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THIRD DIVISION

[G.R. No. 162886. August 11, 2008]

HEIRS OF THE DECEASED SPOUSES VICENTE S. ARCILLA and JOSEFA ASUNCION ARCILLA, namely: Aida Arcilla Alandan, Rene A. Arcilla, Oscar A. Arcilla, Sarah A. Arcilla, and Nora A. Arcilla, now deceased and substituted by her son Sharmy Arcilla, represented by their attorney-in-fact, SARAH A. ARCILLA, *petitioners, vs.* **MA. LOURDES A. TEODORO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; WHILE THE REQUIREMENT IS MANDATORY, IT MUST NOT BE INTERPRETED TOO LITERALLY AND THUS DEFEAT THE OBJECTIVE OF PREVENTING THE UNDESIDERABLE PRACTICE.— In *Gabionza v. Court of Appeals*, this Court has held that Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure — which is to achieve substantial justice as expeditiously as possible. The same guideline still applies in interpreting what is now Section 5, Rule 7 of the 1997 Rules of Civil Procedure. The Court is fully aware that procedural rules are not to be belittled or simply disregarded, for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally settled that litigation is not merely a game of technicalities. Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. Moreover, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just

determination of his cause free from the constraints of technicalities. It must be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirement must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum shopping. In *Uy v. Land Bank of the Philippines*, the Court ruled, thus: The admission of the petition after the belated filing of the certification, therefore, is not unprecedented. In those cases where the Court excused non-compliance with the requirements, there were special circumstances or compelling reasons making the strict application of the rule clearly unjustified. In the case at bar, the apparent merits of the substantive aspects of the case should be deemed as a "special circumstance" or "compelling reason" for the reinstatement of the petition. x x x

2. ID.; ID.; ID.; RELAXATION OF THE RULES IS JUSTIFIED IN CASE AT BAR; APPARENT MERIT OF THE SUBSTANTIVE ASPECT OF THE PETITION, CONSIDERED.— In the instant case, the Court finds that the lower courts did not commit any error in proceeding to decide the case on the merits, as herein respondent was able to submit a certification of non-forum shopping. More importantly, the apparent merit of the substantive aspect of the petition for land registration filed by respondent with the MTC coupled with the showing that she had no intention to violate the Rules with impunity, as she was the one who invited the attention of the court to the inadvertence committed by her counsel, should be deemed as special circumstances or compelling reasons to decide the case on the merits. In addition, considering that a dismissal contemplated under Rule 7, Section 5 of the Rules of Court is, as a rule, a dismissal without prejudice, and since there is no showing that respondent is guilty of forum shopping, to dismiss respondent's petition for registration would entail a tedious process of re-filing the petition, requiring the parties to re-submit the pleadings which they have already filed with the trial court, and conducting anew hearings which have already been done, not to mention the expenses that will be incurred by the parties in re-filing of pleadings and in the re-conduct of hearings. These would not be in keeping with the judicial policy of just, speedy and inexpensive disposition of every action and proceeding.

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3. ID.; ID.; ID.; THE CERTIFICATE OF FORUM SHOPPING EXECUTED IN A FOREIGN COUNTRY IS NOT COVERED BY SECTION 24, RULE 132 OF THE RULES OF COURT.— There is no merit to petitioners' contentions that the verification and certification subsequently submitted by respondent did not state the country or city where the notary public exercised her notarial functions; and that the MTC simply concluded, without any basis, that said notary public was from Maryland, USA; that even granting that the verification and certification of non-forum shopping were notarized in the USA, the same may not be deemed admissible for any purpose in the Philippines for failure to comply with the requirement of Section 24, Rule 132 of the Rules of Court that the notarized document must be accompanied by a certificate issued by an officer in the foreign service of the Philippines who is stationed in the country in which a record of the subject document is kept, proving or authenticating that the person who notarized the document is indeed authorized to do so and has custody of the same.

4. ID.; EVIDENCE; PROOF OF OFFICIAL RECORD; THE REQUIRED CERTIFICATION OF AN OFFICER IN THE FOREIGN OFFICE UNDER SECTION 24 REFERS ONLY TO WRITTEN OFFICIAL ACTS OR RECORDS OF THE OFFICIAL ACTS OF THE SOVEREIGN AUTHORITY, OFFICIAL BODIES AND TRIBUNALS, AND PUBLIC OFFICERS OF THE PHILIPPINES OR OF A FOREIGN COUNTRY.— The ruling of the Court in *Lopez v. Court of Appeals*, cited by petitioners, is inapplicable to the present case because the Rules of Evidence which were in effect at that time were the old Rules prior to their amendment in 1989. The rule applied in *Lopez*, which was decided prior to the effectivity of the amended Rules of Evidence, was Section 25, Rule 132. When the Rules of Evidence were amended in 1989, Section 25, Rule 132 became Section 24, Rule 132; and the amendment consisted in the deletion of the introductory phrase "*An official record or an entry therein*," which was substituted by the phrase "*The record of public documents referred to in paragraph (a) of Section 19.*" Thus, Section 24, Rule 132 of the Rules of Court now reads as follows: Sec. 24. *Proof of official record.* — **The record of public documents referred to in paragraph (a) of Section 19**, when admissible for any purpose, may be evidenced by an official publication

thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. Section 19(a) of the same Rule provides: Sec. 19. Classes of documents. — For the purpose of their presentation in evidence, documents are either public or private. Public documents are: **(a) The written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country;** (b) Documents acknowledged before a notary public except last wills and testaments; and (c) Public records, kept in the Philippines, of private documents required by law to be entered therein. All other writings are private. It cannot be overemphasized that the required certification of an officer in the foreign service under Section 24 refers only to the documents enumerated in Section 19(a), to wit: written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines or of a foreign country. The Court agrees with the CA that had the Court intended to include notarial documents as one of the public documents contemplated by the provisions of Section 24, it should not have specified only the documents referred to under paragraph (a) of Section 19. In *Lopez*, the requirements of then Section 25, Rule 132 were made applicable to all public or official records without any distinction because the old rule did not distinguish. However, in the present rule, it is clear under Section 24, Rule 132 that its provisions shall be made applicable only to the documents referred to under paragraph (a), Section 19, Rule 132.

5. ID.; ID.; FINDINGS OF FACT; RULE; EXCEPTIONS; NOT APPLICABLE IN CASE AT BAR.— Settled is the rule that the trial court's findings of fact, especially when affirmed by the CA, are generally binding and conclusive upon this Court. There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or

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conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. However, petitioners failed to show that any of the exceptions is present in the instant case to warrant a review of the findings of fact of the lower courts.

6. ID.; ID.; PETITIONER'S BARE DENIALS OF THE CONTENTS OF THE SUBJECT DOCUMENTS WILL NOT SUFFICE TO OVERCOME THE PRESUMPTION OF THEIR REGULARITY CONSIDERING THAT THEY ARE ALL NOTARIZED.— Petitioners' bare denials of the contents of the subject documents will not suffice to overcome the presumption of their regularity considering that they are all notarized. To overthrow such presumption of regularity, the countervailing evidence must be clear, convincing and more than merely preponderant, which petitioners failed to present. An examination of the subject Extrajudicial Settlement of Estate clearly shows that the disputed lot forms part of the properties adjudicated in favor of Pacifico Arcilla, respondent's predecessor-in-interest. Moreover, petitioners themselves admit that the Extrajudicial Settlement being referred to in the Affidavit of Quitclaim executed by petitioner and her co-heirs is the Extrajudicial Settlement of the Estate of Jose Arcilla and not of Vicente Arcilla. An examination of the Affidavit of Quitclaim shows that the reference made therein with respect to the date of execution of the said Extrajudicial Settlement as well as the notary public who acknowledged the same and the Document Number, Page Number, Book Number and Series Number all coincide with those appearing in the document evidencing the Extrajudicial Settlement of the Estate of Jose Arcilla. Hence, what has been waived by petitioners is their right, if any, to the properties mentioned in the said Affidavit of Quitclaim, which includes the presently disputed lot.

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7. ID.; ID.; PETITIONER'S EXECUTION OF THE SUBJECT AFFIDAVIT OF QUITCLAIM IS PROOF THAT THEY HAVE RATIFIED THE CONTENTS OF THE DISPUTED EXTRAJUDICIAL SETTLEMENT.— Petitioners posit that they are not bound by the subject Extrajudicial Settlement because they did not participate in nor did they sign the document evidencing such settlement and that their mother who signed on their behalf was not, in fact, authorized to do so. However, the Court agrees with the ruling of the RTC that the Extrajudicial Settlement is a public document, the same having been notarized; that such document is entitled to full faith and credit in the absence of competent evidence showing that its execution was tainted with defects and irregularities which would warrant a declaration of nullity; that in the absence of evidence showing that the person who signed in behalf of herein petitioners was, in fact, not authorized to do so, the presumption that she had the authority, as stated in the Extrajudicial Settlement, remains undisturbed. Moreover, petitioners' execution of the subject Affidavit of Quitclaim is proof that they have ratified the contents of the disputed Extrajudicial Settlement.

