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just the percentage of the sale in proportion to the actual exports of the enterprise.

Petitioner further questions the validity of the requirement under Revenue Regulations No. 2-88 that BOI- and EPZA-registered enterprises must have at least 70% export sales for the sales to be qualified for zero-rating. Petitioner asserts that such requirement constitutes an amendment to the Omnibus Investment Code and the NIRC of 1986, as amended. This argument is rendered moot by the enactment of Republic Act No. 8424 or the NIRC of 1997 which incorporated the provision that the sale of raw materials or packaging materials by VAT-registered persons to an export-oriented enterprise whose export sales exceed 70% of total annual production shall be subject to 0% rate.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 19 June 2000 and the Resolution dated 24 November 2000 of the Court of Appeals in CA-G.R. SP No. 50068.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 148846. September 25, 2007]

CECILIA AMODIA *VDA. DE* MELENCION, VENERANDA AMODIA, FELIPE AMODIA, EUTIQUIO AMODIA and GO KIM CHUAN, *petitioners, vs.* **HONORABLE COURT OF APPEALS and AZNAR BROTHERS REALTY COMPANY,** *respondents.*

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SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROOF OF DOCUMENTS; A FINDING OF FORGERY DOES NOT DEPEND ENTIRELY ON THE TESTIMONIES OF HANDWRITING EXPERTS, BECAUSE THE JUDGE MUST CONDUCT AN INDEPENDENT EXAMINATION OF THE QUESTIONED SIGNATURE IN ORDER TO ARRIVE AT A REASONABLE CONCLUSION AS TO ITS AUTHORITY. — Forgery cannot be presumed. It must be proved by clear, positive and convincing evidence and the burden of proof rests on the party alleging forgery. Handwriting experts are usually helpful in the examination of forged documents because of the technical procedure involved in analyzing them. But resort to these experts is not mandatory or indispensable. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. The RTC's finding with respect to the issue of forgery reads: After a thorough study of the pleadings and evidence of the parties, the court finds that preponderance of evidence heavily tilts in favor of the defendants. The document relied upon by the plaintiff in its claim of ownership over the land in question, the extrajudicial partition and sale, has been found by the document examiner of the PC Crime Laboratory to be a forgery. Being a forgery, said document conveyed nothing in favor of the plaintiff. Hence, plaintiff's claim of ownership over the same has no more leg to stand on. . . . While it is true that the original document was produced before the RTC, the finding of forgery relies wholly on the testimony of the document examiner. It falls short of the required independent examination to be conducted by the trial court judge. Other than the statement of the document examiner, the RTC decision contains no other basis to support its conclusion of the existence of forgery. Accordingly, the CA was correct in rejecting the RTC's finding and in applying the doctrine laid down in the case of *Heirs of Severa Gregorio v. CA.*

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; DOUBLE SALE OF IMMOVABLE PROPERTY; REGISTRATION IN GOOD FAITH; REGISTRATION UNDER ACT 3344 IS NOT THE REGISTRATION CONTEMPLATED IN ARTICLE 1544 OF THE CIVIL CODE; ACT 3344 ONLY PROVIDES FOR THE

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SYSTEM OF RECORDING OF TRANSACTIONS OR CLAIMS OVER UNREGISTERED REAL ESTATES WITHOUT PREJUDICE TO A THIRD PARTY WITH A BETTER RIGHT. — Without doubt, we have here a case of double sale of registered land. *Apropos* is Article 1544 of the New Civil Code which provides: ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property. Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property. Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. We have already ruled that the registration contemplated in this provision refers to registration under the Torrens System, which considers the act of registration as the operative act that gives validity to the transfer or creates a lien upon the land. This rule precisely applies to cases involving conflicting rights over registered property and those of innocent transferees who relied on the clean title of the properties. Thus, we held that registration must be done in the proper registry in order to bind the same. In the case at bench, it is uncontroverted that the subject property was under the operation of the Torrens System even before the respective conveyances to AZNAR and Go Kim Chuan were made. AZNAR knew of this, and admits this as fact. Yet, despite this knowledge, AZNAR registered the sale in its favor under Act 3344 on the contention that at the time of sale, there was no title on file. We are not persuaded by such a lame excuse. Act 3344 provides for the system of recording of transactions or claims over unregistered real estate without prejudice to a third party with a better right. But if the land is registered under the Land Registration Act (and therefore has a Torrens Title), and it is sold and the sale is registered not under the Land Registration Act but under Act 3344, as amended, such sale is not considered registered, as the term is used under Art. 1544 of the New Civil Code. In this case, since the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale in favor of AZNAR was registered under Act No. 3344 and not under Act No. 496, the said document is

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deemed not registered. Rather, it was the sale in favor of Go Kim Chuan which was registered under Act No. 496.

