



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

**SPS. ARMANDO SILVERIO, SR.
AND REMEDIOS SILVERIO,**
Petitioners,

G.R. No. 184079

- versus -

**SPS. RICARDO AND EVELYN
MARCELO,**
Respondents.

X-----X

**SPS. EVELYN AND RICARDO
MARCELO,**
Petitioners,

G.R. No. 184490

Present:

- versus -

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

**SPS. ARMANDO SILVERIO, SR.
AND REMEDIOS SILVERIO,**
Respondents.

Promulgated:

APR 17 2013

X-----X

DECISION

VILLARAMA, JR., J.:

Before the Court are twin petitions for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

The petition¹ in G.R. No. 184079 was filed by petitioners spouses

¹ Rollo (G.R. No. 184079), pp. 18-49.

Armando Silverio, Sr. and Remedios Silverio to assail the Decision² dated March 18, 2008 and Resolution³ dated August 12, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 98105. The CA had affirmed the Decision⁴ dated November 7, 2006 of the Regional Trial Court (RTC) of Parañaque City, Branch 258, in Civil Case No. 06-0099, which in turn, affirmed the Decision⁵ dated September 6, 2005 of the Metropolitan Trial Court (MeTC), Branch 78 in Civil Case No. 2004-271. The Parañaque MeTC, Branch 78, had ordered petitioners to demolish the improvements they have introduced in Lot No. 3976, Parañaque Cad. 299 (Lot 3976), to peacefully surrender possession of the same to respondents spouses Ricardo and Evelyn Marcelo and to pay ₱1,000 per month from May 20, 2004 until they have done so. The court *a quo* likewise directed petitioners to pay respondents ₱20,000 as attorney's fees plus ₱3,000 per appearance of the latter's counsel and costs.

Meanwhile, the petition⁶ in G.R. No. 184490 was filed by petitioners spouses Evelyn and Ricardo Marcelo to contest the Decision⁷ dated March 27, 2008 and Resolution⁸ dated September 1, 2008 of the CA in CA-G.R. SP No. 98713. The CA had reversed and set aside the Decision⁹ dated December 29, 2006 of the RTC of Parañaque City, Branch 257, in Civil Case No. 06-0237, which in turn, affirmed *in toto* the Decision¹⁰ dated April 25, 2006 of the MeTC of Parañaque City, Branch 77, in Civil Case No. 2004-269. The Parañaque MeTC, Branch 77, had ordered respondents Armando Silverio, Sr. and Remedios Silverio to vacate the Marcelo Compound in Lot 3976 and to surrender possession thereof to petitioners. The court *a quo* likewise directed respondents to pay petitioners ₱1,000 per month from May 20, 2004 until they have completely moved out of said property, ₱10,000 as attorney's fees and costs.

The factual antecedents of these consolidated petitions are culled from the records.

G.R. No. 184079

On July 12, 2004, respondents spouses Ricardo and Evelyn Marcelo filed a Complaint¹¹ for unlawful detainer against petitioners spouses Armando Silverio, Sr., and his mother, Remedios Silverio. The case was

² Id. at 53-66. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta concurring.

³ Id. at 67-68.

⁴ Id. at 111-113. Penned by Judge Raul E. De Leon.

⁵ Id. at 114-117. Penned by Executive Judge Jansen R. Rodriguez.

⁶ *Rollo* (G.R. No. 184490), pp. 6-49.

⁷ Id. at 108-125. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid concurring.

⁸ Id. at 127-132. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Hakim S. Abdulwahid and Noel G. Tijam concurring.

⁹ Id. at 78-84. Penned by Judge Rolando G. How.

¹⁰ *Rollo* (G.R. No. 184079), pp. 480-483. Penned by Judge Donato H. De Castro.

¹¹ Id. at 118-121.

docketed as Civil Case No. 2004-271 before the MeTC of Parañaque City, Branch 78.

