



Republic of the Philippines  
**Supreme Court**  
Manila

Recd. by LCH

4-4-13

9:05 am

**SECOND DIVISION**

**VEVENCIA ECHIN PABALAN,  
ET AL.,**

**G.R. No. 174844**

**Petitioner,**

Present:

- versus -

**CARPIO, J.,**  
Chairperson,  
**BRION,**  
**DEL CASTILLO,**  
**PEREZ, and**  
**PERLAS-BERNABE, JJ.**

**THE HEIRS OF SIMEON A.B.  
MAAMO, SR.,**

Promulgated:

**Respondents.**

**MAR 20 2013**

*HW Cabalag Perfecto*

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**DECISION**

**PEREZ, J.:**

Filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure*, the petition for review at bench primarily assails the Decision<sup>1</sup> dated 22 May 2006 rendered by the Twentieth Division of the Court of Appeals (CA) in CA-G.R. CV No. 60769,<sup>2</sup> reversing the Decision dated 20 August 1997 in turn rendered by the Regional Trial Court, Branch 26, Southern Leyte (RTC) in Civil Case No. R-263.<sup>3</sup>

On 31 December 1910, *Onofre* Palapo sold in favor of *Placido* Sy-Cansoy a parcel of land situated in the then Barrio Calapian (now Barangay

<sup>1</sup> Penned by CA Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr.

<sup>2</sup> CA rollo, 22 May 2006 Decision in CA-G.R. CV No. 60769, pp. 205-219.

<sup>3</sup> Records, pp. 825-834, (Civil Case No. R-263), 20 August 1997 RTC Decision.

Estela), Liloan, Leyte (now Southern), for the stated consideration of ₱86.00. Drawn in Spanish, the notarized Leyte Deed of Sale the former executed in favor of the latter identified the property as enclosed by the following boundaries: on the North, by the Barrio Church; on the South and East, by the property of Matias Simagala; and, on the West, by the property of **Miguel** Maamo.<sup>4</sup> On 29 October 1934, Placido, in turn, executed a notarized deed in Spanish, affirming a 12 October 1912 sale of the same parcel for the sum of ₱100.00 in favor of Miguel's wife, **Antonia** Bayon.<sup>5</sup> Faulting **Simplecio** Palapo with forcible entry into the property on 17 October 1934, Antonia, represented by **Simeon** Maamo, later filed the 4 December 1934 ejectment complaint which was docketed as Civil Case No. 298 before the then Court of the Justice of the Peace of Liloan, Leyte.<sup>6</sup>

Served with summons, Simplecio filed an answer dated 6 December 1934, asserting that, as one of the heirs of **Concepcion** Palapo, he had been in legal possession of the property for many years without once being disturbed by anyone.<sup>7</sup> On the strength of the aforesaid documents of transfer as well as the evidence of prior possession adduced by Antonia, however, the Court of the Justice of the Peace of Liloan, Leyte went on to render a Decision dated 17 December 1934, brushing aside Simplecio's defense for lack of evidentiary basis and ordering him to vacate the parcel in litigation.<sup>8</sup> As may be gleaned from the 5 December 1983 certification later issued by Liloan, Leyte Municipal Trial Judge Patricio S. de los Reyes Sr., it appears that the 24 December 1934 writ of execution issued in the case was later returned duly served.<sup>9</sup>

On 9 December 1981, **Simeon Sr., Fabian Sr., Juliana, Olivo, Silvestre Sr., Angela, Bonifacia** and **Estelita**, all surnamed Maamo (**plaintiffs Maamo**), commenced the instant suit with the filing of their complaint for recovery of real property and damages against Simplecio's children, **Crispiniano, Juanito Sr., Arsenia** and **Roberto**, all surnamed Palapo (**defendants Palapo**).<sup>10</sup> In their amended complaint, plaintiffs Maamo alleged that, as children and heirs of the Spouses Miguel and Antonia, they were the co-owners of the parcel of land sold by Placido which, while reported in tax declarations to contain an area of 1,612 square meters, actually measured 13,813 square meters. Invoking the decision redeemed in favor of Antonia in Civil Case No. 298, plaintiffs Maamo

<sup>4</sup> Exhibit "B" and submarkings, folder of exhibits, pp. 2-3.