8. ID.; ID.; THE LAW DOES NOT REQUIRE THAT THE PARTIES TO A DOCUMENT NOTARIZED BY A NOTARY PUBLIC SHOULD BE RESIDENTS OF THE PLACE WHERE THE SAID DOCUMENTS IS ACKNOWLEDGED OR THAT THEY AFFIX THEIR SIGNATURE IN THE PRESENCE OF THE NOTARY PUBLIC; WHAT IS NECESSARY IS THAT PERSONS WHO SIGNED A NOTARIZED DOCUMENT ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE THE NOTARY PUBLIC.— Petitioners' claim that the Affidavit of Quitclaim is null and void on the ground that the signatories thereto are not residents of Virac, Catanduanes and that they affixed their signature in places other than Virac, Catanduanes where they supposedly acknowledged the said document, is not persuasive. The Court finds no error in the finding of the MTC, as affirmed by the CA, that the execution of the subject Affidavit of Quitclaim or the signatures of the affiants appearing therein were never contested nor raised as an issue and that petitioner Sarah Arcilla herself acknowledged her own signature in the said Affidavit. In any event, the law does not require that parties to a document notarized by a notary public should

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be residents of the place where the said document is acknowledged or that they affix their signature in the presence of the notary public. What is necessary is that the persons who signed a notarized document are the very same persons who executed and personally appeared before the notary public in order to attest to the contents and truth of what are stated therein. In the instant case, it is established that, with the exception of petitioner Rene Arcilla, all of herein petitioners, including their now deceased mother Josefa and sister Nora, executed and personally acknowledged before the notary public the subject Affidavit of Quitclaim. Hence, aside from Rene, the said Affidavit of Quitclaim is valid and binding on all the petitioners. With respect to Rene, petitioner Oscar Arcilla, acting as his attorney-in-fact, signed the document on the former's behalf. However, settled is the rule that: A member of the bar who performs an act as a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him. The acts of the affiants cannot be delegated to anyone for what are stated therein are facts of which they have personal knowledge. They should swear to the document personally and not through any representative. Otherwise, their representative's name should appear in the said documents as the one who executed the same. That is the only time the representative can affix his signature and personally appear before the notary public for notarization of the said document. Simply put, the party or parties who executed the instrument must be the ones to personally appear before the notary public to acknowledge the document. Thus, the herein subject Affidavit of Quitclaim may not be binding on Rene. Nonetheless, with or without Rene's participation in the quitclaim, respondent's ownership of the subject lots has been established by preponderance of evidence, as unanimously found by the MTC, the RTC and the CA.

9. CIVIL LAW; PROPERTY; OWNERSHIP; PETITIONER'S PHYSICAL OCCUPATION OF THE COMMERCIAL BUILDING WHICH THEY ERECTED ON THE DISPUTED PROPERTY DOES NOT NECESSARILY PROVE THEIR OWNERSHIP OF THE SUBJECT LOTS; THE AFFIDAVIT OF QUITCLAIM AND DEED OF SALE IN FAVOR OF RESPONDENT ESTABLISH RESPONDENT'S OWNERSHIP OVER THE DISPUTED PROPERTY.— Petitioners' physical occupation of the commercial building which they erected on

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the disputed property does not necessarily prove their ownership of the subject lots. This Court has held that: ownership and possession are two entirely different legal concepts. Just as possession is not a definite proof of ownership, neither is non-possession inconsistent with ownership. The first paragraph of Article 1498 of the Civil Code states that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. **Possession, along with ownership, is transferred to the vendee by virtue of the notarized deed of conveyance. Thus, in light of the circumstances of the present case, it is of no legal consequence that petitioner did not take actual possession or occupation of the disputed lot after the execution of the deed of sale in her favor because she was already able to perfect and complete her ownership of and title over the subject property.** The Extrajudicial Settlement of Estate in favor of Pacifico, respondent's predecessor-in-interest, the Affidavit of Quitclaim and the Deed of Sale in favor of respondent establish respondent's ownership over the disputed property.

APPEARANCES OF COUNSEL

Ocampo and Ocampo for petitioners.
Rene V. Sarmiento and Associates for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the September 12, 2003 Decision[1] of the Court of Appeals (CA) and its Resolution[2] dated March 24, 2004 in CA-G.R. SP No. 72032.

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[1] Penned by Justice Buenaventura J. Guerrero with the concurrence of Justices Andres B. Reyes, Jr. and Regalado E. Maambong; *rollo*, p. 8.

[2] *Id.* at 95.

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The facts of the case are as follows:

On December 19, 1995, Ma. Lourdes A. Teodoro (respondent) initially filed with the Regional Trial Court (RTC) of Virac, Catanduanes an application for land registration of two parcels of land located at Barangay San Pedro, Virac, Catanduanes. The lots, with an aggregate area of 284 square meters, are denominated as Lot Nos. 525-A and 525-B, Csd.-05-010483-D of the Virac Cadastre. Respondent alleged that, with the exception of the commercial building constructed thereon, she purchased the subject lots from her father, Pacifico Arcilla (Pacifico), as shown by a Deed of Sale[3] dated December 9, 1966, and that, prior thereto, Pacifico acquired the said lots by virtue of the partition of the estate of his father, Jose Arcilla evidenced by a document entitled Extrajudicial Settlement of Estate.[4] Respondent also presented as evidence an Affidavit of Quit-Claim[5] in favor of Pacifico, executed by herein petitioners as Heirs of Vicente Arcilla (Vicente), brother of Pacifico.

