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THIRD DIVISION

[G.R. No. 137944. April 6, 2000]

FERNANDA MENDOZA CEQUEÑA and RUPERTA MENDOZA LIRIO, *petitioners, vs.* **HONORATA MENDOZA BOLANTE,** *respondent.*

SYNOPSIS

On October 15, 1975, respondent Honorata Bolante and Miguel Mendoza, brother of petitioners, had a dispute on the ownership of the land during the cadastral survey. Because of this dispute, herein petitioners filed a civil case against respondent claiming ownership and possession of the parcel of land in question. After trial, the court *a quo* rendered its judgment in favor of petitioners awarding the questioned property to petitioners and ordered herein respondent to vacate the property subject of the case and deliver possession thereof to the heirs of Margarito Mendoza. Aggrieved by the decision, respondent filed an appeal to the Court of Appeals. The appellate court reversed the trial court's decision. Hence, this Petition.

The Supreme Court found the petition not meritorious. The Court ruled that the appellate court was correct in not giving credence to the affidavit presented by the petitioner for the reason that it cannot be admitted as an exception to the hearsay rule under the dead man's statute. Likewise, the affidavit cannot be considered an ancient document as the petitioner failed to explain how the purported signature of one of the respondents could have been affixed as she was an illiterate woman who had never had any formal schooling. Tax declarations and receipts are not conclusive evidence of ownership. At most, they constitute mere *prima facie* proof of ownership or possession of the property for which taxes had been paid. In the absence of actual public and adverse possession, the declaration of the land for tax purposes does not prove ownership. In sum, the petitioners' claim of ownership of the whole parcel has no legal basis. Accordingly, the Court denied the petition and the assailed decision and resolution of the appellate court were affirmed.

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; HEARSAY RULE; DEAD MAN'S STATUTE; REQUISITES; A DECLARATION AGAINST INTEREST IS NOT ADMISSIBLE IF THE DECLARANT IS AVAILABLE TO TESTIFY AS WITNESS.—** Before a private document offered as authentic can be received in evidence, its due execution and authenticity must be proved first. And before a document is admitted as an exception to the hearsay rule under the Dead Man's Statute, the offeror must show (a) that the declarant is dead, insane or unable to testify; (b) that the declaration concerns a fact cognizable by the declarant; (c) that at the time the declaration was made, he was aware that the same was contrary to his interest; and (d) that circumstances render improbable the existence of any motive to falsify. In this case, one of the affiants happens to be the respondent, who is still alive and who testified that the signature in the affidavit was not hers. A declaration against interest is not admissible if the declarant is available to testify as a witness. Such declarant should be confronted with the statement against interest as a prior inconsistent statement.

2. **ID.; ID.; ANCIENT DOCUMENT; AFFIDAVIT; REQUISITES TO BE CONSIDERED AN ANCIENT DOCUMENT; AN AFFIDAVIT DOES NOT AUTOMATICALLY BECOME A PUBLIC DOCUMENT JUST BECAUSE IT CONTAINS A NOTARIAL JURAT.—** The affidavit cannot be considered an ancient document either. An ancient document is one that is (1) more than 30 years old, (2) found in the proper custody, and (3) unblemished by any alteration or by any circumstance of suspicion. It must on its face appear to be genuine. The petitioners herein failed, however, to explain how the purported signature of Eduarda Apiado could have been affixed to the subject affidavit if, according to the witness, she was an illiterate woman who never had any formal schooling. This circumstance casts suspicion on its authenticity. Not all notarized documents are exempted from the rule on authentication. Thus, an affidavit does not automatically become a public document just because it contains a notarial jurat. Furthermore, the affidavit in question does not state how the ownership of the subject land was transferred from Sinforoso Mendoza to Margarito Mendoza. By itself, an affidavit is not a mode of acquiring ownership.

