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FIRST DIVISION

[G.R. No. 118230. October 16, 1997]

ABUNDIA BINGCOY, ISIDRO S. BINGCOY, MAMERTO S. BINGCOY, CORAZON S. DAGOY, DOMINGO DAGOMAS, SEGUNDINO LUMHOD, QUIRICO LUMHOD, OTELIA LUMHOD, VICTOR LUMHOD, JOSE BINGCOY, PELAGIA BINGCOY, FELISA BINGCOY, CESAR BINGCOY, DELFIN SAYRE, JESUS SAYRE, MARIA SAYRE, ANASTACIO SAYRE, FLORENTINO BEATE, and ISABELO LUMHOD, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, VICTORIANO BINGCOY, and AGUSTIN BINGCOY,** *respondents.*

SYNOPSIS

Private respondents Victoriano and Agustin Bingcoy filed a complaint for Recovery of Property against herein petitioners on May 31, 1952. In their complaint, private respondents alleged that sometime in July, 1948 petitioners attacked them in their residence and thereafter usurped their house and lands. Thereupon, private respondents refused to vacate the same and restore possession to them. At the trial, Victoriano Bingcoy testified on the contents of several documents that tended to establish their claim of ownership over the subject properties. On December 6, 1983, private respondents' counsel submitted a Memorandum of Exhibits and Formal Offer of Evidence for the Plaintiffs which included all the documents testified to by Victoriano during his direct and cross examinations. However, on May 16, 1987 the entire records of the case were lost from a fire that destroyed Perdices Coliseum which then housed the court *a quo* but were later reconstructed. On July 25, 1991, the trial court rendered judgment in favor of private respondents. The court found sufficient evidence to prove that ownership should be vested in private respondents as prior possessors in good faith in the concept of owner and as illegitimate heirs of Juan Cumayao. Petitioners appealed to the Court of Appeals which affirmed the ownership of private respondents over the parcels of land based not on their right as heirs of Juan Cumayao

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but on their rights as prior possessors in good faith under the law on acquisitive prescription. However, another parcel of land subject of the complaint was adjudged by the appellate court in favor of the petitioners as surviving heirs of Juan Cumayao. Hence, petitioners filed this instant petition.

The petition was dismissed for lack of merit. The Court ruled that private respondents herein have become owners of the land described in the first and second causes of action through acquisitive prescription. The Court also ruled that the earlier narration of the documents testified upon by respondent Victoriano during the trial deliberately enumerated and meticulously described each document in order to show that although said documents have no more physical existence, they were exhaustively testified upon, in the course of both direct and cross examinations, and were properly offered in evidence by the private respondent.

SYLLABUS

1. **REMEDIAL LAW; PROPERTY; PRESCRIPTION, AS A MODE OF ACQUISITION; SUCCESSIONAL RIGHTS, NOT REQUIRED; CASE AT BAR.—** Book III of the Civil Code of the Philippines is entitled, "Different Modes of Acquiring Ownership" and notably, Title V thereunder is denominated, "Prescription." Needless to say, acquisitive prescription is in itself a mode of acquiring ownership over a parcel of land and does not require, as petitioners asseverate, successional or inheritance rights, in order to "ripen" into ownership. Significantly, there is nothing on the record that discloses even an attempt by petitioners to rebut the evidence of private respondents as to their peaceful, continuous, adverse, and open possession in the concept of owner over the parcels of land in question from July 26, 1926 until 1948 or for twenty two (22) years. Under the applicable law at that time, which was Section 41 of the Code of Civil Procedure, Act No. 190, "ten years of actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by xxx whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title." Clearly, therefore, private respondents have become owners,

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by acquisitive prescription, of the parcels of land described in the first and second causes of action.

2. **REMEDIAL LAW; EVIDENCE; WHEN DOCUMENTS LOST DURING A COURTHOUSE FIRE MAY BE APPRECIATED; CASE AT BAR.**— It must have been starkingly obvious that the narration of the documents testified upon by private respondent Victoriano Bingcoy during the trial in September, 1964 and its continuation in July, 1966, in the first part of this ponencia, but which documents were lost to a courthouse fire in 1987, was not without a pre-determined purpose. That earlier narration deliberately enumerated and meticulously described each document in order to show that although said documents have no physical existence now, they were exhaustively testified upon, in the course of both direct and cross-examinations, and were properly offered in evidence by private respondents in open court, such that the trial court and the respondent appellate court could not, without committing procedural error and grave injustice, ignore their contents and their over-all import in rendering judgment. Petitioners especially attack the inclusion of said documents by the trial court and the respondent Court of Appeals in their appreciation of the evidence in the instant controversy, because said documents have allegedly been withdrawn by private respondents at the behest of the petitioners. We can only surmise, however, that petitioners, by so contending with apparent desperation, are simply running out of tenable arguments. We have carefully reviewed the records of the case and are convinced that the technical withdrawal of the documents in question, upon the insistent clamor of petitioners, does not operate to render nugatory the testimonial evidence attesting to the tenor and contents of the said documents. Neither does such a technicality work to justify the erosion, denial or annihilation of the truths undisputedly established by the questioned documents. The trial court and respondent Court of Appeals are courts of law and justice. It would be a gross subversion of their nature as such were they, in full awareness of the questioned documentary evidence proffered and marked during the hearings, affirmatively identified and unhamperedly testified to by the main witness in the case and undoubtedly formally offered by private respondents before the trial court, to consciously choose to sacrifice legalism for substantial justice.

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APPEARANCES OF COUNSEL

Rodrigo V. Icao for petitioners.
Leo B. Diocos for private respondents.

DECISION

HERMOSISIMA, JR., *J.*:

On May 31, 1952, private respondents Victoriano and Agustin Bingcoy filed a Complaint for Recovery of Property in the Court of First Instance (now Regional Trial Court) of Negros Oriental. Docketed as Civil Case No. 2728 and raffled to Branch 37, the complaint alleged that petitioners, some time in July, 1948, attacked private respondents at their residence in Barrio Bongbong, Municipality of Valencia, Province of Negros Oriental, shot at their hogs and chickens and seriously threatened to shoot private respondents if they did not leave their house and their lands. Fearing for their lives, private respondents instinctively jumped out of their house and ran away. Thereupon, petitioners usurped private respondents' house and lands, occupied the same to the deprivation of private respondents and refused, after repeated requests and demands, to vacate the same and restore private respondents in the possession of their properties.