On February 7, 1996, the case was transferred to the Municipal Trial Court (MTC) of Virac, Catanduanes in view of the expanded jurisdiction of said court as provided under Republic Act No. 7691.[6]

In their Opposition dated August 19, 1996, petitioners contended that they are the owners *pro-indiviso* of the subject lots including the building and other improvements constructed thereon by virtue of inheritance from their deceased parents, spouses Vicente and Josefa Arcilla; contrary to the claim of respondent, the lots in question were owned by their father, Vicente, having purchased the same from a certain Manuel

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[3] Annex "I" to Petition, CA *rollo*, p. 114.

[4] Annex "H" to Petition, *id.* at 109.

[5] Annex "J" to Petition, *id.* at 115.

[6] Entitled: An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts , Amending for the Purpose *Batas Pambansa Blg.* 129, Otherwise Known as the "Judiciary Reorganization Act of 1980."

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Sarmiento sometime in 1917; Vicente's ownership is evidenced by several tax declarations attached to the record; petitioners and their predecessors-in-interest had been in possession of the subject lots since 1906. Petitioners moved to dismiss the application of respondent and sought their declaration as the true and absolute owners *pro-indiviso* of the subject lots and the registration and issuance of the corresponding certificate of title in their names.

Subsequently, trial of the case ensued.

On March 20, 1998, herein respondent filed a Motion for Admission[7] contending that through oversight and inadvertence she failed to include in her application, the verification and certificate against forum shopping required by Supreme Court (SC) Revised Circular No. 28-91 in relation to SC Administrative Circular No. 04-94.

Petitioners filed a Motion to Dismiss Application[8] on the ground that respondent should have filed the certificate against forum shopping simultaneously with the petition for land registration which is a mandatory requirement of SC Administrative Circular No. 04-94 and that any violation of the said Circular shall be a cause for the dismissal of the application upon motion and after hearing.

Opposing the motion to dismiss, respondents asserted that the petitioners' Motion to Dismiss Application was filed out of time; respondent's failure to comply with SC Administrative Circular No. 04-94 was not willful, deliberate or intentional; and the Motion to Dismiss was deemed waived for failure of petitioners to file the same during the earlier stages of the proceedings.

On July 19, 1999, the MTC issued an Order[9] denying petitioners' Motion to Dismiss Application.

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[7] Annex "D" to Petition, CA *rollo*, p. 99.

[8] Annex "E" to Petition, *id.* at 102.

[9] Annex "G" to Petition, *id.* at 107.

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On June 25, 2001, the MTC rendered a Decision[10] the dispositive portion of which reads as follows:

> NOW THEREFORE, and considering all the above premises, the Court finds and so holds that Applicant MA. LOURDES A. TEODORO, having sufficient title over this land applied for hereby renders judgment, which should be, as it is hereby CONFIRMED and REGISTERED in her name.
>
> IT IS SO ORDERED.[11]

Herein petitioners then filed an appeal with the Regional Trial Court of Virac, Catanduanes. In its Decision[12] dated February 22, 2002, the RTC, Branch 43, of Virac, Catanduanes dismissed the appeal for lack of merit and affirmed *in toto* the Decision of the MTC. Petitioners filed a Motion for Reconsideration but it was denied by the RTC in its Order[13] of July 22, 2002.

Aggrieved by the RTC Decision, petitioners filed a Petition for Review[14] with the CA. On September 12, 2003, the CA promulgated its presently assailed Decision dismissing the Petition. Petitioners filed a Motion for Reconsideration but the same was denied by the CA in its Resolution[15] dated March 24, 2004.

Hence, the herein petition based on the following grounds:

> A. The Honorable Court of Appeals did not rule in accordance with the prevailing rules and jurisprudence when it held that the belated filing, after more than two (2) years and three (3) months from the initial application for land registration, of a sworn certification against forum shopping in Respondent's application for land registration, constituted substantial compliance with SC Admin. Circular No. 04-94.

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[10] Annex "A" to Petition, *id.* at 73-87.

[11] *Id.* at 87.

[12] Annex "B" to Petition, *id.* at 88-97.

[13] Annex "C" to Petition, *id.* at 98.

[14] *Id.* at 11.

[15] *Id.* at 296.

