

**JOSE GUERRERO, MARIA GUERRERO, MAGDALENA GUERRERO
ESPIRITU, ASSISTED BY HER HUSBAND CANDIDO ESPIRITU,
GREGORLO GUERRERO, CLARA GUERRERO, ET AL., PETITIONERS,
VS. ST. CLARE'S REA...**

G.R. No. 58164. September 02, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

In their petition for review by certiorari, petitioners are seeking a reversal of the decision of the former Court of Appeals (now the Intermediate Appellate Court) dated April 30, 1981 in CA-G.R. No. 57597-R, and its resolution dated September 3, 1981 which denied the petitioners' motion for reconsideration thereof. Our resolution of May 25, 1983 gave due course to the petition.

The action initiated by the petitioners in the Court of First Instance of Rizal prayed for a judgment:

- "1. Declaring the inexistence of the 'Deed of Sale of Lands', Annex 'A' hereof, and 'Deeds of Absolute Sale', Annexes 'B' and 'C', as well as the Original Certificate of Title No. 4591 and Transfer Certificates of Title Nos. 339629 and 340842 of the Registry of Deeds, null and void;
2. Declaring the plaintiffs (now petitioners) the owners in fee simple of the aforescribed property, pro-indiviso;
3. Ordering the private defendants (now private respondents) to reconvey to the plaintiffs the afore-described lot;
4. Declaring the 'Joint Venture Agreement' executed by the defendant partnership and the defendant corporation null and void and ineffective insofar as the plaintiffs are concerned;
5. Ordering the defendant Register of Deeds of Rizal to issue a new transfer certificate of title in favor of the plaintiffs over the said lot;
6. Condemning the defendants, except the defendant Register of Deeds, to pay the plaintiffs, actual and exemplary damages, the amounts of which they will prove during the hearing of the instant case on the merit;
7. Condemning the defendants, except the defendant Register of Deeds, to pay to the plaintiffs attorney's fees in the amount of P5,000.00; plus costs of suit." (Printed Record on Appeal, pp. 116-118.)

Petitioners' original and amended complaints alleged that during their lifetime the spouses Isidoro Guerrero and Panay Ramos were the absolute owners of the disputed property, which is a parcel of land located at San Dionisio, Parañaque, Rizal, with an area of 42,299 square meters, more or less. The spouses had six children, named Andres, Juliana, Aurelio, Leona, Jose and Cristina, and all surnamed Guerrero. Panay Ramos predeceased Isidoro Guerrero. Before his demise, Isidoro Guerrero verbally willed and ordained that the questioned lot be assigned and adjudicated to Andres Guerrero as his share in the inheritance, the other children having been assigned other

lots. Accordingly, upon the death of Isidoro Guerrero, Andres Guerrero physically possessed the lot and cultivated it through his tenant Dominador Ramirez, who earned a 50% share in the net produce, the other 50% being retained by Andres Guerrero who defrayed the cultivation expenses and real estate taxes on the property. Shortly after the beginning of the Japanese occupation, Andres Guerrero entrusted the land to his sister, Cristina Guerrero, and allowed her to have the property cultivated and to retain the owner's share in the harvests. The arrangement between brother and sister was that Cristina Guerrero could continue in the cultivation of the land and enjoyment of the owner's share in the produce for as long as she needed the property. Dominador Ramirez continued his tenancy until shortly before the death of Andres Guerrero. Sometime in July 1943, Andres Guerrero died survived by his widow, Segunda Laquindanum, and their children, who are the petitioners in this case. Cristina Guerrero continued as trustee of the deceased Andres Guerrero.