<sup>5</sup> Exhibit "A," id. at 1.

<sup>6</sup> Exhibits "E" and submarkings, id. at 46-47.

<sup>7</sup> Exhibit "F," id. at 48.

<sup>8</sup> Exhibit "G," id. at 49.

<sup>9</sup> Exhibit "H" and submarkings, id. at 50.

<sup>10</sup> Records, pp. 1-6, (Civil Case No. R-263), 3 December 1981 Complaint.

maintained that their parents later relented to Simplecio's entreaty to be allowed to stay on the property as administrator. Plaintiffs Maamo further averred that, having illegally claimed ownership over the western portion of the property after Simplecio's death in 1971, defendants Palapo unjustifiably refused to heed their demands for the return of the litigated section measuring 7,055 square meters.<sup>11</sup>

On 10 February 1982, defendants Palapo filed their answer, specifically denying the material allegations of plaintiffs Maamo's complaint. Maintaining that they inherited the litigated portion from Simplecio, defendants Palapo asserted that their father, in turn, inherited the same from his brother, *Crispiniano Palapo*, who also succeeded to the rights of Concepcion, the tax declarant as early as 1906. By themselves and thru their said predecessors-in-interest, defendants Palapo insisted that they had been in open, continuous and adverse possession of the litigated portion in the concept of owner since 1906, paying the realty taxes due thereon long before the Second World War. Even assuming that Antonia prevailed in the ejectment suit she filed against Simplecio in 1934, defendants Palapo argued that the causes of action of plaintiffs Maamo's were already barred by prescription, estoppel and laches.<sup>12</sup>

At pre-trial, a commissioner was appointed to conduct an ocular inspection of the litigated portion and to submit a sketch showing, among other matters, the metes and bounds thereof. On 15 August 1982, the court-appointed commissioner submitted a report and sketch, mapping out the 7,055 square meter portion in litigation and identifying its boundaries as follows: on the North, by Maamo St.; on South by Peter Burset St.; on the East, by the Provincial Road; and, on the West, by Ang Bayon St.<sup>13</sup> As noted in the 29 November 1983 pre-trial order issued in the case, the identity of the portion in litigation was admitted by the parties.<sup>14</sup> At the trial of the case on the merits, Simeon Sr. took the witness stand<sup>15</sup> and submitted the deeds executed by Onofre and Placido, the documents pertaining to Civil Case No. 298, the tax declarations (*TDs*) and receipts pertaining to the property dating back to the year 1918 and the certification to file action by the Barangay Estela Lupon secretary.<sup>16</sup> By way of defense evidence, defendants Palapo presented the testimonies of Juanito Palapo and Balbina

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<sup>11</sup> 22 July 1983 Amended Complaint, id. at 146-150.

<sup>12</sup> 29 January 1982 Answer, id. at 15-20.

<sup>13</sup> 15 August 1982 Commissioner's Report and Sketch, id. at 61-64.

<sup>14</sup> 29 November 1983 Pre-Trial Order, id. at 173-175.

<sup>15</sup> TSN, 3 July 1984.

<sup>16</sup> Exhibits "A" to "K" and submarkings, folder of exhibits, pp. 1-52; 91-93.

