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been pending, it would be to do violence to substantial justice to pronounce the proceedings fatally defective for breach of the rule on compulsory counterclaims. Rules of procedure are after all laid down in order to attain justice. They cannot be applied to prevent the achievement of that goal. Form cannot prevail over substance.[13]

WHEREFORE, the petition is dismissed for lack of merit, with costs against the petitioner.

*Teehankee, C.J., Cruz,*** *Paras,* and *Gancayco, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-31471. November 12, 1987]

ROMANA TEODORO and ELINO CLARETE, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, and ISABEL ARIOLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF TRIAL COURT AS TO CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES, ACCORDED GREAT WEIGHT. — An examination of the records discloses indeed, an understanding, albeit oral, between the parties in which the private respondent Isabel Ariola agreed to deliver the 80-square meter portion of

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[13] *Alonso v. Villamor*, 16 Phil. 321; *Palma v. Oreta*, 34 SCRA 739; *Pangasi v. CA*, 71 SCRA 614; *Tan v. Director of Forestry*, 125 SCRA 302; *Toribio v. Bidin*, 134 SCRA 162; *Gotico v. Leyte Chinese Chamber of Commerce*, 136 SCRA 218.

**Designated a Special Member of the First Division.

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the property acquired by her in favor of the petitioner Romana Teodoro. This is implicit from the "Kasunduan," Exhibit "A". In the case at bar, the trial court found that such an oral promise was indeed made by Ariola, and the trial court, by virtue of its office as a trier of facts, is in a better position to judge matters pertaining to credibility of witnesses and their testimonies. Accordingly, we defer to the inferior court's findings of fact.

2. **ID.; ID.; FACTUAL FINDINGS OF THE COURT OF APPEALS; SETTLED EXCEPTIONS TO ITS BINDING EFFECT.** — And while as a rule, this Court is bound by the findings of the Court of Appeals in matters of fact, that rule is subject to well-settled exceptions, amongst them: (1) when the same are grounded entirely on speculation, surmise, and conjecture; (2) the inference made is manifestly mistaken; (3) the Court of Appeals committed a grave abuse of discretion; (4) its judgment is based on a misapprehension of facts; (5) it went beyond the issues of the case and its findings contravene admissions of the parties; (6) its findings of fact are contrary to those of the trial court; (7) the same are conclusions without citation of specific evidence; (8) the facts set forth in the appellant's brief are not disputed by the appellee; and (9) when the findings of fact of the Court of Appeals are not supported by the evidence or contradicted in fact by the evidence on record.

3. **ID.; ID.; DISAGREEMENT IN FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE TRIAL COURT; THOSE OF THE TRIAL COURT, PREVAILS.** — In the instant appeal, there is a clear disagreement between the respondent appellate court's factual findings and those of the trial court. But as we stated, we must yield to the conclusions of the latter. In *Roque v. Buan*, we held: x x x If the decision of the Court of Appeals on the controversial matter suffers, as it does, from some ambiguity, the doubt should be resolved to sustain the trial court in the light of the familiar and accepted rule that "the judge who tries a case in the court below, has vastly superior advantage for the ascertainment of truth and the detection of falsehood over an appellate court sitting as a court of review. The appellate court can merely follow with the eye, the cold words of the witness as transcribed upon the record, knowing at the same time, from actual experience, that more or less, of what the witness actually did say, is always lost in the process of transcribing.

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4. CIVIL LAW; CONTRACTS; PROMISE TO SELL; CONSIDERATION HELD SUFFICIENT. — We reject, finally, the respondent Court of Appeals insofar as it holds that Isabel Ariola's promise (to sell) does not bind Romana Teodoro "because it is not supported by a consideration distinct from the price" pursuant to the provisions of Article 1479 of the new Civil Code. That consideration is expressed in Exhibit "A", under which the petitioners shouldered all rental expenses payable by Ariola for her occupation of the property. This should be distinguished from a sublease arrangement in which the sublessee's responsibility as and for rents due the lessor is subsidiary. But here, the petitioners bound themselves primarily to answer for those rents. That is enough consideration to support Ariola's promise.

