

CELSO AMARANTE HEIRS, NAMELY: FELOMINA, FERNANDA, GENARO, CARMELITA, CRISPIN, CORAZON, ISIDRA, LYDIA, ANTONIO, BIENVENIDO, NATHALIA, DEGUILO, DOMINADOR, ZOSIMA, HUGO AND LORNA,...

G.R. No. 76386. May 21, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

The background facts of this Petition for Review are set forth in our Decision in this same case, promulgated on 26 October 1987, in the following manner:

"On 20 August 1954, petitioners filed a complaint (docketed as Civil Case No. 2967) against respondents for the recovery of a twenty hectare parcel of unregistered agricultural land (Lot 1236, Pls-667) situated in Sitio Campulay, Barrio Atotes, Bindoy, a remote mountainous region of Negros Oriental. The complaint was dismissed by the trial court on 31 January 1962 due to the failure of counsel for petitioners to appear at the scheduled hearing of the case: the dismissal, however, was ordered without prejudice to the refiling of the same complaint.

On 20 December 1962, petitioners refiled their complaint (docketed this time as Civil Case No. 4100) with the then Court of First Instance of Negros Oriental (12th Judicial District).

The evidence for the petitioners (plaintiffs below) indicates that Lot 1236 was one of two pieces of real property originally owned and cultivated by the late Malonis Infiel, a native negrito or Aeta (Ate in the Ilongo dialect) (Brief for Appellants, p. 2; and Memorandum, p. 1). Upon his death (the date is not specified), Lot 1236 was inherited by: (1) Silverio Amarante, Bohemia Infiel, Belta Infiel, Apolonia Infiel, and Inojaria Infiel, the children of Malonis Infiel with Elena Infiel; and (2) Felix Malonis, the son of Malonis Infiel with Lucia Infiel. The other five-hectare property situated in Sitio Awang, Barrio Atotes, Bindoy, Negros Oriental (Lot 1237, Pls-667), on the other hand, was inherited solely by Felix Malonis.

Petitioners, the grandchildren and descendants of Malonis Infiel out of his union with Elena Infiel, contended that Malonis Infiel began occupying Lot 1236 long before the advent of World War II and had cultivated the land by planting no less than 300 coconut trees, 19 mango trees, and 33 bamboo groves thereon. The occupation and possession by Malonis Infiel, his children, and petitioners of Lot 1236 remained undisturbed until sometime in 1953 when respondent Gregorio Bolo, a common law husband of one of the granddaughters of Felix Malonis, caused the survey of Lots 1236 and 1237 in June 1948, and proceeded to occupy Lot 1236 claiming to have purchased the same on 11 April 1948 from respondent heirs of Felix Malonis. Petitioners contested the claim of respondent Bolo and asserted that what had been sold to him was only Lot 1237 (area: 5 hectares) and that Lot 1236 (area: 20 hectares) was surreptitiously declared by respondent Bolo in the aforementioned survey as property owned exclusively by Felix Malonis. Petitioners also contended that respondent Bolo, in his desire to consolidate possession and ownership of Lot 1236 in his name harassed petitioners by instituting a criminal case for qualified theft on 7 October 1953 against Eleuterio Amarante and petitioner Celso Amarante ([T]his criminal case was dismissed by the trial court on 21 February 1956.

Petitioner Celso Amarante died on 2 September 1984 and was substituted in this petition by his wife, fourteen children, and two grandchildren) and by threatening to liquidate the other petitioners if they persisted in their refusal to abandon the disputed property.

For their part, respondents (defendants below), the grandchildren and surviving heirs of Felix Malonis, contended that it was not improper for them to sell Lot 1236 to respondent Bolo on the ground that said property had always been owned exclusively by Felix Malonis, contrary to the claim by petitioners that Lot 1236 was owned in common by the six children of Malonis Infiel by his two wives. Respondents presented Tax Declaration No. 123 issued on 7 August 1948 in the name 'Herederos de Felix Malonis' in support of their claim of ownership over Lot 1236, and in rebuttal of Tax Declaration No. 6051 issued in 1953 in the name of Malonis Infiel which was presented in evidence by petitioners.

On 17 September 1984, Branch 42 of the Regional Trial Court of Dumaguete City (Seventh Judicial District) rendered a Decision (RTC Records, pp. 241-245. The decision was penned by Judge Daniel B. Bernaldez) the dispositive portion of which reads:

'WHEREFORE, premises considered, plaintiffs' complaint is hereby dismissed and declaring the sale between the heirs of Felix Malonis and Gregorio Bolo over the property in question valid, and finally declaring Gregorio Bolo owner of the parcel of land declared under Tax Declaration No. 123 in the name of the Heirs of Felix Malonis and now declared in his name under Tax Declaration No. 4393.