In their complaint before the court *a quo,* private respondents detailed their claims in this manner:

"FIRST CAUSE OF ACTION

x x x x x x x x x

II. That Juan Cumayao died intestate many years ago, without any payable obligation, leaving three legitimate children, namely, Victoriano, Agustin, and Prudencio, all surnamed Bingcoy, as his heirs. He also left three parcels of land in the municipality of Valencia, province of Negros Oriental, more particularly described as follows:

1. Bounded on the North by Potenciana Tavandera - 32.00 m; on the East by Narciso Lumhod - 30.00 m; on the South by Pangas - 28.00 m; and on the West by Valentin Igsi - 40.00 m;

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declared in the name of Juan Cumayao under Tax Declaration No. 2621, assessed at P20.00 for taxation.

2. Bounded on the North by Juan Cumayao (now Victoriano Bingcoy) - 59.00; on the East by Agapito Morano - 33.00 m; on the South by Gaspar Lumhod - 59.00 m; on the West by Bartolome Dagooc - 33.00 m; declared in the name of Agustin Bingcoy under Tax 3840, assessed at P60.00 for taxation.

3. Bounded on the North by Vicente N. Antes Damiano Linguis - 48.00 m; on the East by Lucio Dagoy, Vicente N. and Aniceta Lingcong - 72.00 m; on the South by Marcelina Cumayao antes Magdalino Sayre - 48 m; and on the West by Joaquin Cumayao, Victoriano y Eustaquio Jaro y Gabriel Abequibil - 110.00 m. Declared in the name of Juan Cumayao under Tax Decl. No. 8635, assessed at ₱30.00 for taxation.

III. That Prudencio Bingcoy, brother of the [private respondents], also died single, without issue, nor adopted child, intestate and without any payable obligation, leaving the [private respondents] as his only heirs and a parcel of land located at Bongbong, Valencia, Negros Oriental, more particularly described as follows:

Bounded on the North by Agapito Morano Antes Valentino Lumhod - 106.00 m.; on the East by Donato Lumhod - 32.00 m; on the South by Maria Asuncion Antes Paulino Lumhod - 106.00 m; and on the West by Moises Cumayao - 32.00 m; Declared under Tax Decl. No. 10043, assessed at P30.00 for taxation.

IV. That upon the death of Juan Cumayao and Prudencio Bingcoy, by right of inheritance the [private respondents] automatically became the absolute owners of the property they left described in paragraphs II and III hereof, respectively and have since then been in the actual, open, public, peaceful and continuous possession thereof under claim of title, exclusive of any other rights, adverse to the whole world.

V. That on or about the middle of July 1948, the [petitioners], taking advantage of the weakness and ignorance of the plaintiffs who are illiterates, confederating together and helping one another, armed with a rifle and bolos, went to the house of the [private respondents] at Bongbong, Valencia, and demanded from them the surrender of the above-described parcels of land, claiming that the plaintiffs are without any right to inherit from Juan Cumayao and Prudencio Bingcoy and that they, the [petitioners] are the true heirs of said deceased;

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and in order to scare the [private respondents] the [petitioners] shot the hogs and chickens under the house of the former and threatened to shoot them if they refused to vacate the said land.

VI. That being ignorant, harmless and incapable of protecting themselves, the [private respondents] ran away and thus the [petitioners] got into the possession and control of the above-described land, and since then have retained possession thereof to the exclusion of the [private respondents], and refused to surrender the same despite repeated amicable request made upon them by the [private respondents] in order to avoid judicial litigation.

x x x x x x x x x

SECOND CAUSE OF ACTION

x x x x x x x x x

II. That [private respondent] Victoriano Bingcoy is the absolute owner of three parcels of land located at barrio Bongbong, Valencia, Negros Oriental, more particularly described as follows:

1. Bounded on the North by Magdalina Sayre - 52.00m; on the East by Pedro Sayre - 91.00 m; on the South by Placida Dagooc 27.00 m; and on the West by Francisco Morales and Sotero Dagooc - 87.00 m; Declared under Tax No. 10623, assessed at ₱120.00 for taxation.

2. Bounded on the North by Mauro Tinagan - 20.00 m; on the East by Felipe Nuay - 23.00 m; on the South by Narciso Lumhod - 21.00 m; and on the West by Gaspar Lumhod - 21.00 m; declared under Tax Decl. No. 4024, assessed at ₱50.00 for taxation.

3. Bounded on the North by Rufino Buling - 5.00 m; on the East by Agapito Morano - 20.00 m; on the South by Gaspar Lumhod - 5.00 m; and on the West by the Provincial Road - 20.00 m; declared under Tax 3762, assessed at ₱10.00 for taxation.

III. That Victoriano Bingcoy acquired the first parcel of land by donation from Francisca Morilis, the second and third by purchase from Nicolas Abong and Pascuala Bingcoy, respectively, many years ago as evidenced by documents x x x and [Victoriano Bingcoy's] predecessors-in-interest have been in the actual, open, public, peaceful and continuous possession of said land which [private respondent]

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Victoriano Bingcoy continued up to recent years under claim of title, exclusive of any other right, adverse to the whole world.

IV. That on or about the middle of July 1948, the [petitioners], taking advantage of the weakness and ignorance of the [private respondents] at Bongbong, Valencia, and first demanded the surrender of the properties left by the deceased Juan Cumayao and Prudencio Bingcoy described in paragraphs II and III of the First Cause of Action, and having succeeded in dispossessing the [private respondents] thereof in the manner specified in paragraphs V and VI of the First Cause of Action and encouraged by the inability of [Victoriano Bingcoy] to protect himself, the [petitioners] usurped and occupied the private property of the [private respondent] Victoriano Bingcoy described in Paragraph II, subparagraphs 1, 2 and 3 of the Second Cause of Action, retained possession thereof up to the present time and refused to surrender the same despite the repeated amicable requests made upon them by the [private respondent] Victoriano Bingcoy in order to avoid judicial litigation.

x x x x x x x x x

THIRD CAUSE OF ACTION

x x x x x x x x x

II. That the [private respondent] Agustin Bingcoy is the absolute owner of a parcel of land located in Barrio Bongbong, municipality of Valencia, province of Negros Oriental described as follows:

> Bounded on the North by Agustin Bingcoy - 48.00 m; on the East by Agapito Morano - 74.00 m; on the South by Leon Sayre - 62.00 m; and on the West by Victoriano Bingcoy - 44.00 m; declared under Tax Decl. No. 6350, assessed at ₱90.00 for taxation.

