

**REPUBLIC OF THE PHILIPPINES AND CITY OF CAGAYAN DE ORO,
PETITIONERS, VS. THE COURT OF APPEALS, BENEDICTA MACABALE
SALCEDO, ISIDRO S. BACULIO, EMMANUEL AKUT, IRENEO ORLINO,
LUCY ...**

G.R. No. L-41115. September 11, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

From the consolidated decision dated July 22, 1975 of a Special Division of Five^[1] of the Court of Appeals disposing of the separate motions for reconsideration of the Solicitor General and the City Fiscal of Cagayan de Oro in CA-G.R. No. 46566-R entitled "Republic of the Philippines and City of Cagayan de Oro vs. Benedicta Macabale Salcedo, et al." and resolving the appeal of the two accused in CA-G.R. No. 15289-CR entitled "People of the Philippines vs. Isidro S. Baculio and Josefina W. Bacarrisas," these two separate petitions were filed with this Court, to wit:

(1) Case G.R. No. L-41115 - a petition for review on certiorari assailing the dismissal of the civil case for declaration of nullity of Original Certificate of Title No. 0-257 and all transfer certificates of title issued as a result of subsequent dealings over Cadastral Lot No. 1982, situated in the barrio of Macabalen, Cagayan de Oro City, Misamis Oriental, with an area of 22.4554 hectares; and

(2) Case G. R. No. L-41116 - a special civil action for certiorari contesting the validity of the acquittal of respondents Isidro S. Baculio and Josefina W. Bacarrisas in the criminal case for falsification of public documents relating to Cadastral Lot No. 1982.

However, while these cases were pending decision, counsel for private respondents filed a manifestation dated March 10, 1978 stating that on February 28, 1978, the principal accused in case G.R. No. L-41116, Isidro S. Baculio, died at the Doctors' General Hospital at Cagayan de Oro City due to congestive heart failure, among other causes.

Commenting on the aforesaid manifestation, the Solicitor General stated that the death of the said accused having occurred before final judgment, not only is his criminal liability extinguished but his civil and pecuniary liabilities as well. Cited as authority was Article 89(1) of the Revised Penal Code and *Torrijos vs. Court of Appeals*, 67 SCRA 394. But the fact that there is another accused, namely, Josefina W. Bacarrisas, against whom the criminal action should proceed, was duly pointed out. By reason thereof, We still find necessity in disposing of the assigned errors in G.R. No. L-41116 for the purpose of determining the validity of her acquittal.

As brief as possible, the pertinent facts that led to the institution of the aforesaid civil and criminal cases are as follows:

On July 8, 1964, Isidro S. Baculio, for and on behalf of his mother, Benedicta Macabale Salcedo, filed a verified petition for issuance of a decree of registration over Lot 1982. The petition, which was assigned to Branch I of the

Court of First Instance of Misamis Oriental with Judge Benjamin K. Gorospe presiding and sitting as a cadastral court, was accompanied by a certified true copy of a three-page decision dated December 19, 1940 allegedly rendered by Judge Ricardo Summers of the Court of First Instance of Misamis Oriental in Cadastral Case No. 18, GLRO Cadastral Record No. 1562, On page two of the said decision, Lot 1982 was declared a private land and adjudicated to Benedicta Macabale Salcedo as follows:

"Lote 1982. A favor de Benedicta Mabacale Salcedo, Filipino, mayor de edad, casado con Casiano Baculio, de Municipio de Cagayan, Provincia de Oriental Misamis. Benedicta Macabale Salcedo compre este parcela a sus hermanos y hermanas, cuyos, con el reclamante, son herideros forzosos del defuncto esposas Pablo Salcedo y Rosales Macabale, para consideracion de la suma de cien piesos, monida Filipina, segun del documentos en contestacion como Annex A. El Annex A es fechada de Abril, 1907."[2]

The certified true copy was prepared by Josefina W. Bacarrisas, the Docket Clerk of the Court of First Instance of Misamis Oriental, who was also the custodian of prewar salvaged cadastral records, on the basis of an unsigned carbon copy thereof allegedly found among the file of documents under her custody. At the bottom of the last page of the said carbon copy was a notation: "Es copia verdadera de que certifico" which was signed by Vicente Roa as "Escribano Delegado".

Upon receipt of the petition, the Clerk of Court, Pedro G. Perez, prepared an order for the issuance of the decree and certified that the three-page decision of Judge Summers has not been amended, modified, rectified or otherwise supplemented by any other decision, order or process of the Court. The said petition together with the supporting papers were then presented to Judge Gorospe, who signed the order for issuance of the decree and directed the transmittal of the records to the Land Registration Commission, which issued Decree No. N-99411 on July 17, 1964.

Thereafter, Isidro S. Baculio secured from the Assessor's Office the reconstituted tax declarations of his mother showing payment of the realty taxes for Lot 1982 from the year 1948 to 1964. Then on July 24, 1964, the decree issued by the Land Registration Commission was transcribed in the registration book of the Register of Deeds of Misamis Oriental and pursuant thereto Original Certificate of Title No. 0-257 was issued by the Register of Deeds of Misamis Oriental in the name of Benedicta Macabale Salcedo.

On the very same date, July 24, 1964, this original title was cancelled upon the sale of the lot to Isidro S. Baculio and Transfer Certificate of Title No. T-1224 was issued in his name. However, Isidro S. Baculio subdivided the lot into two parcels, i.e., Lot 1982-A and Lot 1982-B and sold them to Emmanuel A. Akut and Irineo Orlino, respectively. Akut later acquired lot 1982-B from Orlino and afterwards, subdivided the same and sold them to several persons within the remaining months of 1964. These transactions resulted in the issuance of the following certificates of title by the Register of Deeds of Misamis Oriental, namely:

"(1) Isidro S. Baculio - T.C.T. Nos. T-1224 and 4524; (2) Emmanuel A. Akut - T.C.T. Nos. 4528, 4625, 4626, 4756, 4757, 4758, 4759, 4760, and 4768; (3) Irineo Orlino - T.C.T. Nos. 4525, 4602, 4603, 4604, 4611, 4612, 4613, and 4614; (4) Lucy P. Gaston - T.C.T. No. 4605; (5) Rosario Javier - T.C.T. No. 4606; (6) Honesto N. Salcedo - T.C.T. No. 4607; (7) Ruperta Aguilor - T.C.T. No. 4651; (8) Gorgonio Briones - T.C.T. No. 4652; (9) Francisco Q. Beltran - T.C.T. No. 4653; (10) Eriberto Camba - T.C.T. No. 4654; (11) Genoveva C. San Juan - T.C.T. No. 4655; (12) Federico D. Picar - T.C.T. No. 4658; (13) Eufemia Garcia - T.C.T. No. 4946."[3]

As a result of the issuance of the decree of registration of Lot 1982 and entry thereof by the Land Registration Commission as well as subsequent dealings over the aforesaid lot, the Solicitor General and the City Fiscal of Cagayan de Oro filed a petition to declare null and void Original Certificate of Title No. 0-257 and all transfer certificates of title issued therefrom. The proceedings in the trial court on the aforesaid civil case are succinctly stated in the decision dated June 6, 1974 of the Court of Appeals in CA-G.R. No. 46566-R, as follows:

"On July 7, 1965, the Republic of the Philippines, through the Solicitor General, and the City of Cagayan de Oro, through the City Fiscal, filed in the Court of First Instance of Misamis Oriental, a petition, which was amended on August 2, 1965, against Benedicta Macabale Salcedo, the succeeding transferees, the Land Registration Commissioner, and the Register of Deeds of Misamis Oriental. The petition was assigned to Branch IV of the lower court, with Judge Bernardo S. Teves presiding and sitting as an ordinary court. The petition alleged, among others, the following: (1) that the lower court, through Judge Gorospe had acted without jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction and/or in violation of due process of law, in issuing the order for the issuance of the decree and in ordering Lot No. 1982 to be registered in the name of Benedicta Macabale Salcedo, (2) that the 3-page decision of Judge Ricardo Summers, which was annexed to the petition of Isidro S. Baculio, is a forgery and was fraudulently procured, (3) that Lot No. 1982 was declared public land in a 7-page decision rendered by Judge Summers on December 19, 1940, and (4) that the registration of the order of Judge Gorospe for the issuance of the decree was fraudulent, as well as the subsequent transcription of said decree in the books of the Register of Deeds and the issuance of the original and succeeding transfer certificates of title.

Upon the foregoing allegations, the plaintiffs prayed for a declaration of nullity of: (1) the order of Judge Gorospe for the issuance of a decree covering Lot 1982, (2) the 3-page decision of Judge Summers, (3) the Decree No. N-99411 and O.C.T. 0-257, (4) the transfer certificates of title issued to the defendants, and (5) all the documents, papers, acts, and transactions executed, committed and performed in connection with, and necessarily incidental to, the issuance of said decree and titles. The petition further prayed for the surrender and cancellation of the decree and certificates of title, and for damages.

In their answer, defendants Benedicta Macabale Salcedo, Isidro S. Baculio, Emmanuel A. Akut and Irineo Orlino averred that all the proceedings, orders and processes that led to the issuance of title in favor of Benedicta Macabale Salcedo were lawful and regular. As special and affirmative defense, they alleged that the lower court, through Judge Teves, had no jurisdiction over the action initiated by the plaintiffs.

Defendants Lucy P. Gaston, Rosario Javier, and Honesto N. Salcedo averred in their motion to dismiss and answer that they are innocent purchasers and transferees for value, and that under Section 38 of the Land Registration Act a decree cannot be reopened where an innocent purchaser for value has acquired an interest in the subject property.

Defendants Commissioner of Land Registration and Register of Deeds averred in their respective answers that Decree No. N-99411 is valid and effective, having been issued on the basis of the order of Judge Gorospe for the issuance of the decree dated July 8, 1964, and on the strength of the 3-page decision of Judge Summers dated December 19, 1940, a true copy of which was duly certified by the Clerk of Court and furnished the Commissioner.

Eufemia Garcia filed an answer alleging that she was an innocent purchaser for value.

Ruperta Aguilor, Gorgonia Briones, Federico Picar, Eriberto Camba, Genoveva San Juan, and Francisco Q. Beltran averred in their motions to dismiss that they were innocent purchasers for value; that Branch IV of the lower court, with Judge Teves presiding and sitting as an ordinary court, had no jurisdiction over the plaintiffs' action, and is without authority or power to annul the decision of Judge Summers, the order of Judge Gorospe and the decree of the Land Registration Commission, or to cancel the original and transfer certificates of title issued thereunder; that plaintiffs have no legal capacity to sue since the proper party plaintiff is the Director of Lands.

The case was tried after the issues were joined.

Testifying for the plaintiffs, Pedro Pimentel declared that on June 4, 1936 he was granted a nipa and bakhao permit on a portion of Lot 1982 by the Bureau of Forestry. Even before 1950, under a permit issued by the same

bureau, he had his house built on an area of 1,600 square meters on Lot No. 1982, and that ever since he has been living in said area, paying realty taxes to the City as well as the required fees to the Bureau of Forestry. He has never been disturbed in his possession of such portion of Lot No. 1982.

