

**FELICIDAD L. ORONCE AND ROSITA L. FLAMINIANO, PETITIONERS,
VS. HON. COURT OF APPEALS AND PRICILIANO B. GONZALES
DEVELOPMENT CORPORATION, RESPONDENTS.**

G.R. No. 125766. October 19, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

The issue of whether or not a Metropolitan or Municipal Trial Court may resolve the issue of ownership of the property involved in an unlawful detainer case has been discussed by this Court in a number of cases, the more recent of which is that of *Hilario v. Court of Appeals*.^[1] Jurisprudence on the matter has in fact been reflected in the 1997 Rules of Civil Procedure under Rule 70, to wit:

"SEC. 16. Resolving defense of ownership. - When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. (4a)"

These developments in the law notwithstanding, there remains some misconceptions on the issue of jurisdiction of inferior courts in ejectment cases where ownership is raised as a defense that the Court deems proper to clarify in this petition.

Private respondent Priciliano B. Gonzales Development Corporation was the registered owner of a parcel of land with an area of 2,000 square meters. The land with improvements, covered by Transfer Certificate of Title No. RT-54556 (383917), is situated at No. 52 Gilmore Street, New Manila, Quezon City.

In June 1988, private respondent obtained a four million peso - (P4,000,000.00) loan from the China Banking Corporation. To guarantee payment of the loan, private respondent mortgaged the Gilmore property and all its improvements to said bank. Due to irregular payment of amortization, interests and penalties on the loan accumulated through the years.

On April 13, 1992, private respondent, through its president, Antonio B. Gonzales, signed and executed a Deed of Sale with Assumption of Mortgage covering the Gilmore property and its improvements, in favor of petitioners Rosita Flaminiano and Felicidad L. Oronce.^[2] The deed, which states that the sale was in consideration of the sum of P5,400,000.00,^[3] provided inter alia that

"x x x the VENDOR (PBGDC) also guarantees the right of the VENDEES (petitioners) to the possession of the property subject of this contract without the need of judicial action; and possession of said premises shall be delivered to the VENDEES by the VENDOR at the expiration of one (1) year from the date of the signing and execution of this Deed of Sale with Assumption of Mortgage."

On the other hand, petitioners bound themselves to pay private respondent's indebtedness with China Banking Corporation.

In fulfillment of the terms and conditions embodied in the Deed of Sale with Assumption of Mortgage, petitioners paid private respondent's indebtedness with the bank. However, private respondent reneged on its obligation to deliver possession of the premises to petitioners upon the expiration of the one-year period from April 13, 1992. Almost six months later since the execution of the instrument or on October 2, 1992, petitioners caused the registration of the Deed of Sale with Assumption of Mortgage with the Register of Deeds. Simultaneously, they obtained a new title, TCT No. 67990, consistent with the fact that they are the new owners of the property.[4] Sometime in July 1993, they paid the real estate taxes on the property for which they were issued Tax Declarations Nos. C-061-02815 and C-061-02816.[5]

On November 12, 1993, petitioners sent private respondent a demand letter asking it to vacate the premises. Said letter, just like three other consecutive notices sent through the Quezon City post office, was unclaimed. Hence, on April 11, 1994, petitioners filed before the Metropolitan Trial Court of Quezon City, a complaint for unlawful detainer against private respondent. The complaint, docketed as Civil Case No. 8638 was raffled to Branch 41. Petitioners alleged that by virtue of the Deed of Sale with Assumption of Mortgage, they acquired from private respondent the Gilmore property and its improvements, for which reason they were issued TCT No. 67990. However, they added, in violation of the terms of that document, specifically Sec. 3 (c) thereof, private respondent refused to surrender possession of the premises. Consequently, they demanded that private respondent vacate the premises through notices sent by registered mail that were, however, returned to them unclaimed.

In its answer to the complaint, private respondent raised the issue of ownership over the property. It impugned petitioners' right to eject, alleging that petitioners had no cause of action against it because it was merely a mortgagee of the property. It argued that when the parties executed the Deed of Sale with Assumption of Mortgage, its real intention was to forge an equitable mortgage and not a sale. It pointed out three circumstances indicative of an equitable mortgage, namely: inadequacy of the purchase price, continued possession by private respondent of the premises, and petitioners' retention of a portion of the purchase price.

During the preliminary conference on the case, the parties agreed to stipulate on the following: (a) the existence and due execution of the Deed of Sale with Assumption of Mortgage, and (b) the issue of whether or not the premises in litis are being unlawfully detained by private respondent.[6]

On March 24, 1995, the MTC[7] decided the case in favor of petitioners. It ruled that petitioners are the owners of the Gilmore property on account of the following pieces of evidence: (a) TCT No. 67990; (b) petitioners' payment to the China Banking Corporation of P8,500,000.00, the amount of the mortgage entered into between private respondent and said bank; (c) payment of real estate taxes for 1993, and (d) Tax Declaration No. 02816 in petitioners' names. The MTC further held that private respondent's possession of the premises was merely tolerated by petitioners and because it refused to vacate the premises despite demand to do so, then its possession of the same premises had become illegal. Thus, the MTC decreed as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ordering defendant and all persons claiming rights under it to vacate the premises-in-litis located at No. 52 Gilmore St., New Manila, Quezon City, and to peacefully surrender possession thereof to the plaintiffs; to pay plaintiffs the sum of P20,000.00 a month as compensation for the unjust occupation of the same from April 11, 1994 (the date of filing of this case) until defendant fully vacates the said premises; to pay plaintiffs the amount of P20,000.00 as and for attorney's fees plus costs of suit.

Counterclaim is dismissed for lack of merit.

SO ORDERED."[8]

On April 25, 1995, private respondent interposed an appeal to the Regional Trial Court, Branch 219, of Quezon

City that docketed it as Civil Case No. Q-95-23697. Private respondent stressed in its appeal that it was not unlawfully withholding possession of the premises from petitioners because the latter's basis for evicting it was the Deed of Sale with Assumption of Mortgage that did not reflect the true intention of the parties to enter into an equitable mortgage. Clearly in pursuance of that allegation, private respondent filed a motion questioning the jurisdiction of the RTC to entertain its appeal. On the other hand, petitioners filed a motion for the immediate execution of the appealed decision. The RTC granted the motion on September 21, 1995 and the corresponding writ of execution was issued on September 25, 1995. The following day, the sheriff served upon private respondent the writ of execution and a notice to vacate the premises within five (5) days from receipt thereof.

Meanwhile, during the pendency of its appeal, private respondent filed an action for reformation of instrument with the RTC. It was docketed as Civil Case No. Q-95-24927 and assigned to Branch 227.

