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The only issue for resolution in this case concerns the matter of jurisdiction. While clearly *obiter,* the foregoing statement gives the impression that the **merits** of respondent's claim have already been proved and settled. This, on the contrary, is an issue still to be resolved on remand.

The foregoing statement would have serious repercussions on a significant question of law, that is, whether or not a principal can legally be held liable for damages by a person contracted *through an independent contractor under a valid and legitimate service contract*.

This Court has recognized that an employer has "the proprietary right…to exercise an inherent management prerogative and its best business judgment to determine whether it should contract out the performance of some of its work to independent contractors."[8] This right, in my view, flows from the constitutional liberty of an employer to determine whether to perform its work itself or through independent contractors that meet the requirements of the law.

Accordingly, I vote to **GRANT** the petition filed by the SSS and order the dismissal, without prejudice, of respondent's Complaint for Damages filed before the trial court.

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**SECOND DIVISION**

[G.R. No. 201405. August 24, 2015]

**LIWAYWAY ANDRES, RONNIE ANDRES, and PABLO B. FRANCISCO,** *petitioners, vs.* **STA. LUCIA REALTY & DEVELOPMENT, INCORPORATED,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT**

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[8] *San Miguel Corp. Employees Union-PTGWO v. Bersamira*, *supra.*

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**BROUGHT TO THE ATTENTION OF THE LOWER COURT NEED NOT BE CONSIDERED BY A REVIEWING COURT, AS THEY CANNOT BE RAISED FOR THE FIRST TIME AT THAT LATE STAGE.—** Anent petitioners' invocation of ordinary acquisitive prescription, the Court notes that the same was raised for the first time on appeal. Before the RTC, petitioners based their claim of ownership on extraordinary acquisitive prescription under Article 1137 of the Civil Code such that the said court declared them owners of the subject property by virtue thereof in its May 22, 2006 Decision. Also with the CA, petitioners initially asserted ownership through extraordinary acquisitive prescription. It was only later in their Motion for Reconsideration therein that they averred that their ownership could also be based on ordinary acquisitive prescription. "Settled is the rule that points of law, theories, issues and arguments not brought to the attention of the lower court need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule."

2. **CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; IF THE MODE OF ACQUISITION IS PRESCRIPTION, WHETHER ORDINARY OR EXTRAORDINARY, IT MUST BE FIRST SHOWN THAT THE LAND HAS ALREADY BEEN CONVERTED TO PRIVATE OWNERSHIP PRIOR TO THE REQUISITE ACQUISITIVE PERIOD.—** Even if timely raised, such argument of petitioners, as well as with respect to extraordinary acquisitive prescription, fails. "Prescription is one of the modes of acquiring ownership under the Civil Code." There are two modes of prescription through which immovables may be acquired–ordinary acquisitive prescription which requires possession in good faith and just title for 10 years and, extraordinary prescription wherein ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for 30 years without need of title or of good faith. However, it was clarified in the *Heirs of Mario Malabanan v. Republic of the Philippines*, that only lands of the public domain subsequently classified or declared as no longer intended for public use or for the development of national wealth, or removed from the sphere of public dominion and are considered converted into patrimonial lands or lands of private ownership, maybe alienated or disposed through any

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of the modes of acquiring ownership under the Civil Code. And if the mode of acquisition is prescription, whether ordinary or extraordinary, it must first be shown that the land has already been converted to private ownership prior to the requisite acquisitive prescriptive period. Otherwise, Article 1113 of the Civil Code, which provides that property of the State not patrimonial in character shall not be the subject of prescription, applies.

**3. ID.; ID.; ID.; ID.; ID.; SINCE THE SUBJECT PROPERTY IS AN UNREGISTERED PUBLIC LAND, IT CANNOT BE ACQUIRED THROUGH ACQUISITIVE PRESCRIPTION UNLESS THE SAME IS EXPRESSLY DECLARED THROUGH EITHER A LAW ENACTED BY CONGRESS OR PROCLAMATION ISSUED BY THE PRESIDENT THAT THE PROPERTY IS NO LONGER RETAINED FOR PUBLIC SERVICE OR THE DEVELOPMENT OF THE NATIONAL WEALTH OR THAT THE PROPERTY HAS BEEN CONVERTED INTO PATRIMONIAL.—** Sifting through petitioners'allegations, it appears that the subject property is an unregistered *public agricultural* land. Thus, being a land of the public domain, petitioners, in order to validly claim acquisition thereof through prescription, must first be able to show that the State has – expressly declared through either a law enacted by Congress or a proclamation issued by the President that the subject [property] is no longer retained for public service or the development of the national wealth or that the property has been converted into patrimonial. Consequently, without an express declaration by the State, the land remains to be a property of public dominion and hence, not susceptible to acquisition by virtue of prescription. In the absence of such proof of declaration in this case, petitioners' claim of ownership over the subject property based on prescription necessarily crumbles. Conversely, they cannot demand an easement of right-of-way from respondent for lack of personality.