III. That the [private respondent] Agustin Bingcoy acquired the said parcel of land by purchase from Simplicia Lumhod many years ago and since then the said [private respondent] has been in the actual, open, public, peaceful and continuous possession thereof under claim of title, exclusive of any other right adverse to the whole world.

IV. That on or about the middle of July, 1948, the [petitioners], taking advantage of the weakness and ignorance of the plaintiffs who are illeterates [sic], confederating together and helping one another, armed with a rifle and bolos, went to the house of the plaintiffs at Bongbong, Valencia, and first demanded the surrender of the properties

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left by the deceased Juan Cumayao and Prudencio Bingcoy described in Paragraphs II and III of the First Cause of Action, and having succeeding in despossessing [sic] the [private respondents] thereof in the manner specififed [sic] in paragraphs V and VI of the First Cause of Action and encouraged by the inability of the [private respondent] to protect himself, the [petitioners] usurped and occupied the private property of the [private respondent] Agustin Bingcoy described in paragraph II of the Third Cause of Action, retained possession thereof up to the present time and refused to surrender the same despite repeated amicable requests made upon them by the [private respondent] Agustin Bingcoy in order to avoid judicial litigation.

x x x x x x x x x"[1]

Petitioners countered private respondents' allegations by presenting a true copy of the Death Certificate of Juan Cumayao which indicated that the latter had died single on July 17, 1926 at the age of fifty (50) years. They thus established the defense that, since Juan Cumayao died single and without any known children, he could not have passed on, by inheritance, the subject properties to private respondents. To establish their claim of ownership on the subject properties, petitioners claim that the same originally belonged to spouses Marcos Cumayao and Francisca Morales, parents of Juan Cumayao and grandparents of petitioners. They aver, thus, in their Answer dated August 30, 1952 that:

"x x x upon the death of their grandparents and their aforesaid uncle, the [petitioners], together with their other cousins, nephews and nieces, succeeded to all the properties in question as the only heirs of the deceased and to the exclusion of [private respondents] herein, since Juan Cumayao died single, and have, since 1927, been in the actual, open, public, peaceful and continuous possession and enjoyment of same properties, under a claim of ownership exclusive of any other right and adverse to the whole world."[2]

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[1] Fourth Amended Complaint dated March 14, 1989, pp. 1-7, Original Records, pp. 101-107.

[2] Answer dated August 30, 1952, pp. 2-3, Original Records, pp. 11-12.

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On September 1, 1964, trial commenced. Private respondent Victoriano Bingcoy took the stand. He testified on the contents of the following documents:

1. A certificate issued by the Local Civil Registrar of Zamboanguita marked by the court *a quo* as Exhibit "A".[3]

The first paragraph thereof which reads that "this is to certify that Juan Cumayao and Claudia Bingcoy, both residents of the municipality of Valencia, Negros Oriental, which [sic] was [sic] married in this municipality according to the informant," was marked as Exhibit "1-a" for the defendants.[4]

The second paragraph thereof which states that, "this Office could not issue the necessary certificate in view of the fact that all records of Births, Deaths and Marriages were burned during the Japanese Occupation or have been eaten by the white ants," was marked by the trial court as Exhibit "A-1".[5]

2. The marriage certificate of Agustin Bingcoy and Luisa Dacoyan secured from the priest of the town of Luzuriaga marked as Exhibit B.[6]

The paragraph thereof which reads that "x x x *Que en el libro de Casamientos de esta Parroquia pagina cientocuarenta y tres x x x en el dia vientieseis del mes de Noveiembre de mil novencientos cuarenta; Yo, el Presbitero Fr. Amado Lope Cora Parroco de esta Parrocquia de Luzuriaga, Provincia de Negros Oriental, precedidas las amonestaciones y demas diligencias que proviene el Sta. Concilio de Trento y las leyes civiles y no habiendo resultado imedimento alguno que a mi noticia haya ilegado, case por palabra de presente y vele en esta Iglesia de mi cargo, segun rito de Ntra. Santa Madre la Iglesia Catolica a Agustin Bingcoy de vienteseis años de edad soltero natural de Luzuriaga y residente en este pueblo hijo de Juan Cumayao y de Claudia Vincoy, con Luisa Dacoyan y de diesinueve años de edad soltera, natural de Luzuriaga y residente en este pueblo,*

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[3] TSN dated September 1, 1964, p. 60.

[4] *Id.*, pp. 64-65.

[5] *Id.*, pp. 63-64.

[6] *Id.*, p. 67.

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hija de Marcelo Daoyan y de Hilaria Abong" was marked as Exhibit "B-1".[7]

3. A Deed of Sale executed on December, 1915 in favor of Juan Cumayao marked as Exhibit "C".[8] Said deed of sale was in a private instrument and covered the parcel of land described in subparagraph no. 1, paragraph II, under the First Cause of Action. It was signed by Calixto Tavandera, Dionisio Tavandera, Teodora Tavandera, Filomena Tavandera and witnesses Herillas Civil and Antonio Enoy in favor of Juan Cumayao who purchased the said parcel of land from the Tavandera siblings for ₱20.00. The said deed of sale was about 49 years old at the time Victoriano Bingcoy testified thereon.[9]

4. Tax Declaration No. 2621 in the name of Juan Cumayao marked as Exhibit "C-2".[10]

On July 25, 1966, the direct examination of private respondent Victoriano Bingcoy was resumed. He continued testifying on several other documents that established private respondents' claim of ownership over the subject properties. The documents presented to the court and duly testified on by Victoriano Bingcoy, on this particular trial day were the following:

1. A document of sale in favor of Juan Cumayao marked as Exhibit "D" [11] Said document was signed by Felicia Longhod and Bonifacio Quitoy and covered the parcel of land subject of subparagraph 2, paragraph II, under the First Cause of Action. Indicating the purchase price to be ₱25.00, said document of sale was signed before and prepared and ratified by, Justice of the Peace-Notary Public Pablo Teves who had once been the Municipal Judge of Valencia; it was dated January 10, 1920 and bore a worn out documentary stamp.[12]

2. Tax Declaration No. 14141 in the name of Juan Cumayao marked as Exhibit "D-1".[13]

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[7] TSN dated September 1, 1964, pp. 69-70.

