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FIRST DIVISION

[G.R. No. L-38280. March 21, 1975]

ST. PETER MEMORIAL PARK, INC., *petitioner, vs.* **HON. JOSE C. CAMPOS, JR. and/or COURT OF FIRST INSTANCE OF RIZAL (Quezon City, REGINO CLEOFAS, and LUCIA DE LA CRUZ,** *respondents.*

[G.R. No. L-39905. March 21, 1975]

BANCO FILIPINO SAVINGS & MORTGAGE BANK, *petitioner, vs.* **HON. JOSE CAMPOS, REGINO CLEOFAS, and LUCIA DE LA CRUZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE: APPEALS: MAY BE PURSUED TOGETHER WITH A MOTION FOR NEW TRIAL.** — Under American Law, the source of our rules on appeal and new trial, a motion for new trial does not work as a waiver of the appeal, unless there is a rule to the contrary. Both may be pursued at the same time. The *certiorari* petition filed in pursuance of the motion for new trial may prosper as well as that of the appeal from the main decision.

2. **ID.; ID.; ID.; DISMISSAL OF APPEAL IN VIOLATION OF SUPREME COURT'S RESTRAINING ORDER CONSTITUTES GRAVE ABUSE OF DISCRETION.** — A restraining order issued by the Supreme Court enjoining a judge from enforcing his decision is intended to retain the *status quo* insofar as said decision and other circumstances surrounding it are concerned. Any court action or order that would change any circumstance of the decision is necessarily included in the scope of the restraining order. Thus, where the enjoined decision had been appealed when the restraining order was issued, an order dismissing the appeal tended to change the *status quo*, since by reason of the dismissal, the enjoined decision became final. Said dismissal constitutes a grave abuse of discretion correctible by *certiorari*.

3. **ID.; ID.; ID.; *CERTIORARI*; NOT PROPER WHEN APPEAL IS AVAILABLE; EXCEPTIONS.** — The general rule is that the

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extraordinary writ of *certiorari* is not proper when ordinary appeal is available. However, the writ may be granted in cases where it is missing will not promptly relieve petitioner from the injurious effects of the order complained of.

4. **ID.; ID.; ID.; GROUNDS TO JUSTIFY THE GIVING OF DUE COURSE TO PETITION FOR *CERTIORARI*.** — Petitioner seeks the annulment of the court's order denying new trial on the ground that the same was issued with grave abuse of discretion. He claims that the evidence proposed to be presented thereat could not have been produced by him during the trial because the subject matter thereof was a different lot, one not in his name and that if admitted, these newly discovered evidence will probably alter the judgment of the trial court. The ground cited justify the giving of due course to the petition in the instant cases, for ordinary appeal will not be adequate, as many memorial lot buyer are affected, and the very integrity of the Torrens system is at stake and public interest is involved.

5. **ID.; ID.; NEW TRIAL; REQUISITES.** — Rule 37, Sec. 1, par. b of the Rules of Court provides for the grant of new trial based on: "newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result." Its requisites are: (1) that such evidence has been discovered after the trial; (2) that even with the exercise of reasonable diligence, it could not have been discovered and produced at the trial; and (3) that such evidence is of such a nature as to alter the result of the case if admitted.

6. **ID.; ID.; ID.; LIBERAL CONSTRUCTION OF THE RULES RELATIVE TO THE GRANT THEREOF.** — The rule for the granting of a motion for new trial, as all other rules of procedure, should be liberally construed to assist the parties in obtaining a just and speedy determination of tneir rights. Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to find out such truth. The dispensation of justice and vindication of legitimate grievance should not be barred by technicalities.

7. **ID.; ID.; ID.; EFFECT ON APPEALED JUDGMENT.** — The grant of new trial necessarily vacates the judgment subject of the appeal, which, consequently, becomes moot.

