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FIRST DIVISION

[G.R. No. 146459. June 8, 2006]

HEIRS OF DICMAN, namely: ERNESTO DICMAN, PAUL DICMAN, FLORENCE DICMAN FELICIANO TORRES, EMILY TORRES, TOMASITO TORRES and HEIRS OF CRISTINA ALAWAS and BABING COSIL, *petitioners, vs.* **JOSE CARIÑO and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; CERTIFICATE OF NON-FORUM SHOPPING, MANDATORY; EFFECT OF NON-COMPLIANCETHEREWITH. — The petition must be dismissed on the following grounds: 1. Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which requires the pleader to submit a certificate of non-forum shopping to be executed by the plaintiff or principal party, is mandatory, and non-compliance therewith is a sufficient ground for the dismissal of the petition. The forum shopping certification must be signed by the party himself as he has personal knowledge of the facts therein stated. Obviously, it is the plaintiff or principal party who is in the best position to know whether he actually filed or caused the filing of a petition in the case. Where there are two or more plaintiffs or petitioners, all of them must sign the verification and non-forum certification, and the signature of only one of them is insufficient, unless the one who signs the verification and certification has been authorized to execute the same by, and on behalf of, the co-plaintiff or co-petitioner. But it must be stressed that the requirement the principal party himself should sign the certification applies only to a natural person and not to a juridical person which can only act through its officer or duly authorized agent.

2. ID.; ID.; ID.; ID.; RULE OF SUBSTANTIAL COMPLIANCE, WHEN AVAILABLE; REASON FOR RELAXATION IN THE CASE AT BAR. — However, the Court has also held that the rules on forum shopping were designed to promote and facilitate the

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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 regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. Thus, under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional. But a perusal of the relevant decisions handed down by this Court consistently shows that substantial compliance may be invoked and the procedural lapse overlooked provided that, where the petitioner is a natural person as in the case at bar, the authorized signatory must also be a principal party or co-petitioner. Petitioners, as natural persons, cannot therefore appoint a non-party to sign for them, especially since only the petitioners occupy the best position to know whether they actually filed or caused the filing of a petition in this case and who personally know the facts stated in the petition. On this point alone the petition should be dismissed.

3. ID.; APPEALS; SUPREME COURT NOT A TRIER OF FACTS; FINDINGS OF FACTS OF COURT OF APPEALS, CONCLUSIVE AND BINDING ON THE COURT; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. — It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. While jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, namely: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7)

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when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion, none of these exceptions has been shown to apply in the present case and, hence, this Court may not review the findings of fact made by the lower courts.

4. ID.; ID.; ESTOPPEL; DEFINED; RATIONALE; ISSUES RAISED FOR THE FIRST TIME ON APPEAL, BARRED. — Petitioners argue on appeal that the "Deed of Conveyance of Part Rights and Interests in Agricultural Land" dated October 22, 1928 executed between Sioco Cariño and Ting-el Dicman is void *ab initio* for lack of approval of competent authorities as required under Section 145 in relation to Section 146 of the Administrative Code of Mindanao and Sulu, the application of which was later extended to the Mountain Province and Nueva Viscaya and, thereafter, throughout the entire national territory; that the sale was without valid consideration; and that the said deed is not an absolute sale but merely a contract to sell subject to the suspensive condition that the papers evidencing the title must first be perfected. These arguments were lumped under the following issue in their appeal to the CA: 2. THE HONORABLE TRIAL COURT ERRED IN CONSIDERING THE DEED OF CONVEYANCE [OF] PART RIGHTS AND INTERESTS IN AGRICULTURAL LAND EXECUTED BY DICMAN IN FAVOR OF SIOCO CARIÑO DESPITE ITS NULLITY. The foregoing issue and the incidents thereunder were never raised by the petitioners during the proceedings before the RTC. Suffice it to say that issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred by estoppel. Matters, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal where they are raised for the first time. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.

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5. CIVIL LAW; PRESCRIPTION; ACQUISITIVE PRESCRIPTION; 10-YEAR PERIOD THEREFOR, SATISFIED. — Even if this Court should declare the sale null and void or the agreement merely a contract to sell subject to a suspensive condition that has yet to occur, private respondent nonetheless acquired ownership over the land in question through acquisitive prescription. The records show that as early as 1938, the land in controversy had been in the possession of Guzman Cariño, predecessor-in-interest of private respondent, continuously, publicly, peacefully, in concept of owner, and in good faith with just title, to the exclusion of the petitioners and their predecessors-in-interest, well beyond the period required under law to acquire title by acquisitive prescription which, in this case, is 10 years. The findings of fact of the lower courts, and which this Court has no reason to disturb, inescapably point to this conclusion: immediately after the "Deed of Absolute Sale," a public instrument dated January 10, 1938, had been executed by Sioco Cariño in favor of his son, Guzman Cariño (the father of private respondent), the latter immediately occupied the property; the 1940 directory of Baguio Telephones lists his residence at Camp 7, Baguio City along with his telephone number; his permitting the use of portions of the property to various third parties; his introduction of improvements over the land in controversy; the testimonial accounts of his neighbors; and that it was Guzman Cariño alone who declared for tax purposes both the land and the improvements thereon in his name, while the tax declarations of the other claimants made no reference to the subject property. Although arguably Sioco Cariño may not have been the owner of the subject property when he executed the "Deed of Absolute Sale" in 1938 in favor of his son, the requirement of just title is nonetheless satisfied, which means that the mode of transferring ownership should ordinarily have been valid and true, had the grantor been the owner. By the time the successors-in-interest of Ting-el Dicman sought to establish ownership over the land in controversy by filing their "Petition of the Heirs of Dicman to Reopen Civil Reservation Case No. 1, G.L.R.O. 211" on April 24, 1959 with the trial court, and which Guzman timely opposed, more than 20 years had already elapsed. Thus, the 10-year period for acquisitive prescription is deemed satisfied well before Guzman's possession can be said to be civilly interrupted by the filing of the foregoing petition to reopen.

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After the dismissal of that case on July 28, 1978, Guzman Cariño was left undisturbed in his possession of the subject property until his death on August 19, 1982. His remains are buried on the land in question. Thereafter, Guzman's widow and son, herein private respondent, continued possession of the subject property in the same manner. When petitioners, heirs of Ting-el Dicman, tried to revive the case on April 20, 1983, they had, far before that time, lost all rights to recover possession or ownership.

6. ID.; LACHES; DEFINED; RATIONALE; LACHES AND PRESCRIPTION, DISTINGUISHED; ELEMENTS OF *LACHES*, PRESENT IN CASE AT BAR; RIGHT TO RECOVER POSSESSION BARRED BY EQUITABLE DOCTRINE OF *LACHES*. — Prescinding from the issue on prescription, the petitioners and their predecessors-in-interest are nonetheless guilty of *laches*. *Laches* has been defined as such neglect or omission to assert a right, taken in conjunction with the lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relations of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim. It is different from and applies independently of prescription. While prescription is concerned with the fact of delay, *laches* is concerned with the effect of delay. Prescription is a matter of time; *laches* is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; *laches* is not. *Laches* applies in equity, whereas prescription applies at law. Prescription is based on a fixed time, *laches* is not. *Laches* means the failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. It has been held that even a registered owner of property under the Torrens Title system may be barred from recovering possession of property by virtue of *laches*.

