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from private lands, for taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares, tax statutes being construed *strictissimi juris* against the government.[16]

WHEREFORE, premises considered, the instant petition is *DISMISSED* for lack of merit and the decision of the Court of Appeals is hereby *AFFIRMED in toto*. Costs against petitioners.

SO ORDERED.

Narvasa, C.J. (Chairman), Kapunan, Purisima, and *Pardo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 131466. November 27, 1998]

CRISTINA DIMAN, CLARISSA DIMAN, GEORGE DIMAN, FELIPE DIMAN and FLORINA DIMAN, *petitioners, vs.* **HON. FLORENTINO M. ALUMBRES, PRESIDING JUDGE, REGIONAL TRIAL COURT, LAS PIÑAS, BRANCH 255; HEIRS OF VERONICA V. MORENO LACALLE, REPRESENTED BY JOSE MORENO LACALLE,** *respondents.*

SYNOPSIS

This is a petition for review on *certiorari* filed by herein petitioners assailing the September 9, 1997 decision of the Court of Appeals affirming the trial court's orders of June 14, 1995 and December 2, 1996 and not commanding the trial judge to dismiss the action for Quieting of Title and Damages filed by private respondents against them and not prohibiting

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[16] *Republic v. IAC,* 196 SCRA 335 (1991).

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the said judge from conducting further proceedings in the case. In its Order of June 14, 1995, the Regional trial Court of Las Piñas denied petitioners' Motion for Summary Judgment declaring that a perusal of the Complaint and Answer will clearly show that material issue is raised in that both private respondents and petitioners claimed ownership over the land in dispute, presenting their respective titles thereto and accused each other of possessing false title to the land. The trial Court further held that a summary judgement is not proper where the defendant presented defenses tendering factual issues which call for the presentation of evidence. In its order of December 2, 1996, the trial court denied petitioners' Motion for Judgment on Demurrer to Evidence holding that the execution of a deed of conveyance in a certain prescribed form gave effect to the transfer of a title to the land conveyed and without being controverted by any convincing evidence to the contrary can be a sufficient basis in granting private respondents' relief for quieting of their title. The Supreme Court dismissed the petition but on motion for reconsideration filed by the petitioners, the Court reinstated the petition.

The Supreme Court held that the grounds relied on by the trial judge were proper for the denial of a motion for judgment on the pleadings but not as regards a motion for summary judgment. Moreover, the Court found that private respondents had proven nothing whatever to justify a judgment in their favor. They had not presented any copy whatever of the title they wished to be quieted. They had not adduced any proof worthy of the name to establish their predecessors' ownership of the land. On the contrary, their own evidence indicated their lack of title over the land, or the spuriousness of their claim of ownership thereof. The evidence on record could not be interpreted in any other way, and no other conclusion could be drawn therefrom except the unmeritoriousness of the complaint. The case at bar is a classic example of the eminent propriety of a summary judgment or a judgment on demurrer to evidence. Considering these circumstances, including the outlandish grounds of opposition advanced by the private respondents against petitioners' motions for summary judgment and for demurrer to evidence, no less than the obviously mistaken grounds cited by the trial court for denying said motions, the Court has no hesitation in declaring that it was indeed grave

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abuse of discretion on the part of the trial court to have refused to render a summary judgment or one on demurrer to evidence. The Court reversed and set aside the decision of the Court of Appeals and dismissed the case.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; MOTION FOR EXTENSION OF TIME; GRANT THEREOF LIES IN THE SOUND DISCRETION OF THE COURT.** — The Court admits the late comment, but takes this occasion to reiterate the familiar doctrine that no party has a *right* to an extension of time to comply with an obligation within the period set therefor by law; motions for extension are not granted as a matter of course; their concession lies in the sound discretion of the Court exercised in accordance with the attendant circumstances; the movant is not justified in assuming that the extension sought will be granted, or that it will be granted for the length of time suggested by him. It is thus incumbent on any movant for extension to exercise due diligence to inform himself as soon as possible of the Court's action on his motion, by timely inquiry of the Clerk of Court. Should he neglect to do so, he runs the risk of time running out on him, for which he will have nobody but himself to blame.

2. **ID.; ID.; MODES OF DISCOVERY; ADMISSION BY ADVERSE PARTY; REQUEST FOR ADMISSION; EACH OF THE MATTERS LISTED THEREIN DEEMED ADMITTED BY PARTY SERVED THEREWITH FOR FAILURE TO RESPOND WITH A SWORN STATEMENT EITHER DENYING SPECIFICALLY OR SETTING FORTH THE REASONS WHY EITHER ADMISSION OR DENIAL CANNOT BE MADE.** — A Trial Court has no discretion to determine what the consequences of a party's refusal to allow or make discovery should be; it is the law which makes that determination; and it is grave abuse of discretion for the Court to refuse to recognize and observe the effects of that refusal as mandated by law. Particularly as regards requests for admission under Rule 26 of the Rules of Court, the law ordains that when a party is served with a written request that he admit: (1) the genuineness of any material and relevant document described in and exhibited with the request, or (2) the truth of

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any material and relevant matter of fact set forth in the request, said party is bound within the period designated in the request, to file and serve on the party requesting the admission *a sworn statement* either (1) denying specifically the matters of which an admission is requested or (2) setting forth in detail the reasons why he cannot truthfully either admit or deny those matters. If the party served does not respond with such a sworn statement, *each of the matters of which an admission is requested shall be deemed admitted.*

3. **ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.** — The Dimans' request for admission was duly served by registered mail on Jose Lacalle on February 6, 1995, and a copy thereof on his lawyer on February 4, 1995. Neither made any response whatever within the reglementary period. Nor did either of them do so even after receiving copy of the Dimans' "MANIFESTATION WITH MOTION TO REQUIRE PLAINTIFFS TO ANSWER REQUEST FOR ADMISSION," dated March 28, 1995. On account thereof, in legal contemplation, the Heirs impliedly admitted all the facts listed in the request for admission. These plain and simple legal propositions were disregarded by His Honor.