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BARREDO, *J., concurring:*

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; PROPER REMEDY IN CASE OF TRIAL COURT'S DENIAL OF MOTION FOR NEW TRIAL. — I would like to make clear that my reason for concurring in the holding in the main opinion that *certiorari* is the proper remedy in relation to the trial court's denial of petitioners' motion for new trial notwithstanding that they had already filed their respective notices of appeal, appeal bonds and motions for extension to file their records on appeal is that such special civil action may be resorted to when it is patent from the nature of the purported newly discovered evidence that movant can more or less conclusively show that the factual issue to which such evidence relates would have to be decided differently if the same were to be admitted by the court. In such a situation, it is obvious to me that to give due course to the appeal and merely allow the denial of the motion for new trial to be assigned as an error in appellant's brief would only result in unnecessary delay of the final disposition of the controversy between the parties. Since it is more likely that the decision would have to be changed or modified after the new evidence is presented.

APPEARANCES OF COUNSEL

Feliciano C. Tumale for petitioner St. Peter Memorial Park, Inc.

Tan Law Office for petitioner Banco Filipino Savings & Mortgage Bank.

Juan T. Aquino for respondents.

D E C I S I O N

FERNANDEZ, *J.*:

The Court decided to dispose of these two cases in a consolidated decision, considering that the facts in both are the same and the issues are intertwined.

In the Court of First Instance of Rizal, the spouses Regino Cleofas and Lucia de la Cruz filed suit against St. Peter Memorial Park, Inc. (or Memorial Park for short), Araceli-Wijangco del

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Rosario, National Investment and Development Corporation (or NIDC), Banco Filipino Savings and Mortgage Bank (or Banco Filipino for short), the Register of Deeds of Rizal, the Register of Deeds of Quezon City and the Sheriff of Quezon City (Civil Case No. Q-15001). In their amended complaint, the spouses prayed that they be declared the rightful owners of Lot No. 719 of the Piedad Estate, that the Torrens Title to said lot be reconstituted, the title thereto of their deceased predecessor, Antonio Cleofas, having been burned in a fire in 1933; that the certificates of title over said lot in the name of the Memorial Park, and that in the name of Wijangco del Rosario, and all the certificates of title from which these certificates were derived be declared null and void; that the mortgages over said lot constituted in favor of Banco Filipino and the NIDC be declared null and void; and that the Memorial Park be ordered to pay plaintiffs damages. The amended complaint likewise sought issuance of preliminary injunction and the appointment of a receiver. The lower court ordered appointment of a receiver, but upon filing of a bond by the Memorial Park, the receivership was lifted.

After trial, the lower court, on May 2, 1973, rendered a decision in favor of the plaintiffs and against the defendants. The Memorial Park and Banco Filipino, on June 23, 1973, filed their joint motion for reconsideration of the decision. On June 30, 1973, they filed a joint motion for new trial. On July 9, 1973, the Memorial Park filed a supplement to the motion for reconsideration with prayer for new trial. Plaintiffs opposed the motion for reconsideration and/or new trial. On January 10, 1974, the plaintiffs moved for issuance of writ of preliminary injunction and restoration of receivership. On February 5, 1974, the trial court denied new trial. On February 21, 1974, Banco Filipino and the Memorial Park filed their notice of appeal from the decision of May 2, 1973, and filed their cash bond. Within the reglementary period they filed their joint record on appeal.

On February 28, 1974, the Memorial Park filed before this Court a petition for *certiorari* and prohibition with preliminary injunction (L-38280) against the trial judge and the plaintiff spouses, seeking annulment of the court's order denying new

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trial, on the ground that the same was issued in grave abuse of discretion.

On March 7, 1974, this Court issued a restraining order as follows:

"NOW, THEREFORE, effective immediately and until further orders from this Court, You (respondent Judge), your agents representatives and/or any person or persons acting upon your orders or in your place or stead are hereby RESTRAINED from enforcing your decision dated May 2, 1973 and your order dated February 5, 1974, all issued in Civil Case No. Q-15001, entitled '*Regino Cleofas, et al., plaintiff versus St. Peter Memorial Park, Inc., et al., defendants*,' of the Court of First Instance of Rizal, Branch IV at Quezon City, and from stopping the business operations of petitioner herein."