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Given the foregoing findings of fact, all the four (4) elements of *laches,* as prescribed by the decisions of this Court, are present in the case, to wit: a. Conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; b. Delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; c. Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and d. Injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred. As correctly held by the RTC, there is no evidence to the effect that Ting-el Dicman or his successors-in-interest ever filed any action to question the validity of the "Deed of Conveyance of Part Rights and Interests in Agricultural Land" after its execution on October 22, 1928 despite having every opportunity to do so. Nor was any action to recover possession of the property from Guzman Cariño instituted anytime prior to April 24, 1959, a time when the period for acquisitive prescription, reckoned from Guzman's occupation of the property in 1938, had already transpired in his favor. No evidence likewise appears on the record that Sioco Cariño or his Estate ever filed any action to contest the validity of the "Deed of Absolute Sale" dated January 10, 1938. Though counsel for the Estate of Sioco Cariño tried to assail the deed as a forgery in the trial court, the attempt failed and no appeal was lodged therefrom. It will be difficult for this Court to assume that the petitioners and their predecessors were all the while ignorant of the adverse possession of private respondent and his predecessors given the publicity of their conduct and the nature of their acts. Private respondent and his predecessors-in-interest were made to feel secure in the belief that no action would be filed against them by such passivity. There is no justifiable reason for petitioners' delay in asserting their rights—the facts in their entirety show that they have slept on them. For over 30 years reckoned from the "Deed of Conveyance of Part Rights and Interests in Agricultural Land" dated October 22, 1928, or 20 years reckoned from the "Deed of Absolute Sale" dated January 10, 1938, they neglected to take positive steps to assert their dominical claim over the property. With the exception of forgery, all other issues concerning the validity

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of the two instruments abovementioned, as well as the averment that the former was in the nature of a contract to sell, were issues raised only for the first time on appeal and cannot therefore be taken up at this late a stage. The features of this case are not new. The Court has on several occasions held in particular that despite the judicial pronouncement that the sale of real property by illiterate ethnic minorities is null and void for lack of approval of competent authorities, the right to recover possession has nonetheless been barred through the operation of the equitable doctrine of *laches*.

7. **POLITICAL LAW; CONSTITUTIONAL LAW; STATE POLICIES AND PRINCIPLES; CLASSIFICATION OF PUBLIC LANDS CANNOT PREJUDICE VESTED RIGHTS; DUE PROCESS OF LAW; WHEN THE LAW IS CLEAR, THE SUPREME COURT SHALL DECIDE ACCORDING TO THE PRINCIPLES OF RIGHT AND JUSTICE WITH DUE APPRECIATION OF THE RIGHTS OF ALL PERSONS CONCERNED.** — Petitioners argue that Proclamation No. 628 issued by then President Carlos P. Garcia on January 8, 1960 had the effect of "segregating" and "reserving" certain Igorot claims identified therein, including one purportedly belonging to the "Heirs of Dicman," and prohibiting any encumbrance or alienation of these claims for a period of 15 years from acquisition of patent. But by the time the Proclamation had been issued, all rights over the property in question had already been vested in private respondent. The executive issuance can only go so far as to classify public land, but it cannot be construed as to prejudice vested rights. Moreover, property rights may not be altered or deprived by executive fiat alone without contravening the due process guarantees of the Constitution and may amount to unlawful taking of private property to be redistributed for public use without just compensation. The recognition, respect, and protection of the rights of indigenous peoples to preserve and develop their cultures, traditions, and institutions are vital concerns of the State and constitute important public policies which bear upon this case. To give life and meaning unto these policies the legislature saw it fit to enact Republic Act No. 8371, otherwise known as The Indigenous Peoples Rights Act of 1997, as a culminating measure to affirm the views and opinions of indigenous peoples and ethnic minorities on matters that affect their life and culture. The provisions of that law unify

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an otherwise fragmented account of constitutional, jurisprudential and statutory doctrine which enjoins the organs of government to be vigilant for the protection of indigenous cultural communities as a marginalized sector, to protect their ancestral domain and ancestral lands and ensure their economic, social, and cultural well-being, and to guard their patrimony from those inclined to prey upon their ignorance or ductility. As the final arbiter of disputes and the last bulwark of the Rule of Law this Court has always been mindful of the highest edicts of social justice especially where doubts arise in the interpretation and application of the law. But when in the pursuit of the loftiest ends ordained by the Constitution this Court finds that the law is clear and leaves no room for doubt, it shall decide according to the principles of right and justice as all people conceive them to be, and with due appreciation of the rights of all persons concerned.

APPEARANCES OF COUNSEL

Belo Gozon Parel Asuncion & Lucila and *Rodolfo A. Lockey Law Office* for petitioners.

Tenefrancia Agranzamendez Liceralde & Associates for J. Cariño.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This refers to the petition for review on *certiorari* under Rule 45 of the Rules of Court questioning the Decision[1] dated June 30, 2000 of the Court of Appeals (CA) in C.A.-G.R. CV No. 33731, which affirmed *in toto* the Decision dated November 28, 1990 of the Regional Trial Court (RTC), Branch 7 (Baguio City), La Trinidad, Benguet; and the CA Resolution dated December 15, 2000 which denied the petitioners' motion for reconsideration.

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[1] Penned by Associate Justice Mariano M. Umali (now retired), with Associate Justices Conrado M. Vasquez, Jr. and Eriberto U. Rosario, Jr. (now retired), concurring.

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The petition originated from an action for recovery of possession of the eastern half of a parcel of land situated in Residence Section "J", Camp Seven, Baguio City, consisting of 101,006 square meters, more or less, and identified as Lot 46, Ts-39, Plan SWO-37115.[2]

The antecedent facts are clear:

The subject land, at the turn of the 20th century, had been part of the land claim of Mateo Cariño. Within this site, a sawmill and other buildings had been constructed by H.C. Heald in connection with his lumber business. On March 14, 1916, H.C. Heald sold the buildings to Sioco Cariño, son of Mateo Cariño and grandfather of private respondent Jose Cariño. Sioco Cariño then took possession of the buildings and the land on which the buildings were situated.

Ting-el Dicman,[3] predecessor-in-interest of the petitioners, namely, Ernesto Dicman, Paul Dicman, Florence Dicman, Babing Cosil, Feliciano Torres, Cristina Alawas, Emily Torres and Tomasito Torres, and resident of Atab, a sitio within the City of Baguio but located at some distance from the land in controversy, had been employed by Sioco Cariño as his cattle herder. On the advice of his lawyers, and because there were already many parcels of land recorded in his name,[4] Sioco Cariño caused the survey of the land in controversy in the name of Ting-el Dicman.

On October 22, 1928, Ting-el Dicman executed a public instrument entitled "Deed of Conveyance of Part Rights and Interests in Agricultural Land" with Sioco Cariño. The deed reads:

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[2] The eastern portion was denominated as Lot 76-B of Plan RS-463-D.

[3] Also known as "Ping-el" or "Diac-man" in the records.

[4] The RTC took judicial notice of the historical fact "that much of Baguio City, including the Camp John Hay reservation which adjoins the property in question, used to belong to the Cariño family, particularly their patriarch Mateo Cariño. In fact, a whole district of the city, Campo Sioco, is named after Sioco Cariño himself." RTC Decision, p. 2; *Rollo*, p. 103.

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DEED OF CONVEYANCE OF PART RIGHTS AND INTERESTS IN AGRICULTURAL LAND.