3. **CIVIL LAW; PROPERTY; OWNERSHIP; BASIS OF A CLAIM FOR OWNERSHIP THROUGH PRESCRIPTION.—**

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Ownership of immovable property is acquired by ordinary prescription through possession for ten years. Being the sole heir of her father, respondent showed through his tax receipt that she had been in possession of the land for more than ten years since 1932. When her father died in 1930, she continued to reside there with her mother. When she got married, she and her husband engaged in *kaingin* inside the disputed lot for their livelihood. Respondent's possession was not disturbed until 1953 when the petitioners' father claimed the land. But by then, her possession, which was in the concept of owner —public, peaceful, and uninterrupted — had already ripened into ownership. Furthermore she herself, after her father's demise, declared and paid realty taxes for the disputed land. Tax receipts and declarations of ownership for taxation, when coupled with proof of actual possession of the property, can be the basis of a claim for ownership through prescription.

4. **ID.; ID.; ID.; CANNOT BE ACQUIRED BY MERE OCCUPATION.—** In contrast, the petitioners, despite thirty-two years of farming the subject land, did not acquire ownership. It is settled that ownership cannot be acquired by mere occupation. Unless coupled with the element of hostility toward the true owner, occupation and use, however long, will not confer title by prescription or adverse possession. Moreover, the petitioners cannot claim that their possession was public, peaceful and uninterrupted. Although their father and brother arguably acquired ownership through extraordinary prescription because of their adverse possession for thirty-two years (1953-1985), this supposed ownership cannot extend to the entire disputed lot, but must be limited to the portion that they actually farmed. We cannot sustain the petitioners' contention that their ownership of the disputed land was established before the trial court through the series of tax declarations and receipts issued in the name of Margarito Mendoza. Such documents prove that the holder has a claim of title over the property. Aside from manifesting a sincere desire to obtain title thereto, they announce the holder's adverse claim against the state and other interested parties.

5. **ID.; ID.; ID.; TAX DECLARATIONS AND RECEIPTS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP.—** However, tax declarations and receipts are not conclusive evidence of ownership. At most, they constitute mere *prima facie* proof of ownership or possession of the property for which taxes have been paid. In the

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absence of actual public and adverse possession, the declaration of the land for tax purposes does not prove ownership. In sum, the petitioners' claim of ownership of the whole parcel has no legal basis.

APPEARANCES OF COUNSEL

Romeo M. Flores for petitioners.
Public Attorney's Office for respondent.

DECISION

PANGANIBAN, *J.*:

Tax receipts and declarations are *prima facie* proofs of ownership or possession of the property for which such taxes have been paid. Coupled with proof of actual possession of the property, they may become the basis of a claim for ownership. By acquisitive prescription, possession in the concept of owner — public, adverse, peaceful and uninterrupted — may be converted to ownership. On the other hand, mere possession and occupation of land cannot ripen into ownership.

The Case

Before us is a Petition for Review on *Certiorari* of the March 19, 1999 Decision[1] of the Court of Appeals[2] (CA) in CA-GR CV No. 43423. The assailed Decision disposed as follows:[3]

"WHEREFORE, for all the foregoing, the decision of the trial court appealed from is *REVERSED* and *SET ASIDE.* In lieu thereof, judgment is hereby rendered declaring x x x Honorata Mendoza Bolante the rightful owner and possessor of the parcel of land which is the subject of this appeal."

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[1] *Rollo*, pp. 30-39.

[2] Seventh Division composed of *JJ.* Mariano M. Umali (*ponente*); Fermin A. Martin, Jr. (Division chairman) and Romeo J. Callejo, Sr. (member), both concurring.

[3] CA Decision, p. 9; *rollo*, p. 38.

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The Facts

The Petition herein refers to a parcel of land situated in Barangay Bangad, Binangonan, Province of Rizal, having an area of 1,728 square meters and covered by Tax Declaration No. 26-0027.