[8] *Id.*, pp. 81-83.

[9] TSN dated September 1, 1964, p. 85.

[10] *Id.*, p. 87.

[11] TSN dated July 25, 1966, pp. 5-6.

[12] *Id.*, pp. 7-8.

[13] TSN dated July 25, 1966, p. 11.

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3. Tax Declaration No. 3840 in the name of Juan Cumayao marked as Exhibit "D-2".[14]

The statement, *"Transferido segun documento retificado por Notario Publico Pablo Teves el dia 19 de Enero, 1920,"* appearing thereon, was marked as Exhibit "D-3".[15]

4. An official tax receipt with no. 892811 covering taxes paid for the period from 1946 to 1951 marked as Exhibit "D-4".[16]

5. An official tax receipt with no. 1847878 covering taxes paid for the period from 1952 to 1957 marked as Exhibit "D-5".[17]

6. Tax Declaration No. 8635 in the name of Juan Cumayao marked as Exhibit "E".[18] Said Tax Declaration covers the parcel of land subject of subparagraph 3, paragraph II, First Cause of Action. Juan Cumayao acquired this parcel of land by clearing the same.[19]

7. A document of sale in favor of Prudencio Bingcoy marked as Exhibit "F".[20] The document was executed by Gaspar Lumhod and covered the parcel of land subject of paragraph III, First Cause of Action. It was ratified by Judge Pablo Teves and visibly affixed thereon was a partly destroyed documentary stamp.[21] Said document was executed on October 16, 1932.[22]

The last part thereof from the words in Spanish, *"por la presenta"* down to the end of the description ending in the spanish words "32 metros", was marked as Exhibit "F-2".[23]

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[14] *Ibid.*

[15] *Id.*, p. 12.

[16] *Id.*, p. 13.

[17] *Ibid.*

[18] *Id.*, p. 14.

[19] *Ibid.*

[20] *Id.*, p. 18.

[21] TSN dated July 25, 1966, p. 21.

[22] *Id.*, p. 22.

[23] *Id.*, p. 24.

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8. Tax Declaration No. 10043 in the name of Gaspar Lumhod marked as Exhibit "F-1".[24]

9. A deed of donation in favor of Victoriano Bingcoy Bingcoy marked as Exhibit "G"[25] . The document was executed by Francisca Meriles and covered the parcel of land subject of subparagraph 1, paragraph II, Second Cause of Action. It was executed and signed before Judge Pablo Teves.

The thumbmarks of Francisca Meriles and Victoriano Bingcoy were marked as Exhibit "G-1".[26]

The second paragraph in the said deed of donation which states that the property was given in consideration of the past services of Victoriano Bingcoy, was bracketed and marked as Exhibit "G-2".[27]

The third paragraph which contained the acceptance by Victoriano Bingcoy of the property subject of the deed of donation, was bracketed and marked as Exhibit "G-3".[28]

10. The official receipt for payment of ratification fees marked as Exhibit "G-4".[29] The same was issued by Judge Pablo Teves in favor of Francisca Meriles in the amount of ₱3.00 which she paid for the ratification fees.

11. Tax Declaration No. 10623 in the name of Victoriano Bingcoy marked as Exhibit "G-5".[30] This tax declaration covers the aforementioned land donated by Francisca Meriles to Victoriano Bingcoy.

12. Official Tax Receipt No. 474402 marked as Exhibit "G-6".[31] The same showed that Victoriano Bingcoy paid real property taxes on the property donated to him by Francisca Meriles.

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[24] *Ibid.*

[25] *Id.*, p. 36.

[26] *Id.*, p. 39.

[27] TSN dated July 25, 1966, p. 39.

[28] *Ibid.*

[29] *Id.*, p. 40.

[30] *Ibid.*

[31] *Id.*, p. 41.

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13. Official Tax Receipt No. 1847883 marked as Exhibit "G-7".[32] The same showed that Victoriano Bingcoy paid real property taxes on the property donated to him by Francisca Meriles.

14. Document of sale in favor of Victoriano Bingcoy marked as Exhibit "H".[33] Said document was executed by Nicolas Abong as vendor and in favor of Victoriano Bingcoy as vendee, covering the parcel of land subject of subparagraph 2, paragraph II, Second Cause of Action. The document bears the thumbmarks of witnesses Segundo Ubag, Roberto Tinoy and Filomeno Noway.[34]

15. Tax Declaration No. 4024 in the name of Victoriano Bingcoy marked as Exhibit "H-2".[35] This tax declaration covered the parcel of land purchased by Victoriano Bingcoy from Nicolas Abong.

16. Official Tax Receipt No. 872707 marked as Exhibit "H-3".[36] The same showed that Victoriano Bingcoy paid real property taxes on the property that he purchased from Nicolas Abong. The said receipt covered the years from 1946 to 1951.

17. Official Tax Receipt No. 892810 marked as Exhibit "H-4".[37] The same showed that Victoriano Bingcoy paid real property taxes on the property that he purchased from Nicolas Abong. The said receipt also covered the years from 1946 to 1951.

18. Official Tax Receipt No. 1847884 marked as Exhibit "H-5".[38] The same showed that Victoriano Bingcoy paid real property taxes on the property that he purchased from Nicolas Abong. The said receipt covered the years from 1952 to 1961.