KNOW ALL PERSONS BY THESE PRESENTS:

That I, Ting-el Diac-man, of legal age, widower, and resident of the *sitio* known as "Atab," near Camp Seven, City of Baguio, Philippine Islands, DO HEREBY STATE, *viz*: —

That I am the applicant for a free-patent of a parcel of land (public), having a surface of over ten (10) hectares, surveyed by the District Land Office of Baguio for me, and located in the place known as Camp Seven, Baguio;

That to-date I have not as yet received the plan for said survey;

That Mr. Sioco Cariño has advanced all expenses for said survey for me and in my name; and also all other expenses for the improvement of said land, to date;

That for and in consideration of said advance expenses, to me made and delivered by said Mr. Sioco Cariño, I hereby pledge and promise to convey, deliver and transfer unto said Sioco Cariño, of legal age, married to Guilata Acop, and resident of Baguio, P.I., his heirs and assigns, one half (1/2) of my title, rights, and interest to and in the aforesaid parcel of land; same to be delivered, conveyed and transferred in a final form, according to law, to him, his heirs and assigns, by me, my heirs, and assigns, as soon as title for the same is issued to me by proper authorities.

That this conveyance, transfer, or assignment, notwithstanding its temporary nature, shall have legal force and effect; once it is approved by the approving authorities all the final papers and documents, this instrument shall be considered superseded.

After I have received my title to said parcel of land I bind myself, my heirs and assigns, to execute the final papers and forward same for approval of the competent authorities at Mr. Sioco Cariño's expense.

WITNESS MY HAND in the City of Baguio, P.I., this, the 22nd day of October, 1928, A.D.

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his right
TING-EL DIAC-MAN
Thumbmark[5]

After the execution of the foregoing deed, Sioco Cariño, who had been in possession of the land in controversy since 1916, continued to stay thereon.

On January 10, 1938, Sioco Cariño executed, as seller, a public instrument entitled "Deed of Absolute Sale" covering the subject land and its improvements with his son, Guzman Cariño, as buyer. The contract states in part:

> x x x for and in consideration of the sum of ONE PESO (₱1.00) Philippine Currency and other valuable considerations which I had received from my son, Guzman A. Cariño x x x have ceded, transferred and conveyed as by these presents do hereby cede, convey and transfer unto the [sic] said Guzman A. Cariño, his heirs, executors, administrators and assigns, all my rights, title, interests in and participation to that parcel of land (public) covered by an application for free patent with a surface area of Ten (10) hectares, surveyed by the District Land Office of Baguio in the name of Pingel Dicman, and who ceded, conveyed and transferred one half of his title, rights and interests to me under an instrument executed by the said owner in the city of Baguio, Philippines, on the 22nd day of October, 1928 A.D. and duly ratified before Notary Public x x x together with all improvements therein, consisting of oranges, mangoes, and other fruit trees and a building of strong materials (half finished) x x x, which building was purchased by me from H.C. Heald on March 14, 1916, free from all liens and encumbrances, with full rights and authority to the said Guzman A. Cariño to perfect his claim with any government agency the proper issuance of such patent or title as may be permitted to him under existing laws.
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> x x x x x x x x x[6]

[5] Exhibit "6"; Exhibit "H" of Estate of Sioco Cariño.

[6] Exhibit "8"; Exhibit "O" of Estate of Sioco Cariño.

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In a letter dated January 15, 1938, Sioco Cariño asked his son, Guzman Cariño, who had been doing business in Damortis, Sto. Tomas, La Union, to take possession of the subject land and building.[7] Guzman Cariño moved to Baguio as requested and occupied the property. Evidence was adduced in the RTC to the effect that Guzman Cariño took possession of the property publicly, peacefully, and in the concept of owner: the directory of Baguio Telephones published in October 1940 lists the residence of Guzman A. Cariño at Camp 7, Baguio City, along with his telephone number; pictures were taken of him and his family, including the private respondent who was then an infant, depicting the property in the background; U.S. Army authorities obtained permission from Guzman Cariño to use a part of the land in question after the war; he introduced various improvements on the property over the years and exercised acts of ownership over them; he permitted the use of portions of the land to Governor Eulogio Rodriguez, Jr. and the Boy Scouts of Rizal Province; he leased out portions of the land to Bayani Pictures, Inc.; and his neighbors confirmed the possession and occupation over the property of Guzman Cariño and, after him, his son, herein private respondent Jose Cariño. These findings of fact were either confirmed or uncontroverted by the CA.[8]

On July 27, 1954, Guzman Cariño had the entire Lot 46 resurveyed so as to indicate the half portion that belonged to him and the other half that belonged to the petitioners. The resurvey evenly divided the lot into Lot 76-A and 76-B, and purportedly indicated that Lot 76-A, consisting of 50,953 square meters, belonged to the petitioners, while Lot 76-B, also consisting of 50,953 square meters, formerly pertained to Sioco Cariño and, later, to Guzman Cariño. Additionally, the resurvey indicated the house where private

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[7] Sioco Cariño's letter asked Guzman Cariño" to come up here at Camp 7 because I am here waiting for you inasmuch as I like to hand over to you this building here in Camp 7 and also the land which came from Isis, in order that you and your wife have a gift which will serve as the remembrance of your children from me, your father." RTC Decision, pp. 2-3; *Rollo*, pp. 103-4.

[8] CA Decision, p. 2; *Rollo*, p. 63 ; RTC Decision, at 3; *Rollo*, p. 104.

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respondent Jose Cariño resided and, before him, where his predecessors-in-interest, Sioco and Guzman Cariño, also resided.

On May 23, 1955, Guzman Cariño filed a Free Patent Application over the land in question. The application was given due course, but Guzman later withdrew it when he decided to file his opposition to the petition later filed by the heirs of Ting-el Dicman. This petition, entitled "Petition of the Heirs of Dicman to Reopen Civil Reservation Case No. 1, G.L.R.O. 211," was filed by Felipe Dicman, Bobing Dicman and Cating Dicman, in their capacity as compulsory heirs of Ting-el Dicman on April 24, 1959 with the Court of First Instance of Baguio. The petition sought to establish ownership over Lot 76-A and Lot 76-B which, taken together, covered an area of 10.1006 hectares. Guzman Cariño opposed the petition insofar as he insisted ownership over Lot 76-B, the land in controversy. The Estate of Sioco Cariño likewise filed an opposition.

On March 6, 1963, the trial court rendered a partial judgment and confirmed that the title over Lot 76-A belonged to the heirs of Ting-el Dicman, there having been no adverse claim. But as to Lot 76-B, the trial court found it necessary to hold further hearing in order to decide on the adverse claims of the parties.

Meanwhile, on January 8, 1960, while the foregoing petition was pending in the trial court, President Carlos P. Garcia issued Proclamation No. 628 "excluding from the operation of the Baguio Townsite Reservation certain parcels of public land known as 'Igorot Claims' situated in the City of Baguio and declaring the same open to disposition under the provisions of Chapter VII of the Public Land Act." The Proclamation further provided that the "Igorot Claims" enumerated therein shall be "subject to the condition that except in favor of the government or any of its branches, units, or institutions, lands acquired by virtue of this proclamation shall not be encumbered or alienated within a period of fifteen years from and after the date of issuance of patent." One such claim pertained to the "Heirs of Dicman," to wit:

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Name	Lot No.	Survey Plan	Residence Section	Area (Sq.m.)
Heirs of Dicman	46	Swo-37115	"J"	101,006

Before the trial court could dispose of the case, the Supreme Court promulgated *Republic v. Marcos*[9] which held that Courts of First Instance of Baguio have no jurisdiction to reopen judicial proceedings on the basis of Republic Act No. 931. As a consequence, on July 28, 1978, the trial court dismissed the petition to reopen Civil Reservation Case No. 1, G.L.R.O. 211 insofar as Lot 76-B was concerned, and the certificate of title issued pursuant to the partial decision involving Lot 76-A was invalidated. The trial court stated that the remedy for those who were issued titles was to file a petition for revalidation under Presidential Decree No. 1271, as amended by Presidential Decrees No. 1311 and 2034.

