

WIDOWS & ORPHANS ASSOCIATION, INC., PETITIONER, VS. COURT OF APPEALS AND ORTIGAS & COMPANY LIMITED PARTNERSHIP, RESPONDENTS.*G.R. No. 91797. August 07, 1992*

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-91797/>**FELICIANO, J.:**

On 27 August 1974, petitioner Widows' and Orphans Association, Inc. ("Widora") instituted Land Registration Case("LRC") No. Q-336 before Branch 4 of the Court of First Instance of Quezon City (now Branch 83 of the Regional Trial Court, same city). Widora applied for original registration of title over a parcel of land described in Plan LRC(SWO)-15352, alleging that said property is covered by Titulo Propiedad No. 4136 dated 25 April 1894, supposedly issued in the name of one, deceased, Mariano San Pedro y Esteban.[1] In an amended application, Widora stated that the land applied for was situated at Malitlit-Ugong, Quezon City, with an area of 156 hectares.[2]

On 13 October 1978, private respondent Ortigas & Co. Limited Partnership, Inc. ("Ortigas") filed an opposition to the application.[3] This pleading was followed by a motion to dismiss dated 23 October 1978.[4]

In a supplementary report dated 14 November 1978, the Commissioner of Land Registration informed the trial court that the land sought to be registered was "identically the same" as that covered by Lot 7 of Transfer Certificate of Title ("TCT") No. 77652 and of Lot 8 of TCT No. 77653, both of which were issued and standing in the name of Ortigas.[5]

In an order dated 20 April 1979, the trial court set the case for hearing to enable Widora to prove its assertion that TCT Nos. 77652 and 77653 were not derived from the Original Certificates of Title ("OCT") referred to on their faces (i.e., OCT Nos. 19, 336, 337 and 344) and to give Ortigas an opportunity to show the contrary.[6]

For nine (9) years, from 1979 until 1988, hearings were held where the parties adduced evidence in support of their respective contentions.[7]

In an order dated 30 March 1988, the trial court denied Ortigas' motion to dismiss, holding that its TCT's were apparently not derived from the OCT's mentioned on their faces and did not appear to have been based on an existing original decree of registration.[8]

Ortigas' motion for reconsideration having been denied, and the trial court having set the case for hearing on the merits, Ortigas filed a petition for certiorari with prayer for a writ of preliminary injunction with the public respondent Court of Appeals on 10 July 1989.[9]

In a decision dated 27 November 1989, the Court of Appeals gave due course to the petition and nullified the trial court's order of 30 March 1988. It held that TCT Nos. 77652 and 77653 were derived from OCT No. 351, which in turn was based on Decree of Registration No. 1425 issued in favor of Ortigas' predecessor-in-interest in 1905, in G.L.R.O. Record No. 917 which had been tried by the Land Registration Court of Manila. The Court of

Appeals dismissed LRC No. Q-336 because the land subject thereof was already, registered in favor of Ortigas, with the result that the trial court had no jurisdiction over the subject matter of the action.[10]

Its motion for reconsideration having been denied, Widora filed the present petition for review with the Court on 22 March 1990. In a decision dated 28 August 1991, the Court's Third Division set aside the decision of the Court of Appeals and reinstated the order of the trial court dated 30 March 1988.

The Court's Third Division held that the Court of Appeals erred in making factual findings determinative of Widora's application on the basis of "secondary evidence" offered by Ortigas, in unilaterally correcting entries in the Ortigas Torrens titles and held that the controversy regarding the authenticity of said titles should be resolved in "full-blown" hearings before the trial court.[11]

Hence, the present Motion for Reconsideration filed by Ortigas.

Examination of the Court's Decision of 28 August 1991 shows that two (2) considerations led the Court to remand this case to the trial court to hear Widora's application for land registration on the merits.

Firstly, the Court was apparently not entirely certain that the land covered by Widora's application was already registered under the Torrens system in Ortigas' name, such that it appeared prudent to conduct a "full-blown" trial on the merits to clear up that matter, considering: (1) Ortigas argued that its ownership of the land which is the subject of Widora's application was confirmed by Decree No. 1425 issued in G.L.R.O. Record No. 917 of the Land Registration Court of Manila in 1905; however, Widora's evidence tended to show that Decree No. 1425 adjudicated to Ortigas only seventeen (17) hectares of land situated in Sta. Ana, Manila, while Widora's application related to one hundred fifty-six (156) hectares of land situated in Quezon City; and (2) it appeared that Ortigas' TCT Nos. 77652 and 77653 carry some erroneous statements on their face, relating to "their source or mother Original Certificate of Title (OCT)" lending some credence to Widora's contention that the genuineness of those TCTs was dubious.

The second consideration was the feeling that the Court of Appeals should not have resolved these factual uncertainties by using "secondary" evidence offered by Ortigas, considering the limited nature of certiorari jurisdiction, since Torrens titles are conclusive on their face and any inaccuracies of entries thereon are to be corrected only by the proper land registration court.

In the Motion for Reconsideration and in the oral hearing on that Motion, Ortigas invited our attention to the existence of previously decided cases showing that the factual uncertainties we had noted had already been adjudicated by the Court with finality and are now matters of judicial notice.[12]

In this Resolution, the Court will address this principal argument of Ortigas as well as the argument concerning the character of evidence submitted by Ortigas before the trial court.

I.

In holding that the Court of Appeals should not have resolved the factual issues considering the nature of certiorari jurisdiction, the Court relied on *Dioquino v. Intermediate Appellate Court*.^[13] In *Dioquino*, this Court rejected the factual findings made by the Court of Appeals in the course of resolving a petition for review filed under Section 22, B.P. Blg. 129, because, *inter alia*, those factual findings were based on evidence presented *ex parte* as appendices to a motion for reconsideration from the decision of the trial court. Considering that no evidence had been presented by either party in the principal proceedings, either before the Municipal Circuit Trial Court or before the Regional Trial Court, the Court in *Dioquino* concluded that the Court of Appeals' power to resolve issues of fact under Section 9, paragraph 2, B.P. Blg. 129, was misapplied because the opposing party had

no real opportunity to reject the evidence submitted ex parte by its opponent.[14]

Careful examination of the Dioquino case shows that the facts there are so different from those of the present case as to render our holding in Dioquino inapplicable here. Here, the Court of Appeals had conducted hearings on four (4) occasions, during which it required both parties to present evidence to establish their respective contentions on Ortigas' right to a writ of preliminary injunction. At these hearings, both parties reproduced before the Court of Appeals the same evidence they had adduced before the trial court during the 9-year long hearings on Ortigas' motion to dismiss, which evidence tended to support their respective contentions on the derivation of Ortigas's TCTs.[15] Thus, the acceptance of ex parte evidence which the Court rejected in Dioquino, never occurred in the instant case. Moreover, the determination of whether an inferior court had arbitrarily disregarded preponderant evidence of record adduced in protracted hearings before it, is a proper subject of inquiry by an appellate court in a certiorari proceeding.

II.