The undisputed antecedents of this case are narrated by the Court of Appeals as follows:[4]

"The facts not disputed revealed that prior to 1954, the land was originally declared for taxation purposes in the name of Sinforoso Mendoza, father of [respondent] and married to Eduarda Apiado. Sinforoso died in 1930. [Petitioners] were the daughters of Margarito Mendoza. On the basis of an affidavit, the tax declaration in the name of Sinforoso Mendoza of the contested lot was cancelled and subsequently declared in the name of Margarito Mendoza. Margarito and Sinforoso are brothers. [Respondent] is the present occupant of the land. Earlier, on October 15, 1975, [respondent] and Miguel Mendoza, another brother of [petitioners], during the cadastral survey had a dispute on [the] ownership of the land.

"During the pre-trial conference, parties stipulated the following facts:

'1) The land subject of the case was formerly declared for taxation purposes in the name of Sinforoso Mendoza prior to 1954 but is now declared in the name of Margarito Mendoza.

'2) The parties agree[d] as to the identity of the land subject of instant case.

'3) [Petitioners] are the daughters of Margarito Mendoza while the [respondent] is the only daughter of Sinforoso Mendoza.

'4) Margarito Mendoza and Sinforoso Mendoza [were] brothers, now deceased.

'5) During the cadastral survey of the property on October 15, 1979 there was already a dispute between Honorata M. Bolante and Miguel Mendoza, brother of [petitioners].

'6) [Respondent was] occupying the property in question.

'The only issue involved [was] who [was] the lawful owner and possessor of the land subject of the case.'

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[4] CA Decision, pp. 2-5; *rollo*, pp. 31-34.

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"After trial, the court *a quo* rendered its judgment in favor of [petitioners], the dispositive portion of which reads as follows:

> 'Wherefore, in view of the foregoing considerations, judgment is hereby rendered for the [petitioners] and against the [respondent]:
>
> '1. Declaring that the parcel of land situated in Bangad, Binangonan, Rizal covered by tax declaration no. 26-0027 in the name of Margarito Mendoza belong to his heirs, the [petitioners] herein;
>
> '2. Ordering [respondent] to vacate the property subject of the case and deliver possession thereof to the heirs of Margarito Mendoza.
>
> '3. Ordering the [respondent] to indemnify the [petitioners] in the sum of ₱10,000.00, as actual damages.
>
> '4. Ordering the [respondent] to pay the costs.'"

Ruling of the Court of Appeals

The Court of Appeals reversed the trial court because the genuineness and the due execution of the affidavit allegedly signed by the respondent and her mother had not been sufficiently established. The notary public or anyone else who had witnessed the execution of the affidavit was not presented. No expert testimony or competent witness ever attested to the genuineness of the questioned signatures.

The CA further ruled that the affidavit was insufficient to overcome the denial of respondent and her mother. The former testified that the latter, never having attended school, could neither read nor write. Respondent also said that she had never been called "Leonor," which was how she was referred to in the affidavit.

Moreover, the appellate court held that the probative value of petitioners' tax receipts and declarations paled in comparison with respondent's proof of ownership of the disputed parcel. Actual, physical, exclusive and continuous possession by respondent since 1985 indeed gave her a better title under Article 538 of the Civil Code.

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Hence, this Petition.[5]

Issues

Insisting that they are the rightful owners of the disputed land, the petitioners allege that the CA committed these reversible errors:[6]

"1. x x x [I]n not considering the affidavit as an exception to the general rule that an affidavit is classified as hearsay evidence, unless the affiant is placed on the witness stand; and

"2. x x x [I]n holding that respondent has been in actual and physical possession, coupled with x x x exclusive and continuous possession of the land since 1985, which are evidence of the best kind of circumstance proving the claim of the title of ownership and enjoys the presumption of preferred possessor."

The Court's Ruling

The Petition has no merit.

First Issue:
Admissibility of the Affidavit

Petitioners dispute the CA's ruling that the affidavit was not the best evidence of their father's ownership of the disputed land, because the "affiant was not placed on the witness stand." They contend that it was unnecessary to present a witness to establish the authenticity of the affidavit because it was a declaration against respondent's interest and was an ancient document. As a declaration against interest, it was an exception to the hearsay rule. As a necessary and trustworthy document, it was admissible in evidence. And because it was executed on March 24, 1953, it was a self-authenticating ancient document.

