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As to the last issue, it has already been ruled that *certiorari* is proper where the trial court has already issued a writ of execution of the questioned judgment, the issuance being a question of law. (*Vda. de Sayman vs. Court of Appeals*, 121 SCRA 650).

**PREMISES CONSIDERED,** the October 6, 1976 Decision of the Court of Appeals is hereby AFFIRMED.

**SO ORDERED.**

*Feria (Chairman), Fernan, Alampay,* and *Gutierrez, Jr., JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. L-48787. November 14, 1986]

**ABADESA MUÑOZ HECHANOVA, MANUEL HECHANOVA, MARIA CLARA HECHANOVA, TERESITA HECHANOVA, ERLINDA HECHANOVA, and POMPEYO HECHANOVA (In substitution of the late Zosimo Hechanova),** *petitioners, vs.* **COURT OF APPEALS, ELDIGARDA B. VOCALES and RESTITUTA B. CASTILLO with her husband TIMOTEO CASTILLO,** *respondents.*

**SYLLABUS**

**REMEDIAL LAW; CIVIL PROCEDURE; REMAND OF CASES; WARRANTED WHERE PRESENTATION OF EVIDENCE WAS RESERVED IN THE LOWER COURT BUT COURT OF APPEALS DECIDED THE CASE ON THE MERITS.—** Jurisprudence abounds with decisions of the Supreme Court holding that remand of a case to the lower courts for reception of evidence is not necessary if this Court could resolve the dispute on records before it. (*Quisumbing vs. Court of Appeals*,

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122 SCRA 703). In the case at bar, petitioners contend that the evidence of both parties were limited to the issues of prescription, laches and estoppel so that the Court of Appeals erred in deciding the case on the merits, and on the issue of ownership, which issue was not tried by the lower court. Such fact was admitted in private respondents' brief filed in the Court of Appeals complaining, among other things, that they had reserved some other important evidence to be presented in the pre-trial conference but were not allowed by the lower court. Additionally, trial on the merits had not even begun. In the light of the facts and circumstances appearing in the records, a remand is warranted.

**APPEARANCES OF COUNSEL**

*Pio B. Merida, Ambrosio Padilla, Mempin, Reyes, Fernandez and Iguidez Law Office;* and *Emeterio M. Salva and Associates* for petitioners.

*Juan F. Divina and Felix M. Echon* for private respondents.

**D E C I S I O N**

**PARAS, *J.*:**

This is a petition for review on *certiorari* of the decision of the Court of Appeals dated May 19, 1978 in CA-G.R. No. 48614-R titled *ELDIGARDA B. VOCALES, et al. v. ABADESA MUÑOZ HECHANOVA, et al.*, which reversed *in toto* the decision of the Court of First Instance of Northern Samar (Branch VII) in Civil Case No. A-10 (C-387) dismissing private respondents' (plaintiffs therein) complaint on the ground of indubitability of petitioners' (defendants therein) affirmative defenses.

It is undisputed that Florencio Barros, the deceased father of private respondents, was the original owner of the lot in question. Petitioners, however claimed that after the death of Florencio Barros, his children, private respondents Eldigarda Vocales and Restituta Castillo conveyed in 1930, by *Pacto de Retro* or Conditional Sale, the eastern portion of the original lot then declared under Tax Dec. No. 8472 consisting of about 117.47 sq. meters to Romualda Gabion but continued to occupy

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aforesaid portion without redeeming the same from Gabion. The latter filed an action for Forcible Entry against private respondents at the Justice of the Peace Court of Allen, Samar which decided the case in favor of the plaintiff and restored her to the possession of the lot. Thereafter Gabion sold the lot to Zosimo Hechanova in 1932 or 1933 and the latter immediately took possession of the premises as owner thereof. Zosimo Hechanova constructed his house of strong materials in 1940 or 1941 and lived there with his family until 1958 when said house was burned allegedly together with the Deed of Sale executed by Gabion, copy of the Affidavit of Transfer executed by Eldigarda and Restituta in favor of Mrs. Abadesa Hechanova (one of herein petitioners) and some tax payment receipts. However, Gabion executed after the fire an Affidavit of Confirmation of Sale in favor of Zosimo Hechanova who constructed a new house of strong materials in the northern half portion of the lot while private respondents allegedly without making any claim on the lot to the west. On August 6, 1966, private respondents instituted an action against Zosimo Hechanova for recovery of the land in question. (Brief for Petitioners, pp. 5-9).

On the other hand, private respondents countered that after the death of their parents, they became the real and absolute owners of the disputed land; that prior to 1949, Zosimo B. Hechanova who used to stay with the family of respondent Restituta B. Castillo and her husband Timoteo Castillo, verbally asked permission to construct a house of light materials as his temporary residence. He was permitted by private respondents to construct a house in the eastern portion of the aforementioned lot. But later despite verbal demands made by private respondents in 1955 and in 1958 followed by a written demand, to vacate the premises, petitioners refused and instead constructed a house of strong materials. Thus, on August 6, 1966, private respondents filed a complaint to recover ownership and possession of the portion of the lot in question before the then CFI of Northern Samar against Zosimo B. Hechanova, docketed as Civil Case No. C-387 (Private respondents' Brief, pp. 1-2).