Respondents represented themselves as the lawful owners and possessors of Lot 3976, a residential land with an area of 5,004 square meters located in Marcelo Compound, Philip St. Ext., Multinational Village, Parañaque City. They claimed ownership over said lot by virtue of a Decision¹² dated December 12, 1996 of the Department of Environment and Natural Resources (DENR) in DENR-NCR Case No. 95-253 and Tax Declaration No. E-008-19942.¹³

Respondents alleged that sometime in May 1987, petitioners sought permission to construct a house within Lot 3976. Respondents agreed on the condition that petitioners will vacate the moment they need the land. Subsequently, respondents made an oral demand on petitioners to leave the house and return possession of the lot within 15 days from notice. In a Letter¹⁴ dated May 18, 2004, respondents reiterated their demand for petitioners to demolish the house, vacate the 120-square-meter lot on which the house stands and to pay ₱1,000 as rent until they have done so.

As respondents' demands remained unheeded, they filed a complaint for unlawful detainer against petitioners before *Barangay Moonwalk* in Parañaque City. The case was docketed as Barangay Case No. 05/04-051. On July 24, 2004, Atty. Wendell E. Coronel, *Lupon/Pangkat* Secretary of Barangay Moonwalk issued a Certification to File Action¹⁵ in said case upon the reasons "Failed or refused to accept/obey summons to appear for hearing" and "Settlement has been repudiated."

In their Answer,¹⁶ petitioners sought the dismissal of the complaint on the ground that respondents had filed a similar case against them before the MeTC of Parañaque City, Branch 77, docketed as Civil Case No. 2004-269. The latter case is the subject of the petition in G.R. No. 184490.

On September 6, 2005, the MeTC of Parañaque City, Branch 78, rendered judgment in favor of respondents Marcelo. The court *a quo* ruled out forum shopping upon finding that the house subject of the present case is different from that in Civil Case No. 2004-269. The structure involved in the latter case was "originally occupied by [petitioners'] relative and later taken over by [them]"¹⁷ while the house subject of the present case was constructed by petitioners themselves. The MeTC held that petitioners failed to refute the character of their possession as merely tolerated by respondents and they became deforciant upon the latter's demand for them to vacate the subject premises. The court ordered petitioners to pay respondents ₱1,000 as

¹² Id. at 301-327.

¹³ Id. at 328.

¹⁴ *Rollo* (G.R. No. 184490), p. 64.

¹⁵ Id. at 56-A.

¹⁶ *Rollo* (G.R. No. 184079), pp. 122-123.

¹⁷ Id. at 115.

reasonable compensation for the use and occupation of the premises, attorney's fees of ₱20,000 and ₱3,000 per appearance of counsel for respondents.

On appeal, the Parañaque RTC, Branch 258, affirmed the ruling of the MeTC. In a Decision dated November 7, 2006, the RTC sustained respondents' right to bring action to evict petitioners from the contested property. It found petitioners' claim of ownership unsubstantiated and their defense of forum shopping without merit since the properties involved in Civil Case Nos. 2004-269 and 2004-271 are different from each other.

Petitioners moved for reconsideration but their motion was denied in an Order¹⁸ dated February 5, 2007. Thereafter, petitioners filed a Petition for Review¹⁹ under Rule 42 of the Rules with the CA.

In the assailed Decision dated March 18, 2008, the appellate court affirmed *in toto* the RTC judgment. It found no basis to dismiss respondents' complaint based on either forum shopping or splitting a cause of action. The CA disregarded petitioners' argument that the subject property is public land in view of their admission in their Answer²⁰ that respondents are the owners and possessors thereof.

Petitioners filed a Motion for Reconsideration²¹ which the CA denied in a Resolution²² dated August 12, 2008.

G.R. No. 184490

On July 12, 2004, petitioners spouses Ricardo and Evelyn Marcelo filed a Complaint²³ for unlawful detainer against respondents Armando Silverio, Sr., and Remedios Silverio. The case was docketed as Civil Case No. 2004-269 before the MeTC of Parañaque City, Branch 77.

Petitioners' Complaint bore essentially the same allegations as their Complaint in Civil Case No. 2004-271 save for two allegations: (1) respondents requested petitioners' permission to construct a house in Lot 3976 *in May 1986*; and (2) respondents "*improved the house and even operated a sari-sari store*"²⁴ in Marcelo Compound.

In their Answer²⁵ dated August 3, 2004, respondents belied petitioners' claim of exclusive ownership and possession of the subject property. According to respondents, the land in dispute was first occupied by Graciano Marcelo along with his sons Armando Marcelo, petitioner Ricardo Marcelo and

¹⁸ Id. at 174.