19. Tax Declaration No. 3762 in the name of Victoriano Bingcoy marked as Exhibit "I".[39] Said tax declaration covered the parcel of

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[32] *Ibid.*

[33] TSN dated July 25, 1966, p. 42.

[34] *Id.*, pp. 43-44.

[35] *Ibid.*

[36] *Id.*, p. 45.

[37] *Ibid.*

[38] TSN dated July 25, 1966, p. 45.

[39] *Id.*, p. 46.

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land subject of subparagraph 3, paragraph II, Second Cause of Action. Said parcel of land was purchased by

Victoriano Bingcoy from Pascuala Bingcoy, and the transaction was covered by a document of sale which had, however, been destroyed during the war.

The statement appearing on said tax declaration to the effect that Victoriano Bingcoy paid real property tax in the amount of ₱10.00, was marked as Exhibit "I-1".[40]

On May 11, 1967, counsel for petitioners cross-examined Victoriano Bingcoy who was expectedly queried on the various documents that he had testified to during the direct examination.

On December 6, 1983, private respondents' counsel submitted a Memorandum of Exhibits and Formal Offer of Evidence for the Plaintiffs.[41] The same included all the aforementioned documents testified to by Victoriano Bingcoy during his direct and cross examinations.

On May 16, 1987, the entire records of this case, including all the above-enumerated documents marked and testified to by Victoriano Bingcoy during his direct and cross examination, were lost when a fire destroyed the Perdices Coliseum which then housed the court *a quo*.[42] Accordingly, the trial court ordered the reconstruction of the records based on the pleadings to be furnished by the contending parties or their respective lawyers.

On April 19, 1989, trial resumed. Subsequent hearings were also held on June 5, and 19, 1989 and on July 14, 1989.

On July 25, 1991, the trial court rendered judgment[43] in favor of private respondents. Finding sufficient evidence on record proving that ownership over the subject parcels of land was vested in private respondents as prior possessors in good

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[40] *Id.*, p. 47.

[41] Original Records, pp. 69-71.

[42] Order dated June 1, 1987, Original Records, p. 27.

[43] Decision penned by Judge Temistocles B. Diez, Original Records, pp. 153-164.

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faith in the concept of owner and as illegitimate heirs of Juan Cumayao, the trial court ordered the following in the dispositive portion of its decision:

"WHEREFORE, all the foregoing considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants:

(a) Declaring plaintiffs Victoriano Bingcoy and Agustin Bingcoy the real and absolute owners of the parcels of land described under the First Cause of Action in the complaint as follows:

'1. Bounded on the North by Potenciana Tavandera - 32.00 m; on the East by Narciso Lumhod - 30.00 m; on the South by Pangas - 28.00 m; and on the West by Valentin Igsi - 40.00 m; declared in the name of Juan Cumayao under Tax Declaration No. 2621, assessed at ₱20.00 for taxation.

2. Bounded on the North by Juan Cumayao (now Victoriano Bingcoy) - 59.00; on the East by Agapito Morano - 33.00 m; on the South by Gaspar Lumhod - 59.00 m; on the West by Bartolome Dagooc - 33.00 m; declared in the name of Agustin Bingcoy under Tax 3840, assessed at ₱60.00 for taxation.

3. Bounded on the North by Vicente N. Antes Damiano Linguis - 48.00 m; on the East by Lucio Dagoy, Vicente N. and Aniceta Lingcong - 72.00 m; on the South by Marcelina Cumayao antes Magdalino Sayre - 48 m; and on the West by Joaquin Cumayao, Victoriano y Eustaquio Jaro y Gabriel Abequibil - 110.00 m. Declared in the name of Juan Cumayao under Tax Decl. No. 8635, assessed at ₱30.00 for taxation.

4. Bounded on the North by Agapito Morano Antes Valentino Lumhod - 106.00 m.; on the East by Donato Lumhod - 32.00 m; on the South by Maria Asuncion antes Paulino Lumhod - 106.00 m; and on the West by Moises Cumayao - 32.00 m; Declared under Tax Decl. No. 10043, assessed at ₱30.00 for taxation.'

(b) Declaring Victoriano Bingcoy the true and absolute owner of the following three parcels of land as described in the Complaint under the Second Cause of Action; as

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'1. Bounded on the North by Magdalina Sayre - 52.00m; on the East by Pedro Sayre - 91.00 m; on the South by Placida Dagooc 27.00 m; and on the West by Francisco Morales and Sotero Dagooc - 87.00 m; Declared under Tax No. 10623, assessed at ₱120.00 for taxation.

2. Bounded on the North by Mauro Tinagan - 20.00 m; on the East by Felipe Nuay - 23.00 m; on the South by Narciso Lumhod - 21.00 m; and on the West by Gaspar Lumhod - 21.00 m; declared under Tax Decl. No. 4024, assessed at ₱50.00 for taxation.'

3. Bounded on the North by Rufino Buling - 5.00 m; on the East by Agapito Morano - 20.00 m; on the South by Gaspar Lumhod - 5.00 m; and on the West by the Provincial Road 20.00 m; declared under Tax 3762, assessed at ₱10.00 for taxation.'

(c) Declaring Agustin Bingcoy the true and absolute owner of the parcel of land described in the Third Cause of Action of the Complaint as follows:

'Bounded on the North by Agustin Bingcoy - 48.00 m; on the East by Agapito Morano - 74.00 m; on the South by Leon Sayre - 62.00 m; and on the West by Victoriano Bingcoy - 44.00 m; declared under Tax Decl. No. 6350, assessed at ₱90.00 for taxation.'

(d) Ordering the defendants to deliver and restore possession of all the parcels of land described in paragraphs (a), (b) and (c) of the dispositive part of this Decision to the plaintiffs;

(e) Condemning the defendants to pay the plaintiffs jointly and severally the amount ₱410.00 (under the First Cause of Action), the amount of ₱44.00 (Second Cause of Action) and the amount of ₱180.00 (under the Third Cause of Action) a year starting from 1952 under possession of all the aforesaid parcels of land have been delivered and restored to the plaintiffs.

Costs against the defendants."[44]

Unable to agree with the decision of the trial court, petitioners appealed therefrom to the Court of Appeals. They raised the following issues:

[44] Decision of the RTC, pp. 10-12, Original Records, pp. 162-164.