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On August 16, 1969, private respondents (then plaintiffs) amended their complaint to exclude therein the children of Eldigarda Vocales. Zosimo Hechanova died on September 9, 1969 and the complaint was again amended substituting the late Zosimo Hechanova with the herein petitioners, the widow and children of said deceased.

The trial court set the case for pre-trial on March 18, 1970, but on said date, petitioners prayed that said pre-trial be held in abeyance and that a preliminary hearing be held first on their affirmative defenses such as:

(1) that the cause of action of the plaintiffs (private respondents), if any, is already barred by the statute of limitation and/or at least, by laches; and

(2) that plaintiffs (private respondents) are in estoppel.

The CFI of Northern Samar granted petitioners' prayer and a preliminary hearing on said affirmative defenses started on March 20, 1970 (Amended Record on Appeals, pp. 54-55).

On October 28, 1970, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, defendants' affirmative defenses above being indubitable, this case is ordered dismissed without pronouncement as to costs.

"SO ORDERED.

"October 28, 1970, Allen Northern Samar." (Amended Record on Appeal, p. 92).

An *ex-parte* motion filed by plaintiffs (private respondents) to set aside the judgment and to proceed with the pre-trial was denied (Amended Record on Appeal, p. 101), and so the case was appealed to the Court of Appeals.

On appeal, the Court of Appeals found appellants' allegations more credible and discarded the finding of the trial court that appellants' cause of action had already prescribed; it ruled further that Zosimo Hechanova's possession of the questioned lot was by mere tolerance on the part of Florencio Barros (CA Decision, *Rollo*, p. 50).

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The dispositive portion of the Court of Appeals' decision reads as follows:

"WHEREFORE, the decision appealed from is hereby set aside and another one entered, declaring plaintiffs-appellants to be the owners of the litigated piece of land and ordering defendants-appellees to vacate the premises in question and to surrender possession thereof to the appellants. No pronouncement as to costs.

"SO ORDERED."

(CA Decision, *Rollo*, p. 51)

The Resolution of the Court of Appeals dated August 9, 1978 (*Rollo*, p. 70) denied appellees' Motion for Reconsideration.

Hence, this petition.

In a resolution dated November 15, 1978, this Court resolved without giving due course to the petition to require respondents to comment (*Rollo*, p. 79) which comment was filed on April 21, 1979 (*Rollo*, p. 96). Petitioners filed a reply to the comment (*Rollo*, p. 105). Thereafter, the Court resolved to give due course to the petition (*Rollo*, p. 135). After the parties had submitted their respective briefs, the case was considered submitted for decision on March 17, 1980 (*Rollo*, p. 167). Petitioners wished to set the case for oral argument but this prayer was denied in a resolution dated June 4, 1980 (*Rollo*, p. 171).

The crucial issue in this case is whether or not a case on appeal on certain incidents thereof may be decided by the appellate court on the merits.

Jurisprudence abounds with decisions of the Supreme Court holding that remand of a case to the lower courts for reception of evidence is not necessary if this Court could resolve the dispute on records before it. (*Quisumbing v. Court of Appeals*, 122 SCRA 703; *Pagdusalan v. NLRC*, January 31, 1984; *Board of Liquidators v. Zulueta*, 115 SCRA 548; *Republic v. Central Surety & Insurance Co.*, 125 SCRA 641).

It will be observed that the common denominator in all of the above-cited cases was the fact that the trial court had received all the evidence intended to be presented by both parties.

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In the case at bar, petitioners contend that the evidence of both parties were limited to the issues of prescription, laches and estoppel so that the Court of Appeals erred in deciding the case on the merits, and on the issue of ownership, which issue was not tried by the lower court. (Brief for Petitioners, pp. 15-19; *Rollo*, p. 150). Such fact was admitted in private respondents' brief filed in the Court of Appeals complaining, among other things, that they had reserved some other important evidence to be presented in the pre-trial conference but were not allowed by the lower court. (Portion quoted in Brief for Petitioners, p. 16; *Rollo*, p. 150).

Finally the Court of Appeals noted in its decision dated May 19, 1978 that:

> "x x x the alleged sworn statement of Romualda Gabion was never presented in evidence to bolster appellee's claim of ownership over the premises in dispute. If there really is such document, it is queer why the same was not adduced in evidence by the appellees. The conclusion is thus obvious that there is no such kind of document in the possession of the appellees for if the same really exists they could easily have presented it or Romualda Gabion herself to strengthen their bid." (Decision CA-G.R. No. 48614-R; *Rollo*, p. 49)

Such sweeping assertions, even if true, are mere surmises and conjectures which are not evidence. Additionally, trial on the merits had not even begun.

In the light of the facts and circumstances appearing in the records, a remand is warranted.

**PREMISES CONSIDERED,** the appealed decision is hereby REVERSED and SET ASIDE and a new one is hereby rendered, remanding the case to the Regional Trial Court with instructions to hold in abeyance resolution of the issues raised in the preliminary hearing until after a trial on the merits is conducted.

**SO ORDERED.**

*Feria (Chairman), Fernan, Alampay*, and *Gutierrez, Jr., JJ.*, concur.