In a resolution dated December 7, 1995, RTC Branch 219 asserted jurisdiction over the appeal. It ruled that the issue of whether or not an action for reformation of a deed of sale and an unlawful detainer case can proceed independently of each other has been resolved by this Court in *Judith v. Abragan*.^[9] In said case, this Court held that the fact that defendants had previously filed a separate action for the reformation of a deed of absolute sale into one of pacto de retro sale or equitable mortgage in the same Court of First Instance is not a valid reason to frustrate the summary remedy of ejectment afforded by law to the plaintiff.

On December 12, 1995, private respondent filed in the Court of Appeals a petition for certiorari with prayer for a temporary restraining order and writ of preliminary injunction against petitioners and RTC Branch 219. It assailed the September 21, 1995 order granting the issuance of a writ of execution pending appeal, the writ of execution and the notice to vacate served upon private respondent (CA-G.R. SP-39227).

On December 13, 1995, RTC Branch 219^[10] rendered the decision affirming in toto that of the Metropolitan Trial Court. Stating that in ejectment proceedings, the only issue for resolution is who is entitled to physical or material possession of the premises involved, RTC Branch 219 held that:

"x x x the plaintiffs (petitioners herein) are vendees of the defendant (PBGDC) by virtue of a deed of sale where the extent of its right to continue holding possession was stipulated. In the agreement, the existence and due execution of which the defendant had admitted (Order, December 16, 1994, Rollo, p. 111), it was clearly stated that the defendant shall deliver the possession of the subject premises to the plaintiffs at the expiration of one (1) year from the execution thereof, April 12, 1992. The defendant failed to do so. From then on, it could be said that the defendant has been unlawfully withholding possession of the premises from the plaintiffs.

In any case, this ruling on the matter of possession de facto is without prejudice to the action for reformation. This is because 'the judgment rendered in an action for forcible entry or detainer shall be effective with respect to the possession only and in no wise bind the title or effect the ownership of the land or building nor shall it be held conclusive of the facts therein found in a case between the same parties upon a different cause of action not involving possession' (*Ang Ping v. Regional Trial Court*, 154 SCRA 153; Section 7, Rule 70, Rules of Court)."^[11]

On that same date, December 13, 1995, the Court of Appeals issued a temporary restraining order enjoining RTC Branch 219 from enforcing the writ of execution and the notice to vacate the premises and on January 15, 1996, the same court granted private respondent's application for a writ of preliminary injunction enjoining the implementation of both the writ of execution pending appeal and the decision of RTC Branch 219.

Around six months later or on July 2, 1996, RTC Branch 227^[12] issued an order declaring private respondent non-suited for failure to appear at the pre-trial and, therefore, dismissing the action for reformation of instrument in Civil Case No. Q-95-24927. Private respondent, not having sought reconsideration of said order, the same court

issued a resolution on August 15, 1996 directing the entry of judgment in the case.[13] The Clerk of Court accordingly issued the final entry of judgment thereon.[14]

In the meantime, on July 24, 1996, the Court of Appeals rendered the herein questioned Decision.[15] It set aside the December 13, 1995 decision of RTC Branch 219 and declared as null and void for want of jurisdiction, the March 24, 1995 decision of the Metropolitan Trial Court of Quezon City, Branch 41. It made permanent the writ of preliminary injunction enjoining petitioners from implementing the decision of RTC Branch 219, the writ of execution and the notice to vacate. In so holding, the Court of Appeals said:

"It is quite evident that, upon the pleadings, the dispute between the parties extended beyond the ordinary issues in ejectment cases. The resolution of the dispute hinged on the question of ownership and for that reason was not cognizable by the MTC. (See: *General Insurance and Surety Corporation v. Castelo*, 13 SCRA 652 [1965]).

Respondent judge was not unaware of the pendency of the action for reformation. However, despite such knowledge, he proceeded to discuss the merits of the appeal and rendered judgment in favor of respondents on the basis of the deed of sale with assumption of mortgage which was precisely the subject of the action for reformation pending before another branch of the court. Prudence dictated that respondent judge should have refused to be drawn into a discussion as to the merits of the respective contentions of the parties and deferred to the action of the court before whom the issue was directly raised for resolution."

On whether or not private respondent was in estoppel from questioning the jurisdiction of the MTC since it voluntarily submitted thereto the question of the validity of its title to the property, the Court of Appeals said:

"This is not so. As earlier pointed out, petitioner (private respondent here) had, in its answer to the complaint for unlawful detainer, promptly raised the issue of jurisdiction by alleging that what was entered into by the parties was just an equitable mortgage and not a sale. Assuming the truth of this allegation, it is fairly evident that respondents would not have had a cause of action for ejectment. In other words, petitioner, since the start of the case, presented a serious challenge to the MTC's jurisdiction but, unfortunately, the court ignored such challenge and proceeded to decide the case simply on the basis of possession.

'The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not, if it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel (5 C.J.S., 861-863).' (*La Naval Drug Corporation v. Court of Appeals*, 236 SCRA 78 [1994]).

Contrary to respondents' pretense, the filing by petitioner of an action for the reformation of contract may not really be an afterthought. As we understand it, petitioner, to support its allegation that the contract was a mere equitable mortgage, cites the fact that the price was inadequate; it remained in possession of the premises; it has retained a part of the purchase price; and, in any case, the real intention of the parties was that the transaction shall secure the payment by petitioner of its loan, adverting to Article 1602 of the Civil Code. Under Article 1604 of the same code, it is provided that the presence of only one circumstance defined in Article 1602, such as those cited above, is sufficient for a contract of sale with right to repurchase to be presumed an equitable mortgage. Without in any way preempting the decision of the court in the action for reformation, it is our considered view that, under the factual milieu, the action was initiated for the proper determination of the rights of the parties under the contract, and not just an afterthought.

No derogatory inference can arise from petitioner's admission of the existence of the deed of sale with assumption of mortgage. The admission does not necessarily dilute its claim that the same does not express the true intent of the parties.

Verily, since the case at bench involves a controverted right, the parties are required to preserve the status quo

and await the decision of the proper court on the true nature of the contract. It is but just that the person who has first acquired possession should remain in possession pending decision on said case, and the parties cannot be permitted meanwhile to engage in petty warfare over possession of property which is the subject of dispute. To permit this will be highly dangerous to individual security and disturbing to the social order. (*Manlapaz v. Court of Appeals*, 191 SCRA 795 [1990])."[16]

Hence, the present petition for review on certiorari where petitioners raise the following assigned errors allegedly committed by respondent Court of Appeals:

I.