In compliance with the foregoing, the lower court, on March 12, 1974, issued an order holding "in abeyance until further orders from the Appellate Court," action on the petition for appointment of a receiver and for execution of judgment pending appeal, and on March 18, 1974, likewise upon motion of spouses Cleofas and De la Cruz, deferred the approval of the Joint Record on Appeal "until the Supreme Court has ruled on the petition for *certiorari* filed by the defendants."

However, on July 8, 1974, the court, again upon motion of said spouses, dismissed the appeal filed by both the Memorial Park and Banco Filipino, on the ground that the same was abandoned when Memorial Park filed the present petition for *certiorari* on February 28, 1974, the dismissal order having been brought to the attention of this Court in the manifestation of the Memorial Park of July 31, 1974.

On January 3, 1975, Banco Filipino, for its part, filed in this Court a petition for *certiorari* and *mandamus* with preliminary injunction (L-38843), against the trial judge and the spouses Cleofas and Dela Cruz, to annul the trial court's order of July 8, 1974 dismissing its own appeal.

The main issue in these two cases is whether or not the respondent Judge acted in grave abuse of discretion in dismissing

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the joint appeal of the Memorial Park and Banco Filipino in its order of July 8, 1974.

And with respect to Case No. L-38280, the main issue is whether or not the respondent Judge committed a grave abuse of discretion when it denied in its order of February 5, 1974 the motion for new trial of the Memorial Park.

In moving for dismissal of the appeal in the trial court, respondents spouses averred that "the filing of the petition for *certiorari* and prohibition in the Supreme Court by the principal defendant with the acquiescence of the other defendant subsequent to the filing of the notice of appeal, appeal bond and motion for extension to file the record on appeal, in effect, is abandonment of the unperfected appeal"; that "the defendants could not pursue both remedies, appeal to the Court of Appeals and appeal by special action to the Supreme Court of one and the same case"; and that "the dismissal of the appeal is not covered by the restraining order issued by the Supreme Court in the aforesaid petition filed by one of the defendants in this case." And the trial court, "finding the reasons for the motion to dismiss to be well taken, and it appearing that consideration by this Court of the pending motion to dismiss the appeal is not one of those sought to be restrained by the order of the Supreme Court," dismissed the appeal in its order of July 8, 1974.

It must be noted that the petitioner in L-38280 is only St. Peter Memorial Park. Banco Filipino is not a party in that first proceeding before this Court. Thus, whatever may be the effect of the filing of a petition for *certiorari*, on the pending appeal, cannot affect the appeal of Banco Filipino. And the respondent Judge clearly committed a clear error and a grave abuse of discretion when it dismissed the appeal of Banco Filipino due to the filing by the Memorial Park of its petition in L-38280. Moreover, as will now be explained, the dismissal of the appeal violated the restraining order issued by this Court.

Even with respect to the Memorial Park, we cannot say there was abandonment of the appeal. There would have been abandonment if there is incompatibility between the two remedies sought by the Memorial Park, that is, between said appeal and

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the petition for *certiorari*. The appeal is from the decision of May 2, 1973; the *certiorari* petition is directed against the order dated February 5, 1974.

Under American Law, a motion for new trial does not work as a waiver of the appeal, unless there is a rule to the contrary (*U.S. v. Hodge*, 12 L ed 437). Thus, both the motion for new trial and the appeal may be pursued at the same time (*McCandless v. Kramer*, 76 Idaho 516, 286 P2d 334; *Labbe v. Cyr*, 111 A2d 330). This ruling is of persuasive effect on us considering the source of our rules on appeal and new trial. Here, the *certiorari* petition in L-38280 is in pursuance of the motion for new trial. Memorial Park can pursue this remedy as well as that of the appeal from the main decision.