¹⁹ CA *rollo* (CA-G.R. SP No. 98105), pp. 8-31.

²⁰ *Rollo* (G.R. No. 184079), pp. 122-123.

²¹ Id. at 69-76.

²² Id. at 67-68.

²³ *Rollo* (G.R. No. 184490), pp. 50-54.

²⁴ Id. at 51.

²⁵ Records, Vol. 2, pp. 12-13.

Florante Marcelo. Respondents anchor their right of possession on Florante Marcelo, in his capacity as an ostensible co-owner of the contested property. Florante Marcelo is the husband of Marilou Silverio, the daughter of respondents spouses Silverio.

Subsequently, petitioners submitted an Amended Complaint²⁶ dated August 14, 2004, in which they clarified that it was the spouses Florante Marcelo and Marilou Silverio, and not the respondents, who sought their consent to build a house and live in Marcelo Compound. Petitioners recounted that it was after Florante Marcelo and Marilou Silverio separated in 1998 and abandoned said house that respondents asked for permission to stay therein. Petitioners agreed upon an understanding that respondents shall “dismantle said house the moment [petitioners] need the premises.”²⁷ However, respondents refused to move out and surrender possession of the subject property upon demand.

In a Demand Letter²⁸ dated May 18, 2004, petitioners insisted on their demand for respondents to demolish the house they built, vacate the 80-square-meter lot on which it stands, to surrender peaceful possession of the same and to pay ₱1,000 as rent until they have done so.

As respondents ignored petitioners’ demands, the latter brought a complaint for unlawful detainer against respondents before *Barangay Moonwalk* in Parañaque City. The case was docketed as Barangay Case No. 05/04-070. On July 24, 2004, Atty. Wendell E. Coronel, Lupon/Pangkat Secretary of Barangay Moonwalk issued a Certification to File Action²⁹ in said case upon the reasons “Failed or refused to accept/obey summons to appear for hearing” and “Settlement has been repudiated.”

In an Answer³⁰ dated September 8, 2004, respondents assailed the DENR Decision dated December 12, 1996 for supposedly awarding ownership of the subject property to petitioners. According to respondents, Graciano Marcelo, Sr., petitioner Ricardo Marcelo’s father, was a tenant of Fabian Lumbos before the latter sold his land to Mike Velarde. Subsequently, Velarde fenced the subject property, which respondents insist is not part of the parcels that Lumbos sold to Velarde. Upon the belief that Lot 3976 is still government property, the sons of Graciano Marcelo, Sr., including petitioner Ricardo Marcelo and Florante Marcelo, divided the land among themselves and occupied the same. On the tract allotted to Florante, he took in respondent Remedios Silverio to live with him and his wife, Marilou.

Respondents averred that it was in 1997 when the Marcelos conceived the idea of applying for a sales patent over Lot 3976 with the DENR. The Marcelo siblings appointed petitioner Ricardo Marcelo to file the Miscellaneous Sales Application (MSA) in their behalf, sharing the expenses

²⁶ *Rollo* (G.R. No. 184490), pp. 69-73.

²⁷ *Id.* at 70.

²⁸ *Id.* at 75.

²⁹ *Id.* at 66.

³⁰ *CA rollo* (CA-G.R. SP No. 98713), pp. 52-54.

among themselves. However, it was not until later that the Marcelo siblings learned that Ricardo had filed the application in his name alone. Respondents revealed that Ricardo had sold several portions of Lot 3976 even before he could apply for a sales patent thereon.

On February 3, 2005, respondents filed a Supplemental Answer³¹ in which they charged petitioners with forum shopping for filing another ejectment case against them, docketed as Civil Case No. 2004-271 before Branch 78 of the Parañaque MeTC.

In a Decision dated April 25, 2006, the MeTC of Parañaque City, Branch 77, ruled for petitioners Marcelo. The court *a quo* ordered respondents to vacate the subject property, to surrender peaceful possession thereof to petitioners, to give reasonable rent from May 20, 2004 until they have moved out and to pay attorney's fees and costs.