THE DECISION OF THE RESPONDENT COURT OF APPEALS IS CONTRARY TO THE PROVISIONS OF SEC. 33 (2) OF THE JUDICIARY REORGANIZATION ACT OF 1980 CONFERRING EXCLUSIVE ORIGINAL JURISDICTION ON THE METROPOLITAN TRIAL COURT IN EJECTMENT CASES AND VESTING IT WITH AUTHORITY, INDEED MANDATORILY, TO RESOLVE ISSUES OF OWNERSHIP TO DETERMINE ISSUES OF POSSESSION.

II.

THE DECISION OF THE RESPONDENT COURT IS CONTRARY TO CURRENT AND PREVAILING DOCTRINE AS ENUNCIATED IN *WILMON AUTO SUPPLY CORP. VS. COURT OF APPEALS*, 208 SCRA 108; *SY VS. COURT OF APPEALS*, 200 SCRA 117; AND *ASSET PRIVATIZATION TRUST VS. COURT OF APPEALS*, 229 SCRA 627.

III.

THE FILING OF THE REFORMATION CASE CONFIRMS THE JURISDICTION OF THE METROPOLITAN TRIAL COURT OVER THE EJECTMENT CASE; THE DISMISSAL OF THE REFORMATION CASE CONFIRMS THE FACT THAT IT WAS FILED MERELY AS A PLOY TO DELAY DISPOSITION OF EJECTMENT PROCEEDINGS, AND BARES NOT JUST THE ERROR BUT THE UTTER INEQUITY OF THE RESPONDENT COURT'S DECISION ANNULING THE EJECTMENT DECREE AND SETTING ASIDE THE REGIONAL TRIAL COURT DECISION OF AFFIRMANCE.

Petitioners argue that the precedent laid down in *Ching v. Malaya*[17] relied upon by the Court of Appeals, was based on the old law, Republic Act No. 296 (Judiciary Act of 1948), as amended, which vested in the city courts original jurisdiction over forcible entry and unlawful detainer proceedings and the corresponding power to receive evidence upon the question of ownership for the only purpose of determining the character and extent of possession.[18] They claim that since the original complaint for unlawful detainer was filed on April 13, 1992, then the applicable law should have been Section 33 (2) of the Judiciary Reorganization Act of 1980 (*Batas Pambansa Blg. 129*). That law vests in the city courts exclusive original jurisdiction over forcible entry and unlawful detainer cases and the corresponding power to receive evidence upon questions of ownership and to resolve the issue of ownership to determine the issue of possession.[19]

The history of the law vesting Municipal and Metropolitan Trial Courts with jurisdiction over ejectment cases has invariably revolved upon the assumption that the question of ownership may be considered only if necessary for the determination of the issue as to who of the parties shall have the right to possess the property in litigation.[20] Thus, under the Judiciary Act of 1948, as amended, Section 88 vested municipal and city courts with authority to "receive evidence upon the question of title therein, whatever may be the value of the property, solely for the purpose of determining the character and extent of possession and damages for detention." Section 3 of Republic Act No. 5967 that was enacted on June 21, 1969, provided that city courts shall have concurrent jurisdiction with Courts of First Instance over "ejection cases where the question of ownership is brought in issue in the pleadings" and that the issue of ownership shall be "resolved in conjunction with the issue of possession." Expounding on

that provision of law, in *Pelaez v. Reyes*,^[21] this Court said:

"x x x We are of the considered opinion that the evident import of Section 3 above is to precisely grant to the city courts concurrent original jurisdiction with the courts of first instance over the cases enumerated therein, which include 'ejection cases where the question of ownership is brought in issue in the pleadings.' To sustain petitioner's contention about the meaning of the last phrase of paragraph (c) of said section regarding the resolution of the issue of ownership 'in conjunction with the issue of possession' is to disregard the very language of the main part of the section which denotes unmistakably a conferment upon the city courts of concurrent jurisdiction with the courts of first instance over ejection cases in which ownership is brought in issue in the pleadings. It is to Us quite clear that the fact that the issue of ownership is to be resolved 'in conjunction with the issue of possession' simply means that both the issues of possession and ownership are to be resolved by the city courts. And the jurisdiction is concurrent with the Courts of First Instance precisely because usually questions of title are supposed to be resolved by superior courts. In other words, this grant of special jurisdiction to city courts is to be distinguished from the power ordinarily accorded to municipal courts to receive evidence of title only for the purpose of determining the extent of the possession in dispute."

Upon the approval on August 14, 1981 of Batas Pambansa Blg. 129 or the Judiciary Reorganization Act of 1980, however, the power of inferior courts, including city courts, to resolve the issue of ownership in forcible entry and unlawful detainer cases was modified. Resolution of the issue of ownership became subject to the qualification that it shall be only for the purpose of determining the issue of possession. In effect, therefore, the city courts lost the jurisdiction to determine the issue of ownership per se that was theretofore concurrent with the then Courts of First Instance. Thus, Section 33 of B.P. Blg. 129 provides that Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise:

"Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession."

Accordingly, the Interim Rules and Guidelines in the implementation of Batas Pambansa Blg. 129 provides as follows:

"10. Jurisdiction in ejectment cases. - Metropolitan trial courts, municipal trial courts, and municipal circuit trial courts, without distinction, may try cases of forcible entry and detainer even if the question of ownership is raised in the pleadings and the question of possession could not be resolved without deciding the issue of ownership, but the question of ownership shall be resolved only to determine the issue of possession."

Explaining these provisions of law, in *Sps. Refugia v. Court of Appeals*,^[22] the Court said:

"These issuances changed the former rule under Republic Act No. 296 which merely allowed inferior courts to receive evidence upon the question of title solely for the purpose of determining the extent and character of possession and damages for detention, which thereby resulted in previous rulings of this Court to the effect that if it appears during the trial that the principal issue relates to the ownership of the property in dispute and any question of possession which may be involved necessarily depends upon the result of the inquiry into the title, then the jurisdiction of the municipal or city courts is lost and the action should be dismissed. With the enactment of Batas Pambansa Blg. 129, the inferior courts now retain jurisdiction over an ejectment case even if the question of possession cannot be resolved without passing upon the issue of ownership, with the express qualification that such issue of ownership shall be resolved only for the purpose of determining the issue of possession. In other words, the fact that the issues of ownership and possession de facto are intricately interwoven will not cause the dismissal of the case for forcible entry and unlawful detainer on jurisdictional grounds."

Another development in the law has emphasized the fact that inferior courts shall not lose jurisdiction over ejectment cases solely because the issue of ownership is interwoven with the issue of possession. Under the 1983 Rules on Summary Procedure, as amended by a resolution of this Court that took effect on November 15, 1991, all forcible entry and unlawful detainer cases shall be tried pursuant to the Revised Rules on Summary Procedure, regardless of whether or not the issue of ownership of the subject property is alleged by a party.[23] In other words, even if there is a need to resolve the issue of ownership, such fact will not deprive the inferior courts of jurisdiction over ejectment cases[24] that shall be tried summarily.

