Supreme Court E-Library

arresto mayor, the range of which is one (1) month and one (1) day to six (6) months.

WHEREFORE, the decision appealed from finding accused-appellant EDILBERTO RUELO *Y* LAHAYLAHAY guilty beyond reasonable doubt of violating Secs. 15 and 16, Art. III, of R.A. No. 6425, in Crim. Case No. 91-92126 and Crim. Case No. 91-92127 is *AFFIRMED* with the modification that in each of the aforesaid cases, the accused is sentenced to suffer an indeterminate prison term of four (4) months and twenty (20) days of *arresto mayor* maximum as minimum, to three (3) years and two (2) months of *prision correccional* medium as maximum, with costs against accused-appellant in both cases.

SO ORDERED.

Padilla (Chairman), Davide, Jr., Quiason, and *Kapunan, JJ.,* concur.

FIRST DIVISION

[G.R. No. 111952. October 26, 1994]

JULIO TAPEC and PRISCA GALANO, *petitioners, vs.* **COURT OF APPEALS and LORESTO RAGUIRAG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ANCIENT DOCUMENT; REQUISITES, PRESENT. — We agree with the Court of Appeals that Exhibit "1" for the private respondent, the deed of sale in a private writing executed on 15 May 1931 in favor of Manuel Raguirag and Clara Tapec, private respondent's grandparents, is an ancient document whose proof of authenticity was no longer necessary because of the concurrence of the

Supreme Court E-Library

requisites in Section 21, Rule 132 of the Rules of Court. It was already more than thirty years old at the time it was offered in evidence in 1986. It was produced from the custody of respondent Raguirag, an heir of the vendees in the said instrument. And it is unblemished by any alteration or circumstances of suspicion.

2. ID.; ID.; HE WHO CLAIMS OWNERSHIP OF THE LAND HAS THE BURDEN OF PROVING ITS IDENTITY. — While the petitioners sufficiently established the identity of the property claimed by them, the private respondent failed to prove the identity of the property covered by Exhibit "1". Since he specified in his special defenses the property he claimed and asked the court in his prayer that he be declared "the lawful owner and possessor" thereof, the burden was on him to prove its identity.

3. ID.; ID.; ADMISSION BY A PARTY THAT HE IS ONLY A TENANT BELIES ANY CLAIM OF OWNERSHIP. —The private respondent categorically admitted that he is only a tenant-administrator of Lot No. 7444. This admission belies any claim of ownership. It was his aunt, Leoncia Raguirag, who claimed ownership over it during the cadastral survey.

APPEARANCES OF COUNSEL

Evangelista & Evangelista for petitioners.
Sylvia R.T. Rubio for private respoondent.

D E C I S I O N

DAVIDE, JR., *J.*:

In resolving the issue of which document should be given more weight in deciding ownership, the trial court and the Court of Appeals arrived at irreconcilably conflicting judgments. The former held that the deeds of sale in favor of the petitioners, being duly acknowledged before a notary public and registered under Act No. 3344, although executed much later, should prevail over a prior conveyance in a private document in favor of the private respondent's predecessor-in-interest. On appeal by the

Supreme Court E-Library

private respondent, the Court of Appeals held otherwise on the ground that the private document is an ancient document under the rules of evidence and overturned the decision of the trial court.

Hence this petition for review under Rule 45 of the Rules of Court.

There can be no question that the determination of which of the two documents should prevail, in the manner it was done by the courts below, is a question of law. At its heart, however, is a question of fact which, under the general rule that only questions of law may be raised in a petition for review, should not be entertained by this Court. The instant case, however, falls within one of the exceptions to such rule: that the findings of fact of the Court of Appeals are contrary to those of the trial court.[1] Accordingly, we gave due course to this petition.

The procedural and factual antecedents are disclosed by the pleadings.

