioner, through its investigator Atty. De Leon, lastly, directed its inquiry into the notarial register of the notary public shown by the document Annex "C" to have ratified the same—Mr. Vicente Garcia of Manila. Guided by the data appearing in the document, i.e., "Register No. 2506", "Page 3", the Archives Division personnel were able to locate Mr. Vicente Garcia's Notarial Register, page 3 of which shows the entries pertaining to the said instrument, numbered therein as 2506. Certified photocopy of the said page is attached hereto as Annex "C-1", with the pertinent entry enclosed in a red rectangle and identified as "C-1-a".

17. Summarizing, the aforecited public records certainly bear out, in the most conclusive, positive and unmistakable manner, the following: (i) the execution by Antonio Cleofas and Ruperto Cleofas of the Assignment of Sale Certificate No. 923 over Lot 719 of the Piedad Estate, covered by OCT 614, in favor of Aniceto Martin; (ii) the execution by the Directors of Lands of Deed No. 25874 covering the same lot in favor of Aniceto Martin and Trino Narciso; (iii) the registration of this deed of sale in the Registry of Deeds for Rizal, albeit erroneously in the sheet forming part of OCT 543 covering the Tala Estate; and (iv) the issuance in favor of Martin and Narciso of TCT No. 21893, to which this petitioner's titles are traceable. Thus, they close all room even for suspicion about the genuineness and validity of the title of petitioner's predecessors in interest. Moreover, considered against this conclusive proof that a deed of conveyance of Lot 719 executed by the Director of Lands in favor of Martin and Narciso was registered in a memorandum sheet of OCT 543 covering the Tala Estate, the insistence of the Court a quo that the torn Sheet 15 of OCT 614 covering the Piedad Estate refers to Lot 719 becomes absolutely hollow. Surely, the registrar would not have performed the ridiculous act of registering the deed of conveyance in the memorandum sheets of the OCTs of both the Tala and the Piedad Estate.

18. The public documents certified photocopies of which are annexed hereto are incontestable proof of the genuineness of Antonio Cleofas' deed of assignment of his sale certificate over Lot 719, Exhibit "1", and the Director of Lands' deed of conveyance of said lot to Narciso and Martin, Exhibit "2", conclusively belying the Court a quo's surmise to the contrary."

Attached to the Supplemental Motion For Reconsideration are the annexes rendered to in the same. Their incorporation in this Resolution could not be done with convenience, but they may be found in pages 342 to 353 of the Rollo.

In their opposition to the petitioners' prayer for another new trial, the respondents contend that the evidence desired to be presented by the petitioners may not be considered as newly discovered evidence because they could have been discovered with due diligence during the trial, and that the same does not promise to alter the results; neither does it change the finding that the custody of Exhibits "1" and "2" is not in the offices where they should ordinarily be found.

We find the respondents' opposition to the new trial prayed for by the petitioners to be merely formalistic and perfunctory. The very circumstances alone that the missing documents had been executed more than sixty years ago and that they had been misfiled by the government office supposedly in-charge of their custody are enough to refute any supposition that, with reason able diligence, they could have been discovered and presented during the trial in the court below. If the manifestations of the petitioners as to the circumstances under which the evidence they seek to present had been discovered are true, they may hardly be faulted for having discovered said evidence only after the trial.

It is neither a valid objection that the petitioners had previously been afforded the opportunity to present evidence which they failed to do during the trial. A second new trial is expressly authorized by the Rules if "based on a ground not existing nor avoidable when the first motion was made" (Sec. 4, Rule 37, Rules of Court). As pointed out above, the circumstances surrounding the discovery of the evidence which the petitioners desire to present are adequate justification for the failure to make them available during the original trial, or in the new trial previously allowed.

The filing of a motion for new trial in the Supreme Court is expressly authorized by Section 1, Rule 53, in relation to Section 1, Rule 56 of the Rules of Court. The timeliness of the instant motion for new trial may not be questioned, such a motion being allowed to be filed in the appellate courts before the judgments rendered by them "becomes executory" (Sec. 1, Rule 53). The decision herein sought to be reconsidered had not attained the stage of being executory.

The evidentiary worth of the evidence proffered by the petitioners may not be brushed aside by a simplistic and sweeping appraisal that "they do not promise to change the results." Undeniably, if it is true that copies of Exhibits "1" and "2" had actually been filed in the proper government office, but were only misplaced or misfiled therein, there would be little doubt as to the authenticity of the copies in the possession of the petitioners which had been presented in court as Exhibits "1" and "2". Such a finding would meet squarely the pronouncement that Exhibits "1" and "2" are spurious. It would also serve to dissipate the doubts as to their genuineness arising from the fact that Exhibit "1" was executed not by Antonio Cleofas alone, and that it was thumbmarked and not signed by him.

The peculiar circumstances surrounding the discovery of the evidence that the petitioners seek to present; their significance and materiality in arriving at a true appraisal of the matters involved in this case which, as had been previously observed by Us, is one that "involves public interest" affecting as it does many memorial lot buyers and the integrity of the torrens system (63 SCRA 190); and the considerable value of the property herein litigated, behoove Us to proceed cautiously and with circumspection in the determination of the true merits of the controversy, regardless of technicalities and procedural niceties, with the primordial end in view of rendering justice to whomsoever it may be due.