Henry R. Canoy testified as a witness for the plaintiffs that in 1956, he constructed a radio transmitter station on a portion of Lot No. 1982 pursuant to an ordinary permit issued by the Bureau of Forestry. On November 3, 1958, after the completion of his radio tower, transmitter building and other facilities which, in his estimate, are worth P150,000.00, he applied for a long-term lease with the District Forester. When the Bureau of Forestry released Lot No. 1982 to the Bureau of Lands, he changed his lease application to a miscellaneous sales application. The Director of Lands denied his application on the ground that Lot No. 1982 was already covered by Decree No. N-99411 (Exhibit 1).

The plaintiffs also presented evidence to show that in the course of an investigation conducted by the National Bureau of Investigation in 1964, the investigating agent found a carbon copy of two decisions both purportedly by Judge Ricardo Summers, both bearing the same date - December 19, 1940, and both without the signature of the judge. One of the copies was the 3-page decision on the basis of which Lot No. 1982 was registered as the private land of Benedicta Salcedo. The other copy, consisting of seven pages, was without caption, and declares, among others, as follows: "Lote No. 1982. Declarado terreno publico por haber sido reclamado unicamente por los Directores de terrenos y montes."

Atty. Jose Ampeloquio of the Investigating and Action Unit of the Bureau of Lands, another witness of the plaintiffs, testified that in his examination of the list of claimants on file with the Bureau of Lands, which he conducted after the different parts of Lot No. 1982 had been titled in the names of the defendant buyers, he found the words "public land" opposite "Lot 1982". However, the plaintiffs did not present in evidence the records allegedly examined by Atty. Ampeloquio.

After trial, the Court of First Instance of Misamis Oriental, Branch IV, rendered a decision the dispositive part of which is as follows:

'WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendants:

'1) Declaring Cadastral Lot No. 1982 a public land pursuant to the 7-page decision of Judge Ricardo Summers, dated December 19, 1940 in Cadastral Case No. 18 GLRO Cad. Rec. No. 1562, entitled "Commonwealth de Filipinas, Solicitante; Antonio Abaday, et al., reclamen-tes" of this Court:

'2) Declaring the alleged 3-page decision allegedly promulgated by Judge Ricardo Summers on December 19, 1940 declaring Lot 1982 a private land belonging to defendant Benedicta Macabale Salcedo, as forged, fabricated, false and fraudulent;

'3) Declaring null and void the Order for the issuance of a decree, dated July 8, 1964, issued by the Honorable, Judge Benjamin K. Gorospe, of this Court;

'4) Declaring null and void the decree No. N-99411, Original Certificate of Title No. 0-257, and Transfer Certificate of Title Nos. T-1224, 4524, 4525, 4528, 4602, 4603, 4604, 4605, 4606, 4607, 4611, 4612, 4613, 4614, 4625, 4626, 4651, 4652, 4653, 4654, 4655, 4656, 4658, 4757, 4758, 4759, 4760, 4678, and 4946, as well as all documents, papers, acts and transactions executed, committed and performed in connection with, and necessarily incident to, the issuance of said decree and certificates of title;

'5) Ordering defendants Isidro S. Baculio, for himself, and as heir and representative of his late mother, defendant Benedicta Macabale Salcedo, Emmanuel Akut, Ireneo Orlino, Lucy P. Gaston, Rosario Javier, Honesto N. Salcedo, Ruperta Aguilor, Gorgonia Briones, Francisco Q. Beltran, Eriberto Camba, Genoveva C. San Juan, Federico P. Picar and Eufemia Garcia, to surrender to, and directing the Register of Deeds to cancel,

all the above-mentioned certificates of title;

'6) Ordering the Land Registration Commissioner to cancel Decree No. 99411 and to restore its records declaring Lot No. 1982 a public land; and

'7) Ordering defendants to pay jointly and severally the costs.'"[4] (November 13, 1968)

On the other hand, the essential facts of the criminal case are stated in the consolidated decision dated July 22, 1975 of the Court of Appeals, as follows:

"The criminal information for falsification of public documents was filed on September 5, 1966 in the Court of First Instance of Misamis Oriental, against Isidro S. Baculio (practicing lawyer), Benedicta Macabale Salcedo (private person), Pedro G. Perez (former clerk of court), Josefina W. Bacarrisas (docket clerk of the Court of First Instance of Misamis Oriental), Godofredo Doe, Eulogio Doe, Juana Doe, Richard Doe (government employees), Lucy Doe, and Honesto Doe (private persons), alleging as follows:

"That on or about and between the period from May 20, 1964 to July 17, 1964, in the City of Cagayan de Oro, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused persons, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously falsify a decision of the Court of First Instance of Misamis Oriental by making or causing it to appear that the then presiding Judge RICARDO SUMMERS rendered a decision declaring Lot No. 1982 of the Cagayan de Oro Cadastre as a private land and awarding the same to BENEDICTA MACABALE DE SALCEDO, when actually Judge RICARDO SUMMERS did not in fact render the said decision because the said property (Lot No. 1982 Cagayan de Oro Cadastre) was in fact declared public land by the same court.

"That accused BENEDICTA MACABALE SALCEDO, thru her co-accused ISIDRO BACULIO, the latter being her son and counsel, knowing fully well that the said decision is falsified and in pursuit of their conspiracy filed a written petition before the Court of First Instance of Misamis Oriental attaching therewith a copy of the said falsified decision, praying among other things, that an order for the issuance of a decree (OID) be issued over the said land which petition was granted on the same day by Judge BENJAMIN GOROSPE of the said court; that to successfully obtain an Original Certificate of Title on said Lot No. 1982, as they did obtain Original Certificate of Title No. 0-257 in favor of BENEDICTA MACABALE SALCEDO, accused ISIDRO BACULIO with the mutual aid and help of his co-accused did then and there falsify the said Order for the Issuance of a Decree dated July 8, 1964 by adding and/or inserting the following words, to wit:

"All other decisions, orders, processes issued by this Court pertaining to Lot No. 1982 are hereby amended and/or set aside so as to give due course to the above-mentioned decision"

thereby facilitating the adjudication of Lot No. 1982 to BENEDICTA MACABALE SALCEDO, when in truth and in fact Judge BENJAMIN K. GOROSPE of the Court of First Instance of Misamis Oriental, in his order dated July 8, 1964 did not include the aforementioned words in his order; and that as a result of the falsified order to issue the decree and the falsified decision of the Court; the Land Registration Commission issued Original Certificate of Title No. 0-257 in favor of BENEDICTA MACABALE SALCEDO.' (Vol. I, CFI Record, pp. 1-3).

Benedicta Macabale Salcedo died before she could be arraigned. An amended information excluding her from the complaint was filed by the prosecution and admitted by the lower court (*Ibid.*, pp. 47-49, 50). On arraignment, Isidro S. Baculio, Pedro G. Perez (*Ibid.*, p. 50) and Josefina W. Bacarrisas (*Ibid.*, p. 132) pleaded not guilty. Subsequently, the trial court ordered the dismissal of the case against Pedro G. Perez for failure of the Government to prosecute (*Ibid.*, pp. 95, 131).

The criminal case was continued against Isidro S. Baculio and Josefina W. Bacarrisas, after which a decision was rendered by Judge Eduardo de G. Montenegro, the dispositive portion of which is as follows:

'WHEREFORE, judgment is hereby rendered:

'(1) Finding accused Isidro Baculio guilty beyond reasonable doubt of the crime of falsification of public document as defined and penalized in paragraph 1 of Article 172 of the Revised Penal Code, and sentencing him to a penalty of ONE (1) YEAR and EIGHT (8) MONTHS OF Prision Correccional, as minimum, to FOUR (4) YEARS, NINE (9) MONTHS and TEN (10) DAYS OF Prision Correccional, as maximum, with all the accessory penalties provided for by law; and to pay a fine of FOUR THOUSAND (P4,000.00) PESOS:

'(2) Finding accused Josefina Bacarrisas guilty beyond reasonable doubt of the crime of falsification as defined and penalized in Article 171 of the Revised Penal Code and sentencing her to a penalty of FOUR (4) YEARS and TWO (2) MONTHS OF Prision Correccional, as minimum, to EIGHT (8) YEARS and ONE (1) DAY of Prision Mayor, as maximum, with all the accessory penalties provided for by law; and to pay a fine of FOUR THOUSAND (P4,000.00) PESOS; and

'(3) Sentencing the accused Isidro Baculio and Josefina Bacarrisas, jointly and severally to pay the costs.' (Vol. II, CFI Record, pp. 93-117)."[5]

Aggrieved by the decisions of the trial courts, the defendants in the civil case and the accused in the criminal case filed separate appeals to the Court of Appeals, where they were docketed as CA-G.R. No. 46566-R and CA-G.R. No. 15289-CR, respectively. At first, the appeal in the civil case was assigned to the Sixth Division. In view, however, of the dissent of Justice Francisco M. Chanco, two other Justices from among the other members of the court were designated to sit temporarily with them, pursuant to Section 33 of the Judiciary Act of 1948, as amended. A Special Division of Five was thus formed which promulgated a decision on June 6, 1974 in favor of Benedicta Macabale Salcedo, et al., defendants-appellants therein, the dispositive portion of which is as follows:

"WHEREFORE, the decision appealed from is hereby reversed and set aside and another rendered dismissing the petition, without pronouncement as to costs."[6]

Within the reglementary period, the Solicitor General and the City Fiscal of Cagayan de Oro filed separate motions for reconsideration and in the course of the hearing of the said motions, the Solicitor General called the attention of the Special Division of Five to the appealed criminal case for falsification of public documents relating to Lot 1982 pending before the Eighth Division[7] of the Court of Appeals. Finding the civil and criminal cases related, Justice Chanco suggested that they be consolidated for decision by the Special Division of Five. To this suggestion, the parties assented. Thus, after the necessary arrangement was made to effect the assignment of the criminal case to the Special Division of Five and after due hearing on both the motions for reconsideration in the civil case and the merits of the criminal case, the two cases were submitted for decision.

On July 22, 1975, the Special Division of Five, with Justice Francisco M. Chanco again dissenting, rendered a consolidated decision, the dispositive portion of which is hereby quoted as follows:

"WHEREFORE, the appealed judgment in CA-G.R. No. 15289-CR is hereby reversed. Isidro S. Baculio and Josefina W. Bacarrisas are hereby acquitted of the crime charged on the ground that the prosecution has not established the guilt of the accused persons beyond reasonable doubt. Costs de oficio.