5. ID.; ID.; WHEN WORDINGS THEREOF MAY BE SCRUTINIZED. — There are recognized instances where the court may peer behind the bare wordings of a written agreement, to wit: (1) where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put on issue by the pleadings; and (2) when there is an intrinsic ambiguity in the writing. Precisely, it is the claim of the petitioners that Exhibit "A" did not embody the true intention of the parties, that is, that Ariola would eventually cede the property in favor of Teodoro.

D E C I S I O N

SARMIENTO, *J.*:

The petitioners assail the decision of the Court of Appeals* reversing the judgment of the then Court of First Instance of Rizal** in this appeal by way of *certiorari*. The facts, as found by the respondent Court of Appeals, are as follows:

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* Alvendia, Carmelino, *J.*; Enriquez, Juan, and Serrano, Eulogio, *JJ.*, *Concurring.*

** Muñoz-Palma, Cecilia, Presiding Judge.

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In 1948, Isabel Ariola leased from the Manila Railroad Company a parcel of land with an area of about 270 square meters situated in Pasig, Rizal, and designated as Parcel 5-A in the list of said company. Sometime in 1953, the Manila Railroad Company sold four parcels of its property in Pasig, including that leased to Isabel Ariola, to one Alfonso San Lorenzo, who in turn assigned his rights in favor of E.C. Herrera & Company, subject to the condition that "the purchaser would recognize the rights of the present occupants of the said properties to purchase the respective parcels that they are now occupying at a reasonable price to be agreed upon by the parties, and/or continue occupying said parcels of land on rental basis the rates of which should be the same rental rates the Manila Railroad Company is charging them until such time as final adjustment is worked out between the occupants and the purchasers, which occupants are indicated in the attached list duly signed by both parties" (Exh. D). On November 20, 1957, the E.C. Herrera & Company, pursuant to the above condition, sold to Isabel Ariola, who is listed as one of the occupants, a portion of about 176 square meters of the land originally leased to her by the Manila Railroad Company, for and in consideration of the sum of ₱1,903.00. Thereafter, Isabel Ariola was issued Transfer Certificate of Title No. 54930 of the Registry of Deeds of Rizal covering the lot sold to her, which is designated as Lot No. 8-B-47 of Subdivision Plan Psd-43425.

On November 29, 1957, Romana Teodoro and her husband, Elino Clarete, filed a complaint against Isabel Ariola and the E.C. Herrera & Company for the cancellation of Transfer Certificate of Title No. 54930 and the issuance of another title in their favor, with damages, alleging that sometime in December, 1948, by virtue of a verbal agreement between them and defendant Ariola, they constructed a three-storey residential building on a portion of about 71 square meters of the lot leased by Ariola from the Manila Railroad Company; that on January 9, 1954, in confirmation of the verbal agreement, they and defendant Ariola entered into a written contract whereby said defendant assigned her rights and interests on all the portion of land on which their house had been erected and an additional portion adjacent thereto, or a total of 80 square meters; that the Manila Railroad Company gave its conformity to and duly recognized said written agreement; that in the year 1956, through

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fraud and intimidation, defendant Ariola was able to purchase from defendant E.C. Herrera & Company the lot leased to her, including that portion on which their house stands, resulting in the issuance of TCT No. 54930 in her favor; that to protect their interest, they filed an affidavit of adverse claim, which was duly recorded in the Office of the Register of Deeds of Rizal; and that, by reason of said "fraud and misrepresentations" and "in order to protect" their rights and interests, they suffered damages and incurred attorney's fees all amounting to ₱2,800.00.

In her answer, defendant Isabel Ariola denied the material averments of the complaint, claiming by way of special defenses that —

"1. In the year 1948 the plaintiffs and the answering defendant agreed to construct, and in fact they constructed a three (3) story house on the parcel of land leased by the Manila Railroad Company to the answering defendant, the plaintiffs contributing about ₱6,500.00 representing one-half (½) of the cost and expenses incurred in the construction of said three (3) story house and the herein defendant contributed the other one-half in the amount of about ₱6,500.00.