The Court refrains from granting defendants' counterclaim for damages, the same not being proved by convincing evidence.

SO ORDERED.'

On appeal to the Court of Appeals, this case was docketed as CA-G.R. CV NO. 05697. In a Decision dated 3 April 1986, the decision of the trial court was affirmed in toto by the Court of Appeals. (First Civil Cases Division) (The decision was penned by Quetulio-Losa, J., and concurred in by Gaviola, Jr. and Ines-Luciano, JJ.).

The Court of Appeals (Sixth Division) (The Sixth Division was then composed of Griño-Aquino, Ines-Luciano and Cui, JJ.), in a Resolution dated 17 September 1986, denied petitioners' Motion for Reconsideration not on its merits but rather for having been filed late, and ordered that entry of judgment of the decision dated 3 April 1986 of the First Civil Cases Division be made.

In a resolution dated 14 January 1987 (Rollo, p. 42), this Court set aside the resolution dated 17 September 1986 of the Court of Appeals (Sixth Division), as well as the entry of judgment ordered by the Sixth Division in said resolution of the decision dated 3 April 1986 of the First Civil Cases Division. Respondents have since then filed their Comment to the petition while petitioners, in response, have filed their Reply to respondents' comment.

The present Petition for Review was filed with the Court on 11 November 1986.”[1]

After careful examination of the record of the case and full deliberation on the issues raised in the Petition for Review, we rendered a Decision dated 26 October 1987 remanding the case back to the trial court for reception of additional evidence. The final portion of the decision states:

“All the above factors lead us to the conviction that the interests of substantial justice will best be served by remanding this case to the trial court. Ordinarily, we would remand this case for trial de novo. This controversy has, however, been in our courts since 1954; we cannot allow this situation to persist a day longer than is absolutely essential.

WHEREFORE, the Decision of Branch 42 of the Regional Trial Court of Dumaguete City dated 17 September 1984 in Civil Case No. 4100 is SET ASIDE. This case is REMANDED to that Regional Trial Court which is hereby DIRECTED to proceed as follows:

1. It shall consider carefully all the evidence previously submitted to it by petitioners.
2. It shall hold hearings for the purpose of receiving such additional evidence as petitioners may wish to submit in support of their principal allegations and arguments to wit:
 - (a) that Lot No. 1236 was originally owned by Malonis Infiel who cultivated and lived and died on that property;
 - (b) that Malonis Infiel, upon his death, was succeeded, insofar as Lot No. 1236 was concerned, by his six (6) children by his two (2) wives;
 - (c) that petitioner Celso Amarante, his aunts and their children were in actual possession of Lot No. 1236 until 1954 when respondent Bolo by fraud, breach of trust, threats, intimidation, harassment, misrepresentation and other unlawful means divested them of their possession;
 - (d) that what was sold by respondent heirs of Felix Malonis to respondent Bolo was Lot No. 1237 and, if at all and at most, a 1/6 share in Lot No. 1236; and
 - (e) that the Absolute Deed of Sale covering Lot No. 1236 in favor of respondent Bolo is invalid or unenforceable.
3. If additional evidence is submitted by petitioners, respondent's shall be entitled to cross examine, petitioners' additional witnesses and to submit rebuttal evidence.
4. This Regional Trial Court, Branch 42, Dumaguete City shall, with all deliberate dispatch, and in any case within ninety (90) days from receipt hereof, submit a report on the evidence of record and on its findings of fact of this Court. Such findings of fact shall be fully documented by reference to the evidence of record: the basis of each finding of fact shall be clearly identified. The Regional Trial Court shall furnish petitioners and private respondents with a copy of its report to this Court. The entire record of this case shall be elevated to this Court.

After receipt and consideration of the report of the Regional Trial Court, this Court will resolve the Petition for Review and the underlying case on the merits. No costs.

SO ORDERED."[2]

Because this case which involves rights of illiterate Aetas, a vulnerable ethnic minority group, has dragged on for a very long period of time, we have, in the interest of expediting final disposition thereof, taken upon ourselves the task of resolving both the Petition for Review and the underlying case upon the merits.

