Supreme Court E-Library

be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus an additional one (1) year for each additional ₱10,000.00.[25]

Under these norms, the penalty of four (4) years and two (2) months of *prision correccional*, as minimum term, to twenty (20) years of *reclusion temporal*, as maximum term, is correct. The RTC and the CA were correct in not awarding civil liability since the execution of the mortgage deed satisfied the value of the unreturned diamond ring.

WHEREFORE, we hereby *DENY* the petition for lack of merit, and consequently *AFFIRM* the decision dated January 12, 2006 and the resolution dated May 19, 2006 of the Court of Appeals in CA-G.R. CR No. 28785, finding petitioner Dulce Pamintuan guilty beyond reasonable doubt of the crime of *estafa,* defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended. No costs.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr.,* concur.

THIRD DIVISION

[G.R. No. 178411. June 23, 2010]

OFFICE OF THE CITY MAYOR OF PARAÑAQUE CITY, OFFICE OF THE CITY ADMINISTRATOR OF PARAÑAQUE CITY, OFFICE OF THE CITY

[25] See People vs. *Temporado*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 301-304, and the seminal case of *People v. Gabres*, 335 Phil. 242, 256-257 (1997).

[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

Supreme Court E-Library

ENGINEER OF PARAÑAQUE CITY, OFFICE OF THE CITY PLANNING AND DEVELOPMENT COORDINATOR, OFFICE OF THE BARANGAY CAPTAIN AND SANGGUNIANG PAMBARANGAY OF BARANGAY VITALEZ, PARAÑAQUE CITY, TERESITA A. GATCHALIAN, ENRICO R. ESGUERRA, ERNESTO T. PRACALE, JR., MANUEL M. ARGOTE, CONRADO M. CANLAS, JOSEPHINE S. DAUIGOY, ALLAN L. GONZALES, ESTER C. ASEHAN, MANUEL A. FUENTES, and MYRNA P. ROSALES, *petitioners, vs.* **MARIO D. EBIO AND HIS CHILDREN/HEIRS namely, ARTURO V. EBIO, EDUARDO V. EBIO, RENATO V. EBIO, LOURDES E. MAGTANGOB, MILA V. EBIO, and ARNEL V. EBIO,** *respondents.*

SYLLABUS

1. CIVIL LAW; OWNERSHIP; ACCRETIONS; ALLUVIAL DEPOSITS ALONG THE BANKS OF A CREEK DO NOT FORM PART OF THE PUBLIC DOMAIN, IT AUTOMATICALLY BELONGS TO THE OWNER OF THE LAND TO WHICH IT MAY HAVE BEEN ADDED. — It is an uncontested fact that the subject land was formed from the alluvial deposits that have gradually settled along the banks of the Cut-cut creek. This being the case, the law that governs ownership over the accreted portion is Article 84 of the Spanish Law of Water of 1986, which remains in effect, in relation to Article 457 of the Civil Code. x x x It is therefore explicit from the foregoing provisions that alluvial deposits along the banks of a creek do not form part of the public domain as the alluvial property automatically belongs to the owner of the estate to which it may have been added. The only restriction provided for by law is that the owner of the adjoining property must register the same under the Torrens system; otherwise, the alluvial property may be subject to acquisition through prescription by third persons. x x x [W]hile it is true that a creek is a property of public dominion, the land which is formed by the gradual and imperceptible accumulation of sediments along its banks does not form part of the public domain by clear provision of law.

2. REMEDIAL LAW; PARTIES; INDISPENSABLE PARTY AND NECESSARY PARTY, DISTINGUISHED. — [A]n indispensable

Supreme Court E-Library

party is one whose interest in the controversy is such that a final decree would necessarily affect his/her right, so that the court cannot proceed without their presence. In contrast, a necessary party is one whose presence in the proceedings is necessary to adjudicate the whole controversy but whose interest is separable such that a final decree can be made in their absence without affecting them.

3. ID.; ID.; ID.; WHERE THE STATE IS NEITHER A NECESSARY NOR AN INDISPENSABLE PARTY. — In the instant case, the action for prohibition seeks to enjoin the city government of Parañaque from proceeding with its implementation of the road construction project. The State is neither a necessary nor an indispensable party to an action where no positive act shall be required from it or where no obligation shall be imposed upon it, such as in the case at bar. Neither would it be an indispensable party if none of its properties shall be divested nor any of its rights infringed.