After the dismissal of the case, Guzman Cariño was left undisturbed in his possession of the subject property until his death on August 19, 1982. His remains are buried on the land in question, next to the large house purchased in 1916 by his father, Sioco Cariño (the grandfather of private respondent), from H.C. Heald. Guzman's widow and son, private respondent Jose Sioco C. Cariño, continued possession of the subject property.[10]

On April 20, 1983, petitioners, suing as compulsory heirs of Ting-el Dicman, revived the foregoing case by filing a complaint for recovery of possession with damages involving the subject property with the RTC, docketed as Civil Case No. 59-R. As earlier stated, petitioners, then complainants, originally sought to recover possession of the eastern half of the parcel of land situated in Residence Section "J", Camp Seven, Baguio City, consisting of 101,006 square meters, more or less, and identified as Lot 46, Ts-39, Plan SWO-37115.

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[9] 140 Phil. 241 (1969), reiterated in *Republic v. Marcos*, 152 Phil. 204 (1973).

[10] RTC Decision, p. 6; *Rollo*, p. 107.

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Petitioners, then plaintiffs, averred in their complaint:

10. That however, this Honorable Court was not able to decide the [ ] petition for reopening as far as the remaining eastern half portion of the above-described property is concerned due to the fact that the said petition was dismissed for alleged lack of jurisdiction; x x x

11. That because of the above-mentioned dismissal, the conflict between herein plaintiffs and defendant over the half eastern portion of the above-described property which was one of the issues supposed to be decided in the said judicial reopening case remains undecided;

12. That after the dismissal of the abovementioned petition and before the dispute between herein plaintiffs and defendant over the eastern half portion of the above-described property, defendant unlawfully and illegally continue to occupy portion [sic] of the above-described property to the clear damage and prejudice of herein plaintiffs;

13. That the defendant has no valid claim of ownership and possession over any of the portions of the above-described property;

14. That plaintiffs and their predecessors-in-interest have been religiously paying the realty taxes covering the above-described property x x x[11]

Private respondent Jose Cariño filed his answer and prayed for dismissal. He alleged that his predecessors-in-interest had acquired the land by onerous title through the "Deed of Absolute Sale" dated January 10, 1938 executed by his grandfather, Sioco Cariño, as seller, and his father, Guzman Cariño, as buyer; that the property was earlier acquired by Sioco Cariño by virtue of the "Deed of Conveyance of Part Rights and Interests in Agricultural Land" dated October 22, 1928 executed between Sioco Cariño and Ting-el Dicman; and that he has been in possession of the subject property for 55 years peacefully, in good faith, and in concept of owner and therefore perfected title over the same through acquisitive prescription.

On June 13, 1983, the administratrix of the Estate of Sioco Cariño filed a motion to intervene with the RTC. On July 1,

[11] *Rollo*, p. 83.

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1983, the RTC granted said motion. On July 11, 1983, the Estate of Sioco Cariño filed its Complaint-in-Intervention, praying for quieting of title among the adverse claimants.

The RTC, through an ocular inspection on February 15, 1984, found that the larger building still stands on the land in controversy and, together with the surrounding area, constituted the residence and was in the possession of private respondent and his family.

On November 28, 1990, the RTC rendered its decision in favor of private respondent, the dispositive portion of which states:

IN VIEW OF THE FOREGOING, judgment is hereby rendered as follows:

1. Plaintiffs' complaint is hereby DISMISSED;

2. Plaintiffs'-Intervenors complaint-in-intervention is hereby dismissed;

3. Defendant is hereby declared the lawful possessor and as the party who has the better right over the land subject matter [sic] of this action and as such he may apply for the confirmation of his title thereto in accordance with law (R.A. No. 8940[12])[.] Defendant's counterclaim is dismissed;

4. Costs is [*sic*] adjudged against the plaintiff and plaintiff-intervenor.

SO ORDERED.

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[12] This should read "R.A. 6940" which is entitled "AN ACT GRANTING A PERIOD ENDING ON DECEMBER 31, 2000 FOR FILING APPLICATIONS FOR FREE PATENT AND JUDICIAL CONFIRMATION OF IMPERFECT TITLE TO ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN UNDER CHAPTERS VII AND VIII OF THE PUBLIC LAND ACT (CA 141, AS AMENDED)."

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To support its ruling, the RTC found that the tax declarations and their revisions submitted as evidence by the petitioners made no reference to the land in question; [13] that no tax declaration over the land declared in the name of the Estate of Sioco Cariño had been submitted as evidence, and that the intervenor-estate presented tax declarations over the building only; that it was Guzman Cariño alone who declared for taxation purposes both the land and the improvements thereon in his name;[14] that there is no evidence to the effect that petitioners ever filed any action to challenge the validity of the "Deed of Conveyance of Part Rights and Interests in Agricultural Land" dated October 22, 1928; that even assuming that this instrument may be invalid for whatever reason, the fact remains that Sioco Cariño and his successors-in-interest had been in possession of the subject property publicly, adversely, continuously and in concept of owner for at least 55 years before the filing of the action;[15] that Sioco's successor, Guzman Cariño, had been in open and continuous possession of the property in good faith and in the concept of owner from 1938 until his death in 1982 and, hence, the Estate of Sioco Cariño has lost all rights to recover possession from Guzman Cariño or his heirs and assigns; and that although the Estate of Sioco Cariño attempted to assail the genuineness and due execution of the "Deed of Absolute Sale" dated January 10, 1938 executed by Sioco Cariño in favor of his son, Guzman Cariño, the challenge failed since no evidence had been adduced to support the allegation of forgery.[16]

On January 23, 1991, petitioners seasonably filed their notice of appeal. The RTC, however, denied the motion for reconsideration and motion to admit appeal filed by the Estate of Sioco Cariño on July 3, 1991 for being filed out of time.

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[13] RTC Decision, pp. 4-5;

[14] *Id.* at 5; *Rollo*, p. 106; CA Decision, pp. 5-7; *Rollo*, pp. 65-7.

[15] RTC Decision, p. 6; *Rollo*, p. 107.

[16] RTC Decision, p. 7; *Rollo*, p. 108.

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Petitioners raised the following issues before the Court of Appeals:

1. THE HONORABLE TRIAL COURT SERIOUSLY ERRED IN NOT CONSIDERING THE DOCUMENTARY EVIDENCE OF THE PLAINTIFFS-APPELLANTS AND THE STRAIGHTFORWARD DECLARATIONS OF THEIR WITNESS.

2. THE HONORABLE TRIAL COURT ERRED IN CONSIDERING THE DEED OF CONVEYANCE [OF] PART RIGHTS AND INTERESTS IN AGRICULTURAL LAND EXECUTED BY DICMAN IN FAVOR OF SIOCO CARIÑO DESPITE ITS NULLITY.

3. THE HONORABLE TRIAL COURT ERRED IN DECLARING DEFENDANT-APPELLEE TO HAVE A BETTER RIGHT TO THE PROPERTY IN DISPUTE.

4. THE HONORABLE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT AND NOT GRANTING THE RELIEFS PRAYED FOR THEREIN.

On June 30, 2000, the CA dismissed the petition and affirmed *in toto* the ruling of the RTC. On December 15, 2000, the CA issued a Resolution denying petitioners' motion for reconsideration.