B. The Honorable Court of Appeals did not rule in accordance with prevailing laws and jurisprudence when it held that the certification of non-forum shopping subsequently submitted by respondent does not require a certification from an officer of the foreign service of the Philippines as provided under Section 24, Rule 132 of the Rules of Court.

C. The Honorable Court of Appeals did not rule in accordance with prevailing laws and jurisprudence when it upheld the decisions of the Regional Trial Court (RTC) and Municipal Trial Court (MTC) that the lots in question were not really owned by Petitioners' father Vicente S. Arcilla, contrary to the evidence presented by both parties.

D. The Honorable Court of Appeals did not rule in accordance with prevailing laws and jurisprudence when it sustained the decision of the RTC which affirmed *in toto* the decision of the MTC and in not reversing the same and rendering judgment in favor of Petitioners.[16]

In their Memorandum, petitioners further raise the following issue:

Whether or not the Supreme Court may inquire into conclusions of facts made by the Honorable Court of Appeals in the instant Petition.[17]

The Court's Ruling

The petition is bereft of merit.

The CA ruled correctly when it held that the belated filing of a sworn certification of non-forum shopping was substantial compliance with SC Administrative Circular No. 04-94.

Under the attendant circumstances in the present case, the Court cannot uphold petitioners' contention that respondent's delay of more than two years and three months in filing the required certificate of non-forum shopping may not be considered

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[16] *Rollo*, pp. 35-36.

[17] *Id.* at 237-238.

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substantial compliance with the requirements of SC Administrative Circular No. 04-94 and Section 5, Rule 7 of the Rules of Court; that respondent's reasons of oversight and inadvertence do not constitute a justifiable circumstance that could excuse her non-compliance with the mandatory requirements of the above-mentioned Circular and Rule; that subsequent compliance with the requirement does not serve as an excuse for a party's failure to comply in the first instance.

Section 5, Rule 7, of the Rules of Court provides:

> Sec. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions.

This Rule was preceded by Circular No. 28-91, which originally required the certification of non-forum shopping for petitions filed with this Court and the CA; and SC Administrative Circular No. 04-94, which extended the certification requirement for civil complaints and other initiatory pleadings filed in all courts and other agencies.

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In *Gabionza v. Court of Appeals*,[18] this Court has held that Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure — which is to achieve substantial justice as expeditiously as possible.[19] The same guideline still applies in interpreting what is now Section 5, Rule 7 of the 1997 Rules of Civil Procedure.[20]

The Court is fully aware that procedural rules are not to be belittled or simply disregarded, for these prescribed procedures insure an orderly and speedy administration of justice.[21] However, it is equally settled that litigation is not merely a game of technicalities. [22] Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice.[23] Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[24] Even the Rules of Court reflect this principle.[25]

Moreover, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and

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[18] *Gabionza v. Court of Appeals*, G.R. No. 112547, July 18, 1994, 234 SCRA 192, 198.

[19] *Manuel v. Galvez*, G.R. No. 147394, August 11, 2004, 436 SCRA 96, 110.

[20] *Estribillo v. Department of Agrarian Reform*, G.R. No. 159674, June 30, 2006, 494 SCRA 218, 233-234.

[21] *Barnes v. Padilla*, G.R. No. 160753, June 28, 2005, 461 SCRA 533,538 citing *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1988, 292 SCRA 38 and *Sanchez v. Court of Appeals*, G.R. No. 152766, June 20, 2003, 404 SCRA 540.

[22] *Barnes v. Padilla*, *supra*.

[23] *Barnes v. Padilla*, *supra* at 541.

[24] *Id*.

[25] *Id*.

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just determination of his cause free from the constraints of technicalities.[26]

It must be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirement must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum shopping.[27] In *Uy v. Land Bank of the Philippines*,[28] the Court ruled, thus:

> The admission of the petition after the belated filing of the certification, therefore, is not unprecedented. In those cases where the Court excused non-compliance with the requirements, there were special circumstances or compelling reasons making the strict application of the rule clearly unjustified. In the case at bar, the apparent merits of the substantive aspects of the case should be deemed as a "special circumstance" or "compelling reason" for the reinstatement of the petition. x x x[29]

Citing *De Guia v. De Guia*[30] the Court, in *Estribillo v. Department of Agrarian Reform*,[31] held that even if there was complete non-compliance with the rule on certification against forum-shopping, the Court may still proceed to decide the case on the merits pursuant to its inherent power to suspend its own rules on grounds of substantial justice and apparent merit of the case.

In the instant case, the Court finds that the lower courts did not commit any error in proceeding to decide the case on the merits, as herein respondent was able to submit a certification

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[26] *Anadon v. Herrera*, G.R. No. 159153, July 9, 2007, 527 SCRA 90, 96-97; *Villena v. Rupisan*, G.R. No. 167620, April 4, 2007, 520 SCRA 346, 361.

