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indemnity plus moral damages is *AFFIRMED* except that the award for moral damages is reduced from ₱100,000.00 to ₱50,000.00.

SO ORDERED.

Mendoza, Quisumbing, Buena, and *De Leon, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 141540. October 26, 2001]

EDUARDO TAN, *petitioner, vs.* **FLORITA MUECO and ROLANDO MUECO,** *respondents.*

SYNOPSIS

Subject property is Lot No. 6124, a 26 sq. m. elongated strip of land adjoining Real St. and situated in the commercial district of Dumaguete City, and adjacent to petitioner's lot where a cinema is located when respondents acquired the subject lot and started demanding a fee of ₱1.00 for every person that would pass through their property in going to the theater, petitioner objected thereto and claimed that Lot No. 6124 is part of Real St. and therefore, part of the public domain which is open to public use. Respondents filed a complaint for injunction with damage against petitioner, and both the trial court and appellate court upheld the right of respondent. Hence, this appeal.

Records revealed that Lot No. 6124 is in fact a distinct and separate lot from Real St. It was placed under Cadastral Survey, was subject of application and also declared for taxation purposes. And even granting that Lot No. 6124 is part of the public domain, the possessory right of respondents over the same is still entitled to protection. In any case, the public character and ownership of Lot No. 6124 could be properly raised by the State. But as between petitioner and respondents, it is the latter who has a right to be protected by injunctive relief.

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SYLLABUS

1. **CIVIL LAW; PROPERTY; OWNERSHIP; REALTY TAX PAYMENTS ARE GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF OWNER.**— A tax declaration covering Lot No. 6124 in the name of Dovedato Flores in the years, 1974, 1980 and 1985 appear on the record. Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at the very least proof that the holder or declarant, Dovedato Flores, had a claim of title over Lot No. 6124 which was validly transferred to respondents when Florita Mueco purchased subject lot at the public auction.

2. **ID.; ID.; POSSESSION; POSSESSORY RIGHT OF LAND INDEPENDENT OF ITS PUBLIC OR PRIVATE NATURE.**— Even granting that Lot No. 6124 is part of the public domain, the possessory right of respondents over Lot No. 6124 is still entitled to protection. In *Cabellan v. Court of Appeals, et al.*, the Court upheld the respondent's right to possess the lot notwithstanding the claim that said lot is part of a proposed road right of way. Similarly, in *De la Cruz, et al., v. Sagales, et al.*, the Court held that "public interest, public policy and public order demand that the party in peaceful possession of a land, independently of whether it is private in nature or part of the public domain, be not ousted therefrom by means of force, violence or intimidation, regardless of the quality of his alleged right to the possession thereof." In any case, the public character and ownership of Lot No. 6124 could be properly raised by the State. But as between petitioner and respondents, the latter has a right to be protected by injunctive relief.

3. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; THEY WHO WILL NOT BE AFFECTED BY JUDGMENT NEED NOT BE IMPLEADED.**— On the mere allegation that the subject land is public, the province of Negros Oriental and the City of Dumaguete are certainly not indispensable parties in the present case. Their public interest in the instant controversy is distinct and divisible from the private interest of the parties herein, so that they will not necessarily be directly or injuriously affected by the judgment in the present case which completely disposes of the issues only between petitioner and respondents.

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4. **ID.; PROVISIONAL REMEDIES; INJUNCTION; REQUISITES.**— In order that injunction may issue, two requisites must concur: 1) the existence of a right to be protected; and 2) the facts against which the injunction is to be directed are violative of said right. Having established the right of respondents over Lot No. 6124, as well as petitioner's act of interfering with such possessory right, we find that the Court of Appeals did not err in affirming the decision of the trial court granting the injunction prayed for.