The motions for reconsideration in CA-G.R. No. 46566-R are hereby denied."[8]

As heretofore stated at the outset, the Republic of the Philippines and the City of Cagayan de Oro filed two separate petitions with this Court in the civil and criminal cases assailing the rendition of a single decision resolving them jointly. More specifically, the errors alleged in G.R. No. L-41115 to have been committed by respondent Court of Appeals in the appealed civil case are as follows:

"I. The respondent Court of Appeals erred in rendering a single decision in two distinct and separate cases, one

of which is criminal (CA-G.R. No. 15289-CR, entitled "People of the Philippines vs. Isidro Baculio, et al.) and the other civil (CA-G.R. No. 46566-R, entitled "Republic of the Philippines, et al. vs. Benedicta Macabale Salcedo Vda. de Baculio, et al.) which is violative of the due process clause of the Constitution insofar as the respondent Court's reliance on extraneous matters is concerned and Section 9, Article X thereof, when the same Court rendered a single decision for the two cases.

"II. The respondent Court of Appeals erred in relying heavily on extraneous matters which were not even brought up, adduced, offered much less admitted in evidence both in the criminal (CA-G.R. No. 15289-CR) and civil (CA-G.R. No. 46566-R) aspects of the case at bar. This is contrary to basic and fundamental rules of procedure and violative of the due process clause of the Constitution.

"III. The respondent Court of Appeals erred in basing its decision upon, and not declaring the falsity of the three-paged decision (Exhibits "L", "L-1" and "L-2") which on its face and on the basis of physical and incontrovertible facts is clearly a forgery.

"IV. The respondent Court of Appeals erred in considering the seven-paged decision as spurious (Exhibits 'K', 'K-1', 'K-2', 'K-3', 'K-4', 'K-5' and 'K-6'), when its authenticity was not contested and brought in issue before the lower court in Civil Case No. 2560.

"V. The respondent Court of Appeals erred in declaring Lot No. 1982 of the Cagayan de Oro Cadastre originally classified as forestal land as private property of Benedicta Macabale Salcedo Vda. de Baculio, on the basis of self-serving testimonies of the defendants-appellants Macabale et al. instead of confirming its character as a declared public land.

"VI. The respondent Court of Appeals erred in declaring that Judge Benjamin K. Gorospe's assumption of jurisdiction over the Cadastral Proceedings No. 18, GLRO Rec. No. 1562 (Lot No. 1982) when he took cognizance of the motion for the issuance of a decree was to the exclusion of Judge Bernardo Teves and in ruling that the latter should not have taken jurisdiction over, tried and decided Civil Case 2560.

"VII. The respondent Court of Appeals erred in concluding that the petitioners' action in Civil Case No. 2560 should have been a petition for review of the decree, and not one for the nullity of judgment, orders and titles."[9]

On the other hand, the assigned errors in G.R. No. L-41116, the petition insofar as the criminal case is concerned, are merely a reiteration of the first two assignments of error stated above, namely:

"I. The respondent Court gravely erred in rendering a single decision for two cases, one civil (CA-G.R. No. 46566-R) and the other criminal (CA-G.R. No. 15289-CR), tried separately, with distinct evidence presented, and heard by two different judges, and without indicating upon what particular evidence its decision in the criminal or the civil case is based, which is contrary to Section 9, Article X of the Constitution.

"II. The respondent Court gravely erred in rendering the decision by relying on matters not presented, nor offered, much less admitted, in evidence. Such a decision is in violation of the due process clause of the Constitution."[10]

We shall now proceed with the discussion of these assignments of errors.

FIRST ASSIGNMENT OF ERROR

IN L-41115

"The respondent Court erred in rendering a single decision in two distinct and separate cases, one of which is criminal (CA-G.R. No. 15289-CR, entitled "People of the Philippines vs. Isidro Baculio, et al.") and the other civil (CA-G.R. No. 46566-R, entitled "Republic of the Philippines, et al. vs. Benedicta Macabale Salcedo Vda.

de Baculio, et al.") which is violative of the due process clause of the Constitution insofar as the respondent Court's reliance on extraneous matters is concerned and Section 9, Article X thereof, when the same court rendered a single decision for the two cases."

IN L-41116

"The respondent Court gravely erred in rendering a single decision for two cases, one civil (CA-G.R. No. 46566-R) and the other criminal (CA-G.R. No. 15289-CR), tried separately, with distinct evidence presented, and heard by two different judges, and without indicating upon what particular evidence its decision in the criminal or the civil case is based, which is contrary to Section 9, Article X of the Constitution."

We do not find any violation by the respondent Court of Appeals of the due process clause of the Constitution and of Section 9, Article X thereof in finally disposing of the civil and criminal cases in a single decision. For one thing, the civil case was actually decided by the Special Division of Five on June 6, 1974. Only the motions of the Solicitor General and the City Fiscal of Cagayan de Oro City for reconsideration of the said decision in the civil case were resolved together with the criminal case in the decision dated July 22, 1975. Hence, the reversal of the trial court's decision in Civil Case No. 2560 is based solely on the records then on hand without considering the records of the criminal case, for respondent court was not even aware of the pendency of the latter case. What remains to be seen, therefore, is whether or not the evidence in the civil case was used to arrive at the judgment of acquittal and whether or not the evidence in the criminal case was considered in the denial of the two motions for reconsideration in the civil case.

We have noted that despite the vigorous protest raised by petitioners against the rendition of a single decision, their arguments consisted merely of generalities. They failed to point out specifically where respondent court took and considered evidence in the civil case in deciding the criminal case. Actually, the assailed decision dated July 22, 1975 was mainly a review or a recital of the evidence presented in the trial of the criminal case and reference to the civil case was only by way of stressing certain matters extant in both cases. For instance, respondent court noticed that in the criminal case, appellants prefaced their brief with the statement that it "sprung from the filth of politics", so it pointed out a similar statement in the civil case and even quoted the judgment of the trial court in the civil case to the effect that Lot 1982 was "subject of a petition for release by the vociferous and noisy Cagayan de Oro City Landless Residents Association and capitalized by certain local politicians for election purposes." [11] Respondent court also pointed to the testimony of witness, Hilarion Maagad, Sr. in the civil case to the effect that a carbon copy of the three-page decision was found by him in the custody of the Chief of the Cadastral Section of the Land Registration Commission, to emphasize said witness' testimony in the criminal case that he saw an old "original copy of the three-page decision, adjudicating Lot 1982 of the Cagayan Cadastre to Benedicta Macabale Salcedo." [12] To this extent, respondent court made reference to the evidence in the civil case. However, these insignificant occasions do not warrant the annulment of the decision in the criminal case. While it is true, as petitioners pointed out, that the evidence necessary to decide the civil case is not only markedly different in various aspects from the evidence needed to resolve the criminal case but that the quantum of proof required is also different, they erroneously conclude that respondent court evaluated the evidence offered and admitted in both cases together and indiscriminately. As a matter of fact, when respondent court referred to the civil case, it duly indicated therein that it was doing so. Hence, there was no error and confusion as petitioners claim.

Petitioners further argue that respondent court cannot resolve the two cases in a single decision because they were heard, tried and decided by two different judges and evidence was offered and admitted separately in the civil as well as criminal case. It is contended that Civil Case No. 2560 was decided by the Hon. Bernardo Teves, Presiding Judge of Branch IV, Court of First Instance of Misamis Oriental, while Criminal Case No. 4683 was

decided by the Hon. Eduardo de G. Montenegro, Presiding Judge of Branch III of the same court. We do not find any merit in this argument as this Court has consolidated cases tried separately by different courts as long as the factual and/or legal issues involved are similar or the same. The petitioners themselves admitted the community of issues in their petition. Thus, they stated in their petition for certiorari in L-41116: "x x x the criminal case involved the falsification of the document which was also the principal issue in the aforesaid civil case, x x x." [13]

As to the extent of the use by respondent court of the evidence in the criminal case in disposing of the motions for reconsideration in the civil case, We find that respondent Court only made reference to the evidence in the criminal case to strengthen or bolster the judgment it had rendered. Thus, the respondent Court said:

"After a careful study of the evidence in the criminal case in relation to the evidence in the civil case, this Court is all the more convinced that Judge Benjamin K. Gorospe had acted properly in issuing the order for the issuance of the decree of registration of Lot 1982." [14]

Finally, it was the Solicitor General himself who called the attention of the Special Division of Five on the pendency of the criminal case before the Eighth Division of the Court of Appeals. By this disclosure alone, it could be inferred that the Solicitor General realized the interconnection of the two cases and the possible effect or influence of one on the other. In fact, when Justice Francisco Ma. Chanco, the lone dissenter in the dismissal of the civil case as well as in the acquittal of the accused in the criminal case, suggested that the two cases be consolidated for decision, the Solicitor General readily agreed. The consent given by the Solicitor General is clearly indicated in the resolution dated October 1, 1975, the pertinent portion of which is quoted herein as follows:

"Considering that the subject argued by the Solicitor General deals with the authenticity and genuineness of a certain document submitted as an exhibit in the present civil case, Mr. Justice Francisco Ma. Chanco suggested, to which the other Justices concurred, that the criminal case and the civil case be consolidated for decision by the present Division of Five Justices. Both the Solicitor General and Attorney A. R. Montemayor readily agreed. It was further agreed to suspend the hearing on appellee's motions for reconsideration until such time when the Justices of the Division have studied both the civil and criminal cases involved herein." [15]

In the light of the presumption that official duty has been regularly performed, it is fair to assume that a copy of the said resolution was sent to the Solicitor General. Thus, the Solicitor General cannot now claim that they "merely agreed to the suggestion for the consolidation of the two cases under one division of respondent Court, but never to the rendition of a single decision on the two cases by said division." [16]

We, therefore, find no merit to the assigned errors under discussion, to wit, The First Assignment of Error in L-41115 and the First Assignment of Error in L-41116.

SECOND ASSIGNMENT OF ERROR

IN L-41115

"The respondent Court of Appeals erred in relying heavily on extraneous matters which were not even brought up, adduced, offered much less admitted in evidence both in the criminal (CA-G.R. No. 15289-CR) and civil (CA-G.R. No. 46566-R) aspects of the case at bar. This is contrary to basic and fundamental rules of procedure and violative of the due process clause of the Constitution.

IN L-41116

"The respondent Court gravely erred in rendering the decision by relying on matters not presented, nor offered, much less admitted in evidence. Such a decision is in violation of the due process clause of the Constitution."

In the civil case, the alleged extraneous matters injected by respondent court are: (1) the statements of Guillermo Bolohan, namely: the question and answer statement allegedly given before the NBI, whose date of execution does not appear anywhere in the records and the December 3, 1968 affidavit or narrative statement before a notary public; (2) the alleged political motive as the guiding factor behind the institution of the action; (3) the insinuation that respondent Benedicta Macabale Salcedo had a house in the subject premises (Lot 1982) and that the area is covered by a tax declaration which was allegedly used as a security for the bail bond of a Chinese named Paulino Lamber; and (4) the unfounded conclusion that respondent Macabale Salcedo and her son, Isidro Baculio, paid the realty taxes on Lot 1982 as early as before the last global war up to the year 1948 when the tax declaration covering the lot came into being only on June 17, 1964.