On the basis of the Decision dated December 12, 1996 of the DENR, the MeTC declared petitioners the owners of the subject property, with concomitant right to possess it. The court found no evidence to support respondents' possessory claim and considered their occupation of the subject land as merely tolerated by petitioners. The court *a quo* discounted forum shopping upon finding that the house concerned in Civil Case No. 2004-271 was built by petitioners whereas the house in this case was only taken over by them.

In a Decision dated December 29, 2006, the Parañaque RTC, Branch 257, affirmed *in toto* the MeTC ruling. The RTC declared petitioners as the lawful possessors of the subject property by virtue of Tax Declaration No. E-008-19942 in the name of petitioner Ricardo Marcelo. It explained that Florante Marcelo's affinity with petitioner Ricardo, alone, did not automatically make him a co-owner of the contested property.

Dissatisfied, respondents elevated the case to the CA through a petition³² for review under Rule 42.

In the assailed Decision dated March 27, 2008, the CA reversed and set aside the RTC judgment. It brushed aside the alleged procedural infirmities that attended the filing of respondents' petition for being trivial and insufficient to warrant its dismissal. The appellate court found petitioners guilty of forum shopping and splitting of a cause of action. It observed that the two cases for unlawful detainer filed by petitioners are based on a single claim of ownership over Lot 3976 which embraces the subject properties. The CA explains that an adjudication in either suit that petitioners are entitled to the possession of Lot No. 3976 would necessarily mean *res judicata* in the other case. The appellate court noted that the demand letter in both cases was served on respondents on the same day.

³¹ Id. at 65-66.

³² Id. at 7-31.

Issues/Assignment of Errors

On September 29, 2008, spouses Armando Silverio, Sr. and Remedios Silverio filed a petition for review on certiorari which was docketed as G.R. No. 184079. Said petition, which seeks to reverse and set aside the Decision dated March 18, 2008 and Resolution dated August 12, 2008 of the CA in CA-G.R. SP No. 98105, assigns a lone error:

THE COURT OF APPEALS, WITH ALL DUE RESPECT, SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE APPEAL INTERPOSED BY PETITIONERS IN THE ABOVE-ENTITLED CASE ON TECHNICALITIES AND HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, AND/OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.³³

A few days later, on October 2, 2008, spouses Evelyn and Ricardo Marcelo filed a Petition for Review on Certiorari which was docketed as G.R. No. 184490. Said petition, in turn, contests the Decision dated March 27, 2008 and the Resolution dated September 1, 2008 of the CA in CA-G.R. SP No. 98713. Condensed, the issues presented by petitioners are as follows: (1) Whether the filing of separate complaints for unlawful detainer against the same lessees who refuse to vacate, on demand, two different houses constitutes forum shopping and splitting of a cause of action; (2) Whether the CA erred in dismissing Civil Case No. 2004-269; and (3) Whether the instant petition was filed seasonably.

Essentially, the questions that must be addressed in the consolidated petitions before us are common: (1) Are the spouses Ricardo and Evelyn Marcelo guilty of forum shopping? and (2) Who between the spouses Marcelo and the Silverios have better right to the physical possession of Lot 3976?

The Parties' Arguments

Armando Silverio, Sr. and Remedios Silverio allege mainly that spouses Ricardo and Evelyn Marcelo engaged in forum shopping and split a common cause of action when they filed separate complaints for unlawful detainer based on a single claim of ownership over Lot No. 3976. The Silverios maintain that the spouses Marcelo are simply applicants for the issuance of a sales patent over Lot No. 3976 and are actually occupying only 50 square meters of the 5,020-square-meter property. In support thereof, the Silverios invoke the Decision³⁴ dated July 11, 2007 of the DENR which annulled and canceled the MSA filed by the spouses Marcelo over Lot No.

³³ *Rollo* (G.R. No. 184079), p. 37.

³⁴ *Id.* at 95-110.