4. **ID.; ID.; ID.; ID.; ID.; FOR FAILURE TO REPLY THERETO, HEIRS IN CASE AT BAR DEEMED TO HAVE IMPLIEDLY ADMITTED THE FACTS ON WHICH ADMISSION HAS BEEN REQUESTED.** — When the Heirs closed their evidence as party plaintiffs, and the Dimans moved to dismiss on ground of insufficiency of the Heirs' evidence, the Trial Judge was charged with the duty to assess the evidence to ascertain whether or not "upon the facts and the law the plaintiff(s) *** (have) shown no right to relief." It was in the first place incumbent on His Honor to hold the Heirs bound to their admissions appearing in the record, express and implied. In accordance with Section 2, Rule 26 of the 1964 Rules of Court, the Heirs were impliedly, but no less indubitably, deemed to have admitted the facts on which admissions had been duly requested by reason of their failure to reply thereto.

5. **ID.; ID.; SUMMARY JUDGMENT; PROPRIETY THEREOF IS DETERMINED BY LAW.** — It is also the law which determines when a summary judgment is proper. It declares that although the pleadings on their face appear to raise issues of fact — *e.g.*, there are denials of, or a conflict in, factual

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allegations — if it is shown by admissions, depositions or affidavits, that those issues are sham, fictitious, or not genuine, or, in the language of the Rules, that "*except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law*," the Court shall render a summary judgment for the plaintiff or the defendant, as the case may be.

6. **ID.; ID.; ID.; DISTINGUISHED FROM JUDGMENT ON THE PLEADINGS.** — The existence or appearance of ostensible issues in the pleadings, on the one hand, and their sham or fictitious character, on the other, are what distinguish a proper case for a summary judgment from one for a judgment on the pleadings under Rule 19 of the 1964 Rules. In the latter case, there is no *ostensible issue at all*, but *the absence of any* because of the failure of the defending party's answer to raise an issue. On the other hand, in the case of a summary judgment, issues apparently exist — *i.e.*, facts are asserted in the complaint regarding which there is as yet no admission, disavowal or qualification; or specific denials or affirmative defenses are in truth set out in the answer — but *the issues thus arising from the pleadings are sham, fictitious, not genuine, as shown by admissions, depositions or admissions*. In other words, as a noted authority remarks, a judgment on the pleadings is a judgment on the facts as pleaded while a summary judgment is a judgment on the facts as summarily proven by affidavits, depositions or admissions. Another distinction is that while the remedy of a judgment on the pleadings may be sought only by a claimant (one seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief, *supra*), a summary judgment may be applied for by either a claimant or a defending party.

7. **ID.; ID.; ID.; GROUNDS RELIED ON BY JUDGE IN CASE AT BAR, NOT PROPER FOR DENIAL THEREOF.** — These basic distinctions escaped His Honor. He denied the Dimans' motion for summary judgment in his Order of June 14, 1995, opining that a "perusal of the Complaint and the Answer will clearly show that *material issue is raised* in that both plaintiffs and defendants claimed ownership over the land in dispute, presenting their respective titles thereto and accused each other of possessing false title to the land." He added, citing cases, that a summary judgment "is not proper where the defendant

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presented *defenses tendering factual issues* which call for the presentation of evidence." Such a ratiocination is grossly erroneous. Clearly, the grounds relied on by the Judge are proper for the denial of a motion for *judgment on the pleadings* — as to which the essential question, as already remarked, is: *are there issues arising from or generated by the pleadings?* — but not as regards a motion for summary judgment — as to which the crucial question is: *issues having been raised by the pleadings, are those issues genuine, or sham or fictitious, as shown by affidavits, depositions or admissions accompanying the application therefor?* Errors on principles so clear and fundamental as those herein involved cannot but be deemed so egregious as to constitute grave abuse of discretion, being tantamount to whimsical or capricious exercise of judicial prerogative.

8. **ID.; ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR WARRANT GRANT THEREOF OR A JUDGMENT ON DEMURRER TO EVIDENCE.** — The Heirs had proven nothing whatever to justify a judgment in their favor. They had not presented any copy whatever of the title they wished to be quieted. They had not adduced any proof worthy of the name to establish their predecessors' ownership of the land. On the contrary, their own evidence, from whatever aspect viewed, more than persuasively, indicated their lack of title over the land, or the spuriousness of their claim of ownership thereof. The evidence on record could not be interpreted in any other way, and no other conclusion could be drawn therefrom except the unmeritoriousness of the complaint. The case at bar is a classic example of the eminent propriety of a summary judgment, or a judgment on demurrer to evidence.

9. **ID.; ID.; SPECIAL CIVIL ACTION; *CERTIORARI*; TRIAL COURT'S REFUSAL TO RENDER A SUMMARY JUDGMENT OR DEMURRER TO EVIDENCE CONSTITUTES GRAVE ABUSE OF DISCRETION IN CASE AT BAR.** — Considering these circumstances, including the outlandish grounds of opposition advanced by the Heirs against the Dimans' motions for summary judgment and for demurrer to evidence, no less than the obviously mistaken grounds cited by the Trial Court for denying said motions, this Court has no hesitation in declaring that it was indeed grave abuse of discretion on the part of the Trial Court to have refused

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to render a summary judgment or one on demurrer to evidence. In no sense may the Trial Court's errors be considered, as the Court of Appeals did in its judgment of September 9, 1997, as mere errors of judgment correctible by appeal, untarnished by any capriciousness or whimsicality.