More important, it must be remembered that in L-38280 this Court issued a restraining order enjoining respondent Judge "from enforcing your decision dated May 2, 1973." This restraining order was intended to retain the *status quo* insofar as said decision and other circumstances surrounding it are concerned. Any court action or order that would change any circumstance of the decision is necessarily included in the scope of the restraining order. At the time that restraining order was issued, the trial court's decision was a decision on appeal. The order dismissing the appeal tended to change the *status quo*, since by reason of the dismissal, the enjoined decision became final. For the reasons we have expounded we find said dismissal order to have been issued in grave abuse of discretion.

Let us now take up the order of February 5, 1974, denying the motion for new trial of both the Memorial Park and the Banco Filipino, challenged in L-38280.

From the decision of the trial court it appears that the parties do not dispute that Lot No. 719 of the Piedad Estate forms part of the land covered by Original Certificate of Title No. 614 of the Registry of Deeds of Rizal, in the name of the Government of the Philippine Islands. On March 20, 1909, the Director of Lands, as administrator of the Piedad Estate, executed a contract in favor of Antonio Cleofas (Sales Certificate No. 923).

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According to the said decision, private respondents' evidence indicated that Antonio Cleofas, their predecessor, took possession of the lot and occupied the same until his death sometime in 1945. However, Antonio's title was burned in a fire sometime in 1933. Private respondents did not take any step to reconstruct said title until the real estate boom in Quezon City. But when they filed a petition for reconstruction in the Court of First Instance of Rizal (Quezon City), they discovered that the lot was already covered by TCT No. 21893 in the name of Trino Narciso and Aniceto Martin, predecessors of the Memorial Park.

In support of their allegation that a certificate of title to Lot No. 719 was issued in favor of Antonio Cleofas, respondents presented Exh. A, which is Sheet 15 of OCT No. 614, mother title of the Piedad Estate. This title contained many sheets to record transactions because the estate was large.

On the other hand, the decision states, that the Memorial Park and Banco Filipino presented evidence to the following effect: On July 15, 1921, Antonio Cleofas executed a Deed of Assignment of Sales Certificate No. 923 (over Lot 719) in favor of Aniceto Martin (Exh. 1), before the Friar Lands Division of the Bureau of Lands, which deed was approved on July 22, 1921. On May 2, 1932, the Bureau of Lands issued Deed of Conveyance No. 25874 over Lot No. 719 (Exh. 2), in favor of Aniceto Martin and Trino Narciso, upon the latter's payment of the full price of the lot. On the basis of this deed, there issued to Aniceto Martin and Trino Narciso, on June 17, 1932, TCT No. 21893 (Exh. 3). Martin and Narciso declared the lot in their name, for purposes of taxation (Exh. 4, dated March 12, 1935). On May 1, 1937, they sold the lot to Nazario Roque (Exh. 5), in view of which, TCT No. 32258 (Exh. 6) was issued to Roque. Upon his death, TCT No. 12360 was issued to his heirs, Basilisa and Carmen Roque. In 1967 St. Peter Memorial Park, Inc. purchased Lot No. 719, for value and in good faith, from Carmen and Basilisa Roque.

On the basis of Exh. A, respondent Judge made the finding that "on Page 15 of O.C.T. No. 614, by virtue of Sale Certificate

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No. 923 issued by the Bureau of Lands to Antonio Cleofas executed on March 20, 1909, an entry was made in the name of Antonio Cleofas on July, 1929 showing the award and final sale of Lot No. 719 to him by the government, owner of Lot No. 719 of the Piedad Estate."

Exh. A (Sheet 15 of OCT No. 614), however, is torn, and the only data appearing thereon are as follows:

"Document Number — 4357-0-614
Kind — Sale — Executed in
favor of Antonio Cleofas
et als. — Conditions —

I hereby certify .....
herein described .....
certificate of sale .....
Lands, for the sum .....
as certificate of T .....
T-63 at the Book of ....
deed of sale ratified ...
tary Vicente Garcia .....
and filed in T-No. 156."