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"1. What is the status of plaintiffs-appellees? Are they legitimate, or illegitimate, children of Juan Cumayao and Claudia Bingcoy?

2. If illegitimate, to what class do they belong? Are they natural children proper, or spurious children of Juan Cumayao and Claudia Bingcoy?

3. If plaintiffs-appellees are the natural children of Juan Cumayao, are they as such acknowledged natural children?

4. Are unrecognized natural children entitled to successional rights both under the Old, and in the New, Civil Code?

5. Is it correct for the trial court to consider documentary exhibits which are not formally offered in evidence?"[45]

and insisted that the trial court erred:

"1. In declaring that plaintiffs-appellees are the illegitimate children of Juan Cumayao and Claudia Bingcoy;

2. Assuming *arguendo* that plaintiffs-appellees are illegitimate children of Juan Cumayao and Claudia Bingcoy, in granting successional rights to plaintiffs-appellees;

3. In considering documentary exhibits which are not formally offered in evidence as evidence;

4. In concluding that appellants failed to rebut appellees' allegation of use of force and intimidation in July, 1948 to oust appellees from the lands in question; and,

5. In not dismissing the complaint and adjudicating the properties in question to appellants."[46]

On June 10, 1994, the respondent Court of Appeals rendered its Decision affirming the ownership of private respondents over the parcels of land subject of the first and second causes of action in their Complaint before the trial court, while basing such affirmance not on private respondents' right as heirs of Juan Cumayao but on their right as prior possessors in good faith under the law on acquisitive prescription.

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[45] Appellants' Brief dated July 15, 1992, pp. 8-9; CA *Rollo,* pp. 40-41.

[46] Id., pp. 9-10; CA *Rollo,* pp. 41-42.

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The respondent appellate court, however, reversed the court *a quo* respecting the parcel of land subject of the third cause of action. The same was adjudged the property of petitioners as surviving heirs of Juan Cumayao.

The disquisition of respondent Court of Appeals on its own findings in answer to the issues raised on appeal by the petitioners and in refutation of the assigned errors in petitioners' Brief on appeal, is as follows:

"x x x [A]fter a painstaking examination of the evidence presented by the parties, We find:

> As to the 1st and 2nd assigned errors - The first question is: Did the trial court commit a reversible error in ruling that appellees are illegitimate children of Juan Cumayao?
>
> The presumption that a child was born is legitimate as provided for in Article 220 of the New Civil Code is overcome by the death certificate issued by the OIC Local Civil Registrar of the Municipality of Valencia, Province of Negros Oriental where it appears that Juan Cumayao died single on July 17, 1926 x x x. It is a well-settled rule that a death certificate, if duly registered with the Civil Registrar, is considered a public document and the entries found therein are presumed correct (Stronghold Insurance Co., Inc. *vs.* Court of Appeals, May 29, 1989; 173 SCRA 620). Said presumption is merely disputable and will have to yield to more positive evidence establishing their inaccuracy x x x.
>
> Appellee's evidence on this matter is neither positive nor convincing. Aside from the testimony of appellee Victoriano Bingcoy, they presented a witness by the name of Pedro Milan who was 76 years old at the time he testified. He averred on the witness stand that he knew Juan Cumayao and Claudia Bingcoy to be the parents of herein appellees x x x; that he knew appellees since they were born as he was their neighbor at Bongbong, Valencia x x x. While it has been established that Juan Cumayao begot herein appellees, the fact that he died single proves that he had children without having been married. In the absence of clear evidence to show that appellees' parents were married, the conclusion is inevitable that appellees were born out of wedlock.

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Appellees' explanation x x x that it was their grandmother who opted for them to use the surname Bingcoy x x x is totally incongruent with public customs and morals and human experience. No natural mother and for matter, a grandmother, under Filipino tradition, would allow a child not to use the surname of his father if he were really legitimate, considering the stigma that would necessarily attach to a child who is not allowed to use the surname of his own father. x x x

There are no other evidence to sustain appellants' claim that their parents were in fact married to controvert the statement in the death certificate that Juan Cumayao died single. Appellees have not established by sufficient evidence the fact of marriage between their parents. Neither is there any evidence showing that both parents of appellees have no legal impediment to marry.

Thus x x x [w]e agree with the ruling of the trial court that appellees are illegitimate children of Juan Cumayao.

Such being the case, the next question to be resolved is: Not being legitimate, are appellees entitled to inherit from their father, Juan Cumayao?

The Supreme Court sheds light on this matter in *Castro vs. Court of Appeals* (173 SCRA 656, 662 to 663):

> 'Under the Civil Code, whether new or old, illegitimate children x x x were generally classified into two groups: (1) Natural, whether actual or by fiction, were those born outside of lawful wedlock of parents who, at the time of conception of the child, were not disqualified by any impediment to marry each other x x x and (2) Spurious, whether incestuous, adulterous or illicit, were those born of parents who, at the time of conception, were disqualified to marry each other on account of certain legal impediments.
>
> x x x x x x x x x
>
> Under the Civil Code, for an illegitimate child other than natural to inherit, she must first be recognized voluntarily or by court action. x x x *This arises from the legal principle that an unrecognized spurious child like a natural child has no rights from her parents or to their estate because her rights spring not from the filiation or*

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blood relationship but from the child's acknowledgment by the parent x x x. In other words, the rights of an illegitimate child arose not because she was the true and real child of her parents but because under the law, she has been recognized or acknowledged as such a child.

x x x x x x x x x

Under the Civil Code, there are two kinds of acknowledgment — voluntary or compulsory. *The provisions on acknowledgment are applied to natural as well as spurious children* x x x. Article 131 of the old Civil Code provides for voluntary acknowledgment by the father or mother, while Article 135 and Article 136 of the same Code provide for the compulsory acknowledgment by the father and mother respectively.

Article 131 of the old Civil Code states that the acknowledgment of a natural child must be made in the record of birth, in a will or in some other public document.'