[27] *Varorient Shipping Co., Inc. v. National Labor Relations Commission*, G.R. No. 164940, November 28, 2007, 539 SCRA 131, 140.

[28] G.R. No. 136100, July 24, 2000, 336 SCRA 419.

[29] *Id.* at 429.

[30] G.R. No. 135384, April 4, 2001, 356 SCRA 287, 294-295.

[31] *Supra* note 18.

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of non-forum shopping. More importantly, the apparent merit of the substantive aspect of the petition for land registration filed by respondent with the MTC coupled with the showing that she had no intention to violate the Rules with impunity, as she was the one who invited the attention of the court to the inadvertence committed by her counsel, should be deemed as special circumstances or compelling reasons to decide the case on the merits.

In addition, considering that a dismissal contemplated under Rule 7, Section 5 of the Rules of Court is, as a rule, a dismissal without prejudice, and since there is no showing that respondent is guilty of forum shopping, to dismiss respondent's petition for registration would entail a tedious process of re-filing the petition, requiring the parties to re-submit the pleadings which they have already filed with the trial court, and conducting anew hearings which have already been done, not to mention the expenses that will be incurred by the parties in re-filing of pleadings and in the re-conduct of hearings. These would not be in keeping with the judicial policy of just, speedy and inexpensive disposition of every action and proceeding.[32]

The certification of non-forum shopping executed in a foreign country is not covered by Section 24, Rule 132 of the Rules of Court.

There is no merit to petitioners' contentions that the verification and certification subsequently submitted by respondent did not state the country or city where the notary public exercised her notarial functions; and that the MTC simply concluded, without any basis, that said notary public was from Maryland, USA; that even granting that the verification and certification of non-forum shopping were notarized in the USA, the same may not be deemed admissible for any purpose in the Philippines for failure to comply with the requirement of Section 24, Rule 132 of the Rules of Court that the notarized document must be accompanied by a certificate issued by an officer in the foreign service of the Philippines who is stationed in the country in

[32] See Rule 1, Section 6 of the Rules of Court.

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which a record of the subject document is kept, proving or authenticating that the person who notarized the document is indeed authorized to do so and has custody of the same.

The Court agrees with the disquisition of the CA, to wit:

> From the foregoing provision [referring to Section 24, Rule 132, Rules of Court], it can be gathered that it does not include documents acknowledged before [a] notary public abroad. For foreign public documents to be admissible for any purpose here in our courts, the same must be certified by any officer of the Philippine legation stationed in the country where the documents could be found or had been executed. However, after judicious studies of the rule, Sec. 24, Rule 132 of the 1997 Rules of Court basically pertains to written official acts, or records of the official of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country. This is so, as Sec. 24, Rule 132 explicitly refers only to paragraph (a) of Sec. 19. If the rule comprehends to cover notarial documents, the rule could have included the same. Thus, petitioners-oppositors' contention that the certificate of forum shopping that was submitted was defective, as it did not bear the certification provided under Sec. 24, Rule 132 of the Rules of Court, is devoid of any merit. What is important is the fact that the respondent-applicant certified before a commissioned officer clothed with powers to administer oath that [s]he has not and will not commit forum shopping.[33]

The ruling of the Court in *Lopez v. Court of Appeals*,[34] cited by petitioners, is inapplicable to the present case because the Rules of Evidence which were in effect at that time were the old Rules prior to their amendment in 1989. The rule applied in *Lopez*, which was decided prior to the effectivity of the amended Rules of Evidence,[35] was Section 25, Rule 132, to wit:

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[33] CA Decision, *rollo*, p. 90.

[34] No. 77008, December 29, 1987, 156 SCRA 838.

[35] The amendments to the Rules of Evidence were made effective on July 1, 1989.

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Sec. 25. *Proof of public or official record* — **An official record or an entry therein**, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office**. (Emphasis supplied)

When the Rules of Evidence were amended in 1989, Section 25, Rule 132 became Section 24, Rule 132; and the amendment consisted in the deletion of the introductory phrase "*An official record or an entry therein*," which was substituted by the phrase "*The record of public documents referred to in paragraph (a) of Section 19.*"

Thus, Section 24, Rule 132 of the Rules of Court now reads as follows:

Sec. 24. *Proof of official record.* — **The record of public documents referred to in paragraph (a) of Section 19**, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (Emphasis supplied)

Section 19(a) of the same Rule provides:

Sec. 19. Classes of documents. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

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(a) The written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

It cannot be overemphasized that the required certification of an officer in the foreign service under Section 24 refers only to the documents enumerated in Section 19(a), to wit: written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines or of a foreign country. The Court agrees with the CA that had the Court intended to include notarial documents as one of the public documents contemplated by the provisions of Section 24, it should not have specified only the documents referred to under paragraph (a) of Section 19.