3. ID.; ID.; ID.; ID.; THE FACT THAT THE CERTIFICATE OF TITLE OVER THE SUBJECT REGISTERED LAND IS LOST DOES NOT CONVERT IT TO UNREGISTERED LAND; A CERTIFICATE OF TITLE IS MERELY AN EVIDENCE OF OWNERSHIP OR TITLE OVER THE PARTICULAR PROPERTY DESCRIBED THEREIN. — AZNAR insists that since there was no Torrens title on file in 1964, insofar as the vendors, AZNAR, and the Register of Deeds are concerned, the subject property was unregistered at the time. The contention is untenable. The fact that the certificate of title over the registered land is lost does not convert it into unregistered land. After all, a certificate of title is merely an evidence of ownership or title over the particular property described therein. This Court agrees with the petitioners that AZNAR should have availed itself of the legal remedy of reconstitution of the lost certificate of title, instead of registration under Act 3344. We note that in *Aznar Brothers Realty Company v. Aying*, AZNAR, beset with the similar problem of a lost certificate of title over a registered land, sought the reconstitution thereof. It is unfortunate that, in the instant case, despite the sale of the subject property way back in 1964 and the existence of the remedy of reconstitution at that time, AZNAR opted to register the same under the improper registry (Act 3344) and allowed such status to lie undisturbed. From 1964 to 1989, AZNAR did not bother to have the lost title reconstituted or even have the subject property declared under its name for taxation purposes. *Vigilantibus, non dormientibus, jura subveniunt.* Laws must come to the assistance of the vigilant, not of the sleepy.

4. ID.; ID.; ID.; ID.; A BUYER IS NOT BOUND BY AN ADVERSE CLAIM WHICH WAS NOT PREVIOUSLY ANNOTATED ON A LOST TITLE OR ON THE NEW ONE OR TO BE SHACKLED BY A CLAIM WHICH HE DID NOT HAVE ANY KNOWLEDGE OF; CASE AT BAR. — Inscription of an adverse claim serves as a warning to third parties dealing with a piece of real property that someone claims an interest therein or that there is a right superior to that of the titled owner. However, as pointed out by petitioners and as admitted by AZNAR, the Notice of Adverse Claim was annotated on

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TCT No. 20626 only on February 4, 1990, after the lost certificate of title was reconstituted and after the issuance of said TCT in the name of Go Kim Chuan on December 1, 1989. It is, therefore, absurd to say that Go Kim Chuan should be bound by an adverse claim which was not previously annotated on the lost title or on the new one, or be shackled by a claim which he did not have any knowledge of.

5. ID.; ID.; ID.; ID.; RELIANCE IN *SANTIAGO V. COURT OF APPEALS* IS MISPLACED. — Citing *Santiago v. Court of Appeals,* AZNAR contends that even if the adverse claim was annotated on TCT No. 20626 only on February 4, 1990, the prior registration of the sale in its favor under Act 3344 served as constructive notice to Go Kim Chuan and thus negates the latter's claim of good faith, since the Court held in that case, "Registration, however, by the first buyer under Act 3344 can have the effect of constructive notice to the second buyer that can defeat his right as such buyer in good faith." AZNAR's reliance on *Santiago* is misplaced. In *Santiago*, the first buyers registered the sale under the Torrens System, as can be inferred from the issuance of the TCT in their names. There was no registration under Act 3344. Conversely, in the instant case, AZNAR registered the sale in its favor under Act 3344 despite its full knowledge that the subject property is under the operation of the Torrens System. To repeat, there can be no constructive notice to the second buyer through registration under Act 3344 if the property is registered under the Torrens system.

6. ID.; ID.; ID.; ID.; FACTS SHOWING GOOD FAITH ON THE PART OF PETITIONER IN BUYING THE SUBJECT PROPERTY. — Before buying the subject property, Go Kim Chuan made verifications with the Office of the City Assessor of Lapu-Lapu City and the Register of Deeds. He likewise visited the premises of the subject property and found that nobody interposed any adverse claim against the Amodias. After he decided to buy the subject property, he paid all taxes in arrears, caused the publication of the Deed of Extra-Judicial Settlement with Absolute Sale in a newspaper of general circulation, caused the reconstitution of the lost certificate of title and caused the issuance of the assailed TCT in his name. Given these antecedents, good faith on the part of Go Kim Chuan cannot be doubted.

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7. ID.; ID.; ID.; ID.; RESPONDENT'S COMPLAINT CONTAINS NO ALLEGATION OF BAD FAITH ON THE PART OF THE PURCHASER. — We also note that AZNAR's complaint for cancellation of title contains no allegation that the (second) purchaser was aware of defects in his title. In the absence of such an allegation and proof of bad faith, it would be grossly inappropriate for this Court to render judgment against the purchaser who had already acquired title not only because of lack of evidence, but also because of the indefeasibility and conclusiveness of such title.