4. ID.; SPECIAL CIVIL ACTIONS; INJUNCTION; NATURE OF THE RIGHT THAT A PARTY MUST HAVE BEFORE HE CAN AVAIL OF AN INJUNCTIVE RELIEF; CASE AT BAR. — We also find that the character of possession and ownership by the respondents over the contested land entitles them to the avails of the action. A right *in esse* means a clear and unmistakable right. A party seeking to avail of an injunctive relief must prove that he or she possesses a right *in esse* or one that is actual or existing. It should not be contingent, abstract, or future rights, or one which may never arise. x x x [R]espondents are deemed to have acquired ownership over the subject property through prescription. Respondents can assert such right despite the fact that they have yet to register their title over the said lot. It must be remembered that the purpose of land registration is not the acquisition of lands, but only the registration of title which the applicant already possessed over the land. Registration was never intended as a means of acquiring ownership. A decree of registration merely confirms, but does not confer, ownership.

APPEARANCES OF COUNSEL

Jose J. Torrefranca for petitioners.
Norberto C. Caparas, Jr. for respondents.

Supreme Court E-Library

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the January 31, 2007 Decision[1] and June 8, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 91350 allegedly for being contrary to law and jurisprudence. The CA had reversed the Order[3] of the Regional Trial Court (RTC) of Parañaque City, Branch 196, issued on April 29, 2005 in Civil Case No. 05-0155.

Below are the facts.

Respondents claim that they are the absolute owners of a parcel of land consisting of 406 square meters, more or less, located at 9781 Vitalez Compound in Barangay Vitalez, Parañaque City and covered by Tax Declaration Nos. 01027 and 01472 in the name of respondent Mario D. Ebio. Said land was an accretion of Cut-cut creek. Respondents assert that the original occupant and possessor of the said parcel of land was their great grandfather, Jose Vitalez. Sometime in 1930, Jose gave the land to his son, Pedro Vitalez. From then on, Pedro continuously and exclusively occupied and possessed the said lot. In 1966, after executing an affidavit declaring possession and occupancy,[4] Pedro was able to obtain a tax declaration over the said property in his name.[5] Since then, respondents have been religiously paying real property taxes for the said property.[6]

Meanwhile, in 1961, respondent Mario Ebio married Pedro's daughter, Zenaida. Upon Pedro's advice, the couple established

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[1] *Rollo*, pp. 21-29. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring.

[2] *Id.* at 31.

[3] *Id.* at 119-121.

[4] *Id.* at 52.

[5] *Id.* at 53-54.

[6] *Id.* at 26.

Supreme Court E-Library

their home on the said lot. In April 1964 and in October 1971, Mario Ebio secured building permits from the Parañaque municipal office for the construction of their house within the said compound.[7] On April 21, 1987, Pedro executed a notarized Transfer of Rights[8] ceding his claim over the entire parcel of land in favor of Mario Ebio. Subsequently, the tax declarations under Pedro's name were cancelled and new ones were issued in Mario Ebio's name.[9]

On March 30, 1999, the Office of the *Sangguniang Barangay* of Vitalez passed Resolution No. 08, series of 1999[10] seeking assistance from the City Government of Parañaque for the construction of an access road along Cut-cut Creek located in the said *barangay*. The proposed road, projected to be eight (8) meters wide and sixty (60) meters long, will run from Urma Drive to the main road of Vitalez Compound[11] traversing the lot occupied by the respondents. When the city government advised all the affected residents to vacate the said area, respondents immediately registered their opposition thereto. As a result, the road project was temporarily suspended.[12]

In January 2003, however, respondents were surprised when several officials from the *barangay* and the city planning office proceeded to cut eight (8) coconut trees planted on the said lot. Respondents filed letter-complaints before the Regional Director of the Bureau of Lands, the Department of Interior and Local Government and the Office of the Vice Mayor.[13] On June 29, 2003, the *Sangguniang Barangay* of Vitalez held a meeting to discuss the construction of the proposed road. In the said meeting, respondents asserted their opposition to the proposed

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[7] *Id.* at 56-58.

[8] *Id.* at 90.

[9] *Id.* at 22.

[10] *Id.* at 91-94.

[11] *Id.* at 92.

[12] *Id.* at 36-37.

[13] *Id.* at 37-38.