"2. In the year 1952, when the herein defendant learned for the first time that the house which she owns in common with the plaintiff had been declared in the name of Romana Teodoro only, she demanded from the plaintiff the cancellation of the tax declaration in the name of Romana Teodoro so that another tax declaration which would include the herein defendant as owner of one-half (½) of the same may be obtained from the Office of the Provincial Assessor of Rizal, but instead of complying with this demand plaintiffs told the herein defendant that there was no necessity for changing the tax declaration because they never intended to appropriate the said house to themselves and they will always recognize the defendant as part owner of the same.

"3. Sometime before January 9, 1954, the herein defendant offered to purchase from the plaintiffs their share in the house mentioned above, but plaintiffs made a counter-offer to buy the share of the herein defendant in the said house provided that the lease of the land over which the house stands should

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be transferred to them to which proposition herein defendant acceded resulting in the execution of the document Annex 'A' of the complaint, where it is clearly stated that the agreement transferring the lease to the plaintiffs of the land mentioned in the penultimate paragraph hereof would only be valid and effective if the same shall be approved by the Rental Division of the Manila Railroad Company.

"4. The validity of the transfer of the lease embodied in the Annex 'A' being subject to the approval of the Manila Railroad Co., plaintiffs agreed to sell to the defendant their share in the house jointly owned by them in case the Manila Railroad Company will not approve and recognize the said transfer.

"5. The terms and conditions of the document Annex 'A' of the complaint, particularly that portion relating to the transfer of the lease to the plaintiffs, were not approved by the Manila Railroad Company."

At the pre-trial conference held on October 7, 1959, during which the lawyer for defendant E.C. Herrera & Company informed the court that the plaintiffs did not appear in the list of occupants furnished by the Manila Railroad Company and that in the year 1955, when defendant E.C. Herrera & Company initiated ejectment proceedings against occupants who were not up-to-date in the payment of their rentals, only defendant Isabel Ariola appeared as occupant of the lot in question, the court *a quo* made the observation that "this will then be a case of specific performance." Taking a cue, the plaintiffs, on June 14, 1960, filed a "Motion to Admit Amended Complaint." The amendments sought to be introduced by the plaintiffs were the elimination of E.C. Herrera as a party defendant and the change of the action from cancellation of title to specific performance by the inclusion of the following allegations:

"10. That it has been further agreed between the plaintiffs and defendant that in case of any future sale that might be made of the said parcel of land in favor of the occupants thereof, said defendant would purchase and register the same in her favor, under the condition that immediately thereafter, said defendant should sell unto the plaintiffs, that portion containing an area of 80.0 square meters more or less as mentioned in par. 7 hereof, as agreed to be assigned to them as per Annex 'A' at the same rate purchased.

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x x x x x x x x x

"15. That on or about November 20, 1957, defendant purchased from E.C. Herrera & Company, the whole parcel of land occupied by the respective houses of the plaintiffs and defendant comprising an area of 176 square meters more or less, for and in consideration of the sum of ₱1,903.00 or at the rate of ₱10.812 per square meter, and for which Transfer Certificate of Title No. 54930-Rizal, has been issued in the name of the defendant, Isabel Ariola.

"16. That immediately after the plaintiffs have learned that the above-mentioned Transfer Certificate of Title has been issued in favor of the defendant, they (plaintiffs) requested said defendant to sell unto them the area of 80.0 square meters as promised by said defendant, at the same rate as that purchased in the sum of ₱ _____ per square meter.

"17. That despite the repeated requests and demands made by the plaintiffs on the said defendant to sell unto them the said area of 80.0 square meters as promised, defendant, for some reason or other, failed to do so, to the damage and prejudice of the plaintiffs.