5. **CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES MAY BE REDUCED WHERE THERE IS NO ADJUDICATION OF ACTUAL DAMAGES; PROPER ATTORNEY'S FEES.**— Moral and exemplary damages may be reduced in instances where there is no adjudication of actual damages, as in the present case. Accordingly, the Court reduces the amount of awarded moral damages from ₱40,000.00 to ₱25,000.00, and the amount of exemplary damages from ₱100,000.00 to ₱25,000.00. There being an award of exemplary damages, the award of attorney's fees in the amount of ₱20,000.00 is warranted.

APPEARANCES OF COUNSEL

Elam Law Offices and Leo B. Diocos for petitioner.

Llosa, Bonganciso, Ruperto Abiera & Zerna Law Offices for private respondents.

DECISION

YNARES-SANTIAGO, *J.*:

This is a petition for review on *certiorari* seeking to annul and set aside the May 7, 1999 Decision and the December 15, 1999 Resolution of the Court of Appeals[1] in CA-G.R. CV No. 55553, which affirmed in its entirety the Decision[2] of the Regional Trial Court of Dumaguete City, Branch 34, in Civil Case No. 10802, for injunction with damages.

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[1] Sixteenth Division, composed of Associate Justices Godardo A. Jacinto (*Ponente* and Chairman), Roberto A. Barrios (member), and Martin S. Villarama, Jr. (member).

[2] Penned by Judge Rosendo B. Bandal, Jr.

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The present controversy stemmed from Lot No. 6124,[3] a 26 square meter elongated strip of land adjoining Real Street and situated in the commercial district of Dumaguete City. The facts reveal that in NLRC Case No. RAB-VII-011-057-87-D, the National Labor Relations Commission ordered Dovedato Flores to pay separation pay to his former employee, herein respondent Florita Mueco in the amount of P20,847.00. In satisfaction of said award, Lot No. 6124, which was declared for taxation purposes in the name of Dovedato Flores, was levied upon and sold at public auction to Florita Mueco. After the lapse of the redemption period, a Final Deed of Sale was issued to Mueco on December 10, 1990.

Lot No. 6124 is adjacent to petitioner's Lot No. 6123-B (formerly Lot No. 6613), where the Ultra Vision Cinema, operated by petitioner, is located. On November 5, 1993, respondents sent a letter to petitioner offering to him the option to buy Lot No. 6124, with the advice that if he is not interested, they would fence and establish their own business in the area. Petitioner failed to respond to the letter, hence, respondents caused to be placed on a portion of the subject lot, a placard stating that the lot is a private property and, at the same time, advising the public that they are demanding a fee of P1.00 for every person that would pass through the property in going to the theater.[4] Said placard was, however, removed at the instance of petitioner's mother.

Thus, on November 23, 1993, respondents filed with the Regional Trial Court of Dumaguete City, Branch 34, a complaint for injunction with damages, with prayer for the issuance of a temporary restraining order, seeking to enjoin petitioner from intruding into their property. Respondents contended that, notwithstanding the temporary restraining order issued by the court, petitioner caused the removal of the nylon fence and placard on Lot No. 6124.

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[3] "A parcel of commercial land with Cadastral Lot No. 6124, located at Real Street, Dumaguete City. Bounded on the North by Lot No. 6125, on the East by Real Street, on the South by Lot No. 6122, on the West by Lot No. 6123, containing an area of Twenty Six (26) square meters, more or less." (Exh. "A")

[4] Exh. "E-1".

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Petitioner claimed that Lot No. 6124 is part of the public domain, hence, open to public use. He further argued that the sale at public auction of the lot is void because Dovedato Flores from whom respondents allegedly acquired the property, never claimed any right over said lot. In support thereof, Dovedato Flores testified that prior to the acquisition by petitioner's family, he was the owner of Ultra Vision Cinema and the lot on which it is located, having purchased the same from the heirs of Cenon Sillero. Flores likewise stated that he did not own Lot No. 6124 and neither did he declare them for taxation, and that the tax declarations of said lot in his name are forgeries.

To prove the public character of the lot in question, petitioner presented Resolution Nos. 117 and 282 of Dumaguete City which allegedly declared Lot No. 6124 as a sidewalk.[5]

On October 8, 1996, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, as prayed for, judgment is hereby rendered:

1. Perpetually enjoining and restraining defendant Edward Tan, *alias* Eduardo Tan from intruding and trespassing plaintiffs' Lot No. 6124 located right in front of his moviehouse at Real Street, Dumaguete City;

2. Ordering defendant to pay plaintiff ₱40,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱20,000.00 as reimbursement for attorney's fees; and

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[5] Pertinent portion thereof reads — "....the setback or indention be increased to not less than 5 meters which shall serve as a sidewalk of not less than 1 meter nearest the building and the remaining as the parking area and that the existing provisions on the requirements of parking area or parking space is deemed modified or amended, provided, that existing building and present construction are exempted from this amendment except repairs and renovation of the front portion of this building that are made of concrete materials, and provided further, that this indention should not be enclosed or fenced by the lot owners and if there should be an elevation, the elevation should be gradual to allow parking for motor vehicles and provided furthermore, that this will be subject to the approval of the building officials.

Thereafter, no construction of any kind or description shall be allowed on the setback or indented portion, as said area is exclusively for sidewalk and parking area for motor vehicles." (Exhs. "5-b" — "5-c")

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3. Directing defendant to immediately remove the stone-washed cement pavement he had introduced on Lot No. 6124 as well as the concrete walls located at the northern boundary thereof;

Costs against defendant.

SO ORDERED.[6]

On appeal to the Court of Appeals, the latter in its decision dated May 7, 1999, affirmed *in toto* the decision of the trial court. A motion for reconsideration of said decision was subsequently denied by the same court on December 15, 1999.

Hence, the instant petition anchored on the following grounds:

I.

The Honorable Court of Appeals gravely erred in affirming the decision of the Regional Trial Court of Negros Oriental excluding petitioner, by means of perpetual injunction, from enjoying and making use of Lot No. 6124, which is clearly part of a public street, part of a pedestrians' sidewalk, and part of the drainage system of Dumaguete.

II.

The Honorable Court of Appeals gravely erred in affirming the decision of the Regional Trial Court of Negros Oriental granting the remedy of injunction in favor of respondents, their claim in and over Lot No. 6124 being clearly null and void.

III.

The Honorable Court of Appeals gravely erred in not, at least, remanding the case to the Regional Trial Court of Negros Oriental for the latter to require plaintiffs (now respondents) to implead the Province of Negros Oriental and the City of Dumaguete without whom no final determination can be had in the case.

IV.

The Honorable Court of Appeals gravely erred in punishing defendant (now the petitioner) to pay plaintiffs (now the respondents) exorbitant and unconscionable moral damages of ₱40,000.00, exemplary damages of ₱100,000.00, and attorney's fees of ₱20,000.00.

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[6] C.A. Records, p. 15.

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Petitioner contends that Lot No. 6124 is part of Real Street and therefore part of the public domain which is open to use by the general public.

The contention is without merit. The records reveal that Lot No. 6124 is in fact a distinct and separate lot from Real Street. As early as May 25, 1920, said lot was placed under Cadastral Survey by the Bureau of Lands and was the subject of the application of Cenon Sillero and the Provincial Government of Negros Oriental.[7] The same lot was also declared for taxation purposes by Cenon Sillero and the Provincial Government of Negros Oriental.[8] A tax declaration covering Lot No. 6124 in the name of Dovedato Flores in the years, 1974, 1980 and 1985[9] likewise appear on the record. Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at the very least proof that the holder or declarant, Dovedato Flores, had a claim of title over Lot No. 6124 which was validly transferred to respondents when Florita Mueco purchased subject lot at the public auction.[10]

Even granting that Lot No. 6124 is part of the public domain, the possessory right of respondents over Lot No. 6124 is still entitled to protection. In *Cabellan v. Court of Appeals, et al.,*[11] the Court upheld the respondent's right to possess the lot notwithstanding the claim that said lot is part of a proposed road right of way.