Galgaw Madlos,<sup>17</sup> together with the TDs and receipts which they traced to the TD filed by Concepcion in 1906.<sup>18</sup>

On 20 August 1997, the RTC rendered a decision, declaring defendants Palapo to be the legal owners and possessors of the litigated portion. Finding that Simplecio's supposed 17 October 1934 forcible entry into the property preceded the 29 October 1934 deed Placido executed in favor of Antonia, the RTC brushed aside plaintiffs Maamo's claim on the further ground that the 7,055 square meter area of the litigated portion far exceeded the 1,612 square meters declared in their TDs which, as a rule, cannot prevail over defendants Palapo's actual possession of the property. Having possessed the litigated portion in the concept of owner for more than thirty years, defendants Palapo were also declared to have acquired the property by means of prescription, without need of title or good faith. Ordered to respect defendants Palapo's ownership and possession of the portion in litigation, the RTC held plaintiffs Maamo liable to pay the former the total sum of ₱50,000.00 by way of actual and moral damages as well attorney's fees and litigation expenses.<sup>19</sup>

On appeal, the foregoing Decision was reversed and set aside in the herein assailed 22 May 2006 Decision rendered by the CA's Twentieth Division in CA-G.R. CV No. 60769. The CA ruled that plaintiffs Maamo were the true and lawful owners of the litigated portion, upon the following findings and conclusions: (a) the 29 October 1934 deed Placido executed in favor of Antonia was a mere affirmation of an earlier sale made on 12 October 1912, hence, the acquisition of the litigated portion by plaintiffs Maamo's predecessor-in-interest predated Simplecio's 17 October 1934 entry thereon; (b) defendants Palapo traced their claim to Concepcion's 1906 TD which pertained to a different parcel situated in Barrio Pandan, Liloan, Leyte; (c) the claim that the litigated portion was inherited from Concepcion had been rejected in the 17 December 1934 Decision rendered in Civil Case No. 298 which appears to have been returned duly served and executed; and, (e) since the possessory rights of plaintiffs Maamo's predecessor-in-interest had been affirmed and restored, Simplecio's continued possession of the portion in litigation was by mere tolerance and could not, therefore, ripen into ownership acquired by prescription, laches or estoppel.<sup>20</sup>

In the meantime, the death of some of the original parties to the case resulted in their substitution by their respective heirs. Simeon, Sr. was

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<sup>17</sup> TSNs, 28 May 1985, 18 November 1986, 22 August 1996.

<sup>18</sup> Exhibits "1" to "6" and submarkings, folder of exhibits, pp. 53-90.

<sup>19</sup> Records, pp. 825-834, (Civil Case No. R-263), RTC Decision dated 20 August 1990.

<sup>20</sup> CA *rollo*, (CA-G.R. No. 60769), pp. 205-219.

substituted by his wife and children, *respondents* Crispina, Simeon, Jr., Aselita, Remedios, Evansueda, Carmelita, Manuel, Elizabeth, Adelaida and Miguel II, all surnamed Maamo. As a consequence, they were joined in the case with the surviving plaintiffs Maamo, (now *respondents*) Fabian Sr., Juliana, Olivo, Silvestre Sr., Angela, Bonifacia and Estelita, all surnamed Maamo. On defendants Palapo's side, Roberto was substituted by *petitioners* Lydia Veronica, Alily, Beverly and Maricar, all surnamed Palapo.<sup>21</sup> Juanito was, likewise, substituted by *petitioners* Generoso, Perla, Juanito Jr., Delia, Raul, Editha and Elvira, all surnamed Palapo. Arsenia was, in turn, substituted by her children, *petitioners* V[e]vencia, Rogelio, Elizabeth, Josefina, Eusebio, Gavina and Amelita, all surnamed Enchin. Crispiniano was, finally, substituted by his children, *petitioners* Angelita, Normita, Apolonia, Bining and Inday, all surnamed Palapo.<sup>22</sup>

On 7 September 2006, the CA issued the second assailed resolution of the same date, denying for lack of merit petitioners' motion for reconsideration of its 22 May 2006 Decision. Aggrieved, petitioners filed the petition at bench, on the following grounds:

**1. THE CA SERIOUSLY ERRED IN REVERSING THE RTC'S DECISION AND IN DECLARING THE RESPONDENTS IN CONTINUED POSSESSION OF THE PROPERTY IN DISPUTE FROM 1918 TO 1980, NOTWITHSTANDING PETITIONERS' EVIDENCE TO THE CONTRARY WHICH PREPONDERANTLY ESTABLISHED THAT, BY THEMSELVES AND THRU THEIR PREDECESSORS-IN-INTEREST, THEY HAVE BEEN IN OPEN, PUBLIC, ADVERSE AND CONTINUOUS POSSESSION THEREOF IN THE CONCEPT OF OWNERS SINCE 20 JULY 1906.**

**2. THE CA GRAVELY ERRED IN DISREGARDING SIMEON SR.'S ADMISSION IN OPEN COURT THAT RESPONDENTS HAVE NOT BEEN IN POSSESSION OF THE PROPERTY FROM 1935 UNTIL THE FILING OF THEIR COMPLAINT IN 1981, SAID ADMISSION BEING A CLEAR INDICATION THAT THEIR COMPLAINT IS BARRED BY ESTOPPEL AND LACHES.**

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<sup>21</sup> Records, pp. 735-736; 740; 773-774, (Civil Case No. R-263).

<sup>22</sup> CA *rollo*, (CA-G.R. CV No. 60769), pp. 142-143; 165-166; 169-170.

**3. THE CA GRAVELY ERRED IN DECLARING RESPONDENTS AS OWNERS OF THE PROPERTY BY VIRTUE OF PRESCRIPTION UNDER THE CIVIL CODE.**

**4. THE CA SERIOUSLY ERRED IN RELYING ON THE JUDGMENT RENDERED IN CIVIL CASE NO. 298 AS BASIS FOR RESPONDENTS' POSSESSION.**

**5. THE CA ALSO ERRED IN DECLARING THAT SIMPLECIO'S POSSESSION WAS UPON THE TOLERANCE OF RESPONDENTS' PREDECESSORS-IN-INTEREST.<sup>23</sup>**

We find the petition bereft of merit.

For the most part, petitioners raise questions of fact which, as a general rule, are not proper subjects of appeal by *certiorari* under Rule 45 of the Rules of Court as this mode of appeal is confined to questions of law.<sup>24</sup> This Court is not a trier of facts and cannot, therefore, be tasked to go over the proofs presented by the parties in the lower courts and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence.<sup>25</sup> Among the recognized exceptions to this rule, however is when the factual findings of the trial court are, as here, different from those of the CA.<sup>26</sup> Even then, a re-evaluation of factual issues would only be warranted when the assailed findings are totally bereft of support in the records or are so patently erroneous as to amount to grave abuse of discretion. So long as such findings are supported by the record, the findings of the Court of Appeals are conclusive and binding on this Court, even if contrary to those of the trial court.<sup>27</sup>

Our perusal of the record shows that the CA correctly ruled that the land to which the litigated portion pertains was purchased from Placido by respondents' predecessor-in-interest, Antonia, on 12 October 1912 and not on 29 October 1934, the date of the document in which the former

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<sup>23</sup> Rollo, pp. 13-14.

<sup>24</sup> *Goyena v. Ledesma-Gustilo*, 443 Phil. 150, 158 (2003).

<sup>25</sup> *JMM Promotions and Management, Inc. v. Court of Appeals*, G.R. No. 139401, 2 October 2002, 390 SCRA 223, 229-230.

<sup>26</sup> *Manila Electric Company v. Court of Appeals*, 413 Phil. 338, 354 (2001).

<sup>27</sup> *Gonzales v. Court of Appeals*, 411 Phil. 232, 242 (2001).

acknowledged the transaction in writing.<sup>28</sup> Contrary to the RTC's finding, therefore, Antonia already owned the property when petitioners' own predecessor-in-interest, Simplecio, was alleged to have forcibly entered into the property on 17 October 1934. Considering that Placido was, in turn, established to have purchased the property from Onofre on 31 December 1910,<sup>29</sup> it was from the latter date that respondents rightfully traced their ownership and possession thereof. Reference to the aforesaid transactions in the body of the 4 December 1934 ejectment complaint Antonia filed against Simplecio before the Court of the Justice of the Peace of Liloan, Leyte<sup>30</sup> also leave no doubt that the same property was the subject matter of Civil Case No. 298.