We quote below the pertinent portion of the appellate court's ruling:[7]

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[5] This case was deemed submitted for decision on November 29, 1999, upon simultaneous receipt by this Court of the parties' Memoranda. Petitioners' Memorandum was signed by Atty. Romeo M. Flores while that of respondent was signed by Attys. Arceli A. Rubin and Rogel F. Quijano.

[6] Petitioners' Memorandum, pp. 5-6; *rollo*, pp. 85-86.

[7] CA Decision, p. 5; *rollo*, p. 34.

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"While it is true that the affidavit was signed and subscribed before a notary public, the general rule is that affidavits are classified as hearsay evidence, unless affiants are placed on the witness stand (*People's Bank and Trust Company vs. Leonidas,* 207 SCRA 164). Affidavits are not considered the best evidence, if affiants are available as witnesses (*Vallarta vs. Court of Appeals,* 163 SCRA 587). The due execution of the affidavit was not sufficiently established. The notary public or others who saw that the document was signed or at least [could] confirm its recitals [were] not presented. There was no expert testimony or competent witness who attested to the genuineness of the questioned signatures. Worse, [respondent] denied the genuineness of her signature and that of her mother. x x x [Respondent] testified that her mother was an illiterate and as far as she knew her mother could not write because she had not attended school (p. 7, *ibid*). Her testimony was corroborated by Ma. Sales Bolante Basa, who said the [respondent's] mother was illiterate."

The petitioners' allegations are untenable. Before a private document offered as authentic can be received in evidence, its due execution and authenticity must be proved first.[8] And before a document is admitted as an exception to the hearsay rule under the Dead Man's Statute, the offeror must show (a) that the declarant is dead, insane or unable to testify; (b) that the declaration concerns a fact cognizable by the declarant; (c) that at the time the declaration was made, he was aware that the same was contrary to his interest; and (d) that circumstances render improbable the existence of any motive to falsify.[9]

In this case, one of the affiants happens to be the respondent, who is still alive and who testified that the signature in the affidavit was not hers. A declaration against interest is not admissible if the declarant is available to testify as a witness.[10] Such declarant should be confronted with the statement against interest as a prior inconsistent statement.

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[8] Rule 132, Sec. 20, Rules of Court.

[9] Rule 130, Sec. 38, Rules of Court; *Fuentes, Jr. v. Court of Appeals*, 253 SCRA 430, 435, February 9, 1996; *People v. Bernal,* 274 SCRA 197, 203, June 19, 1997.

[10] *Lichauco v. Atlantic, Gulf & Pacific Co.*, 84 Phil. 330, 342, August 23, 1949.

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The affidavit cannot be considered an ancient document either. An ancient document is one that is (1) more than 30 years old, (2) found in the proper custody, and (3) unblemished by any alteration or by any circumstance of suspicion.[11] It must on its face appear to be genuine. The petitioners herein failed, however, to explain how the purported signature of Eduarda Apiado could have been affixed to the subject affidavit if, according to the witness, she was an illiterate woman who never had any formal schooling. This circumstance casts suspicion on its authenticity.

Not all notarized documents are exempted from the rule on authentication. Thus, an affidavit does not automatically become a public document just because it contains a notarial jurat. Furthermore, the affidavit in question does not state how the ownership of the subject land was transferred from Sinforoso Mendoza to Margarito Mendoza. By itself, an affidavit is not a mode of acquiring ownership.

Second Issue:
Preference of Possession

The CA ruled that the respondent was the preferred possessor under Article 538 of the Civil Code because she was in notorious, actual, exclusive and continuous possession of the land since 1985. Petitioners dispute this ruling. They contend that she came into possession through force and violence, contrary to Article 536 of the Civil Code.

We concede that despite their dispossession in 1985, the petitioners did not lose legal possession because possession cannot be acquired through force or violence.[12] To all intents and purposes, a possessor, even if physically ousted, is still deemed the legal possessor.[13] Indeed, anyone who can prove prior possession,

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[11] Rule 132, Sec. 21, Rules of Court; *Heirs of Salud Dizon Salamat v. Tamayo,* 298 SCRA 313, 318, October 30, 1998; and *Heirs of Demetria Lacsa v. Court of Appeals,* 197 SCRA 234, 242, May 20, 1991.

[12] Art. 536, Civil Code; *Bishop of Lipa v. Municipality of San Jose*, 27 Phil. 571, 575, August 29, 1914.

[13] *Ayala de Roxas v. Maglonso*, 8 Phil. 745, 749, April 27, 1906.

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regardless of its character, may recover such possession.[14]

However, possession by the petitioners does not prevail over that of the respondent. Possession by the former before 1985 was not exclusive, as the latter also acquired it before 1985. The records show that the petitioners' father and brother, as well as the respondent and her mother were simultaneously in adverse possession of the land.

Before 1985, the subject land was occupied and cultivated by the respondent's father (Sinforoso), who was the brother of petitioners' father (Margarito), as evidenced by Tax Declaration No. 26425.[15] When Sinforoso died in 1930, Margarito took possession of the land and cultivated it with his son Miguel. At the same time, respondent and her mother continued residing on the lot.

When respondent came of age in 1948, she paid realty taxes for the years 1932-1948.[16] Margarito declared the lot for taxation in his name in 1953[17] and paid its realty taxes beginning 1952.[18] When he died, Miguel continued cultivating the land. As found by the CA, the respondent and her mother were living on the land, which was being tilled by Miguel until 1985 when he was physically ousted by the respondent.[19]

Based on Article 538 of the Civil Code, the respondent is the preferred possessor because, benefiting from her father's tax declaration of the subject lot since 1926, she has been in possession thereof for a longer period. On the other hand, petitioners' father

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[14] *Heirs of Placido Miranda v. Court of Appeals*, 255 SCRA 368, 379, March 29, 1996.

[15] Exhibit "1", RTC Records, p. 94.

[16] Exhibit "2", RTC Records, p. 95.

[17] Exh. "D", RTC Records, p. 77. Petitioners also submitted Tax Declaration Nos. 10410 for 1965, 13481 for 1974, and 26-0027 for 1985. RTC Records, pp. 78-79 & 57.

[18] Exh. "B-17", RTC Records, p. 75. Real Property Tax receipts submitted by the petitioners covered the years 1953-1979. RTC Records, pp. 58-75.

[19] CA Decision, p. 8; *rollo*, p. 37. TSN, November 13, 1992, p. 11.

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acquired joint possession only in 1952.

Third Issue:
Possession of Better Right

Finally, the petitioners challenge the CA ruling that "actual and physical coupled with the exclusive and continuous possession [by respondent] of the land since 1985" proved her ownership of the disputed land. The respondent argues that she was legally presumed to possess the subject land with a just title since she possessed it in the concept of owner. Under Article 541 of the Code, she could not be obliged to show or prove such title.

The respondent's contention is untenable. The presumption in Article 541 of the Civil Code is merely disputable; it prevails until the contrary is proven.[20] That is, one who is disturbed in one's possession shall, under this provision, be restored thereto by the means established by law.[21] Article 538 settles only the question of possession, and possession is different from ownership. Ownership in this case should be established in one of the ways provided by law.

To settle the issue of ownership, we need to determine who between the claimants has proven acquisitive prescription.[22]

Ownership of immovable property is acquired by ordinary prescription through possession for ten years.[23] Being the sole heir of her father, respondent showed through his tax receipt that she had been in possession of the land for more than ten years since 1932. When her father died in 1930, she continued to reside there with her mother. When she got married, she and her husband engaged in *kaingin* inside the disputed lot for their livelihood.[24]

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[20] Arturo M. Tolentino, *Commentaries & Jurisprudence on the Civil Code of the Philippines*, Vol. II, 1992 ed., p. 284; *City of Manila v. Del Rosario*, 5 Phil. 227, 231, November 10, 1905; *Chan v. Court of Appeals*, 33 SCRA 737, 745, June 30, 1970; and *Perez v. Mendoza*, 65 SCRA 480, 490, July 25, 1975.

