



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**THIRD DIVISION**

**ROLANDO GALINDEZ, DANIEL  
 LIBERATO and all persons claiming  
 rights under them,**

Petitioners,

- versus -

**FELOMINA TORRES SALAMANCA-  
 GUZMAN, HEIRS OF FLORA  
 MEDRIANO VILLASISTA herein  
 represented by their Attorney-in-Fact  
 HERMINIO "HERMAN" MEDRIANO,  
 ERLINDA M. CARIÑO, VITO M.  
 ROLDAN, AND ALEJANDRO  
 COLLADO,**

Respondents.

**G.R. No. 231508**

Present:

**CAGUIOA, J.,**  
*Chairperson,*  
**INTING,**  
**GAERLAN,**  
**DIMAAMPAO, and**  
**SINGH, JJ.**

Promulgated:  
**September 28, 2022**  
*MistOC Batt*

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**DECISION**

**GAERLAN, J.:**

Before the Court is a petition for review on *certiorari*<sup>1</sup> filed by petitioners assailing the Decision<sup>2</sup> dated November 29, 2016 of the Court of Appeals (CA), as well as its Resolution<sup>3</sup> dated March 31, 2017 in CA-G.R. SP No. 144897, reversing the Joint Decision<sup>4</sup> dated May 11, 2015 of the Regional Trial Court (RTC), Branch 38, San Jose City in Civil Case Nos. 2014-512-SJC to 2014-516-SJC. The RTC affirmed *in toto* the Joint Decision<sup>5</sup> dated November 7, 2014 of the Municipal Trial Court in Cities (MTCC), Branch 1, San Jose City in Civil Case Nos. (14) 3991 to (14) 3995, dismissing the Complaints for Forcible Entry.

<sup>1</sup> *Rollo* (Vol. I), pp. 10-38.

<sup>2</sup> *Id.* at 634-658. Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Melchor Q.C. Sadang concurring.

<sup>3</sup> *Id.* at 678-680.

<sup>4</sup> *Id.* at 611-620. Penned by Acting Presiding Judge Maximo B. Ancheta, Jr.

<sup>5</sup> *Id.* at 599-610. Penned by Presiding Judge Analie C. Aldea-Arocena.

*J*

### The Antecedents

This case originated from several Complaints for Forcible Entry with Prayer for Temporary Restraining Order and Injunction<sup>6</sup> filed by respondents Felomina Salamanca-Guzman (Guzman), Alejandro Collado (Collado), Vito M. Roldan (Roldan), Erlinda M. Cariño (Cariño), and the Heirs of Flora Medriano Villasista (Heirs of Flora), represented by Herminio Medriano (Medriano) (collectively, respondents), before the MTCC, and docketed as Civil Case Nos. (14) 3991 to (14) 3995.

The five complaints for Forcible Entry contained essentially the same material allegations, to wit: (1) each of the respondents owns and possesses a parcel of land located in Barangay (Brgy.) Palestina, San Jose City, viz.: the lot of the Heirs of Flora is covered by Transfer Certificate of Title (TCT) No. 14996, Guzman's lot by TCT No. (NT-32358) 4526, Collado's lot by TCT No. 12595, Roldan's lot by TCT No. (NT-32358) 4526, and Cariño's lot by TCT No. 12615; (2) each of respondents' lots formed accretion by the passage of time as shown in the Sketch Plan (Exhibit "G");<sup>7</sup> (3) in November 2013, petitioners, by means of force, strategy or stealth, entered the lots, including the accretion, by building a fence on portions thereof, and planted them with onions; (4) hence, respondents went to the Office of the *Punong Barangay* of Brgy. Palestina, San Jose City, where they filed a complaint with the *Tanggapan ng Lupong Tagapamayapa (Lupon)*; and (5) since the parties failed to reach an amicable settlement, said *Lupon* issued to respondents Certifications to File Action. In their respective complaints, respondents prayed that petitioners and all persons claiming rights under them be ordered to vacate and surrender the subject lots.<sup>8</sup>

Petitioners filed their respective Answers with Counterclaim<sup>9</sup> all dated July 21, 2014 to the five complaints, commonly alleging thus: (1) the property being claimed as an accretion by respondents were already there when the late Liberato Locquiao (Locquiao) acquired a parcel of land identified as Lot 2638-B of Subd. Plan (LRC) PSD-10460 covered by TCT No. (NT-78186)-5252-A (Locquiao's property), which is beside the lot covered by TCT No. (NT-32358); (2) when Locquiao acquired Lot 2638-B he requested Vitaliano Ganado (Ganado) to administer it; (3) while cleaning Locquiao's property, Ganado noticed at the end thereof another parcel of land covered with thick bushes to the direction going to the river; (4) Ganado likewise cleaned said parcel of land, as well as the portion at the edge of Simon Torres' (Torres) property, and made them productive by planting therein vegetables such as

<sup>6</sup> Id. at 39-62.

<sup>7</sup> CA rollo (Vol. I), pp. 67-68.

<sup>8</sup> Rollo (Vol. I), pp. 12-16.

<sup>9</sup> CA rollo (Vol. I), pp. 201-252.

possession of said lot at the end of the properties of Locquiao and Torres; (6) sometime in 1975, Ganado enlisted the help of Rolando Galindez (Galindez) in cultivating said land at the end of the properties of Locquiao and Torres; (7) sometime in 1990, Ganado enlisted the help of Daniel Liberato (Liberato) to assist Galindez; (8) said lot at the end of Locquiao's and Torres' properties, which has been in possession of Ganado, is the same lot claimed by respondents as accretion (contested property); (9) the contested property was not formed by accretion and does not belong to respondents, since it is owned by Ganado; (10) respondents have never been in possession of the contested property since Ganado has been in possession thereof since 1967;<sup>10</sup> and (11) petitioners prayed for the dismissal of the complaints, as well as payment of moral and exemplary damages, attorney's fees, and litigation expenses.<sup>11</sup>

Attempts at mediation failed. Hence, the parties submitted their respective position papers,<sup>12</sup> evidence, and judicial affidavits of their witnesses.

Respondents, as complainants in the case below, submitted judicial affidavits of the following witnesses: Medriano,<sup>13</sup> Guzman,<sup>14</sup> Collado,<sup>15</sup> Roldan,<sup>16</sup> Cariño,<sup>17</sup> Diosdado Soriano (Diosdado),<sup>18</sup> Victoria Dupitas (Dupitas),<sup>19</sup> Barangay Captain Rodrigo Mamaed (Brgy. Captain Mamaed),<sup>20</sup> Peter V. Santos (Peter),<sup>21</sup> Engr. Bienvenido Magtuto (Engr. Magtuto),<sup>22</sup> and incumbent Barangay Agrarian Reform Council (BARC) Chairperson Anastacio Santos (Anastacio).<sup>23</sup> Diosdado also executed a supplemental judicial affidavit.<sup>24</sup>

Petitioners, on the other hand, submitted the judicial affidavits of their witnesses, namely: former BARC Chairperson Vicente Tangonan (Tangonan),<sup>25</sup> incumbent BARC Chairperson Anastacio,<sup>26</sup> Ganado,<sup>27</sup> Galindez,<sup>28</sup> and Liberato.<sup>29</sup>

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<sup>10</sup> Id. at 202-203.

<sup>11</sup> Id. at 205.

<sup>12</sup> *Rollo* (Vol. I), pp. 74-88 and 89-111.

<sup>13</sup> Id. at 143-149.

<sup>14</sup> Id. at 150-155.

<sup>15</sup> Id. at 156-160.

<sup>16</sup> Id. at 161-166.

<sup>17</sup> Id. at 167-172.

<sup>18</sup> Id. at 173-177.

<sup>19</sup> Id. at 178-181.

<sup>20</sup> Id. at 182-185.

<sup>21</sup> Id. at 186-190.

<sup>22</sup> Id. at 191-193.

<sup>23</sup> *CA rollo* (Vol. I), pp. 104-107.

<sup>24</sup> *Rollo* (Vol. I), pp. 194-197.

<sup>25</sup> Id. at 112-116.

<sup>26</sup> Id. at 117-121.

<sup>27</sup> Id. at 122-126.

<sup>28</sup> Id. at 127-133.

<sup>29</sup> Id. at 134-138.

### The Decision of the MTCC

The MTCC rendered a Joint Decision<sup>30</sup> dated November 7, 2014, dismissing the cases for lack of cause of action. According to the MTCC, other than respondents' own allegations and that of their witnesses, there was no other evidence of prior physical possession on their part. Respondents' lack of prior physical possession was shown by their failure to allege in their complaints and in the testimonies of their witnesses their respective areas in the land they called an accretion. None of the respondents or their witnesses stated with certainty how large was their possession of said accretion. They could not even pinpoint the location of their respective accretion.<sup>31</sup>

As regards the portions of their respective properties that they also claim were encroached by petitioners, respondents likewise could not state the areas supposedly encroached upon. The MTCC reiterated the settled rule that for evidence to be believed it must not only come from the mouth of a credible witness, but must also be credible in itself.<sup>32</sup>

The MTCC, instead, gave weight to the testimonies of the two BARC Chairpersons, Tangonan and Anastacio, who stated that Ganado had been in prior physical possession of the contested property.<sup>33</sup>

Moreover, the MTCC declared that since respondents' claim of possession of the accretion, *i.e.*, the contested property, was anchored on their absolute ownership of their respective lots, and more than one year had passed from the time that possession of the contested property was allegedly taken from petitioners, the appropriate remedy is *accion publiciana*.<sup>34</sup>

Thus, the respondents filed a Notice of Appeal<sup>35</sup> on November 27, 2014.

Thereafter, on November 28, 2014, a second set of Judicial Affidavits<sup>36</sup> both dated November 28, 2014 by BARC Chairpersons Tangonan and Anastacio were filed with the MTCC to form part of its records.

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<sup>30</sup> Id. at 599-610.

<sup>31</sup> Id. at 607.

<sup>32</sup> Id.

<sup>33</sup> Id. at 609.

<sup>34</sup> Id.

<sup>35</sup> CA *rollo* (Vol. I), pp. 512-513.

<sup>36</sup> Id. at 599-601, 602-604.

### The Decision of the RTC

In their appeal Memorandum,<sup>37</sup> respondents submitted the Supplemental Judicial Affidavit<sup>38</sup> dated January 16, 2015 of Engr. Magtuto, and his undated Certification.<sup>39</sup> In said documents, Engr. Magtuto identified the specific areas purportedly owned by each of the respondents on the contested property.

Nonetheless, in its Joint Decision<sup>40</sup> dated May 11, 2015, the RTC affirmed *in toto* the MTCC's ruling. The RTC declared that the testimonies of the respondents and their witnesses are unworthy of belief and credence since these are biased. Respondents stand to benefit or be prejudiced by the success or failure of these cases. Conversely, the statements of petitioners' witnesses, Tangonan and Anastacio, who were 77 and 69 years old, respectively, at that time, should be given more weight than those of respondents'. Tangonan and Anastacio have no relationship with petitioners or their cause, and do not have a personal stake or interest in the outcome of these cases. Moreover, Tangonan and Anastacio would not dare risk themselves to criminal charges of perjury on behalf of petitioners.<sup>41</sup>

The RTC further declared that considering the manner in which they acquired ownership over their respective properties, respondents may not have been aware that petitioners were already occupying the alleged accretions before the respondents became the registered owners of their respective parcels of land. Although it is undisputed that respondents are in peaceful occupation of the parcels of land covered by their respective TCTs, there was no evidence showing that they were in prior possession of the alleged accretions thereof.<sup>42</sup>

On the other hand, petitioners were able to show that they were in actual physical possession of the contested property when they were constituted as farm helpers in 1975 and 1990 by Ganado, who was likewise in actual and physical possession of a land adjacent to the river since 1967. It was undisputed by the respondents that the land occupied by Ganado was adjacent to the river. This gave substance to petitioners' claim that the alleged accretions were portions of the land administered by Ganado.<sup>43</sup>

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<sup>37</sup> Id. at 514-543.

<sup>38</sup> Id. at 595-597.

<sup>39</sup> Id. at 598.

<sup>40</sup> *Rollo* (Vol. I), pp. 611-620.

<sup>41</sup> Id. at 617-618.

<sup>42</sup> Id. at 618.

<sup>43</sup> Id.

Moreover, the RTC ruled that respondents' witness, Brgy. Captain Mamaed, was a biased witness. The "*Patunay*"<sup>44</sup> dated June 24, 2014 which he signed contained mere conclusions of fact and law. The RTC found that it would have been improbable that respondents would tolerate such an unlawful occupation of their land in their presence or within their knowledge. A 9,535-sq.m. parcel of land cannot just be occupied and fenced in by petitioners in a matter of one day. Surely, this kind of unlawful occupation cannot escape the scrutiny of the public without being noticed or tolerated by respondents.<sup>45</sup>

The RTC concluded that since respondents failed to substantiate with preponderance of evidence their prior physical possession of the contested property, they cannot claim that they have been ousted therefrom or dispossessed thereof by petitioners by means of force, intimidation, threat, strategy or stealth.<sup>46</sup>

The RTC likewise denied respondents' motion for reconsideration<sup>47</sup> in its Joint Resolution<sup>48</sup> dated October 18, 2015. Hence, respondents filed a petition for review with the CA.<sup>49</sup>

### The Ruling of the CA

In its assailed Decision<sup>50</sup> dated November 29, 2016, the CA reversed the RTC's Joint Decision and ordered petitioners to vacate the contested property, to wit:

**WHEREFORE**, premises considered, the Joint Decision dated 11 May 2015 and Joint Resolution dated 18 October 2015 of the Regional Trial Court, Third Judicial Region, Branch 38, San Jose City in *Civil Cases Nos. 2014-512-SJC to 2014-516-SJC*, which affirmed the Joint Decision dated 07 November 2014 of the Municipal Trial Court in Cities, Branch 1, San Jose City in *Civil Cases Nos. (14) 3991 to (14) 3995*, are **REVERSED** and **SET ASIDE**. Respondents are ordered to vacate and surrender the subject premises to the petitioners. No pronouncement as to costs.

**SO ORDERED.**<sup>51</sup>

According to the CA, the RTC committed errors of fact which warrant the reversal of its Joint Decision and Joint Resolution. Contrary to the findings

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<sup>44</sup> CA rollo (Vol. I), p. 71.

<sup>45</sup> Rollo, (Vol. I), p. 619.

<sup>46</sup> Id. at 620.

<sup>47</sup> CA rollo (Vol. I), pp. 621-631.

<sup>48</sup> Id. at 39.

<sup>49</sup> Id. at 3-25.

<sup>50</sup> Rollo (Vol. I), pp. 634-658.

<sup>51</sup> Id. at 654.

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of the lower courts, the CA held that respondents were able to prove, by preponderance of evidence, their cause of action against petitioners.<sup>52</sup>

The CA found that respondents' prior physical possession of their respective lots and the accretion thereof was established by: (a) their testimonies and that of their witnesses, *i.e.*, Brgy. Captain Mamaed, Dupitas (a resident of Brgy. Palestina), and Diosdado (farmer in Roldan, Cariño and Guzman's properties); (b) the undated Certification issued by Engr. Magtuto, as supported by the Sketch Plan dated June 30, 2014 likewise prepared by him; (c) blotter entry dated November 6, 2013; and (d) *Patunay* dated June 23, 2014 and *Patunay* dated June 24, 2014, both issued by Brgy. Captain Mamaed.<sup>53</sup>

The CA declared that the certifications or *Patunays* of the *Tanggapan ng Punong Barangay*, through Brgy. Captain Mamaed, were issued in the regular performance of his official duties. Hence, in the absence of proof adduced to rebut the presumption of regularity in the performance of official duty, said certifications deserve credence over petitioners' naked assertion of possession of the contested property.<sup>54</sup>

As regards the testimonies of BARC Chairpersons Tangonan and Anastacio, the CA ruled that they cannot be relied upon for containing conflicting statements.<sup>55</sup> In his first Judicial Affidavit dated July 24, 2014, Tangonan stated, in part, that he knows petitioners and Ganado because Ganado's property was situated near his own, and that he has seen petitioners tilling or working on Ganado's property since 1970. Anastacio, on the other hand, stated in his first Judicial Affidavit also dated July 24, 2014 that: (a) Ganado farms several properties, including a parcel of land which he described as situated at the south portion of Locquiao's property, south of Torres' property, south of Pascual's property, and west of a "public land" tilled by Federico Liberato (Federico), *i.e.*, the accretion; and (b) he has personally seen Ganado and petitioners work on Ganado's property.

However, in his second Judicial Affidavit dated November 28, 2014, Tangonan stated, *inter alia*, that the lot farmed by Ganado with the help of petitioners was the lot near that of Locquiao and at the boundary accretion of Ganado and Medriano. Meanwhile, in his second Judicial Affidavit dated November 28, 2014, Anastacio clarified, among others, that the respondents actually farmed the accretion on their respective lots, and that respondents

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<sup>52</sup> Id.

<sup>53</sup> Id. at 646-648.

<sup>54</sup> Id. at 648.

<sup>55</sup> Id. at 653.

were in possession of the accretion on their respective lots until these were seized by petitioners.

In arriving at the above conclusions, the CA considered all the evidence presented by the parties, even those filed after the MTCC rendered its Joint Decision, and those submitted for the first time on appeal to the RTC.

Petitioners filed a motion for reconsideration, which the CA denied in its assailed Resolution<sup>56</sup> dated March 31, 2017.

Thus, the instant petition.

### Issues

Petitioners submit the following issues for resolution:

#### I.

WHETHER OR NOT THE CA'S ASSAILED DECISION AND RESOLUTION IS CONTRARY TO LAW AND JURISPRUDENCE.

#### II.

WHETHER OR NOT THE CA'S ASSAILED DECISION IS SUPPORTED BY THE EVIDENCE SUBMITTED BY THE PARTIES.<sup>57</sup>

### Our Ruling

The petition is granted.

There is no contesting that the first issue is a question of law which is a proper subject of a petition for review on *certiorari* under Rule 45.<sup>58</sup>

As to the second issue, petitioners ask this Court to evaluate whether the CA's assailed Decision is supported by the evidence on record. In other words, to review the CA's findings of fact. Ordinarily, this is beyond the scope of a petition for review on *certiorari* since the Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.<sup>59</sup> However, this rule admits exceptions, such as when the findings of fact are conflicting,

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<sup>56</sup> Id. at 678-680.

<sup>57</sup> Id. at 20.

<sup>58</sup> RULES OF COURT, Rule 45, Section 1.

<sup>59</sup> Id.



and when the findings of the CA are contrary to those of the trial court,<sup>60</sup> as in this case.

Here, both the MTCC and the RTC found that respondents failed to prove that they were in prior physical possession of the contested property. Both courts found preponderant evidence showing that petitioners were in prior physical possession of the contested property. These courts declared that respondents' testimonies, as well as their witnesses, are unreliable. Instead, they gave credence to the testimonies of BARC Chairpersons Tangonan and Anastacio, and disregarded the second Judicial Affidavits they executed.

Conversely, the CA ruled that respondents proved by preponderance of evidence that they had prior physical possession of the contested property. The CA considered the evidence submitted to the MTCC *after* said court already rendered its Joint Decision, *i.e.*, the second Judicial Affidavits of BARC Chairpersons Tangonan and Anastacio, as well as evidence submitted for the first time on appeal, *i.e.*, the Supplemental Judicial Affidavit of Engr. Magtuto and his undated Certification.

Was the CA correct in considering the second Judicial Affidavits executed by BARC Chairpersons Tangonan and Anastacio and the Supplemental Judicial Affidavit of Engr. Magtuto and his undated Certification?

We rule in the negative.

Forcible entry and unlawful detainer cases, otherwise known as ejectment cases, are governed by the Revised Rules on Summary Procedure. The pertinent provisions of said Rules state, thus:

Sec. 8. *Record of preliminary conference.* – Within five (5) days after the termination of the preliminary conference, the court shall issue an order stating the matters taken up therein, including but not limited to:

X X X X

Sec. 9. *Submission of affidavits and position papers.* – Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the affidavits of their witnesses and other evidence on the factual issues defined in the order, together with their position papers setting forth the law and the facts relied upon by them.

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<sup>60</sup> *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990).

Sec. 10. *Rendition of judgment.* – Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last clarificatory affidavits, or the expiration of the period for filing the same.

The court shall not resort to the clarificatory procedure to gain time for the rendition of the judgment.

From the above provisions, the Rules on Summary Procedure are clear that the parties are to submit the affidavits of *all* their respective witnesses and other evidence, together with their position papers, within 10 days after the court issues its order on the preliminary conference. Thereafter, the parties may only submit additional affidavits or evidence upon order of the court, should the court find it necessary to clarify certain material facts. Hence, the parties must ensure that the evidence they submit to the MTCC are sufficient to establish their respective allegations regardless of whatever evidence the opposing party may present. It is settled that parties must rely on the strength of their own evidence, and not upon the weakness of the defense offered by their opponent.<sup>61</sup>

In the case below, the parties filed with the MTCC their respective position papers, together with the affidavits of all their witnesses, as well as their documentary evidence. The MTCC rendered its Joint Decision<sup>62</sup> based thereon.

However, mere days after the MTCC issued its Joint Decision, and a day after the respondents herein filed their Notice of Appeal, the second Judicial Affidavits both dated November 28, 2014 of BARC Chairpersons Tangonan and Anastacio were filed with the MTCC.

The submission of said second Judicial Affidavits was highly irregular if not malicious, and inconsistent with the Rules on Summary Procedure and settled principles of law. Since the MTCC had already rendered its decision, the submission of these second Judicial Affidavits were undeniably not by order of the court to clarify material facts, as provided in the Rules on Summary Procedure. These second Judicial Affidavits were also not

<sup>61</sup> *Gajudo v. Traders Royal Bank*, 519 Phil. 791, 803 (2006), citing *Saguid v. Court of Appeals*, 451 Phil. 825, 837 (2003).

<sup>62</sup> *Rollo* (Vol. I), pp. 599-610.

accompanied by a submission or pleading which would identify which party was offering said affidavits as part of their evidence.

While the record does not bear a clear indication as to which party caused said second Judicial Affidavits to be filed, the fact that respondents herein were quick to highlight these second Judicial Affidavits to support their arguments in their Memorandum with the RTC suggest that they were prepared and submitted at respondents' behest. That these second Judicial Affidavits were hastily filed with the MTCC the day immediately after respondents filed their Notice of Appeal, reveals the malicious intention of making these second Judicial Affidavits form part of the records of the case which were elevated to the RTC on appeal. This mischievous scheme was confirmed when respondents alluded to these second Judicial Affidavits in their Memorandum<sup>63</sup> with the RTC, and cited them by referring only to their assigned page number in the MTCC record, instead of attaching copies thereof to their Memorandum.

Additionally, the last pages<sup>64</sup> of both second Judicial Affidavits bear the handwritten words "Copy furnished: Atty. Manolo Soriano San Jose City 11-28-14." Atty. Manolo Soriano was petitioners' counsel-of-record. If, as it is being made to appear on record, BARC Chairpersons Tangonan and Anastacio voluntarily decided to execute and submit these second Judicial Affidavits, free from any influence or coercion from any party, why was respondents' counsel, Atty. Dick Francisco Fernandez, not likewise furnished copies of said second Judicial Affidavits?

To be sure, this Court has repeatedly ruled that piecemeal presentation of evidence is not in accord with orderly justice.<sup>65</sup> It bears to stress that BARC Chairpersons Tangonan and Anastacio were neutral third parties to the case below, who were accessible to both the petitioners and the respondents. In fact, respondents even submitted a Judicial Affidavit of BARC Chairperson Anastacio, albeit narrating only the events that transpired when the parties faced each other at the barangay. Surely, respondents could have also requested BARC Chairpersons Tangonan and Anastacio to testify on their behalf regarding their alleged physical possession of the contested property, and submitted their testimonies together with their position paper to the MTCC.

In the second Judicial Affidavits<sup>66</sup> of BARC Chairpersons Tangonan and Anastacio, they "clarified" their earlier testimony, and stated that

<sup>63</sup> CA rollo (Vol. I), pp. 539-540.

<sup>64</sup> Id. at 601, 604.

<sup>65</sup> *Cansino v. Court of Appeals*, 456 Phil. 686, 693 (2003).

<sup>66</sup> CA rollo (Vol. I), pp. 599-604.

petitioners only possessed the portion of the contested property directly adjacent to Locquiao's property. They claim that, contrary to their prior testimony, respondents were the ones who possessed and farmed the portions of the contested property which were adjacent to their respective properties. While there was no express recantation, BARC Chairpersons Tangonan and Anastacio's declarations in the second Judicial Affidavits directly contradict and oppose those in their first Judicial Affidavits. Hence, for all intents and purposes, these are retractions of their testimonies in the first Judicial Affidavits.

This Court has viewed recantations with suspicion and reservation. Affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated. Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld.<sup>67</sup>

However, mere retraction by a witness does not necessarily vitiate the original testimony if credible. The rule is settled that in cases where a previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons or motives for the change, discriminatingly analyzed.<sup>68</sup>

In this case, the belated submission of the second Judicial Affidavits deprived the MTCC of the opportunity to scrutinize these second Judicial Affidavits vis-à-vis the first Judicial Affidavits, as well as the affiants thereto, in order to test and determine which testimony was more credible and worthy of belief. Therefore, this Court remains reluctant to give weight and credence to the recantation of BARC Chairpersons Tangonan and Anastacio in their second Judicial Affidavits.

As regards the Supplemental Judicial Affidavit and undated Certification of Engr. Magtuto, respondents only submitted these for the first time on appeal to the RTC. The clear purpose was to address the finding of the MTCC that respondents could not even identify with specificity the

<sup>67</sup> *People v. P/Supt. Lamsen*, 721 Phil. 256, 259 (2013), citing *Regidor, Jr. v. People*, 598 Phil. 714, 737 (2009) and *Balderama v. People*, 566 Phil. 412, 421 (2008).

<sup>68</sup> *People v. P/Supt. Lamsen*, *id.* at 260.

portion of land allegedly usurped by petitioners, or the exact sections of the “accretion” supposedly belonging to each of them.

Engr. Magtuto’s Certification tends to prove ownership, whereas, the only issue in a case for forcible entry is prior physical possession.<sup>69</sup> More importantly, there was no justification for the delay in presenting said evidence. It was only after the MTCC pointed out the insufficiency in their evidence that respondents prepared and submitted the Supplemental Judicial Affidavit and Certification. This cannot be countenanced. This Court will not tolerate respondents’ piecemeal presentation of evidence.

From the foregoing, the CA clearly erred in giving weight and credence to the second Judicial Affidavits of BARC Chairpersons Tangonan and Anastacio, and considering the Supplemental Judicial Affidavit and undated Certification of Engr. Magtuto.

Anent the second issue, *i.e.*, whether or not the CA’s assailed Decision is supported by the evidence on record, We rule that it is not.

### ***Forcible Entry Cases***

In forcible entry, one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth. The possession is illegal from the beginning and the only issue is who has the prior possession *de facto*.<sup>70</sup>

The words “by force, intimidation, threat, strategy or stealth”<sup>71</sup> shall include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession, therefrom. The foundation of the action is really the forcible exclusion of the original possessor by a person who has entered without right. The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary.<sup>72</sup>

For a forcible entry suit to prosper, the plaintiffs must allege and prove: (a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy, or

<sup>69</sup> *Esperal v. Trompeta-Esperal*, G.R. No. 229076, September 16, 2020.

<sup>70</sup> *Spouses del Rosario v. Gerry Roxas Foundation, Inc.*, 666 Phil. 410, 422 (2011), citing *Sumulong v. Court of Appeals*, 302 Phil. 392, 404 (1994).

<sup>71</sup> *Mediran v. Villanueva*, 37 Phil. 752, 756 (1918).

<sup>72</sup> *Id.*

stealth; and (c) that the action was filed within one year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.<sup>73</sup>

At the risk of repetition, the only issue in forcible entry cases is the physical or material possession of real property—prior physical possession and not title.<sup>74</sup>

The question is: have respondents proved, by preponderance of evidence, prior physical possession of the contested property?

We now evaluate the evidence submitted by the parties to the MTCC, sans the second Judicial Affidavits of BARC Chairpersons Tangonan and Anastacio, and the Supplemental Judicial Affidavit and undated Certification of Engr. Magtuto.

### *Respondents' evidence*

Records show that respondents submitted the following documentary evidence to the MTCC through their Position Paper, *viz.* :

Exh. "A"	Special Power of Attorney
Exh. "B"	Deed of Absolute Sale
Exh. "C"	TCT No. 14996
Exh. "D"	Certificate of Death of Flora Medriano Villasista
Exh. "E"	Marriage Contract of Santiago Villasista and Flora Medriano
Exh. "F"	Report of Birth (Ranny Paul M. Villasista)
Exh. "G"	Sketch Plan (prepared by Engr. Matuto)
Exh. "H"	<i>Reklamo</i> before the <i>Tanggapan ng Lupong Tagapamayapa</i>
Exh. "I"	Certifications to File Action
Exh. "J"	Demand Letters dated June 4, 2014
Exh. "K"	Registry Return Receipts

<sup>73</sup> *Mangaser v. Ugay*, 749 Phil. 372, 381 (2014), citing *De La Cruz v. Court of Appeals*, 539 Phil. 158, 170 (2006).

<sup>74</sup> *Esperal v. Trompeta-Esperal*, supra note 69, citing *German Management and Services, Inc. v. Court of Appeals*, 258 Phil. 293 (1989); *Ganadin v. Ramos*, 188 Phil. 28, 39 (1980); *Baptista v. Carillo*, 164 Phil. 233, 239 (1976) as cited in *Heirs of Laurora v. Sterling Technopark III*, 449 Phil. 181, 186 (2003).

Exh. "L"	<i>Patunay</i> dated June 24, 2014 issued by the <i>Punong Barangay</i>
Exh. "M"	Certificate of Death of Elena B. Torres
Exh. "N"	Certificate of Death of Crisostomo G. Salamanca
Exh. "O"	Certification from the Office of the Civil Registrar
Exh. "P"	TCT No. (NT-32358) 4526
Exh. "Q"	TCT No. 12595
Exh. "R"	Kasulatan dated March 24, 1992
Exh. "S"	Barangay Blotter
Exh. "T"	<i>Patunay</i> dated June 23, 2014
Exh. "U"	TCT No. 12615

Respondents likewise submitted the judicial affidavits of the following witnesses wherein they testified, thus:

In his Judicial Affidavit<sup>75</sup> dated October 6, 2014, **Medriano** stated, among others, that: he is the representative of the Heirs of Flora; he filed the case below because petitioners forcibly entered Flora's lot including the accretion thereof sometime in 2013; Flora owned the lot and bought it from Feliciano Molina, which lot was more or less 10,000 sq.m. situated in Brgy. Palestina, San Jose City; from the time Flora's lot was bought sometime in 1992, he and his other siblings farmed and planted onion and other vegetables thereon, including the accretion thereof, wherein they planted onions during their season; the Sketch Plan prepared by Engr. Magtuto proves the existence of the accretion; when he went to Flora's lot in November 2013, he saw that the accretion thereon was plowed and was fenced by petitioners; they informed the barangay captain who, in turn, accompanied them to the accretion; Galindez made them pay for his labor and efforts in working on the land; Roldan paid Galindez ₱800.00; however, after a few days, Galindez and Liberato continued to plant onions on the accretion; hence, they decided to file a case before the barangay.

In her Judicial Affidavit<sup>76</sup> dated October 6, 2014, **Guzman** testified, *inter alia*, that: she filed an ejectment case against petitioners who forcibly entered the property that she inherited from her parents located in Brgy. Palestina, San Jose City, and covered by TCT No. (NT-32358) 4526; before her mother died, her parents were the ones farming said lot; when her mother

<sup>75</sup> *Rollo* (Vol. D), pp. 143-149.

<sup>76</sup> *Id.* at 150-155.

died, she allowed her cousin Diosdado and his family to farm said lot as well as its accretion; the Sketch Plan prepared by Engr. Magtuto was proof of the accretion; she started farming on the lot and the accretion thereof from the time she inherited it from her mother in 1990 until it was forcibly entered by petitioners; she was informed by Diosdado that in November 2013, petitioners forcibly entered the accretion; they went to the barangay captain, who, in turn, accompanied them to the accretion; Galindez received payment for the return of the accretion; however, after a few days, petitioners returned to Guzman's lot; hence, they decided to file a case before the barangay.

In his Judicial Affidavit<sup>77</sup> dated October 6, 2014, **Roldan** stated, among others, that: he filed a case for forcible entry against petitioners; in 1992, he purchased a lot covered by TCT No. (NT-32358) 4526; he paid Diosdado to farm and work on his lot including the accretion thereof; the Sketch Plan prepared by Engr. Magtuto was proof of the accretion; he planted on his lot since 1992 when he purchased it; he only planted red and white onions, and *batanes* on his lot; petitioners forcibly entered the accretion on his lot; Diosdado informed him that he was threatened by petitioners, as seen in the barangay blotter; thus, he went to the barangay captain, who accompanied him to the accretion; Galindez received payment for his efforts in working on the accretion; he paid Galindez ₱800.00, as shown in the *Patunay* of the *Punong Barangay*; however, after a few days, petitioners continued to plant onions on his lot's accretion; hence, they decided to complain before the barangay.

In her Judicial Affidavit<sup>78</sup> dated October 6, 2014, **Cariño** testified, *inter alia*, that: she filed a case against petitioners for forcible entry because the latter entered into the accretion on her lot which is situated in Brgy. Palestina, San Jose City; the Sketch Plan prepared by Engr. Magtuto was proof of the accretion; when her husband was still alive, they farmed on her lot and the accretion thereon; when her husband died, their children farmed on her lot; they started planting on her lot in 1957; they also planted on the accretion; during that time, the area of the accretion was small but it increased after some time; they would plant on her lot onions during its season, and after the harvest, they would plant vegetables; she found out that petitioners forcibly entered the accretion of her lot in November 2013; Galindez threatened Diosdado, as shown in the blotter; thus, they went to the barangay captain, who accompanied them to the accretion; Galindez received payment for his efforts in working on the accretion; however, after a few days, petitioners continued to plant onions on her lot's accretion; hence, they decided to complain before the barangay.

<sup>77</sup> Id. at 161-166.

<sup>78</sup> Id. at 167-172.



In his Judicial Affidavit<sup>79</sup> dated October 6, 2014, **Collado** stated, among others, that: he filed his case against petitioners for forcible entry because, at first, Liberato prohibited him from working on the accretion attached to his titled property, then in November 2013, petitioners already unlawfully took possession of said accretion; his property and the accretion thereon is located in Brgy. Palestina, San Jose City; the Sketch Plan prepared by Engr. Magtuto was proof of the accretion; he has been planting on his titled land and the accretion thereon since 1983 when he purchased it; but even before he purchased it, he has been farming on said property since 1956; he would only plant on his property once a year; during the rainy season, he plants on the titled property, sometimes *palay*, sometimes vegetables; after harvest season, he plants onions, this time also on the accretion; in November 2013, he found out that petitioners forcibly entered the accretion on his property; thus, he went to the barangay captain, who accompanied them to the accretion; Galindez received payment for his efforts in working on the accretion; however, after a few days, petitioners continued to plant onions on his property's accretion; hence, he decided to file a complaint before the barangay.

In his Judicial Affidavit<sup>80</sup> dated July 24, 2014 and Supplemental Judicial Affidavit<sup>81</sup> dated October 7, 2014, **Diosdado** testified, *inter alia*, that: he is a resident of Brgy. Tulad, San Jose City; he is one of the helpers/farmers of Guzman, Roldan, and Cariño; he has been helping Roldan starting around 1992; even before that, he was already helping in the properties of Guzman and Cariño; Guzman, Roldan, and Cariño's properties are in Brgy. Palestina, San Jose City; Guzman, Roldan, and Cariño are the true possessors and owners of the subject properties, including the property beside the river and adjacent to their properties which is referred to as the accretion; sometime in November 2013, between 7:00 and 8:00 in the morning, he saw Galindez and Liberato arrive and without warning, started cutting out weeds on the accretion; he approached them and asked why they were working on the accretion; Galindez threatened him; he left and informed the lot owners, *i.e.*, Guzman, Roldan and Cariño, about what happened; days after the incident, he went to the barangay to have said incident recorded in the blotter; after that incident, petitioners built a fence around the accretion, including those attached to Collado's and Medriano's properties; thus, he and the respondents went to the barangay captain, who accompanied them to the accretion; Galindez received payment for his efforts in working on the accretion; however, after a few days, petitioners continued to plant onions on the accretion on respondents' properties; hence, they decided to file a complaint before the barangay.

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<sup>79</sup> Id. at 156-160.

<sup>80</sup> Id. at 173-177.

<sup>81</sup> CA rollo (Vol. I), pp. 461-463.

In her Judicial Affidavit<sup>82</sup> dated October 8, 2014, **Dupitas** stated, among others, that: she is a resident of Brgy. Palestina; she is 63 years old and got married in Brgy. Palestina; sometime around 1983, before Roldan purchased his property, she was the one farming it because it was leased to her by the previous owner; she planted/farmed on Roldan's lot until 1992, when it was sold to him; she and her husband were able to send their kids to school using the earnings from the onions they farmed on Roldan's land; she would plant once a year on the land, including the accretion; sometime in November 2013, she found out that Galindez and Liberato unlawfully possessed the accretion; she knows this because she would pass through the subject property; she also personally witnessed Roldan pay Galindez for his labor.

In his Judicial Affidavit dated September 23, 2014, Brgy. Captain **Mamaed** testified, *inter alia*, that: he is a resident of Brgy. Palestina where he grew up; his parents used to have a lot beside the subject lots of the respondents; he saw respondents farm their respective lots, including the accretion thereon; petitioners entered the properties of respondents in November 2013; there was a settlement between the parties when Galindez accepted payment in the amount of ₱800.00 from Roldan; however, after a few days, he discovered that petitioners did not vacate the subject property; respondents were in possession of the accretion since they were the ones planting onions thereon during the season; there is no truth to petitioners' allegations that Ganado possessed the accretion since 1967.

In his Judicial Affidavit<sup>83</sup> dated August 26, 2014, **Engr. Magtuto** stated, among others, that: he is the geodetic engineer who conducted the relocation survey on the properties owned by Medriano, Cariño, Collado, Guzman and Roldan, as well as the accretion thereon; he prepared the Sketch Plan dated June 30, 2014; said Sketch Plan shows the properties owned by respondents and the accretion thereon which they also own.

In his Judicial Affidavit<sup>84</sup> dated September 25, 2014, BARC Chairperson **Anastacio** testified, *inter alia*, that: he accompanied the parties to this case, as well as Brgy. Captain Mamaed, to the said accretion; when they reached said accretion, they saw that the ground had been plowed and cleared out; Brgy. Captain Mamaed convinced the parties to settle the issue; Galindez received payment from Roldan for his labor on the accretion; however, after a few days, Roldan returned to the barangay to report that petitioners did not vacate the property; hence, the parties were again summoned; Brgy. Captain Mamaed told the petitioners to stop working on the accretion because, according to a seminar he attended, said accretion belongs

<sup>82</sup> Rollo (Vol. I), pp. 178-181.

<sup>83</sup> Id. at 588-590.

<sup>84</sup> CA rollo (Vol. I), pp. 481-484.

to the owner of the land to which it is attached; he agrees with Brgy. Captain Mamaed's opinion.

In his Judicial Affidavit<sup>85</sup> dated September 25, 2014, **Peter** stated, among others, that: he is not related to any of the parties to this case; this case is about the accretion in Brgy. Palestina, San Jose City; he issued the Certifications to File Action in this case.

### *Petitioners' evidence*

Petitioners appended the following documentary evidence to their Position Paper before the MTCC, viz.:

Sketch Plan prepared for Vitaliano Ganado by Engr. Alejandro G. Lazaro, Chief of Party, DENR-CENRO
Police Blotter dated April 8, 2014
Excerpt from the Police Blotter dated July 29, 2014
TCT No. (NT078186)5252-A
<i>Patunay</i> dated July 28, 2014 issued by the <i>Tanggapan ng Punong Barangay</i>

Petitioners likewise submitted the judicial affidavits of the following witnesses, who testified, thus:

In his Judicial Affidavit<sup>86</sup> dated September 26, 2014, **Galindez** testified, *inter alia*, that: he is a farmer on the lot of Ganado located in Zone 4, Brgy. Palestina, which is near the river; he has been tilling and farming on said lot since 1975 up to present; his duties include preparing the soil, planting onions and vegetables, watering the plants, and harvesting them when they are ready; he knows Roldan because they faced each other at the barangay sometime in 2010 when Roldan filed a complaint against him over a portion of lot that Galindez cleared out and ploughed; Roldan claimed that said lot was his; at the barangay, Galindez agreed to receive ₱800.00 as payment from Roldan for his labor on said lot; Ganado, however, caused a survey to be conducted on his property, and it was discovered that the lot being claimed by Roldan was actually Pascual's property that was being farmed by Rogelio Cabuling; it is NOT true that he threatened Diosdado in November 2013; he saw Esperidion Soriano (Esperidion) and Gil Soriano (Gil) cutting grass on

<sup>85</sup> *Rollo* (Vol. I), pp. 536-539.

<sup>86</sup> *Id.* at 525-530.