APPEARANCES OF COUNSEL

Bernardo P. Fernandez and *Elias L. de los Reyes* for petitioners.
Michael P. Moralde for private respondents.

D E C I S I O N

NARVASA, *C.J.*:

The petition for review on *certiorari* in this case was initially dismissed by Resolution dated January 14, 1998; but after deliberating on petitioners' motion for reconsideration dated February 23, 1998, the private respondents' comment thereon, the reply to the comment, as well as the record of the case itself, the Court was convinced that the order of dismissal should be reconsidered and the petition reinstated. It accordingly promulgated a resolution to that effect on October 12, 1998, and required "respondents to file their Comment on the petition within ten (10) days from notice ***."

Notice of the Resolution was duly served on private respondents' attorney on October 21, 1998. The latter filed a motion for extension of time of thirty (30) days to file comment, counted from October 31. The Court granted the extension sought, but only for fifteen (15) days.

The comment was filed late, on November 20, 1998, Counsel's explanation is that he had sought an extension of 30 days "*due to the other volume of legal works similarly situated and school work of the undersigned as professor of law and dean of the University of Manila,*" and had entertained "the honest belief" that it would be granted. However, he learned belatedly that only a 15-day extension had been conceded. He forthwith completed the comment and filed it, albeit five days late.

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The Court admits the late comment, but takes this occasion to reiterate the familiar doctrine that no party has a *right* to an extension of time to comply with an obligation within the period set therefor by law; motions for extension are not granted as a matter of course; their concession lies in the sound discretion of the Court exercised in accordance with the attendant circumstances; the movant is not justified in assuming that the extension sought will be granted, or that it will be granted for the length of time suggested by him. It is thus incumbent on any movant for extension to exercise due diligence to inform himself as soon as possible of the Court's action on his motion, by time inquiry of the Clerk of Court. Should he neglect to do so, he runs the risk of time running out on him, for which he will have nobody but himself to blame.

Now, the petition for review on *certiorari* appends practically all the material pleadings, motions, orders and judgments in the Regional Trial Court and the Court of Appeals. The respondents' comment on the petition has been filed, as just mentioned, and opposes its material averments. There is now no impediment to the adjudication of petitioners' appeal on the merits on the basis of the record as it stands at this time. This, the Court will now proceed to do.

In 1991, more than fifty years after the effectivity of the Rules of Court[1] — containing provisions relative *inter alia* to the modes of discovery[2] — this Court had occasion to observe that "among far too many lawyers (and not a few judges), there is, if not a regrettable unfamiliarity and even outright ignorance about the nature, purposes and operation of the modes of discovery, at least a strong yet unreasoned and unreasonable disinclination to resort to them — which is a great pity for the

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[1] On July 1, 1940, superseding for the most part Act No. 190 (the Code of Civil Procedure) and G.O. No. 58 (Criminal Procedure), as amended, in effect since the American Occupation.

[2] The provisions on discovery were retained, unchanged, in the revised issuance of the Rules, effective on January 1, 1964. In the more recent amendments which became effective on July 1, 1997, these provisions have also been substantially retained with just a few changes.

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intelligent and adequate use of the deposition-discovery procedure, could, as the experience of other jurisdictions convincingly demonstrates, effectively shorten the period of litigation and speed up adjudication."[3]

The case at bar deals with one of such modes of discovery — a request for admission under Rule 26 of the Rules of 1964; more particularly, the legal consequences of the failure to respond thereto in the manner indicated by law. It also treats of other adjective devices to expedite litigation: a summary judgment under Rule 34,[4] and a judgment on demurrer to evidence under Rule 35.[5] Had the principles involved been better understood and more faithfully observed, the case might have been more quickly decided.

Actually, there are several adjective tools incorporated in the Rules of Court explicitly designed, like those just mentioned, to abbreviate litigation or abort it at certain stages. Their obvious purpose is to unmask as quickly as may be feasible, and give short shrift to, untenable causes of action or defenses and thus avoid waste of time, effort and money.[6] For reasons yet to be

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[3] *Republic v. Sandiganbayan,* 204 SCRA 211, 200.

[4] Now Rule 35, under the amendments effective July 1, 1997.

[5] Now Rule 33, under the 1997 amendments.

[6] These devices or tools are the following: (1) motion to dismiss under Rule 16; (2) a motion to declare a defending party in default under Rule 18 of the Rules of 1964 (now Sec. 3, Rule 9 of the 1997 Rules; (3) at the pre-trial under Rule 20 (Rule 18 under the 1997 Rules) : (a) a motion to declare a complaining party non-suited, or a defending party in default, for failure to appear; (b) the execution of a compromise, or an agreement to refer the dispute to voluntary arbitration or other alternative mode of dispute-resolution; (4) a motion to dismiss under Rule 17; (5) admission of facts (*supra*) or other sanctions (e.g., contempt, striking out of pleadings, etc.) resulting from a refusal to make or allow discovery under Rules 24 to 29 (now Rules 23 to 29 of the 1997 Rules); (6) a motion for judgment on the pleadings under Rule 19 (now Rule 34 in the 1997 Rules); (7) a motion for summary judgment under Rule 34 (now Rule 35 in the 1997 Rules) *supra*; (8) a demurrer to evidence, or a motion to dismiss after plaintiff has rested on the ground that 'upon the facts and the law, the plaintiff has shown no right to relief" under Rule 35 (now Rule 33 in the 1997 Rules), *supra*.