The court *a quo*, in its order of June 21, 1960, denied the above motion, but upon motion of the plaintiffs it reconsidered said order and admitted the amended complaint.

Answering the amended complaint, defendant Isabel Ariola reiterated her defenses set forth in her original answer and, in addition, averred as follows:

"6. She had not entered into any contract with the plaintiffs either verbal or oral, promising to sell any land much less the land in dispute, neither has there been any act ratifying or confirming the same. As a matter of fact in the plaintiffs' complaint in Civil Case No. 4790 and in Civil Case No. 4770, both in the Court of First Instance of Rizal, now amended, and in I.S.N. 3203-Provincial Fiscal of Rizal together with all the documentary evidences and testimonies, nowhere could it be found that there is anything said or intimated that there has been a promise to sell or intention to sell made by the defendant to the plaintiffs of the disputed land. All these were under the solemnity of oaths as well as the change of fraud from fraud

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to no fraud at all in Civil Case No. 4770 drawn artistically to achieve their aims. And if really there has been a promise as what they are now claiming, plaintiffs never wanted and never would want to be late to claim the promise to the land in dispute after twelve (12) years more or less, that is, since 1948 when the verbal agreement was entered and was confirmed in writing in 1954. The alleged agreement to sell was made in 1948 and not in January, 1954 as this is the date when the verbal contract in 1948 was reduced to writing as confirmation.

"7. The action has no basis in law and in fact because:

(a) The complaint states no cause of action.

(b) The claim in which the action or suit is founded is unenforceable under the Statute of Frauds; and

(c) The cause of action is barred by the Statute of Limitations.

"8. After the construction of the three-story house in 1948, there has been an understanding and agreement between the plaintiffs and the defendant herein that if and when the assignment of lease by the defendant to the plaintiffs would not be approved by the Manila Railroad Company, the three-story house owned in common by both the plaintiffs and the defendant would have to pay ₱50.00 a month to the defendant for the occupancy of the land in question and that the rentals collected on the three-story house, be divided between them, accounting and liquidation would have to be made to effect reimbursement by defendant to the plaintiffs by paying the latter their share which is one-half of the money spent for the three-story house, more or less ₱6,500.00, deducting of course all true and valid deductions with depreciations."[1]

On April 29, 1965, the trial court rendered judgment in favor of the petitioners. The dispositive portion thereof states as follows:

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IN VIEW OF THE ABOVE CONSIDERATIONS, this Court orders defendant Isabel Ariola to reconvey to spouses Romana Teodoro

[1] *Rollo*, 36-42.

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and Elino Clarete the portion of 80 square meters of the lot now titled under Transfer Certificate of Title No. 54930 of Rizal on which plaintiffs' house stands upon payment to her of the amount corresponding to the 80 square meters at the rate of ₱10.82 or a total of Eight Hundred Sixty-Five Pesos and Sixty Ctvos. (₱865.60). All other claims of plaintiffs for damages are hereby denied. With costs against defendant.

SO ORDERED.[2]

In finding for the petitioners, Judge Muñoz Palma held:

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We are inclined to believe and we do believe that there was indeed a verbal understanding or agreement between the plaintiffs and the defendant that in the event defendant shall acquire the entire lot by purchase that portion of 80 square meters occupied by plaintiffs' house will be conveyed to the latter. Had there been no such assurance the plaintiffs surely would not have undertaken the construction on that lot of a three-storey house of strong materials which for taxation purposes is assessed at a little less than ₱6,000.00. As a matter of fact, Isabel Ariola in the document, Exh. "A", divested herself of any interest on that portion of 80 square meters occupied by plaintiffs' house when she transferred to plaintiffs the lease of said area. With that understanding existing between the parties a relationship of trust was created between them so that when Isabel Ariola purchased the entire lot from E.C. Herrera and Company she did so in trust for the plaintiffs herein insofar as that portion of 80 square meters was concerned. We should not overlook the fact that in the very deed of purchase between the Manila Railroad Company and Alfonso Lorenzo the rights of the occupants to purchase the portions occupied by them was recognized, and although in the list of occupants attached to said deed of purchase Romana Teodoro did not appear as one of them, the truth, however, is that it was known to Isabel Ariola that not she alone was occupying that particular lot, and that she had conveyed to Romana Teodoro whatever rights she had over the 80 square meters portion originally leased by her from the Manila Railroad Company. Defendant's pretension that the last paragraph in Exh. "A" is not binding because the transfer of her rights was

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[2] *Id.*, 36.