Supreme Court E-Library

project and their claim of ownership over the affected property.[14] On November 14, 2003, respondents attended another meeting with officials from the city government, but no definite agreement was reached by and among the parties.[15]

On March 28, 2005, City Administrator Noli Aldip sent a letter to the respondents ordering them to vacate the area within the next thirty (30) days, or be physically evicted from the said property.[16] Respondents sent a letter to the Office of the City Administrator asserting, in sum, their claim over the subject property and expressing intent for a further dialogue.[17] The request remained unheeded.

Threatened of being evicted, respondents went to the RTC of Parañaque City on April 21, 2005 and applied for a writ of preliminary injunction against petitioners.[18] In the course of the proceedings, respondents admitted before the trial court that they have a pending application for the issuance of a sales patent before the Department of Environment and Natural Resources (DENR).[19]

On April 29, 2005, the RTC issued an Order[20] denying the petition for lack of merit. The trial court reasoned that respondents were not able to prove successfully that they have an established right to the property since they have not instituted an action for confirmation of title and their application for sales patent has not yet been granted. Additionally, they failed to implead the Republic of the Philippines, which is an indispensable party.

Respondents moved for reconsideration, but the same was denied.[21]

[14] *Id.* at 107-112.

[15] *Id.* at 39.

[16] *Id.* at 116.

[17] *Id.* at 117-118.

[18] *Id.* at 32-51.

[19] *Id.* at 119.

[20] *Supra* note 3.

[21] *Id.* at 136.

Supreme Court E-Library

Aggrieved, respondents elevated the matter to the Court of Appeals. On January 31, 2007, the Court of Appeals issued its Decision in favor of the respondents. According to the Court of Appeals—

> The issue ultimately boils down to the question of ownership of the lands adjoining Cutcut Creek particularly Road Lot No. 8 (hereinafter RL 8) and the accreted portion beside RL 8.
>
> The evidentiary records of the instant case, shows that RL 8 containing an area of 291 square meters is owned by Guaranteed Homes, Inc. covered by TCT No. S-62176. The same RL 8 appears to have been donated by the Guaranteed Homes to the City Government of Parañaque on 22 March 1966 and which was accepted by the then Mayor FLORENCIO BERNABE on 5 April 1966. There is no evidence however, when RL 8 has been intended as a road lot.
>
> On the other hand, the evidentiary records reveal that PEDRO VITALEZ possessed the accreted property since 1930 per his Affidavit dated 21 March 1966 for the purpose of declaring the said property for taxation purposes. The property then became the subject of Tax Declaration No. 20134 beginning the year 1967 and the real property taxes therefor had been paid for the years 1966, 1967, 1968, 1969, 1970, 1972, 1973, 1974, 1978, 1980, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004. Sometime in 1964 and 1971, construction permits were issued in favor of Appellant MARIO EBIO for the subject property. On 21 April 1987, PEDRO VITALEZ transferred his rights in the accreted property to MARIO EBIO and his successors-in-interest.
>
> Applying [Article 457 of the Civil Code considering] the foregoing documentary evidence, it could be concluded that Guaranteed Homes is the owner of the accreted property considering its ownership of the adjoining RL 8 to which the accretion attached. However, this is without the application of the provisions of the Civil Code on acquisitive prescription which is likewise applicable in the instant case.
>
> x x x x x x x x x
>
> The subject of acquisitive prescription in the instant case is the accreted portion which [was] **duly proven** by the Appellants. It is clear that since 1930, Appellants together with their predecessor-in-interest, PEDRO VITALEZ[,] have been in exclusive possession

Supreme Court E-Library

of the subject property and starting 1964 had introduced improvements thereon as evidenced by their construction permits. Thus, even by extraordinary acquisitive prescription[,] Appellants have acquired ownership of the property in question since 1930 even if the adjoining RL 8 was subsequently registered in the name of Guaranteed Homes. x x x.

x x x x x x x x x

Further, it was only in 1978 that Guaranteed Homes was able to have RL 8 registered in its name, which is almost fifty years from the time PEDRO VITALEZ occupied the adjoining accreted property in 1930. x x x.

x x x x x x x x x

We likewise note the continuous payment of real property taxes of Appellants which bolster their right over the subject property. x x x.

x x x x x x x x x

In sum, We are fully convinced and so hold that the Appellants [have] amply proven their right over the property in question.

WHEREFORE, premises considered, the instant appeal is hereby **GRANTED**. The challenged Order of the court *a quo* is **REVERSED** and **SET ASIDE**.