3976. Ultimately, the Silverios insist that the subject property remains a public land.

In their consolidated Memorandum³⁵ for G.R. Nos. 184079 and 184490, spouses Ricardo and Evelyn Marcelo denied the allegations of forum shopping and splitting a single cause of action. They assert the following distinctions between the houses involved in Civil Case Nos. 2004-269 and 2004-271: (1) the house in Civil Case No. 2004-271 was built by the Silverios in May 1987 while the house subject of Civil Case No. 2004-269 was constructed by Florante Marcelo and Marilou Silverio in May 1986; and (2) the house in Civil Case No. 2004-271 has been occupied by the Silverios from the beginning while they merely took over the house referred to in Civil Case No. 2004-269 and put up a *sari-sari* store therein. The spouses Marcelo contend that while they claim ownership of Lot No. 3976 as a whole, the portions thereof on which the two houses stand are distinct -- one has an area of 80 square meters while the other measures 120 square meters. In view of this, the spouses Marcelo believe that the refusal by the Silverios to vacate said houses violated at least two rights and gave rise to separate causes of action.

The Court's Ruling

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.³⁶ In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.³⁷

Here, the spouses Ricardo and Evelyn Marcelo brought separate complaints for unlawful detainer against Armando Silverio, Sr. and Remedios Silverio based on their refusal to vacate two houses inside the Marcelo Compound. In both Civil Case Nos. 2004-269³⁸ and 2004-271, the spouses Marcelo anchor their right of possession over the subject properties on Tax Declaration No. E-008-19942 and on the Decision dated December 12, 1996 of the DENR in DENR-NCR Case No. 95-253. The DENR gave due course to the MSA filed by the spouses Marcelo over Lot 3976, where the Marcelo Compound is situated.

³⁵ Id. at 449-479.

³⁶ *Corpuz v. Agustin*, G.R. No. 183822, January 18, 2012, 663 SCRA 350, 362.

³⁷ *Barrientos v. Rapal*, G.R. No. 169594, July 20, 2011, 654 SCRA 165, 171.

³⁸ *Rollo* (G.R. No. 184490), pp. 50-51.

For their part, the Silverios seek the dismissal of both complaints on the grounds of forum shopping and splitting a single cause of action.

Forum shopping is a deplorable practice of litigants consisting of resort to two different *fora* for the purpose of obtaining the same relief, to increase the chances of obtaining a favorable judgment.³⁹ The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions.⁴⁰

In *Chua v. Metropolitan Bank & Trust Company*,⁴¹ the Court enumerated the ways by which forum shopping may be committed:

Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).⁴²

Common to these types of forum shopping is the identity of the cause of action in the different cases filed. Cause of action is defined as “the act or omission by which a party violates the right of another.”⁴³

In this case, the spouses Marcelo filed two cases for unlawful detainer against Armando Silverio, Sr. and Remedios Silverio on July 12, 2004. In Civil Case No. 2004-269, the cause of action is the alleged unlawful withholding of possession by the Silverios of the house which Florante Marcelo and Marilou Silverio constructed in Lot 3976. On the other hand, the cause of action in Civil Case No. 2004-271 for unlawful detainer is the supposed unlawful withholding of possession by the Silverios of the house which they, themselves, built in Lot 3976. While the main relief sought in Civil Case No. 2004-269 appears to be different from that in Civil Case No. 2004-271, the right on which both claims are hinged is the same – the purported ownership by the spouses Marcelo of Lot 3976. Indeed, paragraph 3 of the spouses Marcelo’s Complaint in both cases similarly read:

3. Plaintiffs are the lawful owners and possessors of a residential lot containing an area of 5,004 sq. m. known as Lot 3976 Parañaque Cad. 299 by virtue of a final and executory decision of the [Land] Management Bureau (DENR) promulgated on Dec. 12, 1996 and Tax Dec. No. E-008-083-77 issued in their name by the City Assessor of Parañaque City. Certified true copy of Tax Dec. No. E-008-19942 is hereto attached as “Annex “A””.⁴⁴

³⁹ *Dy v. Mandy Commodities Co., Inc.*, G.R. No. 171842, July 22, 2009, 593 SCRA 440, 450.

⁴⁰ *Id.*

⁴¹ G.R. No. 182311, August 19, 2009, 596 SCRA 524.

⁴² *Id.* at 535-536.

⁴³ *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011, 645 SCRA 205, 215.

⁴⁴ *Rollo* (G.R. No. 184079), pp. 118-119; *rollo* (G.R. No. 184490), pp. 50-51.

Basically, the cause of action in both cases is the unlawful withholding by the Silverios of Lot 3976.