On 4 December 1994, the petitioners, who are husband and wife, filed a complaint for recovery of ownership with the Regional Trial Court at Batac, Ilocos Norte, against David Cabuyadao and herein private respondent Loreto Raguirag. The petitioners alleged in their complaint that they are the owners of a parcel of land with an area of 11,850 square meters, located at Barangay No. 26, Oaiag-Upay, Paoay, Ilocos Norte, more specifically described as follows:

"RURAL, part of which is riceland and the rest a pasture, bounded on the North by the Heirs of Oligario Cabuyadao and others; on the East, by Tony Cac (formerly Luis Bacud); on the South, by Rufino Macoco et al.; and, on the West by the successors of Eusebio Agdeppa and Luis Cueva, with an area of 11,850 square meters more or less."

They further averred that during the cadastral survey of Paoay, Ilocos Norte, unknown to them and without their consent, the

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[1] *Remalante vs. Tibe*, 158 SCRA 138 [1988]; *Medina vs. Asistio*, 191 SCRA 218 [1990]; *Misa vs. Court of Appeals*, 212 SCRA 217 [1992]; *Borillo vs. Court of Appeals*, 209 SCRA 130 [1992].

Supreme Court E-Library

above-described property was surveyed and subdivided into Lot Nos. 7452, 7444, and 7450, and that under baseless claims of ownership, David Cabuyadao and Loreto Raguirag threatened to enter Lot No. 7452 and Lot No. 7444, respectively. The petitioners then prayed that they be declared the owners of Lot Nos. 7452 and 7444 and that a writ of preliminary injunction be issued ordering the defendants and their agents and representatives to desist from entering the lots.

David Cabuyadao was declared in default[2] for failure to file his answer.

In his answer with counterclaim,[3] private respondent (defendant) Loreto Raguirag denied having knowledge of the property claimed by the petitioners but by way of special defense asserted that he is the absolute owner of the parcel of land described as follows:

"UNCULTIVATED LAND — situated at Dumalaoaig, # 19, Paoay, Ilocos Norte, with an area of 3,487 sq. meters, more or less, designated as Lot No. 7444, Cad, 445D of Paoay, Ilocos Norte. Bounded on the north by Benigno Raguirag; on the East by Manuel Raguirag; on the South by Felipe Cueva, and on the West by Gregorio Agdeppa."

The petitioners' claim of ownership is based on two deeds of absolute sale, one executed on 2 January 1950 by Trinidad Gonzales in favor of petitioner Julio Tapec,[4] and the other executed on 28 May 1949 by Rosario Gonzales in favor of the petitioners,[5] both acknowledged before the same notary public and duly registered with the Office of the Register of Deeds under Act No. 3344 on 8 March 1950 and 29 July 1949, respectively.

The property subject of the sale by Trinidad Gonzales is described as follows:

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[2] OR, 14.

[3] *Id*., 5-8.

[4] Exhibit "A"; *Id*., 61.

[5] Exhibit "B"; OR, 62.

Supreme Court E-Library

"A parcel of an unirrigated riceland measuring 4832 sq. m. and pasto[6] measuring 2380 sq. m. and both bounded on the North by Aquilino Oamil and others, East Rufino Diaz and others, South Leocadio Macoco and others and West Felipe Cueva and others and that said land is valued at ₱180.00 for this current year as per Tax No. 016399 (previously under Tax No. 68663) in the name of Miguel Gonzales . . ."

while the parcel sold by Rosario Gonzales is described thus:

"A parcel of unirrigated riceland measuring 4832 sq. m. and bounded on the North by Oligario Cabuyadao, Manuel Raguirag and Aquilino Oamil, East by Luis Bacud and Rufino Diaz, South by Leocadio Macoco and Ariston Cueva, and West by Eusebio Agdeppa and Felipe Cueva. It is valued at ₱*180* for this current year as per Tax No. *016399* under the name of the late Miguel Gonzales. . ."