WHEREFORE, the decision promulgated on July 30, 1979 is hereby SET ASIDE. Let this case be remanded to

the Regional Trial Court of the National Capital Region at Quezon City for the purpose of conducting the new trial prayed for by the petitioners. No costs.

### **SO ORDERED.**

Teehankee, Makasiar, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Relova and Gutierrez, Jr., JJ., concur.

Fernando, C.J., and Concepcion Jr., J., took no part.

Aquino, J., on leave.

Guerrero, J., I dissent in a separate opinion.

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[\*] Also attached hereto, as Annex "A-1-a-i", is photocopy of the center portion of page 10 of OCT No. 543 of the Tale Estate, which shows the entries with more clarity.

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### **SEPARATE DISSENTING OPINION**

#### **GUERRERO, J.:**

For resolution are the motions for reconsideration filed by both petitioners of the decision promulgated in this case on July 30, 1979, as well as the supplemental motion for reconsideration subsequently filed by the same parties which contained the alternative prayers that: (a) the motions for reconsideration be considered in the light of the additional documentary evidence attached thereto which the petitioners ask this Court to take judicial notice of, or (b) if this Court is not inclined to do so on procedural or technical grounds, that the case be remanded to the trial court for new trial in order to afford petitioners the opportunity to present newly discovered evidence.

The opinion of the majority resolved to set aside the decision promulgated on July 30, 1979 and to remand this case to the Regional Trial Court of the National Capital Region at Quezon City for the purpose of conducting the new trial prayed for by the petitioners.

I dissent.

Petitioners moved for a new trial for the purpose of presenting "newly discovered evidence" to bolster their contention that the Deed of Assignment of Sale Certificate No. 923 (Exhibit "1") which, as stated under the majority opinion, "constitutes the bedrock of the claim of petitioners of ownership over Lot No. 719 of the Piedad Estate," is a genuine document. It is stated in the majority opinion that:

"The evidentiary worth of the evidence proffered by the petitioners may not be brushed aside by a simplistic and sweeping appraisal that 'they do not promise to change the results.' Undeniably, if it is true that copies of Exhibits "1" and "2" had actually been filed in the proper government office, but were only misplaced or misfiled therein, there would be little doubt as to the authenticity of the copies in the possession of the petitioners which had been presented in court as Exhibits "1" and "2". Such a finding would meet squarely the pronouncement that Exhibits "1" and "2" are spurious. It would serve to dissipate the doubts as to their genuineness arising from the fact that Exhibit "1" was executed not by Antonio Cleofas alone, and that it was thumbmark and not signed by him."

The decision promulgated in this case on July 30, 1979 (92 SCRA 389) emphatically stated that:

"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 thumbmark 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."

As to why said factual finding may no longer be disturbed in this appeal by the petitioners from the decision of the Court of First Instance of Quezon City[1] is clearly explained in the decision of this Court, to wit:

"The defendants, St. Peter Memorial Park, Inc. (now Himlayang Pilipino, Inc.) and Banco Filipino Savings & 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 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 and 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.'

"Upon receipt of the record 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.'

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

.....

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

"Thus, in Republic of the Philippines versus Director of Lands, 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., 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 vs. Alvarez*, is that 'only questions of law may be raised.' The opinion goes on further to state: 'That was made clear in *Perez vs. Araneta*. It cited thirty decisions to that effect. Then came *Flores vs. Flores* which referred to twelve additional cases. A reaffirmance of such a doctrine last appeared in *Encinares vs. Catighod*.' 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.'

.....

"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." (92 SCRA, pages 396-407).

After the promulgation of said decision, this Court reiterated the foregoing doctrine in *Gonzales vs. Court of First Instance*, 104 SCRA 479, where it ruled that in an appeal under R.A. 5440, only legal issues can be raised, and in *Grace Park Engineering Co., Inc. vs. Ali Dimaporo*, 107 SCRA 226, and *Debuque vs. Climaco*, 99 SCRA 353, where it was ruled that a direct appeal from the Court of First Instance to this Court binds the appellant to the findings of fact of the trial court because he is deemed to have accepted the facts as found by the trial court.

In view of the foregoing, it is clear that, since this is a direct appeal under R.A. 5440, where only questions of law may be raised, as in fact the petitioners manifested that only questions of law are raised in their appeal, the factual finding of the trial court that Antonio Cleofas did not make any assignment of Lot No. 719 to any person and that the purported assignment of the land in question bearing only the supposed thumbmark of Antonio Cleofas is spurious, is now final and unassailable.

The result under the majority opinion is that the petitioners are enabled to question said factual finding because, as a consequence of the grant of the prayer of the petitioners for a new trial contained in their supplemental motion for reconsideration, and the remanding of the case to the trial court precisely to allow the petitioners to adduce proof to bolster their contention that the Deed of Assignment of Certificate of Sale No. 923 (Exh. "1") is a genuine document, the finding of fact of the trial court that said deed is spurious is now open to attack and possible overhaul. A party may not be allowed to do indirectly what he cannot do directly.

In view of the serious unsettling effect of the majority opinion on established jurisprudence on the matter and its disregard of the applicable law, I am constrained to dissent therefrom.

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[1] Now Regional Trial Court of Quezon City.

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