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not approved by the Manila Railroad Company is utterly without legal justification. Defendant loses sight of the fact that on the date of the execution of Exh. "A" the consent of the Manila Railroad Company was not necessary because at that time it was no longer the owner of the property in question by reason of its conveyance to Alfonso San Lorenzo.[3]

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The Court of Appeals, in rendering a reversal, ruled:

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x x x [I]t is obvious that when the plaintiffs constructed the house in *1948*, there was no understanding or promise on the part of the defendant that she would sell the lot in question if she acquired it from the lessor, the alleged verbal agreement having been entered into, according to plaintiff Elino Clarete, only in *1953* or five years after the construction of the house on the lot in question.

Moreover, if there was such a verbal agreement entered into in 1953, we see no reason why it was not included in the written contract, Exhibit A, which was executed by and between the plaintiffs and the defendant on January 9, 1954. Said written contract was supposed to be a confirmation of the previous agreement between the parties, and yet it did not mention anything about a promise on the part of the defendant to sell the lot in question to the plaintiffs. To our mind, this circumstance belies the pretension of the plaintiffs, for a written contract is presumed to embody all the previous and contemporaneous agreements between the parties thereto.

Another factor that would militate against the claim of the plaintiffs is that, in their original petition or complaint, nothing whatsoever was said about the alleged promise of the defendant to sell the lot in question to them. For if there was indeed such a promise or understanding, the plaintiffs would never have failed to allege the same, it being a material fact essential to their cause of action.[4]

Upon the facts, we agree with the respondent Court that "the basic issue [is] whether or not there was indeed a verbal agreement between the plaintiffs and the defendant whereby

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[3] *Id.*, Record on Appeal, 159-160.

[4] *Id.*, 46-47; italics in original.

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the latter undertook to buy the lot in question from the Manila Railroad Company and thereafter to resell the same to the former."[5]

We hold that upon the same facts, the respondent Court erred in reversing the trial court.

An examination of the records discloses indeed, an understanding, albeit oral, between the parties in which the private respondent Isabel Ariola agreed to deliver the 80-square meter portion of the property acquired by her in favor of the petitioner Romana Teodoro. This is implicit from the "Kasunduan," Exhibit "A", in which Ariola averred:

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Na, ako'y may inarrendahang lupa ng Manila Railroad Company na may sukat na 270 metros cuadrados (humigit kumulang) at kilala sa tawag na Parcela 5-A sa talaan ng tanggapan ng Rental Division, M.R.R. Co., at ang nasabing lupa ay bahagi ng Pasig old station grounds of TITLE NO. 4399 Lalawigan Rizal.

Na, noong buwan ng Diciembre, 1948 pinahintulutan ko na makapagtayo ng bahay si Romana Teodoro, at ang nasabing bahay ay may sukat na 71 metros cuadrados (humigit kumulang) materiales fuertes, tatlong palapag ng nasabing bahay, simula sa nakaraang Enero 1949 hanggang Diciembre, 1955, o sa loob ng pitong (7) taong simula noong na itayo ang nasabing bahay, na wala akong dapat pagbayaran maliban sa consumo ng tubig at ilaw na aking magagamit;

Na, bilang arendadora ng nasabing lupa, ako ang mananagot sa maging kaupahan ng buong Parcela No. 5-A sa Manila Railroad Company at kailan ay hindi ko isasama sa ano mang pananagutan sa pagkakautang sa kaupahan ng nasabing lupa ang nagmamay-are na si ROMANA TEODORO.[6]

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[5] *Id.*, 8-9.