Respondent Loreto Raguirag, on the other hand, anchored his defense on a document, dated 15 May 1931[7] and handwritten in Ilocano, wherein the brothers Victoriano, Gregorio, Matias, and Alejandro, all surnamed Gonzales,[8] sold to the spouses Manuel Raguirag and Clara Tapec, grandparents of respondent Raguirag, for a consideration of ₱150.00 a pasture situated in Dumalaoing, Paoay, Ilocos Norte, with an area of 3,450 sq. meters and bounded:

". . . as follows, North Victoriano Gonzalis I, East Alejandro Gonzalis, Miguel Gonzalis and others, South Pelipi Cuyba West Gregorio Agdippa."[9]

Witnesses to the said handwritten document were Manuel Raguirag, Cornelio Cabuyao, and Miguel Gonzales.

At the trial, petitioner Julio Tapec identified the deeds of sale executed by Trinidad and Rosario Gonzales and the sketch plan of Lot Nos. 7444, 7450, and 7452 of the Paoay Cadastre[10]

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[6] So in original. Probably should be "pasture."

[7] Exhibit "1"; OR.

[8] Written in the document as "Gonzalis."

[9] Translation of Exhibit "1"; OR, 139.

[10] Exhibit "C".

Supreme Court E-Library

and declared that the area sold by Trinidad corresponds to Lot Nos. 7450 and 7452 while the parcel sold by Rosario corresponds to Lot No. 7444.[11] He further alleged that he has been in possession of the lots since he purchased them and had them declared for taxation purposes in his name in 1950[12] and that before he bought the property of Trinidad Gonzales, he had to first redeem it from Ireneo Raguirag to whom it was mortgaged by Trinidad for ₱100.00 on 10 November 1947 and who (Trinidad) was in possession thereof.[13]

On the other hand, private respondent Raguirag presented the 1931 private writing which, according to him, was shown to him when he was a boy by his grandfather, Manuel Raguirag, who said, "all of these are our properties of which I bought from Alejandro Gonzales."[14] He claimed that his grandfather was in possession of the property until his death during the Japanese occupation.

Then his father, Ireneo Raguirag, continued such possession until he died in 1967.[15] Ireneo had the property declared for taxation purposes in 1962.[16] After his father's death, Loreto took over the possession of the property and during the cadastral survey of Paoay, it was claimed by Leoncia Raguirag, a sister of Ireneo. The private respondent is merely possessing it as tenant-administrator. Thus:

"ATTY. LUMBO —

q I understand that the land in suit has already a lot number, do you know who is the survey claimant of the lot in suit?

x x x x x x x x x

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[11] TSN, 16 January 1986, 4.

[12] Exhibit "D."

[13] Exhibits "K" and "K-1" (Translation); TSN, 27 August 1986, 1-3.

[14] TSN, 6 November 1986, 2.

[15] TSN, 6 November 1986, 5.

[16] Exhibit "2".

Supreme Court E-Library

a Leoncia Raguirag, sir.

q Who is this Leoncia Raguirag?

a A sister of my father, sir.

q You said that from the death of your late father up to the present you are the one possessing this land in suit, my question is, why are you in possession of this property?

a Yes, sir, because my father is no longer living.

q And since according to you this survey claimant is Leoncia Raguirag, a sister of your late father, in what capacity are you possessing the land in suit?

a As a tenant-administrator, sir.

q Tiller-administrator of what?

a That pastureland in the land of my father, sir.

q What is that pastureland you are referring to in the name of your father?

a That is the pastureland that is being claimed by Julio Tapec, sir."[17]

On 31 October 1989, the trial court rendered a decision,[18] the dispositive portion of which reads as follows:

"In view of all the foregoing, it is hereby ordered:

1. That the plaintiffs are absolute owners of Lot Nos. 7942[19] and 7444.

2. That the defendants pay the costs."

In support thereof, it made the following findings and conclusion:

"That an impartial assessment of the evidence adduced disclosed that the deed of sale executed in favor of the plaintiffs by the vendees Trinidad Gonzales and Rosario Gonzales marked as Exh. "A" and "B"

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[17] TSN, 6 November 1986, 6-7.

[18] OR, 150-155; *Rollo*, 17-22. Per Judge Jose P. Tabanda.

[19] Should be 7452.

