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SECOND DIVISION

[G.R. No. 109312. March 29, 1996]

HEIRS OF PLACIDO MIRANDA, *petitioners, vs.* THE COURT OF APPEALS, HON. RODOLFO TOLEDANO, Presiding Judge of RTC, Iba, Zambales, Branch 69, AGERICO MIRANDA and his wife JUANA MARCIA, CHARITO MIRANDA and her husband TIMOTEO PAULE, herein represented by their Attorney-In-Fact, EDITHA ZUNIGA, and THE REGISTER OF DEEDS OF IBA, ZAMBALES, *respondents.*

[G.R. No. 120245. March 29, 1996]

ISMAEL ESMELE, ALFREDO MIRANDA, NOE MIRANDA, SR., NOE MIRANDA, JR., AMOR LEDINA, FERDINAND LEDINA, PEDRO REYES, FELIX REYES, NARCISO REYES, ROY BORJA, REMIGIO ENCARNACION, ROBERTO DE LUNA, and SPS. EDEN LEDINA and HECTOR SEVILLA, *petitioners, vs.* THE COURT OF APPEALS, HON. FELIX MAMENTA, JR., Presiding Judge, RTC, Branch 70, Iba, Zambales, CHARITO MIRANDA, and her husband TIMOTEO PAULE, herein represented by their Attorney-in-Fact, EDITHA ZUNIGA, *respondents.*

SYLLABUS

1. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; TAX RECEIPTS AND DECLARATION OF OWNERSHIP FOR TAXATION, WHEN COUPLED WITH PROOF OF ACTUAL POSSESSION OF PROPERTY,

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CAN BE THE BASIS OF CLAIM OF OWNERSHIP THROUGH PRESCRIPTION. — Indeed private respondent Agerico Miranda acquired the land by virtue of a deed of sale. His daughter, Charito, to whom the land was later transferred, has in her favor a certificate of title, tax receipts and evidence of possession of the land for more than 30 years. Tax receipts and declarations of ownership for taxation, when coupled with proof of actual possession of the property, can be the basis of claim of ownership through prescription.

2. **ID.; ID.; ID.; OWNERSHIP AND OTHER REAL RIGHTS OVER IMMOVABLE PROPERTY; HOW ACQUIRED.** — Ownership and other real rights over immovable property are acquired by ordinary prescription through possession for ten years if the adverse possession is by virtue of a title and it is in good faith. Without need of title or of good faith, ownership and other real rights over immovables also prescribe through uninterrupted adverse possession for 30 years. For possession to constitute the foundation of a prescriptive right, it must be under a claim of title or it must be adverse or in the concept of owner. In this case, therefore, on the basis alone of possession for more than 30 years, private respondents' ownership, acquired through extraordinary prescription, is beyond question.

3. **ID.; CONTRACTS; VOIDABLE CONTRACTS; ARTICLE 1391 OF THE CIVIL CODE PRESUPPOSES THAT NO ACQUISITIVE PRESCRIPTION HAS SET IN.** — Petitioners contend that under Art. 1391 of the Civil Code they had a period of four (4) years within which to bring an action for annulment and that this period commenced to run only from November 1991, when they allegedly discovered the fraud committed against them. Art. 1391 presupposes, however, that no acquisitive prescription has set in, for after the favorable effects of acquisitive prescription have

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set in, rights of ownership over a property are rendered indisputable.

4. **ID.; ID.; ID.; PETITIONERS' CONTENTION THAT THE CONTRACT OF SALE IN CASE AT BAR IS ABSOLUTELY SIMULATED AND, THEREFORE, THE ACTION TO DECLARE ITS NULLITY IS IMPRESCRIPTIBLE IS INCONSISTENT WITH HIS THEORY THAT THE PRIVATE RESPONDENT ACQUIRED THE LAND THROUGH FRAUD; CASE AT BAR.** — Nor is it correct to say that the sale to private respondents is absolutely simulated and, therefore, the action to declare its nullity is imprescriptible. As Art. 1345 of the Civil Code provides, a contract is simulated if the parties did not intend to be bound at all. This is completely the opposite of petitioners' theory that private respondent Agerico Miranda acquired the land from Maximo Miranda through fraud.