[6] *Id.*

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DAHIL DITO, simula sa Enero 1, 1954, ang lupa na nasasakop ng buong kabahayan ni Romana Teodoro, kasama ang patio na magkakaroon ng sukat na 80 metros cuadrados (humigit kumulang) ay inililipat ko ang arendamiento sa nasabing ROMANA TEODORO, o sa kaniyang taga-pagmana, at ang kaupahan ng bahaging ito ng Parcela Blg. 5-A ay siya (Romana Teodoro) ang mananagot sa Manila Railroad Company at aawasin naman sa aking, at ang nalalabing sukat na kinatitirikan ng bahay ko at kiosko ako naman ang magbabayad, ang lahat ng ito ay sa pagsangayon ng tanggapan ng Rental Division, Manila Railroad Company.[7]

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As found by the trial court, this is an admission that she had no more rights over the properties as a result of her earlier promise to part therewith eventually.

Her attempts furthermore to repudiate the clear terms of Exhibit "A",[8] as well as the proprietary claims she now lays over the building constructed by Teodoro,[9] betray an effort on her part to falsify the provisions of Exhibit "A" itself, a document she had herself prepared, if not to evade her obligations based on her promise altogether. We cannot say, under these circumstances, that she had acted in the best of faith in dealing with Teodoro.

We do not find the respondent Court's reliance upon the provisions of Section 7, of Rule 130, of the Rules of Court well-taken.[10] There are recognized instances where the court

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[7] *Id.*

[8] In her answer (Record on Appeal, 134), she alleged that the assignment of rights under Exhibit "A" was subject to approval by the Manila Railroad Company, although there is nothing there that requires such an approval.

[9] She likewise claimed in her answer (*Id.*, 128) that the building was property owned in common between her and Teodoro.

[10] SEC. 7. *Evidence of written agreements.* — When the terms of an agreement have been reduced to writing, it is to be considered as containing

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may peer behind the bare wordings of a written agreement, to wit: (1) where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put on issue by the pleadings; and (2) when there is an intrinsic ambiguity in the writing.[11] Precisely, it is the claim of the petitioners that Exhibit "A" did not embody the true intention of the parties, that is, that Ariola would eventually cede the property in favor of Teodoro.

As we noted, however, Ariola submits otherwise, and her version is that she did not enter into any oral agreement with Teodoro with respect to the 80-square meter lot in question. To be sure, it is the parties' word against the other, and it is in such a situation that a cautious appreciation of the evidence assumes vital weight. In the case at bar, the trial court found that such an oral promise was indeed made by Ariola, and the trial court, by virtue of its office as a trier of facts, is in a better position to judge matters pertaining to credibility of witnesses and their testimonies. Accordingly, we defer to the inferior court's findings of fact.

And while as a rule, this Court is bound by the findings of the Court of Appeals in matters of fact, that rule is subject to well-settled exceptions, amongst them: (1) when the same are grounded entirely on speculation, surmise, and conjecture; (2) the inference made is manifestly mistaken; (3) the Court of Appeals committed a grave abuse of discretion; (4) its judgment is based on a misapprehension of facts; (5) it went beyond the issues of the case and its findings contravene admissions of

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all such terms, and, therefore, there can be, between the parties and their successors-in-interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

(*a*) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;

(*b*) When there is an intrinsic ambiguity in the writing.

The term "agreement" includes wills.

[11] *Supra.*

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the parties; (6) its findings of fact are contrary to those of the trial court; (7) the same are conclusions without citation of specific evidence; (8) the facts set forth in the appellant's brief are not disputed by the appellee; and (9) when the findings of fact of the Court of Appeals are not supported by the evidence or contradicted in fact by the evidence on record.[12] In the instant appeal, there is a clear disagreement between the respondent appellate court's factual findings and those of the trial court. But as we stated, we must yield to the conclusions of the latter. In *Roque v. Buan*,[13] we held:

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If the decision of the Court of Appeals on the controversial matter suffers, as it does, from some ambiguity, the doubt should be resolved to sustain the trial court in the light of the familiar and accepted rule that "the judge who tries a case in the court below, has vastly superior advantage for the ascertainment of truth and the detection of falsehood over an appellate court sitting as a court of review. The appellate court can merely follow with the eye, the cold words of the witness as transcribed upon the record, knowing at the same time, from actual experience, that more or less, of what the witness actually did say, is always lost in the process of transcribing. But the main difficulty does not lie here. There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there was no doubt as to the identity of the words." (Moran, Comments on the Rules of Court.)[14]

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[12] *Ramos v. Pepsi-Cola Bottling Company of the Philippines*, No. L-22533, February 9, 1967, 19 SCRA 289 (1967); *Roque v. Buan*, No. L-22459, October 31, 1967, 21 SCRA 642 (1967); *Tolentino v. De Jesus*, No. L-32797, March 27, 1974, 56 SCRA 167 (1974); *Alsua-Betts v. Court of Appeals*, Nos. L-46430-31, July 30, 1979, 92 SCRA 332 (1979); *Macadangdang v. Court of Appeals*, No. L-49542, September 12, 1980, 100 SCRA 72 (1980).

[13] *Supra*.

[14] At 648.

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We find immaterial, for purposes of this appeal, the apparent lapse of the petitioner, Elino Clarete, in stating that "[o]ur verbal contract started since 1953,"[15] in contrast to the petitioners' averment that the agreement existed since 1948. The claims are not necessarily at war with each other. For whether in 1953 or 1948, the existence of the agreement is not negated.

That the petitioners did not allege about the oral contract in their original complaint is not fatal to the cause of the petitioners. It was for that reason — the omission of that allegation — that the complaint was amended. Be that as it may, the amendment resulted in the abandonment of the first complaint.[16] The same cannot therefore be the basis of any judgment.

We reject, finally, the respondent Court of Appeals insofar as it holds that Isabel Ariola's promise (to sell) does not bind Romana Teodoro "because it is not supported by a consideration distinct from the price"[17] pursuant to the provisions of Article 1479 of the new Civil Code.[18] That consideration is expressed in Exhibit "A", under which the petitioners shouldered all rental expenses payable by Ariola for her occupation of the property. This should be distinguished from a sublease arrangement in which the sublessee's responsibility as and for rents due the lessor is subsidiary.[19] But here, the petitioners bound themselves primarily to answer for those rents. That is enough consideration to support Ariola's promise.

WHEREFORE, the Decision appealed from is REVERSED and SET ASIDE. The private respondent, Isabel Ariola, her

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[15] *Rollo*, 46.

[16] *Ruymann and Ferris v. Director of Lands*, 34 Phil. 428 (1916).

[17] *Rollo, Id.*, 47.

[18] Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

[19] CIVIL CODE, Art. 1652.

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heirs and assigns, are ordered to reconvey to the petitioners the portion of 80 square meters of that parcel covered by Transfer Certificate of Title No. 54930 of the Register of Deeds of Rizal on which the petitioners' house stands upon payment to them of ₱865.60.

No costs.

IT IS SO ORDERED.

Melencio-Herrera, Paras, and *Padilla, JJ.*, concur.

Yap (Chairman), J., took no part, law firm counsel for petitioner.

SECOND DIVISION

[G.R. No. L-38173. November 12, 1987]

FERNANDO SARMIENTO, *petitioner, vs.* **HON. MAGNO S. GATMAITAN, Chairman, HON. JOSE M. LEUTERIO and HON. LUIS B. REYES, Members, COURT OF APPEALS, Manila, and CATALINA PONCE AS GUARDIAN *AD LITEM*, Mandawe City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BOND, NO LONGER REQUIRED UNDER THE PRESENT RULES; NEW PROCEDURAL RULE APPLICABLE ONLY TO ACTIONS PENDING AND UNDETERMINED AT THE TIME OF APPROVAL OF SAID RULE. — Under the present rules, an