We find no merit in the contention of the spouses Marcelo that Civil Case Nos. 2004-269 and 2004-271 present distinct causes of action since they pertain to separate portions of the Marcelo Compound. The analogy drawn by the spouses Marcelo between the ejectment of a tenant leasing several units of a condominium project and the unlawful detainer cases they brought against the Silverios is misplaced. In the former, there exists a lessor-lessee relationship between the owner of the condominium and the tenant, respectively. Hence, the rights and duties of the condominium owner and the tenant are defined by the terms of the contract. In contrast, the parties in this case present adverse possessory claims over those portions of Lot 3976 in which the houses concerned are situated.

In particular, the spouses Marcelo assert better right of possession based on their alleged right as “lawful owners and possessors of a residential lot containing an area of 5,004 sq. m. known as Lot 3976 Parañaque Cad. 299 by virtue of a final and executory decision of the [Land] Management Bureau (DENR) promulgated on Dec. 12, 1996 and Tax Dec. No. E-008-083-77 issued in their name by the City Assessor of Parañaque.”⁴⁵ For their part, the Silverios claim better right of possession on account of their actual occupation of the subject properties. In either case, a finding that the spouses Marcelo have better right to possess the subject property could only be premised on their lawful possession of the entire Lot No. 3976, Parañaque Cad. 299. It follows, therefore, that a final adjudication in favor of the spouses Marcelo in one case would constitute *res judicata* in the other.

In *Agustin v. Delos Santos*,⁴⁶ the Court cited three tests to verify whether there is identity of causes of action for purposes of applying the principle of *res judicata*. The first test is the “absence of inconsistency test” where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions.⁴⁷ The more common approach in ascertaining identity of causes of action is the “same evidence test,” whereby the following question serves as a sufficient criterion: “would the same evidence support and establish both the present and former causes of action?” If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not.⁴⁸ Aside from the “absence of inconsistency test” and “same evidence test,” we have also ruled that a previous judgment operates as a bar to a subsequent one when it had touched on a matter already decided, or if the parties are in effect “litigating for the same thing.”⁴⁹

⁴⁵ Id.; id.

⁴⁶ G.R. No. 168139, January 20, 2009, 576 SCRA 576.

⁴⁷ Id. at 588-589.

⁴⁸ Id. at 590.

⁴⁹ Id. at 591.

The “absence of inconsistency test” finds no application in this case since it presupposes that a final judgment has been rendered in the first case. By applying the “same evidence test,” however, it becomes apparent that the proof necessary to obtain affirmative relief in Civil Case No. 2004-269 is the same as that in Civil Case No. 2004-271. Since the spouses Marcelo are claiming sole ownership of Lot 3976 in their MSA, the evidence needed to establish better right of possession over the house constructed by Florante Marcelo and Marilou Silverio, and the one built by the Silverios is the same, regardless of the fact that they were built on separate portions of said lot. We have ruled time and again that “a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.”⁵⁰

Evidently, the spouses Marcelo engaged in forum shopping by filing separate cases for unlawful detainer based on a single claim of ownership over Lot 3976. Said act is likewise tantamount to splitting a cause of action which, in this case, is a cause for dismissal on the ground of *litis pendencia*. On this score alone, the petition for review on certiorari filed by the spouses Marcelo in G.R. Nos. 184490 must fail, alongside their averments in G.R. No. 184079.

In any case, even if we confront the issue as to who between the spouses Marcelo and the Silverios have better right of possession over the subject properties, the former would still not prevail.

As earlier stated, the DENR-NCR had canceled the MSA filed by the spouses Marcelo in its Decision⁵¹ dated July 11, 2007. The Department found that the spouses Marcelo failed to satisfy the requirements for the acquisition of Lot 3976 under the Public Land Act. The DENR-NCR clarified that the Decision dated December 12, 1996 gave due course to the application, not only of the spouses Marcelo, but also those of other applicants. It gave weight to the findings in the ocular inspection that the spouses Marcelo are actually occupying only 50 square meters of Lot 3976 while the remaining portions are inhabited by 111 families. The DENR-NCR adds that the spouses Marcelo cannot claim the entire Lot No. 3976 since Republic Act No. 730⁵² limits the area of land that may be applied for to 1,000 square meters.⁵³ In conclusion, the DENR-NCR held that Lot 3976

⁵⁰ *Asia United Bank v. Goodland Company, Inc.*, supra note 43, at 217.