**LEONEN, *J.*, *concurring opinion*:**

**1. CIVIL LAW; CIVIL CODE; PROPERTY; EASEMENTS; FOR FAILURE TO PROVE OWNERSHIP OVER THE PROPERTY, PETITIONERS ARE NOT ENTITLED TO DEMAND AN EASEMENT OF RIGHT OF WAY AGAINST RESPONDENT.—** In *Heirs of Maningding v. Court of*

*Appeals,* this court held that while extraordinary acquisitive prescription did not require a title or the existence of good faith, the immovable property should have been under uninterrupted adverse possession for 30 years. With regard to the issue of the length of possession, the trial court based its ruling on respondent's alleged failure to deny in its Answer petitioners' allegation of uninterrupted adverse possession. This was subsequently overturned by the Court of Appeals, alongside the finding that petitioners failed to produce evidence to support their allegations. At best, petitioners may rely on the April 13, 1998 letter of Carlos Andres for their claim of adverse possession. However, considering that 30 years have not elapsed thus far since the letter was made, petitioners' claim has not yet ripened to ownership through extraordinary acquisitive prescription. For having failed to prove ownership over the property, petitioners are not entitled to demand an easement of right of way against respondent.

**2. ID.; ID .; ID.; PROPERTY RIGHTS, IN ALL THEIR FORMS, ARE PROTECTED BY NO LESS THAN THE CONSTITUTION; THE PROTECTION IS NOT NECESSARILY RENDERED WEAK FOR LACK OF PAPER TITLE THAT PUTS IT WITHIN A PARTICULAR LEGAL CLASSIFICATION.—** I reiterate my position in *Heirs of Mario Malabanan v. Republic of the Philippines* regarding lands of public domain and state ownership. Article XII, Section 2 of the Constitution provides: Section 2. ***All lands of the public domain,*** waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources ***are owned by the State***. With the exception of agricultural lands, all other natural resources shall not be alienated. The provision only refers to "all lands of the public domain" as subject to state ownership. It does not create a presumption that the state owns all lands that do not appear to be within the scope of private ownership. It also does not create a presumption that all lands not yet reclassified or alienated to a private person by the state remain part of public dominion. In my view, the state's reclassification of lands from public domain to patrimonial lands or lands of private ownership is not the reckoning act in all cases from which a person may establish his or her ownership over a property. For instance, occupation in the concept of an owner, either through themselves

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> or their predecessors in interest, since time immemorial has been recognized by this court as early as 1909 in *Cariño v. Insular Government of the Philippine Islands.* x x x Property rights, in all their forms, are protected by no less than the Constitution. This protection is not necessarily rendered weak for lack of paper title that puts it within a particular legal classification.

**APPEARANCES OF COUNSEL**

*Pablo B. Francisco* for petitioners.
*Aquino Martin V. Nillo* for respondent.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

Not all may demand for an easement of right-of-way. Under the law, an easement of right-of-way may only be demanded by the owner of an immovable property or by any person who by virtue of a real right may cultivate or use the same.

This Petition for Review on *Certiorari* assails the November 17, 2011 Decision[1] of the Court of Appeals in CA-G.R. CV No. 87715, which reversed and set aside the May 22, 2006 Decision[2] of the Regional Trial Court (RTC), Binangonan, Rizal, Branch 68 granting petitioners Pablo B. Francisco (Pablo), Liwayway Andres (Liwayway), Ronnie Andres (Ronnie) and their co-plaintiff Liza Andres (Liza) a 50-square meter right-of-way within the subdivision of respondent Sta. Lucia Realty and Development, Incorporated (respondent). Likewise assailed is the March 27, 2012 CA Resolution[3] which denied petitioners and Liza's Motion for Reconsideration thereto.

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[1] CA *rollo*, pp. 70-77; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Antonio L. Villamor and Franchito N. Diamante.

[2] Records, pp. 171-175; penned by Judge John C. Quirante.

[3] CA *rollo*, pp. 114-116.