Naturally, and understandably so, plaintiffs-appellees did not present any evidence that they have been acknowledged by Juan Cumayao by reason of their original stand that they are legitimate children of Juan Cumayao. There being no proof that appellees were acknowledged by Juan Cumayao as his illegitimate children, appellees could not therefore legally inherit from the estate of the deceased Juan Cumayao.

If appellees are not entitled to inherit from Juan Cumayao, have they acquired ownership over the parcels of land in question? As to the four (4) parcels of land under the First Cause of Action, Pedro Milan (TSN, September 1, 1964) and Victoriano Bingcoy (TSN, Hearings of September 1, 1964 and July 25, 1966) testified that appellees took possession of the parcels of land left by Juan Cumayao after his death on July 26, 1926, peacefully, continuously, adversely, openly and in the concept of owners up to 1948, or for a period of *twenty two years*, by introducing improvements thereon like abaca plants and coconut trees, harvesting fruits thereof, declaring the same for taxation purposes x x x and paying the corresponding realty taxes therefor. We find no evidence on the part of defendants-appellants controverting the same.

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Under Section 41 of the Code of Civil Procedure, Act No. 190, to wit:

> 'SEC. 41. Title to land by prescription. — *Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title* x x x.'

It is not disputed that appellants have been in possession, as stated above, for 22 years in the concept of owners. Consequently, appellants' claim over the parcels of land in question have already prescribed. The trial court did not commit any error in awarding said parcels of land (under the First Cause of Action) to herein appellees.

As to the third assigned error x x x [c]onsidering that appellants' counsel had cross-examined appellees' witnesses despite the failure of counsel for appellees to offer their testimonies when they were called to testify, appellants are deemed to have waived their right to object to the admissibility of the testimonies. x x x

There is merit to appellants' claim that only Exhibits 'E', 'F-1', 'G-4', and 'I' should be considered by the court in rendering the decision, as the rest of the exhibits for appellees were withdrawn by their counsel (Order dated April 9, 1989).

However, in the interest of substantial justice and for equitable reasons considering that it is not disputed that the Perdicas Coliseum housing the court was burned last May 14, 1987 and the entire records of the case were lost including the documents marked as Exhibits 'G', 'G-1' to 'G-7', 'H', 'H-1' to 'H-5' and 'I', described in the reconstituted 'Memorandum of Exhibits and Formal Offer of Evidence for the Plaintiffs' x x x said descriptions of the burned documents may be considered and taken together as part of the positive and convincing testimony of appellee Victoriano Bingcoy (TSN, Hearing of July 25, 1977) which testimony sustains the findings of the trial court in favor of appellees. It cannot be over-emphasized that appellants did not present any evidence to controvert the testimony of appellee Victoriano on this matter.

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The possession of the three (3) parcels of land by appellee Victoriano under the Second Cause of Action was acquired not through inheritance from Juan Cumayao but by donation in case of the first parcel of land covered by a document duly executed and thumbmarked by both donor Francisca Meriles and donee Victoriano x x x that had been lost in the fire; by purchase from Nicolas Abong in the case of the second parcel of land and covered by a document x x x and by purchase from Pascuala Bingcoy in case of the third parcel of land, the document evidencing the same having been destroyed during the war but with tax declaration in the name of appellee Victoriano x x x and payment of taxes therefor x x x together with the tax declaration x x x and payments of realty taxes x x x which were gutted by fire except Exh. 'G-4' which is an official receipt for ratification fee. As already stated, there is no evidence presented by appellants controverting the above testimony of appellee Victoriano Bingcoy. Appellants failed to establish that they have better rights to the parcels of land subject matter of the Second Cause of Action.

With respect to the parcel of land under the Third Cause of Action x x x We find no evidence to sustain the finding of the trial court that said land was given to appellee Juan Cumayao. No document was ever presented in court to prove the donation; and the realty taxes paid by appellee Agustin on said land started only in 1951, three years after appellees were ousted from the land in 1948. Considering that said parcel of land undisputedly belonged to Juan Cumayao, its ownership passed by inheritance to his heirs upon his death. And appellees not being entitled to inheritance as earlier discussed, the parcel of land properly pertains to herein appellants who are the surviving heirs of said decedent. We find no evidence that entitles appellee Agustin to acquisitive prescription under the Old Civil Code or Code of Civil Procedure.

As to the fourth assigned error: The testimonies of Milan and Victoriano Bingcoy establish the fact that appellees forcibly entered the parcels of land in question and ousted appellees therefrom by threatening Victoriano's life with a gun x x x. They were not controverted by the evidence of appellants. Neither Ricardo Genel nor Felisa Lumhod, witnesses for appellants, denied the aforesaid testimonies x x x. The trial court did not commit any error in finding that appellees were

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forcibly dispossessed by appellants in 1948. We have meticulously read the testimonies of appellants' witnesses x x x and not one of them disclaimed the acts of dispossession committed by appellant against appellees ousting the latter from the parcels of land in question.

x x x x x x x x x

As to the fifth assigned error, the Fourth Amended Complaint of appellees should be dismissed with respect only to the Third Cause of Action, for reasons already discussed above."[47]

Pursuant to the above postulations, the respondent appellate court modified the decretal portion of the court *a quo*'s decision insofar as the parcel of land subject of the Third Cause of Action is concerned. The modification runs in this wise:

"WHEREFORE, the appealed judgment is hereby MODIFIED to the effect that the dispositive portion should read as follows:

x x x x x x x x x

(c) Declaring *Pedro Bingcoy, et al.* the true and absolute owners of the parcel of land described in the Third Cause of Action of the Complaint as follows:

'Bounded on the North by Agustin Bingcoy - 48.00 m; on the East by Agapito Morano - 74.00 m; on the South by Leon Sayre - 62.00 m; and on the West by Victoriano Bincoy - 44.00 m; declared under Tax Decl. No. 6350, assessed at ₱90.00 for taxation.'

(d) *Ordering plaintiff Agustin Bingcoy to deliver and restore possession of the parcel of land described in paragraph (c) of herein dispositive part of the Decision to defendants;*

(e) Ordering defendants to deliver and restore *possession* of all the parcels of land described in paragraphs (a) and (b) of the dispositive part of this Decision to the plaintiffs;

(f) Condemning the defendants to pay the plaintiffs, jointly and severally the amount of ₱410.00 (under the First Cause of Action); *and* the amount of ₱44.00 (under the Second Cause of

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[47] Decision of the Court of Appeals, pp. 10-20; *Rollo,* pp. 37-47.