[21] Art. 539, Civil Code.

[22] Article 540 of the Civil Code provides: "Only the possession acquired and enjoyed in the concept of owner can serve as a title for acquiring dominion."

[23] Art. 1134, Civil Code.

[24] Comment, p. 8; *rollo*, p. 53; TSN, January 4, 1993, p. 3.

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Respondent's possession was not disturbed until 1953 when the petitioners' father claimed the land. But by then, her possession, which was in the concept of owner — public, peaceful, and uninterrupted[25] — had already ripened into ownership. Furthermore she herself, after her father's demise, declared and paid realty taxes for the disputed land. Tax receipts and declarations of ownership for taxation, when coupled with proof of actual possession of the property, can be the basis of a claim for ownership through prescription.[26]

In contrast, the petitioners, despite thirty-two years of farming the subject land, did not acquire ownership. It is settled that ownership cannot be acquired by mere occupation.[27] Unless coupled with the element of hostility toward the true owner,[28] occupation and use, however long, will not confer title by prescription or adverse possession. Moreover, the petitioners cannot claim that their possession was public, peaceful and uninterrupted. Although their father and brother arguably acquired ownership through extraordinary prescription because of their adverse possession for thirty-two years (1953-1985),[29] this supposed ownership cannot extend to the entire disputed lot, but must be limited to the portion that they actually farmed.

We cannot sustain the petitioners' contention that their ownership of the disputed land was established before the trial court through the series of tax declarations and receipts issued in the name of Margarito Mendoza. Such documents prove that the holder has a claim of title over the property. Aside from manifesting a sincere desire to obtain title thereto, they announce the holder's adverse claim against the state and other interested parties.[30]

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[25] Art. 1118, Civil Code.

[26] *Heirs of Miranda v. CA, supra*, p. 375.

[27] Art. 714, Civil Code.

[28] *Corporacion de PP. Dominicos v. Lazaro,* 42 Phil. 119, 122 & 126-127, September 10, 1921.

[29] *Heirs of Miranda v. CA, supra,* p. 368; and *Heirs of Segunda Maningding v. Court of Appeals,* 276 SCRA 601, 605, July 31, 1997.

[30] *Republic v. Court of Appeals*, 258 SCRA 712, 720, July 12, 1996.

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However, tax declarations and receipts are not conclusive evidence of ownership.[31] At most, they constitute mere *prima facie* proof of ownership or possession of the property for which taxes have been paid.[32] In the absence of actual public and adverse possession, the declaration of the land for tax purposes does not prove ownership.[33] In sum, the petitioners' claim of ownership of the whole parcel has no legal basis.

WHEREFORE, the Petition is *DENIED* and the assailed Decision and Resolution *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Melo (Chairman), Vitug, Purisima, and *Gonzaga-Reyes, JJ.*, concur.

EN BANC

[G.R. No. 139489. April 10, 2000]

DANILO FERRER, *petitioner, vs.* COMMISSION ON ELECTIONS and RAFAEL M. GROSPE, *respondents.*

SYNOPSIS

Petitioner Dante B. Ferrer and private respondent Rafael M. Grospe were candidates for the position of Punong Barangay in Barangay Bantug Hacienda, Talavera, Nueva Ecija during the May 12, 1997 *barangay* elections. The Barangay Board of Canvassers proclaimed petitioner Danilo B. Ferrer as the duly elected Punong

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[31] *Director of Lands v. Intermediate Appellate Court,* 195 SCRA 38, 44, March 11, 1991.

[32] *Heirs of Vencilao, Sr. v. Court of Appeals,* 288 SCRA 574, 581-582, April 1, 1998; *Deiparine v. Court of Appeals,* 299 SCRA 668, 675, December 4, 1998; *Titong v. Court of Appeals,* 287 SCRA 102, 115, March 6, 1998.

[33] *De Luna v. Court of Appeals,* 212 SCRA 276, 280, August 6, 1992.