Supreme Court E-Library

respectively are public documents registered in the Office of the Register of Deeds of Ilocos Norte while that of the defendant is in a private document.

That between a deed of sale in a public document and a deed of sale in private document, the former must prevail;

That a contract may be entered into in whatever form except where the law requires a document or other special form.

'When the law requires that a contract be in a public document in order that it may be valid or enforceable, such as contracts which have for their object the creation or transmission of rights over immovable property, that requirement is absolute and indispensable.' (*Manotok Realty, Inc. vs. Court of Appeals, et al*., G.R. No. 35365, 9 April '87, Second Division).

Art. 1358 N.C.C. (No. 1). Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property must appear in a public document (*Gallardo vs. Intermediate Appellate Court*, G.R. No. 67742, 21 Oct. '87, First Division)."

Loreto Raguirag appealed from the decision to the Court of Appeals which docketed the appeal as CA-G.R. CV No. 26093.

In its decision[20] of 20 September 1993, the Court of Appeals reversed the appealed decision. It declared:

"The plaintiffs-appellees raise for the first time, on appeal, the question of the genuineness of the Deed of Sale offered as documentary evidence by the defendants-appellants. It has been decided by the Supreme Court that objection to the admission of evidence must be made seasonably, at the time it is introduced or offered, otherwise they are deemed waived and will not be entertained for the first time on appeal. (*People of the Philippines vs. Benjamin Bañares*, G.R. No. 68298, November 25, 1986, 145 SCRA 680) The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper

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[20] Per Associate Justice Eubulo G. Verzola, with the concurrence of Associate Justices Ricardo J. Francisco and Lourdes K. Tayao-Jaguros.

Supreme Court E-Library

time. (*Interpacific Transit, Inc. vs. Rufo Aviles and Josephine Aviles*, G.R. No. 86062, June 6, 1990, 186 SCRA 385).

Aside from that, a private document may be exempted from proof of due execution and authenticity under the 'ancient document rule.' Section 22, Rule 132 of the Rules of Court provides that:

> 'Sec. 22. Evidence of execution not necessary. — Where a private writing is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its execution and authenticity need be given.'

In this case, the Deed of Sale dated 15 May 1931 complies with the first requirement of Section 22 since it was offered in evidence in 1986. It was presented in court by the proper custodian thereof who is an heir of the person who would naturally keep it complying with the requirement that it be produced from a custody in which it would naturally be found if genuine. (*Resurreccion Bartolome, et al., vs. The Intermediate Appellate Court, et al.*, G.R. No. 76792, March 12, 1990, 183 SCRA 102) Neither is there any evidence of alterations or any circumstances that would cause a doubt on the genuineness of the document.

Thus, all the elements of a valid contract of sale under Article 1458 of the Civil Code, are present, such as: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent. In addition, Article 1477 of the same Code provides that 'the ownership of the thing sold shall be transferred to the vendee upon actual or constructive delivery thereof.' The plaintiff-appellee Julio Tapec himself, testified during cross-examination that Ireneo Raguirag (father of defendants-appellants) was already in possession of the parcel of land when the subject land was offered to him by the vendor, Rosario Gonzales. (Original Records, TSN, June 26, 1986, p. 8) Moreover, Constancia Gonzales, a sister of the vendor of the plaintiffs-appellees, and a witness for the defendants-appellants, testified that the subject pastureland was sold to the grandfather of the defendants-appellants as told to her by her parents; and that the predecessors-in-interest of the defendants-appellants have been in possession of the property since they bought it. (Original Records, TSN, November 23, 1988, pp. 2-3).

The validity of the sale of the subject pastureland to the predecessors-in-interest of the defendants-appellants cannot be

Supreme Court E-Library

disputed. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. (Article 1356, New Civil Code) We do not agree with the ruling of the trial judge that under Article 1358 of the New Civil Code, a contract which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property, must appear in a public document to be valid and enforceable.