In *Lopez*, the requirements of then Section 25, Rule 132 were made applicable to all public or official records without any distinction because the old rule did not distinguish. However, in the present rule, it is clear under Section 24, Rule 132 that its provisions shall be made applicable only to the documents referred to under paragraph (a), Section 19, Rule 132.

The CA did not err in sustaining the findings of fact and conclusion of law of the MTC and the RTC.

Settled is the rule that the trial court's findings of fact, especially when affirmed by the CA, are generally binding and conclusive upon this Court.[36] There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of

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[36] *Sandejas v. Ignacio, Jr.*, G.R. No. 155033, December 19, 2007, 541 SCRA 61, 74.

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discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[37] However, petitioners failed to show that any of the exceptions is present in the instant case to warrant a review of the findings of fact of the lower courts.

Petitioners insist that the documents which were presented in evidence by respondent to prove her ownership of the subject lot are rife with defects and inconsistencies. Petitioners contend that the subject lot should not have been included in the Extrajudicial Settlement of the Estate of Jose Arcilla, because he was no longer the owner of the said property at the time of said settlement; the Deed of Sale should be declared null and void because the seller, Pacifico Arcilla, was not the owner of the subject lands at the time the said Deed was executed; the Affidavit of Quitclaim is not valid and has no force and effect considering that the document indicates that the signatures of petitioners were affixed in different places, none of which is in Virac, Catanduanes where they supposedly acknowledged said document.

The only evidence of petitioners to prove their claim that the disputed property was sold by Jose Arcilla to Manuel Sarmiento in 1908 is a single Tax Declaration in the name of the latter, with a notation that the property was acquired by purchase.

The Court agrees with the CA in its finding that petitioners failed to present any substantial evidence, such as a deed of sale, to prove their claim that their predecessor, Vicente Arcilla, bought the disputed property from Sarmiento. Petitioners were

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[37] *Id.* at 74-75.

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only able to present tax declarations in Vicente's name to prove their allegation that Vicente became the owner of the subject property. The tax declarations presented in evidence by petitioners are not supported by any other substantial proofs.

The Court has ruled time and again that tax declarations do not prove ownership but are at best an *indicium* of claims of ownership.[38] Payment of taxes is not proof of ownership, any more than indicating possession in the concept of an owner.[39] Neither a tax receipt nor a declaration of ownership for taxation purposes is evidence of ownership or of the right to possess realty when not supported by other effective proofs.[40]

In addition, the Court agrees with the CA when it held that if Vicente, in fact, owned the disputed properties, his widow, Josefa, would not have agreed to include said lots among those partitioned in the Extrajudicial Settlement of the Estate of Jose.

On the other hand, respondent's claim of ownership is not only backed up by tax declarations but also by other pieces of evidence such as the subject Extrajudicial Settlement, Affidavit of Quitclaim, and Deed of Sale.

Petitioners question the validity of the above-mentioned documents. However, as the CA, RTC and MTC found, these documents are all notarized. It is settled that a notarized document is executed to lend truth to the statements contained therein and to the authenticity of the signatures.[41] Notarized documents enjoy the presumption of regularity which can be overturned only by clear and convincing evidence.[42]

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[38] *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, G.R. No. 160832, October 27, 2006, 505 SCRA 665, 682; *Abing v. Waeyan*, G.R. No. 146294, July 31, 2006, 497 SCRA 202, 208-209.

[39] *Id*.

[40] *Id*.

[41] *Llemos v. Llemos*, G.R. No. 150162, January 26, 2007, 513 SCRA 128, 139.

[42] *Id*.

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Petitioners' bare denials of the contents of the subject documents will not suffice to overcome the presumption of their regularity considering that they are all notarized. To overthrow such presumption of regularity, the countervailing evidence must be clear, convincing and more than merely preponderant, which petitioners failed to present.[43]

An examination of the subject Extrajudicial Settlement of Estate clearly shows that the disputed lot forms part of the properties adjudicated in favor of Pacifico Arcilla, respondent's predecessor-in-interest.

Moreover, petitioners themselves admit that the Extrajudicial Settlement being referred to in the Affidavit of Quitclaim executed by petitioner and her co-heirs is the Extrajudicial Settlement of the Estate of Jose Arcilla and not of Vicente Arcilla. An examination of the Affidavit of Quitclaim shows that the reference made therein with respect to the date of execution of the said Extrajudicial Settlement as well as the notary public who acknowledged the same and the Document Number, Page Number, Book Number and Series Number all coincide with those appearing in the document evidencing the Extrajudicial Settlement of the Estate of Jose Arcilla. Hence, what has been waived by petitioners is their right, if any, to the properties mentioned in the said Affidavit of Quitclaim, which includes the presently disputed lot.