The case was set for hearing before the trial court in compliance with the 26 October 1987 Decision of this Court. In the supplemental hearings, petitioners presented Florentina Amarante who testified that Celso Amarante, his aunts and their children had been in actual possession of Lot 1236 and that since her marriage to Celso Amarante, they had lived on this parcel of land situated in Sitio Campulay.[3] Fernanda Amarante, daughter of Celso and Florentina, testified that she was born in 1936 in Sitio Campulay where her parents had built their house.[4] Her parents and her father's aunts and their children were living peacefully in Lot 1236 until private respondent Gregorio Bolo divested them of their possession through threats, intimidation, harassment and other unlawful means in 1953. Her family, therefore, left Campulay and did not attempt to go back again. Instead, on 20 August 1954, they instituted Civil Case No. 2967 for recovery of Lot 1236.[5]

For his part, respondent Bolo did not dispute the fact of prior possession of Lot 1236 by petitioners and their predecessors-in-interest. To rebut the additional evidence presented by petitioners, respondent Bolo took the witness stand again and testified on practically the same facts he had testified to during the main trial of this case and re-submitted his exhibits including new exhibits (Exhibits 20, 21 and 21-A).[6]

In the second and final Report dated 7 April 1989, rendered by Judge Jesus L. Tabilon, Presiding Judge, Regional Trial Court, Branch 42, Dumaguete City, pursuant the Resolution of this Court dated 27 February 1989 which had reiterated its requirement that the trial court "make findings of fact and x x x identify the evidence that it considered in arriving at its finding of fact", the trial judge set forth the following findings of fact:

"In a case for recovery of real property filed by plaintiffs against defendants, docketed as Civil Case No. 4100 with Branch XLII, Regional Trial Court, Dumaguete City, plaintiffs seek to recover from defendants five-six (5/6) portion of a parcel of land known as Lot No. 1236, Pls 667, situated at Campulay, Atotes, Bindoy, Negros Oriental. In support of their complaint, plaintiffs adduced both oral and documentary evidence and proved the following to wit:

That during the lifetime of Malonis Infiel, a native Negrito or Aeta, he had two (2) wives, namely: Elena Infiel and Lucia Infiel. That Malonis Infiel and Elena Infiel had five (5) children, namely: Silverio Infiel Amarante, Apolonia Infiel, Bohemia Infiel, Belta Infiel and Inojaria Infiel (TSN, April 3, 1974, p. 19 and TSN, June 21, 1974, p. 4) while Malonis Infiel and Lucia Infiel had only one (1) son, Felix Malonis (TSN, June 21, 1974, p. 2). Malonis Infiel was in possession and cultivation of two (2) parcels of land, one later known as Lot No. 1236, Pls 667, situated at Sitio Campulay and other later known as Lot No. 1237, Pls 667, situated at Sitio Awang, all at Barangay Atotes, Bindoy, Negros Oriental. That upon the death of Malonis Infiel, Lot No. 1236 at Campulay was inherited by: 1) Silverio Amarante, Bohemia Belta Infiel, Apolonia Infiel and Inojaria Infiel, the children of Malonis Infiel with Elena Infiel; and 2) Felix Malonis, the son of Malonis Infiel with Lucia Infiel, inherited Lot No. 1237, Pls 667 at Awang (TSN., Oct. 9, 1974, p. 4). That Malonis Infiel had been in possession of Lot No. 1236 long before the advent of the Second World war, this allegation is apparent from the ages of the three hundred (300) coconut trees and the circumference of the nineteen (19) mango trees planted inside said Lot No. 1236 (TSN, April 3, 1974). That petitioner Celso Amarante, together with his aunts and their children who are the heirs of Malonis Infiel with Elena Infiel were in peaceful possession and enjoyment of Lot No. 1236, declared the same under Tax Dec. No. 6051, in the name of Hrs. of Malonis Infiel, dated September 12, 1953 (Exh. 'A') and paid taxes thereon (Exhibits 'B', 'B-1' to 'B-5'). The contention of defendants that Tax Dec. No. 6051 was concocted to facilitate the filing of Civil Case No. 2967 by plaintiffs against herein defendants is untenable, considering the fact that Tax Dec. No. 6051; Exh. 'A' was issued on September 12, 1953 while the filing of the Civil Case No. 2967 took place one year thereafter, on August 20, 1954. That the possession and occupation of Malonis Infiel, his children and grandchildren, who are the plaintiffs in this case of Lot No. 1236 remained undisturbed until sometime in 1953 when defendant Gregorio Bolo, a common-law husband of one of the granddaughters of Felix Malonis had Lots Nos. 1236 and 1237 surveyed (Exh. '12') occupied said lots claiming to have purchased the same from the heirs of Felix Malonis by virtue of an Absolute Deed of Sale dated March 6, 1949 (Exh. '8'). That in order to eject plaintiffs from Lot No. 1236, defendant Gregorio Bolo threatened and harassed plaintiffs by filing Criminal Case No. 257 before the Justice of the Peace Court of Bindoy, Negros Oriental for the crime of "Qualified Theft" against Eleuterio Amarante and Celso Amarante, who are among the plaintiffs in this case (Exh. 'C') which was dismissed on the ground that question of ownership was involved (Exh. 'C-1') and Criminal Case No. 336 before the Justice of the Peace Court of Payabon (now Bindoy), Negros Oriental for the crime of "Light Threats" (Exh. 'D') which case was likewise dismissed on the ground that the prosecution failed to prove the guilt of accused beyond reasonable doubt (Exh. 'D-1'). That unable to eject plaintiffs from the land in question with the filing of the aforementioned cases, defendant- Gregorio Bolo threatened to kill plaintiff Celso Amarante and by virtue of said threat, Celso Amarante's aunts and cousins vacated and left the land in question with Celso Amarante the last to vacate and went to reside at Pagsalayan upon advise of his children and wife for he (Celso Amarante)

might be killed or be a killer (TSN, April 3, 1974, p. 13).