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fathomed, these devices seem to be of scant familiarity and of infrequent availment, as above observed, with the result that the salutary objective of the Rules of bringing about a simple, inexpensive and expeditious system of litigation has not been fully achieved.

Now, to come to grips with the case. There is no disagreement about the antecedents. The case began in the Regional Trial Court of Las Piñas (Branch 255), where a complaint for "Quieting of Title and Damages" was filed by the Heirs of Veronica V. Moreno Lacalle (represented by Jose Moreno Lacalle) against Cristina Diman, Clarissa Diman, George Diman, Felipe Diman and Florina Diman.[7] In their complaint, the Lacalle heirs claimed that:

a) their mother, the late Veronica V. Moreno Lacalle (who died in 1992), was the owner of a "parcel of land situated at Brgy. Pulang Lupa Uno, Las Piñas, *** covered by Transfer Certificate of Title No. 273301 of the Registry of Deeds of the Province of Rizal";

b) Veronica Lacalle had acquired the land in 1959 by virtue of a deed of absolute sale, and retained as caretakers the persons she found in occupancy of the lot at the time of the sale, namely: Julian Nario and his wife, Adelaida Legaspi, "with arrangement to share the agricultural fruits" until the former would have need of the property;

c) the caretakers of the lot were served with a notice for them to vacate the land (dated November 22, 1994) and an *alias* writ of demolition (dated June 7, 1994) issued by the Metropolitan Trial Court in Civil Case No. 2619 — a case for "ejectment with damages" filed by the Dimans against the Narios, judgment in which, commanding the Narios' ouster, had supposedly been affirmed by the Makati Regional Trial Court (Branch 137);

d) neither the deceased Veronica nor any of her heirs had been made parties to said ejectment action;

e) the complaint for ejectment contains false assertions, and had caused them injury for which the Dimans should be made to pay damages.

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[7] Court of Appeals Record, pp. 30-35.

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In their answer with counterclaim dated February 2, 1995,[8] the Dimans alleged that:

a) they are the registered and absolute owners of the land registered in their names under TCT Nos. 90628, 90629 and 58676 (Pasay City), and have no knowledge of the land claimed by the Lacalle Heirs;

b) they are entitled to eject from their land the Nario Spouses, who were falsely claiming to be their lessees;

c) if the Heirs' theory is that the land in their title, No. 273301, is the same as that covered by the Dimans' titles, then said title No. 2733101 is spurious because:

(1) no less than three official agencies — (i) the Office of the Registrar of Deeds for Rizal and Regional Registrar for Region IV, (ii) the Register of Deeds of Pasay City, and (iii) the *Pangasiwaan Pangtalaan ng Lupain* (Land Registration Authority) — have certified to the absence of any entry in their records concerning TCT No. 273301 covering land with an area of 22,379 square meters in the name of Veronica Vda. De Moreno Lacalle;

(2) Decree No. N-11601 explicitly cited as basis by TCT No. 273301 refers to land in Mauban, Quezon Province, according to the records of the Land Registration Authority; and GLRO Record No. 14978 also expressly mentioned as basis for TCT No. 273301, refers to a registration case heard in Pangasinan;

and

d) they are entitled to damages on their counterclaim.

After joinder of the issues, the Dimans served on the Heirs on February 2, 1995, a REQUEST FOR ADMISSION (dated February 2, 1995) of the truth of the following specified matters of fact, to wit:[9]

a) the Heirs' TCT 273301 (Rizal) is not recorded in the Registry of Rizal, or of Pasay City, or of Parañaque, or of Las Piñas;

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[8] Court of Appeals Record, pp. 37-41.

[9] Court of Appeals Record, pp. 42-44.

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b) the Dimans' transfer certificates of title are all duly registered in their names in Pasay City, as alleged in their answer;

c) in the Index Records of Registered Property Owners under Act No. 496 in the Office of the land Registration Authority, there is no record of any property situated in Las Piñas in the name of Veronica Lacalle, more particularly described in TCT 273301;

4) the Heirs cannot produce a certified true copy of TCT 273301;

5) neither Veronica Lacalle nor any of her heirs ever declared the property under TCT 273301 for taxation purposes since its alleged acquisition on February 24, 1959 or since the issuance of said title on August 7, 1959;

6) not a single centavo has been paid by the Heirs as real estate taxes; and

7) no steps have been taken by the Heirs to ascertain the genuineness and authenticity of the conflicting titles.

The REQUEST FOR ADMISSION was received by Jose Lacalle himself through registered mail on February 6, 1995, and copy thereof, by the latter's lawyer (Atty. Cesar T. Ching) on February 4, 1995. However, no response whatever was made to the request by Lacalle, his lawyer, or anyone else, despite the lapse of the period therefor fixed by Section 2 of Rule 26 (not less than ten days after service). The Dimans thereupon filed with the Court a "MANIFESTATION WITH MOTION TO REQUIRE PLAINTIFFS TO ANSWER REQUEST FOR ADMISSION," dated March 28, 1995,[10] giving the Heirs ten (10) more days to file their answer to the request for admission, a copy of which was personally delivered to the latter's lawyer; but again, no response whatever was made.

The Dimans then submitted a "MOTION FOR SUMMARY JUDGMENT" dated April 17, 1995.[11] In that motion they drew attention to the Heirs' failure to file any Pre-Trial Brief, and the several instances when the Heirs failed to appear at scheduled

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[10] Court of Appeals Record, pp. 45-46.

[11] Court of Appeals Record, pp. 47-55.