Ganado's lot sometime in November 2013; he approached Esperidion and Gil and prohibited them from cutting grass; this resulted in a confrontation among them; Esperidion threw stones at him while he was walking away; in response, Galindez picked up some stones to defend himself with, but did not need to throw them since Esperidion stopped when he saw Galindez pick up stones; Galindez headed home and afterwards, reported the incident to Ganado; Ganado instructed him to not allow Esperidion and Gil to enter his property again; Ganado caused a survey to be conducted on his property sometime in March 2014; he was present during the survey; they erected wooden posts and barbed wire around Ganado's property; however, the following day, they found that the wooden posts had been pulled out and the barbed wires were cut; Liberato went to the barangay and the police station to have the incident recorded in the blotter; after a few days, they again erected fences around Ganado's property, this time, using concrete posts; these were again destroyed; the property that Ganado caused to be fenced is the same property subject of this case; he has been working with Liberato on Ganado's property since 1990; he doesn't know who destroyed the fences because they just found them in broken condition the following morning; though he did see Marcelo Soriano, the nephew of Diosdado, Gil, and Esperidion, uprooting some concrete posts that were left planted on the ground; he knows that there is a dispute surrounding the lot he is farming for Ganado because a complaint was filed against him with the barangay sometime in April 2014 by the respondents; he and Liberato are not farming the land as its owners, but are merely working thereon on behalf of Ganado.

In his Judicial Affidavit<sup>87</sup> dated September 29, 2014, **Liberato** stated, among others, that: there is no accretion; the "accretion" referred to and claimed by respondents is the property which he and Galindez farms on behalf of Ganado; he has been working on the subject property since 1990 when Ganado hired him to help in planting "*sibuyas na batanes*;" since then, he would plant *sibuyas na batanes* yearly until 1997, when they switched to planting red and white onions instead; he knows that there are people claiming ownership over Ganado's property where he works because Ganado caused said property to be fenced; Ganado caused his property to be fenced sometime in April 2014; at first, the fence was made of wooden posts and barbed wire; thereafter, it was replaced with concrete posts and barbed wire; the first fence was replaced because it was destroyed; the barbed wires were cut and the wooden posts uprooted; after this incident, he went to the barangay and to the police to report it; respondents complained against himself and Galindez before the barangay; he and Galindez also received the complaints from the court.

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<sup>87</sup> Id. at 531-535.

In his Judicial Affidavit<sup>88</sup> dated September 29, 2014, **Ganado** testified, *inter alia*, that: he knows Galindez and Liberato because they help him farm his land situated in Zone 4, Brgy. Palestina; the property that Galindez and Liberato farm on his behalf is located beside the lots of Locquiao, Federico, Torres, and Pascual (farmed by Rogelio Cabuling); he started farming on that land in 1967; he was called by Locquiao to clear out and farm the latter's newly bought lot; once he finished clearing out Locquiao's lot, he noticed that beside it, there's another lot with dense soil, so he also cleared that out and planted vegetables on it such as squash and sweet potato; he has been farming that particular lot since 1967 until present through the help of Galindez and Liberato; Galindez informed him in November 2013 that there are people claiming his property as their own; upon being informed of this, he instructed Galindez to not allow these people to usurp his property; he also had his property surveyed by Engr. Francisco Manuel (Engr. Manuel) of the Department of Environment and Natural Resources (DENR); the survey showed that his property measured 12,921 sq.m. based on the plan prepared by Engr. Manuel; he identified his lot as shown on the plan, as well as all the lots of Locquiao and Torres; after the survey, he caused his property to be fenced with barbed wire and wooden posts to prevent trespassers from coming in; his property was still trespassed because the barbed wires were cut and the wooden posts uprooted and broken; he instructed Liberato to report this incident to the barangay and the police; he also instructed Liberato to again put up concrete posts as fence this time; these concrete posts and barbed wire were again destroyed sometime in April 2014; a few months thereafter, he was informed by Galindez and Liberato that the latter received complaints from the court; he accompanied Galindez and Liberato to a lawyer who prepared their answer for them, and collected their testimony regarding the land in dispute.

In his Judicial Affidavit<sup>89</sup> dated July 24, 2014, former BARC Chairperson **Tangonan** stated, among others, that: he started residing in Brgy. Palestina from 1956 until present; he was *Purok Leader* in 1978, then elected as *Konsehal*; he was BARC Chairperson from 1986 to 2003; as BARC Chairperson, his duties included hearing complaints regarding real property in the barangay to arrive at an amicable settlement; in case parties do not settle, he prepares a "*Patunay*" or certification to that effect; as BARC Chairperson, he became aware of the lands/real properties in Brgy. Palestina, who the owners thereof are, who are in possession, who are farming thereon, and the extent or boundaries of the properties; Ganado's property which is being farmed by petitioners is in Zone 4, Brgy. Palestina, San Jose City, beside the properties of Locquiao, Pagdanganan, and Soriano; it is under the TCT of Torres; Galindez and Liberato do not have their own property to farm, instead, they merely farm Ganado's property; petitioners have been working on

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<sup>88</sup> Id. at 122-126.

<sup>89</sup> Id. at 112-116.

Ganado's property for a long time because as early as 1970, he already saw them tilling the land.

In his Judicial Affidavit<sup>90</sup> dated July 24, 2014, BARC Chairperson **Anastacio** testified, *inter alia*, that: he is the BARC Chairperson of Brgy. Palestina from 2002 up to present; his duties include assisting complainants in land disputes to establish the boundaries of properties; obtaining owners' consent to have their properties surveyed; assisting parties to arrive at an amicable settlement of their dispute; in case they fail to arrive at a settlement, preparing an "indorsement" of their dispute to the agrarian council; he knows Ganado because they live in the same barangay; Ganado is a farmer; Ganado farms many properties, including the parcel of land at the south portion of the property owned by Locquiao, south of Torres' property, south of Pascual's property (that is being farmed by Cabuling), and west of a "public land" being tilled by Federico; he personally sees Ganado working on said property whenever he swims in the river; he started seeing Ganado working on said property as early as 1970s; Ganado hired help to assist him in farming his properties; he knows Galindez and Liberato because he sees them working on the property of Ganado mentioned above.

### ***Preponderance of Evidence***

Section 1, Rule 133 of the Revised Rules on Evidence provides:

Section 1. *Preponderance of evidence, how determined.* – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though **the preponderance is not necessarily with the greater number.** (Emphasis supplied)

"Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of credible evidence."<sup>91</sup>

<sup>90</sup> Id. at 117-121.

<sup>91</sup> *Ogawa v. Menigishi*, 690 Phil. 359, 367 (2012), citing *Amoroso v. Alegre, Jr.*, 552 Phil. 22, 34 (2007).

By preponderance of evidence, means that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term “greater weight of evidence” or “greater weight of the credible evidence.”<sup>92</sup> It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.<sup>93</sup>

Upon close analysis, this Court is inclined to believe the findings of the MTCC and the RTC that respondents failed to prove that they had prior physical possession of the contested property, and that petitioners’ evidence of their prior physical possession preponderates.

In examining respondents’ judicial affidavits, it becomes very obvious that they referred to the contested property, which they call the “accretion,” always in relation to their respective titled properties. It is evident that they perceive the contested property as an attachment to their titled properties. In fact, respondents argue that they are the rightful possessors of the contested property under Article 457 of the Civil Code which states that the accretion belongs to the owner of the lands adjoining the banks of rivers.<sup>94</sup> Hence, respondents made it a point to establish their ownership over their titled properties, and narrated the manner in which they acquired the same.