Petitioners posit that they are not bound by the subject Extrajudicial Settlement because they did not participate in nor did they sign the document evidencing such settlement and that their mother who signed on their behalf was not, in fact, authorized to do so. However, the Court agrees with the ruling of the RTC that the Extrajudicial Settlement is a public document, the same having been notarized; that such document is entitled to full faith and credit in the absence of competent evidence showing that its execution was tainted with defects and irregularities which would warrant a declaration of nullity; that in the absence of evidence showing that the person who signed in behalf of

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[43] *Tapuroc .v Loquellano Vda. de Mende*, G.R. No.152007, January 22, 2007, 512 SCRA 97, 109.

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herein petitioners was, in fact, not authorized to do so, the presumption that she had the authority, as stated in the Extrajudicial Settlement, remains undisturbed.

Moreover, petitioners' execution of the subject Affidavit of Quitclaim is proof that they have ratified the contents of the disputed Extrajudicial Settlement.

Petitioners' claim that the Affidavit of Quitclaim is null and void on the ground that the signatories thereto are not residents of Virac, Catanduanes and that they affixed their signature in places other than Virac, Catanduanes where they supposedly acknowledged the said document, is not persuasive. The Court finds no error in the finding of the MTC, as affirmed by the CA, that the execution of the subject Affidavit of Quitclaim or the signatures of the affiants appearing therein were never contested nor raised as an issue and that petitioner Sarah Arcilla herself acknowledged her own signature in the said Affidavit.

In any event, the law does not require that parties to a document notarized by a notary public should be residents of the place where the said document is acknowledged or that they affix their signature in the presence of the notary public. What is necessary is that the persons who signed a notarized document are the very same persons who executed and personally appeared before the notary public in order to attest to the contents and truth of what are stated therein.[44]

In the instant case, it is established that, with the exception of petitioner Rene Arcilla, all of herein petitioners, including their now deceased mother Josefa and sister Nora, executed and personally acknowledged before the notary public the subject Affidavit of Quitclaim. Hence, aside from Rene, the said Affidavit of Quitclaim is valid and binding on all the petitioners.

With respect to Rene, petitioner Oscar Arcilla, acting as his attorney-in-fact, signed the document on the former's behalf. However, settled is the rule that:

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[44] *Fulgencio v. Martin*, A.C. No. 3223, May 29, 2003, 403 SCRA 216, 221.

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A member of the bar who performs an act as a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him. The acts of the affiants cannot be delegated to anyone for what are stated therein are facts of which they have personal knowledge. They should swear to the document personally and not through any representative. Otherwise, their representative's name should appear in the said documents as the one who executed the same. That is the only time the representative can affix his signature and personally appear before the notary public for notarization of the said document. Simply put, the party or parties who executed the instrument must be the ones to personally appear before the notary public to acknowledge the document.[45]

Thus, the herein subject Affidavit of Quitclaim may not be binding on Rene. Nonetheless, with or without Rene's participation in the quitclaim, respondent's ownership of the subject lots has been established by preponderance of evidence, as unanimously found by the MTC, the RTC and the CA.

Finally, petitioners' physical occupation of the commercial building which they erected on the disputed property does not necessarily prove their ownership of the subject lots.

This Court has held that:

ownership and possession are two entirely different legal concepts. Just as possession is not a definite proof of ownership, neither is non-possession inconsistent with ownership. The first paragraph of Article 1498 of the Civil Code states that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. **Possession, along with ownership, is transferred to the vendee by virtue of the notarized deed of conveyance. Thus, in light of the circumstances of the present case, it is of no legal consequence that petitioner did not take actual possession or occupation of the disputed lot after the execution of the deed of sale in her favor because she was already able to perfect and**

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[45] *Bautista v. Bernabe*, A.C. No. 6963, February 9, 2006, 482 SCRA 1, 7-8.

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complete her ownership of and title over the subject property.[46] (Emphasis supplied)

The Extrajudicial Settlement of Estate in favor of Pacifico, respondent's predecessor-in-interest, the Affidavit of Quitclaim and the Deed of Sale in favor of respondent establish respondent's ownership over the disputed property.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated September 12, 2003 and its Resolution of March 24, 2004 in CA-G.R. SP No. 72032 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164624. August 11, 2008]

SARI-SARI GROUP OF COMPANIES, INC. (formerly MARIKO NOVEL WARES, INC.), *petitioner, vs.* **PIGLAS KAMAO (Sari-Sari Chapter), RONNIE S. TAMAYO, JOSE DEL CARMEN, JOCYLENE PADUA, VICKY BERMEO and ELIZABETH MATUTINA,** *respondents.*

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[46] *Tating v. Marcella*, G.R. No. 155208, March 27, 2007, 519 SCRA 79, 90-91.