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hearings resulting in the dismissal of their complaint, which was however later reinstated. They argued that because the Heirs had failed to respond to their REQUEST FOR ADMISSION, each of the matters of which an admission was requested, was deemed admitted pursuant to Section 2, Rule 26. On this basis, and on the basis of the joint affidavit of Clarissa Diman de los Reyes and Florina Diman Tan — attached to the motion and substantiating the facts recited in the request for admission — the Dimans asserted that no genuine issue existed and prayed that "a summary judgment be entered dismissing the case for lack of merit."

The Heirs' counsel filed a two-page opposition dated May 15, 1995[12] in which, betraying an unfortunate unfamiliarity with the concept of summary judgments, he asserted *inter alia* that:

> "In order for defendants (Dimans) to successfully pray for judgment on the pleadings, they have to clearly allege in their permissive counterclaim their cause of action and if the answer of the plaintiffs (Heirs) to such kind of counterclaim admit (sic) it or the answer to the counterclaim is a sham, that is the time for the defendants to move for a judgment summarily. *** (D)efendants have no cause of action for praying for summary judgment. It is the plaintiffs who will pray for that and not the defendants."

Subsequently, the Dimans submitted a reply dated May 23, 1995;[13] the Heirs, a rejoinder dated June 1, 1995;[14] and the Dimans, a pleading entitled "Exceptions and Comment to Plaintiffs' Rejoinder" dated June 8, 1995.[15]

The Trial Court denied the Dimans' motion for summary judgment. In its Order of June 14, 1995,[16] the Court declared that a "perusal of the Complaint and the Answer will clearly

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[12] Court of Appeals Record, pp. 56 *et seq.*

[13] *Id.*, pp. 57-60.

[14] *Id.*, pp. 61-64.

[15] *Id.*, pp. 65-69.

[16] *Id.*, pp. 72-73.

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show that material issue is raised in that both plaintiffs and defendants claimed ownership over the land in dispute, presenting their respective titles thereto and accused each other of possessing false title to the land." It stressed, citing jurisprudence, that a summary judgment "is not proper where the defendant presented defenses tendering factual issues which call for the presentation of evidence."

The case proceeded to trial in due course. At its start, the Heirs' counsel, Atty. Michael Moralde, responding to questions of the Court, admitted that his clients did not have the original copy of the title which was the basis for their cause of action, but asserted that they were "still searching" for it since "(i)n every municipality there are several Registry of Deeds." He theorized that the word "'title' *** is a relative term *** (and) does not only refer to a document but refers to ownership."[17]

Only Jose Moreno Lacalle gave evidence for the plaintiff Heirs. Like Atty. Moralde, he admitted that he had no copy "of the document which says *** (his) mother is the registered owner"; that the deed of sale was not the only basis for his and his co-heirs' claim to the land, but also "a xerox copy of the *** title *** except that *** (he) cannot find the original"; that "maybe" the original was in possession of the person who was his mother's agent in all her transactions, a certain Mr. Lopez, whom he could no longer locate; that he had tried to verify the existence of the title "from the Register of Deeds of Pasig and Pasay" without success; that he had not, however, gone to the Register of Deeds of Parañaque or Las Piñas.[18]

The Heirs' documentary evidence consisted of (1) Veronica Lacalle's death certificate, (2) the special power of attorney authorizing Jose Lacalle to act for his brothers and sisters; and (3) the deed of absolute sale purportedly executed by Eusebio Mojica, Clara Mojica, Maria Mojica, Antonia Mojica, Amanda Mojica and Teodora Aranda which deeded over to Veronica

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[17] *Id.*, pp. 76-77.

[18] *Id.*, pp. 78 *et seq.*

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Lacalle the "land 'known as Lot 1 PSU-151453,'" but which made no reference to any Torrens title over it.

Shortly after the Heirs rested their case, the Dimans filed a "Motion for Judgment on Demurrer to Evidence," dated June 25, 1996.[19] They summarized the Heirs' evidence — focusing attention on the Heirs' failure to present "even an unauthenticated photocopy of the title," and the absence of any proof that any proceedings for registration of the land under the Torrens Act had been instituted — and emphasized anew said Heirs' implied admissions resulting from their failure to answer their (the Dimans') request therefor as a mode of discovery. On these premises, the Dimans contended that a judgment on demurrer should be rendered, there being no genuine issue between the parties notwithstanding the ostensible conflict of averments in their basic pleadings.

The Heirs presented a three-page opposition, dated July 7, 1996.[20] In it their counsel set out the startling contention that *"(d)emurrer to evidence is violative to due process as the judgment be rendered without giving the plaintiff the opportunity to cross-examine the defendant,"* and petulantly inquired, "How could the truth come out without cross-examination of the defendants by the plaintiffs?" particularly, as regards "whether their (the Dimans') title is not fake." Said counsel also posited the amazing notion that *"Demurrer to evidence may be correct only in criminal cases as it is the right of the accused to remain silent, and that includes his right to file demurrer for fear of cross-examination. But not in Civil Cases."* Once more counsel regrettably exposed his ignorance of quite elementary legal principles.

Again, the Dimans' efforts at expediting disposition of the litigation were unsuccessful. By Order dated December 2, 1996,[21] the Trial Court denied their motion to dismiss. Respecting the Heirs' omission to present in evidence any copy (even a

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[19] *Id.*, pp. 93-103.

[20] *Id.*, pp. 104-106.

[21] *Id.*, pp. 107-108.