When the jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts was expanded, thereby amending Batas Pambansa Blg. 129, by virtue of Republic Act No. 7691 that took effect on April 15, 1994, the jurisdiction of said courts over ejectment cases was retained. Thus, in *Hilario v. Court of Appeals* this Court said:

"x x x. As the law now stands, inferior courts retain jurisdiction over ejectment cases even if the question of possession cannot be resolved without passing upon the issue of ownership; but this is subject to the same caveat that the issue posed as to ownership could be resolved by the court for the sole purpose of determining the issue of possession.

Thus, an adjudication made therein regarding the issue of ownership should be regarded as merely provisional and, therefore, would not bar or prejudice an action between the same parties involving title to the land. The foregoing doctrine is a necessary consequence of the nature of forcible entry and unlawful detainer cases where the only issue to be settled is the physical or material possession over the real property, that is, possession *de facto* and not possession *de jure*."

In other words, inferior courts are now "conditionally vested with adjudicatory power over the issue of title or ownership raised by the parties in an ejectment suit." [25] These courts shall resolve the question of ownership raised as an incident in an ejectment case where a determination thereof is necessary for a proper and complete adjudication of the issue of possession. Considering the difficulties that are usually encountered by inferior courts as regards the extent of their power in determining the issue of ownership, in *Sps. Refugia v. Court of Appeals*, the Court set out guidelines to be observed in the implementation of the law which, as stated at the outset, has recently been restated in the 1997 Rules of Civil Procedure. The guidelines pertinent to this case state:

"1. The primal rule is that the principal issue must be that of possession, and that ownership is merely ancillary thereto, in which case the issue of ownership may be resolved but only for the purpose of determining the issue of possession. Thus, x x x, the legal provision under consideration applies only where the inferior court believes and the preponderance of evidence shows that a resolution of the issue of possession is dependent upon the resolution of the question of ownership.

2. It must sufficiently appear from the allegations in the complaint that what the plaintiff really and primarily seeks is the restoration of possession. Consequently, where the allegations of the complaint as well as the reliefs prayed for clearly establish a case for the recovery of ownership, and not merely one for the recovery of possession *de facto*, or where the averments plead the claim of material possession as a mere elemental attribute of such claim for ownership, or where the issue of ownership is the principal question to be resolved, the action is not one for forcible entry but one for title to real property.

x x x x x x x x,

5. Where the question of who has the prior possession hinges on the question of who the real owner of the disputed portion is, the inferior court may resolve the issue of ownership and make a declaration as to who among the contending parties is the real owner. In the same vein, where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the document of title or any other

contract on which the claim of possession is premised, the inferior court may likewise pass upon these issues. This is because, and it must be so understood, that any such pronouncement made affecting ownership of the disputed portion is to be regarded merely as provisional, hence, does not bar nor prejudice an action between the same parties involving title to the land. Moreover, Section 7, Rule 70 of the Rules of Court expressly provides that the judgment rendered in an action for forcible entry or unlawful detainer shall be effective with respect to the possession only and in no wise bind the title or affect the ownership of the land or building."^[26] (Emphasis supplied.)

In the case at bar, petitioners clearly intended recovery of possession over the Gilmore property. They alleged in their complaint for unlawful detainer that their claim for possession is buttressed by the execution of the Deed of Sale with Assumption of Mortgage, a copy of which was attached as Annex "A" to the complaint and by the issuance of TCT No. 67990 that evidenced the transfer of ownership over the property.^[27] Because metropolitan trial courts are authorized to look into the ownership of the property in controversy in ejectment cases, it behooved MTC Branch 41 to examine the bases for petitioners' claim of ownership that entailed interpretation of the Deed of Sale with Assumption of Mortgage.

However, while it quoted paragraph (c) of the Deed of Sale with Assumption of Mortgage that embodies the agreement of the parties that possession of the Gilmore property and its improvements shall remain with the vendor that was obliged to transfer possession only after the expiration of one year,^[28] MTC Branch 41 apparently did not examine the terms of the deed of sale. Instead, it erroneously held that the issue of whether or not the document was in fact an equitable mortgage "should not be properly raised in this case." Had it examined the terms of the deed of sale, which, after all is considered part of the allegations of the complaint having been annexed thereto, that court would have found that, even on its face, the document was actually one of equitable mortgage and not of sale. The inferior court appears to have forgotten that all documents attached to a complaint, the due execution and genuineness of which are not denied under oath by the defendant, must be considered as part of the complaint without need of introducing evidence thereon.^[29]

Article 1602 of the Civil Code provides that a contract shall be presumed to be an equitable mortgage by the presence of any of the following:

- "(1) When the price of a sale with right to repurchase is unusually inadequate;
- (2) When the vendor remains in possession as lessee or otherwise;
- (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
- (4) When the purchaser retains for himself a part of the purchase price;
- (5) When the vendor binds himself to pay the taxes on the thing sold;
- (6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation."

Article 1604 of the same Code provides that the provisions of Article 1602 "shall also apply to a contract purporting to be an absolute sale." The presence of even one of the circumstances in Article 1602 is sufficient basis to declare a contract as one of equitable mortgage.^[30] The explicit provision of Article 1602 that "any" of those circumstances would suffice to construe a contract of sale to be one of equitable mortgage is in consonance with the rule that the law favors the least transmission of property rights.

The Deed of Sale with Assumption of Mortgage covering the 2,000-square-meter lot located at No. 52 Gilmore Street, New Manila, Quezon City provides as follows:

"3. That the total consideration for the sale of the above-described property by the VENDOR to the VENDEES is FOURTEEN MILLION (P14,000,000.00) PESOS, in Philippine currency, payable as follows:

a) The VENDOR shall be paid by the VENDEE the sum of FIVE MILLION FOUR HUNDRED THOUSAND (P5,400,000.00) PESOS upon the signing and execution of this Deed of Sale With Assumption of Mortgage after computation of the mortgage obligation of the VENDOR with CHINA BANKING CORPORATION in the amount of _____ which the VENDEES agree to assume as part of the consideration of this sale. The VENDEES hereby assume the mortgage obligation of the VENDOR with the CHINA BANKING CORPORATION in the total amount of _____.