⁵¹ Supra note 34.

⁵² AN ACT TO PERMIT THE SALE WITHOUT PUBLIC AUCTION OF PUBLIC LANDS OF THE REPUBLIC OF THE PHILIPPINES FOR RESIDENTIAL PURPOSES TO QUALIFIED APPLICANTS UNDER CERTAIN CONDITIONS.

⁵³ SECTION 1. Notwithstanding the provisions of sections sixty-one and sixty-seven of Commonwealth Act Numbered One hundred forty-one, as amended by Republic Act Numbered Two hundred ninety-three, any Filipino citizen of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for the public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupants has constructed his house on the land and actually resided therein. Ten percent of the purchase price shall be paid upon the approval of the sale and the balance may be paid in full, or in ten equal annual installments.

remains a public land and its dwellers may apply for the purchase of those portions that they are actually occupying.

Factual considerations relating to lands of the public domain properly rest within the administrative competence of the Director of Lands and the DENR. Findings of administrative agencies, which have acquired expertise because of their jurisdiction, are confined to specific matters and are accorded respect, if not finality, by the courts. Even if they are not binding to civil courts exercising jurisdiction over ejectment cases, such factual findings deserve great consideration and are accorded much weight.⁵⁴

Nonetheless, the declaration by the DENR-NCR that Lot 3976 is still part of the public domain does not mean that neither of the parties is entitled to the possession of the subject properties. In *Pajujo v. Court of Appeals*,⁵⁵ we reiterated the policy behind the summary action of forcible entry and unlawful detainer, thus:

It must be stated that the purpose of an action of forcible entry and detainer is that, regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by strong hand, violence or terror. In affording this remedy of restitution the object of the statute is to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims. This is the philosophy at the foundation of all these actions of forcible entry and detainer which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his.⁵⁶

The parties in *Pajujo* were informal settlers on the public land which was the subject of said case. We ruled that since the government, which has title or better right over the property was not impleaded in the case, the Court cannot, on its own, evict the parties. We recognized better right of possession in favor of the petitioner therein who began occupying the disputed property ahead of the respondents in said case.

A case with parallel factual milieu is *Modesto v. Urbina*.⁵⁷ Like the spouses Marcelo, the respondents in said case relied on a MSA and tax declarations to substantiate their claim of possession over the contested land therein. In ruling for the petitioners in said case, the Court stressed that the mere declaration of land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the claimant's actual possession.⁵⁸ We explained that unless a public land is shown to have been reclassified as alienable or actually alienated by the State to a private person,

⁵⁴ *Estrella v. Robles, Jr.*, G.R. No. 171029, November 22, 2007, 538 SCRA 60, 76.

⁵⁵ G.R. No. 146364, June 3, 2004, 430 SCRA 492.

⁵⁶ *Id.* at 515-516, citing *Drilon v. Gaurana*, No. L-35482, April 30, 1987, 149 SCRA 342, 348.

⁵⁷ G.R. No. 189859, October 18, 2010, 633 SCRA 383.

⁵⁸ *Id.* at 402.

that piece of land remains part of the public domain, and its occupation, in the concept of owner, no matter how long, cannot confer ownership or possessory rights.⁵⁹ This finds support in Section 88 of the Public Land Act, which provides:

Section 88. The tract or tracts of land reserved under the provisions of section eighty-three shall be non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable under the provisions of this Act or by proclamation of the President.

In a Certification⁶⁰ dated June 8, 2006, Samson G. de Leon, the Regional Technical Director for Lands of the DENR-NCR stated that:

This is to certify that Lot 3976 Cad 299, Parañaque Cadastre situated at San Dionisio, Parañaque, Metro Manila, containing an area of 5,027.00 square meters has been verified based on available records of this Office to be under Project No. 25, classified as **Alienable or Disposable Public Land**, certified as such on **3 January 1968** per BFD L.C. Map No. 2323.

x x x x

This is to further certify that as per Certification dated 15 December 2005 issued by Records Officer II Anita B. Ibardolasa which is hereto attached, **no land patent has been issued over the same or any portion thereof.**

x x x x. (Emphasis supplied.)