The CA based its ruling on the following reasons: that the petitioners raised for the first time on appeal the issue on whether the "Deed of Conveyance of Part Rights and Interests in Agricultural Land" is void *ab initio* under Sections 145 and 146 of the Administrative Code of Mindanao and Sulu[17] (which

[17] Sections 145 and 146 provide as follows:

SEC. 145. *Contracts with non-Christians: requisites.* - Save and except contracts of sale or barter of personal property and contracts of personal service comprehended in chapter seventeen hereof no contract or agreement shall be made in the Department by any person with any Moro or other non-Christian tribe or portion thereof the Department or with any individual Moro or other non-Christian inhabitant of the same for the payment or delivery of money or other thing of value in present or in prospective, or in any manner affecting or relating to any real property, unless such contract or agreement be executed and approved as follows:

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was made applicable later to the Mountain Province and Nueva Viscaya by Act 2798, as amended by Act 2913, and then to all other cultural minorities found within the national territory by virtue of Section 120 of the Public Land Act[18]) and, hence, cannot be considered by the reviewing court; [19] that, even if this issue were considered, the records fail to show that Ting-el Dicman, though an Igorot, is a non-Christian and, hence, the foregoing laws are not applicable;[20] that there was sufficient

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x x x x x x x x x

(b) It shall be executed before a judge of a court of record, justice or auxiliary justice of the peace, or notary public, and shall bear the approval of the provincial governor wherein the same was executed or his representative duly authorized in writing for such purpose, indorsed upon it.

x x x x x x x x x

(f) The judge, justice or auxiliary justice of the peace, or notary public before whom such contract or agreement is executed shall certify officially thereon the time when and the place where such contract or agreement was executed, and that it was in his presence, and who are the interested parties thereto, as stated to him at the time; the parties making the same; the source and extent of authority claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agent or attorney of any party or parties thereto.

SEC. 146. *Void contracts.* - Every contract or agreement made in violation of the next preceding section shall be null and void; and all money or other thing of value paid to any person by any aforesaid Moro or non-Christian inhabitant or tribe or portion thereof, or any other person, for or on his or their behalf, thereunder or pursuant thereto may be recovered by suit in the name of the province wherein the contract was executed in any court of competent jurisdiction; and one-half thereof shall be paid to the person suing for the same, and the other half shall be paid into the treasury of the province wherein the contract was executed for the use of the aforesaid Moro or non-Christian inhabitant or tribe or portion thereof by or for whom it was so paid.

[18] *Amarante v. Court of Appeals*, G.R. No. 76386, October 26, 1987, 155 SCRA 46, 58; *Lacamen v. Laruan*, G.R. No. L-27088, July 31, 1975, 65 SCRA 605, 608; *Miguel v. Catalino*, 135 Phil. 229, 234 (1968).

[19] CA Decision, p. 10; *Rollo*, p. 70.

[20] CA Decision, pp. 11-13; *Rollo*, pp. 71-3.

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proof of consideration for the said deed;[21] and that even if the deed were a mere contract to sell and not an absolute sale, under *Borromeo v. Franco*[22] the obligation on the part of the purchaser to perfect the title papers within a certain time is not a condition subsequent nor essential to the obligation to sell, but rather the same is an incidental undertaking the failure to comply therewith not being a bar to the sale agreed upon.[23]

On February 12, 2001, petitioners, through newly retained counsel, filed their petition for review on *certiorari* under Rule 45.

Petitioners raise the following grounds for the petition:

A.

THE COURT OF APPEALS ERRED IN RULING THAT THE PROVISIONS OF ACT NO. 2798 ARE NOT APPLICABLE TO THE "DEED OF CONVEYANCE" EXECUTED BY PING-EL DICMAN ON THE GROUNDS THAT THERE IS NO PROOF THAT HE WAS A NON-CHRISTIAN AND THAT BAGUIO CITY IS NOT COVERED BY THE SAID ACT.

B.

THE COURT OF APPEALS ERRED IN THE APPLICATION OF THE RULING IN *BORROMEO V. FRANCO* (5 PHIL. 49 [1905]) THAT AN AGREEMENT ON THE PART OF THE PARTY TO A CONTRACT TO PERFECT THE TITLE PAPERS TO A CERTAIN PROPERTY WITHIN A CERTAIN TIME IS NOT A CONDITION SUBSEQUENT OR ESSENTIAL OF THE OBLIGATION TO SELL [sic].

C.

THE COURT OF APPEALS ERRED IN RULING THAT THE PROPERTY SUBJECT OF LITIGATION AND OVER WHICH RESPONDENT'S IMPROVEMENTS ARE BUILT BELONGS TO RESPONDENT NOTWITHSTANDING UNCONTROVERTED EVIDENCE THAT PETITIONERS' PREDECESSOR-IN-INTEREST PING-EL DICMAN HAD APPLIED FOR FREE PATENT OVER THE SUBJECT AREA AND HAD BEEN ISSUED PLAN SWO-37115 IN HIS NAME BY THE

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[21] CA Decision, pp. 13-14; *Rollo*, pp. 73-4.

[22] 5 Phil. 49 (1905).

[23] CA Decision, p. 14; *Rollo*, p. 74

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BUREAU OF LANDS IN 1954 AND HAD BEEN IN ACTUAL, OPEN, PEACEFUL, ADVERSE AND CONTINUOUS POSSESSION OF THE PROPERTY SINCE THE EARLY 1900s UNTIL HIS DEATH WHEN HIS GRANCHILDREN AND SUCCESSORS-IN-INTEREST, THE PETITIONERS, TOOK OVER AND CONTINUED THE POSSESSION OF THEIR GRANDFATHER, PING-EL DICMAN.

On March 2, 2001, petitioners filed their Manifestation and Motion to Substitute Babing Cosil and Cristina Alawas With Their Respective Heirs stating, among others, that Julio F. Dicman, son of petitioner Ernesto Dicman, had been appointed by the petitioners to sign the petition for and in their behalf, but due to distance and time constraints between Makati City and Baguio, he was not able to submit the same in time for the deadline for the petition on February 12, 2001. Petitioners attached the Special Power of Attorney seeking to formalize the appointment of Julio F. Dicman as their attorney-in-fact and to ratify his execution of the verification and certification of non-forum shopping for and on behalf of the petitioners.

On March 15, 2001, private respondent filed with this Court a Motion for Leave of Court to File Motion to Dismiss and/or Deny Due Course, arguing that the petition failed to comply with the requirements for verification and certification of non-forum shopping. The affiant of the petition, according to private respondent, is not a principal party in the case; rather, he is merely the son of Ernesto Dicman, one of the petitioners. The verification and certification reads:

VERIFICATION AND CERTIFICATION

I, *JULIO F. DICMAN*, of legal age, Filipino, with residence address at Camp 7, Montecillo Road, Baguio City, after being first duly sworn in accordance with law, do hereby depose and state:

1. *I am one of the petitioners* in the above-entitled case;

x x x (italics supplied)

To private respondent, since Ernesto Dicman, one of the petitioners, appears to be alive, he excludes his son as the successor-in-interest of Ting-el Dicman. The verification, therefore, is false in view of the statement under oath that Julio F. Dicman is a petitioner when in fact he is not, and should be cause for the

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dismissal of the case and indirect contempt of court, without prejudice to administrative and criminal action.