b) The VENDOR hereby undertakes and agrees with the VENDEES that the first-named party shall warrant and defend the title of said real property hereby conveyed in favor of the VENDEES, their heirs, successors or assigns, against all just claims of all persons or entities; that the VENDOR also guarantees the right of the VENDEES to the possession of the property subject of this contract without the need of judicial action; and furthermore, the VENDOR binds itself to execute any additional documents to complete the title of the VENDEES to the above-described property so that it may be registered in the name of the VENDEES in accordance with the provisions of the Land Registration Act.

c) It is hereby expressly agreed and understood by and between the VENDOR and the VENDEES that the house and other improvements found in the premises are included in this sale and that possession of said premises shall be delivered to the VENDEES by the VENDOR at the expiration of one (1) year from the date of the signing and execution of this Deed of Sale with Assumption of Mortgage.

d) It is furthermore expressly provided and agreed by and between the VENDOR and the VENDEES that the capital gains tax shall be paid by the VENDOR while any and all fees and expenses incident to the registration and transfer of the title to the aforementioned property shall be defrayed and borne by the VENDEES.

e) Attached to this Deed of Sale with Assumption of Mortgage as Annex 'A' thereof is the Certificate of ROSANA FLORES, Corporate Secretary of PRICILIANO B. DEVELOPMENT CORPORATION, a corporation duly organized and existing under Philippine Laws who certified that at a special meeting of the Board of Directors of said corporation held on December 3, 1991 at which meeting a quorum was present, the following resolution was adopted and passed, to wit:

`RESOLVED, AS IT IS HEREBY RESOLVED, that the company, PRICILIANO B. GONZALES DEVELOPMENT is (sic) hereby authorized the President, Mr. Antonio B. Gonzales to enter into and/or negotiate for the sale of a property described as Transfer Certificate of Title No. 383917 with an area of TWO THOUSAND (2,000) SQUARE METERS under the Registry of Deeds of Quezon City;

`RESOLVED FURTHER, that Mr. ANTONIO B. GONZALES, is hereby authorized to sign, execute any and all documents relative thereto.'

That aforesaid resolution is in full force and effect.

(sgd.)

ROSANA FLORES

Corporate Secretary

(SGD.)

f) Full title and possession over the above-described property shall vest upon the VENDEES upon the full compliance by them with all the terms and conditions herein set forth."[31] (Underscoring supplied.)

That under the agreement the private respondent as vendor shall remain in possession of the property for only one

year, did not detract from the fact that possession of the property, an indicium of ownership, was retained by private respondent as the alleged vendor. That period of time may be deemed as actually the time allotted to private respondent for fulfilling its part of the agreement by paying its indebtedness to petitioners. This may be gleaned from paragraph (f) that states that "full title and possession" of the property "shall vest upon the VENDEES upon the full compliance by them with all the terms and conditions herein set forth.

Paragraph (f) of the contract also evidences the fact that the agreed "purchase price" of fourteen million pesos (P14,000,000.00) was not handed over by petitioners to private respondent upon the execution of the agreement. Only P5,400,000.00 was given by petitioners to private respondent, as the balance thereof was to be dependent upon the private respondent's satisfaction of its mortgage obligation to China Banking Corporation. Notably, the MTC found that petitioners gave private respondent the amount of P8,500,000.00 that should be paid to the bank to cover the latter's obligation, thereby leaving the amount of P100,000.00 (P5,400,000.00 + P8,500,000.00 = P13,900,000.00) of the "purchase price" still unpaid and in the hands of petitioners, the alleged "vendees."

Hence, two of the circumstances enumerated in Article 1602 are manifest in the Deed of Sale with Assumption of Mortgage, namely: (a) the vendor would remain in possession of the property (no. 2), and (b) the vendees retained a part of the purchase price (no. 4). On its face, therefore, the document subject of controversy, is actually a contract of equitable mortgage.

The denomination of the contract as a deed of sale is not binding as to its nature. The decisive factor in evaluating such an agreement is the intention of the parties, as shown, not necessarily by the terminology used in the contract, but by their conduct, words, actions and deeds prior to, during and immediately after executing the agreement.[32] Private respondent's possession over the property was not denied by petitioners as in fact it was the basis for their complaint for unlawful detainer.

Neither does the issuance of a new transfer certificate of title in petitioners' favor import conclusive evidence of ownership or that the agreement between the parties was one of sale.[33] In *Macapinlac v. Gutierrez Repide*, this Court said:

"x x x it must be borne in mind that the equitable doctrine x x x to the effect that any conveyance intended as security for a debt will be held in effect to be a mortgage, whether so actually expressed in the instrument or not, operates regardless of the form of the agreement chosen by the contracting parties as the repository of their will. Equity looks through the form and considers the substance; and no kind of engagement can be adopted which will enable the parties to escape from the equitable doctrine to which reference is made. In other words, a conveyance of land, accompanied by registration in the name of the transferee and the issuance of a new certificate, is no more secured from the operation of the equitable doctrine than the most informal conveyance that could be devised." [34]

A closer look into the allegations of the complaint would therefore show that petitioners failed to make out a case for unlawful detainer. By the allegations in the complaint, private respondent as a mortgagor had the right to possess the property. A mortgage is a real right constituted to secure an obligation upon real property or rights therein to satisfy with the proceeds of the sale thereof such obligation when the same becomes due and has not been paid or fulfilled.[35] The mortgagor generally retains possession of the mortgaged property[36] because by mortgaging a piece of property, a debtor merely subjects it to a lien but ownership thereof is not parted with.[37] In case of the debtor's nonpayment of the debt secured by the mortgage, the only right of the mortgagee is to foreclose the mortgage and have the encumbered property sold to satisfy the outstanding indebtedness. The mortgagor's default does not operate to vest in the mortgagee the ownership of the encumbered property, for any such effect is against public policy.[38] Even if the property is sold at a foreclosure sale, only upon expiration of the redemption period, without the judgment debtor having made use of his right of redemption, does ownership

of the land sold become consolidated in the purchaser.[39]

Petitioners' tenuous claim for possession of the Gilmore property was emasculated further by private respondent's answer to their complaint. The latter claimed ownership of the property, alleging that the agreement was one of mortgage and not of sale. Private respondent alleged therein that in March 1993 (sic), it borrowed money from petitioner Felicidad Oronce alone to redeem the subject property from China Banking Corporation. She agreed to lend it the amount on condition that the Gilmore property should be mortgaged to her to guarantee payment of the loan. However, petitioner Flaminiano took the money from petitioner Oronce and paid the mortgage obligation of private respondent to the China Banking Corporation while claiming that 50% of the amount was hers. Petitioner Flaminiano's husband, Atty. Eduardo Flaminiano, forthwith prepared the Deed of Sale with Assumption of Mortgage and, without private respondent's knowledge, had it registered for which reason a new certificate of title was issued to petitioners. In claiming that the agreement was one of mortgage, private respondent alleged in its answer, inter alia, that the actual total value of the property was thirty million pesos (P30,000,000.00); that while it had possession of the property, petitioners did not then attempt to repossess the same, notwithstanding the lapse of one year from the execution of the document; that petitioners did not pay the real estate taxes even after the transfer of title in their favor, and that petitioners did not deliver to private respondent the alleged purchase price.