The area of the property that Antonia acquired in 1912 was, of course, not specified but was simply identified by the following boundaries: on the North, by the Barrio Church; on the South and East, by the property of Matias Simagala; and, on the West, by the property of Miguel Maamo. By the time that the property was declared for taxation purposes in the name of Antonia's husband, Miguel, for the years 1918, 1948, 1971, 1974, 1976 and 1980, the boundaries enclosing the same were, however, already stated as follows: on the North, by Maamo St.; on the South, by Peter Burset St.; on the East, by Union St.; and, on the West, by Ang Bayon St.<sup>31</sup> These apparent variances in the boundaries of the property were, however, elucidated during the direct examination of Simeon Sr. who explained the permutations said boundaries underwent over the years. These included the destruction of the Barrio church in 1912 and its subsequent relocation, the construction of Maamo St., Peter Burset St. and Ang Bayon St. and the donation made by his parents, Miguel and Antonia, of portions of the property for street construction.<sup>32</sup>

On the other hand, petitioners trace their claim of ownership and possession to Concepcion who declared a two-hectare parcel of land for taxation purposes in 1906 under TD 832 and from whom her brother, Crispiniano, was alleged in the answer to have inherited the same. Contradicting their initial claim that Simplecio, in turn, inherited the property from Crispiniano,<sup>33</sup> petitioners later asserted that Simplecio directly inherited the property from Concepcion who was unmarried and died with issue.<sup>34</sup> As a perusal thereof would readily reveal, however, TD

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<sup>28</sup> Exhibit "A," folder of exhibits, p. 1.

<sup>29</sup> Exhibit "B," and submarkings, id. at 2-3.

<sup>30</sup> Exhibits "C," and submarkings, id. at 46-47.

<sup>31</sup> Exhibits "C," "C-1," "C-2," "C-3," "C-4" and "C-5," id. at 4-9.

<sup>32</sup> TSN, 3 July 1984, pp. 22-38.

<sup>33</sup> Records, p. 17, (Civil Case No. R-263).

<sup>34</sup> TSN, 28 May 1985, p. 10; TSN, 18 July 1996, p. 3.

832 was filed by Concepcion on 20 July 1906 with respect to a parcel of land situated in Barrio of Pandan and identified by the following boundaries: on the North, by la Playa (the seashore); on the South, by Patrecio Lanog; on the East, by Simeon Bajan; and on the West, by Placido Cimagala.<sup>35</sup> According to the testimony of Juanito, said property was eventually subdivided into three parcels which were all eventually declared for taxation purposes in the name of Simplecio.<sup>36</sup>

Instead of Barrio Pandan which was stated as the location of Concepcion's property in TD 832, our perusal of the TDs that petitioners adduced *a quo* shows that the three parcels into which said property was supposedly divided are, however, situated in Barrio Estela. The first parcel was declared in the names of Concepcion and **Justiniano** Palapo under TDs 4173 and 5401 in the years 1922 and 1958, respectively, and was identified by the following boundaries: on the North, by Cuares St.; on the South, by Bahan St.; on the East, by Palapo St.; and on the West by Union St.<sup>37</sup> The foregoing boundaries were reproduced in TDs 16670 and 1997 in the name of Concepcion for the years 1971 and 1974, respectively.<sup>38</sup> It was only in 1975 and 1980, when the property was declared in the name of Simplecio under TDs 5125 and 4202, respectively, that the boundaries of the property were stated as follows: on the North, by the Church Site; on the South, by Cuares St.; on the East, by the Provincial Road; and on the West, by the School Site.<sup>39</sup>