5. **REMEDIAL LAW; CIVIL PROCEDURE; PRESCRIPTION MAY BE EFFECTIVELY PLEADED IN A MOTION TO DISMISS IF THE COMPLAINT SHOWS ON ITS FACE THAT THE ACTION HAS ALREADY PRESCRIBED AT THE TIME IT WAS FILED.** — The Regional Trial Court dismissed the complaint upon motion by the private respondents and after petitioners had been given full opportunity to oppose the motion to dismiss through the presentation of argument. As the question was whether petitioners' action was barred by prescription or private respondents had acquired ownership by prescription, there was no need for the reception of oral evidence. Petitioners themselves stated in their complaint that the sale, which they were seeking to annul, had been made on November 5, 1957. Since their complaint was filed only on June 2, 1992, after almost 35 years, it was clear that acquisitive prescription had set in. Prescription may be effectively pleaded in a

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motion to dismiss if the complaint shows on its face that the action had already prescribed at the time it was filed. In fact the trial court could have dismissed the case *motu proprio* on this ground even though the private respondents did not present a motion for the dismissal of the complaint.

6. ID.; ID.; APPEALS; A PARTY CANNOT SUBSTITUTE THE SPECIAL CIVIL ACTION OF CERTIORARI UNDER RULE 65 OF THE RULES OF COURT FOR THE REMEDY OF APPEAL. — Instead of appealing, petitioners filed a petition for certiorari against the trial court's order of dismissal. The issue in this case is whether the Court of Appeals erred in dismissing petitioners' action on the ground that certiorari was not the proper remedy against the order of the trial court. We hold that the appellate court did not err. The correct procedural recourse was appeal not only because, as already explained, the trial court did not commit any grave abuse of discretion in dismissing petitioners' action without the presentation of oral testimonies but also because the order of dismissal was a final order from which petitioners could have appealed in accordance with Rule 41, § 2. Certiorari generally lies only when there is no appeal nor any other plain, speedy or adequate remedy available to petitioners. Here appeal was available. It was adequate to deal with any question whether of fact or of law, whether of error of jurisdiction or grave abuse of discretion or error of judgment which the trial court might have committed. But petitioners instead filed a special civil action of certiorari. A party cannot substitute the special civil action of certiorari under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of certiorari. As this Court held in *Fajardo v. Bautista* (232 SCRA 291 [1994]): Generally, an order of dismissal, whether right or

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wrong, is a final order, and hence a proper subject of appeal, not certiorari. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive. Accordingly, although the special civil action of certiorari is not proper when an ordinary appeal is available, it may be granted where it is shown that the appeal would be inadequate, slow, insufficient, and will not promptly relieve a party from the injurious effects of the order complained of, or where appeal is inadequate and ineffectual. Nevertheless, certiorari cannot be a substitute for the lost or lapsed remedy of appeal, where such loss is occasioned by the petitioner's own neglect or error in the choice of remedies. The Court of Appeals therefore did not err in holding: The remedy of a petition for certiorari is unavailing. This court possesses no authority to rule upon non-jurisdictional issues in a certiorari proceeding. A writ of certiorari may issue only when the tribunal "has acted without or in excess of its jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law."