On May 2, 2001, in their Manifestation and Motion for Leave to File the Attached Reply and Reply, petitioners argued that while it may be true that the verification and certification to the petition were signed by Julio F. Dicman, the son of one of the petitioners, they subsequently confirmed his authority to sign on behalf of all the petitioners through the Special Power of Attorney submitted to the Court in a Manifestation and Motion to Substitute Babing Cosil and Cristina Alawas With Their Respective Heirs filed on March 2, 2001. Petitioners invoked substantial compliance and prayed that the Court overlook the procedural lapse in the interest of substantial justice. The parties thereafter submitted their respective memoranda.

The petition must be dismissed on the following grounds:

1. Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which requires the pleader to submit a certificate of non-forum shopping to be executed by the plaintiff or principal party, is mandatory, and non-compliance therewith is a sufficient ground for the dismissal of the petition.[24] The forum shopping certification must be signed by the party himself as he has personal knowledge of the facts therein stated.[25] Obviously, it is the plaintiff or principal party who is in the best position to know whether he actually filed or caused the filing of a petition in the case.[26] Where there are

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[24] RULES OF COURT, Rule 46, Sec. 3, par. 5 (1997); *Great Southern Maritime Services Co. v. Acuña*, G.R. No. 140189, February 28, 2005, 452 SCRA 422, 435; *Philippine Phosphate Fetilizer Co. v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 369, 382; *Chan v. Regional Trial Court of Zamboanga del Norte in Dipolog City, Br. 9*, G.R. No. 149253, April 15, 2004, 427 SCRA 796, 806.

[25] *Loquias v. Ombudsman*, 392 Phil. 596 (2000).

[26] *Philippine Phosphate Fetilizer Co. v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 369, 382; *Chan v. Regional Trial Court of Zamboanga del Norte in Dipolog City, Br. 9*, G.R. No. 149253, April 15, 2004, 427 SCRA 796, 806; *Mendigorin v. Cabantog*, 436 Phil. 483 (2002); *Digital Microwave Corporation v. Court of Appeals*, G.R. No. 128550, March 16, 2000, 328 SCRA 286, 290.

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two or more plaintiffs or petitioners, all of them must sign the verification and non-forum certification, and the signature of only one of them is insufficient,[27] unless the one who signs the verification and certification has been authorized to execute the same by, and on behalf of, the co-plaintiff or co-petitioner.[28] But it must be stressed that the requirement the principal party himself should sign the certification applies only to a natural person and not to a juridical person which can only act through its officer or duly authorized agent.[29]

However, the Court has also held 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 regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[30] Thus, under justifiable circumstances, the Court

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[27] *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005, 459 SCRA 604, 616-17; *Gonzales v. Balikatan Kilusang Bayan sa Pananalapi, Inc.*, G.R. No. 150859, March 28, 2005, 454 SCRA 111, 115-16.

[28] *Loquias v. Ombudsman*, *supra* note 25, at 67-8.

[29] *BA Savings Bank v. Sia*, 391 Phil. 370 (2000).

[30] *Philippine Phosphate Fetilizer Co. v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 369, 383-84; *Vicar International Construction, Inc. v. FEB Leasing and Finance Co.*, G.R. No. 157195, April 22, 2005, 456 SCRA 588, 596-99; *Great Southern Maritime Services Co. v. Acuña*, G.R. No. 140189, February 28, 2005, 452 SCRA 422, 435-37; *Cavile v. Heirs of Cavile*, 448 Phil. 302 (2003); *Chan v. Regional Trial Court of Zamboanga del Norte in Dipolog City, Br. 9*, G.R. No. 149253, April 15, 2004, 427 SCRA 796, 808; *General Milling Corporation v. NLRC*, 442 Phil. 424 (2002); *Active Realty & Development Corporation v. Daroya*, 431 Phil. 753, 758-59 (2002); *Shipside Incorporated v. Court of Appeals*, G.R. No. 143377, February 20, 2001, 352 SCRA 334, 345-47; *Uy v. LandBank*, G.R. No. 136100, July 24, 2000, 336 SCRA 419, 427-29; *Roadway Express, Inc.*

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has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.[31]

But a perusal of the relevant decisions handed down by this Court consistently shows that substantial compliance may be invoked and the procedural lapse overlooked provided that, where the petitioner is a natural person as in the case at bar, the authorized signatory must also be a principal party or co-petitioner.[32] Petitioners, as natural persons, cannot therefore appoint a non-party to sign for them, especially since only the petitioners occupy the best position to know whether they actually filed or caused the filing of a petition in this case and who personally know the facts stated in the petition. On this point alone the petition should be dismissed.

2. It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. While jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, namely: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is

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v. Court of Appeals, G.R. No. 121488, November 21, 1996, 264 SCRA 696, 700-01; *Bernardo v. NLRC*, G.R. No. 105819, March 15, 1996, 255 SCRA 108, 117; *Loyola v. Court of Appeals*, G.R. No. 117186, June 29, 1995, 245 SCRA 477, 482-84.

[31] See, *e.g.*, *Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 336-37; *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6 2004, 433 SCRA 455, 465.

[32] See *San Miguel Co. v. Aballa*, G.R. No. 149011, June 28, 2005, 461 SCRA 392; *Heirs of Olarte v. NHA*, G.R. No. 165821, June 21, 2005, 460 SCRA 561; *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005, 459 SCRA 604; *Cavile v. Heirs of Cavile*, G.R. No. 148635, 1 April 2003, 400 SCRA 255, 261-262; *Docena v. Lapesura*, G.R. No. 140153, March 28, 2001, 355 SCRA 658; *Dar v. Alonzo-Legasto*, 393 Phil. 734 (2000).

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based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion,[33] none of these exceptions has been shown to apply in the present case and, hence, this Court may not review the findings of fact made by the lower courts.

3. Petitioners argue on appeal that the "Deed of Conveyance of Part Rights and Interests in Agricultural Land" dated October 22, 1928 executed between Sioco Cariño and Ting-el Dicman is void *ab initio* for lack of approval of competent authorities as required under Section 145 in relation to Section 146 of the Administrative Code of Mindanao and Sulu, the application of which was later extended to the Mountain Province and Nueva Viscaya and, thereafter, throughout the entire national territory;[34] that the sale was without valid consideration; and that the said deed is not an absolute sale but merely a contract to sell subject to the suspensive condition that the papers evidencing the title must first be perfected. These arguments were lumped under the following issue in their appeal to the CA:

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[33] *Rivera v. Roman*, G.R. No. 142402, September 20, 2005, 470 SCRA 276; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; *Aguirre v. Court of Appeals*, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 319; *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279 (2002).

[34] *Amarante v. Court of Appeals*, G.R. No. 76386, October 26, 1987, 155 SCRA 46, 58; *Lacamen v. Laruan*, G.R. No. L-27088, July 31, 1975, 65 SCRA 605, 608; *Miguel v. Catalino*, 135 Phil. 229, 234 (1968).

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2. THE HONORABLE TRIAL COURT ERRED IN CONSIDERING THE DEED OF CONVEYANCE [OF] PART RIGHTS AND INTERESTS IN AGRICULTURAL LAND EXECUTED BY DICMAN IN FAVOR OF SIOCO CARIÑO DESPITE ITS NULLITY.

The foregoing issue and the incidents thereunder were never raised by the petitioners during the proceedings before the RTC. Suffice it to say that issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred by estoppel.[35] Matters, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal where they are raised for the first time. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.[36]

4. Even if this Court should declare the sale null and void or the agreement merely a contract to sell subject to a suspensive condition that has yet to occur, private respondent nonetheless acquired ownership over the land in question through acquisitive prescription.[37]

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[35] *Cruz v. Fernando*, G.R. No. 145470, December 9, 2005, 477 SCRA 173, 182; *Philippine Banking Corporation v. Court of Appeals*, G.R. No. 127469, January 15, 2004, 419 SCRA 487, 503-04; *Caltex (Phils), Inc. v. CA*, G.R. No. 97753, August 10, 1992, 212 SCRA 448, 461.