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photocopy) of TCT No. 273301, the Court remarked that "Not being able to prove the genuineness and authenticity of TCT No. 273301, it being only a mere xerox copy *** (the Heirs) did not formally offer the same in evidence." However, the Court said, the deed of sale of the land in Veronica Lacalle's favor that was submitted instead — the "genuineness and authenticity *** (of which had) been fully established" by the certification of the Clerk of Court of the Manila RTC — was adequate for the purpose. According to the Court, "(e)xecution of a deed of conveyance in a certain prescribed form gave effect to the transfer of a title to the land conveyed *** (and) without being controverted by any convincing evidence to the contrary can be sufficient basis in granting the plaintiffs' relief for quieting of their title." The Order passed *sub silentio* on the quaint contentions in the Heirs' opposition.

The Dimans moved for reconsideration under date of January 2, 1997,[22] *inter alia* (1) alleging that although the photocopy of TCT 2773301 annexed to the Heirs' complaint states that the "certificate is a transfer from T.C.T. No. 259150" (and this, presumably, would be the vendors' [the Mojicas'] title), no effort whatever was made to submit proof thereof, and (2) reiterating the proposition that the Heirs were bound by their implied admissions under Rule 26.

The Dimans also submitted a "SUPPLEMENT TO MOTION FOR RECONSIDERATION" dated January 7, 1997[23] in which they invited attention to the identity of the technical description of the land contained in the deed of sale to Veronica Lacalle and that set out in TCT No. 273301. It must therefore have been Veronica Lacalle, they reasoned, who had instituted the registration proceedings leading to the supposed issuance of said TCT No. 273301. Yet the heirs failed to present evidence of the record of any such registration proceedings, just as they failed to present evidence of any authentic copy of the title itself.

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[22] *Id.*, pp. 109-112.

[23] *Id.*, pp. 113-116.

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The Heirs filed a one-page "Vehement Opposition ***" dated February 15, 1997.[24] Once again they reiterated the astounding argument that *the Dimans' "insistence *** (on the demurrer to evidence) is tantamount to suppression of their evidence as they are afraid of cross-examination"!*

Again the Trial Court rebuffed the Dimans. In its Order of February 28, 1997,[25] the Court ruled that the issues raised in the motion for reconsideration and its supplement had already been passed upon in the Order of December 2, 1996. It then set the case "for the reception of defendants' evidence on April 22, 1997 ***."

What the Dimans did was to commence a special civil action of *certiorari, mandamus* and prohibition in the Court of Appeals praying (a) that it set aside the Orders of June 14, 1995 (denying summary judgment), of December 2, 1996 (denying demurrer to evidence), and of February 28, 1997 (denying reconsideration); (b) that the Trial Judge be commanded to dismiss the case before it; and (c) that said judge be prohibited from conducting further proceedings in the case.

But once again their efforts met with failure. The Appellate Tribunal (Seventh Division) promulgated judgment on September 9, 1997 decreeing that their petition be "DENIED due course and DISMISSED." The Court of Appeals held that insofar as concerned the Order of June 14, 1995, the petition for its invalidation had not been filed within a reasonable time; and that as regards the Order of December 2, 1996, the remedy of *certiorari* was improper because : (1) said order was merely interlocutory, (2) any error therein constituted only an error of judgment correctible by appeal, and (3) there was no capriciousness or whimsicality attendant upon the order. The Dimans' motion for reconsideration was later denied by the Court of Appeals by Resolution dated November 5, 1997.[26]

The Dimans thereupon filed with this Court a petition for review on *certiorari* of the Appellate Tribunal's Decision of

[24] *Id.*, pp. 117.

[25] *Id.*, p. 121.

[26] *Id.*, p. 123.

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September 9, 1997. But seemingly consistent with the pattern of judicial misfortune which they had theretofore been traversing, their petition for review was dismissed, by Resolution dated January 14, 1998. Their appeal was however subsequently reinstated, as earlier recounted.

Now, what first strikes the Court about the case at bar is the regrettable absence of familiarity, therein laid bare, with the rules of discovery and with the underlying philosophy and principles of the cognate remedy of summary judgment. That resulted in the undue protraction of the present action despite ample demonstration of the absence of any genuine issue — that is to say, that the issues ostensibly arising from the pleadings were sham or fictitious.

A Trial Court has no discretion to determine what the consequences of a party's refusal to allow or make discovery should be; it is the law which makes that determination; and it is grave abuse of discretion for the Court to refuse to recognize and observe the effects of that refusal as mandated by law. Particularly as regards requests for admission under Rule 26 of the Rules of Court, the law ordains that when a party is served with a written request that he admit : (1) the genuineness of any material and relevant document described in and exhibited with the request, or (2) the truth of any material and relevant matter of fact set forth in the request, said party is bound within the period designated in the request,[27] to file and serve on the party requesting the admission a *sworn statement* either (1) denying specifically the matters of which an admission is requested or (2) setting forth in detail the reasons why he cannot truthfully either admit or deny those matters. If the party served does not respond with such sworn statement, *each of the matters of which an admission is requested shall be deemed admitted.*[28]

In this case, the Dimans' request for admission was duly served by registered mail on Jose Lacalle on February 6, 1995,

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[27] Which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion.

[28] Sec. 2, Rule 26, Rules of 1964.

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and a copy thereof on his lawyer on February 4, 1995. Neither made any response whatever within the reglementary period. Nor did either of them do so even after receiving copy of the Dimans' "MANIFESTATION WITH MOTION TO REQUIRE PLAINTIFFS TO ANSWER REQUEST FOR ADMISSION," dated March 28, 1995. On account thereof, in legal contemplation, the Heirs impliedly admitted all the facts listed in the request for admission. These plain and simple legal propositions were disregarded by His Honor.

It is also the law which determines when a summary judgment is proper. It declares that although the pleadings on their face appear to raise issues of fact — *e.g.*, there are denials of, or a conflict in, factual allegations — if it is shown by admissions, depositions or affidavits, that those issues are sham, fictitious, or not genuine, or, in the language of the Rules, that "*except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law,*[29] the Court shall render a summary judgment for the plaintiff[30] or the defendant[31] as the case may be.[32]

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[29] Sec. 3, Rule 34.