8. ID.; LAND REGISTRATION; TORRENS CERTIFICATE OF TITLE; THE TORRENS SYSTEM WAS ADOPTED IN THE COUNTRY BECAUSE IT WAS BELIEVED TO BE THE MOST EFFECTIVE MEASURE TO GUARANTY THE INTEGRITY OF LAND TITLES AND INSURE THEIR INDEFEASIBILITY ONCE THE CLAIM OF OWNERSHIP IS ESTABLISHED AND RECOGNIZED. — It is worth stressing that the Torrens system was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to insure their indefeasibility once the claim of ownership is established and recognized. If a person purchases a piece of land on the assurance that the seller's title thereto is valid, he should not run the risk of losing his acquisition. If this were permitted, public confidence in the system would be eroded and land transactions would have to be attended by complicated and not necessarily conclusive investigations and proof of ownership.

APPEARANCES OF COUNSEL

Richard W. Sison & Associates for petitioners.
Rolindo Navarro for private respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal

[1] Dated June 23, 2001, *rollo*, pp. 4-32.

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of the Court of Appeals (CA) Decision [2] dated March 30, 2001 and praying that the Decision[3] of the Regional Trial Court (RTC) of Lapu-Lapu City, dated February 18, 1993, be upheld.

The Facts

The subject property is a 30,351 square meter parcel of land (subject property) particularly denominated as Lot No. 3368, located at Suba-basbas, Marigondon, Lapu-Lapu City, Cebu, and part of a total area of 30,777 square meters covered by Transfer Certificate of Title (TCT) No. 20626[4] (entire property) in the name of the late petitioner Go Kim Chuan (Go Kim Chuan).[5]

The entire property was originally owned by Esteban Bonghanoy[6] who had only one child, Juana Bonghanoy-Amodia,[7] mother of the late Leoncia Amodia and petitioners Cecilia Amodia *Vda. de* Melencion, Veneranda Amodia, Felipe Amodia, and Eutiquio Amodia[8] (the Amodias). The entire property was brought under the operation of the Torrens System.[9] However, the title thereto was lost during the Second World War.

On July 10, 1964, the Amodias allegedly executed an Extra-Judicial Partition of Real Estate with Deed of Absolute Sale[10] whereby they extra-judicially settled the estate of Esteban

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[2] Particularly docketed as CA-G.R. C.V. No. 51814, penned by Associate Justice B.A. Adefuin-Dela Cruz (now retired), with Associate Justices Andres B. Reyes, Jr. and Josefina Guevara-Salonga, concurring; *id*. at 34-42.

[3] Particularly docketed as Civil Case No. 2254-L; *id*. at 82-87.

[4] *Id*. at 72-73.

[5] Go Kim Chuan died on March 26, 1997 as evidenced by his death certificate dated June 28, 2001; *id*. at 71.

[6] Also referred to as Esteban Bunghanoy in other pleadings and documents.

[7] Also referred to as Juana Bunghanoy in other pleadings and documents.

[8] Also referred to as Eustaquio Amodia in other pleadings and documents.

[9] Act No. 496 (1903) or the Land Registration Act, now Presidential Decree No. 1529 (1978) or the Property Registration Decree.

[10] *Rollo*, p. 77.

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Bonghanoy and conveyed the subject property to respondent Aznar Brothers Realty Company (AZNAR) for a consideration of ₱10,200.00. On August 10, 1964, the said Extra-Judicial Partition of Real Estate with Deed of Absolute Sale was registered under Act 3344[11] as there was no title on file at the Register of Deeds of Lapu-Lapu City (Register of Deeds). Thereafter, AZNAR made some improvements and constructed a beach house thereon.

On February 18, 1989, petitioners Cecilia Amodia *Vda. de* Melencion, Veneranda Amodia, Felipe Amodia and Eutiquio Amodia[12] (petitioners Amodias) executed a Deed of Extra-Judicial Settlement with Absolute Sale,[13] conveying the subject property in favor of Go Kim Chuan for and in consideration of ₱70,000.00. The lost title covering the subject property was reconstituted pursuant to Republic Act (RA) No. 26.[14] A reconstituted title particularly designated as Original Certificate of Title (OCT) No. RO-2899 was issued in the name of Esteban Bonghanoy[15] and, subsequently, a derivative title (TCT No. 20626) was issued in the name of Go Kim Chuan on December 1, 1989. Thereafter, Go Kim Chuan exercised control and dominion over the subject property in an adverse and continuous manner and in the concept of an owner.

On February 14, 1990, AZNAR wrote a letter[16] to petitioners Amodias asking the latter to withdraw and/or nullify the sale entered into between them and Go Kim Chuan. On the same

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[11] Act No. 3344 is the law amending Act No. 2837, which in turn amended Section 194 of the Administrative Code, otherwise known as the SYSTEM OF RECORDING FOR UNREGISTERED REAL ESTATE.

[12] Leoncia Amodia, at the time of the execution of said Deed, already passed away. She died single and without issue.

[13] *Rollo*, pp. 78-79.

[14] Entitled: AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED and approved on September 25, 1946.