However, this Court finds it highly significant, if not curious, that none of the respondents were able to narrate how they discovered said “accretion” to their respective properties, or what acts they performed to actually take possession of it. When the respondents acquired their titled properties, said “accretion” was not included in the documents of transfer.<sup>95</sup> It is also undisputed that the alleged “accretion” was not included in their respective TCTs.<sup>96</sup> It therefore begs the question: when did respondents realize that there was an “accretion” on their properties? And upon such discovery, what acts did they perform to take actual physical possession thereof? It should be stressed that the alleged “accretion” measures 9,535 sq.m., which is bigger than each of the titled properties of Collado, Cariño, and Roldan. Hence, respondents cannot merely treat it as an attachment to their respective properties. They must prove actual physical possession of the “accretion” aside from their possession of their titled properties. This, respondents’ evidence utterly failed to do.

<sup>92</sup> *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution and Logistics Systems Inc.*, 805 Phil. 244, 262 (2017), citing *Raymundo v. Lunaria*, 590 Phil. 546, 553 (2008).

<sup>93</sup> *Id.*

<sup>94</sup> *Rollo* (Vol. II), p. 837.

<sup>95</sup> See Deed of Absolute Sale dated April 22, 1992, *id.* at 882; and *Kasulatan* dated March 24, 1992, *id.* at 894.

<sup>96</sup> *Id.* at 876-879, 883-886, 890-893, 895-898.

In contrast, petitioners were able to narrate with clarity and detail how they took actual physical possession of the contested property, to wit: sometime in 1967, Locquiao requested Ganado to administer his lot, which is adjacent to the contested property. After Ganado finished clearing out and preparing Locquiao's lot for farming, he noticed that the adjacent lot, a.k.a. the contested property, also had dense soil suitable for farming. Hence, he cleared that out too and planted vegetables such as squash and sweet potato. In 1970 and 1990, respectively, he hired Galindez and Liberato to farm the contested property on his behalf. Since then, they planted *sibuyas na batanes* yearly on the contested property until 1997. Thereafter, they planted only red and white onions.

Respondents also failed to identify the specific portions of the contested property that supposedly belonged to each of them respectively. It bears to stress that only Engr. Magtuto, in his Supplemental Judicial Affidavit submitted to the RTC, identified the portions supposedly belonging to each of the respondents through the relocation survey that he conducted. However, if respondents truly were in actual physical possession of the contested property, should they not be aware of its metes and bounds?

On the other hand, Ganado was able to identify the extent of the contested property. In his Judicial Affidavit, Ganado not only enumerated the lots that surrounded the contested property, but also identified the position of said lots in relation to the contested property as shown in the Sketch Plan prepared by Engr. Manuel. This reveals Ganado's familiarity with the contested property, and bolsters his claim of prior physical possession thereof.

To be sure, even the *Patunay* or Certifications issued by Brgy. Captain Mamaed fail to establish respondents' actual possession of the contested property. In the *Patunay* dated June 24, 2014, Brgy. Captain Mamaed merely stated, thus: "*Pinatutunayan ko bilang Punong Barangay ng Brgy. Palistina na ang lupa kasama ng accretion na sinakop nina Rolando Galindez at Daniel Liberato nuong Nobyembre 2013 ay posisyon at pag-aari nina Erlinda Carino, Alejandro Collado, Vito Roldan, Felomina Salamanca[-Guzman] at mga naiwang kaanak ni Flora Medriano.*"<sup>97</sup> The possession referred to here pertains to legal possession as an attribute of ownership, as opposed to actual physical possession. This interpretation is consistent with the statement of BARC Chairperson Anastacio, in his Judicial Affidavit dated September 25, 2014, that Brgy. Captain Mamaed warned petitioners to stop working on the contested property because he learned in a seminar that the accretion belongs to the owner of the property to which it is attached. Interestingly, although his name appears at the bottom of said *Patunay* dated June 24, 2014, BARC Chairperson Anastacio did not affix his signature thereon.

<sup>97</sup> CA rollo (Vol. I), p. 71.



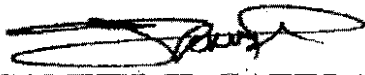
Respondents further assert that Galindez's act of accepting payment from Roldan proves that they were in prior possession of the contested property. This Court, however, notes that said payment was made after the parties first faced each other at the barangay, with regard to which BARC Chairperson Anastacio narrated that Brgy. Captain Mamaed told petitioners to desist from working on the "accretion" because it belongs to the respondents. It bears to emphasize that Galindez and Liberato are mere hired farmers of Ganado. Considering that Galindez was then out-numbered by respondents and was directed by the Brgy. Captain himself to surrender possession of the contested property, it is not hard to imagine why Galindez submitted.

All told, aside from their bare allegation that they have prior physical possession of the contested property, respondents' testimonies were bereft of details to prove that they were the ones in actual possession. Respondents' Judicial Affidavits contained only general statements and conclusions regarding possession of the contested property. In contrast, even without considering or relying on the first Judicial Affidavits of BARC Chairpersons Tangonan and Anastacio, petitioners successfully proved by preponderance of evidence that they had prior physical possession of the contested property. Moreso, when we consider said first Judicial Affidavits wherein BARC Chairpersons Tangonan and Anastacio categorically declare that they personally saw Ganado and petitioners farming on the contested property since the 1970s.

In view of the foregoing, respondents failed to prove, by preponderance of evidence, that they had prior physical possession of the contested property. Therefore, the CA gravely erred in reversing the decision of the RTC.

**WHEREFORE**, the Petition is **GRANTED**. The Decision dated November 29, 2016 and the Resolution dated March 31, 2017 of the Court of Appeals in CA-G.R. SP No. 144897 are **REVERSED and SET ASIDE**. The Joint Decision dated November 7, 2014 of the Municipal Trial Court in Cities, Branch 1, San Jose City, as affirmed by the Regional Trial Court, Branch 38, San Jose City in its Joint Decision dated May 11, 2015, is **REINSTATED**.

**SO ORDERED.**

  
**SAMUEL H. GAERLAN**  
Associate Justice

WE CONCUR:



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**HENRI JEAN PAUL B. INTING**  
Associate Justice



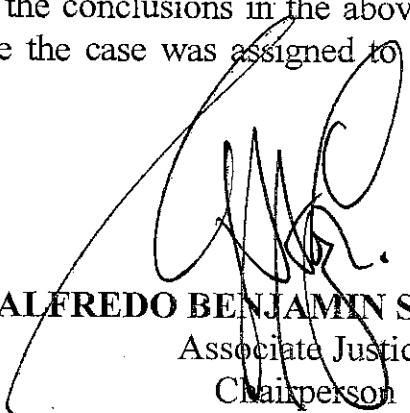
**JAPAR B. DIMAAMPAO**  
Associate Justice



**MARIA FLOMENA D. SINGH**  
Associate Justice

**ATTESTATION**

I attest 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.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



**ALEXANDER G. GESMUNDO**  
Chief Justice