The complaints further alleged that as early as December 10, 1957, the land was surveyed by the Bureau of Lands for and in the name of Andres Guerrero as Lot No. 4752, Case No. 4, Cadastre No. 229 of the Parañaque Cadastre. Sometime during the latter part of 1971 certain people who introduced themselves as agents or buyers of the land approached some of the plaintiffs in order to secure their consent to the sale of the property. Said plaintiffs were informed that the land was titled in the name of their cousin, Manuel Guerrero. Plaintiffs made inquiries and discovered the following: that Manuel Guerrero was able to have the lot titled in his name on the basis of a 'Deed of Sale of Land' dated April 24, 1948 purportedly executed by Cristina Guerrero; that he caused the lot to be surveyed in his name as Lot No. 4752 and he was issued advance Plan No. AP-10008 on February 28, 1962; that in the advance plan issued to him, it was duly noted that Lot No. 4752 had been previously surveyed for Andres Guerrero; that in 1963, Manuel Guerrero, assisted by Felicisimo Guerrero, father of the defendants Guerreros, filed an application for registration of land with the Court of First Instance of Rizal; that notwithstanding the opposition of the heirs of Cristina Guerrero, the court ruled that Manuel Guerrero owned the lot; that despite oppositors' appeal to a higher court, the Register of Deeds issued Original Certificate of Title No. 4591 to the applicant; that on September 14, 1971, there was filed with the Register of Deeds of Rizal a "Deed of Absolute Sale" purportedly executed by Manuel Guerrero in favor of the defendants Guerreros; that the Register of Deeds gave due course to the registration of that deed, cancelled OCT No. 4591 and was issued Transfer Certificate of Title No. 339629 in its stead; that on the same day that the deed of sale was registered, the defendants Guerreros caused to be notarized an "Articles of Partnership" of St. Clare's Realty Company, Ltd., constituting themselves as partners; that on September 28, 1971, the defendants Guerreros sold the disputed lot in a "Deed of Absolute Sale" to the St. Clare's Realty Company, Ltd.; that by virtue thereof, the Register of Deeds issued TCT No. 340842 in the name of said realty company.

According to the original and amended complaints, the Deed of Sale in favor of Manuel Guerrero was fraudulent, simulated and falsified for the reason, among others, that Cristina Guerrero was not the owner of the land at the time she purportedly sold it; that Manuel Guerrero obtained OCT No. 4591 in fraud of the plaintiffs; that the Deeds of Sale to the defendants Guerreros and St. Clare's Realty Company, Ltd. and the transfer certificates of title in their favor are fraudulent and simulated, and ineffective against the plaintiffs for the reason, among others, that at the time of execution of the Deeds of Sale, the defendants Guerreros knew that the property belonged to Andres Guerrero; that long after the complaint in the present case has been filed, the plaintiffs came to know that the St. Clare's Realty Company, Ltd. executed a "Joint Venture Agreement" with the United Housing Corporation under which the latter bound itself to develop the property into a residential subdivision; and that the said agreement was entered into in gross and evident bad faith.

Separate answers were filed by the defendants Guerreros, St. Clare's Realty Company, Ltd. and United Housing Corporation. The defendants Guerreros alleged that Cristina Guerrero was the absolute owner of the property; that the action of the plaintiffs had prescribed and they are guilty of laches. St. Clare's Realty Company, Ltd. averred

that its contract with United Housing Corporation was made in good faith. United Housing Corporation averred that there is no privity of interest between plaintiffs and this defendant considering that the plaintiffs are not parties to the Joint Venture Agreement.

Issues having been joined; the case proceeded to trial.

Frisco Cervantes, grandson of Cristina Guerrero, testified as a witness of the plaintiffs that having had previous information that the disputed lot was borrowed from Andres Guerrero and that Cristina Guerrero merely mortgaged it to Manuel Guerrero, he went to the house of Manuel Guerrero in Barrio San Dionisio, Parañaque, Rizal, in 1968 at the behest of the plaintiffs, to inquire about the mortgage; that in reply, Manuel Guerrero stated that the land had been sold but it would be changed with another lot of the same area; that in 1970, Sotero Cervantes and Laura Cervantes, children of Cristina Guerrero, and he went to see Manuel Guerrero at the Sta. Rita Church in Parañaque; that Sotero and Laura asked if they could get the land back; that Manuel Guerrero answered that it were better to change the disputed lot with another parcel of the same area and value; that as he was not satisfied with the answer, Frisco Cervantes went to the Office of the Register of Deeds in Pasig, Rizal, where he obtained a copy of a Deed of Sale in favor of Manuel Guerrero which he delivered to the children of Andres Guerrero.