The motion for new trial is based on newly discovered evidence. It alleges that:

"Fully convinced of the validity of its title, having discovered no flaw in spite of extraordinary diligence and extensive search into every record connected with Lot No. 719 of the Piedad Estate, defendant St. Peter assessed and analyzed the situation after receipt of a copy of the Decision sought to be reconsidered.

Defendant St. Peter was certain of one thing: that a certificate of title over Lot No. 719 of the Piedad Estate could not have been issued in favor of Cleofas because all rights thereto had been assigned to Martin, predecessor-in-interest of defendant St. Peter (Exh. "1") pursuant to which Exh. "2" (Deed of Conveyance from Bureau of Lands to Martin) and Exh. "3" (TCT No. 21893) were issued, also all in favor of Martin.

So, defendant St. Peter started on the premise now that the entry in favor of Antonio Cleofas, *et als.* on Sheet 15 of OCT No. 614 (the

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major portion of which appear to have been torn off and lost) must refer to another lot of the Piedad Estate and not to Lot No. 719.

Defendant St. Peter took another hard look at the said incomplete entry concerning Antonio Cleofas, **et als.** on sheet 15 of OCT 614. It provided only three valuable clues to start on, namely:

1) "T-63 at the Book of - - - -"
2) "tary Vicente Garcia - - - - -"
3) "and filed in T-No. 156 - - -"

Knowing that during the particular period in question, TCTs had only 5 digits, defendant St. Peter surmised that 'T-No. 156 - - -' refers to TCT No. 156 with 2 digits missing. The said defendant then thought it only had to look at 100 TCTs or from TCT No. 15600 up to TCT No. 15699 to discover the remaining two digits and finally, the missing link.

'T-63 at the book of - - -' was a vital clue. It turned out to be a volume in the Register of Deeds of Rizal containing 200 TCTs (from No. 15501 to 15699), and as conjectured, included the 15600 series. And defendant St. Peter discovered TCT No. 15694:

1) in the name of Antonio Cleofas, *et als.*
2) covering Lot No. 640 (not 719) of the Piedad Estate.
3) transferred from OCT No. 614.
4) and referring to Sheet 15 of OCT No. 614.
5) issued on July 15, 1929.

The hunch of defendant St. Peter became a reality. The entry on sheet or page 15 of OCT no. 614 refers to another lot (not 719) and another title (TCT No. 15694 covering Lot No. 640 of the Piedad Estate).

It is important to state as the Register of Deeds of Rizal will testify, that there is *no other TCT* in the series from No. 15601 to 15699 (except for No. 15694) in the name of Antonio Cleofas, alleged predecessor of plaintiff.

Defendant St. Peter still had another clue: 'Vicente Garcia,' the notary whose name kept cropping up in the various documents involved in the case at bar.

Another search was conducted in the musty record of the archives, and files of Notary Public Vicente Garcia were found to be intact. They disclosed:

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1) Entry No. 1977 in the Notary's book referring to Deed No. 18562 in favor of "Antonio Cleofas *y* hermanos" referring to Lot No. 640 of the Piedad Estate.

2) Deed No. 18562 conveying Lot No. 640 of the Piedad Estate from the Bureau of Lands to Antonio Cleofas, *et als.*

It is, therefore, now a certainty that the certificate of title referred to on sheet or page 15 of OCT no. 614 in the name of Antonio Cleofas, *et als.* is another certificate of title covering a different lot (TCT No. 15694 of Lot 640 of the Piedad Estate), and not a certificate of title covering Lot No. 719.