[15] *Supra* note 3.

[16] CA *rollo*, p. 27.

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date, a Notice of Adverse Claim[17] was annotated by AZNAR on TCT No. 20626. Because petitioners did not heed AZNAR's demand, on April 25, 1990, AZNAR filed a case against petitioners Amodias and Go Kim Chuan for Annulment of Sale and Cancellation of TCT No. 20626[18] alleging that the sale to Go Kim Chuan was an invalid second sale of the subject property which had earlier been sold to it. Petitioners Amodias denied that they executed the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale in favor of AZNAR, claiming that their purported signatures thereon were forged.[19] Trial on the merits ensued.

The RTC's Decision

On February 18, 1993, the RTC dismissed AZNAR's complaint and declared Go Kim Chuan as the real owner of the subject property. The RTC ratiocinated that the signatures of the Amodias in the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale executed in favor of AZNAR were found by the document examiner of the Philippine Constabulary (PC) Crime Laboratory to be forged, thus, the said deed did not convey anything in favor of AZNAR. Moreover, the subject property had been brought under the Land Registration Act; hence, all transactions involving the same should have complied with the said law. Finally, the RTC held that AZNAR failed to show that Go Kim Chuan acquired the subject property in bad faith.

Aggrieved, AZNAR appealed the RTC Decision to the CA.[20]

The CA's Decision

On March 30, 2001, the CA rendered a Decision holding that the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale executed by the Amodias in favor of AZNAR

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[17] Particularly denominated as Entry No. 994-V-VIII-D.B. made by Ateniso Coronado, Assistant Administrator of AZNAR, record, p. 8.

[18] Complaint for Civil Case No. 2254-L, *rollo*, pp. 74-76.

[19] Answer for Civil Case No. 2254-L, records, pp. 10-13.

[20] Notice of Appeal, *id.* at 93.

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was registered ahead of the Deed of Extra-Judicial Settlement with Absolute Sale in favor of Go Kim Chuan, thus, pursuant to Article 1544 of the New Civil Code, the former deed should be given preference over the latter; that AZNAR's adverse claim was annotated earlier than the execution of the Deed of Extra-Judicial Settlement with Absolute Sale in favor of Go Kim Chuan; hence, the latter should have respected said adverse claim and should have made inquiries as to possible defects that may exist in the title over the subject property; and that in the absence of a final determination by a court of proper jurisdiction on the alleged forged signatures of the Amodias in the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale, the finding of the document examiner was insufficient for the RTC to rule in favor of the petitioners.

The CA disposed of the case in this wise:

WHEREFORE, premises considered, the assailed decision dated February 18, 1993 of the Regional Trial Court of Lapu-Lapu City, Branch 27, in Civil Case No. 2254-L is hereby **REVERSED** and **SET ASIDE** and a new one is hereby entered as follows:

(1) Declaring plaintiff-appellant Aznar Brothers Realty Company as the real owner of the land in question;

(2) Declaring both the Deed of Extra-judicial Settlement with Absolute Sale dated February 1, 1989 executed by Felipe Amodia, Cecilia Amodia, Veneranda A. Ibag and Eustaquio Amodia in favor of Go Kim Chuan and the Transfer Certificate of Title No. 20626 in the name of Go Kim Chuan as **NULL AND VOID**;

(3) Ordering Go Kim Chuan to deliver to the aforesaid plaintiff-appellant the possession of the land in question and to execute a registrable deed of conveyance of the subject property to the said plaintiff-appellant.

No costs.

SO ORDERED.[21]

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[21] *Rollo*, p. 42.

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Petitioners filed a Motion for Reconsideration[22] which the CA denied in its Resolution[23] dated June 5, 2001.

Hence, this Petition based on the following grounds:

I

Lot 3368 was already a registered land under Act 496, thus, the registration by respondent of the Deed of Sale in 1964 under Act 3344 produces no legal effect whatsoever;

II

Even assuming *arguendo* that the lot in question was duly registered under Act 3344 as an unregistered land, it is without prejudice to better rights and the provision of Article 1544 of the New Civil Code would be inapplicable;

III

The Honorable Court of Appeals erred in holding that an adverse claim was already existing at the time the subject land was sold to petitioner Go Kim Chuan; on the contrary, the latter had purchased the said land in good faith and for value, without notice of any fact that would reasonably impel a closer inquiry as to the possibility of a defect in the vendor's title; and

IV

The Court of Appeals has misapplied the case of *Heirs of Severa Gregorio v. CA, 300 SCRA 565,* cited in support of its ruling that the court *a quo* committed error in appreciating the testimony of an expert witness as to the forgery of the first Deed of Sale.[24]

In its Comment[25] dated September 18, 2001, AZNAR argued, among others, that the Petition is dismissible because the Verification and Certification of Non-forum Shopping were not signed by all the petitioners, invoking this Court's Decision in the case of *Loquias v. Office of the Ombudsman*,[26] that the

[22] *Id*. at 47-59.