SO ORDERED.[22]

On June 8, 2007, the appellate court denied petitioners' motion for reconsideration. Hence, this petition raising the following assignment of errors:

I. WHETHER OR NOT THE DECISION AND RESOLUTION OF THE HONORABLE COURT OF APPEALS THAT RESPONDENTS HAVE A RIGHT *IN ESSE* IS IN ACCORD WITH THE LAW AND ESTABLISHED JURISPRUDENCE[;]

II. WHETHER OR NOT THE DECISION AND RESOLUTION OF THE HONORABLE COURT OF APPEALS THAT THE SUBJECT LOT IS AVAILABLE FOR ACQUISITIVE PRESCRIPTION IS IN ACCORD WITH THE LAW AND ESTABLISHED JURISPRUDENCE[;] AND

[22] *Id.* at 25-29. Emphasis supplied.

Supreme Court E-Library

III. WHETHER OR NOT THE STATE IS AN INDISPENSABLE PARTY TO THE COMPLAINT … FILED BY RESPONDENTS IN THE LOWER COURT.[23]

The issues may be narrowed down into two (2): procedurally, whether the State is an indispensable party to respondents' action for prohibitory injunction; and substantively, whether the character of respondents' possession and occupation of the subject property entitles them to avail of the relief of prohibitory injunction.

The petition is without merit.

An action for injunction is brought specifically to restrain or command the performance of an act.[24] It is distinct from the ancillary remedy of preliminary injunction, which cannot exist except only as part or as an incident to an independent action or proceeding. Moreover, in an action for injunction, the auxiliary remedy of a preliminary prohibitory or mandatory injunction may issue.[25]

In the case at bar, respondents filed an action for injunction to prevent the local government of Parañaque City from proceeding with the construction of an access road that will traverse through a parcel of land which they claim is owned by them by virtue of acquisitive prescription.

Petitioners, however, argue that since the creek, being a tributary of the river, is classified as part of the public domain, any land that may have formed along its banks through time should also be considered as part of the public domain. And respondents should have included the State as it is an indispensable party to the action.

We do not agree.

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[23] *Id.* at 12-13.

[24] *Manila Banking Corporation v. Court of Appeals*, G.R. No. L-45961, July 3, 1990, 187 SCRA 138, 144-145.

[25] *Id.* at 145.

Supreme Court E-Library

It is an uncontested fact that the subject land was formed from the alluvial deposits that have gradually settled along the banks of Cut-cut creek. This being the case, the law that governs ownership over the accreted portion is Article 84 of the Spanish Law of Waters of 1866, which remains in effect,[26] in relation to Article 457 of the Civil Code.

Article 84 of the Spanish Law of Waters of 1866 specifically covers ownership over alluvial deposits along the banks of a creek. It reads:

ART. 84. Accretions deposited gradually upon lands contiguous to creeks, streams, rivers, and lakes, by accessions or sediments from the waters thereof, belong to the owners of such lands.[27]

Interestingly, Article 457 of the Civil Code states:

Art. 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.

It is therefore explicit from the foregoing provisions that alluvial deposits along the banks of a creek do not form part of the public domain as the alluvial property automatically belongs to the owner of the estate to which it may have been added. The only restriction provided for by law is that the owner of the adjoining property must register the same under the Torrens system; otherwise, the alluvial property may be subject to acquisition through prescription by third persons.[28]

In contrast, properties of public dominion cannot be acquired by prescription. No matter how long the possession of the properties has been, there can be no prescription against the State regarding

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[26] See *Heirs of Emiliano Navarro v. Intermediate Appellate Court*, G.R. No. 68166, February 12, 1997, 268 SCRA 74.

[27] As cited in *Government of the P.I. v. Colegio de San Jose*, 53 Phil. 423, 430 (1929).

[28] *Grande v. Court of Appeals*, No. L-17652, June 30, 1962, 5 SCRA 524, 530-531.

Supreme Court E-Library

property of public domain.[29] Even a city or municipality cannot acquire them by prescription as against the State.[30]

Hence, while it is true that a creek is a property of public dominion,[31] the land which is formed by the gradual and imperceptible accumulation of sediments along its banks does not form part of the public domain by clear provision of law.