The foregoing are newly discovered evidence within the meaning of paragraph (b), Sec. 1, Rule 137 of the Rules of Court and/or evidence not presented due to mistake or excusable negligence within the purview of paragraph (a) *supra*. Certified copies of these documents are attached hereto as:

1) Annex "A" - TCT no. 15694.
2) Annex "B" - Entry No. 1977 of Notary Public Vicente Garcia.
3) Annex "C" - Deed No. 18562"

As heretofore stated, the trial court refused to grant new trial.

The questions presented in L-38280 are: (1) Is *certiorari* the proper remedy, ordinary appeal being available to petitioner St. Peter Memorial Park, Inc. (2) Did respondent Judge commit grave abuse of discretion and/or excess of jurisdiction when he denied the motion for new trial?

As contended by herein respondents, the general rule is that the extraordinary writ of *certiorari* is not proper when ordinary appeal is available. However, we have granted the writ in cases where it is shown that appeal would be inadequate, slow, insufficient and will not promptly relieve petitioner from the injurious effects of the order complained of (*Jose vs. Zulueta,* 2 SCRA 578; 57 Phil. 893; *Botelho Shipping Corporation vs. Leuterio,* 8 SCRA 127; *People vs. Zulueta*, 89 Phil. 756). In fact, in "*Alfonso vs. Yatco*," 80 Phil. 407, to avoid future litigations, we passed upon a petition for *certiorari* though the

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proper remedy was appeal. Indeed, as we held in "*Ramos vs. Central Bank*," 41 SCRA 584:

"Nor would it serve the interest of justice to dismiss the case at this stage and let a new petition be filed in another court. In *Bay View vs. Manila Hotel Worker's Union* (L-21803, 17 December 1966), this Court, through Mr. Justice Conrado V. Sanchez, pointed out the evils attending split jurisdictions, saying:

> "To draw a tenuous jurisdictional line is to undermine stability in . . . litigations. A piece meal resort to one Court and another gives rise to multiplicity of suits . . . The time to be lost, effort wasted, anxiety augmented, additional expense incurred . . . these are considerations which weigh heavily against split jurisdiction. Indeed, it is more in keeping with orderly administration of justice that all the causes of action here be cognizable and heard by only one court . . . (Cas. cit., 18 SCRA 953)."

The grounds cited by petitioners for the allowance of the writ of *certiorari*, justify the giving of due course to the petitions in these two cases, for ordinary appeal will not be adequate. As many memorial lot buyers are affected, and the very integrity of the torrens system is at stake, public interest is involved.

We now address ourselves to the issue of whether respondent Judge committed grave abuse of discretion and/or excess of jurisdiction when he denied petitioner's motion for new trial, based on the evidence attached to the said motion and which we recited earlier in this decision.

Under paragraph (b), Sec. 1, Rule 37 of the Rules of Court, the requisites for the grant of new trial based on:

"Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result,"

are: (1) that such evidence has been discovered after the trial; (2) that even with the exercise of reasonable diligence, it could not have been discovered and produced at that trial; and (3) that such evidence is of such a nature as to alter the result of the case if admitted (*People vs. Ventura*, 5 SCRA 741).

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This rule for the granting of a motion for new trial, as all other rules of procedure, should be liberally construed to assist the parties in obtaining a just and speedy determination of their rights. Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to find out such truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities (Sec. 1, Rule 1, Revised Rules of Court; *Talavera vs. Mañgoba,* L-18373, August 31, 1963, 8 SCRA 837).

Gauged by these standards, we find the evidence proposed to be presented by petitioner in a new trial are newly discovered evidence within the contemplation of the Rules of Court. The said evidence could not have been produced during the trial because the subject-matter of the trial was Lot No. 719. Petitioner correctly searched, discovered and presented during that trial, all documents pertaining to Lot No. 719 only. The evidence sought to be presented in a new trial by petitioner became pertinent and important only after trial, when judgment was rendered by respondent Judge that private respondents have a valid and subsisting title to Lot No. 719 on the basis of sheet 15 of OCT No. 614 (Exh. "A") which on its face does not mention Lot No. 719. Based on the incomplete data appearing on Exh. "A", petitioner conducted a new search and discovered the evidence it now seeks to present in a new trial, indubitably showing that sheet 15 of OCT No. 614 refers to a title to Lot No. 640, and not to Lot No. 719 in the name of petitioner. If admitted in a new trial, these newly discovered evidence will probably alter the judgment of the trial court.