Considering these claims of private respondent, MTC Branch 41 should have passed upon the issues raised on the ownership of the Gilmore property for the purpose of determining who had the right to possess the same. As it turned out, it simply accepted the allegations of petitioners without examining the supporting documents. Had it closely analyzed the documents, it would have concluded that petitioners could not have validly ousted private respondent from the property since the basis for its claim of ownership, the Deed of Sale with Assumption of Mortgage, was actually a document evidencing an equitable mortgage. It would have accordingly dismissed the complaint for lack of cause of action.

In fine, had the MTC exercised its bounden duty to study the complaint, it would have dismissed the same for lack of cause of action upon a provisional ruling on the issue of ownership based on the allegations and annexes of the complaint. Or, exercising caution in handling the case, considering petitioners' bare allegations of ownership, it should have required the filing of an answer to the complaint and, having been alerted by the adverse claim of ownership over the same property, summarily looked into the issue of ownership over the property. As this Court declared in *Hilario v. Court of Appeals*:

"It is underscored, however, that the allegations in the complaint for ejectment should sufficiently make out a case for forcible entry or unlawful detainer, as the case may be; otherwise, jurisdiction would not vest in the inferior court. Jurisdiction over the subject matter is, after all, determined by the nature of the action as alleged or pleaded in the complaint. Thus, even where the defendant alleges ownership or title to the property in his or her answer, the inferior court will not be divested of its jurisdiction. A contrary rule would pave the way for the defendant to trifle with the ejectment suit, which is summary in nature, as he could easily defeat the same through the simple expedient of asserting ownership." [40]

As discussed above, even a perusal of the complaint without going over the claims of private respondent in his answer would have sufficed to arrive at a provisional determination of the issue of ownership. The importance of such provisional ruling on the issue of ownership is demanded by the fact that, in the event that the claim of the plaintiff in an ejectment case is controverted as in this case, any ruling on the right of possession would be shaky, meaningless and fraught with unsettling consequences on the property rights of the parties. After all, the right of possession must stand on a firm claim of ownership. Had the MTC made a provisional ruling on the issue of ownership, the parties would have availed of other remedies in law early on to thresh out their conflicting claims.

Private respondent's action for reformation of instrument was in fact a step in the right direction. However, its failure to pursue that action^[41] did not imply that private respondent had no other remedy under the law as regards the issue of ownership over the Gilmore property. There are other legal remedies that either party could have availed of. Some of these remedies, such as an action for quieting of title, have been held to coexist with actions for unlawful detainer.^[42] There is a policy against multiplicity of suits but under the circumstances, only the institution of proper proceedings could settle the controversy between the parties in a definitive manner.

Hence, although the Court of Appeals resolved the appeal under the misconception that the action for reformation of instrument was still viable, it correctly held that the controversy between the parties was beyond the ordinary issues in an ejectment case. Because of the opposing claims of the parties as to the true agreement between them, the issue of ownership was in a sense a prejudicial question that needed determination before the ejectment case should have been filed. To reiterate, a decision reached in the ejectment case in favor of any of the parties would have nonetheless spawned litigation on the issue of ownership. At any rate, proceedings would have been facilitated had the inferior courts made even a provisional ruling on such issue.

The contentious circumstances surrounding the case were demonstrated by an occurrence during the pendency of this petition that cries out for the resolution of the issue of ownership over the Gilmore property.

After the parties had filed their respective memoranda before this Court, private respondent filed an urgent motion to cite petitioner Rosita L. Flaminiano and her husband, Atty. Eduardo B. Flaminiano, in contempt of court.^[43] The motion was founded on an affidavit of Dr. Tadeo Gonzales who resided at the contested property, deriving his right to do so from private respondent corporation that is owned by his family. Gonzales alleged that on September 20, 1997, petitioner Flaminiano and her husband entered the property through craftiness and intimidation. At around 5:30 p.m. on that day, two (2) men knocked at the gate. When the houseboy, Luis R. Fernandez, opened the gate for pedestrians tentatively, the two men told him that they would like to visit Gonzales' mother who was ailing.

Once inside, the two men identified themselves as policemen and opened the gate for twenty (20) men, two (2) trucks and an L-300 van to enter. When Gonzales went outside the house, he saw thirty (30) to forty (40) men and two (2) trucks entering the driveway. The person he asked regarding the presence of those people inside the property turned out to be the brother of petitioner Flaminiano. That person said, "Kami ang may-ari dito. Matagal na kaming nagtitiis, kayo ang dapat sa labas." After Gonzales had told him that the property was still under litigation before this Court, the man said, "Walang Supreme Court - Supreme Court." When Gonzales asked petitioner Flaminiano, who was inside the premises, to order the people to leave, she said, "Papapasukin namin ito dahil sa amin ito. Maglalagay ako ng tao diyan sa loob, sa harap, sa likod. Wala ng pakiusap." When a power generator was brought inside the property and Gonzales pleaded that it be taken out because the noise it would create would disturb his ailing mother, Emiliana Gonzales, petitioner Flaminiano said, "Walang awa-awa sa akin." Atty. Flaminiano butted in and, referring to Gonzales' mother, said, "Ialis mo na, matanda na pala." When Gonzales prevented the switching on of some lights in the house due to faulty wiring, Atty. Flaminiano suggested, "Bakit hindi mo ipasunog ito? May insurance pa kayo 5 million, madali lang 'yan. Short circuit." Since the Flaminianos and their crew were not about to leave the property, Gonzales called up his brother, Atty. Antonio Gonzales, and informed him of what happened. However, instead of confining themselves in the driveway, the Flaminianos and their group entered the terrace, bringing in food.

Gonzales was all the while concerned about his 81-year-old mother who had just been discharged from the hospital. However, the Flaminianos stayed until the next day, September 22, 1997, using the kitchen, furniture and other fixtures in the house. Gonzales took pictures of Flaminiano and his companions. When Atty. Flaminiano arrived, he confronted Gonzales and told him, "Hindi ako natatakot kahit kanino ka pa mag-report, kahit pa sa

Supreme Court, gusto ko nga mag-reklamo kayo para matapos ang kaso. Sa September 25, may shooting dito, gagawin ko ang gusto ko dito."[44]

The affidavits of Renato C. Mola, driver of Atty. Antonio Gonzales, and that of Luis R. Fernandez, houseboy of Dr. Tadeo Gonzales, as well as the xerox copy of the sworn statement dated September 21, 1997 of Pria B. Gonzales before the Philippine National Police in Camp Crame where she filed a complaint against Atty. Flaminiano for the illegal entry into their house, support the affidavit of Dr. Gonzales.