It having been established that the land in question, Lot No. 1236 had been in possession and cultivation long before the Second World War, first by late Malonis Infiel and after his death by his children and grandchildren who are the plaintiffs in this case, the Absolute Deed of Sale (Exh. 'H'-plaintiff and Exh. '8'-defendant) executed and signed by the heirs of Felix Malonis which included the land in question owned and cultivated by plaintiffs would be null and void in so far as the lot in question is concerned. Defendant Gregorio Bolo, relied much on Tax Dec. No. 123 in the name of the Heirs of Felix Malonis (Exh. 11') which was issued on August 7, 1948 much earlier than Tax Dec. No. 6051 in the name of Heirs of Malonis Infiel (Exh. 'A') which was issued on September 12, 1953, covering the parcel of land in question, but tax declaration and tax receipts are not evidence of ownership (Municipality of Santiago Isabela vs. Court of Appeals, 120 SCRA 734) Tax Dec. No. 123 in the name of Heirs of Felix Malones issued on August 7, 1948 cannot surpass and overcome the evidence of prior possession and cultivation of plaintiffs and their predecessors in interest of the land in question.

That the Absolute Deed of Sale (Exh. '8') which is the basis of defendant Gregorio Bolo's claim of ownership over the land in question, appears to be executed by illiterate non-Christian vendors being Negritos or Aetas and said sale is in the language not understood by the vendors and the same was not approved by the Presidential Assistant for Cultural Minorities (formerly Commission on National Integration) and therefore, pursuant to Section 120 of Commonwealth Act No. 141, the Absolute Deed of Sale, Exhibit '8' is null and void. The evidence on record having established that Lot No. 1236 was originally possessed and owned by Malonis Infiel, the Absolute Deed of Sale, Exhibit '8' executed by the Heirs of Felix Malonis, if the same is at all valid, would only convey end transfer one-sixth (1/6) of Lot No. 1236, Felix Malonis, being one of the six (6) children of Malonis Infiel.”[7]

1. The first issue we need to consider is a preliminary one, relating to the nature of the underlying action in the Petition at bar. The complaint refiled by the petitioners with the then Court of First instance of Negros Oriental, was captioned “Civil Case No. 4100: For Recovery of Real Property”. This designation given by petitioners to their own pleadings does not, however, obligate us to treat it as no more than an action for recovery of possession of real property. It is a principle consistently adhered to in this jurisdiction that is not the caption but the facts alleged in the complaint or other pleading which give meaning to the pleading and on the basis of which such pleading may be legally characterized.[8] In the law on pleadings, courts are frequently called upon to pierce veiling forms and to go direct to the substance of things. Courts are not, therefore to be bound by falsa descriptio or defective caption given to a pleading for such is not controlling. Courts are rather to be guided by the substantive averments of the pleadings. On this basis, we believe and so hold that the action filed by the petitioners was one not merely for recovery of possession of real property but rather one also for quieting of title.⁸ It will be seen that Article 476 of the Civil Code which provides as follows:

"Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein." (Underscoring supplied)

is precisely applicable to the case at bar.

2. We should consider next the character or the rights held by petitioners in respect of Lot 1236. The testimony of Celso Amarante showed that in 1974, the coconut trees planted by petitioners and their predecessors-in-interest were already approximately seventy (70) years of age. The mango trees had trunks with circumferences of about

three (3) arm lengths; indicating once more that those trees were very old.⁹ Thus, it was clearly shown that Malonis Infiel had begun occupying Lot No. 1236 a very long time ago. When the possession of Malonis Infiel of the land is tacked on to that of petitioners, there is no question that possession exceeded thirty (30) years which is the period for extraordinary prescription provided for in Article 1137 of the Civil Code.