In arriving at its conclusion that TCT Nos. 77652 and 77653 are proper derivatives of OCT No. 351, which in turn had been issued pursuant to Decree No. 1425, the Court of Appeals had relied on (a) a certified true copy of OCT No. 351; (b) survey plans prepared by Ortigas' Geodetic Engineer, Mr. Carlos Angeles, which were based on plottings of the boundaries of parcels of land appearing in the Notice of Initial Hearing in G.L.R.O. Record No. 917 and in the technical description found in the body of OCT No. 351, and in TCT Nos. 77652 and 77653; and (c) the testimony of Engineer Angeles that these plottings showed that the land covered by the TCTs was inside the larger parcel of land covered by the OCT, which in turn was inside the much larger parcel of land (The Hacienda de Mandaloyon) adjudicated to Ortigas' predecessor-in-interest by Decree No. 1425 issued in G.L.R.O. Record No. 917.[16] As noted earlier, the above evidence had been presented by Ortigas before the trial court during the prolonged hearings on its motion to dismiss. The Court described the above evidence as "secondary" in nature and noted that Ortigas did not establish the due execution and subsequent loss of the original documents, as required by the Rule on Secondary Evidence.[17] After careful re-examination of the evidence of record and applicable rules of evidence, the Court considers that the word "secondary evidence" was inaccurate. The copy of OCT No. 351 offered by Ortigas was a certified true copy of the original thereof found in the Registration Book of the Register of Deeds of Rizal.[18] The admissibility of such a copy in court proceedings is an exception to the ordinary rule on secondary evidence;[19] such admissibility is in fact mandated by Section 47 of Act No. 496 (The Land Registration Act).[20] Under the Land Registration Act which was in force at the time OCT No. 351 was issued, the original thereof found in the Registration Book of the Register of Deeds of Rizal was an official transcript of Decree No. 1425, with respect to the land covered by such decree situated in the Province of Rizal.[21]

Thus, OCT No. 351 constitutes direct proof of the existence of Decree No. 1425 upon which the Ortigas TCTs (Nos. 77652 and 77653) are based. We believe further that the Court of Appeals was justified in relying upon the plotting prepared by Engineer Carlos Angeles and his testimony explaining the significance thereof, notwithstanding the secondary nature of that plotting and testimony. For, as will be seen shortly, the authenticity and correctness of these survey plans and of Engineer Angeles's explanation thereof had already been judicially sustained in previously decided cases.

III.

In its Motion for Reconsideration and its supporting memorandum, Ortigas argued that the seeming factual uncertainties relating to its TCTs which had impelled the Court to order a remand of this case to the trial court, had already been resolved with finality in previously decided cases and are now matters of judicial notice.

We have reviewed the underlying record carefully and must conclude that this claim of Ortigas is impressed with considerable merit. When evidence of record in the instant case is considered together with the findings and conclusions embodied in previously decided cases, the factual uncertainties initially feared by the Court are dissipated. In truth, resolution of these uncertainties results from the application of the principle of *res adjudicata* and of its two (2) component concepts, i.e., conclusiveness of judgment and bar by prior judgment.

As early as 1906, in *Cia Agricola de Ultramar v. Domingo, et. al.*,^[22] this Court affirmed on appeal the trial court's confirmation of the title of La Compania Agricola de Ultramar as registered owner under the Torrens System of the Hacienda de Mandaloyon. Such confirmation, referring to title over a specific thing, has now acquired immutability and incontestability.^[23] Thus, in *Ortigas v. Hon. Ruiz*,^[24] the Court ruled that the Ortigas & Co. Ltd. Partnership was the successor-in-interest of La Compania Agricola de Ultramar and can invoke the benefits of the Court's 1906 ruling, under the doctrine of the law of the case, to defeat an action for annulment of some of its transfer certificates of title on the ground of alleged fraud.^[25]

The Court noted in its 1906 decision that the identity and area of the Hacienda de Mandaloyon were not disputed by the oppositors in the land registration proceeding.^[26] Neither was the validity of the land registration proceeding therein impugned by said oppositors. Hence the Court had no occasion there to discuss the detailed matters dealt with below.

However, in at least two subsequent cases cited by Ortigas, the Supreme Court had occasion to affirm decisions rendered by the Court of Appeals, based on facts adduced before the Courts of First Instance, clarifying these matters. The legal conclusions drawn in these two cases, as well as the factual findings on which they were based, supplemented the *Cia. Agricola* ruling and demonstrate that the land registration court hearing Widora's application in LRC No. Q-336, could not have acquired jurisdiction over the land subject of the application, since that land is already registered under the Torrens system (TCT Nos. 77652 and 77653) and in fact formed part of a larger tract of land similarly previously brought under the Torrens system in the name of Ortigas' predecessor-in-interest.

IV.

In the first of these cases, *Felipe C. Navarro v. Ortigas & Co. Ltd. Partnership*,^[27] this Court affirmed in 1979 by way of a minute resolution the decision of the Court of Appeals in C.A.-G.R. No. 53125-R dated 13 December 1978.^[28] In that decision, the Court of Appeals established that the land registration application of La Compania Agricola de Ultramar over the Hacienda de Mandaloyon was granted under Decree No. 1425, actually issued under G.L.R.O. Record No. 917 by the Land Registration Court of Manila in 1905, the very same Decree affirmed by this Court in its 1906 decision. The Court of Appeals noted that Ortigas had established this proposition by offering an extant portion of Decree No. 1425 covering land within the territorial jurisdiction of the City of Manila, which "coincides with a portion of the entire vast tract of land embraced by the technical description appearing in the notice of initial hearing published in the Manila American and (in) La Democracia (English and Spanish language newspapers of general circulation existing in 1904, certified true copies of which were offered in evidence by Ortigas) and was distinctly shown in a map or sketch plotted by Mr. Carlos Angeles, Geodetic Engineer."^[29]

By way of background, the Navarro case involved a suit for injunction instituted by Ortigas on 11 February 1972 before Branch 16 of the Court of First Instance of Rizal [docketed as Civil Case No. Q-16265] in order to restrain a certain Felipe Navarro from fraudulently selling portions of its property to innocent third persons. Felipe Navarro was allegedly the attorney-in-fact of the physical occupants of a 17,955 square meter parcel of land owned by Ortigas and bounded by Amado T. Reyes St., Harapin ng Bukas St. and Luna St., San Juan, Manila.

Felipe Navarro answered the complaint by impugning the validity of the Torrens titles held by Ortigas over the entire Hacienda de Mandaloyon, situated partially in Manila, partially in Quezon City and partially in Pasig,[30] because, among other things, they were allegedly declared void in a decision rendered by Branch 15 of the Court of First Instance of Rizal in Civil Case No. 7-M(10339).[31]

After trial, CFI Judge Sergio Apostol rejected Navarro's contention in a decision granting injunction dated 16 December 1972, holding that the Ortigas titles were indefeasible, being based on Decree No. 1425 issued in 1905.[32]

Before reaching the conclusion that the Ortigas titles had become indefeasible, Judge Apostol satisfied himself as to the existence of original Decree of Registration No. 1425, issued in 1905 in G.L.R.O. Record No. 917, from which these titles were derived:

"There seems to be no question that there exists in the dockets of the General Land Registration Office a case known as G.L.R.O. Record No. 917 with La Compania Agricola de Ultramar as petitioner. The record of said case is, however, no longer complete. Copies of the application for registration, plan, technical description, decision and decree can no longer be found. However, the expediente of the case still contains documents which reflect part of the proceedings that transpired therein, among which are:

1. 'Mocion Pidiento Se Deja Sin Efecto A La Rebeldia' dated April 13, 1905;
2. 'Decision on Motion to Vacate General Default' dated March 29, 1905;
3. Minutes of the session of the Land Registration Court presided by the Honorable Auxiliary Judge James Ross on the 29th day of March, 1905 in G.L.R.O. Record No. 917;
4. Minutes of the session of the Land Registration Court presided by the Honorable Auxiliary Judge James Ross on the 29th day (sic) of March, 1905 in G.L.R.O. Record No. 917;
5. 'Mocion Emmendado Pidiendo Se Deja sin Efecto A La Sentencia Por Rebeldia' and
6. 'Mocion Pidiendo Se Deja Sin Efecto A La Rebeldia.

The foregoing, the court believes, establishes beyond doubt that there was such a land registration case known as G.L.R.O. Record No. 917 with Compania Agricola de Ultramar as petitioner.

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Defendant, however, contends that because the decree in that case could no longer be found in the expediente of the case, Decree No. 1425, the decree number appearing in the titles issued under G.L.R.O. Record No. 917, is non-existent and fictitious.

To rebut this contention of the defendant, plaintiff presented the following evidence:

1. A certified xerox copy of page 18 of the Book of Decrees, Bk. I;
2. A certified xerox copy of page 19 of the same book;
3. A certified xerox copy of Decree No. 1425 insofar as it covers the areas located in Manila;
4. A copy of the letter of transmittal from the Clerk of Court to the Register of Deeds of Manila dated August 15, 1907 signed by (Clerk of the Land Registration Court) A.K. Jones requesting that a separate title be issued for each parcel of land covered by Decree No.1425; and
5. A certification issued by Alberto H. Lingayo, Chief Surveyor of the Land Registration Commission to the

effect that in the index card of ordinary cases kept in the Land Registration Commission, La Compania Agricola de Ultramar appears to be the petitioner in G.L.R.O. Record Nos. 699, 875 and 917 and that Decree Nos. 240, 696 and 1425 were issued on August 9, 1904, September 14, 1905 and April 26, 1905, respectively in these cases as (shown by) the Decree Book of Ordinary Cases of the Commission.

This Court finds that there is nothing in Exhibits '7', '384' or 'CCCC' (evidence of defendant Navarro) from which it may be inferred that Decree No.1425 is non-existent or fictitious. On the contrary, the wordings of these certifications imply that such a decree did exist but the same can no longer be found in the expediente of G.L.R.O. Record No.917 because it was lost during the war."[33] (Citations of evidence omitted, underscoring supplied)

Judge Apostol also established that the Ortigas titles covered a large tract of land described in the technical description appearing in the initial notice of hearing in G.L.R.O. Record No. 917:

"All these titles were traced back to their respective Original Certificates of Title, which were issued under G.L.R.O. Record Nos. 699, 875 and 917. Finally, it (Ortigas) proved that the lands in question are all embraced by the land described in the notice of initial hearing in G.L.R.O. Record No. 917 as published in the Manila American and La Democracia (Exhibit 'NNNN'), and Decree No. 1425."[34] (Underscoring supplied)

Exhibit 'NNNN' (above cited by Judge Apostol) in turn was based on the map plottings prepared by Geodetic Engineer Carlos Angeles of said technical descriptions as they appeared in certified true copies of the Manila American and La Democracia.[35]

It should also be observed that Judge Apostol had noted an inaccuracy in the designation of the source titles of TCT Nos. 77652 and 77653 similar to that noted by Widora in this case, but Judge Apostol held that this inaccuracy did not affect the validity of the titles:

"Finally, defendant questions the fact that some of plaintiff's Transfer Certificates of Title, particularly Transfer Certificates of Title Nos. 73884, 77652, 71436-A and 77653, show that they were originally registered under Original Certificates of Title Nos. 19, 313 (sic), 336, 334 (sic) and 699 whereas Original Certificate of Title No. 19 covers land which is located in Antipolo. Plaintiff's witness, the surveyor Carlos Angeles, however, explained this as follows:

'Q. It has been pointed out, Mr. Angeles that the present titles of the plaintiff Ortigas and Company Limited Partnership now indicate that these lands covered by these titles were originally registered in Original Certificate of Titles 337, 19, 336 and 334. Were you able to trace how these entries appeared in these titles?

A. In Transfer Certificate No.77652 and 77653, it is indicated at the bottom of the title that it came from Original Certificate of Title Nos. 337, 19, 336, 337 (sic) and 344. We found out that 19 could not have been a source because it is in Antipolo, Rizal. Now, we traced back this title to show where that error is, and then we found out that it should have been 13, as indicated in Transfer Certificate of Titles Nos. 443880, 27111, 44381 and 44382. So 19 is just a mere topographical (sic) error.

Q. How about Transfer Certificate of Title No. 699?

A. 699 is a G.L.R.O. Record Number, which was typed on the title.'

To better illustrate this, plaintiff's witness traced these errors in a diagram which he prepared and which was marked as Exhibit 'YYYY'

This Court is satisfied that the error in the statement of the sources of plaintiff's titles was, as shown by Exhibit 'YYYY', merely typographical. Besides, these errors do not go into the validity of plaintiff's titles. And they have all been traced to their respective Original Certificates of Title."[36] (Citations of evidence omitted; underscoring supplied)

The decision of Judge Apostol was affirmed in its entirety by Gaviola, J. of the Court of Appeals.[37] As noted earlier, Felipe Navarro's petition for review of the Gaviola decision was denied by the Supreme Court for lack of merit.[38] The Court's minute resolution is a judgment on the merits for the purpose of applying the principles of bar by prior judgment and conclusiveness of judgment.[39]

The factual matters raised, controverted, litigated and established in G.R. No. 50156 (Navarro v. Ortigas) which are relevant to the present case are as follows: 1) the inaccuracies in the sourcing of the mother titles of TCT Nos. 77652 and 77653 did not impair their probative value as evidence of Ortigas' ownership over the land described in their technical descriptions; 2) the Registry of Deeds of Manila was the source of an original copy of Decree No. 1425 to the extent that that Decree covered property situated in Manila; but this Decree, in its entirety, really covers much more, i.e., the entire Hacienda de Mandaloyon; 3) the extant sources of the boundaries of the Hacienda de Mandaloyon are the technical descriptions thereof appearing in the initial notice of hearing in G.L.R.O. Record No. 917; and 4) the land described in and covered by TCT Nos. 77652 and 77653 formed part of the Hacienda de Mandaloyon.

Under the doctrine of conclusiveness of judgment, these factual matters established in G.R. No. 50156 are binding on Widora and can no longer be relitigated by it in G.R. No. 91797.[40] Both cases, to a certain extent, involve the same subject matter (i.e., the parcels of land described in Ortigas' TCT Nos. 77652 and 77653. Ortigas' cause of action in G.R. No. 50156 consisted of the fraudulent sales of its property made by Felipe Navarro in behalf of his "owner"- clients. That differs somewhat from Ortigas' cause of action in G.R. No. 91797, which consists of the adverse claim of ownership asserted by Widora over Ortigas' property, manifested through the filing of Widora's application for land registration. But more importantly, there is a substantial identity between Felipe Navarro (and his clients) on one hand and Widora on the other; both parties sought to question the validity of Decree No. 1425 and its particular derivatives here involved (TCT Nos. 77652 and 77653), insofar as the Decree had adjudicated in favor of Ortigas ownership of land being claimed by Navarro and Widora. This circumstance makes them privies in law for purposes of the operation of the rule on conclusiveness of judgment.[41]

Furthermore, it must be observed that Widora is bound by the ruling laid down in the *Cia. Agricola* case of 1906 that Ortigas (through its predecessor-in-interest) is the registered owner of land comprising the Hacienda de Mandaloyon because the factual matters resolved in the Navarro case show that the land covered by Widora's application forms part of that vast tract of land adjudicated to Ortigas' predecessor-in-interest in the 1906 decision.

Finally, as held in the Court of Appeals decision which we affirmed in G.R. No. 50156, the Torrens titles of Ortigas served as evidence of its indefeasible title over the property covered thereby and they became incontrovertible one year after entry of the final decree of registration from which they were derived in 1906.[42] The Supreme Court's affirmance of this ruling in fact constitutes a holding that the land covered by these titles (particularly TCT Nos. 77652 and 77653) have been duly brought under the Torrens System of land registration and that this circumstance prevented the land registration court hearing Widora's application in LRC No. Q-336 from acquiring jurisdiction over the land covered by that application.[43]

V.

In the second previously decided case, *Del Rosario, et. al. v. Ortigas & Co. Ltd. Partnership*, [44] the Supreme Court affirmed the decision of the Court of Appeals in A.C.-G.R. CV No. 61356 dated 29 December 1983, [45] holding that various Ortigas TCT's, including TCT Nos. 77652 and 77653, overlapping various portions of a seventy-hectare parcel of land situated in Ugong Norte, Pasig and Bagumbayan, Quezon City had become indefeasible and could no longer be impugned by the physical occupants of the overlapping property.[46]

By way of background, this *Del Rosario* case originated as Civil Case No. 7-M(10339) before Branch 15 of the

CFI of Rizal. In 1967, two (2) groups of occupants of the disputed property, faced with final and executory judgments for ejectment obtained by Ortigas, instituted this Del Rosario case as a class suit to impugn the validity of Ortigas' Torrens titles. The theory of the plaintiffs was that G.L.R.O. Record No. 917, and its incidents, were void ab initio for alleged lack of notice of initial hearing, among other reasons. In a decision dated 31 March 1970, Judge Vivencio Ruiz ruled in favor of the plaintiffs and declared the Ortigas TCTs null and void.

Judge Ruiz' decision was, however, nullified on petition for certiorari, prohibition and mandamus by the Court of Appeals in its decision dated 12 November 1971 in C.A.-G.R. No. 00039-R.[47] The Court of Appeals also decreed a remand of the case for new trial based on Ortigas' newly-discovered evidence.[48] This decision was affirmed by the Supreme Court in G.R. No. L-34440 by a Resolution dated 4 April 1972.[49]

In a decision dated 3 November 1973, CFI Judge Arsenio Alcantara (to whom the case was remanded) rendered a decision on new trial upholding and confirming, among others, "the validity of Decree No. 1425, issued in Expediente 917 and all titles emanating therefrom." This decision was affirmed in its entirety by the Court of Appeals in AC-G.R. No. CV-61356, as noted earlier.[50] In turn, this Court Of Appeals decision was affirmed by the Supreme Court in G.R. No. 66110 in a Resolution denying Del Rosario's petition for review for lack of merit dated 16 February 1985.[51]

It should be noted that Ortigas' evidence and argument establishing the existence and regularity of the proceedings in G.L.R.O. Record No. 917 and of Decree No. 1425 from which its controverted TCTs were derived, first adopted in the Navarro case, were likewise used and sustained again in the Del Rosario case,[52] and are, by and large, the same evidence and argument submitted by Ortigas to resolve the same alleged factual uncertainty raised for the third time in this case.[53]

In the Del Rosario case, Geodetic Engineer Carlos Angeles again drew and offered in evidence a map indicating the full extent of the Hacienda de Mandaloyon, based on plottings of the technical descriptions appearing in the initial notice of hearing in G.L.R.O. Record No. 917, offered and marked as Exhibit 43-A New Trial.[54] Judge Alcantara noted that these plottings were quite adequate for the purpose of identifying the land registered in Cia. Agricola's name in 1906:

"Plaintiffs [Del Rosario, et al.] also attempted to show as per technical description published in the Manila American and La Democracia, a polygon does not close such that one cannot give the exact area of the land sought to be registered. They claim that the plan submitted by said Surveyor Carlos Angeles is 'doctored' because it had a closed polygon. In this connection, it should be emphasized that the Hacienda Mandaloyon is a vast tract of land having an area of 4,000 hectares with natural boundaries consisting of rivers and creeks as shown in the plan Exh. '43-A' New Trial. Its natural boundaries are the Marikina River, Pasig River, San Juan River, Diliman Creek and Estero de Buaya, etc. Indeed, boundaries which are natural and fixed such as creeks and rivers, not the area, should govern in determining the identity of the land sought to be registered. And even conceding that the magnetic survey employed in surveying the disputed property in 1904 was erroneous, yet 'mistake in survey is not a ground for alteration of decree of registration.' In fact, plaintiffs' [Del Rosario] witness, Geodetic Engineer Pedro Samson, readily admitted that the properties being claimed by them are inside the area described in the notices." [55] (Citations omitted; underscoring supplied)

Exhibit 43-A New Trial submitted in the Del Rosario case showed the boundaries and location of the entire Hacienda Mandaloyon. Annex P submitted in the present Widora case shows the same entire Hacienda Mandaloyon and is identical with Exhibit 43-A New Trial. In the present Widora case, Ortigas also submitted Annex K-1 to show the location and boundaries of the land covered by TCT Nos. 77652 and 77653. When the map which is Annex K-1 is placed side by side with (or on top of) the map of the whole Hacienda Mandaloyon which is Exhibit 43-A New Trial and Annex P, the Annex K-1 map coincides with a portion of the Exhibit 43-A

map. In other words, the lots covered by TCT Nos. 77652 and 77653 which are mapped in Annex K-1 constituted a portion of the Hacienda Mandaloyon. These Exhibits also show that the parcels of land covered by TCT Nos. 77652 and 77653 are located west of the Marikina river, which river was established in Del Rosario to be the eastern natural boundary of the Hacienda de Mandaloyon.

Thus, once more, it is apparent that the factual matters which Widora seeks to litigate in G.R. No. 91797 have already been resolved in the Del Rosario case. Since the subject matter of the controversy in Del Rosario and in G.R. No. 91797 are identical (parcels of land covered by TCT Nos. 77652 and 77653), the cause of action of Widora in G.R. No. 91797 is identical to that of the petitioners in Del Rosario, i.e., the petitioners in Del Rosario contested Ortigas' claim of ownership over the land from which they were being ejected, which is of course the same claim of ownership embodied in Ortigas' opposition to Widora's land registration application over the same land in the instant case. It follows that Widora in G.R. No. 91797 must also be deemed privy in law of the petitioners in Del Rosario (for they too assailed the validity of Decree No. 1425 and its particular derivatives, TCT Nos. 77652 and 77653). Accordingly, the factual and legal matters resolved with finality in the Del Rosario case, which are determinative of the merits of Widora's application for land registration in G.R. No. 91797 must be considered, as in the Navarro case, as a bar to the grant of the Widora application under the rule on conclusiveness of judgment.

VI.

There is another important element of Widora's claim being asserted in the present proceedings which is precluded by both the principle of bar by prior judgment and the principle of conclusiveness of judgment. Widora's application for registration in the present case (LRC No. Q-336), essentially rests on an alleged Spanish title: "Titulo de Propiedad No. 4136," dated 25 April 1894, said to be issued in the name of one Mariano San Pedro y Esteban, supposedly covering land of unimaginably large proportions: 173,000 hectares in Bulacan, Nueva Ecija, Rizal, Quezon City, Caloocan City and Pasay City.[56]

Back in 10 December 1976, or only two (2) years after Widora had filed LRC No. Q-336, one Justino Benito and Widora commenced another case, Civil Case No. Q-22410 before the CFI of Quezon City. Benito claimed there that he was co-administrator of the intestate estate of Don Mariano San Pedro y Esteban, and that part of this estate was land covered by the supposed Spanish title, including a piece of land situated in Ugong Norte, Pasig and Bagumbayan, Quezon City, which land was covered by TCT Nos. 77652 and 77653 issued in Ortigas' name. Benito and Widora, therefore, sought in Q-22410 to annul those TCTs for covering land allegedly previously owned by the Don Mariano San Pedro y Esteban estate as evidenced by the supposed Titulo de Propiedad No. 4136, and subsequently sold or assigned by the estate to Widora.[57]

Ortigas moved to dismiss the Benito-Widora complaint, arguing inter alia, that the alleged Spanish title relied upon by Benito and Widora had already been divested of probative value as evidence of land ownership, by P.D. No. 892. Ortigas' motion to dismiss was sustained on that ground by the trial court in a decision dated 28 February 1978.[58]

That decision of the trial court in Q-22410 was affirmed on appeal by the Court of Appeals in C.A.-G.R. No. CV-64424 in a decision written by Jurado, J., dated 31 May 1984. The Court of Appeals, thus, affirmed the trial court's ruling that the Spanish title relied upon by Benito and Widora was no longer any good.[59]

Widora (but not Benito) went on a Petition for Review before the Supreme Court, in G.R. No. 69343. This Court affirmed the decision of the Court of Appeals in a minute resolution dated 6 February 1985. Entry of final judgment was made on 29 March 1985.[60]

As noted, in the case at bar, Widora is relying upon the same supposed Spanish title - Titulo de Propiedad No. 4136. We believe and so hold that the Resolution of this Court in G.R. No. 69343, holding that that alleged Spanish title had become bereft of any probative value is *res adjudicata* in respect of the present case. Put a little differently, the principle of bar by prior judgment precludes any reliance by Widora in the case at bar on that fantastic Spanish title considering the essential identities of parties and identity of subject matter and of cause of action between Civil Case No. Q-22410 and LRC Case No. Q-336.

We should add that Widora's prayer for alternative relief in the form of confirmation of imperfect title over the land covered by its application for registration, is immaterial. That alternative relief is also premised upon Widora's claim that Ortigas had fraudulently registered the land in its (Ortigas) own name such that the land remained presumptively public land. The firmly entrenched rule is that a party can not evade the application of the principle of bar by prior judgment by simply varying the form of the action or by adopting a different mode of presenting its case.[61]

VII.

We consider finally the question of whether or not the defense of *res adjudicata* has been waived by Ortigas by failure to plead that defense seasonably in its opposition or motion to dismiss in LRC No. Q-336.

We believe and so hold that there was no such waiver of *res adjudicata* by Ortigas in the case at bar. It is most important to note, in the first place, that the defense of *res adjudicata* pleaded by Ortigas in this case relates ultimately to the jurisdiction of the land registration court to try LRC No. Q-336. The Court of Appeals correctly stressed that Ortigas having shown that the land applied for by Widora is already registered in Ortigas' name, the land registration court simply had no jurisdiction to decree the registration of that same land in the name of some other person. The well-established rule is that lack of jurisdiction which renders an action dismissible may be determined by the court seized with it *motu proprio*, and may be raised by a party, at any stage of the proceedings even on appeal.[62]

With particular reference to the ruling that Widora's alleged Titulo de Propiedad No. 4136 was bereft of probative value, we note that the Benito-Widora case reached finality (in the Supreme Court) only in 1985, when the proceedings in the motion to dismiss filed by Ortigas in LRC No. Q-336 were already in an advanced stage.

In the second place, the Resolutions of the Supreme Court in the Navarro and Del Rosario cases, disposed of those cases on their merits by affirming the pertinent decisions of the Court of Appeals. Those Resolutions are part of the case law and the records of this Court itself of which we are bound to take judicial notice.[63] We are certainly not at liberty to disregard them in any case. So to disregard our own decisions would be to inflict substantial injustice and irreparable injury upon Ortigas which would be compelled to do all over again what it had done at least twice before ---to prove it has indefeasible title to the land covered by TCT Nos. 77652 and 77653. The resulting injustice and injury would not be limited to Ortigas, but would engulf many thousands of present registered private owners of Transfer Certificates of Title covering the thousands of hectares of land embraced by Decree No. 1425. The grave social implications of permitting a cloud to arise on all those Transfer Certificates of Title by our failure to take into account our own decisions in earlier cases, can scarcely be contemplated.

In the third place, waiver of *res adjudicata*, certainly in cases like the one before us, cannot casually be assumed to have been made. What is involved here is not an academic doctrine of law but very valuable property rights, so valuable that at least thrice before, various persons or groups of persons (including Widora, for the second time) have attempted to usurp title thereto by assailing the same two (2) TCTs. Ortigas tenaciously fought off those efforts at least three (3) times before, from the trial court thru the Court of Appeals to our own Court, each

litigation stretching out to many years. In this situation, only the most explicit and deliberate statement, in unmistakable language; will suffice to constitute waiver; that is certainly not present here. What is claimed here is merely implied or presumed waiver, which has been expressly denied by Ortigas. Yet as Lantin, J. of the respondent Court of Appeals observed, as far back as 27 June 1979, in its motion for reconsideration of the trial court's order of 20 April 1979 denying its motion to dismiss, Ortigas had already brought to the attention of the trial court the fact that its assailed titles had been upheld by Courts of First Instance and appellate courts in prior cases.[64] Moreover, during the proceedings on Ortigas' motion to dismiss, the Government itself, through the Land Registration Commission, had advised the trial court that the 156 hectare parcel Widora was seeking to register were "covered by valid and subsisting titles in the name of Ortigas." [65]

Finally, the record of the instant case shows that Ortigas pleaded as a special and affirmative defense bar by prior judgment in its very first Opposition dated 13 October 1978 to Widora's application in LRC Q-336.[66] That defense was elaborated by Ortigas in its motion to dismiss dated 23 October 1978, where it stressed that the land applied for was already registered in its name under the Torrens system and that such previous registration of its title amounts to *res adjudicata* binding upon the whole world.[67] During the protracted hearings on its motion to dismiss before the trial court, Ortigas specifically pleaded our decision in the Benito-Widora case which by then had attained finality, in a Memorandum dated 28 October 1986 as a bar to further proceedings in the case at bar. In its motion for reconsideration of the trial court's order denying the motion to dismiss, Ortigas again specifically pleaded the Benito-Widora case, as well as the Compania Agricola case to show that its registered title over the disputed land had become infeasible.[68] Further, Ortigas specifically pleaded not only the Compania Agricola and the Benito-Widora cases but also the decisions in the Navarro, Del Rosario and Ruiz cases in its petition for certiorari, prohibition and mandamus before the Court of Appeals.[69] We accordingly find it extremely difficult to suppose that there was implied or presumed waiver here of the defense of *res adjudicata*.

FOR ALL THE FOREGOING, we hold that the Motion for Reconsideration should be as it is hereby GRANTED; that our Decision dated 28 August 1991 is hereby RECONSIDERED and SET ASIDE; that Widora's Petition for Review in the instant case is hereby DENIED for lack of merit. The Regional Trial Court's order of 30 March 1988 is hereby SET ASIDE and that court is hereby ORDERED to dismiss immediately LRC Case No. Q-336. The Decision and Resolution of the Court of Appeals dated 27 November 1989 and 25 January 1990, respectively, are hereby AFFIRMED in toto. Costs against petitioner.

Gutierrez, Jr., (Chairman), Davide, Jr., and Romero, JJ., concur.

Bidin, J., see dissenting opinion.

[1] Decision, p. 2; Rollo, p. 24; unless otherwise qualified, references to the "Rollo" are the folio of G.R. No. 91797.

[2] Id.

[3] Rollo, of C.A.-G.R. SP No. 18085, p. 65.

[4] Id., pp. 70-71.

[5] Id., p. 90.

[6] Id., p. 108.

[7] Id., pp. 12 and 328.

[8] Id., pp. 45-47.

[9] Id., pp. 2, 40 and 41.

[10] Decision, pp. 9-12; Rollo, pp. 31-34.

[11] Id., pp. 7-14; Rollo, pp. 234-241.

[12] Memorandum, pp. 12-13; Rollo, pp. 313-314.

[13] 179 SCRA 163 (1989); Decision, pp. 8-9; Rollo, pp. 235-236.

[14] 179 SCRA at 166-167 and 172-173.

[15] Rollo of C.A.-G.R. S.P. No. 18085, pp. 285 and 460; Folder of Exhibits for Ortigas in SP No. 18085; Folder of Exhibits for Widora in SP No. 18085.

[16] Decision, pp. 4-6; Rollo, pp. 26-28.

[17] Section 5, Rule 130; Decision, p. 7; Rollo, p. 234.

[18] Rollo, p. 256.

[19] Sections 3[d] and 7, Rule 130, Rules of Court.

[20] Section 47 of Act No. 496 provides:

"SEC. 47. The original certificate in the registration book, any copy thereof duly certified under the signature of the clerk, or of the register of deeds of the province or city where the land is situated and the seal of the court, and also the owner's duplicate certificate shall be received as evidence in all courts of the Philippine Islands and shall be conclusive as to all matters contained therein except so far as otherwise provided in this Act." (Underscoring supplied)

[21] Sections 40 and 41 of Act No. 496 provide:

"SEC. 40. Every decree of registration shall bear the day of the year, hour and minute of its entry, and shall be signed by the clerk. x x x The decree shall be stated in a convenient form for transcription upon the certificates of title hereinafter mentioned.

SEC. 41. Immediately after final decision by the court directing the registration of any property, the clerk shall send a certified copy of such decision to the chief of the General Land Registration Office, who shall prepare the decree in accordance with section forty of Act Numbered Four hundred and ninety-six, and he shall forward a certified copy of said decree to the register of deeds of the province or city in which the property is situated. The register of deeds shall transcribe the decree in a book to be called the 'Registration Book' in which the leaf, or leaves, in consecutive order shall be devoted exclusively to each title. The entry made by the register of deeds in this book in each case shall be the original certificate of title, and shall be signed by him and sealed by his office. x x x" (Underscoring supplied)

[22] 6 Phil. 246 (1906).

[23] Section 49[a], Rule 39; Vda. de Cailles v. Mayuga, 170 SCRA 347, 356 (1989).

[24] 148 SCRA 326 (1987).

[25] Id., pp. 331 and 335-336.

[26] Cia. Agricola at p. 247.

[27] G.R. No. L-50156, promulgated 7 May 1979, final judgment entered 22 June 1979, Rollo of C.A.-G.R. No. 53125-R, p. 541; Rollo of G.R. No. L-50156, p. 110.

[28] Penned by J. Ramon Gaviola Jr.

[29] Rollo, pp. 327, 351 and 356.

[30] A total of 235 TCTs, including TCT Nos. 77652 and 77653, as plotted in Sheet 5 of Psu-25904 [Index of Exhibits, Civil Case No. Q-16265, p. 12; Rollo of C.A.-G.R. No. 53125-R, p. 20], the same piece of documentary evidence [Annex K-1] offered by Ortigas in the present Widora case to show the location of the land covered by these TCTs.

[31] This decision was in fact nullified by the Court of Appeals in C.A.-G.R. CV No. 00039-R by a decision dated 12 November 1971. The Court of Appeals decision was affirmed by the Supreme Court in G.R. No. L-34440 (See below, Part V).

[32] Rollo, pp. 327-329 and 334; Rollo of C.A.-G.R. No. 53125-R, pp. 20, 22, 517.

[33] Record on appeal, pp. 331-335; Rollo of C.A.-G.R. No. 53125-R, p. 77-A.

[34] Record on appeal, p. 378; Rollo of C.A.-G.R. No. 53125-R, p. 77-A.

[35] Index of Exhibits, Civil Case No. Q-16265, p. 12; Rollo of C.A.-G.R. No. 53125-R, p. 20.

[36] Record on Appeal, pp. 375-377; Rollo of C.A.-G.R. No. 53135-R, p. 77-A.

[37] Rollo of C.A.-G.R. No. 53125-R, p. 420.

[38] Id., p. 542.

[39] Heirs of the late Santiago Maningo v. Intermediate Appellate Court, 183 SCRA 691, 699 (1990) and cases cited thereunder.

[40] Lopez v. Reyes, 76 SCRA 179, 186-187 (1977); reiterated in Smith Bell and Co. [Phils.] v. Court of Appeals, 197 SCRA 201, 210-211 (1991).

[41] See Calalang v. Register of Deeds of Quezon City, G.R. Nos. 76265 and 83280, 22 April 1992, p. 12; Valencia v. Regional Trial Court of Quezon City, Br. 90, 184 SCRA 80, 91 (1990); Legarda v. Savellano, 158 SCRA 194, 199 (1988).

[42] Decision, p. 25; Record on Appeal of C.A.-G.R. No. 53125-R, P. 413; Tirado v. Sevilla, 188 SCRA 321, 327 (1990).

[43] See Pamintuan v. San Agustin, 43 Phil. 558, 560-561 (1922), reiterated in Gabriel v. Court of Appeals, 159 SCRA 461, 468 (1988).

[44] G.R. No. 66110, promulgated 16 February 1985, final judgment entered 10 April 1985; Rollo of G.R. No. 66110, p. 111.

[45] Penned by Sison, P.V., J.

[46] Rollo of G.R. No. 66110, pp. 20, 25, 39 and 107.

[47] Decision in C.A.-G.R. No. SP-00039, p. 1A, contained in Brief of Defendant-Appellee in C.A.-G.R. No. 61356-R, Rollo of G.R. No. 66110.

[48] The newly discovered evidence consisted of certified true copies of the 1904 issues of the Manila American and La Democracia newspapers containing the notice of initial hearing in G.L.R.O. Record No. 917. This evidence was offered to rebut the holding in the Ruiz decision that the land registration court hearing G.L.R.O. Record No. 917 failed to acquire jurisdiction over the land subject matter of Cia. Agricola's application for lack of publication of the initial notice of hearing.

By happenstance, Ortigas received information that the Library of the U.S. Congress in Washington, D.C. might have the newspaper issues containing the publication of the notice of hearing of G.L.R.O. Case No. 917. The information proved correct and Ortigas secured the certified true copies from Washington, D.C. (Decision in C.A.-G.R. No. SP 00039, pp. 10A, 21A-32A).

[49] Supreme Court Judgment Entry Book, May-August 1972 Volume-S. Judgment entered 25 June 1972.

[50] Rollo of G.R. No. 66110, pp. 5, 20, 24-25, 35, 37-38 and 42; Rollo, p. 358.

[51] Rollo of G.R. No. 66110, p. 107.

[52] Decision in Civil Case No. 7-M[10339] New Trial, Appellee's Brief in C.A.-G.R. No. 61356-R, pp. 34B-36B.

[53] Comment, pp. 12-15; Rollo, pp. 91-94.

[54] Rollo of G.R. No. 66110, p. 41; Appellee's Brief in A.C.-G.R. CV No. 61356-R, p. 180; Exhibit "1", Amended Record on Appeal in A.C.-G.R. CV No. 61356-R, Vol. II, pp. 971-972; Amended Record on Appeal in A.C.-G.R. CV No. 61356-R, Vol. II, pp. 878-879.

[55] Decision in Civil Case No. 7-M(10339) New Trial; Appellee's Brief in A.C.-G.R. CV No. 61356-R, pp. 41B-42B.

[56] Order dated 17 November 1978 in SP No. 312-R entitled "In re: Intestate Estate of the late Mariano San Pedro y Esteban," contained in Brief for defendant-appellee in C.A.-G.R. No. 64424-R, pp. 57C-58C.

[57] Rollo of G.R. No. 69343, pp. 25-26.

[58] Id.

[59] Id., pp. 32-33.

[60] Id., pp. 7, 19, 116 and 124.

[61] Magdangal v. City of Olongapo, 179 SCRA 506, 509-510 (1990); Bugnay Construction and Development Corporation v. Laron, 176 SCRA 240, 250 (1989); Sangalang v. Caparas, 151 SCRA 53, 59 (1987); Ibabao v. Intermediate Appellate Court, 150 SCRA 76, 85 (1987); Ramos v. Pangasinan Transportation Co. Inc., 79 SCRA 170, 176 (1977).

[62] Section 2, Rule 9; see Calimlim v. Ramirez, 118 SCRA 399, 406 (1982); reiterated in People v. Eduarte, 182 SCRA 750, 754-756 (1990).

[63] Section 1 of Rule 129 of the Rules of Court; see Tiburcio v. Phil. Homesite and Housing Corporation, 106 Phil. 477 (1959) and Lewin v. Galang, 109 Phil. 1041 (1960).

[64] Rollo, p. 24. Our decision in Navarro v. Ortigas (supra), was promulgated on 7 May 1979. Our decision in Del Rosario v. Ortigas (supra), was then still six (6) years in the future, being promulgated on 16 February 1985. So was our decision in the Benito and Widora v. Ortigas (supra).

[65] Rollo, p. 24.

[66] Rollo of C.A.-G.R. SP No. 18085, p. 65.

[67] Id., pp. 70-71.

[68] Id., pp. 134-136.

[69] Id., pp. 26-35.

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DISSENTING OPINION

BIDIN, J.:

With due respect, I find it difficult to agree with the ponencia written by my esteemed colleague, Mr. Justice Florentino Feliciano.

In disposing of the controversy before us, the Court resolved the issue on the basis of facts which are not extant in the records of the case (GR No. 97197). This is quite unprecedented.

Invoking the concept of judicial notice, the Court considered certain facts which led it to rule in favor of respondent Ortigas. I submit that these "facts" substantial as they are, should not have been considered by the Court for the simple reason that they were not even alleged by respondent itself nor do they appear on the records before us. In so doing, it is my submission that the Court over-stretched the concept of judicial notice. The immutable rule on burden of proof is that each party must prove his own affirmative allegations (Sec. 1, Rule 131) by the amount of evidence required by law which is preponderance of evidence in civil cases. That is why the decision sought to be reconsidered, remanded the case to the trial court for further proceedings. At the risk of being repetitious, I would like to emphasize that the facts narrated in the Resolution were gathered substantially from sources outside of the records of the case.

In its motion for reconsideration, respondent Ortigas contends, among others, that the petition filed by Widows and Orphans is already barred by res judicata; that the origin of TCT Nos. 77652 and 77653 has been correctly identified by the Court of Appeals as OCT 351, notwithstanding the fact that the said TCTs themselves show on their faces that they have been derived from OCT Nos. 19, 334, 336 and 337.

First, as to the defense of res judicata. At the outset, it is significant to note that respondent Ortigas did not set up or raise the doctrine of res judicata anent the existence of previous cases involving the same parties (Widora v. Court of Appeals, GR No. 69343 and Del Rosario v. Ortigas & Co., GR No. 66110) either in its Comment to the petition, in its memorandum or in its motion for reconsideration. In said pleadings, respondent merely alleged that the trial court has no jurisdiction over LRC Case No. Q-336 simply because the land applied for is alleged to have been already decreed and titled in its name and cannot be decreed a second time (Rollo, pp. 101 & 194). They were bare recitals of general principles applicable to land registration cases with respect to indefeasibility of certificates of titles, made without the benefit of any discussion regarding the application thereof to the case at bar nor was there any reference made to any case (now being relied upon) as constitutive of res judicata.

Likewise, the existence of the said cases does not appear to have been raised in the court a quo or put in issue before respondent Court of Appeals (as in fact it was not even considered by the Court of Appeals in the appealed decision). Before this Court, respondent Ortigas chose to maintain its silence in raising the defense of res judicata

and did so only after an adverse decision was rendered. Furthermore, it was not even raised in its motion for reconsideration but only in its memorandum submitted after the hearing on said motion. Such being the case, I do not think this Court is at liberty to cull evidence not borne by the records and in the process go beyond what appears in the pleadings.

It is my considered opinion that the defense of res judicata must be seasonably pleaded in order to be valid, (Fernandez v. de Castro, 48 Phil 123 [1925]; see also Del Val v. Del Val, 29 Phil 534 [1915]) and if not set up as a defense or ground of objection seasonably, the doctrine of res judicata is deemed waived (Alvarez v. Court of Appeals, 158 SCRA 401 [1988]; Vergara v. Rugue, 78 SCRA 312 [1977]; Phil. Coal Miners' Assn. v. Cebu Portland Cement, 10 SCRA 784 [1964]). Where res judicata was raised as a defense only in the motion for reconsideration, the same was deemed waived (Pulido v. Pablo, 117 SCRA 16 [1982]). Here, respondent raised the defense of res judicata only in its memorandum submitted after filing its motion for reconsideration of the decision dated August 28, 1991, which motion, as stated earlier, did not even contain any reference to the cases now belatedly set up as a defense by respondent in its memorandum in support of its motion for reconsideration. Respondent's invocation of res judicata having been made too late in the day, the same must be considered as having been waived (Sec. 8, Rule 15 and Sec. 5, Rule 16).