Petitioners contend that respondent Court relied heavily on the Bolohan statements although neither statement was introduced in evidence. The question and answer statement was merely cited in the opposition of private respondents to the motion for reconsideration filed by herein petitioners relative to the June 6, 1974 decision of the respondent Court of Appeals in CA-G.R. No. 46566-R. This was how the said statement got into the civil case.

In the criminal case, where the extraneous matters referred to the Bolohan statements alone, the December 3, 1968 affidavit or narrative statement was appended as an annex to the motion for new trial in the court below, which motion was, however, denied for lack of merit. A portion of the question and answer statement was quoted in two of the three separate briefs filed by private respondents as appellants in the criminal case. These were the means whereby the Bolohan statements somehow became part of the records of the criminal case.

Private respondents claim that Guillermo Bolohan is the only surviving member of the staff of Judge Ricardo Summers, who issued the decision subject of these cases. They never introduced him as a witness. But they attempted to take his deposition in the criminal case. Their motion to that effect was however denied by the trial court.

In answer to this assigned error, private respondents maintain that the statements of Bolohan were merely cumulative evidence bolstering their claim that it is the three-page decision that is genuine and not the seven-page decision. They argue that respondent court considered the sworn statement of Bolohan corroborative of the fact that the seven-page decision was without caption, title, and signature, for even without Bolohan's statement the fact that the seven-page decision is really captionless and without title and signature cannot be altered nor change the admission made by petitioners' witness, Vicente G. Corrales, "that he only supplied the caption and title, where there was none, in the preparation of the certified copy." Private respondents further explain that when Bolohan stated that where a claimant failed to appear on time after the opening session in the morning, Judge Summers would summarily declare the lot public land, but when the claimant later appeared the judge would reconsider and adjudicate the lot in favor of claimant, such statement merely affirmed the testimony of Jose Ampeloquio to the effect that "when there is no claimant (to a lot cadastrally surveyed) the land is identified as public land at the time of the survey." Private respondents conclude that even if the statement of Bolohan were to be discarded, the testimony of petitioners' witness, Ampeloquio, would still remain and explain why a seven-page decision was drafted although left unpromulgated by Judge Summers.

In the criminal case, private respondents justified the use of the Bolohan statements in the light of the doctrine that "an appeal throws the whole case open to review and it becomes the duty of the appellate court to correct such

errors as may be found in the judgment appealed from and that the appellate court in a criminal case may explore the whole records for the purpose of arriving at the correct conclusion."

No matter how respondent Court used the Bolohan statement, whether as principal evidence, cumulative evidence or corroborative evidence, We hold that such use is not sanctioned by our procedural rules. Section 35, Rule 132 of the Revised Rules of Court explicitly provides: "The court shall consider no evidence that has not been formally offered. The purpose for which the evidence is offered must be specified."

The rule is that any evidence which a party desires to submit for the consideration of the court must formally be offered by him.[17] Such a formal offer is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial and no finding of fact can be sustained which is not supported by such evidence.[18] Thus, documents not regularly received in evidence on the trial will not be considered in disposing of the issues of an action.[19] Without a limit on the kind of documents and other evidence which may be considered by the courts, all our rules on evidence will be rendered nugatory.

The narrative statement of Guillermo Bolohan, executed on December 3, 1968, cannot partake of the nature of a validly adduced, offered and admitted piece of evidence because it was merely appended as an annex to the motion for new trial. Much less can the undated question and answer statement of Bolohan, which is the one relied upon by respondent Court, not the narrative statement, be considered as such because it was brought out, in the criminal case, only in their appeal briefs and in the civil case, only in their opposition to the motion for reconsideration of herein petitioners. Hence, the same was presented for the first time on appeal, at which stage, no additional factual evidence could be introduced for the reason that its presentation would, as in fact it did, deprive petitioners of their right to be heard with regard to said statement.

Neither can the use of the question and answer statement of Bolohan be justified by the doctrine that an appeal in a criminal case throws the whole case open for review. Although part of the physical records of the case, it does not constitute a valid part thereof because it was incorporated therein violation of our rules on evidence.

Having thus found that it was an error for respondent Court for having considered the said question and answer statement of Bolohan in disposing of the civil and criminal cases, the next question that has to be resolved is whether or not such error warrants the reversal of the decision dated July 22, 1975 of respondent Court insofar as it denied the motion for reconsideration of petitioners in the civil case and the annulment of the same decision insofar as it acquitted private respondents of the crime charged.

We shall resolve the issue first in relation to the judgment of acquittal which petitioners seek to annul in the petition at bar.

Private respondents argue that this "appeal" by the Solicitor General would place them in double jeopardy contrary to Section 2, Rule 122 of the Revised Rules of Court which provides:

"Sec. 2. Who may appeal. - The People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy. x x x"

We agree. There is the further protection that the Constitution affords to an accused in ordaining that: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." [20]

This Constitutional mandate prohibits not only a subsequent prosecution in a new and independent cause. It also extends to an appeal in the same case by the prosecution after jeopardy had attached, thereby in effect viewing such appeal as presenting a new and se-parate jeopardy, repugnant to the fundamental law's provision against

double jeopardy.[21]

Equally well-settled is the rule that the protection against double jeopardy bars any other form of inquiry into a judgment of acquittal - either through a certiorari proceeding[22] or a petition for review.[23] Perforce, the present special civil action for certiorari of petitioners, which seeks to nullify the judgment of acquittal for having been allegedly rendered with grave abuse of discretion tantamount to lack of jurisdiction, must fail.

That this must be Our conclusion is further supported by Our finding that the use of the Bolohan statement constitutes merely an error of judgment and not an error of jurisdiction as there was no clear showing that respondent Court exercised its power in the arbitrary or despotic manner by reason of passion or personal hostility or that its act was so patent and gross as to amount to an evasion or a virtual refusal to perform the duty enjoined or to act in contemplation of law.[24] For one thing, the Bolohan statement was not the sole basis of respondent Court for the acquittal of private respondents. The entire evidence presented by petitioners, both oral or documentary, from the NBI witnesses to the Spanish grammarian, Jose Montalban, were impugned and discredited one by one to the end that respondent Court was convinced that the guilt of the accused persons was not proved beyond reasonable doubt. The failure of petitioners to offer or to submit the carbon copy of the three-page and seven-page decisions, despite the repeated requests of private respondents was likewise considered by respondent Court, to which We fully agree, as a blatant denial of due process that merits the reversal of a judgment of conviction. Certainly, these considerations taken all together cannot be a valid basis to indict respondent Court as having acted whimsically and capriciously in decreeing a judgment of acquittal.

Anent the other alleged extraneous matters used by respondent Court in the civil case, We do not find any necessity in discussing them, referring as they do to insignificant matters that do not have any legal bearing on the final disposition of the case.

THIRD ASSIGNMENT OF ERROR

(G.R. L-41115)

"The respondent Court erred in basing its decision upon, and not declaring the falsity of the three-paged decision (Exhibits "L", "L-1", and "L-2") which on its face and the basis of physical and incontrovertible facts is clearly a forgery."

FOURTH ASSIGNMENT OF ERROR

(G.R. L-41115)

"The respondent Court erred in considering the seven-paged decision as spurious (Exhibits "K", "K-1", "K-2", "K-3", "K-4", "K-5" and "K-6"), when its authenticity was not contested and brought in issue before the lower court in Civil Case No. 2560."

These assignment of errors are the more important ones. Stated differently, the third assignment of error raises the main question in this petition for review, that is, whether or not the three-page decision is falsified. On the other hand, the fourth assignment of error simply raises the question of whether or not there is necessity of ruling on the authenticity of the seven-page decision.

Several arguments are advanced by petitioners to support their view that the three-page decision is falsified. First, they claim that the falsity of the questioned three-page decision is attested by experts on documents. They presented the report of Senior Document Examiner Hermenegildo C. Mil of the National Bureau of Investigation, (Report No. 174-1264, June 17, 1965) who, according to them, more than sufficiently established their stand. A

material portion of the said report on which Mil testified before the lower court is herein quoted:

"1. As far as the age of the documents is concerned, no opinion can be rendered for lack of basis. Nevertheless, in the case of the three-paged decision, declaring the lot in question a 'private land', artificial aging is seemingly indicated by –

(a) The spreading of spluttered ink in unusual places;

(b) The uneven discoloration of the pages which is not in consonance with the natural aging of documents; and

(c) The suspicious presence of rust in certain portion of the three-pages of the decision, indicating negligence on the part of the alleged owner in taking care of a very valuable or important document like a 'favorable court order'.

"2. As to authenticity, the same findings obtain as in the 'age of documents'. However, it is imperative to state here certain facts observed in the course of the examination.

"In the three-page decision declaring the lot in question a 'private land', the typewriter used in the second page is different from the one used in the first and third pages. And a different kind of paper, too, was used in the second page from the paper used in the first and third pages.

"Incident to this case, pertinent documents in the files of the Land Registration Commission have been examined, among which are the 'Order' for the issuance of the decree declaring the lot in question a 'private land, and the Record Book of Cadastral lots numbered '63'.

"With regards to the first document, it was observed with surprise that the 'Notation' in said 'order' setting aside previous decisions involving Lot No. 1982 was typed from a typewriter different from the one used in typing the rest of the entries, and yet there are very few typewritten entries therein.

"In the case of the second or later document, it is indicated therein that the 'Decision' declaring Lot No. 1982 (Cad. Rec. No. 1562) as 'public land' was promulgated first, or ahead of the 'Decision' declaring it a 'private land'. This is evidenced by the fact that in the said Record Book of Cadastral Lots, the entry declaring it a 'public land' was written on the line provided therefor in the usual or natural course, whereas the entry declaring it a 'private land' was written or superimposed above this entry, giving rise to the conclusive presumption that it was written or entered later."[25]

Petitioners further cited a portion of the report of another expert, Captain Pedro Elvas, Jr., who examined the document at the behest of private respondents. His findings were, however, withheld and not presented as evidence. A portion of Elvas' report was quoted by petitioners, "not as proof of the truth of the report itself because the same was suppressed, but as ready reference for this Honorable Court in the exercise of its plenary judicial powers to better appraise the gravity of the fraud perpetrated against public interest and to spotlight the weight that must be given to the report of NBI Senior Document Examiner Hermenegildo Mil," which portion reads:

"Based from the above findings, it is concluded that, of the alleged three-page Court decision, dated 19 Dec. 1940, rendered by the CFI Misamis Oriental, Ninth Judicial District, marked 'Q-1', 'Q-2' and 'Q-3', PAGE TWO (2), Marked 'Q-2' IS NOT THE ORIGINAL SECOND PAGE OF THESE SET OF DOCUMENTS BUT AN INSERTION, made at a later date, prepared on a different typewriter, aged artificially, done in a sheet of paper of postwar manufacture and finally, the contents made to appear the subject of the court decision by altering a portion of the title on the first page, marked 'Q-1', to reflect the desired lot numbers as entered in the inserted page (marked 'Q-2')".[26]

Secondly, petitioners show the falsity of the three-page decision through the analysis conducted on the contents of the three-page decision by an expert in the Spanish language, Mr. Jose Montalban, who found that the decision

relied upon by private respondents and upon which their entire case rests is full of grammatical barbarities. They claimed that an honorable judge of the old school, like Judge Summers, would not have dared write poor Spanish and consequently expose himself, as the decision fraudulently passed off as his own has now exposed him, to public ridicule.