More importantly, there is Section 48(b) of Commonwealth Act No. 141, as amended by Republic Act No. 1942, otherwise known as the Public Land Act, which provides as follows:

"Section 48. The following described citizens of the Philippines occupying lands of the public domain or claiming to own any such land or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x x x x x

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of the title except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant, and shall be entitled to a certificate of title under the provisions of this chapter." (Underscoring supplied)

There is no question that petitioners, at the time they had been forcibly driven off the Sitio Campulay parcel of land, had through their possession and that of their predecessors-in-interest complied with the requirements of long continued (at least 30 years), bonafide, open, exclusive and notorious possession and occupation of Lot 1236 which was, of course, originally agricultural land of the public domain. As such, they had become owners of Lot 1236 even before formal confirmation of their title under Section 48 (b) of the Public Land Act. In *Director of Lands v. Intermediate Appellate Court et al.*,¹⁰ the Supreme Court, in overruling the earlier case of *Manila Electric Company v. Castro Bartolome, et al.*,¹¹ said:

"Nothing can more clearly demonstrate the logical inevitability of considering possession of public land which is of the character and duration prescribed by statute as the equivalent of an express grant from the State than the dictum of the statute itself that the possessor(s) 'x x x shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title x x x.' No proof being admissible to overcome a conclusive presumption, confirmation proceedings would, in truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would not confer title, but simply recognize a title already vested. The proceedings would not originally convert the land from public to private land, but only confirm such a conversion already effected by operation of law from the moment the required period of possession became complete. As was so well put in *Cariño*, 'x x x (T)here are indications that registration was expected from all, but none sufficient to show that, for want of it, ownership actually gained would be lost. The effect of the proof, wherever made, was not to confer title, but simply to establish it, as already conferred by the decree, if not by earlier law.

x x x x x x x x

The Court, in the light of the foregoing, is of the view, and so holds, that the majority ruling in *Meralco* must be reconsidered and no longer deemed to be binding precedent. The correct rule, as enunciated in the line of cases already referred to, is that alienable public land held by a possessor, personally or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period (30 years under The Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period, ipso jure."¹²

3. We turn to the Absolute Deed of Sale dated 6 April 1949 under which the respondent heirs of Felix Malonis purported to sell to Gregorio Bolo a total of 53.19 hectares for a stated consideration of P1,148.00. The subject matter of the Absolute Deed of Sale was described in the following terms:

“x x x x x x x x

That one Felix Malonis, during his lifetime was in open, continuous, public possession in the concept of an owner for more than sixty years, of a parcel of land situated in Sitios Awang and Campolay, Manjuyod, Neg. Or., which parcel of land is particularly bounded and described as follows:

North -

Onoy Infiel Monte Pamansilang y Tagaytay Campabudlot ----

1,000.00 m.

East -

Sergio Solingca, Gregorio Bolo, and Placido Andres -----

580.00 m.

South -

Rio Anuled -----

600.00 m.

West -

Sapa sa Balantao -----

640.00 m.

containing an area of fifty-three hectares and nineteen ares (53:19.00), under Tax Declaration No. 123 and assessed for P2,540.00; with improvements consisting of 200 ponos de cocos de 2-a; 50 ponos de cocos para 1954; 4 ponos de mangas; and 6 grupos canas espinas. This parcel of land has visible monuments consisting of marked stones in every corner, and presently in the possession of the Vendee.

x x x x x x x x”¹³

We note that the Absolute Deed of Sale referred to Tax Declaration No. 123. In this connection, we need to refer to the Survey Plan that respondent Gregorio Bolo had caused to be prepared. This Survey Plan¹⁴ shows: Lot 1236 -- with an area of 314,161 square meters: and Lot 1237 -- with an area of 211,206 square meters (total: 525,367 square meters or 52.5367 hectares). It is worth noting that the total area of Lots 1236 and 1237, as set out in Gregorio Bolo's Survey Plan, varies from the area of land stated to be sold under the Absolute Deed of Sale.

More importantly, however, the Court must clarify that what we have heretofore referred to as Lot 1236 must not be taken to refer to Lot 1236 set out in Gregorio Bolo's Survey Plan. What we have referred to in this decision as Lot 1236 is really the tract of land located in Sitio Campulay which had been occupied and cultivated by Malonis Infiel and his successors-in-interest, petitioners in the instant case. This tract of land in Campulay, approximately twenty (20) hectares in area, is covered by Tax Declaration No. 6051 standing in the name of petitioners, heirs of Malonis Infiel, and obtained by them on 12 September 1953. In this and in our earlier Decision dated 26 October 1987, we have used the term "Lot No. 1236" as simply a shorthand way of referring to the parcel of land in Sitio Campulay, Barrio Atotes, Bindoy, Negros Oriental.

In the same way, what we have in this decision and earlier referred to as Lot No. 1237 is really the parcel of land located in Sitio Awang, Barrio Atotes, Bindoy, Negros Oriental, which had also been occupied and cultivated by Malonis Infiel.

We must then note that Lot No. 1236 in Gregorio Bolo's Survey Plan purports to be much larger than the 20-hectare Campulay parcel of land occupied and cultivated by Malonis Infiel. In other words, the Campulay tract of land of Malonis Infiel had been overlain and absorbed by Lot No. 1236 of Gregorio Bolo's Survey Plan. Similarly, the tract of land in Sitio Awang occupied and cultivated by Malonis Infiel was overlain and absorbed by Lot No. 1237 of Gregorio Bolo's Survey Plan, which Lot 1237 was much larger than the 5-hectare tract of land Malonis Infiel had occupied and cultivated in Sitio Awang. Thus, the land covered by Gregorio Bolo's Survey Plan presumably resting upon the Absolute Deed of Sale of 6 April 1949 purported to be more than twice the combined area of the original Campulay and Awang tracts of land occupied and cultivated by Malonis Infiel and his successors-in-interest.

As discussed earlier, the heirs of Felix Malonis had no rights at all in respect of the Campulay parcel of land of Malonis Infiel. No credible explanation was offered as to why they had declared under their own name in Tax Declaration No. 123 not only the original Sitio Awang tract of land of Malonis Infiel (concededly inherited by Felix Malonis from Malonis Infiel) but also the Sitio Campulay parcel of land of Malonis Infiel, as well as the surrounding lands obviously owned or claimed by other persons. In other words, Tax Declaration No. 123 and Gregorio Bolo's Survey Plan showed that in some unknown and unexplained way, Gregorio Bolo's claims had expanded more than ten-fold from the original 5-hectare Sitio Awang parcel of land allocated to Felix Malonis to a grand total of 53.19 hectares (under the Absolute Deed of Sale) or 52.5367 hectares (under Gregorio Bolo's Survey Plan).

It must be stressed that because, as already pointed out petitioners had become owners of the Campulay tract of land originally occupied and cultivated by Malonis Infiel, through long continued, exclusive, open and notorious possession of said tract of land, the supposed vendors under the Absolute Deed of Sale, the respondent heirs of Felix Malonis, had no rights at all in respect of the Sitio Campulay tract of land which they could have conveyed to respondent Gregorio Bolo. The respondent heirs of Felix Malonis have pretended that their predecessor-in-interest Felix Malonis, was also owner of the Sitio Campulay tract of land. This pretense is bereft of support in the evidence of record.

We must then go back to the basic point made in our earlier Decision in this case on 26 October 1987. There we pointed to the provisions of Section 120 of the Public Land Act, Commonwealth Act. No. 141 as amended by Republic Act No. 3872:

"Section 120. Conveyance and encumbrance made by persons belonging to the so-called "non-Christian Filipinos" or national cultural minorities, when proper, shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument or conveyance or encumbrances is written. Conveyances or encumbrances made by illiterate non-Christians or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by the said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration [now, the Presidential Assistant for Cultural Minorities]."15 (Underscoring supplied.)

There is nothing in the record to show that respondent heirs of Felix Malonis who are, like Felix himself and his father Malonis Infiel, native "non-Christian" Aetas and who appear to have executed the Deed of Sale were literate or schooled individuals able to read and understand the English language in which the Absolute Deed of Sale was written. Indeed, the Absolute Deed of Sale itself stated that the respondent heirs of Felix Malonis did not know how to read and write:

"IN WITNESS WHEREOF, we have hereunto caused to affix our right thumb-marks for not knowing how to read and write, after the (sic) this instrument was read and translated to us in the Visayan dialect known to us this 6th day of April 1949 in the Municipality of Manjuyod, Neg. Or., Philippines." (Underscoring supplied.)

Accordingly, the respondent heirs, instead of signing the Absolute Deed of Sale to show their confirmity thereto, had merely affixed their thumbmarks: the Deed is in fact note-worthy in that not a single signature by any of the sixteen (16) supposed vendors appeared. It is not pretended that Deed was approved by competent authority under Section 120 of the Public Land Act.

What is the legal consequence of failure to obtain the approval of the then Commissioner of Mindanao and Sulu for the Absolute Deed of Sale here involved? We believe and so hold that the failure to obtain that approval had the effect of rendering the Absolute Deed of Sale here involved as null and void ab initio.¹⁶ We believe that this conclusion is compelled not only by the express words of Section 120 of the Public Land Act as amended but also by a consideration of the fundamental public policy which Section 120 seeks to realize: and that is, the protection of members of the "non-Christian" cultural minorities in our country such as the respondent heirs of Felix Malonis and the petitioners, heirs of Malonis Infiel, themselves from their own illiteracy or lack of schooling and from those who would manipulate and exploit them. Thus, the Absolute Deed of Sale under cover of which respondent Gregorio Bolo wound up in possession of all the land originally occupied and cultivated by Malonis Infiel in Sitios Campulay and Awang, as well as a great deal of other land in the vicinity thereof, was not merely a voidable contract; it was, rather, an absolutely void or legally inexistent instrument. It conferred no rights whatsoever upon respondent Gregorio Bolo who, it might be noted, was careful not to sign that Deed. It certainly was ineffective to affect in anyway or transmit the rights of petitioners to the Campulay tract of land originally possessed and occupied by Malonis Infiel.