Article 1358 of the New Civil Code enumerates certain contracts that must appear in public or private documents. This provision does not require such form in order to validate the act or contract but to insure its efficacy. Contracts enumerated by this article are, therefore, valid as between the contracting parties, even when they have not been reduced to public or private writings. (Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume Four, 1985 ed., pp. 549-550) Therefore, the Deed of Sale in favor of the predecessor-in-interest of the defendants-appellants is considered valid and enforceable, even if it was only embodied in a private writing.

In upholding the validity of the 1931 sale of the subject pastureland, we can only conclude that when the land was sold to the plaintiffs-appellees in 1950, the vendor had no right to sell the subject property since at that time her family no longer owned the land and thus no legal right was transferred by the vendor to the plaintiffs-appellees. Article 1459 of the New Civil Code requires that the vendor must have a right to transfer the ownership thereof at the time it is delivered, otherwise the contract of sale is void.

Article 1544 of the New Civil Code on double sales does not apply in this case. The article provides that if an immovable property should have been sold to different vendees, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry Property. In order that the above mentioned provision may be invoked, it is necessary that the conveyance must have been made by a party who has an existing right in the thing, and the power to dispose of it. It cannot, therefore, be invoked in a case where the two different contracts of sale are made by two different persons, one of them not being the owner of the property sold. (Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume Five, 1959, pp. 83-84)."[21]

[21] *Rollo,* 27-30.

Supreme Court E-Library

Before us, the petitioners raise the sole issue of whether the deeds of sale to them, which were embodied in public instruments and registered under Act No. 3344,[22] should prevail over the alleged sale to the ancestors of respondent Raguirag executed much earlier in a private instrument.

It appears that the petitioners no longer question the validity and due execution of the 1931 deed of conveyance. Nevertheless, they stand firm on their argument that such instrument is valid and enforceable only as to the parties thereto and cannot bind third persons and innocent purchasers.[23]

We agree with the Court of Appeals that Exhibit "1" for the private respondent, the deed of sale in a private writing executed on 15 May 1931 in favor of Manuel Raguirag and Clara Tapec, private respondent's grandparents, is an ancient document whose proof of authenticity was no longer necessary because of the concurrence of the requisites in Section 21,[24] Rule 132 of the Rules of Court.[25] It was already more than thirty years old at the time it was offered in evidence in 1986.[26] It was produced from the custody of respondent Raguirag, an heir of the vendees in the said instrument. And it is unblemished by any alteration or circumstances of suspicion.

As correctly ruled by the Court of Appeals, the said private instrument is a deed of sale in which all the requisites of a

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

[23] *Rollo*, 13.

[24] It used to be Section 22, as referred to by the Court of Appeals. Said Section 21 reads:

> "SEC. 21. *When evidence of authenticity of private document not necessary.* — Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given."

[25] See *Claveris vs. Quingco*, 207 SCRA 66 [1992].

[26] See RICARDO J. FRANCISCO, *Evidence (Rules of Court in the Philippines, Rules 128-134*) 1993 ed., 507.

Supreme Court E-Library

valid contract are present and which is binding upon the parties. The trial court erroneously held that it is invalid because it is not in a public document as required by Article 1358 of the Civil Code and pursuant to *Manotok Realty, Inc. vs. Court of Appeals.*[27] Article 1358 does not invalidate the acts or contracts enumerated therein if they are not embodied in public documents. As one noted civilian has said:

> "This Article enumerates certain contracts that must appear in public or private documents. This provision does not require such form in order to validate the act or contract but to insure its efficacy. It is limited to an enumeration of the acts and contracts which should be reduced to writing in a public or private instrument. The reduction to writing in a public or private document, required in this article, is not an essential requisite for the existence of the contract, but is simply a coercive power granted to the contracting parties by which they can reciprocally compel the observance of these formal requisites. Contracts enumerated by this article are, therefore, valid as between the contracting parties, even when they have not been reduced to public or private writings. Except in certain cases where public instruments and registration are required for the validity of the contract itself, the legalization of a contract by means of a public writing and its entry in the register are not essential solemnities or requisites for the validity of the contract as between the contracting parties, but are required for the purpose of making it effective as against third person."[28]

What the trial court referred to in Manotok is not the ruling of this Court but the claim of the petitioner therein. What this Court stated was that "the sale made by Legarda to Lucero should have been embodied in a public instrument in accordance with Article 1358 of the Civil Code *and should have been duly registered with the Register of Deeds to make it binding against third persons."* (italics supplied).