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***Factual Antecedents***

Petitioners and Liza filed a Complaint[4] for Easement of Right-of-Way against respondent before the RTC on November 28, 2000. They alleged that they are co-owners and possessors for more than 50 years of three parcels of unregistered agricultural land in Pag-asa, Binangonan, Rizal with a total area of more or less 10,500 square meters (subject property). A few years back, however, respondent acquired the lands surrounding the subject property, developed the same into a residential subdivision known as the Binangonan Metropolis East, and built a concrete perimeter fence around it such that petitioners and Liza were denied access from subject property to the nearest public road and *vice versa*. They thus prayed for a right-of-way within Binangonan Metropolis East in order for them to have access to Col. Guido Street, a public road.

In its Answer,[5] respondent denied knowledge of any property adjoining its subdivision owned by petitioners and Liza. At any rate, it pointed out that petitioners and Liza failed to sufficiently allege in their complaint the existence of the requisites for the grant of an easement of right-of-way.

During trial, Pablo testified that he bought a 4,000-square meter-portion of the subject property from Carlos Andres (Carlos), the husband of Liwayway and father of Ronnie and Liza.[6] According to Pablo, he and his co-plaintiffs are still in possession of the subject property as evidenced by an April 13, 1998 Certification[7] issued by the *Barangay* Chairman of Pag-asa.[8] Further, Pablo clarified that the easement of right-of-way that they are asking from respondent would traverse the latter's subdivision for about 50 meters from the subject property all

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[4] Records, pp. 1-4.

[5] *Id*. at 11-14.

[6] TSN dated October 15, 2002, pp. 6 and 11. See also the *Kasulatan ng Bilihang Panuluyan*, records, p. 63.

[7] Records, p. 69.

[8] TSN, October 15, 2002, *id.* at 6 and 11.

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the way to another subdivision that he co-owns, Victoria Village, which in turn, leads to Col. Guido Street.[9] He claimed that the prevailing market value of lands in the area is about ₱600.00 per square meter. Pablo also explained that the subject property is still not registered under the Land Registration Act since no tax declaration over the same has been issued to them despite application with the Municipal Assessor of Binangonan.[10] When required by the court to submit documents regarding the said application,[11] Pablo attached in his Compliance,[12] among others, Carlos' letter[13] of May 18, 1998 to the Municipal Assessor of Binangonan requesting for the issuance of a tax declaration and the reply thereto dated August 5, 1998[14] of the Provincial Assessor of Rizal. In the aforesaid reply, the Provincial Assessor denied the request on the ground that the subject property was already declared for taxation purposes under the name of Juan Diaz and later, in the name of Juanito[15] Blanco, et al. (the Blancos).

Liwayway testified next. According to her, she and her children Ronnie and Liza are the surviving heirs of the late Carlos who owned the subject property.[16] Carlos acquired ownership over the same after he had been in continuous, public and peaceful possession thereof for 50 years,[17] the circumstances of which he narrated in a *Sinumpaang Salaysay*[18] that he executed while he was still alive. Carlos stated therein that even before he was born in 1939, his father was already

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[9] *Id*. at 5 and 14.

[10] *Id*. at 8 and 11-12.

[11] *Id*. at 16.

[12] Records, p. 31.

[13] *Id*. at 38.

[14] *Id*. at 39.

[15] Also referred to as "Juanita" in other parts of the records.

[16] TSN dated November 21, 2002, p. 6.

[17] *Id*. at 10-11.

[18] Records, pp. 64-65.

in possession and working on the subject property; that in 1948, he started to help his father in tilling the land; that when his father became weak and eventually died, he took over the land; and, that he already sought to register his ownership of the property with the Department of Environment and Natural Resources (DENR) and to declare the same for taxation purposes.

For its part, respondent presented as a lone witness the then Municipal Assessor of Binangonan, Virgilio Flordeliza (Flordeliza). Flordeliza confirmed that Carlos wrote him a letter-request for the issuance of a tax declaration.[19] He, however, referred the matter to the Provincial Assessor of Rizal since the property for which the tax declaration was being applied for was already declared for taxation purposes in the name of one Juan Diaz.[20] Later, the tax declaration of Juan Diaz was cancelled and in lieu thereof, a tax declaration in the name of the Blancos was issued.[21] For this reason, the Provincial Assessor of Rizal denied Carlos' application for issuance of tax declaration.[22]

***Ruling of the Regional Trial Court***

The RTC rendered its Decision[23] on May 22, 2006. It observed that petitioners and Liza's allegation in their Complaint that they were in possession of the subject property for more than 50 years was not denied by respondent in its Answer. Thus, the same is deemed to have been impliedly admitted by the latter. It then ratiocinated that based on Article 1137[24] of the Civil Code, petitioners and Liza are considered owners of the

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[19] TSN dated October 7, 2003, pp. 8-9, 12-13.