7. **ID.; BATAS PAMBANSA BLG. 129; INFERIOR COURTS MAY DETERMINE QUESTIONS OF OWNERSHIP IN EJECTMENT CASES WHENEVER NECESSARY TO DECIDE THE QUESTION OF POSSESSION.** — All ejectment cases are now covered by the summary procedure regardless of whether they involve questions of ownership. Under the Revised Rules on Summary Procedure, the adjudication of cases is done on the basis of affidavits and position papers. The court is no longer allowed to hold hearings to receive testimonial evidence. Should the Court find it necessary to clarify certain issues, it may require the parties instead to submit affidavits or other evidence. The proceeding is required to be summary so as to promote the speedy disposition of ejectment cases. Nor could the pendency of the action for

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annulment of sale and reconveyance in the Regional Trial Court be successfully pleaded in abatement of an action for unlawful detainer or forcible entry. It is now settled that the court in ejectment cases may determine questions of ownership whenever necessary to decide the questions of possession. Nor may petitioners, by filing an action involving the ownership of the land, frustrate the ejectment suit, brought by private respondent. Inferior courts are not divested of jurisdiction over ejectment cases just because the defendants assert ownership over the litigated property. Indeed, the only issue in such cases is physical or material possession or possession *de facto*, independent of any claim of ownership set forth by any of the party litigants. The purpose of the suit is the restoration to the aggrieved party of the possession of the premises from which he has been forcibly ejected or which has been withheld from him, and anyone who can prove prior possession *de facto* may recover such possession. This rule holds true regardless of the character of a party's possession, provided that he has in his favor priority of time which entitles him to stay on the property until he is lawfully ejected.

APPEARANCES OF COUNSEL

Linzag-Arcilla & Associates Law Offices for Heirs of Placido Miranda in G.R. No. 109312 and Ismael Esmele, et al. in G.R. No. 120245.

Nelson A. Loyola for Charito Miranda.

D E C I S I O N

MENDOZA, *J.*:

These cases have been consolidated as they involve the same parties and subject matter (a 21-hectare land in Pawa-Talon and Guintoan, Palauig, Zambales) and related issues.

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G.R. No. 109312 is a petition for review of the decision[1] of the Court of Appeals, sustaining the dismissal by the Regional Trial Court, Branch 69 at Iba, Zambales, of a complaint which petitioners had filed for the annulment of the sale of the land in question to private respondents. On the other hand, **G.R. No. 120245** is a petition for review of another decision[2] of the Court of Appeals, affirming the ejectment of petitioners from the land which is the subject of G.R. No. 109312.

The facts are as follows:

Placido Miranda and his wife were owners of a parcel of land, consisting of about 21 hectares, in Pawa-Talon and Guintoan, Palauig, Zambales. Upon their death, the land was administered by their son Maximo Miranda. On November 5, 1957 Maximo Miranda sold the land to Agerico Miranda, then Provincial Treasurer of Zambales. On November 15, 1984, Free Patent Title No. 600198 (OCT No. P-7753), covering the land in question, was issued to Agerico Miranda's daughter, Charito. Since they acquired it from Maximo Miranda, Agerico Miranda has been in possession and cultivation of the land in behalf of his daughter, now a resident of New Jersey, U.S.A.

On December 28, 1991, the heirs of Placido Miranda entered the land and prevented private respondents from cultivating it, claiming that they were the rightful owners and possessors because Maximo Miranda was merely the administrator of Placido Miranda's estate, and that Agerico Miranda,

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[1] Per Justice Antonio M. Martinez, chairman, and concurred in by Justices Artemon D. Luna and Alicia Austria-Martinez.

[2] Per Justice Justo P. Torres, Jr., chairman, and concurred in by Justices Ramon U. Mabutas, Jr. and B.A. Adefuin-dela Cruz.

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as Provincial Treasurer, caused the preparation of a tax declaration in which it was made to appear that Maximo Miranda was the sole owner of the land.

On January 24, 1992 private respondents brought an action for forcible entry in the Municipal Circuit Trial Court of Masinloc and Palauig, Masinloc, Zambales against petitioners. The complaint was dismissed by the court on the ground that it had no jurisdiction over the case, but on appeal the Regional Trial Court at Iba, Zambales reversed and remanded the case to the MCTC.