[36] *Cruz v. Fernando, supra*; *Department of Agrarian Reform v. Franco*, G.R. No. 147479, September 26, 2005, 471 SCRA 74, 92-93; *Gualberto v. Go*, G.R. No. 139843, July 21, 2005, 463 SCRA 671, 678; *De Rama v. Court of Appeals*, G.R. No. 131136, February 28, 2001, 353 SCRA 94.

[37] Section 41 of Act 190 (Code of Civil Procedure) provides:

Sec. 41. *Title to land by prescription.* – Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the person under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must be actual, open, public,

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The records show that as early as 1938, the land in controversy had been in the possession of Guzman Cariño, predecessor-in-interest of private respondent, continuously, publicly, peacefully, in concept of owner, and in good faith with just title, to the exclusion of the petitioners and their predecessors-in-interest, well beyond the period required under law to acquire title by acquisitive prescription which, in this case, is 10 years.[38]

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continuous, under a claim of title exclusive of any other right and adverse to all claimants x x x

The relevant provisions under the present Civil Code provide:

Art. 1117. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.

Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law.

Art. 1118. Possession has to be in the concept of an owner, public, peaceful and uninterrupted.

Art. 1127. The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.

Art. 1128. The conditions of good faith required for possession in Articles 526, 527, 528, and 529 of this Code are likewise necessary for the determination of good faith in the prescription of ownership and other real rights.

Art. 1129. For the purposes of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.

Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

[38] CODE OF CIVIL PROCEDURE, Act 190, Section 41. Article 1116 of the 1950 Civil Code states:

Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required for prescription should lapse, the present Code shall be applicable, even though by the former laws a longer period might be required.

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The findings of fact of the lower courts, and which this Court has no reason to disturb, inescapably point to this conclusion: immediately after the "Deed of Absolute Sale," a public instrument dated January 10, 1938, had been executed by Sioco Cariño in favor of his son, Guzman Cariño (the father of private respondent), the latter immediately occupied the property; the 1940 directory of Baguio Telephones lists his residence at Camp 7, Baguio City along with his telephone number; his permitting the use of portions of the property to various third parties; his introduction of improvements over the land in controversy; the testimonial accounts of his neighbors; and that it was Guzman Cariño alone who declared for tax purposes both the land and the improvements thereon in his name, while the tax declarations of the other claimants made no reference to the subject property.[39] Although arguably Sioco Cariño may not have been the owner of the subject property when he executed the "Deed of Absolute Sale" in 1938 in favor of his son, the requirement of just title is nonetheless satisfied, which means that the mode of transferring ownership should ordinarily

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This is a case where Article 1116 may be said to apply, such that if the period began and ended under the old law, then the period under the old law applies which, in this case, is only 10 years regardless of good faith or bad faith. Section 41 of Act 190, otherwise known as the Code of Civil Procedure, allows adverse possession in any character, whether good faith or bad faith, to ripen into ownership after the lapse of ten years. *See Rigonan v. Derecho,* G.R. No. 159571, July 15, 2005, 463 SCRA 627, 643-44; *Ramos v. CA*, 198 Phil. 263; *Alvero v. Reas*, 146 Phil. 221 (1970); *Ongsiaco v. Dallo*, 136 Phil. 596 (1969); *Arboso v. Andrade*, 87 Phil. 782, 785-786 (1950); *Santos v. Heirs of Crisostomo,* 41 Phil. 342 (1921); *Locsin Rama v. Montelibano Ramos,* 36 Phil. 136 (1917); *Altman v. Commanding Officer,* 11 Phil. 516 (1908). Prescription lies under the said section even in the absence of good faith and just title. *Rigonan v. Derecho,* G.R. No. 159571, July 15, 2005, 463 SCRA 627, 643-44, *citing Alvero v. Reas,* 146 Phil. 221 (1970). The new Civil Code took effect on August 30, 1950.

[39] CA Decision, pp. 5-7; *Rollo*, pp. 65-7; RTC Decision, pp. 3, 5; *Rollo*, pp. 104, 106.

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have been valid and true, had the grantor been the owner.[40] By the time the successors-in-interest of Ting-el Dicman sought to establish ownership over the land in controversy by filing their "Petition of the Heirs of Dicman to Reopen Civil Reservation Case No. 1, G.L.R.O. 211" on April 24, 1959 with the trial court, and which Guzman timely opposed, more than 20 years had already elapsed. Thus, the 10-year period for acquisitive prescription is deemed satisfied well before Guzman's possession can be said to be civilly interrupted by the filing of the foregoing petition to reopen.[41] After the dismissal of that case on July 28, 1978, Guzman Cariño was left undisturbed in his possession of the subject property until his death on August 19, 1982. His remains are buried on the land in question. Thereafter, Guzman's widow and son, herein private respondent, continued possession of the subject property in the same manner. When petitioners, heirs of Ting-el Dicman, tried to revive the case on April 20, 1983, they had, far before that time, lost all rights to recover possession or ownership.

5. Prescinding from the issue on prescription, the petitioners and their predecessors-in-interest are nonetheless guilty of *laches*.

Laches has been defined as such neglect or omission to assert a right, taken in conjunction with the lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity.[42] It is a delay in the assertion

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[40] See CODE OF CIVIL PROCEDURE, Act 190, Section 41. See *also* CIVIL CODE OF THE PHILIPPINES, R.A. 386, Arts. 1117, 1129 & 1130 (1950); IV ARTURO M. TOLENTINO, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 26 (1991); IV EDGARDO L. PARAS, *CIVIL CODE OF THE PHILIPPINES ANNOTATED* 31-2 (2000), *citing Doliendo v. Biarnesa*, 7 Phil. 232 (1906) & 2 CASTAN 240.

[41] See CIVIL CODE OF THE PHILIPPINES, R.A. 386, Art. 1123 (1950).

[42] *De Vera-Cruz v. Miguel*, G.R. No. 144103, August 31, 2005, 468 SCRA 506, 518; *Lacamen v. Laruan, supra* note 34, *citing* 27 AM. JUR. 2d 687; Re O'Donnel's Estate, 8 Ill. App. 2d 348, 132 N.E. 2d 74; 2 POMEROY'S EQUITY JURISPRUDENCE 171-72 (5th ed.).

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of a right which works disadvantage to another[43] because of the inequity founded on some change in the condition or relations of the property or parties.[44] It is based on public policy which, for the peace of society,[45] ordains that relief will be denied to a stale demand which otherwise could be a valid claim.[46] It is different from and applies independently of prescription. While prescription is concerned with the fact of delay, *laches* is concerned with the effect of delay. Prescription is a matter of time; *laches* is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; *laches* is not. *Laches* applies in equity, whereas prescription applies at law. Prescription is based on a fixed time, *laches* is not.[47] *Laches* means the failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it.[48] It has been held that even a registered owner of property under the Torrens Title system may be barred from recovering possession of property by virtue of *laches*.[49]

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[43] *De Vera-Cruz v. Miguel, supra*; *Lacamen v. Laruan, supra*, citing *Hall v. Mortgage Secur. Co.* 192 S.E. 145, 393, 11 A.L.R. 118.

[44] *De Vera-Cruz v. Miguel, supra*; *Lacamen v. Laruan, supra*, citing 2 *POMEROY'S EQUITY JURISPRUDENCE* 171-72 (5th ed.).