Similarly, in *De la Cruz, et al., v. Sagales, et al.,*[12] the Court held that "public interest, public policy and public order demand

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[7] Exh. "2".

[8] Exh. "10".

[9] Exhs. "7", "8", and "9".

[10] *Republic v. Court of Appeals, et al.,* 258 SCRA 712, 720 [1996]; citing *Heirs of Severo Legaspi, Sr. v. Vda. de Dayot,* 188 SCRA 508 [1990].

[11] 304 SCRA 119 [1999].

[12] 107 Phil. 668, 672 [1960].

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that the party in peaceful possession of a land, independently of whether it is private in nature or part of the public domain, be not ousted therefrom by means of force, violence or intimidation, regardless of the quality of his alleged right to the possession thereof."

In any case, the public character and ownership of Lot No. 6124 could be properly raised by the State. But as between petitioner and respondents, the latter has a right to be protected by injunctive relief.

We find no merit in the belated disclaimer and repudiation by Flores of his claim over Lot No. 6124. As correctly pointed out by the Court of Appeals, the testimony of Flores in 1996, or several years after he has been dispossessed of the lot, can not affect the right of respondents. Indeed, said tax declarations should be given credence having been executed way back in 1974 when Flores could not care less about giving a biased testimony to favor a party.

So also, respondent's reliance on Resolution Nos. 117 and 282 of Dumaguete City, is misplaced. Said resolutions are merely intended to regulate the granting or withholding of any application for building permits in Dumaguete City, and cannot in anyway be made the basis for classifying lots as public or private.

As to the third assigned error, suffice it to state that remand of the instant case is not necessary. The Province of Negros Oriental and the City of Dumaguete are certainly not indispensable parties in the present case. Their interest in the instant controversy is distinct and divisible from the interest of the parties herein, so that they will not necessarily be directly or injuriously affected by the judgment in the present case which completely disposes of the issues between petitioner and respondents.[13]

In order that injunction may issue, two requisites must concur: 1) the existence of a right to be protected; and 2) the facts against

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[13] *BA Finance v. Court of Appeals, et al.*, 258 SCRA 102, 112-113 [1996]; citing *Servicewide Specialist, Inc. v. Court of Appeals, et al.*, 251 SCRA 70 [1996]; citing *Servicewide Specialist, Inc. v. Court of Appeals, et al.*, 251 SCRA 70 [1995].

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which the injunction is to be directed are violative of said right.[14] Having established the right of respondents over Lot No. 6124, as well as petitioner's act of interfering with such possessory right, we find that the Court of Appeals did not err in affirming the decision of the trial court granting the injunction prayed for.

Moral and exemplary damages may be reduced in instances where there is no adjudication of actual damages,[15] as in the present case. Accordingly, the Court reduces the amount of awarded moral damages from ₱40,000.00 to ₱25,000.00, and the amount of exemplary damages from ₱100,000.00 to ₱25,000.00. There being an award of exemplary damages, the award of attorney's fees in the amount of ₱20,000.00 is warranted.[16]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CV No. 5553, is *AFFIRMED* with the *MODIFICATION* that the award of moral damages is reduced to ₱25,000.00, and the award of exemplary damages is reduced to ₱25,000.00.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Kapunan, and *Pardo, JJ.,* concur.

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[14] *Development Bank of the Philippines v. Court of Appeals, et al.,* G.R. No. 137557, October 30, 2000.

[15] *Tiongco v. Deguma, et al.,* 317 SCRA 527, 541 [1999]; citing *Del Rosario v. Court of Appeals*, 267 SCRA 158 [1997].

[16] *Development Bank of the Philippines v. Court of Appeals, et al.,* 284 SCRA 14 [1998]; citing Article 2208 (1) Civil Code.