Roman Mataverde, Chief Geodetic Engineer of the Bureau of Lands designated as Officer-In-Charge of the Surveys Division, testified for the plaintiffs that in the Bureau's Lot Data Computation Book showing the list of claimants for Lot 4752, Case 4, Cadastre 299, Parañaque, Rizal, (Exhibit A), which was surveyed on December 10, 1957, Andres Guerrero is listed as claimant. The records of the Bureau of Lands from 1957 (when Lot 4752 was cadastrally surveyed for Andres Guerrero) until 1962 show no claimant to the property except Andres Guerrero. In 1962, the Bureau of Lands received a letter with an affidavit attached to it from Manuel Guerrero requesting that an advance plan be made. Advance Plan No. 10008 was made without Andres Guerrero being notified. But in the advance plan, the Bureau of Lands listed Andres Guerrero as original claimant so that he would, not be pre-judged when a case comes to trial.

Dominador Ramirez testified that during the rainy season of 1936, Andres Guerrero asked him to work on his land located at Barrio San Dionisio, Parañaque, Rizal, with an area of four (4) hectares, more or less. As tenant, his agreement with Andres Guerrero was that he would till the land in consideration of 50% of the harvests with Andres Guerrero shouldering the cultivation expenses. From 1936, to about 1941 or 1942, he worked on the land and gave 50% of the produce to Andres Guerrero who went personally to the field to get the same. In 1941 or 1942, he stopped working on the land because war had broken out.

On October 19, 1973, Laura Cervantes testified that her mother, Cristina Guerrero, had been sick for a long time before she died at the age of 80 years in 1948; and that her mother could walk only inside their house in Parañaque; that the money spent for the illness of her mother came from Manuel Guerrero; and that, through her children, Cristina Guerrero could ask money from Manuel Guerrero because of the land that Andres Guerrero had lent to her.

After Laura Cervantes had thus testified, counsel for the defendants Guerreros objected to the line of questioning on the ground that the said witness was testifying "on matters which are prohibited under Sec. 20(a), Rule 130, of the Rules of Court." The trial court having ruled that the witness "may answer", defendants' counsel registered a continuing objection. The court allowed the witness to continue her testimony subject to such objection. (TSN, pp. 9-20, October 19, 1973.)

Resuming her testimony, Laura Cervantes stated that the land was lent by Andres Guerrero to Cristina Guerrero; that Manuel Guerrero loaned money to Cristina Guerrero for quite some time; that shortly after the death of

Cristina Guerrero, Manuel Guerrero went to their house, accompanied by Felicisimo Guerrero, and summed up the loans he had extended to Cristina Guerrero in the total amount of P1,900.00; and that Felicisimo Guerrero asked Laura Cervantes to sign a piece of paper to attest to the fact that a certain amount of money had been borrowed from Manuel Guerrero.

On October 24, 1973, the defendants Guerreros filed a written motion to disqualify Laura Cervantes as a witness on the basis of Section 20(a), Rule 130, of the New Rules of Court. The motion was opposed by the plaintiffs. On November 16, 1973, the trial court granted the motion and declared that Laura Cervantes, Jose Cervantes as well as other witnesses similarly situated, are disqualified to testify in the case.

On February 12, 1974, plaintiffs filed a "Motion For The Honorable Presiding Judge Of This Honorable Court To Inhibit Himself And/Or To Transfer Case To Another Branch." Oppositions to the said motion were filed. On April 26, 1974, the trial court denied the motion.

At the continuation of the trial on June 14, 1974, plaintiffs and their counsel failed to appear despite due notice and repeated previous warnings to their lawyer. Instead of appearing in court, plaintiffs, thru counsel, filed an urgent motion to reset the hearing, which was opposed by the defendants. On even date, the court issued an order as follows:

"In view of the non-appearance of the plaintiffs as well as their counsel for today's hearing, they are deemed to have waived their right to further present or formally offer their evidence in court, and on motion of defendants' counsels, the Clerk of Court, Atty. Juan A. Carambas, is hereby authorized and commissioned to receive the evidence for the defendants. After the defendants have closed their case, they are given 10 days within which to file their respective memoranda and the case is deemed submitted for decision after receipt of the complete transcript of stenographic notes." (Record on Appeal, p. 212.)

On June 22, 1974, plaintiffs filed a "Manifestation" to the effect that they did not waive their rights to present further evidence, to cross-examine defendants witnesses, and to present rebuttal evidence; and that they were reserving the exercise of those rights upon the finality of the decision of the Court of Appeals in a petition for certiorari, prohibition and mandamus against the Presiding Judge of the trial court, which they were then preparing to file.

Indeed, on June 25, 1974, plaintiffs instituted the said special civil action, which was docketed in the Court of Appeals as its CA-G.R. No. SF-03120. The action sought the disqualification of the trial judge from continuing with the hearing of the case. On June 27, 1974, the Court of Appeals denied the petition outright. Copy of the resolution was received by the plaintiffs on July 2, 1974. They filed a motion for reconsideration on July 17, 1974.

On the same date, July 17, 1974, the trial court rendered its decision with the following dispositive part:

"WHEREFORE, judgment is hereby rendered in favor of the defendants (and) against the plaintiffs:

1. Dismissing the complaint and Amended Complaint;
2. Ordering the plaintiffs to pay the private defendant Guerreros the amount of P20,000.00 for actual damages, P500,000.00 for moral damages and P10,000.00 as attorney's fees;
3. Ordering the plaintiffs to pay the defendant St. Clare's Realty Co. Ltd., the amount of P1,923,000.00 as actual damages, P50,000.00 as exemplary damages and P5,000.00 as attorney's fees;
4. Ordering the plaintiffs to pay the defendant United Housing Corporation the amount of P90,500.00 as actual damages; P100,000.00 for loss of goodwill and business reputation, P80,000.00 as exemplary damages,

P15,000.00 as lawyer's fees; and

5. To pay the cost of suit.

The Register of Deeds of Rizal is hereby directed to cancel the Lis Pendens in Transfer Certificate of Title No. 340842 in the name of the St. Clare's Realty Co., Ltd., Book T-1971. Meanwhile, the defendant United Housing Corporation is ordered to proceed and continue with its commitments under the Memorandum Agreement dated October 12, 1971." (Record on Appeal, pp. 259-261.)

On July 20, 1974, or three (3) days before plaintiffs received the decision, they filed with the trial court a "Motion Ex-Abundantia Cautela" praying that should the Court of Appeals render an adverse resolution in CA-G.R. No. SF-03120, the lower court should set aside its order of June 14, 1974 and allow plaintiffs to present other evidence, cross-examine witnesses of the defendants, and present rebuttal evidence.

On August 21, 1974, plaintiffs filed a motion for reconsideration of the decision which they received on July 23, 1974.

Early in 1975, Judge Arsenio Alcantara who rendered the decision was replaced by Judge Florelia Castro-Bartolome. In her order of February 13, 1975, Judge Castro-Bartolome resolved that:

"1) The plaintiffs' 'Motion Ex-Abundantia Cautela' dated July 18, 1974, having been passed upon by Judge Arsenio B. Alcantara by the rendition of the Decision dated July 17, 1974, is deemed to have been clearly denied by the Honorable Judge who penned the said decision;

2) The plaintiffs' 'Motion for Reconsideration' dated August 21, 1974 and 'Supplemental Motion for Reconsideration' dated August 22, 1974, have to be as they are hereby, denied;

x x x x x x x x

5) The plaintiffs' 'Motion for Reconsideration' and 'Supplemental Motion for Reconsideration' are not pro-forma and have suspended the running of the period of appeal."

On February 21, 1975, plaintiffs perfected their appeal to the Court of Appeals where the case was docketed as CA-G.R. No. 57597-R. On April 20, 1981, the Court of Appeals rendered its decision as follows:

"WHEREFORE, all the foregoing considered, the decision appealed from is hereby affirmed, with modification in regard to damages as follows: (a) for the defendants Guerreros, P50,000.00 moral damages, and P10,000.00 exemplary damages; (b) for the defendant St. Clare's Realty Co., Ltd., P10,000.00 exemplary damages; (c) for the defendant United Housing Corporation, P40,000.00 for loss of goodwill and business reputation and P10,000.00 exemplary damages. The actual damages and attorney's fees 'are hereby maintained."

On May 27, 1981, the Court of Appeals denied plaintiffs' motion for reconsideration.

Hence, the present petition for review by certiorari.

In their instant petition for review, petitioners have raised substantive and procedural points on which the lower tribunals have allegedly erred. The substantive issues refer to the lack of basis for the grant of actual, moral and exemplary damages in the huge amount of over two million pesos; and the error of ruling that the action was barred by prescription and laches. Petitioners underscore the procedural errors they attribute to the lower courts which resulted in the deprivation of their full opportunity to ventilate their case and prove the validity of their claim. They assail the ruling that their witnesses Laura Cervantes, Jose Cervantes" and others similarly situated" are disqualified to testify; and that they waived the right to present their evidence when they failed to appear at a hearing set by the trial judge during the pendency of proceedings taken by the petitioners to disqualify him due to

alleged hostility manifested by the latter towards the petitioners.

At this instance, We consider it unnecessary to discuss the substantive merits of the petitioners' cause of action. The record reveals that they have not yet completed the presentation of their evidence. Whatever evidence they had previously presented were apparently not considered in the rendition of the questioned decisions for not having been "formally offered." It does not strike Us as fair and just that the petitioners would be made answerable for damages in such a huge amount for having filed an allegedly baseless and unfounded action without affording them the full opportunity of establishing the merit of their claim. On the face of the record, We are convinced that they had been denied that chance due to some mistaken and capricious application of pertinent pro-cedural rules.

The first question of importance that engages the attention of this Court is whether or not the witnesses Laura Cervantes and Jose Cervantes were correctly disqualified from testifying in the case and their testimonies excluded on the basis of Section 20(a), Rule 130, of the Rules of Court, which provides as follows:

"Section 20. Disqualification by reason of interest or relationship. – The following persons cannot testify as to matters in which they are interested, directly or indirectly as herein enumerated:

(a) Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such became of unsound mind."

Upon the facts and under the law, this Court is fully persuaded that the affirmative rulings of both the trial court and the Court of Appeals were made in error. The plain truth is that Laura Cervantes and Jose Cervantes are not parties in the present case, and neither are they assignors of the parties nor "persons in whose behalf a case is prosecuted." They are mere witnesses by whose testimonies the plaintiffs aimed to establish that it was not Cristina Guerrero, but Andres Guerrero, who owned the disputed land at the time of its alleged sale to Manuel Guerrero; that Cristina Guerrero did not really sell but merely mortgaged the property to Manuel Guerrero.

"Following this rule of construction, it may be said that incompetency to testify established in the provision above quoted, affects only the persons therein mentioned, and no others, that is, only parties plaintiff or their assignors, persons in whose behalf a case is prosecuted. Mere witnesses who are neither parties plaintiff, nor their assignors, nor persons in whose behalf a case is prosecuted, are not included in the prohibition." (Moran, *Comments on the Rules of Court*, 1970 ed., Vol. 5, p. 166.)

By excluding the testimonies of the two witnesses and by barring them from further testifying, upon reasoning that unduly strained the meaning of the provisions of the Rules of Court relied upon, the trial court deprived itself of the opportunity of knowing the truth in this case.

Moreover, the present case is not a claim or demand against the estate of the deceased Manuel Guerrero. The defendants Guerreros are not the executors or administrators or representatives of such deceased. They are being sued as claimants of ownership in their individual capacities of the disputed lot. The lot is not a part of the estate of Manuel Guerrero. Hence, the inapplicability of the dead man's rule.

"It has been held that statutes providing that a party in interest is incompetent to testify where the adverse party is dead or insane, must be applied strictly in accordance with their express wording, irrespective of their spirit. The law uses the word 'against an executor or administrator or other representative of a deceased person.' It should be noted 'that after the mention of an executor or administrator the words or other representative follows, which means that the word 'representative' includes only those who, like the executor or administrator,

are sued in their representative, not personal, capacity. And that is emphasized by the law by using the words 'against the estate of such deceased persons', which convey the idea of an estate actually owned by the deceased at the time the case was brought and that, therefore, it is only his rights that are to be asserted and defendant in the litigation by the person representing him, not the personal rights of such representative." (Moran, *ibid.*, pp. 169-171.)

The next question that requires attention is whether or not the exclusion of plaintiffs' evidence and their preclusion from presenting further proof was correctly sustained by the respondent Court of Appeals. Prior to the issuance of the court's order of June 14, 1974, by which the plaintiffs were "deemed to have waived their right to further present or formally offer their evidence", the following had testified as witnesses of the plaintiffs, namely: Alfredo Zamora, Roman Mataverde, Moises Javillonar, Dominador Ramirez, Bonifacio Sumulong, Frisco Cervantes, Laura Cervantes and Jose Cervantes. It was error to hold that the testimonial evidence should have been formally offered, or that without such offer, such evidence was waived. The offer of testimonial evidence is effected by calling the witness to the stand and letting him testify before the court upon appropriate questions. (Moran, *Comments on the Revised Rules of Court*, Vol. 6, 1970 ed., p. 122.)

Notwithstanding rigid cross-examination conducted by the lawyers of the defendants, the witnesses discovered the following facts: In the 1930's Andres Guerrero physically possessed the disputed lot, paid the real estate taxes for it, had the same cultivated through a tenant, defrayed the cultivation expenses, and exclusively enjoyed the owner's share in the harvests. Andres Guerrero loaned the lot to his sister, Cristina Guerrero, before he died. Cristina Guerrero became ill prior to the year 1948. She could walk only inside her house in Parañaque, Rizal. The money spent for her illness was borrowed from Manuel Guerrero. After the death of Cristina Guerrero, Manuel Guerrero and Felicísimo Guerrero came to her house and the money loaned to her was totalled in the amount of P1,900.00. On December 10, 1957, the questioned lot was cadastrally surveyed and denominated as Lot 4752 of the Parañaque Cadastre. Andres Guerrero was the lone claimant. Until 1962, no other person claimed the lot.

The foregoing proofs bear materially on the questions raised by the plaintiffs as to whether or not: (1) Cristina Guerrero or Andres Guerrero owned the lot when the former purportedly sold it to Manuel Guerrero in 1948; (2) Cristina Guerrero really sold or merely mortgaged the land to Manuel Guerrero; (3) Manuel Guerrero and, after him, the defendants Guerreros were buyers in good faith. Instead of insulating itself from evidence that could lead it to the truth, the trial court should have addressed itself to the questions why: (1) if it is true that Cristina Guerrero was the owner of the disputed lot in 1948, the cadastral surveyors who actually repaired to the field listed Andres Guerrero as the sole claimant of the property; (2) until 1962, no other person except Andres Guerrero claimed the lot as his own; (3) notwithstanding the purported deed of sale by Cristina Guerrero to Manuel Guerrero was executed on April 24, 1948, it was presented for registration with the Register of Deeds almost ten (10) years later only on February 27, 1958 (TSN, p. 15, January 9, 1974); (4) in the deed of sale to Manuel Guerrero, it is stated that he appeared in Parañaque, Rizal, before Atty. Jose D. Villena who was a notary public in Makati, Rizal; (5) the area of the land bought by Manuel Guerrero was 33,090 square meters whereas the area of the land sold by him to the defendants Guerreros was 42,299 square meters. The court also ought rather to have noticed the fact that, in the deed of sale in favor of Manuel Guerrero, it is stated that the subject parcel of land "is surrounded by mud-dikes besides the stone monuments that visibly marked all its boundaries", which clearly indicate a previous survey and which may in turn lead to the question if the deed of sale to Manuel Guerrero "might have been made after the cadastral survey in 1957 and not in 1948.

The trial court rendered its decision solely on the basis of the defendants' evidence and without regard to the proofs that the plaintiffs had presented on July 17, 1974 before the Court of Appeals could finally resolve plaintiffs' petition to disqualify the trial judge. As modified by the Court of Appeals, the decision sentences the

plaintiffs to pay damages and attorney's fees, apart from the costs of suit, in the staggering amount of Two Million One Hundred Eighty Three Thousand and Five Hundred (P2,183,500.00) Pesos, without plaintiffs having been given the chance to complete their evidence, to cross-examine the witnesses of the defense, and to present rebuttal evidence. The way the trial court and the Court of Appeals proceeded in this case, litigation became more a game of technicalities than a proceeding to search the truth and mete justice. No other fairer course of action is demanded but for this Court to remand the case for further proceedings.

WHEREFORE, the decision of the respondent Court of Appeals is hereby set aside. Let the records of the case be remanded to the court of origin with instruction to the trial court to allow the plaintiffs to complete their evidence, to cross-examine the defendants' witnesses, and to present rebuttal evidence if they so desire, and thereafter to decide the case anew.

SO ORDERED.

Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.
Teehankee, J., (Chairman), no part.

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