Thirdly, petitioners claim that page two of the three-page decision was typed with a different typewriter. They point out that Atty. Hilarion Maagad, Sr., a noted lawyer in the place, could not likewise have subjected himself to possible ridicule in testifying falsely that his typewriter was borrowed by respondent Baculio in the 1960's to prepare a document dated 1940. While he may not be certain as to the exact date when the typewriter was borrowed by respondent Baculio, the stark reality remains that after the examination of the specimen taken from the same typewriter, the NBI expert concluded that the additions made on the three-page decision were made on the very same typewriter borrowed from Atty. Hilarion Maagad, Sr. In other words, the very typewriter belonging to Atty. Maagad, Sr. was positively established as the machine used to prepare page two of the supposed 1940 document.

Fourthly, petitioners contend that the paper used for page two is of postwar vintage, not existing before the war and on the date the three-page decision was allegedly typed and fifth, they argued that there was deliberate aging of the document, as shown by the uneven discoloration and splattering of ink and rust.

Finally, petitioners claim that Lot 1135 adjudicated in favor of Jacinto Estrada was already registered in the name of Faustino Neri by virtue of the Order issued by Judge Felix Martinez on October 24, 1935.

In addition thereto, petitioners call attention to the corroborative evidence of falsity of the three-page decision, namely:

(1) The falsification of the Order of Judge Benjamin Gorospe by the addition of a paragraph not found in the original at the time it was signed by him. Judge Gorospe was very emphatic about this forgery when he testified, that he issued a certification, which states as follows:

"TO WHOM IT MAY CONCERN:

This is to certify that according to the verified petition under date of July 8, 1964, filed by Atty. Isidro S. Baculio, counsel for the claimant-petitioner, relative to Cad. Case No. 18, LRC Rec. No. 1562, Lot No. 1982, Cagayan Cadastre, entitled 'Commonwealth of the Philippines, Solicitante versus Antonio Abaday, Reclamantes, Benedicta Macabale Salcedo, Claimant-Petitioner', the file copy of the 'Order for the Issuance of Decrees in Cadastral Cases (Judicial Form No. 115-Revised February, 1940) under date of July 8, 1964 attached to the records of said petition does not show the following notations which appear on the photostatic copy of the same in the possession of the NBI, Eastern Mindanao Region, Cagayan de Oro City, viz:

'All other decisions, orders or processes issued by this Court pertaining to Lot No. 1982 only, are hereby amended and/or set aside so as to give due course to the above-mentioned decision adjudicating said lot to Benedicta Macabale Salcedo'.

It is further certified that the undersigned does not remember nor could he have authorized any person or persons to make any alteration or addition to the original order as it appears now in our files.

This certificate is issued upon request of Atty. Abdul Aguam of the National Bureau of Investigation, Eastern Mindanao Region, Cagayan de Oro City, in connection with his investigation on the matter.

Cagayan de Oro City, February 8, 1966.

s/ Benjamin K. Gorospe

t/ BENJAMIN K. GOROSPE

Judge"[27]

(2) The fact that immediately after the issuance of OCT No. 0-257 in the name of Benedicta Macabale Salcedo transfers were made to different persons, mostly the relatives of the Macabales and for practically no considerations at all.

(3) The fact of the prior recording of Lot 1982 with the Land Registration Commission and the Bureau of Lands as declared public lands and that the name of Benedicta Macabale Salcedo is not among the list of cadastral lot claimants.

(4) The fact of the motion for issuance of decree having been filed after the lapse of almost 24 solid years from the date (December 19, 1940) which is undisputedly the date of the three-page decision.

(5) The fact that Lot 1982 was released totally only on July 28, 1961 by the Bureau of Forestry which is undisputed.

In refutation of the above arguments, private respondents submit the following answers:

First, Agent Hermenegildo C. Mil merely ventured an opinion on the artificial aging of the three-page decision since he had stated that no opinion could be rendered as far as the age and authenticity of the carbon copy of the three-page decision because of lack of basis. Although Mil stated that "there was suspicious presence of rust in certain portion of the three-page decision, indicating some sort of negligence on the part of the alleged owner in taking care of a very valuable or important document like a favorable court order," this suspicion was based on the presumption that the said document was in the custody of the person who was to be benefitted by it and by this, is meant the accused Isidro S. Baculio. Since Agent Mil admitted in his cross-examination that "we have not found any direct evidence to show that this three-page decision has been in the possession of (the accused) Atty. Isidro S. Baculio at any time," then the testimony of Agent Mil is also valueless.

We hold that the report of Agent Hermenegildo C. Mil, upon which he testified during the trial of the case below, should be taken in its whole context. It may not have established with definite certainty the age and authenticity of the three-page decision but it categorically pointed out some physical and uncontroverted facts that either indicate artificial aging or put in doubt the authenticity of the said decision, namely: (1) the spreading of spluttered ink in unusual places; (2) the uneven discoloration of the page which is not in consonance with the natural aging of documents; (3) the suspicious presence of rust in certain portions of the three-page decision; (4) the use of a different typewriter for the second page and (5) the use of a different kind of paper also for page two. Hence, viewed in its totality, the report is more than an expression of opinion as to the age and authenticity of the three-page decision because it speaks of facts duly perceived by the reporter.

Anent the use of petitioners of the report of Pedro Elvas, Jr., which was not introduced in evidence, We rule that said report is inadmissible because the justification of petitioners of the use thereof cannot alter its character as an evidence that has not been formally offered. Nevertheless, even without considering said report, Agent Hermenegildo C. Mil's report is sufficient to create a doubt on the validity of the title of private respondents over Lot 1982. The Elvas' report does not say anything new. It merely corroborates the findings of Agent Mil.

On the testimony of Jose Montalban regarding the alleged grammatical "barbarities" in the three-page decision, We agree with the respondent Court that the opinion of Jose Montalban is worthless considering that the NBI itself has admitted that pages 1 and 3 of the three-page decision are genuine, despite the typographical and grammatical errors therein contained.

Anent the first factor that allegedly diminish the value of Jose Montalban's opinion, We hold that one need not be

a Spaniard in order to speak grammatically correct Spanish. Hence, the only question here is whether or not Judge Ricardo Summers was proficient in Spanish. Inasmuch as Jose Montalban, a professor in Spanish, gave a testimony to the effect that he knew Judge Summers personally, that he conversed with him in Spanish and that he heard him speak Spanish "divinamente" or fluently, in the absence of contrary proof from respondents, such testimony stands. It is, therefore, an error to say that "the records of the case does not show whether Judge Summers ... was proficient in Spanish."

However, We find that the second and third considerations, pointed out by respondent Court, that allegedly diminish the value of Jose Montalban's opinion, are quite plausible. It is, indeed, probable that whoever typed Judge Summer's decision might have erred in copying from the original considering that the basis of the testimony of Jose Montalban was a mere "true copy". This is bolstered by the fact that there are typographical and grammatical errors not only on page two but also on pages one and three of the said decision. Thus, for the reason that the testimony of Jose Montalban was based not on the original copy of the three-page decision, nor on the carbon duplicate thereof, but only on a "true copy", We have no choice but to disregard the testimony of Jose Montalban in deciding these cases.

Regarding the use of a different typewriter for the second page of the three-page decision, private respondents argue that a later finding of Agent Hermenegildo C. Mil, Report No. 20-764, dated October 29, 1965 (Exh. 11-Baculio, Vol. II, CFI Record, p. 84), which was elicited from him on cross-examination is that "no opinion can be rendered as far as the typewriting query is concerned because aside from being a blurred copy, the questioned typewriting is also smeared with ink and rust, hence precluding an effective and clear examination."

Private respondents contend that prosecution witness Hilarion K. Maagad, Sr. was sure and emphatic when he testified that it was only in May of 1965 when accused Isidro S. Baculio went to his house for the first time to borrow his typewriter. Thus, if the accused really borrowed the typewriter of Hilarion Maagad, Sr., it could not have been for the purpose of typing the second page of the three-page decision, because the petition for the issuance of decree, to which a certified true copy of the carbon copy of the three-page decision was already attached, was filed on July 8, 1964.

We hold that it would be unsound practice for the court to disregard a report which has been the subject of testimony of a witness simply because said witness makes an inconsistent statement in another report later on. Inasmuch as the first report of Agent Hermenegildo C. Mil duly established the fact that the typewritten entries on page two of the three-page decision reveal that a different typewriter was used from the one used in the first and third pages, his apparent change of heart when he stated "that no opinion can be rendered as far as the typewriting query is concerned," cannot alter the previously proved fact of its character as such.

A recanting testimony is oftentimes regarded as unreliable. Besides, in the cases involved herein, the later testimony of Agent Mil is unworthy of credence. The smudges of ink and rust on the three-page decision could not have precluded an effective and clear examination because the dissimilarity in the typewritten entries was immediately noticed and in fact, pointed out categorically in the first report made.

The fact that page two of the three-page decision was typed with a different typewriter is further bolstered by the testimony of Atty. Hilarion K. Maagad, Sr. who established that his typewriter was borrowed by the accused. Linking this testimony with the findings of the National Bureau of Investigation as testified to by Agent Mil that after comparing specimens from Atty. Maagad's typewriter with the typewritten entries on page two of the three-page decision, they found that it was said typewriter of Atty. Maagad that was used to prepare page two of the three-page decision, the date when said typewriter was borrowed becomes immaterial. The defense of private respondents capitalizing on the statement of Atty. Maagad that he was sure that the accused borrowed his

typewriter only in 1965 and not in 1964 when the petition for issuance of decree was filed, need not, therefore, be discussed.

We dwell next on the alleged use of paper of postwar manufacture for page two of the three-page decision. Private respondents maintain that petitioners' argument on this score is refuted in the appealed decision as follows:

"Regarding page 2 of the 3-page decision, the prosecution contends that the paper used in its preparation is different from the paper used for pages 1 and 3. The prosecution claims that the paper used for page 2 contains optical bleach which could only be found on paper of postwar manufacture. The only evidence on this comes from an agent of the NBI who was not qualified by the prosecution as an expert on chemical dyes used on paper for its fluorescent and brightening effect. Nevertheless, on the assumption that the second page of the 3-page decision contains optical bleach, the prosecution concludes that the second page of the 3-page decision is falsified.

To defend themselves against this charge, the accused persons wanted to see and confront the carbon copy of the 3-page decision. xxx xxx xxx But the trial court arbitrarily dismissed the manifestation and objections by directing the defense to:

"COURT: (To the defense)
Proceed with your evidence.