[20] *Id*. at 13.

[21] *Id*.

[22] *Id*. at 14-15.

[23] Records, pp. 171-175.

[24] Article 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

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subject property through extraordinary prescription. Having real right over the same, therefore, they are entitled to demand an easement of right-of-way under Article 649[25] of the Civil Code.

The RTC further held that Pablo's testimony sufficiently established: (1) that the subject property was surrounded by respondent's property; (2) the area and location of the right-of-way sought; (3) the value of the land on which the right-of-way is to be constituted which was ₱600.00 per square meter; and (4) petitioners and Liza's possession of the subject property up to the present time.

In the ultimate, said court concluded that petitioners and Liza are entitled to an easement of right-of-way, thus:

> WHEREFORE, judgment is hereby rendered giving the plaintiffs a right of way of 50 square meters to reach Victoria Village towards Col. Guido Street. Defendant Sta. Lucia is hereby ordered to grant the right of way to the plaintiffs as previously described upon payment of an indemnity equivalent to the market value of the [50-square meter right of way].
>
> SO ORDERED.[26]

Respondent filed a Notice of Appeal[27] which was given due course by the RTC in an Order[28] dated June 27, 2006.

***Ruling of the Court of Appeals***

On appeal, respondent argued that petitioners and Liza were neither able to prove that they were owners nor that they have any real right over the subject property intended to be the

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[25] Article 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

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[26] Records, p. 175.

[27] *Id*. at 176-177.

[28] *Id*. at 188.

dominant estate. Hence, they are not entitled to demand an easement of right-of-way. At any rate, they likewise failed to establish that the only route available from their property to Col. Guido Street is through respondent's subdivision.

In a Decision[29] dated November 17, 2011, the CA held that the evidence adduced by petitioners and Liza failed to sufficiently establish their asserted ownership and possession of the subject property. Moreover, it held that contrary to the RTC's observation, respondent in fact denied in its Answer the allegation of petitioners and Liza that they have been in possession of subject property for more than 50 years. In view of these, the CA concluded that petitioners and Liza have no right to demand an easement of right-of-way from respondent, thus:

> WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. Accordingly, the May 22, 2006 Decision of the Regional Trial Court of Binangonan, Rizal, Branch 68 is REVERSED and SET ASIDE. Civil Case No. 00-037-B is ordered DISMISSED.
>
> SO ORDERED.[30]

Petitioners and Liza's Motion for Reconsideration[31] was denied in the CA Resolution[32] dated March 27, 2012.

Hence, petitioners seek recourse to this Court through this Petition for Review on *Certiorari*.

**Issue**

Whether petitioners are entitled to demand an easement of right-of-way from respondent.

**Our Ruling**

The Petition has no merit.

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[29] CA *rollo*, pp. 70-77.

[30] *Id*. at 76.

[31] *Id*. at 79-90.

[32] *Id*. at 114-116.

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Under Article 649 of the Civil Code, an easement of right-of-way may be demanded by the owner of an immovable or by any person who by virtue of a real right may cultivate or use the same.

Here, petitioners argue that they are entitled to demand an easement of right-of-way from respondent because they are the owners of the subject property intended to be the dominant estate. They contend that they have already acquired ownership of the subject property through ordinary acquisitive prescription.[33] This is considering that their possession became adverse as against the Blancos (under whose names the subject property is declared for taxation) when Carlos formally registered his claim of ownership with the DENR and sought to declare the subject property for taxation purposes in 1998. And since more than 10 years[34] had lapsed from that time without the Blancos doing anything to contest their continued possession of the subject property, petitioners aver that ordinary acquisitive prescription had already set in their favor and against the Blancos.

In the alternative, petitioners assert that they have already become owners of the subject property through extraordinary acquisitive prescription since (1) they have been in open, continuous and peaceful possession thereof for more than 50 years; (2) the subject property, as depicted in the Survey Plan they caused to be prepared is alienable and disposable; (3) Carlos filed a claim of ownership over the property with the DENR, the agency charged with the administration of alienable public land; and (4) Carlos' manifestation of willingness to declare the property for taxation purposes not only had the effect of giving notice of his adverse claim on the property but also strengthened his *bona fide* claim of ownership over the same.