In its supplemental motion[45] to cite petitioner Flaminiano and her husband, Atty. Flaminiano, in contempt of court, private respondent alleged that the Flaminianos committed additional contumacious acts in preventing another member of the family, Mrs. Cipriana Gonzales, from entering the property. In her affidavit, Mrs. Gonzales said that the Flaminianos and their people used "the whole house, except the bedrooms, for their filming activities." [46]

Thereafter, private respondent filed an urgent motion for the issuance of a temporary restraining order and/or writ of preliminary injunction with this Court to enjoin petitioners, Atty. Flaminiano and their representatives and agents from preventing private respondent, its agents and representatives from entering the property and to cease and desist from occupying the property or from committing further acts of dispossession of the property.[47] On October 13, 1997, this Court issued the temporary restraining order prayed for.[48] In the motion it filed on October 21, 1997,[49] private respondent informed the Court that the TRO could not be served upon petitioners immediately because, Atty. Flaminiano, their counsel of record, had changed address without informing the Court. It was served upon said counsel only on October 15, 1997. However, instead of complying with this Court's order, petitioners continued occupying the property. On October 16, 1997, after receiving a copy of the TRO, petitioners put up a huge billboard in front of the property stating that it is the national headquarters of the People's Alliance for National Reconciliation and Unity for Peace and Progress (PANRUPP).

In their comment on the motion for contempt, petitioners noticeably did not controvert the facts set forth by private respondent in said motion. Instead, it reasserted its claim of ownership over the property as evidenced by TCT No. 67990. They alleged that they had mortgaged the property to the Far East Bank and Trust Company in the amount of thirty million pesos (P30,000,000.00) for which they are paying a monthly interest of around P675,000.00 "without enjoying the material possession of the subject property which has been unlawfully and unjustly detained by private respondent for the last four (4) years as it was used as the residence of the members of the family of its President ANTONIO B. GONZALES without the said private respondent paying rentals thereon for the period from January 1995 up to October 5, 1997 when the said property was voluntarily vacated by the members of the President (sic) of respondent corporation, ANTONIO B. GONZALES, who has since then been a fugitive from justice having been convicted by final judgment of the crime of estafa through falsification of public document and has succeeded in evading his sentence."

They averred that Tadeo Gonzales erroneously claimed that the rights of ownership and possession over the property are still under litigation because "the issue of ownership is no longer involved in this litigation when the complaint for reformation of instrument with annulment of sale and title filed by private respondent" was dismissed with finality by reason of non-suit. Hence, they claimed that they "now stand to be the unquestionable registered and lawful owners of the property subject of controversy" and that the July 24, 1996 Decision of the Court of Appeals "has already lost its virtuality and legal efficacy with the occurrence of a 'supervening event' which is a superior cause superseding the basis of the judgment" in CA-G.R. No. 39227 of respondent court.

They informed the Court that they are now leasing the property to PANRUPP from October 1, 1997 to September 30, 1998. They alleged, however, that the property is in a "deplorable state of decay and deterioration" that they

saw the need "to act swiftly and decisively to prevent further destruction" of the property where they "invested millions of pesos of their life-time savings to acquire the same." Hence, they sought the assistance of barangay officials in Barangay Mariana, New Manila who helped them effect "the peaceful entry into the property of the petitioners without the use of strategy, force and intimidation contrary to what was alleged" in the motion for contempt. They "peacefully took over" possession of the property on September 20, 1997 but allowed the immediate members of the family of private respondent's president to stay on. The family finally agreed to vacate the premises on October 5, 1997 "upon the offer of the petitioners to shoulder partially the expenses for the hospitalization of the ailing mother at the St. Luke General Hospital where she was brought by an ambulance accompanied by a doctor" at petitioners' expense.

Petitioners questioned the issuance by this Court of the TRO on October 13, 1997, asserting that when it was issued, there were "no more acts to restrain the illegal occupants of the subject property (as they) had already peacefully vacated the premises on October 5, 1997 or more than a week after the said TRO was issued by the Third Division" of this Court. They prayed that the motion for contempt be denied for lack of merit and that the TRO issued be lifted and set aside "for the act or acts sought to be restrained have already been done and have become a fait accompli before the issuance of the TEMPORARY RESTRAINING ORDER on October 13, 1997." [50]

As earlier discussed, petitioners' claim that the dismissal of the action for reformation of instrument for non-suit had written finis to the issue of ownership over the Gilmore property is totally unfounded in law. Petitioners should be reminded that the instant petition stemmed from an unlawful detainer case, the issue of which is merely possession of the property in question. The issue of ownership has not been definitively resolved for the provisional determination of that issue that should have been done by the MTC at the earliest possible time, would only be for the purpose of determining who has the superior right to possess the property. Inasmuch as this Court has resolved that the rightful possessor should have been private respondent and its representatives and agents, the TRO issued by this Court on October 13, 1997 should not be lifted. That the TRO was issued days before private respondent left the property is immaterial. What is in question here is lawful possession of the property, not possession on the basis of self-proclaimed ownership of the property. For their part, petitioners should cease and desist from further exercising possession of the same property which possession, in the first place, does not legally belong to them.

The conduct of petitioner Flaminiano in taking possession over the property as alleged by private respondent through Tadeo Gonzales is deplorably high-handed. On an erroneous assumption that she had been legally vested with ownership of the property, she took steps prior to the present proceedings by illegally taking control and possession of the same property in litigation. Her act of entering the property in defiance of the writ of preliminary injunction issued by the Court of Appeals constituted indirect contempt under Section 3, Rule 71 of the Rules of Court that should be dealt with accordingly.

Be that as it may, what is disturbing to the Court is the conduct of her husband, Eduardo Flaminiano, a lawyer [51] whose actuations as an officer of the court should be beyond reproach. His contumacious acts of entering the Gilmore property without the consent of its occupants and in contravention of the existing writ or preliminary injunction issued by the Court of Appeals and making utterances showing disrespect for the law and this Court, are certainly unbecoming of a member of the Philippine Bar. To be sure, he asserted in his comment on the motion for contempt that petitioners "peacefully" took over the property. Nonetheless, such "peaceful" take-over cannot justify defiance of the writ of preliminary injunction that he knew was still in force. Notably, he did not comment on nor categorically deny that he committed the contumacious acts alleged by private respondent. Through his acts, Atty. Flaminiano has flouted his duties as a member of the legal profession. Under the Code of

Professional Responsibility, he is prohibited from counseling or abetting "activities aimed at defiance of the law or at lessening confidence in the legal system." [52]

WHEREFORE, the instant petition for review on certiorari is hereby DENIED and the questioned Decision of the Court of Appeals AFFIRMED without prejudice to the filing by either party of an action regarding the ownership of the property involved. The temporary restraining order issued on October 13, 1997 is hereby made permanent. Petitioners and their agents are directed to turn over possession of the property to private respondent.