[30] SEC. 1, Rule 34, Rules of 1964 reads: "*Summary judgment for claimant.*—A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits for a summary judgment in his favor upon all or any part thereof." The last clause was amended to read: "*move with supporting affidavits, depositions or admissions for a summary judgment* ***" (Sec. 1, Rule 35, Rules of 1997).

[31] SEC. 2, Rule 34, Rules of 1964 reads: "*Summary judgment for defending party.* — A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits for a summary judgment in his favor as to all or any part thereof." The last clause was similarly amended to read: "*move with supporting affidavits, depositions or admissions for a summary judgment* *** " (Sec. 2, Rule 35, Rules of 1997).

[32] SEE Regalado, *Remedial Law Compendium*, Sixth Revised Ed., Vol. 1, pp. 360-362, citing *Agcanas v. Nagum,* Mar. 30, 1970; *Estrada v. Consolacion,* June 29, 1976; *Motor Service Co. v. Yellow Taxicab Co.,* 96 Phil. 688; *Miranda v. Malate Garage & Taxicab, Inc.,* 99 Phil. 670; Moran, Comments on the Rules, 1979 ed. Vol. 1, pp. 166-170: *See also Vergara v. Suelto,* 156 SCRA 753; *PNB v. Noah's Ark etc.,* 226 SCRA 36.

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Parenthetically, the existence or appearance of ostensible issues in the pleadings, on the one hand, and their sham or fictitious character, on the other, are what distinguish a proper case for a summary judgment[33] from one for a judgment on the pleadings under Rule 19 of the 1964 Rules.[34] In the latter case, there is no *ostensible issue at all,* but the *absence of any* because of the failure of the defending party's answer to raise an issue. Rule 19 expresses the principle as follows:

"Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading ***."[35]

On the other hand, in the case of a summary judgment, issues apparently exist — *i.e.,* facts are asserted in the complaint regarding which there is as yet no admission, disavowal or qualification; or specific denials or affirmative defenses are in truth set out in the answer — but *the issues thus arising from the pleadings are sham, fictitious, not genuine, as shown by admissions, depositions or admissions.* In other words, as a noted authority remarks, a judgment on the pleadings is a judgment on the facts as pleaded while a summary judgment is a judgment on the facts as summarily proven by affidavits, depositions or admissions.[36] Another distinction is that while the remedy of a judgment on the pleadings may be sought only by a claimant (one seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief, *supra*), a summary judgment may be applied for by either a claimant or a defending party.

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[33] Under Rule 34 of the Rules of 1964 (now Rule 35 of the 1997 Rules).

[34] Now Rule 34 of the 1997 Rules.

[35] Italics supplied. *N.B.* Rule 34 of the 1997 Rules pertinently reads: "Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, *direct judgment on such pleading.* However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved. (Italics supplied).

[36] Moran, op. cit., at p. 170.

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These basic distinctions escaped His Honor. He denied the Dimans' motion for summary judgment in his Order of June 14, 1995, opining that a "perusal of the Complaint and the Answer will clearly show that *material issue is raised* in that both plaintiffs and defendants claimed ownership over the land in dispute, presenting their respective titles thereto and accused each other of possessing false title to the land." He added, citing cases, that a summary judgment "is not proper where the defendant presented *defenses tendering factual issues* which call for the presentation of evidence." Such a ratiocination is grossly erroneous. Clearly, the grounds relied on by the Judge are proper for the denial of a motion for *judgment on the pleadings* — as to which the essential question, as already remarked, is: *are there issues arising from or generated by the pleadings*? — but not as regards a motion for *summary judgment* — as to which the crucial question is: *issues having been raised by the pleadings, are those issues genuine, or sham or fictitious, as shown by affidavits, depositions or admissions accompanying the application therefor?*

Errors on principles so clear and fundamental as those herein involved cannot but be deemed so egregious as to constitute grave abuse of discretion, being tantamount to whimsical or capricious exercise of judicial prerogative.

When the Heirs closed their evidence as party plaintiffs, and the Dimans moved to dismiss on ground of insufficiency of the Heirs' evidence, the Trial Judge was charged with the duty to assess the evidence to ascertain whether or not "upon the facts and the law the plaintiff(s) *** (have) shown no right to relief." It was in the first place incumbent on His Honor to hold the Heirs bound to their admissions appearing in the record, express and implied. In accordance with Section 2, Rule 26 of the 1964 Rules of Court, the Heirs were impliedly, but no less indubitably, deemed to have admitted the facts on which admissions had been duly requested by reason of their failure to reply thereto. Said Section 2 reads as follows:

"SEC. 2. *Implied admissions.* — Each of the matters of which an admission is requested *shall be deemed admitted unless*, within a

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period designated in the request, which shall not be less than ten (10) days after service thereof, or within such further time as the court may allow on motion and notice, the party to whom the request is directed *serves upon the party requesting the admission a sworn statement* either denying specifically the matters on which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections on the ground of irrelevancy or impropriety of the matter requested shall be promptly submitted to the court for resolution."[37]

In determining the chief issue in the case, the Trial Judge should have taken due account of the following circumstances on record and obvious legal propositions:

1) the Heirs' admissions of the following facts, *viz.*:

a) the Heirs' TCT 273301 (Rizal) is not recorded in the Registry of Rizal, or of Pasay City, or of Parañaque, or of Las Piñas;

b) on the other hand, the Dimans' transfer certificates of title are all duly registered in their names in Pasay City;

c) there is no record of any property situated in Las Piñas in the name of Veronica Lacalle — more particularly described in TCT 273301 — in the Index Records of Registered Property Owners under Act No. 496 in the Office of the Land Registration Authority;

d) the Heirs do not have and cannot produce even a certified true copy of TCT 273301;

e) neither Veronica Lacalle nor any of her heirs ever declared the property under TCT 273301 for taxation purposes since its alleged acquisition on February 24, 1959 or since the issuance of said title on August 7, 1959;

f) not a single centavo was ever paid by the Heirs as real estate taxes; and

g) no steps were ever taken by the Heirs to ascertain the genuineness and authenticity of the conflicting titles.