In making the foregoing conclusions, we do not by any means intend to prejudge the effect of such evidence on the outcome of the case. We are confining ourselves to the conclusion that the evidence intended to be submitted, "would probably alter the result."

We hold that respondent Judge committed grave abuse of discretion in denying the motion for new trial, having disregarded in a capricious and arbitrary manner, the newly discovered

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evidence (*PAL vs. Salcedo*, L-22110, Sept. 29, 1967; *People vs. Halasa*, L-21495, July 21, 1967; *Palma vs. Q & S, Inc.*, 17 SCRA 100; *People vs. Gutierrez,* 26 SCRA 143).

We rule, therefore, in favor of new trial. The grant of new trial necessarily vacates the judgment (Sec. 5, Rule 37, Revised Rules of Court; *Knowles vs. Thompson,* 65 P 468; *Evansville vs. Cooksey,* 112 NE 541) subject of the appeal which, consequently, becomes moot.

WHEREFORE PREMISES CONSIDERED, the petitions in L-38280 and L-39905 are granted, the orders of February 5, 1974 and July 8, 1974 are hereby declared null and void and set aside, and both cases are remanded to the trial court for new trial, pursuant to the motion to that effect of both Banco Filipino and Memorial Park, dated June 30, 1973, which is hereby granted. Costs against private respondents.

Makalintal (Chairman), C.J., and *Antonio, J.*, concur.

Fernando, J., concurs in both opinions.

Barredo, J., concurs in the judgment in a separate opinion.

Aquino, J., is on sick leave.

BARREDO, *J., concurring:*

I would like to make clear that my reason for concurring in the holding in the main opinion that *certiorari* is the proper remedy in relation to the trial court's denial of petitioners' motion for new trial notwithstanding that they had already filed their respective notices of appeal, appeal bonds and motions for extension to file their records on appeal is that such special civil action may be resorted to when it is patent from the nature of the purported newly discovered evidence that movant can more or less conclusively show that the factual issue to which such evidence relates would have to be decided differently if the same were to be admitted by the court. In such a situation, it is obvious to me that to give due course to the appeal and merely allow the denial of the motion for new trial to be assigned as an error in appellant's brief would only result in unnecessary

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delay of the final disposition of the controversy between the parties. Since it is more likely that the decision would have to be changed or modified after the new evidence is presented, I see no sense in leaving the question of its admission for resolution in the appeal, when after all the already evident ultimate result would be to return the case to the trial court for its reception.

The other aspect of respondents' contention that the evidence involved in these cases is not newly discovered is to my mind secondary. Assuming there is some plausibility in respondents' pose in this respect, I am persuaded nevertheless that substantial justice would be better attained by admitting the profferred evidence, which as already observed, appears to be indubitable. The main opinion prefers to reserve judgment on this point, but I feel it is more honest to say that if new trial must be granted in these cases in spite of the fact that petitioners have already taken their appeal within the reglementary period, it is only because the facts anyone can infer or deduce from the evidence being offered, which is documentary and official, are apparently more proximate to the truth, in the light of common experience.

As I see it, the net result of Our decision cannot prejudice the respondents. It is quite obvious that it is Lot 640 and not Lot 719 that belongs to them, and they do not pretend that they have acquired more than one lot in Piedad Estate, so as to entitle them to both Lots 640 and 719. The accident that caused the 1099 of their title, TCT 15694 is no reason at all for courts to unjustly enrich them by adjudicating to them Lot 719, when all they have to do is assert their right over Lot 640 which is the one that appears recorded in their name in the official records which up to now stand unchallenged, much less impugned.