It must be stressed at the outset that contrary to petitioners' allegations, there is no showing that Carlos filed a claim of

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[33] Pursuant to Article 1134 of the Civil Code which provides that ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

[34] Thirteen years as of the time of the filing of the Memorandum for Petitioners on April 17, 2013.

ownership over the subject property with the DENR. His April 13, 1998 letter[35] to the said office which petitioners assert to be an application for the registration of such claim is actually just a request for the issuance of certain documents and nothing more. Moreover, while Carlos indeed attempted to declare the subject property for taxation purposes, his application, as previously mentioned, was denied because a tax declaration was already issued to the Blancos.

Anent petitioners' invocation of ordinary acquisitive prescription, the Court notes that the same was raised for the first time on appeal. Before the RTC, petitioners based their claim of ownership on extraordinary acquisitive prescription under Article 1137 of the Civil Code[36] such that the said court declared them owners of the subject property by virtue thereof in its May 22, 2006 Decision.[37] Also with the CA, petitioners initially asserted ownership through extraordinary acquisitive prescription.[38] It was only later in their Motion for Reconsideration[39] therein that they averred that their ownership could also be based on ordinary acquisitive prescription.[40] "Settled is the rule that points of law, theories, issues and arguments not brought to the attention of the lower court need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule."[41]

Even if timely raised, such argument of petitioners, as well as with respect to extraordinary acquisitive prescription, fails. "Prescription is one of the modes of acquiring ownership under

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[35] Records, p. 66.

[36] See Memorandum for Plaintiffs, *id.* at 153-160 at 155-156.

[37] *Id*. at 169-175, 172.

[38] See Plaintiffs-Appellees' Brief, CA *rollo,* pp. 43-52, 48, 49.

[39] *Id*. at 79-91.

[40] *Id*. at 88.

[41] *Krystle Realty Development Corporation v. Alibin,* G.R. No. 196117, August 13, 2014, 733 SCRA 1, 12.

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the Civil Code."[42] There are two modes of prescription through which immovables may be acquired – ordinary acquisitive prescription which requires possession in good faith and just title for 10 years and, extraordinary prescription wherein ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for 30 years without need of title or of good faith.[43] However, it was clarified in the *Heirs of Mario Malabanan v. Republic of the Philippines,*[44] that only lands of the public domain subsequently classified or declared as no longer intended for public use or for the development of national wealth, or removed from the sphere of public dominion and are considered converted into patrimonial lands or lands of private ownership, may be alienated or disposed through any of the modes of acquiring ownership under the Civil Code.[45] And if the mode of acquisition is prescription, whether ordinary or extraordinary, it must first be shown that the land has already been converted to private ownership prior to the requisite acquisitive prescriptive period. Otherwise, Article 1113 of the Civil Code, which provides that property of the State not patrimonial in character shall not be the subject of prescription, applies.[46]

Sifting through petitioners' allegations, it appears that the subject property is an unregistered *public agricultural* land. Thus, being a land of the public domain, petitioners, in order to validly claim acquisition thereof through prescription, must first be able to show that the State has –

> expressly declared through either a law enacted by Congress or a proclamation issued by the President that the subject [property] is no longer retained for public service or the development of the national wealth or that the property has been converted into patrimonial.

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[42] *Republic v. Rizalvo, Jr.*, 659 Phil. 578, 589 (2011).

[43] *Tan v. Ramirez*, 640 Phil. 370, 380 (2010).

[44] G.R. No. 179987, September 3, 2013, 704 SCRA 561.

[45] *Id*. at 585.

[46] *Id*.

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Consequently, without an express declaration by the State, the land remains to be a property of public dominion and hence, not susceptible to acquisition by virtue of prescription.[47]

In the absence of such proof of declaration in this case, petitioners' claim of ownership over the subject property based on prescription necessarily crumbles. Conversely, they cannot demand an easement of right-of-way from respondent for lack of personality.

All told, the Court finds no error on the part of the CA in reversing and setting aside the May 22, 2006 Decision of the RTC and in ordering the dismissal of petitioners' Complaint for Easement of Right-of-Way against respondent.

**WHEREFORE,** the Petition is **DENIED**. The November 17, 2011 Decision and March 27, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 87715 are **AFFIRMED**.

**SO ORDERED.**

*Carpio (Chairperson), Mendoza,* and *Jardeleza, JJ.,* concur.