Moreover, an indispensable party is one whose interest in the controversy is such that a final decree would necessarily affect his/her right, so that the court cannot proceed without their presence.[32] In contrast, a necessary party is one whose presence in the proceedings is necessary to adjudicate the whole controversy but whose interest is separable such that a final decree can be made in their absence without affecting them.[33]

In the instant case, the action for prohibition seeks to enjoin the city government of Parañaque from proceeding with its implementation of the road construction project. The State is neither a necessary nor an indispensable party to an action where no positive act shall be required from it or where no obligation shall be imposed upon it, such as in the case at bar. Neither would it be an indispensable party if none of its properties shall be divested nor any of its rights infringed.

We also find that the character of possession and ownership by the respondents over the contested land entitles them to the avails of the action.

A right *in esse* means a clear and unmistakable right.[34] A party seeking to avail of an injunctive relief must prove that he

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[29] *Meneses v. El Commonwealth De Filipinas*, 69 Phil. 647, 650 (1940).

[30] See *City of Manila v. Insular Government*, 10 Phil. 327, 338 (1908).

[31] *Maneclang v. Intermediate Appellate Court*, No. 66575, September 30, 1986, 144 SCRA 553, 556.

[32] Regalado, Vol. I, *Remedial Law Compendium*, 9th edition, p. 91.

[33] *Id.*

[34] *Philippine Leisure and Retirement Authority v. Court of Appeals*, G.R. No. 156303, December 19, 2007, 541 SCRA 85, 100.

Supreme Court E-Library

or she possesses a right *in esse* or one that is actual or existing.[35] It should not be contingent, abstract, or future rights, or one which may never arise.[36]

In the case at bar, respondents assert that their predecessor-in-interest, Pedro Vitalez, had occupied and possessed the subject lot as early as 1930. In 1964, respondent Mario Ebio secured a permit from the local government of Parañaque for the construction of their family dwelling on the said lot. In 1966, Pedro executed an affidavit of possession and occupancy allowing him to declare the property in his name for taxation purposes. Curiously, it was also in 1966 when Guaranteed Homes, Inc., the registered owner of Road Lot No. 8 (RL 8) which adjoins the land occupied by the respondents, donated RL 8 to the local government of Parañaque.

From these findings of fact by both the trial court and the Court of Appeals, only one conclusion can be made: that for more than thirty (30) years, neither Guaranteed Homes, Inc. nor the local government of Parañaque in its corporate or private capacity sought to register the accreted portion. Undoubtedly, respondents are deemed to have acquired ownership over the subject property through prescription. Respondents can assert such right despite the fact that they have yet to register their title over the said lot. It must be remembered that the purpose of land registration is not the acquisition of lands, but only the registration of title which the applicant already possessed over the land. Registration was never intended as a means of acquiring ownership.[37] A decree of registration merely confirms, but does not confer, ownership.[38]

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[35] *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, June 7, 2007, 523 SCRA 405, 413.

[36] *Id.* at 415.

[37] *Republic v. Court of Appeals*, Nos. L-43105 & L-43190, August 31, 1984, 131 SCRA 532, 539.

[38] *Lopez v. Esquivel, Jr.*, G.R. No. 168734, April 24, 2009, 586 SCRA 545, 562; and *Republic v. Court of Appeals*, G.R. No. 108998, August 24, 1994, 235 SCRA 567, 576.

Supreme Court E-Library

Did the filing of a sales patent application by the respondents, which remains pending before the DENR, estop them from filing an injunction suit?

We answer in the negative.

Confirmation of an imperfect title over a parcel of land may be done either through judicial proceedings or through administrative process. In the instant case, respondents admitted that they opted to confirm their title over the property administratively by filing an application for sales patent.

Respondents' application for sales patent, however, should not be used to prejudice or derogate what may be deemed as their vested right over the subject property. The sales patent application should instead be considered as a mere superfluity particularly since ownership over the land, which they seek to buy from the State, is already vested upon them by virtue of acquisitive prescription. Moreover, the State does not have any authority to convey a property through the issuance of a grant or a patent if the land is no longer a public land.[39]

Nemo dat quod dat non habet. No one can give what he does not have. Such principle is equally applicable even against a sovereign entity that is the State.

WHEREFORE, the petition is *DENIED* for lack of merit. The January 31, 2007 Decision, as well as the July 8, 2007 Resolution, of the Court of Appeals in CA-G.R. SP No. 91350 are hereby *AFFIRMED*.

With costs against petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad,*[*] *JJ.,* concur.

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[39] *De Guzman v. Agbagala*, G.R. No. 163566, February 19, 2008, 546 SCRA 278, 286.

[*] Additional member per Special Order No. 843.