[23] *Id*. at 45.

[24] *Id*. at 17-19.

[25] *Id*. at 90-104.

[26] 392 Phil. 596 (2000).

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same were signed only by one April Socorro Go, daughter of the late Go Kim Chuan, who did not even appear to be authorized to file the instant case in behalf of the other petitioners.

In their Reply[27] dated October 22, 2001, petitioners contended that April Socorro Go is one of the legitimate children and an heir of the late Go Kim Chuan and, as such, she has personal knowledge of the truth of the facts alleged in the Petition. Petitioners submitted that they substantially complied with the Rules of Court by attaching the required Verification and Certification of Non-Forum Shopping and since the same are required simply to facilitate and promote the orderly administration of justice, compliance therewith should not be imposed with absolute literalness.

On December 19, 2001, petitioners, through counsel, filed a Motion[28] for Leave to Admit Amended Petition[29] for Review on *Certiorari* (Amended Petition). Petitioners manifested that they were seeking to correct a defect in the designation of parties and prayed that the Heirs of Go Kim Chuan, namely, Estrella S. Go, Sonia Beth Go-Reynes, Daryl Go, and April Socorro Go be impleaded as petitioners instead of the earlier designated petitioners, Cecilia Amodia *Vda. de* Melencion, Veneranda Amodia, Felipe Amodia, Eutiquio Amodia, and Go Kim Chuan. Counsel for petitioners admitted that he inadvertently included the petitioners Amodias in the initial Petition for Review on *Certiorari* (Original Petition), as they were parties before the RTC and CA. The counsel also manifested that he was only representing the Heirs of Go Kim Chuan in this case. Lastly, he claimed that other than the substitution of the original petitioners, both the Original Petition and Amended Petition uniformly raised the same issues and should be given due course in the greater interest of justice and that the instant Motion was not interposed for delay.

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[27] *Rollo*, pp. 107-114.

[28] *Id.* at 118-120.

[29] *Id.* at 121-148.

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Per directive of the Court,[30] AZNAR filed its Comment[31] on the said motion wherein AZNAR manifested that it had no serious objection to the admission of the Amended Petition if the same was intended merely to implead the Heirs of Go Kim Chuan as petitioners. However, AZNAR interposed strong opposition to the Amended Petition's admission since the names of the petitioners Amodias were deleted without their written consent.

In their Reply,[32] the Heirs of Go Kim Chuan, through counsel, claimed that petitioners Amodias were excluded from the Amended Petition because they can no longer be located despite diligent efforts exerted by counsel. The counsel claims that after the rendition of the assailed CA Decision, he sent several letters to petitioners Amodias but they did not reply; hence, the Heirs of Go Kim Chuan, left with no choice, filed the instant case before this Court on their own.

The Court issued a Resolution[33] dated September 16, 2002 giving due course to the Petition and requiring the parties to submit their respective Memoranda.

In their Memorandum,[34] pititioners Heirs of Go Kim Chuan reiterate the same issues raised in the Original Petition and the Amended Petition. They argue that Act 3344 only refers to transactions affecting lands or interests therein not previously registered under the Spanish Mortgage Law or under the Torrens system; that if AZNAR could not have registered the sale in 1964 under Act 496 because the title over the subject property was lost, AZNAR should have availed itself of the remedy of reconstitution; that registration under Act 3344 is without legal effect and could not operate as constructive notice to petitioners and third persons, hence, may not be used as basis for the application of Art. 1544 of the New Civil Code; that the Notice

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[30] Resolution dated January 28, 2002; *id*. at 202.

[31] *Rollo*, pp. 203-206.

[32] *Id*. at 213-217.

[33] *Id*. at 219-220.

[34] *Id*. at 221-248.

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of Adverse Claim of AZNAR was annotated on TCT No. 20626 only on February 14, 1990 after the execution of the Deed of Extra-Judicial Settlement with Absolute Sale in favor of Go Kim Chuan on February 18, 1989, hence, the CA erred when it held that Go Kim Chuan was not a buyer in good faith for supposedly having knowledge of such adverse claim; and that the doctrine laid down in *Heirs of Severa Gregorio v. CA*[35] is inapplicable since it referred to a case wherein the original copy of the document under review was not produced in evidence while in the instant case, the original copy of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale executed by the Amodias in favor of AZNAR was presented before the trial court judge.