It is undisputed by the spouses Marcelo that the Silverios presently occupy those portions of Lot 3976 which are the subjects of the consolidated petitions before us. In particular, the Silverios tie their possession of the parcel at issue in G.R. No. 184490 to Florante Marcelo who appropriated a portion of Lot 3976 for himself, and with his wife, constructed a house thereon in 1986. As regards the portion of Lot 3976 subject of G.R. No. 184079, the Silverios have established their dwelling thereon in 1987 - long after Lot 3976 was classified as alienable and disposable public land on January 3, 1968.

Meanwhile, the spouses Marcelo insist on their better right to possess the contested parcels as holders of Tax Declaration No. E-008-19942 in the name of Ricardo Marcelo. Said tax declaration, which covers Lot 3976, was issued for the year 2005 and canceled Tax Declaration No. E-008-18821, also under the name of Ricardo Marcelo. Other than said tax declaration, however, we found nothing in the records of these cases to show that the spouses Marcelo have been consistently paying taxes on Lot 3976. We note that Tax Declaration No. E-008-19942 was issued fairly recently, and by itself, is inadequate to convince the Court that the spouses Marcelo have been in open, continuous and exclusive possession of the subject portions of Lot 3976, by themselves or through a successor-in-interest, since January 3, 1968. More importantly, it is

⁵⁹ Id. at 400.

⁶⁰ Records, Vol. 3, p. 719.

ingrained in our jurisprudence that the mere declaration of a land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the claimant's actual possession.⁶¹

Considering that the Silverios are in actual possession of the subject portions of Lot 3976, they are entitled to remain on the property until a person who has a title or a better right lawfully ejects them. The ruling in this case, however, does not preclude the Silverios and the spouses Marcelo from introducing evidence and presenting arguments before the proper administrative agency to establish any right to which they may be entitled under the law.⁶²

WHEREFORE, the Court RESOLVES:

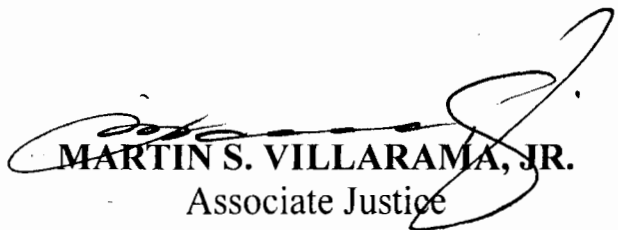
(1) To **GRANT** the petition in G.R. No. 184079. The Decision dated March 18, 2008 and Resolution dated August 12, 2008 of the Court of Appeals in CA-G.R. SP No. 98105 are **REVERSED and SET ASIDE**;

(2) To **DENY** the petition in G.R. No. 184490. Consequently, the Decision dated March 27, 2008 and Resolution dated September 1, 2008 of the Court of Appeals in CA-G.R. SP No. 98713 are **AFFIRMED**; and

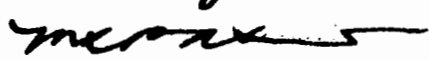
(3) To **DISMISS** the complaints for unlawful detainer filed by the spouses Ricardo and Evelyn Marcelo against Armando Silverio, Sr. and Remedios Silverio for lack of merit.

No pronouncement as to costs.

SO ORDERED.



MARTIN S. VILLARAMA, JR.
Associate Justice

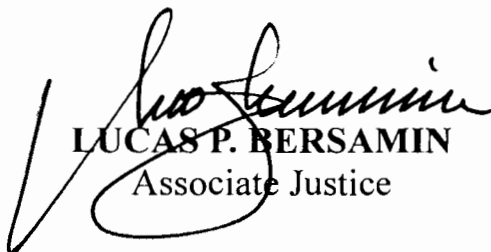
WE CONCUR:

Pls see Concurring and Dissenting Opinion

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁶¹ *Modesto v. Urbina*, supra note 57, at 402.

⁶² See *Pajuyo v. Court of Appeals*, supra note 55, at 523.

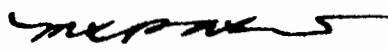

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice