

**EDITHA ALVIOLA AND PORFERIO ALVIOLA, PETITIONERS, VS.
HONORABLE COURT OF APPEALS, FLORENCIA BULING VDA DE
TINAGAN, DEMOSTHENES TINAGAN, JESUS TINAGAN, ZENAIDA T.
JOSEP AND JOSEP...**

G.R. No. 117642. April 24, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

In this petition for review on certiorari, petitioners assail the decision[1] of the Court of Appeals dated April 8, 1994 which affirmed the decision of the lower court ordering petitioners to peacefully vacate and surrender the possession of the disputed properties to the private respondents.

Culled from the record are the following antecedent facts of this case to wit:

On April 1, 1950, Victoria Sonjaconda Tinagan purchased from Mauro Tinagan two (2) parcels of land situated at Barangay Bongbong, Valencia, Negros Oriental.[2] One parcel of land contains an area of 5,704 square meters, more or less;[3] while the other contains 10,860 square meters.[4] Thereafter, Victoria and her son Agustin Tinagan, took possession of said parcels of land.

Sometime in 1960, petitioners occupied portions thereof whereat they built a copra dryer and put up a store wherein they engaged in the business of buying and selling copra.

On June 23, 1975, Victoria died. On October 26, 1975, Agustin died, survived by herein private respondents, namely his wife, Florencia Buling Vda. de Tinagan and their children Demosthenes, Jesus, Zenaida and Josephine, all surnamed Tinagan.

On December 24, 1976, petitioner Editha assisted by her husband filed a complaint for partition and damages before the then Court of First Instance of Negros Oriental, Branch 1, Dumaguete City, docketed as Civil Case No. 6634, claiming to be an acknowledged natural child of deceased Agustin Tinagan and demanding the delivery of her shares in the properties left by the deceased.[5]

On October 4, 1979, the aforesaid case was dismissed by the trial court on the ground that recognition of natural children may be brought only during the lifetime of the presumed parent and petitioner Editha did not fall in any of the exceptions enumerated in Article 285 of the Civil Code.[6]

Petitioners assailed the order of dismissal by filing a petition for certiorari and mandamus before this Court.[7] On August 9, 1982, this Court dismissed the petition for lack of merit.[8] Petitioners filed a motion for reconsideration but the same was denied on October 19, 1982.[9]

On March 29, 1988, private respondents filed a complaint for recovery of possession against Editha and her husband Porferio Alviola before the Regional Trial Court of Negros Oriental, Branch 35, Dumaguete City, docketed as Civil Case No. 9148, praying, among others, that they be declared absolute owners of the said parcels

of land, and that petitioners be ordered to vacate the same, to remove their copra dryer and store, to pay actual damages (in the form of rentals), moral and punitive damages, litigation expenses and attorney's fees.[10]

In their answer, petitioners contend that they own the improvements in the disputed properties which are still public land; that they are qualified to be beneficiaries of the comprehensive agrarian reform program and that they are rightful possessors by occupation of the said properties for more than twenty years.[11]

After trial, the lower court rendered judgment in favor of the private respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, in Civil Case No. 9148, for Recovery of Property, the court hereby renders judgment:

- a) Declaring plaintiffs as the absolute owners of the land in question including the portion claimed and occupied by defendants;
- b) Ordering defendants Editha Alviola and her husband Porfirio Alviola to peacefully vacate and to surrender the possession of the premises in question to plaintiffs; Defendants may remove their store and dryer on the premises without injury and prejudice to the plaintiffs;
- c) Ordering defendants to pay the following amounts to the plaintiffs:
 1. P150.00 monthly rentals from April 1988 up to the time the improvements in the questioned portions are removed;
 2. P5,000.00 for attorney's fees;
 3. P3,000.00 for litigation expenses and to pay the costs.

SO ORDERED.[12]

Petitioners appealed to the Court of Appeals. On April 8, 1994, the respondent court rendered its decision,[13] affirming the judgment of the lower court. Petitioners filed a motion for reconsideration[14] but the same was denied by the respondent court in an order dated October 6, 1994.[15]

Hence, this petition.

Petitioners aver that respondent court erred in declaring private respondents the owners of the disputed properties. They contend that ownership of a public land cannot be declared by the courts but by the Executive Department of the Government, citing the case of *Busante vs. Hon. Court of Appeals*, Oct. 20, 1992, 214 SCRA 774; and that the respondent court erred in not considering that private respondents' predecessor-in-interest, Victoria Sonjaco Tinagan, during her lifetime, ceded her right to the disputed properties in favor of petitioners.

Moreover, petitioners maintain that the respondent court erred in holding that they were in bad faith in possessing the disputed properties and in ruling that the improvements thereon are transferable. They claim that the copra dryer and the store are permanent structures, the walls thereof being made of hollow-blocks and the floors made of cement.

Private respondents counter that the question of whether or not the disputed properties are public land has been resolved by overwhelming evidence showing ownership and possession by the Tinagans and their predecessors-in-interest prior to 1949. They further aver that they merely tolerated petitioners' possession of the disputed properties for a period which was less than that required for extraordinary prescription.

The petition must fail.

Petitioners claim that the disputed properties are public lands. This is a factual issue. The private respondents adduced overwhelming evidence to prove their ownership and possession of the two (2) parcels of land on portions of which petitioners built the copra dryer and a store. Private respondents' tax declarations and receipts of payment of real estate taxes, as well as other related documents, prove their ownership of the disputed properties. As stated previously in the narration of facts, these two (2) parcels of land were originally owned by Mauro Tinagan, who sold the same to Victoria S. Tinagan on April 1, 1950, as evidenced by a Deed of Sale,[16] wherein the two (2) lots, Parcels 1 and 2, are described.[17] Anent Parcel 1, tax declarations indicate that the property has always been declared in the name of the Tinagans. The first, Tax Declaration No. 3335[18] is in the name of Mauro Tinagan. It was thereafter cancelled by Tax Declaration No. 19534 effective 1968,[19] still in the name of Mauro. This declaration was cancelled by Tax Declaration No. 016740 now in the name of Agustin Tinagan,[20] effective 1974, followed by Tax Declaration No. 08-421 in the name of Jesus Tinagan, effective 1980;[21] and finally by Tax Declaration No. 08-816 in the name of Jesus Tinagan, effective 1985.[22]

With regard to Parcel 2, private respondents presented Tax Declaration No. 20973 in the name of Mauro Tinagan, effective 1959,[23] Tax Declaration No. 016757, effective 1974;[24] Tax Declaration No. 08-405-C in the name of Agustin Tinagan, effective 1980[25] and Tax Declaration No. 08-794 in the name of Agustin Tinagan, effective 1985.[26] Moreover, the realty taxes on the two lots have always been paid by the private respondents.[27] There can be no doubt, therefore, that the two parcels of land are owned by the private respondents.

The record further discloses that Victoria S. Tinagan and her son, Agustin Tinagan, took possession of the said properties in 1950, introduced improvements thereon, and for more than 40 years, have been in open, continuous, exclusive and notorious occupation thereof in the concept of owners.

Petitioners' own evidence recognized the ownership of the land in favor of Victoria Tinagan. In their tax declarations,[28] petitioners stated that the house and copra dryer are located on the land of Victoria S. Tinagan/Agustin Tinagan. By acknowledging that the disputed portions belong to Victoria/Agustin Tinagan in their tax declarations, petitioners' claim as owners thereof must fail.

The assailed decision of the respondent court states that "Appellants do not dispute that the two parcels of land subject matter of the present complaint for recovery of possession belonged to Victoria S. Tinagan, the grandmother of herein plaintiffs-appellees; that Agustin Tinagan inherited the parcels of land from his mother Victoria; and that plaintiffs-appellees, in turn, inherited the same from Agustin." [29]

Taking exception to the aforequoted finding, petitioners contend that while the 2 parcels of land are owned by private respondents, the portions wherein the copra dryers and store stand were ceded to them by Victoria S. Tinagan in exchange for an alleged indebtedness of Agustin Tinagan in the sum of P7,602.04.[30]

This claim of the petitioners was brushed aside by the respondent court as merely an afterthought, thus -

"Appellants' claim that they have acquired ownership over the floor areas of the store and dryer 'in consideration of the account of Agustin Tinagan in the sum of P7,602.04' is not plausible. It is more of an 'after-thought' defense which was not alleged in their answer. Although the evidence presented by them in support of this particular claim was not duly objected to by counsel for appellees at the proper time and therefore deemed admissible in evidence, an examination of the oral and documentary evidence submitted in support thereof, reveals the weakness of their claim.

"Appellant testified that the areas on which their store and dryer were located were exchanged for the amount of P7,602.04 owed to them by Agustin in 1967 (TSN, Hearing of April 14, 1989, p. 9); that he did not bother to execute a document reflecting such agreement 'because they were our parents and we had used the land for

quite sometime already they had also sold their copra to us for a long time.' (Id.) Yet, as earlier discussed, the tax declarations in appellants' answer show that even after 1967, they expressly declared that the parcels of land on which their store and dryer were constructed, belonged to Victoria and Agustin (Exhs. 2-A, 2-B, 2-C, 3-A, 3-B). If appellants really believed that they were in possession of the said particular areas in the concept of owners, they could have easily declared it in said tax declarations." [31]

Concededly, petitioners have been on the disputed portions since 1961. However, their stay thereon was merely by tolerance on the part of the private respondents and their predecessor-in-interest. The evidence shows that the petitioners were permitted by Victoria Sanjoco Tinagan to build a copra dryer on the land when they got married. Subsequently, petitioner Editha Alviola, claiming to be the illegitimate daughter of Agustin Tinagan, filed a petition for partition demanding her share in the estate of the deceased Agustin Tinagan on December 6, 1976. However, the petition was dismissed since it was brought only after the death of Agustin Tinagan. This Court dismissed the petition for certiorari and mandamus filed by petitioner Editha Alviola on August 9, 1982. It was on March 29, 1988, when private respondents filed this complaint for recovery of possession against petitioners. Considering that the petitioners' occupation of the properties in dispute was merely tolerated by private respondents, their posture that they have acquired the property by "occupation" for 20 years does not have any factual or legal foundation.

As correctly ruled by the respondent court, there was bad faith on the part of the petitioners when they constructed the copra dryer and store on the disputed portions since they were fully aware that the parcels of land belonged to Victoria Tinagan. And, there was likewise bad faith on the part of the private respondents, having knowledge of the arrangement between petitioners and Victoria Tinagan relative to the construction of the copra dryer and store. Thus, for purposes of indemnity, Article 448 of the New Civil Code should be applied. [32] However, the copra dryer and the store, as determined by the trial court and respondent court, are transferable in nature. Thus, it would not fall within the coverage of Article 448. As the noted civil law authority, Senator Arturo Tolentino, aptly explains: "To fall within the provision of this Article, the construction must be of permanent character, attached to the soil with an idea of perpetuity; but if it is of a transitory character or is transferable, there is no accession, and the builder must remove the construction. The proper remedy of the landowner is an action to eject the builder from the land." [33]

The private respondents' action for recovery of possession was the suitable solution to eject petitioners from the premises.

WHEREFORE, this petition should be, as it is hereby, DISMISSED. The assailed decision is hereby AFFIRMED.

SO ORDERED.

Regalado, (Chairman), Melo, Puno, and Mendoza, JJ., concur.

[1] Penned by the Honorable Justices of the Court of Appeals, Ma. Alicia Austria-Martinez, Ponente, Alfredo M. Marigomen, Chairman, and Ruben T. Reyes, Junior Member, 13th Division.

[2] Exhibit "L," Deed of Purchase and Sale, Folder of Exhibits.

[3] Exhibit "L-1," *ibid*.

[4] Exhibit "L-2," *ibid*.

[5] Exhibit "B," *ibid*.

- [6] Order, Exhibit “E,” Folder of Exhibits.
- [7] Petition, Exhibit “A,” *ibid*.
- [8] Resolution of Second Division, Exhibit “J,” *ibid*.
- [9] Resolution of the Second Division, Exhibit “K,” *ibid*.
- [10] Complaint, pp. 2-5, Original Record.
- [11] Answer, pp. 12-13, *ibid*.
- [12] Decision, pp. 161-181, Original Record.
- [13] Decision, pp. 25-33, CA Rollo.
- [14] Motion for Reconsideration, pp. 34-35, *ibid*.
- [15] Order, page 42, *ibid*.
- [16] Exhibit “L.”
- [17] Exhibits “L-1” and “L-2.”
- [18] Exhibit “M.”
- [19] Exhibit “N.”
- [20] Exhibit “O.”
- [21] Exhibit “P.”
- [22] Exhibit “Q.”
- [23] Exhibit “R.”
- [24] Exhibit “S.”
- [25] Exhibit “T.”
- [26] Exhibit “U.”
- [27] Exhibits “W” to “CC-3.”
- [28] Exhibits “2,” “2-A” to “2-C” and Exhibits “3,” “3-A” and “3-B.”
- [29] P. 4, CA Decision; p. 18, Petition.
- [30] P. 18, Petition.
- [31] P. 5, Petition.
- [32] P. 8, CA Decision.
- [33] *Ibid*.

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