On the basis of the parties' position papers, the documentary evidence submitted by them and their own pleadings, the MCTC on August 5, 1993 rendered judgment for private respondents, ordering petitioners to vacate the land. Its decision was affirmed *in toto* by the Regional Trial Court. Petitioners filed a Petition for Review in this Court (G.R. No. 114994) which referred the case to the Court of Appeals. On February 24, 1995, the appellate court rendered a decision dismissing the case for lack of merit. Petitioners filed a motion for reconsideration which was denied. The Court of Appeals' decision is subject of the present petition for review on certiorari in **G.R. No. 120245**.

On the other hand, petitioners herein filed on June 2, 1992 a complaint for Declaration of Nullity, Annulment of Title and Deed of Sale and Cancellation of Title and Reconveyance with Damages and Partition against private respondents. Petitioners reiterated their contention that the sale of the land to Agerico was fraudulent and therefore void. In addition they contended that the certificate of title issued in the name of Agerico's daughter, Charito Miranda, was null and void because the latter was

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disqualified from owning lands in the Philippines, having become a foreign citizen. They argued that in any event prescription did not set in because actions to declare the inexistence of an absolutely simulated contract do not prescribe[3] and that if there was an applicable period of prescription, it would be four (4) years from November 1991, when they allegedly discovered the fraud committed against them by private respondents.

In answer, private respondents alleged that since 1957, they had been in possession and cultivation of the land, planting it to mango and coconut trees. After Charito Miranda had gone to the U.S.A., the land was administered by her father, Agerico Miranda. Private respondents complained that petitioners entered said land and prevented them from going into it.

Upon motion of private respondents, the Regional Trial Court dismissed the complaint on the ground of prescription. Instead of appealing from the decision, petitioners filed a special civil action for certiorari in the Court of Appeals, which, on March 16, 1993, dismissed their action. Its decision is now the subject of review in **G.R. No. 109312**.

Procedural and substantive issues are raised in these appeals for the consideration of this Court. We shall deal with these appeals in inverse order.

In **G.R. No. 109312** petitioners contend that because the Court of Appeals did not set aside the order of the Regional Trial Court which dismissed their action for the annulment of the sale on the ground of prescription, the appellate court sanctioned a dismissal based purely on "technicalities" which

[3]CIVIL CODE, Arts. 1409 (2) and 1410.

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deprived petitioners of the opportunity to present evidence and thus violated their right to due process.

The contention is without merit. The Regional Trial Court dismissed the complaint upon motion by the private respondents and after petitioners had been given full opportunity to oppose the motion to dismiss through the presentation of argument. As the question was whether petitioners' action was barred by prescription or private respondents had acquired ownership by prescription, there was no need for the reception of oral evidence. Petitioners themselves stated in their complaint that the sale, which they were seeking to annul, had been made on November 5, 1957. Since their complaint was filed only on June 2, 1992, after almost 35 years, it was clear that acquisitive prescription had set in. Prescription may be effectively pleaded in a motion to dismiss if the complaint shows on its face that the action had already prescribed at the time it was filed. In fact the trial court could have dismissed the case *motu proprio* on this ground even though the private respondents did not present a motion for the dismissal of the complaint.[4]

Indeed private respondent Agerico Miranda acquired the land by virtue of a deed of sale. His daughter, Charito, to whom the land was later transferred, has in her favor a certificate of title, tax receipts and evidence of possession of the land for more than 30 years.[5] Tax receipts and declarations of ownership for taxation, when coupled with proof of actual possession of the property, can be the basis of claim of ownership through prescription.[6]

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[4] PNB *v.* Pacific Commission House, 27 SCRA 766 (1969); PNB *v.* Perez, 16 SCRA 270 (1966).

[5] MCTC Decision, Records, pp. 47-54.

[6] Heirs of Juan Oclarit *v.* Court of Appeals, 233 SCRA 239 (1994).