One of the constitutional rights of an accused person is to be duly informed of the nature and cause of the accusation against him. The demand of the accused persons to have the carbon copy of the 3-page decision produced in court was, obviously, an assertion of their constitutional right. The peremptory denial by the trial court of that demand was a deprivation of the constitutional right of the accused to both substantive and procedural due process, which "is not to be lightly glossed over." In the ascertainment of the question as to whether or not the accused really committed the crime charged, the prosecution and the trial court had unfairly limited the accused to a mere photostatic copy of the carbon copy of the 3-page decision. Needless to state, the photostatic copies were incapable of showing the alleged indications of artificial aging of the documents such as brittleness, splattering of ink, presence of rusts, and uneven discoloration of the paper. Neither are the NBI reports safe guides in determining whether the charge that a different kind of paper was used for page 2 of the carbon copy of the 3-page decision is true or not. Indeed, the NBI's reversal of itself on the typewriter query and on the alleged artificial aging of the second page of the certified true copy has rendered its reports and opinions very unreliable. The trial court should have required the prosecution in the face of the demands of the defense, to produce the carbon copies of the 3-page and 7-page decisions. Thus, "what is indispensable in law was rendered nugatory in fact" by what the trial judge did, or more appropriately, by what he failed to do."^[28]

We note that private respondents' defense on this score relates to the criminal case. Nothing is mentioned about a similar demand having been made during the trial of the civil case for the production of the carbon duplicate of the three-page decision. We hold that as far as the civil case is concerned, mere preponderance of evidence showing that the three-page decision is falsified is enough to declare null and void Original Certificate of Title No. 0-257 and all the transfer certificates of title issued as a result of subsequent dealings over Cadastral Lot No. 1982. The testimony of Agent Hermenegildo C. Mil to the effect that a different kind of paper was used for page two, in the absence of countervailing evidence from the private respondents, is sufficient to establish that point. In the criminal case, however, We cannot rule similarly in the face of the demands of the accused to see for themselves the carbon duplicate of the document object of the crime of falsification. All accused are accorded certain rights under the law to the end that only those whose guilt is proven beyond reasonable doubt are punished. They should be given all the necessary data as to why they are being proceeded against so that they would be in a position to defend themselves properly. If these were not done, there is an element of unfairness.

Due process is in fact denied them.

Finally, on the various corroborative evidence presented by petitioners showing the falsity of page two of the three-page decision, private respondents merely attack the allegation on the falsification of the order of Judge Benjamin Gorospe for the issuance of the decree of registration. They contend that the alleged insertion in the order does not constitute falsification under the law, citing the ruling in *People vs. Pacana*, 47 Phil. 48 at 56, to the effect that in falsification "the change in the public document must be such as to affect the integrity of the same or to change the effects which it could otherwise produce; for unless that happens, there could not exist the essential element of the intention to commit the crime." Moreover, they assert that there is absolutely no evidence to show that Isidro S. Baculio or his mother made the falsification.

We agree with private respondents. The elements of the crime of falsification in paragraph 6, article 171 of the Revised Penal Code are: (1) that there be an alteration (change) or intercalation (insertion) on a document; (2) that it was made on a genuine document; (3) that the alteration or intercalation has changed the meaning of the document; and (4) that the change made the document speak something false.[29]

Inasmuch as with or without the insertion, the Commissioner of Land Registration was bound to issue the decree of registration pursuant to the order of Judge Gorospe, We hold that the said intercalation was purposeless and meaningless. The Commissioner was called upon to exercise only a ministerial act, not a discretionary act.

One last point. Petitioners contend that for purposes of determining the falsity of the three-page decision, the petitioners need not prove that the seven-page decision is authentic. They claim that the respondent court's act of comparing the three-page decision with the seven-page decision to determine which is more genuine is not relevant in deciding the issues involved and that to find the seven-page decision false cannot by any rule of law or evidence result in the finding that the three-page decision is authentic.

On the other hand, private respondents maintain that "the matter with petitioners is that they presumed the forgery of the three-page decision by presuming the genuineness of the seven-page decision. They wanted a judgment of conviction for falsification on the basis of a mere presumption. Therefore, it became necessary for the appellate court to examine the seven-page decision and to compare it with the three-page decision." The fact that the seven-page decision is captionless, without title or signature of Judge Summers, that it does not bear the authentic signature of any court personnel, whereas the three-page decision contain the abbreviation "FDO", which stands for "Firmado", written immediately before the typewritten name of Judge Summers, and that the following notation appears at the lower left hand corner of the three-page decision: "Es copia verdadera de que certifico, Firmado Vicente Roa - Escribano Delegado," are apparent in the comparison of the two decisions. The authenticity of the notation has not been challenged, let alone impugned by the prosecution. Vicente Roa was admittedly a member of the staff of Judge Summers, who at various times acted as deputy clerk of court. The NBI examined the signature "Vicente Roa" appearing at the bottom of the last page of the three-page decision, and compared it with the genuine signature of Vicente Roa as it appears in the latter's notarial register and admitted during trial that the said signature is genuine.

Private respondents quote other "disturbing points" enumerated by the respondent court about the so-called seven-page decision:

"First, the certification issued by Atty. Vicente G. Corrales is dated October 7, 1952. But the defense correctly claims that the certified copy of the so-called 7-page decision was received in Manila only on February 16, 1963, as shown on the face of the first page of the certified true copy of the 7-page decision. (Vol. II, t.s.n., p. 97). Upon examination of Exhibit A (Vol. I, Folder of Exhibits, p. 1) there is no question that the certified copy was received on February 16, 1963. The prosecution also failed to explain this discrepancy of more than eleven

years.

"Second, the date on which the 7-page decision was presumably rendered by Judge Ricardo Summers, as originally typed on the 1st page was "Noviembre 23 (or 25, the date is not even clear) 1940." But as it appears from the photostatic copy of the carbon copy of the so-called 7-page decision, both the month and the day have been cancelled by a horizontal line and in lieu thereof the word "Diciembre" and the figure "19" were written immediately above it (Exhibit K-6, Vol. II, Folder of Exhibits, p. 100). The prosecution also failed to disclose the author of the alteration and the reason for it.

"Third, in the 7-page decision, Lot No. 411 of the Cadastral Survey of Cagayan de Oro appears to have been adjudicated to the conjugal partnership of Juan Roa Valdeconcha and Sinforosa Acero (Exhibit K-1; Ibid., p. 96). However, the defense presented evidence to show that the aforesaid lot was actually titled in the name of Felicitas Vda. de Sabal, under Original Certificate of Title No. 0-192 issued by the Register of Deeds of Cagayan de Oro City on October 3, 1958, pursuant to Decree No. N-65439 issued on September 12, 1959. The decree was issued by virtue of the order for issuance of decree promulgated by Judge Benjamin K. Gorospe in Registration Case No. N-40, L.R.C. Record No. N-4357 (Exhibit 8-Baculio, dorsal side; Vol. II, CFI Record, p. 75)."[30]

We hold that there certainly is no necessity for comparing the three-page decision with the seven-page decision to determine which is more genuine. It should be remembered that the civil case was instituted by the petitioners herein for the nullification of the order of Judge Benjamin K. Gorospe for the issuance of the decree in Cadastral Case No. 18, GLRO Rec. No. 1562, dated July 8, 1964 on the main premise that the three-page decision dated December 19, 1940 which formed the basis of Judge Gorospe's order is a forgery. What must of necessity be resolved therefore, is the authenticity of the three-page decision. The answer to that question can be arrived at only after the examination of said three-page decision itself, not any other. Hence, the respondent court gravely erred when it concluded that the three-page decision is authentic after discrediting the seven-page decision because what was actually put to test was the said seven-page decision. While We may agree with respondents that there are indeed some "dis-turbing" factors about the seven-page decision, there are far more glaring indications of falsity in the three-page decision. For how are We to regard the following established facts: the spreading of spluttered ink in unusual places, the uneven discoloration of the pages, the suspicious presence of rust, the use of a different typewriter and a different kind of paper for page two of the three-page decision, other than exercise extreme caution before believing its contents? How should the fact that immediately after the issuance of Original Certificate of Title No. 0-257 in the name of Benedicta Macabale Salcedo, transfers were made to different persons for practically no consideration at all? If anything, this act was an apparent aberration on the part of private respondents that invited a second look, suspicion and investigation. As suspected, the trial court found that some of these transfers were fictitious, as no receipts of payment, except for one, was presented in evidence. Respondents, therefore, could not expect to gain anything through their obdurate capitalization on the flaws of the seven-page decision because the three-page decision, of itself, could not withstand the test of scrutiny. The legal maxim to the effect that one must rely on the strength of his title, not on the weakness of the title of his opponent holds true in this case.

We rule that the respondent Court of Appeals erred in declaring the three-page decision as genuine and in considering the seven-page decision as spurious.

FIFTH ASSIGNMENT OF ERROR

"The respondent Court erred in declaring Lot No. 1982 of the Cagayan de Oro Cadastre originally classified as forestal land as private property of Benedicta Macabale Salcedo Vda. de Baculio, on the basis of self-serving testimonies of the defendants-appellants Macabale, et al. instead of confirming its character as a declared public land."

In support of this assignment of error, petitioners contend that prior to the institution of the action in Cadastral Case No. 18, GLRO Rec. No. 1562, before the Court of First Instance of Misamis Oriental, Lot No. 1982 was an integral part of timberland known and identified as Block F, LC Project No. 8, BF Map, LC 585 of the Bureau of Forestry. It was only on September 4, 1956, acting on Resolution No. 293, series of 1955 of the City Council of Cagayan de Oro when the Bureau of Forestry released a portion of Block F, LC Project No. 8 with an area of 12.82 hectares as alienable and disposable. And it was only on July 28, 1961 when again, two parcels of the land embraced within Block F, LC Project No. 8, containing an area of 1.0 and 2.4 hectares were released by the Bureau of Forestry as alienable and disposable at the request of Henry Canoy and M.B. Cabaraban who were in possession thereof by virtue of a permit issued by the Bureau of Forestry over portions of this particular lot.

Petitioners claim that the Court, therefore, erred in not properly appreciating the testimony of Atty. Jose Ampeloquio, legal officer of the Lands Division of Misamis Oriental and a member of the action unit of the Bureau of Lands which investigated the matter sometime in 1964. Said testimony was to the effect that he, together with other investigators found that in the record of cadastral lots in the Land Registration Commission, Lot No. 1982 was recorded as public land on the line where such an entry properly and regularly pertains. However, they found another entry declaring it a private land that was irregularly written later above or superimposed over the previous entry declaring the lot a public land.

Moreover, this witness testified that they found that the lot was swampland with bacauan or mangroves growing therein as late as 1964. So petitioners argued that areas with such growth are classified as forest lands. Section 1820 of the Revised Administrative Code clearly defines public forests, to wit:

"Sec. 1820. Words and Phrases Defined. For purposes of this chapter, 'public forest' includes, except as otherwise indicated, all unreserved public land including nipa and mangrove swamps and all forest of whatever character."