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[37] Italics supplied.

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2) the statement in open Court of the Heirs' own counsel that his clients did not have original copy of the title, that they were in fact "still searching" for the title;[38]

3) the testimony of Jose Moreno Lacalle that he had no copy "of the document which says *** (his) mother is the registered owner" of the land in question; that he "cannot find the original" which "maybe" was in possession of his mother's agent, a certain Mr. Lopez, whom, he could no longer locate; that he had tried to verify the existence of the title "from the Register of Deeds of Pasig and Pasay" without success; that he had not, however, gone to the Register of Deeds of Parañaque or Las Piñas;[39]

4) that the only document bearing on the issue submitted by the Heirs, the deed of absolute sale purportedly executed by Eusebio Mojica, Clara Mojica, Maria Mojica, Antonia Mojica, Amanda Mojica and Teodora Aranda — which deeded over to Veronica Lacalle the "land 'known as Lot 1 PSU-151453,'" but which made no reference to any Torrens title over it — was not accompanied by proof of the vendors' ownership of the land in question;

5) that the land subject of the Heirs' action for quieting of title being registered land (being in fact registered in the Dimans' favor), the unregistered deed of sale relied upon by the Heirs cannot and does not affect said land, or bind any third party (including the Dimans) for the reason that, as a matter of law:

> "*** (N)o deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration"; and it is the "act of registration (that) shall be the operative act to convey or affect the land in so far as third persons are concerned," which "registration shall be made in

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[38] *Id.*, pp. 76-77.

[39] *Id.*, pp. 78 *et seq.*

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the *** Register of Deeds for the province or city where the land lies."[40]

and

6) that there is no proof whatever of the ownership or character of the rights of the vendors (the Mojicas) over the property purportedly conveyed.

In fine, the Heirs had proven nothing whatever to justify a judgment in their favor. They had not presented any copy whatever of the title they wished to be quieted. They had not adduced any proof worthy of the name to establish their precedessors' ownership of the land. On the contrary, their own evidence, from whatever aspect viewed, more than persuasively indicated their lack of title over the land, or the spuriousness of their claim of ownership thereof. The evidence on record could not be interpreted in any other way, and no other conclusion could be drawn therefrom except the unmeritoriousness of the complaint. The case at bar is a classic example of the eminent propriety of a summary judgment, or a judgment on demurrer to evidence.

Considering these circumstances, including the outlandish grounds of opposition advanced by the Heirs against the Dimans' motions for summary judgment and for demurrer to evidence, no less than the obviously mistaken grounds cited by the Trial Court for denying said motions, this Court has no hesitation in declaring that it was indeed grave abuse of discretion on the part of the Trial Court to have refused to render a summary judgment or one on demurrer to evidence. In no sense may the Trial Court's errors be considered, as the Court of Appeals did in its judgment of September 9, 1997, as mere errors of judgment correctible by appeal, untarnished by any capriciousness or whimsicality.

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[40] Sec. 51, PD 1529 (Property Registration Decree); *Abuyo v. De Suazo*, 18 SCRA 600; *Tañedo v. C.A.*, 252 SCRA 80, citing *Nuguid v. C.A.*, 171 SCRA 213; *Sajonas v. C.A.*, 158 SCRA 79; *Dela Calzada-Cieras v. C.A.*, 212 SCRA 390; *Davao Grains, Inc. v. I.A.C.*, 171 SCRA 612; *Quilisadio v. C.A.*, 182 SCRA 401; *Heirs of Marasigan v. I.A.C.*, 152 SCRA 253.

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WHEREFORE, the challenged decision of the Court of Appeals promulgated on September 9, 1997 is REVERSED and SET ASIDE: the Orders dated July 14, 1996 and December 2, 1996 rendered in the action for "Quieting of Title and Damages" — docketed as Civil Case No. 94-3085 of the Regional Trial Court at Las Piñas (Branch 255) and entitled "Heirs of Veronica V. Moreno Lacalle, represented by Jose Moreno Lacalle *versus* Cristina Diman, Clarissa Diman, George Diman, Felipe Diman and Florina Diman" — are annulled; and said Civil Case No. 94-3085 is DISMISSED. Costs against private respondents.

IT IS SO ORDERED.

Romero, Kapunan, Purisima, and *Pardo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 131622. November 27, 1998]

LETICIA Y. MEDEL, DR. RAFAEL MEDEL and SERVANDO FRANCO, *petitioners, vs.* **COURT OF APPEALS, SPOUSES VERONICA R. GONZALES and DANILO G. GONZALES, JR., doing lending business under the trade name and style "GONZALES CREDIT ENTERPRISES,"** *respondents.*

SYNOPSIS

Private respondents filed with the Regional Trial Court of Bulacan a complaint against petitioners for collection of the full amount of their loan including interests and other charges. Petitioners alleged, among others, that the interest rate on the ₱500,000.00 loan was excessive at 5.5% per month with additional service charge of 2% per annum, and penalty charge of 1% per month. They further alleged that the stipulation for