*Leonen, J.,* see separate concurring opinion.

## CONCURRING OPINION

**LEONEN, *J.*:**

I concur in the denial of the Petition for Review on Certiorari.

Article 649 of the Civil Code provides that an easement of right of way may be demanded only by the owner of an immovable property, or a person who may use or cultivate the property on account of a real right. Petitioners attempted to establish their own ownership through the two modes of acquisitive prescription. Their main argument was that they obtained ownership over the property through ordinary

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[47] *Republic v. Aboitiz*, G.R. No. 174626, October 23, 2013, 708 SCRA 388, 401-402.

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acquisitive prescription.[1] However, petitioners failed to sufficiently establish that their possession was in good faith and with just title, falling short of the requirements set by Article 1117[2] of the Civil Code.

In the alternative, petitioners asserted that they became owners of the property through extraordinary acquisitive prescription.[3] In *Heirs of Maningding v. Court of Appeals*,[4] this court held that while extraordinary acquisitive prescription did not require a title or the existence of good faith, the immovable property should have been under uninterrupted adverse possession for 30 years.[5] With regard to the issue of the length of possession, the trial court based its ruling on respondent's alleged failure to deny in its Answer petitioner's allegation of uninterrupted adverse possession.[6] This was subsequently overturned by the Court of Appeals, alongside the finding that petitioners failed to produce evidence to support their allegations.[7] At best, petitioners may rely on the April 13, 1998 letter of Carlos Andres for their claim of adverse possession.[8] However, considering that 30 years have not elapsed thus far since the letter was made,[9] petitioner's claim has not yet ripened to ownership through extraordinary acquisitive prescription.

For having failed to prove ownership over the property, petitioners are not entitled to demand an easement of right of way against respondent.

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[1] *Rollo*, pp. 10-11.

[2] ARTICLE 1117. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.

Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law. (1940a)

[3] *Rollo*, pp. 11-12.

[4] 342 Phil. 567 (1997) [Per *J.* Bellosillo, First Division].

[5] *Id.* at 567-578.

[6] *Rollo*, pp. 22-23.

[7] *Id.*

[8] *Id.* at 11.

[9] *Id.*

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However, I reiterate my position in *Heirs of Mario Malabanan v. Republic of the Philippines*[10] regarding lands of public domain and state ownership.

Article XII, Section 2 of the Constitution provides:

> Section 2. ***All lands of the public domain,*** waters minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are ***owned by the State***. With the exception of agricultural lands, all other natural resources shall not be alienated. . . . (Emphasis supplied)

The provision refers to "all lands of the public domain" as subject to state ownership. It does not create a presumption that the state owns all lands that do not appear to be within the scope of private ownership. It also does not create a presumption that all lands not yet reclassified or alienated to a private person by the state remain part of public dominion.

In my view, the state's reclassification of lands from public domain to patrimonial lands or lands of private ownership is not the reckoning act in all cases from which a person may establish his or her ownership over a property. For instance, occupation in the concept of an owner, either through themselves or their predecessors in interest, since time immemorial has been recognized by this court as early as 1909 in *Cariño v. Insular Government of the Philippine Islands*:[11]

> It is true that, by Section 14, the Government of the Philippines is empowered to enact rules and prescribe terms for perfecting titles to public lands where some, but not all, Spanish conditions had been fulfilled, and to issue patents to natives for not more that 16 hectares of public lands actually occupied by the native or his ancestors before August 13, 1898. But this section perhaps might be satisfied if confined to cases where the occupation was of land admitted to be public land, and had not continued for such a length of time under such

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[10] G.R. No. 179987, September 3, 2013, 704 SCRA 561 [Per *J.* Bersamin, *En Banc*].

[11] 212 U.S. 449 (1909) [Per *J.* Holmes].

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circumstances as to give rise to the understanding that the occupants were owners at that date. ***We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser, and to set the claims of all the wilder tribes afloat.*** It is true again that there is excepted from the provision that we have quoted as to the administration of the property and rights acquired by the United States, such land and property as shall be designated by the President for military or other reservations, as this land since has been. But there still remains the question what property and rights the United States asserted itself to have acquired.

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that ***when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land***.[12] (Emphasis supplied)

Property rights, in all their forms, are protected by no less than the Constitution.[13] This protection is not necessarily rendered weak for lack of paper title that puts it within a particular legal classification.

**ACCORDINGLY**, I vote to deny the Petition.

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[12] *Id.*

[13] Art. III, Sec. 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.