4. Turning to the conflicting tax declarations of petitioners and private respondent heirs of Felix Malonis, it was earlier noted that both the court of origin and the respondent appellate court concluded that the petitioners' tax declaration was a mere "concoction" devised only "to offset the effects of respondents' tax declaration". Tax Declaration No. 123 in the name of "Herederos de Felix Malonis" was obtained by private respondents on 7 August 1948. Upon the other hand, Tax Declaration No. 6051 in the name of the heirs of Malonis Infiel, was obtained by petitioners on 12 September 1953. While Tax Declaration No. 6051 was obviously later in point of time than Tax Declaration No. 123, this circumstance alone does not support the conclusion reached by the two (2) courts below. Civil Case No. 2967 was commenced on 20 August 1954 almost a year after issuance of Tax Declaration No. 6051. Thus, we cannot simply assume, as apparently the two (2) courts below did, that Tax Declaration No. 6051 was secured solely for the purpose of filing Civil Case No. 2967. We agree with the conclusion of Judge Tabilon on this point.

It seems useful to stress that being in actual and long continued possession of the parcel of land in Sitio Campulay, petitioners were fully entitled to declare such parcel of land in their own name. This right was not any way restricted, and much less was it foreclosed, by the earlier tax declaration obtained by private respondent heirs of Felix Malonis, doubtless with the assistance and probably the urging of Gregorio Bolo. At most, Tax Declaration No. 123 indicated that the respondent heirs of Felix Malonis were claiming title to or rights in the Sitio Campulay tract of land originally possessed and cultivated by Malonis Infiel.¹⁷ Such a claim, however, was not supported nor accompanied by possession of the Sitio Campulay parcel of land. As is well-known, it is only where payment of taxes is accompanied by actual possession of the land covered by the tax declaration, that such circumstance may be material in supporting a claim of ownership.¹⁸ In the case at bar, as more than once pointed out, private respondents were never in possession of the Sitio Campulay parcel until private respondent Gregorio Bolo, acting pursuant to a void and legally inexistent Absolute Deed of Sale and by threats and intimidation, drove petitioners out of the Sitio Campulay tract of land and took physical possession thereof.

5. We turn to the question of whether or not the respondent heirs of Felix Malonis are entitled to a one-sixth (1/6) portion of the Sitio Campulay tract of land. We earlier noted that petitioners did not question the right of the respondent heirs of Felix Malonis to the 5-hectare piece of property situated in Sitio Awang which had been inherited solely by Felix Malonis from the parties common ancestor -- Malonis Infiel. The respondent heirs of Felix Malonis, upon the other hand, did not claim one-sixth (1/6) portion of the Campulay tract of land. What they claimed was the whole of the Campulay tract of land and a great deal of surrounding land as well. It was thus incumbent upon the respondent heirs of Felix Malonis to show a lawful basis for Felix Malonis or his heirs to participate in the ownership of the Sitio Campulay tract of land. It will be recalled that the Sitio Campulay parcel of land had an area of 20 hectares such that the five (5) children of Malonis Infiel with Elena Infiel were entitled to a pro indiviso share of four (4) hectares each. Felix Malonis, upon the other hand, was assigned a 5-hectare piece of land in Sitio Awang. There is no showing whether prima facie or otherwise why Felix Malonis or his heirs should have any claim to participate as well in the ownership of the Sitio Campulay parcel of land. Thus, the trial court in its findings of fact transmitted to this Court in the Report dated 7 April 1989 of Judge Tabilon, found that petitioners alone were entitled to the Sitio Campulay parcel of land while Felix Malonis and his heirs were exclusively entitled to the Sitio Awang tract of land. We see no reason for overturning such conclusion.

6. We consider finally the petitioners' claim for damages. In their amended complaint refiled on 10 December 1962 before the then Court of First Instance of Negros Oriental, petitioners alleged, among other things, that the Sitio Campulay parcel of land yielded a total annual income stream of P2,800.00:

"10. The 300 fruit-bearing coconut trees yield 16,000 nuts a year valued at P800.00; the 19 fruit-bearing mango trees yield 9,500 fruits a year valued at P950.00; the 15 hectare corn land produce 150 cavans of grains a year valued at P1,050.00 for a total annual income of P2,800.00 which respondent Bolo appropriated to himself to the prejudice of petitioners."