On the other hand, in its Memorandum,[36] AZNAR maintains that the Original Petition is dismissible because the Verification and Certification of Non-Forum Shopping thereof were not signed by all the petitioners. AZNAR further claims that the Amended Petition was filed in order to cure a fatal defect which should not be countenanced by this Court. AZNAR also contends that Go Kim Chuan was a buyer in bad faith as he had prior constructive notice that the subject property was sold to AZNAR because the sale was registered with the Register of Deeds under Act 3344; that the 1964 sale was registered under Act 3344 because the subject property was not actually covered by a Torrens title at the time; that there was no other mode of registration except under Act 3344; that Go Kim Chuan had to wait for the reconstitution of the lost title, hence, it could not be said that he examined any certificate of title and could feign ignorance of the sale in favor of AZNAR; that the second sale did not transfer the subject property to Go Kim Chuan since it was no longer within the vendors' power to convey; that with respect to the issue of forgery, the finding of the document examiner is not conclusive; and that such issue was belied by petitioner Veneranda Amodia herself when she declared that the negotiated sale in 1964 between AZNAR and the Amodias

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[35] G.R. No. 117609, December 29, 1998, 300 SCRA 565.

[36] *Id.* at 303-318.

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was not consummated because the latter did not receive the full consideration for the subject property.

Before resolving the main issues raised, the Court shall first deal with an apparent procedural lapse in this case.

Counsel for petitioners filed a Motion for Leave to Admit Amended Petition for Review on *Certiorari* in order to implead the Heirs of the late Go Kim Chuan as the new petitioners and to delete the names of petitioners Amodias because they could no longer be located. Said petitioners sought the relaxation of the rules so that in the interest of justice, the case can be decided on the merits. AZNAR opposes the Amended Petition because it was allegedly filed to cure a fatal defect in the original petition — non-compliance with the rules on Verification and Certification of Non-Forum Shopping.

In this regard, the case of *Iglesia ni Cristo v. Ponferrada*[37] is instructive, *viz.*:

> The purpose of verification is simply to secure an assurance that the allegations of the petition (or complaint) have been made in good faith; or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render it fatally defective. Indeed, verification is only a formal, not a jurisdictional requirement.
>
> The issue in the present case is not the lack of verification but the sufficiency of one executed by only one of plaintiffs. This Court held in *Ateneo de Naga University v. Manalo*, that the verification requirement is deemed substantially complied with when, as in the present case, only one of the heirs-plaintiffs, who has sufficient knowledge and belief to swear to the truth of the allegations in the petition (complaint), signed the verification attached to it. Such verification is deemed sufficient assurance that the matters alleged in the petition have been made in good faith or are true and correct, not merely speculative.
>
> The same liberality should likewise be applied to the certification against forum shopping. The general rule is that the certification

[37] G.R. No. 168943, October 27, 2006, 505 SCRA 828, 840-841, citing *Ateneo de Naga University v. Manalo*, 458 SCRA 325 (2005).

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must be signed by all plaintiffs in a case and the signature of only one of them is insufficient. However, the Court has also stressed in a number of cases that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.

Thus, we held in *Iglesia ni Cristo* that the commonality of interest is material and crucial to relaxation of the Rules.

In the case at bench, the petitioners in the Amended Petition are Heirs of the late Go Kim Chuan. They represent their predecessor-in-interest in whose favor a title was issued covering the subject property and said title is sought to be canceled by AZNAR. Clearly, there is presence of the commonality of interest referred to in *Iglesia ni Cristo*. Under the circumstances, the rules may be reasonably and liberally construed to avoid a patent denial of substantial justice, because it cannot be denied that the ends of justice are better served when cases are determined on the merits — after all parties are given full opportunity to ventilate their causes and defenses — rather than on technicality or some procedural imperfections.[38]

The Issues

We now proceed to the merits of the case. From the issues raised, there are ultimately two questions that require resolution:

First, did the CA misapply the doctrine in *Heirs of Severa Gregorio v. CA* in ruling that the RTC committed an error in appreciating the testimony of an expert witness as to the forgery of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale?

Second, who between Go Kim Chuan and AZNAR has the better right over the subject property?

[38] *Id*. at 843.

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We resolve the first question in the negative.

Forgery cannot be presumed. It must be proved by clear, positive and convincing evidence and the burden of proof rests on the party alleging forgery. Handwriting experts are usually helpful in the examination of forged documents because of the technical procedure involved in analyzing them. But resort to these experts is not mandatory or indispensable. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because **the judge must conduct an independent examination** of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.[39]

The RTC's finding with respect to the issue of forgery reads:

> After a thorough study of the pleadings and evidence of the parties, the court finds that preponderance of evidence heavily tilts in favor of the defendants. The document relied upon by the plaintiff in its claim of ownership over the land in question, the extrajudicial partition and sale, has been found by the document examiner of the PC Crime Laboratory to be a forgery. Being a forgery, said document conveyed nothing in favor of the plaintiff. Hence, plaintiff's claim of ownership over the same has no more leg to stand on. x x x[40]

While it is true that the original document was produced before the RTC, the finding of forgery relies wholly on the testimony of the document examiner. It falls short of the required independent examination to be conducted by the trial court judge. Other than the statement of the document examiner, the RTC decision contains no other basis to support its conclusion of the existence of forgery. Accordingly, the CA was correct in rejecting the RTC's finding and in applying the doctrine laid down in the case of *Heirs of Severa Gregorio v. CA*.