Petitioners also point out that land areas of this nature, being considered forest, are under the exclusive control and management of the Director of Forestry, now Director of Forst Development, quoting Section 1838 of the Revised Administrative Code which provides as follows:

"The Director of Forestry, with the approval of the Secretary of Agriculture and Natural Resources, may, upon such terms as may be deemed reasonable, lease or grant to any Filipino citizen or association of persons duly incorporated and authorized by the Constitution to acquire lands of the public domain, permits for the use of forest lands or vacant public lands not declared agricultural, for a period not exceeding twenty-five years, for the establishment of sawmills, lumber yards, timber depots, logging camps, right of way, and plantations for the raising of nipa and/or other palms, bacauan, medical plants or trees of economic value, and for the construction of hotels, sanitarium, fishing establishment, residences or camps, fishpond, saltworks, pastures for a large or small cattle or for other lawful purposes for an area not exceeding twenty-four hectares; Provided, that the maximum area shall not exceed two thousand hectares for fishponds, saltworks, nipa and/or other palms or bacauan plantations and right of way."

Pursuant to this provision, petitioners continue, a certain Henry Canoy and Pedro Pimentel occupied certain portions of the questioned lot by virtue of government leases.

On the other hand, petitioners insist that the only muniment of title to show that the said land belonged to Benedicta Macabale Salcedo was a tax declaration, which document was, however, secured only after she and her son, respondent Baculio, were successful in registering said lot under their names. A tax declaration secured over a parcel of land classified as forest does not vest ownership in favor of the said declarant or taxpayer. This was the pronouncement of the Supreme Court in the case of the Province of Camarines Sur vs. Director of Lands, 36 O.G. 2194; and J.M. Tuazon and Co., Inc. vs. Villanueva, 55 O.G. 3658.

Private respondents answer the foregoing arguments by stating, among other things, that long before the war, other persons than Benedicta Macabale Salcedo had claimed Lot 1982 as private property. They quote the following facts found by respondent Court:

"Hilarion Maagad, Sr., one of the prosecution witnesses, himself lodged a complaint in behalf of his client against Benedicta Macabale Salcedo and her son, Isidro S. Baculio, one of the accused persons in the present criminal case, for the annulment of Benedicta Salcedo's title. This case was docketed as Civil Case No. 2565 of the Court of First Instance of Misamis Oriental (Exhibit 9-Baculio, Vol. II, CFI Records, pp. 73, 76-80). In the said complaint, Hilarion Maagad, Sr. alleged for his clients that they are the 'grandchildren and great grandchildren of the late Cosme Macabale and Elena Al-lansa who, in their lifetime, acquired a parcel of land in the barrio of Macabalan. . . Cagayan de Oro City. . . to wit: Lot 1982 of the Cadastral Survey of Cagayan, L.R.C. Cad. Record No. 1562.' (Exhibit Q-Baculio, par. 3, Ibid., p. 77); that 'the plaintiffs can prove that the late Cosme Macabale was an applicant-claimant and for whom Lot No. 1982 was cadastrally surveyed.' (Exh. 9-Baculio, par. 8, Ibid., p. 79). This shows that Lot 1982 has been claimed as private land by other parties long before 1964." [31]

We do not argue with private respondents with respect to the said finding of fact of respondent Court. However, We do not consider the same to be a good and valid argument to prove that the land in question is not a forest land. Mere filing of a claim does not convert a non-disposable public land into one that is disposable. Neither is the number of persons laying a claim on the land proof of the classification of the said land as disposable public land.

For the same reason, the existence of a miscellaneous sales application for Lot 1982, as testified to by Jose Ampeloquio, does not thereby make the land subject of the application fall under the administration and supervision of the Bureau of Lands. More importantly, the initiation by the government of the cadastral proceeding with respect to said lot, likewise, does not mean that the government was representing said lot as alienable and disposable public agricultural land. The error of respondents lies in their misconception that only alienable and disposable public land may be the subject of a cadastral proceeding. The truth is that all classes of lands are included in such proceedings: private lands, public agricultural lands and lands of public ownership. The public lands are, of course, declared public lands in the hearing.[32] In one of the early cases decided by this Court on land registration,[33] the objective of the cadastral system and the classes of land to which it applies were discussed therein as follows:

"Now, what was the occasion for the enactment of the Cadastral Act(No. 2259)? The inference sought to be drawn is that the necessity of providing a method for requiring the compulsory registration of private lands is what induced its passage. But there is no language in the Act that can make it apply exclusively to private property. The first Section begins with language almost identical with the first line of Section 61 of Act 926, quoted supra: 'Whenever, in the opinion of the Governor-General, the public interests require that titles to any lands be settled and adjudicated, upon the order of the Governor-General, the Director of Lands or the private surveyor named by the landowners, if the Director of Lands approves, shall make a survey plan of such lands.'"

All classes of lands may thus be the subject of cadastral proceedings. In fact, President Ferdinand E. Marcos placed the entire country under a five-year cadastral program starting 1978 to facilitate the registration of all lands.

The attempts of private respondents to discredit the testimony of Jose Ampeloquio do not convince Us to adopt the holding of respondent Court with respect to the character of land involved in these cases. We rule that respondent Court erred in reversing the finding of the trial court and in declaring the land as the private property of Benedicta Macabale Salcedo.

SIXTH ASSIGNMENT OF ERROR

"The respondent Court erred in declaring that Judge Benjamin K. Gorospe's assumption of jurisdiction over the Cadastral Proceedings No. 18, GLRO Rec. No. 1562 (Lot No. 1982) when he took cognizance of the Motion for the Issuance of a Decree was to the exclusion of Judge Bernardo Teves and in ruling that the latter should not have taken jurisdiction over, tried and decided Civil Case No. 2560."

SEVENTH ASSIGNMENT OF ERROR

"The respondent Court erred in concluding that the petitioners' action in Civil Case No. 2560 should have been a petition for review of decree, and not one for nullity of judgment, orders and titles."

In relation to the above assignments of error, the pertinent portions of the assailed decision state the following:

"A judgment in a cadastral case to the effect that a lot is declared and decreed public land is not a final decree within the meaning of Sections 38 and 40 of Act No. 496, and therefore, it may be set aside. The same is true with a judgment declaring a piece of land private. For, a decision in a cadastral case, wherein the proceedings are the same as those which are followed in an ordinary registration case, is merely the commencement of the final decree which confers an irrevocable title. As long as the final decree is not issued by the Commissioner of Land Registration, and the period of one year fixed for the review thereof has not yet elapsed, the title is not finally adjudicated and the decision therein rendered continues to be under the control and sound discretion of the court rendering it. (Afalla and Pinarac vs. Rosauero, 60 Phil. 622 at p. 625; Roman Catholic Bishop of Cebu vs. Philippine Railway Co. and Reyno, 49 Phil. 546; De los Reyes vs. De Villa, 48 Phil. 227; Capió vs. Capió, 50 O.G. 137 at p. 139). Before the title is finally adjudicated, the court rendering the decision or decree may set it aside and adjudicate the land to another. (Director of Lands vs. Busuego, 12 SCRA 678 at p. 681; Capió vs. Capió, 50 O.G. p. 137 at p. 139).

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"The issuance of Judge Gorospe's order and decree was the continuation of a single proceeding - the registration of title to Lot No. 1982. Such proceeding began with the initiation of the cadastral case, and could terminate only when the title to the lot has been finally and irrevocably adjudicated. At the stage of the proceeding when the decree is still reviewable, as in the present case, the cadastral proceeding is not a terminated case. Therefore, appellees' action to annul Judge Gorospe's order and decree is still part of the single and continuing cadastral proceeding. Such being the case, there should be but one responsible court which should have exclusive control of every part of the proceeding. Obviously, it cannot be entrusted to two or more courts, independent from one another. Otherwise, there would be confusion and delay and, possibly injustice to the parties (Macias vs. Uy Kim, 45 SCRA 251). The court which should have exclusive control of every part of the present cadastral proceeding is, legally and logically, the branch in which Judge Gorospe is seated. It was the court in which the cadastral case was commenced; it should be the court to write finis to the case. The action to review and annul a decree of registration is properly cognizable by the court which rendered the decision and granted the decree (Director of Lands vs. Busuego, 12 SCRA at p. 681)"

"xxx xxx xxx

In *Gianan vs. Imperial*, G.R. No. L-37963, February 28, 1974, it was held that as a matter of comity it is well that the same branch of court that decided a case should hear the case if it is still presided by the same judge who rendered the alleged questioned decision. x x x"[34]

In assailing the above portions of the decision, petitioners argue that the cadastral jurisdiction of Judge Benjamin Gorospe cannot exclude the general jurisdiction of Judge Bernardo Teves. The issues of falsification and forgery

which gave rise to the issuance of the titles involved in the case at bar are certainly contentious and complicated. Hence, said issues could not be validly resolved in the same cadastral proceedings. They cannot be ventilated in a cadastral court of limited jurisdiction. Section 112 of Act 496, while providing for a summary procedure in cases regarding erasures, alteration or amendment of a certificate of title, entry of a new certificate or entry or cancellation of a memorandum upon a certificate, is inefficacious, however, in an action for cancellation of title involving contentious issues. Said provision affords relief only when there is unanimity among the parties or when there is no adverse claim or serious objection on the part of any party in interest.[35]

Indeed, as a general rule, an issue properly litigable in an ordinary civil action under the general jurisdiction of the Court of First Instance should not be resolved in a land registration proceeding. From the provisions of Section 2 of Act 496, as amended, as well as those of the Cadastral Act or Act 2259, the special and limited character of the jurisdiction of the Court of Land Registration is apparent. Hence, while it is true, as private respondents insist, that the jurisdiction of a land registration court or a cadastral court even after the issuance of the final decree of registration in a land registration or cadastral case subsists, this applies only to matters specifically provided by law to be within its special jurisdiction. Section 6 of Act 2259 and Section 112 of Act 496 provide some of those instances. But, as correctly contended by petitioners, the proceedings under Section 112 of Act 496 are summary in nature and are allowed only when a scrutiny of the allegations discloses that the issues are so patently insubstantial as not to be genuine issues.[36] Hence, an action for annulment being contentious falls within the general jurisdiction of the Court of First Instance pursuant to the Revised Judiciary Act.

Inasmuch as in this jurisdiction, the Court of First Instance also functions as a land registration court, an exception to the general rule (that an issue properly litigable in an ordinary civil action should not be resolved in a land registration proceeding) has been established, that is, if the parties acquiesce in submitting that issue for determination in the land registration proceeding and they were given full opportunity to present their respective sides and their evidence, the land registration court would have jurisdiction to pass upon that issue.[37] Whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or its limited jurisdiction as a special court (probate, land registration, etc.) is in reality not a jurisdictional question. It is in essence a procedural question involving a mode of practice "which may be waived." [38] In this case, however, there is no acquiescence of the parties to submit the issue of forgery and falsification to the cadastral court.