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Ownership and other real rights over immovable property are acquired by ordinary prescription through possession for ten years if the adverse possession is by virtue of a title and it is in good faith.[7] Without need of title or of good faith, ownership and other real rights over immovables also prescribe through uninterrupted adverse possession for 30 years.[8] For possession to constitute the foundation of a prescriptive right, it must be under a claim of title or it must be adverse or in the concept of owner.[9] In this case, therefore, on the basis alone of possession for more than 30 years, private respondents' ownership, acquired through extraordinary prescription, is beyond question.

Petitioners contend that under Art. 1391 of the Civil Code they had a period of four (4) years within which to bring an action for annulment and that this period commenced to run only from November 1991, when they allegedly discovered the fraud committed against them. Art. 1391 presupposes, however, that no acquisitive prescription has set in, for after the favorable effects of acquisitive prescription have set in, rights of ownership over a property are rendered indisputable.[10]

Nor is it correct to say that the sale to private respondents is absolutely simulated and, therefore, the action to declare its nullity is imprescriptible. As Art. 1345 of the Civil Code provides, a contract is simulated if the parties did not intend to be bound at all. This is completely the opposite of petitioners' theory that private respondent Agerico Miranda

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[7] CIVIL CODE, Art. 1134.
[8] CIVIL CODE, Art. 1137; Ferrer *v.* Bautista, 231 SCRA 257 (1994).
[9] De Jesus *v.* Court of Appeals, 217 SCRA 307 (1993).
[10] *See* Ramos *v.* Court of Appeals, 112 SCRA 542 (1982).

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acquired the land from Maximo Miranda through fraud.

Instead of appealing, petitioners filed a petition for certiorari against the trial court's order of dismissal. The issue in this case is whether the Court of Appeals erred in dismissing petitioners' action on the ground that certiorari was not the proper remedy against the order of the trial court. We hold that the appellate court did not err. The correct procedural recourse was appeal not only because, as already explained, the trial court did not commit any grave abuse of discretion in dismissing petitioners' action without the presentation of oral testimonies but also because the order of dismissal was a final order from which petitioners could have appealed in accordance with Rule 41, § 2. Certiorari generally lies only when there is no appeal nor any other plain, speedy or adequate remedy available to petitioners. Here appeal was available. It was adequate to deal with any question whether of fact or of law, whether of error of jurisdiction or grave abuse of discretion or error of judgment which the trial court might have committed. But petitioners instead filed a special civil action of certiorari.

A party cannot substitute the special civil action of certiorari under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of certiorari.[11] As this Court held in *Fajardo v. Bautista*:[12]

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[11] Bell Carpets Int'l Trading Corp. *v.* Court of Appeals, 185 SCRA 35 (1990); Felizardo *v.* Court of Appeals, 233 SCRA 220 (1994); Martinez *v.* Court of Appeals, 237 SCRA 575 (1994); Meneses *v.* Court of Appeals, 237 SCRA 484 (1994).

[12] 232 SCRA 291 (1994).

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Generally, an order of dismissal, whether right or wrong, is a final order, and hence a proper subject of appeal, not certiorari. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive. Accordingly, although the special civil action of certiorari is not proper when an ordinary appeal is available, it may be granted where it is shown that the appeal would be inadequate, slow, insuffucient, and will not promptly relieve a party from the injurious effects of the order complained of, or where appeal is inadequate and ineffectual. Nevertheless, certiorari cannot be a substitute for the lost or lapsed remedy of appeal, where such loss is occasioned by the petitioner's own neglect or error in the choice of remedies.

The Court of Appeals therefore did not err in holding:

The remedy of a petition for certiorari is unavailing. This court possesses no authority to rule upon non-jurisdictional issues in a certiorari proceeding. A writ of certiorari may issue only when the tribunal "has acted without or in excess of its jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law."