However, we resolve the second question in favor of Go Kim Chuan.

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[39] *Jimenez v. Commission on Ecumenical Mission and Relations of the United Presbyterian Church in the USA*, 432 Phil. 895, 907 (2002), citing *Heirs of Severa Gregorio v. CA*, *supra* note 35. (Emphasis supplied).

[40] Record, pp. 90-91.

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Without doubt, we have here a case of double sale of registered land. *Apropos* is Article 1544 of the New Civil Code which provides:

> ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

We have already ruled that the registration contemplated in this provision refers to registration under the Torrens System, which considers the act of registration as the operative act[41] that gives validity to the transfer or creates a lien upon the land.[42] This rule precisely applies to cases involving conflicting rights over registered property and those of innocent transferees who relied on the clean title of the properties.[43] Thus, we held that registration must be done in the proper registry in order to bind the same.[44]

In the case at bench, it is uncontroverted that the subject property was under the operation of the Torrens System even before the respective conveyances to AZNAR and Go Kim Chuan were made. AZNAR knew of this, and admits this as fact. Yet,

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[41] *Naval v. Court of Appeals*, G.R. No. 167412, February 22, 2006, 483 SCRA 102, 110.

[42] *Naawan Community Rural Bank Inc. v. Court of Appeals*, 443 Phil. 56, 64 (2003).

[43] *Aznar Brothers Realty Company v. Court of Appeals*, 384 Phil. 95, 113-114 (2000).

[44] *Soriano v. Heirs of Magali*, 118 Phil. 505, 511 (1963), citing Secs. 50 and 51 of Act 496.

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despite this knowledge, AZNAR registered the sale in its favor under Act 3344 on the contention that at the time of sale, there was no title on file. We are not persuaded by such a lame excuse.

Act 3344 provides for the system of recording of transactions or claims over unregistered real estate[45] without prejudice to a third party with a better right.[46] But if the land is registered under the Land Registration Act (and therefore has a Torrens Title), and it is sold and the sale is registered not under the Land Registration Act but under Act 3344, as amended, such sale is **not considered registered**, as the term is used under Art. 1544 of the New Civil Code.[47]

In this case, since the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale in favor of AZNAR was registered under Act No. 3344 and not under Act No. 496, the said document is deemed not registered.[48] Rather, it was the sale in favor of Go Kim Chuan which was registered under Act No. 496.

AZNAR insists that since there was no Torrens title on file in 1964, insofar as the vendors, AZNAR, and the Register of Deeds are concerned, the subject property was unregistered at the time. The contention is untenable. The fact that the certificate of title over the registered land is lost does not convert it into unregistered land. After all, a certificate of title is merely an evidence of ownership or title over the particular property described therein.[49] This Court agrees with the petitioners that AZNAR should have availed itself of the legal remedy of

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[45] *Tapec v. Court of Appeals*, G.R. No. 111952, October 26, 1994, 237 SCRA 749, 757.

[46] *Radiowealth Finance Co. v. Palileo*, 274 Phil. 516 (1991).

[47] *Abrigo v. De Vera*, G.R. No. 154409, June 21, 2004, 432 SCRA 544, 552, citing Paras, *Civil Code of the Philippines Annotated* (1990), Vol. V, p. 154. (Emphasis supplied)

[48] *Aznar Brothers Realty Company v. Aying*, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 501.

[49] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, 377 (2003).

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reconstitution of the lost certificate of title, instead of registration under Act 3344. We note that in *Aznar Brothers Realty Company v. Aying*,[50] AZNAR, beset with the similar problem of a lost certificate of title over a registered land, sought the reconstitution thereof. It is unfortunate that, in the instant case, despite the sale of the subject property way back in 1964 and the existence of the remedy of reconstitution at that time, AZNAR opted to register the same under the improper registry (Act 3344) and allowed such status to lie undisturbed. From 1964 to 1989, AZNAR did not bother to have the lost title reconstituted or even have the subject property declared under its name for taxation purposes. *Vigilantibus, non dormientibus, jura subveniunt*. Laws must come to the assistance of the vigilant, not of the sleepy.[51]

Although it is obvious that Go Kim Chuan registered the sale in his favor under Act 496 while AZNAR did not, we still cannot make an outright award of the subject property to the petitioners solely on that basis. For the law is clear: mere registration of title is not enough. Good faith must accompany the registration.

Thus, to be able to enjoy priority status, the second purchaser must be in good faith, *i.e.*, he must have no knowledge of the previous alienation of the property by the vendor to another. Notably, what is important for this purpose is not whether the second buyer is a buyer in good faith, but whether he registers the second sale in good faith, meaning, he does so without knowledge of any defect in the title over the property sold.[52]

To fully resolve the second question, therefore, it is imperative that we determine whether Go Kim Chuan was a registrant in good faith.