Petitioner Filomena Amarante, daughter of Celso Amarante, testified that when they were still occupying the Sitio Campulay tract of land, they used to harvest 16,000 coconuts a year which, computed on the basis of P0.10 per nut, possibly the value thereof when she testified in 1975, would come up to P1,600.00. The 19 mango trees were, according to Filomena, yielding annually 3,800 fruits with a total value of P380.00. Clearly, the evidence relating to the damages actually suffered by petitioners consisting of income from the Sitio Campulay land which starting from 1954 had been appropriated by respondent Gregorio Bolo to his own uses, is less than satisfactory. We note, firstly, that the reference is to annual income from the land but no clarification was made as to whether such figure referred to gross income or whether it referred to income already net of expenses. We note, secondly, that the record is bare of testimony relating to the change in value of the produce on the Campulay parcel of land from the time the amended complaint was filed in 1962 and onwards. The Court must, however, take judicial notice of the fact that nominal peso value of such commodities as coconuts, mangoes and cereal grains (rice or corn) have substantially increased over the last thirty-five (35) years. Notwithstanding the less than satisfactory condition of the record insofar as the amount of actual or compensatory damages is concerned, in order that the Court may write finis to this case which began thirty-five (35) years ago, the Court in the exercise of its discretion believes that it would be reasonable to balance out the two (2) above factors and accordingly to award the amount of damages claimed (P2,800.00 per year) multiplied by thirty-five (35) years or a total of P98,000.00. The Court also believes that because private respondent Gregorio Bolo drove the petitioners by threats and intimidation and the use of void and inexistent documents from the possession which they and their forbears had previously enjoyed of the Sitio Campulay tract of land, attorney's fees are properly assessed from private respondent Gregorio Bolo in the amount of P20,000.00.¹⁹

WHEREFORE, the Petition for Review is hereby GRANTED due course and

1. The Decision dated 17 September 1984 of the Regional Trial Court, Branch 42, Dumaguete City in Civil Case No. 4100 and the Decision dated 3 April 1986 in C.A. - G.R. CV No. 05697 and its Resolution dated 17 September 1986, are hereby SET ASIDE and NULLIFIED.
2. The Absolute Deed of Sale dated 6 April 1949 purportedly executed by the heirs of Felix Malonis in favor of respondent Gregorio Bolo, is hereby DECLARED null and void ab initio.
3. Petitioners are hereby DECLARED entitled to the ownership of the Sitio Campulay parcel of land originally possessed and cultivated by Malonis Infiel, having an area of approximately twenty (20) hectares end covered by Tax Declaration No. 6051. Private respondents and all persons claiming under either Gregorio Bolo or any one or more of the heirs of Felix Malonis, are hereby ORDERED to vacate this tract of land immediately and to turnover the possession of such land together with all improvements thereon to petitioners.
4. Private respondent Gregorio Bolo shall pay to petitioners the amount of P98,000.00 by way of actual or compensatory damages, plus attorney's fees in the amount of P20,000.00, both with legal interest thereon from the date of finality of this decision until actual payment thereof.
5. Let a copy of this Decision be furnished to the Director of Lands and to the Presidential Assistant for Cultural Minorities, Office of the President of the Philippines, for their information and such action as may be appropriate in the premises including, among other things, the survey of the Sitio Campulay tract of land here involved by a duly licensed Geodetic Engineer or Land Surveyor to the end that such tract of land may be identified by metes and bounds.

This Decision is immediately executory. Triple costs against private respondent Gregorio Bolo.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Celso Amarante, et al. v. Court of Appeals, 155 SCRA at 47-50 (1987); Rollo, pp. 60-64.

[2] 155 SCRA at 58-60; Rollo, pp. 75-77.

[3] TSN, 2 December 1988, pp. 5-9.

[4] Id., pp. 24-25.

[5] Id., pp. 38-39.

[6] See Report by Judge Jesus L. Tabilon, dated 18 January 1989; Rollo, pp. 107-108.

[7] Rollo, pp. 109-112.

[8] E.g., Ras v. Sua, 134 Phil. 131 (1968); Cajefe v. Fernandez, 109 Phil. 743 (1960).

8 See, in this connection. Sapto, et al. v. Fabiana. 103 Phil. 683 (1958).

9 TSN, 3 April 1974, pp. 13-15.

10 146 SCRA 509 (1986).

11 114 SCRA 799 (1982).

12 146 SCRA at 520, 522; underscoring supplied.

13 Records, p. 317.

14 Records, p. 323.

15 The statute had originally specified the Commissioner of Mindanao and Sulu as the official authorized to approve such instruments. On 18 June 1964, Republic Act No. 3872 changed the authorized officer to the Chairman of the Commission on National Integration.

16 Mangayao, et al. v. Lasud, et al. 120 Phil. 154 (1964), per Reyes, J.B.L.

17 Director of Lands v. Reyes, 68 SCRA 177 (1975).

18 Viernes v. Agapaoa, 41 Phil. 286 (1920).

19 Article 2208, paragraphs (2), (5) and (11), Civil Code.

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