In **G.R. No. 120245** petitioners argue that the use of summary procedure in the MCTC was improper because there was a question of ownership involved and a hearing should instead have been held according to regular procedure. In support of their claim petitioners cite the following provision of the Rules on Summary Procedure:

§ 1. *Scope.* — This Rules shall govern the procedure in the Metropolitan Trial Courts, the Municipal Trial Courts, and the Municipal circuit Trial Courts in the following cases:

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A. *Civil Cases*:

(1) Cases of forcible entry and unlawful detainer, except where the question of ownership is involved, or where the damages or unpaid rentals sought to be recovered by the plaintiff exceed twenty thousand pesos (P20,000.00) at the time of the filing of the complaint;

The proceedings below were held, however, pursuant to the Revised Rules on Summary Procedure which took effect on November 15, 1991, which now provide:

1. *Scope.* — This rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction:

A. *Civil Cases*:

(1) All cases of forcible entry and unlawful detainer, irrespective of the amount of damages or unpaid rentals sought to be recovered. Where attorney's fees are awarded, the same shall not exceed twenty thousand pesos (P20,000.00).

All ejectment cases are now covered by the summary procedure regardless of whether they involve questions of ownership.[13] Under the Revised Rules on Summary Procedure, the adjudication of cases is done on the basis of affidavits and position papers.[14] The court is no longer allowed to hold hearings to receive testimonial evidence. Should the Court find it necessary to clarify certain issues, it

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[13] Del Rosario *v.* Court of Appeals, 241 SCRA 519 (1995); Asset Privatization Trust *v.* Court of Appeals, 229 SCRA 627 (1994).

[14] Revised Rules on Summary Procedure, § 10.

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may require the parties instead to submit affidavits or other evidence. The proceeding is required to be summary so as to promote the speedy disposition of ejectment cases.[15]

Nor could the pendency of the action for annulment of sale and reconveyance in the Regional Trial Court be successfully pleaded in abatement of an action for unlawful detainer or forcible entry. It is now settled that the court in ejectment cases may determine questions of ownership whenever necessary to decide the questions of possession. Nor may petitioners, by filing an action involving the ownership of the land, frustrate the ejectment suit, brought by private respondent. Inferior courts are not divested of jurisdiction over ejectment cases just because the defendants assert ownership over the litigated property.[16]

Indeed, the only issue in such cases is physical or material possession or possession *de facto,* independent of any claim of ownership set forth by any of the party litigants. The purpose of the suit is the restoration to the aggrieved party of the possession of the premises from which he has been forcibly ejected or which has been withheld from him, and anyone who can prove prior possession *de facto* may recover such possession. This rule holds true regardless of the character of a party's possession, provided that he has in his favor priority of time which entitles him to stay on the property until he is lawfully ejected.[17]

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[15] Del Rosario *v.* Court of Appeals, 241 SCRA 519 (1995).

[16] Buazon *v.* Court of Appeals, 220 SCRA 182 (1993); San Pedro *v.* Court of Appeals, 235 SCRA 145 (1994).

[17] Somodio *v.* Court of Appeals, 235 SCRA 307 (1994); University Physician's Services, Inc. *v.* Court of Appeals, 233 SCRA 86 (1994).

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WHEREFORE, the petitions for review in these cases are DISMISSED and the decisions of the Court of Appeals are AFFIRMED.

SO ORDERED.

Regalado, Romero, and *Puno, JJ.,* concur.
Torres, Jr., J., on leave.

FIRST DIVISION

[G.R. No. 109614-15. March 29, 1996]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* ADRONICO GREGORIO and RICARDO GREGORIO, *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES ENTITLED TO THE HIGHEST DEGREE OF RESPECT.** — This Court is not inclined to disturb the findings and conclusion of the court below, there being no cogent reason therefor. For, aside from the well-settled rule that the factual findings of the trial judge who had the opportunity to observe the demeanor of the witnesses and assess their credibility is entitled to the highest degree of respect, there appears to be no strong reason to depart from the said doctrine since the decision is fully supported by the evidence on record.

2. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; BELIED BY THE**