The CA found that AZNAR registered its Notice of Adverse Claim ahead of the Deed of Extra-Judicial Settlement with Absolute

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[50] *Supra* note 48.

[51] *Claverias v. Quingco,* G.R. No. 77744, March 6, 1992, 207 SCRA 66, 84.

[52] *Blanco v. Rivera,* G.R. No. 145878, April 25, 2006, 488 SCRA 148, 154, citing *Bayoca v. Nogales*, 340 SCRA 154 (2000).

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Sale in favor of Go Kim Chuan. Because of this, the CA declared that Go Kim Chuan was not a buyer in good faith, because he should have respected such adverse claim or, at least, inquired into the validity thereof.

We do not agree.

While factual issues are not within the province of this Court, as it is not a trier of facts and is not required to examine the oral and documentary evidence *de novo*, this Court has the authority to review and, in proper cases, reverse the factual findings of lower courts in the following instances: (a) when the findings of fact of the trial court are in conflict with those of the appellate court; (b) when the judgment of the appellate court is based on a misapprehension of facts; and, (c) when the appellate court manifestly overlooked certain relevant facts which, if properly considered, would justify a different conclusion.[53]

The instant case falls squarely within the foregoing exceptions.

Concededly, inscription of an adverse claim serves as a warning to third parties dealing with a piece of real property that someone claims an interest therein or that there is a right superior to that of the titled owner.[54] However, as pointed out by petitioners and as admitted by AZNAR, the Notice of Adverse Claim was annotated on TCT No. 20626 only on February 4, 1990, after the lost certificate of title was reconstituted and after the issuance of said TCT in the name of Go Kim Chuan on December 1, 1989. It is, therefore, absurd to say that Go Kim Chuan should be bound by an adverse claim which was not previously annotated on the lost title or on the new one, or be shackled by a claim which he did not have any knowledge of.

Citing *Santiago v. Court of Appeals*,[55] AZNAR contends that even if the adverse claim was annotated on TCT No. 20626 only on February 4, 1990, the prior registration of the sale in

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[53] *Tan v. Court of Appeals,* 421 Phil. 134, 141-142 (2001).

[54] *Velasquez, Jr. v. Court of Appeals,* G.R. Nos. 138480 and 139449, March 25, 2004, 426 SCRA 309, 314.

[55] 317 Phil. 400, 414 (1995).

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its favor under Act 3344 served as constructive notice to Go Kim Chuan and thus negates the latter's claim of good faith, since the Court held in that case, "Registration, however, by the first buyer under Act 3344 can have the effect of constructive notice to the second buyer that can defeat his right as such buyer in good faith."

AZNAR's reliance on *Santiago* is misplaced. In *Santiago*, the first buyers registered the sale under the Torrens System, as can be inferred from the issuance of the TCT in their names. There was no registration under Act 3344. Conversely, in the instant case, AZNAR registered the sale in its favor under Act 3344 despite its full knowledge that the subject property is under the operation of the Torrens System. To repeat, there can be no constructive notice to the second buyer through registration under Act 3344 if the property is registered under the Torrens system.[56]

Moreover, before buying the subject property, Go Kim Chuan made verifications with the Office of the City Assessor of Lapu-Lapu City and the Register of Deeds. He likewise visited the premises of the subject property and found that nobody interposed any adverse claim against the Amodias. After he decided to buy the subject property, he paid all taxes in arrears, caused the publication of the Deed of Extra-Judicial Settlement with Absolute Sale in a newspaper of general circulation, caused the reconstitution of the lost certificate of title and caused the issuance of the assailed TCT in his name.[57] Given these antecedents, good faith on the part of Go Kim Chuan cannot be doubted.

We also note that AZNAR's complaint for cancellation of title contains no allegation that the (second) purchaser was aware of defects in his title. In the absence of such an allegation and proof of bad faith, it would be grossly inappropriate for this Court to render judgment against the purchaser who had already acquired title not only because of lack of evidence, but

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[56] *Abrigo v. De Vera*, *supra* note 47, at 557.

[57] *Supra* note 19, at 11-12.

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also because of the indefeasibility and conclusiveness of such title.[58]

Finally, it is worth stressing that the Torrens system was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to insure their indefeasibility once the claim of ownership is established and recognized. If a person purchases a piece of land on the assurance that the seller's title thereto is valid, he should not run the risk of losing his acquisition. If this were permitted, public confidence in the system would be eroded and land transactions would have to be attended by complicated and not necessarily conclusive investigations and proof of ownership.[59]

WHEREFORE, the instant petition for review is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 51814 is *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court of Lapu-Lapu City, Branch 27, in Civil Case No. 2254-L, is *REINSTATED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.,* concur.

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[58] *Velasquez, Jr. v. Court of Appeals*, *supra* note 54, at 315, citing *Chu, Sr. v. Benelda Estate*, 353 SCRA 424 (2001).

[59] *Republic v. Guerrero*, G.R. No. 133168, March 28, 2006, 485 SCRA 424, 444.