Declared for taxation purposes in the name of Concepcion under TDs 4175, 5411, 16667 and 1994 in the years 1922, 1948, 1971 and 1974, respectively, the second parcel was, on the other hand, described as delimited by the following boundaries: on the North by Sarvida St.; on the South, by Cuares St.; on the East, by Union St.; and on the West, by the property of Antonia Bayon.<sup>40</sup> When the same parcel was, however, declared in Simplecio's name in 1975 and 1980 under TDs 5123 and 4204, the boundaries were inexplicably altered in the following wise: on the North, by Cuares and Sarvida St.; on the South, by the property of Demetrio Palapo; on the East, by the Seashore; and on the West, by the Provincial Road.<sup>41</sup> The third parcel was, finally, declared in the names of Concepcion and Justiniano in the years 1922, 1948, 1971 and 1974 under TDs 4179, 5410, 16664 and 1993, respectively. Its boundaries were identified as follows: on

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<sup>35</sup> Exhibit "1-F," folder of exhibits, p. 59.

<sup>36</sup> TSN, 13 June 1986; TSN, 18 July 1996, p. 24.

<sup>37</sup> Exhibits "1-D" and "1-E," folder of exhibits, pp. 57-58.

<sup>38</sup> Exhibits "1-B" and "1-C," id. at 55-56.

<sup>39</sup> Exhibits "1" and "1-A," id. at 53-54.

<sup>40</sup> Exhibits "3-B," "3-C," "3-D" and "3-E," id. at 70-73.

<sup>41</sup> Exhibits "3" and "3-A," id. at 68-69.



the North, by the property of Concepcion Palapo; on the South, by the property of Simeon Bajan; on the East, by Palapo St.; and on the West, by Union St.<sup>42</sup> By the time this parcel was declared for taxation purposes in Simplecio's name in 1975 and 1980 under TDs 5121 and 4205, the boundaries were once again altered in the following wise: on the North, by the Barrio Road and the property of Miguel Maamo; on the South, by the Church Site; on the East, by the Provincial Road; and on the West, by the School Site and Barrio Road.<sup>43</sup>

As noted, the provenance of the foregoing TDs were all traced to TD 832 which pertained to a property situated in Barrio Pandan and not Barrio Estela, the location of the property in litigation. Since both Simeon, Sr. and Juanito testified that Barrio Pandan is more than one kilometer to about two kilometers away from Barrio Estela,<sup>44</sup> we find that the CA correctly ruled that petitioners cannot trace their claim of possession and ownership to TD 832 that Concepcion obtained in 1906. In contrast, respondents were able to trace their claim to Onofre's 31 December 1910 sale of the property to Placido who, in turn, sold the same to Antonia on 12 October 1912. The TDs Miguel filed with respect to the property also date back to 1918<sup>45</sup> or four years ahead of the TD's filed in 1922 in the names of Concepcion and Justiniano, over the three parcels into which the property was purportedly subdivided. Even more importantly, the stated boundaries of the property declared in Miguel's name are identical to the boundaries of the property identified in the sketch submitted by the court-appointed commissioner. This cannot be said of the properties declared in the names of Concepcion and Justiniano, the boundaries of which were further altered when they were declared in Simplecio's name in 1975 and 1980.

As determined by the court-appointed commissioner, the total area of the parcel claimed by respondents measures 14,433 square meters, of which 7,055 square meters are, in turn, claimed by petitioners.<sup>46</sup> In deciding against respondents, the RTC ruled that the areas of said parcel and, for that matter, the portion in litigation, were disproportionately larger than the 1,612 square meters stated in the TDs adduced by respondents. It must be borne in mind, however, that what defines the land is not the numerical data indicated as its size or area but, rather, the boundaries or "metes and bounds" specified in its description as enclosing the land and indicating its limits.<sup>47</sup> To repeat, the evidence adduced *a quo* shows that the boundaries of the parcel of land

<sup>42</sup> Exhibits "4-B," "4-C," "4-D," "4-E," *id.* at 80-83.

<sup>43</sup> Exhibits "4" and "4-A," *id.* at 78-79.

<sup>44</sup> TSN, 24 September 1984, p. 5, TSN, 18 July 1996, p. 7.

<sup>45</sup> Exhibits "C," "C-1," "C-2," "C-3," "C-4" and "C-5," folder of exhibits, pp. 4-9.

<sup>46</sup> Records, pp. 61-64, (Civil Case No. R-263), 15 August 1982 Commissioner's Report and Sketch.

<sup>47</sup> *Tabuso v. Court of Appeals*, 411 Phil. 775, 787 (2001).

purchased by Antonia are consistent with the boundaries of the parcel of land in Miguel's TDs and the sketch submitted by the court-appointed commissioner.

Petitioners next fault the CA for supposedly disregarding their evidence to the effect that Simplecio had been in possession of the property since 1912 as well as Simeon Sr.'s admission that respondents have not been in possession thereof since 1935. Aside from the fact that the TDs they presented pertain to a different property, however, petitioners conveniently overlook Antonia's filing of an ejectment complaint against Simplecio in 1934 with respect to the property herein litigated. In the 17 December 1934 Decision rendered in the case, the Court of the Justice of the Peace of Liloan Leyte significantly determined Antonia's prior possession of the property and upheld her right to take possession thereof.<sup>48</sup> While it is true that a judgment rendered in a forcible entry case will not bar an action between the same parties respecting title or ownership,<sup>49</sup> the rule is settled that such a judgment is conclusive with respect to the issue of material possession.<sup>50</sup> Although it does not have the same effect as *res judicata* in the form of bar by former judgment which prohibits the prosecution of a second action upon the same claim, demand, or cause of action, the rule on conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties and their privies on a different claim or cause of action.<sup>51</sup>

To Our mind, the fact that the writ of execution issued in Civil Case No. 298 was returned duly served<sup>52</sup> also lends credence to respondents' claim that Simplecio's possession of the property was upon Miguel's tolerance.<sup>53</sup> Since acts of a possessory character executed due to license or by mere tolerance of the owner are inadequate for purposes of acquisitive prescription,<sup>54</sup> petitioners cannot claim to have acquired ownership of the property by virtue of their possession thereof since 1935. Under Articles 444<sup>55</sup> and 1942<sup>56</sup> of the old *Civil Code*, possession of real property is not affected by acts of a possessory character which are merely tolerated by the possessor, or which are due to his license.<sup>57</sup> Granted that long, continued

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<sup>48</sup> Exhibit "G," folder of exhibits, p. 49.

<sup>49</sup> *S.J.Vda. De Villanueva v. Court of Appeals*, 403 Phil. 721, 730 (2001).

<sup>50</sup> *Buazon v. Court of Appeals*, G.R. No. 97749, 19 March 1993, 220 SCRA 182, 190.

<sup>51</sup> *Heirs of Abadilla v. Galarosa*, 527 Phil. 264, 278 (2006).

<sup>52</sup> Exhibit "H" and submarkings, folder of exhibits, p. 50.

<sup>53</sup> TSN, 3 July 1984, p. 34.

<sup>54</sup> *Lamsis v. Dong-e*, G.R. No. 173021, 20 October 2010, 634 SCRA 154, 172.

<sup>55</sup> Art. 444. Acts which are merely tolerated and those clandestinely executed, without knowledge of the possessors of a thing, or by force, do not affect the possession.

<sup>56</sup> Art. 1942. Acts of a possessory character, performed by virtue of the license, or by mere tolerance on the part of the owner, are of no effect for establishing possession.

<sup>57</sup> *Cuayong v. Benedicto*, 37 Phil. 781, 793 (1918).

occupation, accompanied by acts of a possessory character, affords some evidence that possession has been exerted in the character of owner and under claim of right,<sup>58</sup> this inference is unavailing to petitioners since Simplecio's continued possession of the property after his defeat in the ejectment suit was clearly upon the tolerance of respondents' predecessors-in-interest.

Viewed in the light of the foregoing considerations, petitioners' reliance on Sections 40<sup>59</sup> and 41<sup>60</sup> of Act No. 190 or the *Code of Civil Procedure* is, at the very least, misplaced. Inasmuch as possession must be adverse, public, peaceful and uninterrupted in order to consolidate prescription, it stands to reason that acts of a possessory character done by virtue of a license or mere tolerance on the part of the real owner are not sufficient.<sup>61</sup> It has been ruled that this principle is applicable not only with respect to the prescription of the dominium as a whole, but, to the prescription of right in *rem*.<sup>62</sup> Considering that Article 1119 of the present *Civil Code* also provides that "(a)cts of possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for the purposes of possession," the error petitioners impute against the CA for applying the new *Civil Code* provisions on prescription is more apparent than real. Then as now, possession must be *en concepto de dueño* or adverse in order to constitute the foundation of a prescriptive right. If not, such possessory acts, no matter how long, do not start the running of the period of prescription.<sup>63</sup>

As for the supposed fact that possession by tolerance was not among the issues simplified during the pre-trial of the case, suffice it to say that the same is subsumed in the second issue identified in the RTC's 29 November 1983 pre-trial order, *i.e.*, "(w)hether or not [p]etitioners and the[ir]

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<sup>58</sup> *Corporacion de PP. Dominicos v. Lazaro*, 42 Phil. 119, 127 (1921).

<sup>59</sup> SECTION 40. *Period of Prescription as to Real Estate*. — An action for recovery of the title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues.

<sup>60</sup> SECTION 41. *Title to Land by Prescription*. — Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. But failure to occupy or cultivate land solely by reason of war shall not be deemed to constitute an interruption of possession of the claimant, and his title by prescription shall be complete, if in other respects perfect, notwithstanding such failure to occupy or cultivate the land during the continuance of war.

<sup>61</sup> *Seminary of San Carlos v. Municipality of Cebu*, 19 Phil. 32, 42 (1911).

<sup>62</sup> *Cuaycong v. Benedicto*, *supra*, note 57 at 792-793.

<sup>63</sup> *Esguerra v. Manantan*, G.R. No. 158328, 23 February 2007, 516 SCRA 561, 573.

predecessors-in-interest had been in the actual, physical possession of the land in question in the concept [of] owners since 1906 up to the present.”<sup>64</sup> Since Simplecio’s possession of the subject parcel was by mere tolerance, we find that the CA correctly brushed aside petitioners’ reliance on estoppel which cannot be sustained by mere argument or doubtful inference.<sup>65</sup> The same may be said of the CA’s rejection of laches, an equitable doctrine the application of which is controlled by equitable considerations.<sup>66</sup> It operates not really to penalize neglect or sleeping on one’s rights, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation.<sup>67</sup> Unfortunately for petitioners’ cause, no such situation obtains in the case.

**WHEREFORE**, premises considered, the instant petition for review on certiorari is **DENIED** for lack of merit.

**SO ORDERED.**



**JOSE PORTUGAL BEREZ**  
Associate Justice

**WE CONCUR:**




**ANTONIO T. CARPIO**  
Associate Justice


<sup>64</sup> Records, (Civil Case No. R-263), p. 175.

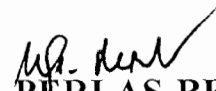
<sup>65</sup> *Liga v. Allegro Resources Corp.*, G.R. No. 175554, 23 December 2008, 575 SCRA 310, 320-321.

<sup>66</sup> *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, 379 (2003).

<sup>67</sup> *Maestrado v. Court of Appeals*, 384 Phil. 418, 430 (2000).

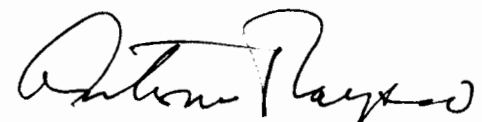
  
**ARTURO D. BRION**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

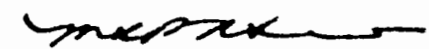
### ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were 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