Petitioner Rosita Flaminiano is hereby held guilty of contempt of court for disobeying the writ of injunction issued by the Court of Appeals and accordingly fined P20,000.00 therefor. Her counsel and husband, Atty. Eduardo B. Flaminiano, is ordered to pay a fine of P25,000.00 for committing contumacious acts unbecoming of a member of the Philippine Bar with a stern warning that a repetition of the same acts shall be dealt with more severely. Let a copy of this Decision be attached to his record at the Office of the Bar Confidant.

This Decision is immediately executory. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan, and Purisima, JJ., concur.
Pardo, J., no part.

[1] 329 Phil. 202 (1996).

[2] Rollo, pp. 171-173.

[3] Ibid., p. 172.

[4] Ibid., p. 278.

[5] Ibid., p. 158.

[6] Ibid., pp. 13, 55.

[7] Presided by Judge Rose Marie Alonzo-Legasto.

[8] Rollo, p. 60.

[9] L-41162, September 5, 1975, 66 SCRA 600.

[10] Presided by Judge Jose Catral Mendoza.

[11] Rollo, p. 64.

[12] Presided by Judge Vicente Q. Roxas.

[13] Rollo, p. 65.

[14] Ibid., p. 66.

[15] Penned by Associate Justice Oswaldo D. Agcaoili and concurred by Associate Justices Jesus M. Elbinias and Eubulo G. Verzola.

[16] Rollo, pp. 45-46.

[17] G.R. No. 56449, August 31, 1987, 153 SCRA 412.

- [18] Rollo, p. 23.
- [19] Ibid., p. 19.
- [20] Sps. Refugia v. Court of Appeals, 327 Phil. 982 (1996).
- [21] L-48168, August 31, 1978, 85 SCRA 233, 242.
- [22] Supra, at p. 999.
- [23] Hilario v. Court of Appeals, supra at p. 207-208.
- [24] Sps. Refugia v. Court of Appeals, supra at p. 1000.
- [25] Ibid at p. 1003.
- [26] Ibid., pp. 1004-1006.
- [27] MTC Decision, p. 2; Rollo, p. 50.
- [28] MTC Decision, pp. 7-8.
- [29] City of Cebu v. Court of Appeals, 327 Phil. 799, 808 (1996).
- [30] Olea v. Court of Appeals, 317 Phil. 328, 338 (1995) citing Lizares v. Court of Appeals, G.R. No. 98282, September 6, 1993, 226 SCRA 112.
- [31] Rollo, pp. 171-173.
- [32] Zamora v. Court of Appeals, G.R. No. 102557, July 30, 1996, 260 SCRA 10.
- [33] Olea v. Court of Appeals, supra at p. 336 citing Macapinlac v. Gutierrez Repide, 43 Phil. 770 (1922).
- [34] Supra at p. 783.
- [35] PEÑA, REGISTRATION OF LAND TITLES AND DEEDS, 1988 ed., p. 250 quoting Sanchez Roman.
- [36] Ibid., p. 254.
- [37] Adlawan v. Torres, G.R. Nos. 65957-58, July 5, 1994, 233 SCRA 645, 655.
- [38] Guanzon v. Hon. Argel, 144 Phil. 418, 423 (1970) citing Art. 2088 of the Civil Code.
- [39] Medida v. Court of Appeals, G.R. No. 98334, May 8, 1992, 208 SCRA 887, 897-898.
- [40] Supra, at pp. 210-211.
- [41] Private respondent corporation, through its officer(s), failed to appear at the pre-trial in Civil Case No. Q-95-24927 on July 2, 1996, several months after it had filed the action for reformation of instrument, but its counsel was present. Judge Roxas of RTC Quezon City Branch 227 even instructed said counsel to file a motion for reconsideration of the July 2, 1996 order non-suiting private respondent. The court also reset the pre-trial for September 24, 1996 but that was cancelled by the issuance of the order of August 15, 1996 declaring the order of dismissal as final and executory (Rollo, p. 65). Be that as it may, while under Section 2, Rule 20 of the Rules of Court of 1964 a party who fails to appear at a pre-trial conference may be non-suited or considered as in default, equity and the circumstances obtaining when private respondent was non-suited could not have demanded the application of Section 3, Rule 17 stating that the dismissal of the case shall have the effect of an adjudication on the merits. Note should be taken of the fact that, because the order of July 2, 1996 non-suiting private respondent

also reset the case for pre-trial, the dismissal was without prejudice. Aside from that, private respondent is a corporation and therefore, its officers must have presumed that appearance of its counsel would have sufficed. The non-suit of a plaintiff has always been subject to the discretion of the courts. Judgments of non-suit are generally disfavored in the same manner that default judgments are discouraged (*Marahay v. Melicor*, L-44980, February 6, 1990, 181 SCRA 811, 816). As Chief Justice Andres R. Narvasa once said, "(t)he desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present evidence and either in plaintiff's being non-suited or the defendant's being pronounced liable under an ex parte judgment" (*Padua v. Erieta*, L-38570, May 24, 1988, 161 SCRA 458).

[42] In *Hilario v. Court of Appeals* (supra at pp. 209-210), the Court enumerated the cases catalogued in *Wilmon Auto Supply Corporation v. Court of Appeals* (G.R. No. 97637, April 10, 1992, 208 SCRA 108) that should not be regarded as prejudicial to an ejectment case as follows: (1) injunction suits; (2) accion publiciana; (3) writ of possession case; (4) action for quieting of title; (5) suits for specific performance with damages; (6) action for reformation of instrument; (7) accion reivindicatoria, and (8) suits for annulment of sale, or title or document.

[43] *Rollo*, p. 200.

[44] *Ibid.*, pp. 207-210.

[45] *Ibid.*, p. 221.

[46] *Ibid.*, pp. 226-228.

[47] *Ibid.*, p. 232.

[48] *Ibid.*, p. 251.

[49] *Ibid.*, p. 253.

[50] *Rollo*, pp. 267-274.

[51] He was admitted to the Philippine Bar in 1958.

[52] Rule 1.02.

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