Besides, the question of whether a court or a branch thereof has authority or jurisdiction to annul a judgment rendered by another court of concurrent jurisdiction or by another branch has been resolved affirmatively in the cases of *Dulap vs. Court of Appeals*, L-28306, December 18, 1971, 42 SCRA 537 and *Gianan vs. Imperial*, L-37963, February 28, 1974, 55 SCRA 755, where this Court similarly held:

"To hold that a court of a branch thereof has no authority or jurisdiction to annul a judgment simply because that judgment was rendered by another branch would, therefore, practically amount to judicial legislation, affecting as it will, the provisions of the Revised Judiciary Act. In an action to annul a final judgment or order, the choice of which court the action should be filed with is not left to the parties; by legal mandate the action should be filed with the court of first instance. The question is in what place (with what particular court of first instance) the action should be commenced and tried. The question, as discussed above, is actually one of venue. x x x.

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Our conclusion must therefore be that a court of first instance or a branch thereof has the authority and jurisdiction to take cognizance of, and act in, a suit to annul a final and executory judgment or order rendered by another court of first instance or by another branch of the same court. The policy of judicial stability, which

underlies the doctrine laid down in the cases of *Dumara-og, J. M. Tuason & Co., Inc. and Sterling Investment Corporation, et al.*, supra, should be held subordinate to an orderly administration of justice based on the existing rules of procedure and the law. x x x"

While it is true that this Court pointed out in *Gianan vs. Imperial* that "as a matter of comity it is well that the same branch of court that decided a case should hear the case if it is still presided by the same judge who rendered the alleged questioned decision," petitioners correctly countered that such policy does not divest the court concerned of its jurisdiction over the pertinent case.

Petitioners manifested to this Court that Judge Bernardo Teves' assumption of jurisdiction over the case for nullification of the order of Judge Benjamin Gorospe was questioned before this Court in G.R. No. L-26671 but to no avail since the Court denied the petition summarily in a resolution dated October 17, 1966. They further mention the filing of a substantially and almost similarly worded petition by private respondents with the Court of Appeals, docketed as CA-G.R. No. 38489-R also questioning the jurisdiction assumed by Judge Bernardo Teves. And respondent Court, finding the move on the part of the private respondents a clear case of misrepresentation and suppression, dismissed the petition in a decision dated May 17, 1967.

Parenthetically, no word was said in refutation by private respondents about the filing of similar petitions in the Supreme Court and the Court of Appeals questioning the assumption of jurisdiction of Judge Bernardo Teves. Of course, it is understandable that such fact be suppressed because the denial of both petitions shows the obvious lack of merit of the arguments of private respondents on that issue.

In fact, the only argument presented by private respondents in confutation of the assigned error is the ruling of respondent Court. In effect, what private respondents did was to cite as authority for their argument the very same decisions being assailed now. They merely added a recent decision, i.e., *Manalo vs. Mariano*, (supra) supposedly in support of the decision of respondent Court on the question at bar. The question presented therein was: whether the Pasig Branch X of the Court of First Instance of Rizal can entertain an action for annulment of a partition agreement on the ground of fraud although its validity had already been upheld by Branch VIII of the same court in a land registration case.

Private respondents cite the following statements of this Court in the said case:

"Moreover, the action to annul the 1960 partition agreement would be an unwarranted collateral attack on the judgment in the land registration case which was rendered by another branch of the lower court. Such an action would reopen the issue as to the validity of the partition agreement, an issue which was already resolved and set at rest in the land registration case. The rule of non *quieta movere* applies. (See *Dulap vs. Court of Appeals*, L-28306, December 18, 1971, 42 SCRA 537)."

It appears, however, that the main reason why this Court ruled negatively on the question presented in that case was the applicability of the doctrine on bar by prior judgment since the issue raised therein was the validity of the partition agreement which has already been adjudicated by another branch of the same court and therefore, it would be highly improper to re-litigate the same issue. This situation is unlike in *Dulap vs. Court of Appeals* and *Gianan vs. Imperial* where the cause of action is entirely different from that in the action which gave rise to the judgment sought to be annulled, for a direct attack against a final and executory judgment is not incidental to, but is the main object of the proceeding.

In resumé, We hold that the decision dated July 22, 1975 of respondent Court substantially conforms with the due process clause and Section 9, Article X of the Constitution, as well as with the norm set by this Court in *Jose vs. Santos*, 35 SCRA 538, where it was held:

"Nor is there any rigid formula as to the language to be employed to satisfy the requirement of clarity and distinctness. The discretion of the particular judge in this respect, while not unlimited, is necessarily broad. There is no sacramental form of words which he must use upon pain of being considered as having failed to abide by what the Constitution directs. This is a realm where his individuality is not stifled, his habitual mode of giving expression to his thoughts respected. It suffices that his decision is not tainted with that degree of ambiguity that open vistas of doubt both as to what the facts really were and the significance attached to them by the law."

But as far as the use of extraneous matters are concerned, particularly the question and answer statement of Guillermo Bolohan, which was not presented, nor offered, much less admitted in evidence, We hold that respondent Court gravely erred in so doing as it was violative of Section 35, Rule 132 of the Revised Rules of Court. The acquittal that ensued thereafter has, however, been rendered beyond scrutiny due to the operation of the double jeopardy clause. Of course, the acquittal mentioned herein refers to that of respondent Josefina W. Bacarrisas as the criminal prosecution of respondent Isidro S. Baculio had terminated upon his death on February 28, 1978, pursuant to Article 89(1) of the Revised Penal Code.

With respect to the dismissal of the civil case for declaration of nullity of Original Certificate of Title No. 0-257 and all transfer certificates of title issued as a result of subsequent dealings over Cadastral Lot No. 1982, We hold such dismissal a reversible error. The falsity of the three-page decision had been sufficiently proved in the trial court. Despite all the arguments of respondents negating each and every proof of its falsity, We find that the preponderance of evidence still points towards the falsity of the three-page decision. The attempts to discredit the testimony of Agent Hermenegildo C. Mil had been rendered futile in the light of these physical and incontrovertible facts proven during the trial, to wit: (1) the spreading of ink in unusual places, (2) the uneven discoloration of the pages, (3) the suspicious presence of rust, and (4) the use of a different typewriter and the use of a different kind of paper on page two of the three-page decision. Neither can the flaws of the seven-page decision which was relied upon by petitioners as the genuine decision obliterate these physical and incontrovertible facts. Even without the said seven-page decision declaring Lot 1982 as public land, there is a presumption that all lands are considered public lands unless overcome by clear and convincing evidence. Inevitably, the three-page decision cannot pass the category of a clear and convincing evidence. Respondent Court committed grave abuse of discretion in reversing the trial court's finding that said lot is public land and in declaring the same as private property of Benedicta Macabale Salcedo.

Finally, We uphold the jurisdiction of Judge Bernardo Teves to annul the judgment or order rendered by another court of concurrent jurisdiction, which in this case is the order of Judge Benjamin K. Gorospe for issuance of decree of registration over Lot 1982, pursuant to the rulings in *Dulap vs. Court of Appeals* (supra) and *Gianan vs. Imperial* (supra).

IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, (a) the petition for review on certiorari in G.R. No. L-41115 should be, as it is hereby GRANTED; the decision dated June 6, 1974 of respondent Court dismissing the petition of the Republic of the Philippines and the City of Cagayan de Oro for declaration of nullity of the decree of registration of Lot 1982 and the decision dated July 22, 1975 denying the motions for reconsideration of petitioners are hereby SET ASIDE and REVERSED; and the decision dated November 13, 1968 of the Court of First Instance of Misamis Oriental, Branch IV in Civil Case No. 2560 is hereby REINSTATED; and (b) the petition for certiorari in G.R. No. L-41116 should be, as it is hereby DISMISSED.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., and Escolin, JJ., concur. Aquino and Abad Santos, JJ., in the result. De

Castro, J., no part.

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- [1] Pascual, J., ponente; Reyes, A., Reyes, L.B. and Lim, JJ., concurring; and Chanco, J., dissenting.
- [2] Rollo in L-41115, p. 362.
- [3] Ibid., p. 365.
- [4] Ibid., pp. 365-372.
- [5] Ibid., pp. 94-96.
- [6] Ibid., p. 388.
- [7] San Diego, J., Chairman; Ramos and Busran, JJ., Members.
- [8] Rollo in L-41115, p. 148.
- [9] Petitioner's Brief in L-41115, pp. 13-15.
- [10] Petitioner's Brief in L-41116, pp. 7 & 9.
- [11] Ibid., p. 29.
- [12] Ibid., p. 77.
- [13] Rollo in L-41115, p. 20.
- [14] Ibid., underscoring supplied.
- [15] Rollo in L-41116, p. 121, underscoring supplied.
- [16] Ibid., p. 236.
- [17] De Castro vs. The Court of Appeals of Manila, et al., 75 Phil. 834; Ayala vs. Valencia, 56 Phil. 182.
- [18] U.S. vs. Solaña, 33 Phil. 582.
- [19] Dayrit vs. Gonzalez, 7 Phil. 182.
- [20] Article IV, Section 22 of the Constitution.
- [21] Kepner vs. United States, 195 U.S. 100; 11 Phil. 669; Trono vs. U.S., 11 Phil. 725; People vs. Bringas, 70 Phil. 528; People vs. Hernandez, 94 Phil. 49; People vs. Ang Cho Kio, 95 Phil. 475; People vs. Pomeroy, 97 Phil. 927; People vs. Montemayor, 26 SCRA 687.
- [22] City Fiscal of Cebu vs. Kintanar, 32 SCRA 601; People vs. Doneso, 49 SCRA 281.
- [23] People vs. Inting, 70 SCRA 289.
- [24] Abig vs. Constantino, 2 SCRA 299; Solidum vs. Hernandez, 7 SCRA 320; Delfin vs. Court of Appeals, 13 SCRA 366.
- [25] Petitioners' Brief in L-41115, pp. 27-29.
- [26] Ibid., pp. 30-31.
- [27] Ibid., pp. 33-35.

[28] Respondents' Brief in L-41115, pp. 42-45.

[29] Reyes, Luis B., The Revised Penal Code, Book Two, 1971, p. 197, underscoring supplied.

[30] Respondents' Brief in L-41115, pp. 56-58.

[31] Ibid., p. 59.

[32] Noblejas, Antonio H., Land Titles and Deeds, 1968 ed., p. 38.

[33] Govt. of P.I. vs. Municipality of Binalonan, 32 Phil. 634.

[34] Rollo in L-41115, pp. 383-387.

[35] August A. Santos, et al. vs. Hon. Fernando A. Cruz, 52 SCRA 330.

[36] Sangalang, Sr. vs. Caingat, L-25531, September 26, 1968, 25 SCRA 180.

[37] Franco vs. Monte de Piedad and Savings Bank, L-17610, April 22, 1963, 7 SCRA 660; City of Manila vs. Tarlac Development Corporation, L-24557, July 31, 1968, 24 SCRA 466; City of Manila vs. Manila Lodge No. 761, L-24469, July 31, 1968, 24 SCRA 466; City of Manila vs. Army and Navy Club of Manila, L-24481, July 31, 1968, 24 SCRA 466.

[38] Cunanan vs. Amparo, 80 Phil. 227, 232; Manalo vs. Mariano, L-33850, January 22, 1976, 69 SCRA 80.

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