In any event, a perusal of the cases belatedly relied upon by respondent as defense (res judicata) would readily disclose that OCT 351, the alleged origin of TCT Nos. 77652 and 77653, was not the subject matter of said cases much less passed upon in the disposition of said cases. The issue of the applicability of OCT 351 to the case at bar is even more compounded by the fact that TCT Nos. 77652 and 77653 do not, on their faces, reflect that their origin is OCT 351 as claimed by respondent. On the contrary, said TCTs trace their origin to OCT Nos. 19, 334, 336 and 337 and hence, not to OCT 351. Otherwise stated, Ortigas' evidence (TCTs 77652 and 77653) do not support its contention that the said TCTs were derivatives of OCT 351.

The majority opines, however, that this Court has already given its imprimatur to the claim of Ortigas that the identity of the disputed parcel of land has already been decided as far back in 1906 in the case of Cia. Agricola de Ultramar v. Domingo (6 Phil. 246) and later in Ortigas v. Ruiz (148 SCRA 326 [1987]). Examining said cases, I see no clear and definite technical description of the contested land.

Ortigas v. Ruiz (supra) involves a parcel of land covered by TCT No. 227758 with an area of 162 hectares located in Pasig, Rizal. There is no identity of subject matter between Ortigas v. Ruiz and the instant case. They refer to different parcels of land covered by different transfer certificates of title. On the other hand, the 1906 case of Ultramar v. Domingo (supra) involves a parcel of land known as "Hacienda de Mandaluyon" without any specification as to its location, area and boundaries. Hence, it cannot be said that the parcel of land applied for in this case is identical with the lots covered by Ortigas title. As stated in the decision sought to be reconsidered, Decree 1425 (alleged by Ortigas to embrace the lots covered by its TCT Nos. 77652 and 77653), covers a 17-hectare lot located at Sta. Ana, Manila, while the lot applied for is alienable and disposable as certified by the Bureau of Lands and by the Bureau of Forestry and has an area of 156 hectares located in Quezon City four (4) kilometers away from Sta. Ana, Manila.

Respondent next argues that the Court of Appeals committed no error in admitting as evidence OCT 351 on the ground that Sec. 47 of Act 496 itself declares it to be admissible in all courts. Said Section provides:

"Sec. 47. The original certificate in the registration book, any copy thereof duly certified under the signature of the clerk, or of the register of deeds of the province or the city where the land is situated and the seal of the court, and also the owner's duplicate certificate shall be received as evidence in all courts of the Philippine Islands and shall be conclusive as to all matters contained therein except so far as otherwise provided in this Act." (underscoring supplied)

Following the line of respondent's argument, OCT 351 should not have been admitted and/or considered as proof that TCT Nos. 77652 and 77653 were derived from it (OCT 351). This is because the said TCTs themselves show that they were derived not from OCT 351 but from other OCTs stated above. To admit OCT 351 as the supposed origin of TCT Nos. 77652 and 77653 at this stage of the proceeding would in effect be disregarding the official entries made therein which indicate that said TCTs were derivatives of OCT Nos. 19, 334, 336 & 337. These entries are conclusive, so the law says. Consequently, Ortigas' contention that TCT Nos. 77652 and 77653 are derivatives of OCT 351 has no leg to stand on.

The procedure adopted by the respondent Court of Appeals in arriving at its conclusion that TCT Nos. 77652 and 77653 were derived from OCT 351 contrary to what is stated in the faces of said TCTs, finds no support in law as it amounted to a correction and/or alteration of the TCTs in violation of the existing applicable law. Under the Sec. 112 of Act 496 (now Sec. 108 of PD 1529), no certificate of title may be amended or altered except by order of the proper regional trial court. The petition for the purpose must be filed before the regional trial court, sitting as a land registration court, and entitled in the original case in which the decree of registration was entered. Certainly, the Court of Appeals, in a certiorari and injunction proceeding, cannot arrogate unto itself that power lodged exclusively with the land registration court without running afoul with the said provision of law.

Unfortunately, this Court sustained the findings of respondent court. Thus giving judicial assent to the illegal assumption of jurisdiction by the respondent Court of Appeals in the amendment or alteration of TCTs contrary to the procedure which the law has explicitly provided. In effect, and by virtue of this Court's Resolution, we assumed the functions of a trial court and a land registration court at the same time. This, I believe, should not be done.

Ortigas also questions the ruling of this Court which considers the plan submitted as well as the testimony of its surveyor as secondary evidence to prove the contents of Decree 1425. However, what was submitted by Ortigas as the survey plan of the land and attached to its memorandum as an annex is actually a location map prepared by its own surveyor in 1972 or 67 years after its alleged registration and not the blueprint copy of the original survey plan, showing the sketch and the technical description of the lot applied for approved by the Director of Lands. Hence, a secondary evidence of doubtful competency.

Ortigas further assails the ruling of this Court to the effect that the issue of whether the land applied is a registered land as contended by it or a public land as certified by the Bureau of Lands and the Bureau of Forestry calls for a full-blown trial before the court a quo.

The issue in this case is whether the 156-hectare parcel of land applied for, located at Ugong Norte, Quezon City, is covered by Ortigas' TCT Nos. 77652 and 77653, or is alienable and disposable land as contended by petitioner and certified by the Bureau of Lands and the Bureau of Forestry. These are questions of facts and questions of facts are beyond the province of this Court (PLDT v. National Telecommunications commission, 190 SCRA 717 [1990]).

As stated earlier, the correction of the entries in the transfer certificates of title should be effected before the Regional Trial Court sitting as a land registration court which has original jurisdiction over the same pursuant to Sec. 112 of Act 496 (now Sec. 108, PD 1529). For as long as these entries appear in the transfer certificates of title, they are binding and conclusive upon the court (Sec. 47, Act. 496). Otherwise stated, these entries, until ascertained to be erroneous in an appropriate proceeding before the land registration court, are binding and conclusive in all courts including the respondent Court of Appeals and this Court. Inasmuch as Ortigas insists that the subject parcel of land is covered by OCT 351 under Decree 1425, while its own Transfer Certificate of Title Nos. 77652 and 77653 state that they are derivatives of OCT Nos. 19, 334, 336 and 337, it follows that Transfer

Certificates of Title Nos. 77652 and 77653 do not embrace the subject parcel of land, not being derivatives of OCT 351. The entries in the TCTs of Ortigas cannot be dismissed as mere errors since the said entries are conclusive. Hence, the necessity of remanding the case to the court a quo for resolution of the factual issues in the exercise of its original jurisdiction. Neither this Court nor the respondent Court of Appeals can initially make the correction, if there be any.

But what is more disturbing is the fact that the ponencia based its decision on evidenciary facts not borne out by the records. The ponencia made a number of references to the records had in the Court of Appeals which, unfortunately, does not appear on the records presented before this Court for resolution. This, I believe, amounted to over-extending the concept of judicial notice. I submit that it is not the duty of this Court to supply what the party litigants have failed to present. Otherwise, this Court might as well sit as a trier of facts.

In view of the foregoing considerations, I vote to DENY the motion for reconsideration.

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