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Action) a year starting from 1952 until possession of all the aforesaid parcels of land have been delivered and restored to the plaintiffs.

SO ORDERED."[48]

Still not contented with the ruling of the respondent Court of Appeals which partly found their claims of ownership as heirs of Juan Cumayao, to be meritorious, although only insofar as the parcel of land under the Third Cause of Action is concerned, petitioners submit that the respondent appellate court committed grave abuse of discretion when it affirmed the trial court's award to private respondents of the parcels of land covered under the First and Second Causes of Action. They have assigned the following errors:

"(1) On its own, the Honorable Court of Appeals shifted, or changed, the theory of the case and the issues litigated by the parties in Civil Case No. 2728;

(2) Assuming *arguendo* that only the emphasis in the aspect of the case is changed, or altered, private respondents' claim over the *parcels* of land (described in their First Cause of Action) is based on 'TITULO PUTATIVO' and, as such, said claim ought to have been rejected;

(3) The Honorable Court of Appeals considered documentary evidence which were not formally re-offered in evidence below, or were withdraw, (sic) by private respondents; and,

(4) There is no harmony in the findings of fact in the Decision of the Court of Appeals such that it committed grave misapprehension of facts."[49]

There is no merit to the instant petition.

There are two primary issues that need to be definitively resolved in this case:

(1) May private respondents obtain ownership by acquisitive prescription over the parcels of land described under the first

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[48] Decision of the Court of Appeals, pp. 20, 22-23; *Rollo,* pp. 47, 49-50.

[49] Petition dated December 1, 1994, pp. 14-15; *Rollo,* pp. 15-16.

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and second causes of action although they, as unrecognized illegitimate children, have no inheritance rights thereto?

(2) May the trial court and the respondent Court of Appeals consider as basis for their decisions, documents that had been formally offered but were lost by fire and are thus no longer available for physical scrutiny but are adequately described in the direct testimony of the premiere witness in the case who was also cross-examined by the opposing party as regards the same documents?

Petitioners furiously take the negative side of both these issues, but they utterly fail to persuade us, as we instead believe that the trial court and the respondent Court of Appeals were correct in their findings and conclusions.

First. Petitioners insist that in order for private respondents to be qualified to become owners of the parcels of land under the first and second causes of action in accordance with our laws on acquisitive prescription, they should first have been entitled to the same parcels of land through succession because absent "successional rights from their deceased parents, private respondents have NO MODE of acquiring ownership over said properties and their possession, if any, over said properties x x x *could not ripen into ownership by prescription*"[50] (italics theirs).

Petitioners' theory is absolutely erroneous. It only takes a cursory glance at Book III of the Civil Code of the Philippines to expose the ridiculousness of this contention. Book III is entitled, "Different Modes of Acquiring Ownership" and notably, Title V thereunder is denominated, "Prescription". Needless to say, acquisitive prescription is in itself a mode of acquiring ownership over a parcel of land and does not require, as petitioners asseverate, successional or inheritance rights, in order to "ripen" into ownership.

Significantly, there is nothing on the record that discloses even an attempt by petitioners to rebut the evidence of private

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[50] Petition, pp. 17-18; *Rollo,* pp. 18-19.

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respondents as to their peaceful, continuous, adverse, and open possession in the concept of owner over the parcels of land in question from July 26, 1926 until 1948 or for twenty two (22) years. Under the applicable law at that time, which was Section 41 of the Code of Civil Procedure, Act No. 190, "ten years of actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by x x x whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title." Clearly, therefore, private respondents have become owners, by acquisitive prescription, of the parcels of land described in the first and second causes of action.

Petitioners' resort to a baseless legal argument, however, is understandable. They had never been armed with the evidence needed to prove their ownership of the subject parcels of land, and they even enhanced and confirmed private respondents' prior possession of the subject properties when their witnesses, namely, Ricardo Genel, Feliciano Cumayao, and Corazon Dagoy, failed to deny the acts of dispossession committed by petitioners against private respondents in that fateful year of 1948.

Second. It must have been starkingly obvious that the narration of the documents testified upon by private respondent Victoriano Bingcoy during the trial in September, 1964 and its continuation in July, 1966, in the first part of this *ponencia,* but which documents were lost to a courthouse fire in 1987, was not without a pre-determined purpose. That earlier narration deliberately enumerated and meticulously described each document in order to show that although said documents have no physical existence now, they were exhaustively testified upon, in the course of both direct and cross-examinations, and were properly offered in evidence by private respondents in open court, such that the trial court and the respondent appellate court could not, without committing procedural error and grave injustice, ignore their contents and their over-all import in rendering judgment.

Petitioners especially attack the inclusion of said documents by the trial court and the respondent Court of Appeals in their

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appreciation of the evidence in the instant controversy, because said documents have allegedly been withdrawn by private respondents at the behest of the petitioners. We can only surmise, however, that petitioners, by so contending with apparent desperation, are simply running out of tenable arguments.

We have carefully reviewed the records of the case and are convinced that the technical withdrawal of the documents in question, upon the insistent clamor of petitioners, does not operate to render nugatory the testimonial evidence attesting to the tenor and contents of the said documents. Neither does such a technicality work to justify the erosion, denial or annihilation of the truths undisputedly established by the questioned documents. The trial court and respondent Court of Appeals are courts of law and justice. It would be a gross subversion of their nature as such were they, in full awareness of the questioned documentary evidence proffered and marked during the hearings, affirmatively identified and unhamperedly testified to by the main witness in the case and undoubtedly formally offered by private respondents before the trial court, to consciously choose to sacrifice legalism for substantial justice.

WHEREFORE, the instant petition is HEREBY DISMISSED for lack of merit.

Costs against petitioners.

SO ORDERED.

Bellosillo, Vitug, and *Kapunan, JJ.,* concur.

Davide, Jr., (Chairman), in the result.