[45] *De Vera-Cruz v. Miguel, supra*; *Lacamen v. Laruan, supra*, citing *Tijam v. Sibonghanoy*, L-21450, April 15, 1968, 23 SCRA 29.

[46] *De Vera-Cruz v. Miguel, supra*; *Lacamen v. Laruan, supra*, citing *Vda. de Lima v. Tio*, 143 Phil. 401 (1970).

[47] *De Vera-Cruz v. Miguel, supra*; *Lacamen v. Laruan, supra*, citing *Nielson & Company, Inc. v. Lepanto Consolidated Mining Co.*, 125 Phil. 204 (1966).

[48] *Id.* citing *Eduarte v. Court of Appeals*, 370 Phil. 18 (1999); *Catholic Bishop of Balanga v. Court of Appeals*, 332 Phil. 206 (1996).

[49] *Panganiban v. Dayrit*, G.R. No. 151235, July 28, 2005, 464 SCRA 370, 381; *Vda. De Cabrera, et al. v. CA, et al.*, 335 Phil. 19 (1997).

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Given the foregoing findings of fact, all the four (4) elements of *laches,* as prescribed by the decisions of this Court, are present in the case, to wit:

a. Conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy;

b. Delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit;

c. Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and

d. Injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.[50]

As correctly held by the RTC, there is no evidence to the effect that Ting-el Dicman or his successors-in-interest ever filed any action to question the validity of the "Deed of Conveyance of Part Rights and Interests in Agricultural Land" after its execution on October 22, 1928[51] despite having every opportunity to do so. Nor was any action to recover possession of the property from Guzman Cariño instituted anytime prior to April 24, 1959, a time when the period for acquisitive prescription, reckoned from Guzman's occupation of the property in 1938, had already transpired in his favor. No evidence likewise appears on the record that Sioco Cariño or his Estate ever filed any action to contest the validity of the "Deed of Absolute

[50] *Panganiban v. Dayrit, supra,* note 49, at 382; *Claverias v. Quingco,* G.R. No. 77744, March 6, 1992, 207 SCRA 66, 83; *Miguel v. Catalino,* 135 Phil. 229, 235 (1968); *Mejia de Lucas v. Gamponia,* 100 Phil. 277, 280 (1956); *Go Chi Gun v. Co Cho,* 96 Phil. 622, 637 (1954), citing 19 Am. Jur., 343-344.

[51] RTC Decision, p. 6; *Rollo,* p. 107.

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Sale" dated January 10, 1938.[52] Though counsel for the Estate of Sioco Cariño tried to assail the deed as a forgery in the trial court, the attempt failed and no appeal was lodged therefrom. It will be difficult for this Court to assume that the petitioners and their predecessors were all the while ignorant of the adverse possession of private respondent and his predecessors given the publicity of their conduct and the nature of their acts. Private respondent and his predecessors-in-interest were made to feel secure in the belief that no action would be filed against them by such passivity. There is no justifiable reason for petitioners' delay in asserting their rights—the facts in their entirety show that they have slept on them. For over 30 years reckoned from the "Deed of Conveyance of Part Rights and Interests in Agricultural Land" dated October 22, 1928, or 20 years reckoned from the "Deed of Absolute Sale" dated January 10, 1938, they neglected to take positive steps to assert their dominical claim over the property. With the exception of forgery, all other issues concerning the validity of the two instruments abovementioned, as well as the averment that the former was in the nature of a contract to sell, were issues raised only for the first time on appeal and cannot therefore be taken up at this late a stage. The features of this case are not new. The Court has on several occasions held in particular that despite the judicial pronouncement that the sale of real property by illiterate ethnic minorities is null and void for lack of approval of competent authorities, the right to recover possession has nonetheless been barred through the operation of the equitable doctrine of *laches*.[53]

6. Petitioners argue that Proclamation No. 628 issued by then President Carlos P. Garcia on January 8, 1960 had the effect of "segregating" and "reserving" certain Igorot claims identified therein, including one purportedly belonging to the "Heirs of Dicman," and prohibiting any encumbrance or alienation

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[52] RTC Decision, pp. 6-7; *Rollo*, pp. 107-08.

[53] See *Lucenta v. CFI*, G.R. No. L-39789, June 20, 1988, 162 SCRA 197; *Lacamen v. Laruan*, *supra*; *Miguel v. Catalino*, *supra*, note 34.

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of these claims for a period of 15 years from acquisition of patent. But by the time the Proclamation had been issued, all rights over the property in question had already been vested in private respondent. The executive issuance can only go so far as to classify public land, but it cannot be construed as to prejudice vested rights. Moreover, property rights may not be altered or deprived by executive fiat alone without contravening the due process guarantees[54] of the Constitution and may amount to unlawful taking of private property to be redistributed for public use without just compensation.[55]

The recognition, respect, and protection of the rights of indigenous peoples to preserve and develop their cultures, traditions, and institutions are vital concerns of the State and constitute important public policies which bear upon this case. To give life and meaning unto these policies the legislature saw it fit to enact Republic Act No. 8371, otherwise known as The Indigenous Peoples Rights Act of 1997, as a culminating measure to affirm the views and opinions of indigenous peoples and ethnic minorities on matters that affect their life and culture.[56] The provisions of that law unify an otherwise fragmented account of constitutional, jurisprudential and statutory doctrine which enjoins the organs of government to be vigilant for the protection of indigenous cultural communities as a marginalized sector, [57] to protect their ancestral domain and

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[54] See *Ayog v. Cusi*, 204 Phil. 126 (1982).

[55] See *Manotok v. NHA*, G.R. No. L-55166-7, May 21, 1987, 150 SCRA 89.

[56] See *Sedfrey M. Candelaria, Introducing the Indigenous Peoples Rights Act,* 47 ATENEO L.J. 571 (2002) (introducing the Colloquium on Indigenous Peoples and discussing the framework of IPRA); Werner Blenk, *ILO Partnership with Indigenous Peoples,* 47 ATENEO L.J. 556 (2002) (defining the historical involvement of the International Labor Organization in the situation of indigenous and tribal peoples); Terence D. Jones, *The United Nations Development Programme and the Indigenous Peoples,* 47 ATENEO L.J 562 (2002) (discussing the situation of indigenous peoples in light of internal conflict and sustainable development).

[57] CIVIL CODE OF THE PHILIPPINES, R.A. 386, Art. 24 (1950).

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ancestral lands and ensure their economic, social, and cultural well-being,[58] and to guard their patrimony from those inclined to prey upon their ignorance or ductility.[59] As the final arbiter of disputes and the last bulwark of the Rule of Law this Court has always been mindful of the highest edicts of social justice especially where doubts arise in the interpretation and application of the law. But when in the pursuit of the loftiest ends ordained by the Constitution this Court finds that the law is clear and leaves no room for doubt, it shall decide according to the principles of right and justice as all people conceive them to be, and with due appreciation of the rights of all persons concerned.

WHEREFORE, the instant petition is *DENIED* and the assailed Decision and Resolution of the Court of Appeals are *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Panganiban, C.J. (Chairperson), Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

Ynares-Santiago, J., on leave

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[58] See *PHILIPPINE CONST.* Art. XII, Sec. 5.

[59] *Amarante v. Court of Appeals*, G.R. No. 76386, October 26, 1987, 155 SCRA 46, 58; *Madale v. Sa Raya*, 92 Phil. 558 (1953); *Porkan v. Navarro*, 73 Phil. 698 (1942); *De Porkan v. Yatco*, 70 Phil. 161 (1940).