While we uphold the ruling of the Court of Appeals that the 15 May 1931 sale in favor of the private respondent's grandparents

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[27] 149 SCRA 174 [1987].

[28] ARTURO M. TOLENTINO, *Civil Code of the Philippines*, vol. IV, 1985 ed., 549-550.

Supreme Court E-Library

was valid and enforceable, we cannot, however, accept its findings that:

"In upholding the validity of the 1931 sale of the subject pastureland, we can only conclude that when the land was sold to the plaintiffs-appellees [petitioners herein] in 1950, the vendor had no right to sell the subject property since at the time her family no longer owned the land and thus no legal right was transferred by the vendor to the plaintiffs-appellees."

Firstly, it should be remembered that per the testimony of petitioner Julio Tapec, the sale in 1950 was that executed on 2 January 1950 by Trinidad Gonzales and the property subject thereof corresponds to Lot Nos. 7450 and 7452,[29] while the sale executed on 28 May 1949 by Rosario Gonzales[30] corresponds to Lot No. 7444. It is the latter lot which is claimed by the private respondent.[31] The original owner of the property sold by Trinidad and Rosario was their father, Miguel Gonzales,[32] and as indicated in the deeds of sale they executed, the portion each sold was declared for taxation purposes in the name of their father.[33] With respect to the 1931 sale, Miguel Gonzales was not a vendor therein but a mere witness thereto. The vendors were Victoriano, Matias, Alejandro, and Gregorio, all surnamed Gonzales. Obviously, the Court of Appeals erred in finding that Trinidad had no more right to sell the property.

Secondly, while the petitioners sufficiently established the identity of the property claimed by them, the private respondent failed to prove the identity of the property covered by Exhibit "1". Since he specified in his special defenses the property he claimed and asked the court in his prayer that he be declared "the lawful owner and possessor" thereof, the burden was on him to prove its identity.[34]

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[29] Exhibit "A"; OR, 61.

[30] Exhibit "B"; *Id.*, 62.

[31] Paragraph 1, Special Defense and Counterclaim; *Id.*, 5-6.

[32] TSN, 26 June 1986, 6-7 (a.m.).

[33] Exhibit "G"; OR, 78; TSN, 6 January 1986, 6.

[34] *Misa vs. Court of Appeals*, 212 SCRA 217 [1992].

Supreme Court E-Library

Thirdly, it was established that Trinidad Gonzales had mortgaged her property to the private respondent's father, Ireneo Raguirag, on 10 November 1947.[35] The mortgage was redeemed only shortly before its sale to the petitioners in 1950. If Ireneo were its owner as heir of Manuel Raguirag, there was no reason for Ireneo to have accepted the mortgage thereof.

Finally, the private respondent categorically admitted that he is only a tenant-administrator of Lot No. 7444. This admission belies any claim of ownership. It was his aunt, Leoncia Raguirag, who claimed ownership over it during the cadastral survey.[36]

IN VIEW OF THE FOREGOING, the *instant petition* is *GRANTED*. The *decision* of the *Court of Appeals* in *CA-G.R. CV No. 26093* is hereby *REVERSED*, and the *dispositive portion* of the *decision* of *Branch 17* of the *Regional Trial Court at Batac, Ilocos Norte*, in *Civil Case No. 1669-17* is *REINSTATED*, subject to the correction of the portion therein which reads "Lot Nos. 7942" to "Lot Nos. 7452."

SO ORDERED.

Padilla (Chairman), Bellosillo, Quiason, and *Kapunan, JJ.,* concur.

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[35] Exhibits "K" and "K-1" (Translation).

[36] TSN, 6 November 1986, 7.